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Supreme Court of Maryland
ROBERT C. MURPHY COURTS OF APPEAL BUILDING

Petitions for Writ of Certiorari - December, 2024

PETITIONS FOR WRIT OF CERTIORARI

September Term, 2024

Granted December 19, 2024

County Council of Prince George's County v. Robin Dale Land LLC, et al. – Case No. 38, September Term, 2024

Issues – Land Use – 1) Did ACM err when it held that the District Council's adoption of Council Resolution (CR)-136-2021 approving the Countywide Sectional Map Amendment is not comprehensive rezoning when this Court in *Prince George's Cnty. Council v. Concerned Citizens of Prince George's Cnty.*, 485 Md. 150 (2023), and the Maryland General Assembly, recognized that CR-136-2021 is comprehensive rezoning? 2) Did ACM err in its interpretation and application of Section 27-222 of the prior zoning ordinance (concerning sectional map amendments) and this Court's precedent on the hallmarks of comprehensive rezoning when it held that the District Council's adoption of CR-136-2021 is not a comprehensive rezoning? 3) Did ACM err when it failed to apply CR-136-2021, a change in law, as required by *McHale v. DCW Dutchship Island*, 415 Md. 145 (2010), when ACM previously held in *Bazzarre v. County Council*, 2017 WL 2334472 (May 30, 2017) that none of the property owners had vested or accrued substantive rights. 4) Was the District Council's adoption of CR-11-2019 and CR-12-2019 approving the Subregion 5 and 6 Master Plans and Sectional Map Amendments, made within the legal boundaries of its plenary legislative powers?

Sergey S. Danshin v. State of Maryland – Case No. 39, September Term, 2024

Issue – Criminal Law – Did the trial court commit reversible error by refusing to propound the pattern jury instruction on defense of others where Petitioner denied being the shooter but the record provided evidence of the Petitioner's state of mind at the time of the shooting?

Daniel M. Hall v. Anne Arundel County, Maryland – Case No. 40, September Term, 2024

Issues – Health General – 1) Did the trial court err in affirming the Personnel Board's decision that the County's termination of Petitioner's employment for using medical cannabis with a valid written certification was proper? 2) Did the trial court err in affirming the Board's finding that Petitioner could have been under the influence of cannabis at work?

In re Expungement Petition of Bradley B. – Case No. 41, September Term, 2024

Issue – Criminal Procedure – Does § 10-110 of the Criminal Procedure Article, which permits people who meet other eligibility criteria to expunge certain convictions after a waiting period that begins when they "satisf[y] the sentence...imposed," nevertheless prohibit someone from ever expunging an eligible conviction if they were, for any reason, ever found in violation of probation ordered for that conviction and probation closed as "unsatisfactory"?

Denied/Dismissed December 20, 2024

The order denying or dismissing the below petitions can be found here.

Abraham, Keion Kalil v. State – Pet. No. 273
Bailey, William M. v. State – Pet. No. 350
Bay City Property Owners Ass'n v. Cnty. Comm'rs of Queen Anne's Cnty – Pet. No. 333
Brooks, Martin v. State – Pet. No. 339
Cropper, John Edward v. State – Pet. No. 321
DeBerry v. Mount St. Mary's University – Pet. No. 287
DeBerry v. Nguyen – Pet. No. 290
Ferrell, Martinez D. v. State – Pet. No. 266
Hall v. State Employees Credit Union – Pet. No. 356
Hawkins v. Mohamed and Son Jewelers – Pet. No. 279
Helfrich v. King – Pet. No. 322
Hernandez v. Prince George's Cnty. Police Dept. – Pet. No. 303
Ibrahim v. Moriarty – Pet. No. 327
In re: Su.N., Sa.N., & So.N. – Pet. No. 308
In the Matter of Hill – Pet. No. 345
In the Matter of the Petition of Md. BioEnergy – Pet. No. 325 and conditional cross-petition
Inko-Tariah v. Okereke – Pet. No. 302
Jen's Place v. Federal Hill Investments – Pet. No. 332
Jones, Jeffrey R. v. State – Pet. No. 312
Kanda, George v. State – Pet. No. 323
Lawson, Damon v. State – Pet. No. 320

Lofland, Da'yon v. State – Pet. No. 334
McKnight v. Bank Auto Body – Pet. No. 310
Melvin, Shaunessi v. State – Pet. No. 288
Nash, Michael Anthony v. State – Pet. No. 306
Nivens, Stephen v. Dept. of Pub. Safety & Correctional Servs. – Pet. No. 335
Nyarko v. Akinlade – Pet. No. 278
Okedi v. White Oaks Auto service – Pet. No. 307
Reeves v. Akunne – Pet. No. 293
Shing v. Univ. of Md. Medical Center – Pet. No. 348
Snead v. ECI Cemetery SVC of MD – Pet. No. 276
Yan v. Suarez – Pet. No. 319
Young v. The Park at Winterset – Pet. No. 337

Denied/Dismissed December 31, 2024

DeBerry, Shaunesi v. State – Pet. No. 361
DeBerry, Shaunesi v. State – Pet. No. 362
DeBerry, Shaunesi v. State – Pet. No. 363
DeBerry, Shaunesi v. State – Pet. No. 364
DeBerry, Shaunesi v. State – Pet. No. 365

In the Matter of Julia and Ryan King, et al.	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
	*	CASE NO.: C- 03-CV-22-000574

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

ORDER

Pursuant to the Mandate from the Appellate Court of Maryland, dated August 30, 2024, the decision of the Board of Appeals is **REVERSED**.

10/9/2024

Stacy A. Mayer, Judge
Circuit Court for
Baltimore County

Clerk, please send copies to: all parties.

Entered: Clerk, Circuit Court for
Baltimore County, MD
October 10, 2024

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BOARD OF APPEALS

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Appellate Court of Maryland
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IN THE APPELLATE COURT OF MARYLAND

Julia and Ryan King, et al., Appellant	*	
	*	No. 2094, September Term 2022
v.	*	ACM-REG-2094-2022
	*	Circuit Court No. C-03-CV-22-000574
Cornelius David Helfrich, et al., Appellee	*	
	*	
	*	
	*	

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

MANDATE

On the 30th day of August, 2024, it was ordered and adjudged by the Appellate Court of Maryland:

Judgement of the Circuit Court for Baltimore County reversed and case remanded to that court with instructions to reverse the decision of the Board of Appeals. Costs to be paid by appellees.

STATE OF MARYLAND, Sct.:
I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Appellate Court of Maryland. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Appellate Court of Maryland, this 1st day of October, 2024.



Rachel Dombrowski

Rachel Dombrowski, Clerk
Appellate Court of Maryland

MANDATE - STATEMENT OF COSTS

Appellate Court of Maryland

ACM-REG-2094-2022

Julia and Ryan King, et al. v. Cornelius David Helfrich, et al.

Appellant			
	Lauren and Evan Brown	Notice of Appeal	50.00
		RPIF	11.00
		Filing Fee - Lower Court	60.00
		Brief	48.00
		Reply Brief	48.00
		Record Extract	585.60
		Transcript/Stenographer Costs	283.50
		Appellant Total	**1,086.10**
Appellee			
	Dominion Properties, LLC	Brief	105.60
		Appellee Total	**105.60**
		Total Costs	**1,191.70**

STATE OF MARYLAND, ss:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Appellate Court of Maryland.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Appellate Court of Maryland this 1st day of October, 2024.

Rachel Dombrowski
Clerk of the Appellate Court of Maryland

Costs shown on this Mandate are to be settled between counsel and <u>NOT THROUGH THIS OFFICE.</u>

Entered: Clerk, Circuit Court for
Baltimore County, MD
October 1, 2024

E-FILED
Rachel Dombrowski, Clerk
Appellate Court of Maryland
8/30/2024 2:13 PM

Julia and Ryan King, et al. v. Cornelius David Helfrich, et al.
No. 2094, September Term 2022

Land Use – Zoning and Planning – Variances. In Baltimore County, a zoning agency may grant a variance from the zoning regulations otherwise applicable to a property only if, among other things, that property satisfies the "uniqueness" condition for a variance. To satisfy the uniqueness test, a property must have an inherent characteristic not shared by other properties in the area, such as its shape, topography, subsurface conditions, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. A property that is similar or identical to other properties in the area is not unique simply because the owner of the property did not build a house on the property at the same time that owners of nearby similar properties built houses on their properties when a prior zoning classification allowed such construction. In other words, a property does not satisfy the uniqueness condition for a variance simply as a result of rezoning of an area.

Land Use – Zoning and Planning – Variances. Under Baltimore County's variance regulations, the property owner seeking a variance must prove, among other things, that the proposed variance would be in harmony with the spirit and intent of other applicable zoning regulations that apply to the property. A zoning agency's grant of a variance is reversible error when the applicant has failed to introduce evidence from which the zoning agency could reach that finding. The inquiry focuses on harmony with existing regulations, not on harmony with regulations in effect at an earlier time.

Land Use – Zoning and Planning – Variances. In Baltimore County, the Board of Appeals does not have the authority to grant a variance from height or area zoning regulations that would increase residential density. Mechanisms for doing that include rezoning through the change/mistake rule or the quadrennial rezoning process.

Land Use – Zoning and Planning – Variances. Whether or not neighbors who oppose a property owner's application for a variance have objected to variance applications for other properties in the neighborhood is not relevant to the question of whether the zoning agency should grant the application before it.

Land Use – Zoning and Planning – Takings. In order to assert that a zoning classification has effected an inverse condemnation of a property – a "taking" that entitles the owner to just compensation – the claimant must exhaust the available remedies under the local land use law, including, as appropriate, applications for rezoning and applications for variances.

Circuit Court for Baltimore County
Case No. C-03-CV-22-000574

REPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2094

September Term, 2022

JULIA AND RYAN KING, ET AL.

v.

CORNELIUS DAVID HELFRICH, ET AL.

Arthur
Shaw
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by McDonald, J.

Filed: August 30, 2024

The Maryland Legislature has adopted a policy that the orderly development and use of land requires comprehensive regulation through planning and zoning measures implemented by local governments. To carry out that policy, a local government adopts a comprehensive plan that sets broad goals on topics such as transportation, infrastructure, public facilities, and resource conservation. To implement the comprehensive plan, the local government then adopts a zoning ordinance that maps large areas of the jurisdiction into various zones and sets the types and intensity of uses that may be permitted in each zone. Although the comprehensive zoning adopted by a local government is presumed to be correct, a jurisdiction may include in its zoning laws mechanisms for exempting an individual parcel of land from a zoning classification or from particular regulations applicable to the classification. One such mechanism is a variance from the zoning regulations applicable to the parcel; another is piecemeal rezoning.

This case concerns an application for a variance from zoning regulations. A variance may be granted when a property is "unique" and, if so, when that uniqueness results in undue hardship or "practical difficulty" to the owner and when certain other criteria are satisfied.

Appellee Cornelius D. Helfrich owns 16 Locust Drive, ("16 Locust"), which is located in an area of Catonsville in Baltimore County. He has contracted to sell it to Appellee Dominion Properties, LLC ("Dominion"). 16 Locust is a long-vacant lot in a

residential subdivision[1] otherwise developed with houses prior to the adoption of the current zoning. That zoning has remained unchanged since 1996, when the County first adopted it through its comprehensive zoning process. As currently zoned, 16 Locust is too small to accommodate a house.

This case began when Mr. Helfrich and Dominion (collectively, "Applicants") sought variances from the area and setback regulations that apply to the zone in which 16 Locust is located and that currently constrain the construction of a house there. Appellants Julia and Ryan King and more than 50 other neighborhood residents (collectively, "Protestants") opposed the application.[2]

The County Board of Appeals ("Board") granted the variances on the basis that (1) 16 Locust, although not physically unique compared to other properties in the zone, was rendered "unique" by virtue of the adoption of the 1996 zoning and (2) there was undue hardship/practical difficulty because there was no other beneficial use of the property and a failure to grant the variances would result in an unconstitutional taking of Mr. Helfrich's property. Protestants have sought judicial review of that decision.

For the reasons explained below, we hold:

---

[1] 16 Locust was recorded on the subdivision plat as lot "6," in section "A." The parties refer to it in various ways. We refer to it, and to lot "7," which is the adjacent parcel at 18 Locust Drive, by street address.

[2] The caption of this case, both in the Circuit Court and this Court, has appeared in various different iterations, some of which did not include the Applicants, who are the Appellees in this appeal. We have adopted a version that identifies the Protestants as Appellants and the Applicants as Appellees.

(1) The Board did not apply the correct standard of *uniqueness* of a property for purposes of the variance regulation.

(2) Given the facts that the Board found, the property in question does not satisfy the correct standard of uniqueness.

(3) The Board failed to find, and Applicants failed to prove, that the proposed variances were in "strict harmony with the spirit and intent" of the existing zoning regulations applicable to 16 Locust.

(4) The County laws from which the Board derives its power to grant variances do not authorize the Board to exempt this particular property either from the uniqueness standard on the grounds that the variances are necessary to avoid a taking or from the other conditions that the regulation sets on the Board's variance powers. Where, as here, a property owner maintains that the property was zoned erroneously and seeks to restore to the property the incidents of its former zoning, the owner's remedy is to seek a zoning reclassification from the County Council under the procedures for such requests. Applicants did not establish for purposes of their takings claim that they had sought that remedy.

(5) The Board erred legally to the extent that it based its decision on the evidence that variances had been granted in the past to owners of improved lots in the neighborhood.

I

Legal Background

The variance application is subject to the State laws applicable to the planning and zoning powers of a charter county such as Baltimore County, to the Baltimore County Code and Zoning Regulations, and to the case law on the role of variances in land use regulation.

Resolution of this appeal requires a review of the Board's interpretation of the County's variance regulation, both as to the uniqueness test set by that regulation and as to the Board's own role in granting a variance to avoid a taking. Because that regulation and its application to this case are best understood in light of the broader statutory scheme, we begin with a general overview of that scheme.

A. Zoning Powers of a Charter County under the Maryland Code

The Local Government Article of the Maryland Code empowers a charter county such as Baltimore County to "enact local laws relating to zoning and planning to protect and promote public safety, health, morals, and welfare[.]" Maryland Code, Local Government Article ("LG"), §10-324(a). It further declares as a "policy of the State" that "the orderly development and use of land and structures requires comprehensive regulation through the implementation of planning and zoning controls" and that those controls "shall be implemented by local government." LG §10-324(b)(1),(2).

With regard to planning controls, a charter county must enact and execute a "comprehensive plan" that implements various broad quality of life issues and includes certain visions and elements, such as development regulations and water and transportation infrastructure. Maryland Code, Land Use Article ("LU"), §§1-401(b), 1-405, 1-406

through 1-411; *see also Friends of Frederick Cnty. v. Town of New Market*, 224 Md. App. 185, 194-98 (2015) (describing the visions and elements requirements). The charter county must then implement its comprehensive plan by adopting zoning laws and other land use measures that are consistent with the visions and certain of the elements stated in it. LU §1-417.[3] Among other things, the charter county adopts, and then periodically revises, a comprehensive zoning map.

As explained by the then-Court of Appeals (now known as the Supreme Court of Maryland), comprehensive zoning "involve[s] large geographic areas and emanate[s] largely from policy considerations, including future public needs, potential for orderly growth, and the public health, safety, and general welfare to be advanced." *County Council of Prince George's County v. Zimmer Dev. Co*., 444 Md. 490, 508 (2015); *see also Mayor & Council of Rockville v. Rylyns Enterprises, Inc*., 372 Md. 514, 535 (2002) (explaining comprehensive zoning). Comprehensive zoning adopted by a local legislative body is accorded "a strong presumption of correctness and validity." *Rylyns*, 372 Md. at 538; *see also People's Couns. for Baltimore Cnty. v. Beachwood I Ltd. P'ship*, 107 Md. App. 627, 638-41 (1995) (explaining the presumption of correctness to be accorded to the Baltimore County Council's reduction of the permissible density in an area through the comprehensive rezoning process).

[3] *See* Joseph A. Stevens, "Quiet Revolution" - Maryland Slowly Takes Back Local Government Land Use Controls, Md. B.J., November/December 2018, at 28, 32 (discussing various State mandates regarding local land use planning; noting that amendments to the Land Use Article in 2009 "memorialized the consistency mandate between comprehensive plans and implementing land use regulations.").

While setting the policy that land use be regulated on a comprehensive basis, the law recognizes that the circumstances of a particular property may justify excepting it from the restrictions of the otherwise applicable zoning. One mechanism for doing that is to rezone the property on a piecemeal basis through the county's "change/mistake rule" procedures. Those procedures, as described further below, apply when the property owner can prove that unforeseen changes have occurred in the surrounding neighborhood since the prior comprehensive rezoning or that the zoning authority made a mistake of fact in the comprehensive rezoning. *Zimmer*, 444 Md. at 512.

Another mechanism is to grant a property owner's application for a variance that exempts the property from one or more of the regulations applicable to the zone. That mechanism requires the property owner to establish that the property is unique in such a way that the regulation creates an undue hardship or practical difficulty for the owner. *See, e.g., Rylyns*, 372 Md. at 536-37 (describing mechanisms for excluding a particular property from comprehensive zoning).

To avoid the abuse of such mechanisms, the requirements for each must be specified as a part of the comprehensive zoning ordinance, not devised on a case-by-case basis. *Rylyns*, 372 Md. at 537-39. Thus, the default principle is that zoning is to be done comprehensively, in coordination with the inter-disciplinary planning process, rather than by piecemeal actions. *See* LU §§1-401(b), 1-405, 1-406 through 1-411, 1-417; *see also generally Rylyns*, 372 Md. at 535-38 (listing the characteristics of "proper" comprehensive zoning); *Zimmer*, 444 Md. at 505-08 (same); *Town of Bel Air v. Bodt*, No. SCM-REG-027-2023, slip op. at 2 n.2 (July 9, 2024).

A charter county may establish a board of appeals with original jurisdiction to review an administrative decision concerning, among other things, "an application for a zoning variation or exception or amendment of a zoning map." LG §10-305(b)(1). Within the limits set by the statute, the authority that a charter county chooses to confer on its board of appeals can vary by county.

B. Zoning under the Baltimore County Code and Zoning Regulations

1. Zoning through the Quadrennial Comprehensive Zoning Process

Baltimore County reviews its comprehensive zoning map on a four-year cycle. Baltimore County Code (2015) ("County Code") §32-3-212. As part of that process, the County Council adopts a map that divides the county into zones, districts, or divisions by type of use. County Code, §§32-3-201, 202.[4]

The County Council has adopted regulations – the Baltimore County Zoning Regulations ("BCZR") – that elaborate on and implement the comprehensive plan and map.

---

[4] Baltimore County explains its comprehensive zoning process this way:

> The Comprehensive Zoning Map Process (CZMP) takes place every four years on an exact schedule specified in the County Code. Any citizen may request a zoning change on any property in the County. The CZMP covers a period of approximately 12 months and results in zoning decisions that are reflected in a final Log of Issues, with the County Council enacting legislation for each issue whether to retain the existing zoning or to enact a different zone(s) or district(s). Generally, each issue is a single property, but an issue may cover many adjoining properties and might even cover many hundreds of acres. The zoning on all properties which were not issues is re-enacted without change.

https://www.baltimorecountymd.gov/departments/planning/comprehensive-rezoning/index.html

Some regulations for the residential zones directly address density, which refers to the number of dwelling units allowable within a quantified space.[5] Others, often referred to as area regulations, address matters that have a more indirect impact on density, such as lot size requirements, minimum setback requirements, and front yard requirements.[6]

Article 1B of the BCZR governs zones classified as Density Residential ("D.R.") zones. In particular, BCZR §1B02.2 contains the density regulations applicable to land in the zones relevant to this case. Under that regulation, density of land in a residential subdivision is gauged by the total residential acreage of the subdivision, not lot-by-lot. For land zoned D.R. 2, as 16 Locust has been zoned since 1996, the regulation caps the maximum gross residential density at two dwelling units per acre of the subdivision. For land zoned D.R. 5.5, as 16 Locust was zoned prior to 1996, the regulation caps the maximum gross residential density at 5.5 dwelling units per acre.

Pertinent to the application that resulted in this case, BCZR §1B02.3 contains certain area regulations applicable to an existing subdivision in the D.R. zones. Under the area regulation for land zoned D.R. 2, the minimum net lot area for a dwelling is 20,000

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[5] For example, the Court in *People's Couns. for Baltimore Cnty. v. Beachwood I Ltd. P'ship* addressed a comprehensive rezoning in which the County Council "changed the zoning on the subject property from D.R. 5.5 to D.R. 1, thereby lowering the permitted residential density to 1 dwelling unit per acre." 107 Md. App. 627, 634 (1995).

[6] *See* BCZR §1B00.1 (in its declaration of findings regarding the regulations for the Density-Residential zones, referring to the "minimum standards for individual lots" as "having been derived from maximum overall density standards"); *see also, e.g.,* 3 Rathkopf's The Law of Zoning and Planning §51:8 (4th ed.) (explaining that development density can be regulated by various methods, including "setback and frontage requirements, limitations on bulk and building area, and lot depth," as well as through unit density and minimum lot size).

square-feet – slightly less than one-half acre. BCZR §1B02.3C. The lot must be at least 100 feet wide, the front yard must be at least 40 feet deep, the rear yard must be at least 40 feet deep, and the sum of the widths of the side yards must total at least 40 feet, with each side yard at least 15 feet in width. *Id*. Those are the regulations from which Applicants sought a variance.

During the quadrennial cycle, any person may seek the rezoning of a parcel by filing the appropriate form to generate an "issue" for the County Council's consideration during its eventual consideration of the comprehensive plan. County Code §32-3-211- 214; *see also People's Counsel for Baltimore County v. Prosser Co*., 119 Md. App. 150, 168–69 (1998) (explaining the process for requesting a rezoning during the comprehensive plan cycle); footnote 4 above.

2. Rezoning Outside of the Quadrennial Planning Process

In the interim between quadrennial planning cycles, a person may seek to rezone a parcel by filing with the Board of Appeals a petition under the "change/mistake" rule. Such a petition must show either that the character of the neighborhood of a particular parcel has substantially changed since the last comprehensive rezoning or that the most recent classification of that parcel was erroneous. County Code, §§32-3-233, 32-3-503, 32-3-510; *see also Prosser*, 119 Md. App. at 168–69 (explaining the process for requesting a rezoning under the change/mistake rule).[7]

[7] The Baltimore County Department of Planning describes "two major differences" between quadrennial rezoning and change/mistake rezoning:

C. Relevant Baltimore County Variance Laws and the Board's Authority

1. Baltimore County's Variance Laws

The Baltimore County Code authorizes the grant of a variance from certain regulations in accordance with the conditions set forth in the BCZR. County Code, §32-3-301. Those conditions are delineated in BCZR §307.1 which, in relevant part, provides:

> Authority to grant variances; procedures and restrictions.
>
> The Zoning Commissioner of Baltimore County[8] 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 [BCZR] would result in practical difficulty or unreasonable hardship.
>
> No increase in residential density beyond that otherwise allowable by the [BCZR] shall be permitted as a result of any such grant of a variance from height or area regulations.

> The County Council has broad legislative authority to place whatever zone it deems to be appropriate on a particular property. The Board of Appeals, however, is exercising delegated authority and is much more limited in the scope of its decision-making discretion. The Board of Appeals cannot grant a change in zoning unless the record shows that there has been either a substantial change in the character of the neighborhood since the last comprehensive process, or an error in the mapping. As a legal matter, either of these conditions is usually very difficult to prove.

https://www.baltimorecountymd.gov/departments/planning/comprehensive-rezoning/index.html.

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

> Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare.
>
> They shall have no power to grant any other variances. . . .

BCZR §307.1 (breaks added between sentences for readability).

Broken down into its separate parts, this regulation imposes the following six conditions on the authority of the Zoning Commissioner or, as applicable, the Board of Appeals (collectively "zoning agency") to grant a variance:

(1) The zoning agency may grant a variance only from certain specified regulations – those governing height and area, off-street parking, and signs.

(2) The zoning agency may grant a variance "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." This condition is generally known as the "uniqueness" condition.[9]

(3) The zoning agency may grant a variance "only in cases where ... strict compliance with the [BCZR] would result in practical difficulty or unreasonable hardship." We shall refer to this condition as the "difficulty/hardship" condition.

[9] Similar variance provisions in the zoning laws of some counties refer to characteristics "unique" to the property. Some, like the Baltimore County regulation, refer to characteristics that are "peculiar" to the property. Maryland courts have viewed the terms as interchangeable and generally refer to the application of this condition as the "uniqueness analysis." *See Dan's Mountain Wind Force, LLC v. Allegany County Bd. of Zoning Appeals*, 236 Md. App. 483, 494-95 (2018).

(4) "No increase in residential density beyond that otherwise allowable by the [BCZR] shall be permitted as a result of any such grant of a variance from height or area regulations." We shall refer to this as the "density" condition.

(5) "[A]ny 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." We shall refer to this as the "harmony" condition.

(6) "[A]ny such variance shall be granted only … in such manner as to grant relief without injury to public health, safety and general welfare." We shall refer to this as the "general welfare" condition.

See BCZR §307.1. Further, the Zoning Commissioner and the Board of Appeals, when it has jurisdiction, "shall have no power to grant any other variances." The word "shall," as used in the BCZR, "is mandatory." BCZR §101.1.

The provision that prohibits the Board of Appeals from granting a variance that increases density has been part of the zoning law in Baltimore County since at least 1964. That year, Baltimore County amended its variance law to expressly prohibit the Board of Appeals from granting a variance that would increase residential density beyond that permitted by the regulations. *See Yorkdale Corp. v. Powell*, 237 Md. 121, 124 (1964) (detailing the history of the legislation that amended the regulation).[10]

[10] At least one other home rule county has made a different decision, choosing to confer on its board of appeals the authority to grant a variance from density requirements. *See, e.g.*, *Dan's Mountain*, 236 Md. App. at 491 (quoting Allegany County's definition of "variance" as a "'change of density, bulk[,] or area requirements'").

2. Defining Uniqueness

The Maryland appellate courts have construed various counties' variance laws, including Baltimore County's, to require a sequenced analysis in which the threshold question is whether the property meets a threshold test of uniqueness. *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore Cnty*., 407 Md. 53, 80-83 (2008) (citing *Cromwell v. Ward*, 102 Md. App. 691, 694-95 (1995)). To satisfy this test, an applicant must prove that the property "is – in and of itself – unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property." *Cromwell,* 102 Md. App. at 694. More specifically, the subject property must have "an inherent characteristic not shared by other properties in the area, *i.e*., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions." *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994).

The uniqueness condition "does not refer to the extent of improvements upon the property, or upon neighboring property." *North,* 99 Md. App. at 514 (applying a county critical area ordinance that, like Baltimore County's variance law, phrased the uniqueness test to require that "special conditions or circumstances exist that are peculiar to the land"); *see also Chester Haven Beach P'shp v. Board of Appeals*, 103 Md. App. 324, 335, n.3 ("the existence *vel non* of houses … is not normally relevant to variances; uniqueness of a property is relevant to variances."); *cf. Umerley v. People's Couns. for Baltimore Cnty*.,

108 Md. App. 497, 508 (1996) (the fact that the applicants had used the property for a trucking facility before the County adopted the area regulations at issue did not make the property unique for purposes of a variance). In sum, "[w]here a property's physical peculiarities do not cause the landowner to suffer disproportionately due to application of the zoning enactment in question, the property is not 'unique' in the law of variances." *Trinity Assembly*, 407 Md. at 82.

As this Court has explained, the uniqueness condition serves in part to ensure that a county's planning agencies do not intrude on the legislative powers reserved to its legislative body by routinely granting piecemeal exceptions for land that is no different from the other land governed by the particular regulation. *See Dan's Mountain*, 236 Md. App. at 494-95. The uniqueness condition thus implements the general land use principle that zoning is to be done on a comprehensive basis, rather than by piecemeal actions. *See, e.g., North*, 99 Md. App. at 518 (stating that exceptions such as variances are to be granted "sparingly, and under special circumstances" because "[t]o do otherwise would decimate zonal restrictions and eventually destroy all zoning regulations") (citation and internal quotation marks omitted). Accordingly, "[a] property that is affected uniquely may be entitled to relief through a variance, while a property owner experiencing a more common problem must seek a legislative remedy." *Dan's Mountain*, 236 Md. App. at 495.

3. When and How Practical Difficulty or Unreasonable Hardship Applies

Absent a threshold finding that the property is unique, "the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship." *Cromwell*, 102 Md. App. at 694-95. Thus, it is not appropriate to consider the

question of hardship first and, if some hardship exists, use that as a basis to find that the property is uniquely impacted by the zoning regulation. Instead, the first step is to focus on whether the property has an "inherent characteristic not shared by other properties in the area." *North*, 99 Md. App. at 515; s*ee also Umerley*, 108 Md. App. at 507 (reversing the Baltimore County Board's grant of a variance because the board "ignore[d] the first prong of the variance test"); *Cromwell*, 102 Md. App. at 726 (holding that the Baltimore County Board's grant of a variance was "arbitrary and illegal" because the applicant had not introduced evidence to establish the uniqueness element); *cf. Trinity*, 407 Md. at 83 (noting that because the Baltimore County Board had found that "the physical attributes of the Property are not distinguishing, . . . [t]here was no need for the Board to go further to consider whether physical uniqueness (which it found does not exist) causes the [regulation] to affect Trinity disproportionately.").

If the uniqueness condition is satisfied, the next step in the sequence is to determine whether the particular uniqueness has caused practical difficulty or unreasonable hardship. *Cromwell*, 102 Md. App. at 721. An applicant who seeks a variance from a restriction on the type of use permissible on the site must prove that the use restriction imposes an unreasonable hardship, while an applicant who seeks relief from area requirements, such as minimum setbacks, need only prove that compliance with the standards presents a "practical difficulty." *Dan's Mountain*, 236 Md. App. at 501-02; *Red Roof Inns, Inc. v. People's Counsel for Baltimore Cnty.*, 96 Md. App. 219, 225 (1993).

The hardship/difficulty standards do not require the applicant to prove that the application of the land use law in question effects a taking of the landowner's property

without compensation, in violation of the Fifth Amendment of the United States Constitution proscription against a governmental taking of private property for public use without just compensation.[11] *See Belvoir Farms Homeowners Ass'n, Inc. v. North*, 355 Md. 259, 282 (1999). Nonetheless, the variance process may serve as an "relief valve" to avoid a takings claim. *Maryland Reclamation Associates v. Harford Cnty.*, 468 Md. 339, 401 (2020). Thus, at this second step in the analysis, the decision-making agency may consider proof of a taking as grounds for granting a variance. Alternatively, "there may be instances in which, when faced with a takings claim, a local jurisdiction reasonably determines that a particular land use creates such a conflict with adjacent uses or other legitimate land planning objectives, that it does not want to permit a land use through the application of a variance at that particular location." *Id.* at 416.

4. Relevance of Other Variances Granted in the Zone

The fact that a variance has previously been granted elsewhere in the zone is not necessarily relevant to either the uniqueness or the hardship/difficulty analysis. The

[11] The Fifth Amendment, applicable to the States through the Fourteenth Amendment, provides that the government may not take private property "for public use, without just compensation." United States Constitution, Fifth Amendment. Article III, §40 of the Maryland Constitution prohibits the General Assembly from enacting a "[l]aw authorizing private property to be taken for public use without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation."

A taking can be possessory, as when the government exercises its eminent domain power to effect a physical taking of private property, or instead non-possessory, as when the government regulates a property in such a way and to such an extent as to effectively "take" it. *Maryland Reclamation Associates v. Harford Cnty.*, 468 Md. 339, 389 (2020). Only the second type is relevant here.

Supreme Court of Maryland has explained that such prior exceptions "are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function that is beyond the domain of the zoning board." *Easter v. Mayor & City Council of Baltimore*, 195 Md. 395, 400 (1950) (internal quotation marks and citation omitted). The application of the uniqueness and hardship conditions in a particular case thus does not depend either on whether, in another case, a landowner seeking a variance for different land had met those conditions or on whether other third parties have appeared to oppose those applications.

II

Factual and Procedural History

A. The Lot, its Ownership, and its Zoning

As the record of the hearing before the Board of Appeals reveals, the basic facts concerning the lot in question and the history of the zoning related to it are undisputed.

16 Locust comprises 0.11 acres and is one of 20 lots in a residential subdivision in Catonsville. The developer of the subdivision platted and recorded it in the Baltimore County land records in 1933, before Baltimore County began to adopt zoning laws. Houses were built on all of the other lots in the subdivision, mostly during the 1930s and 1940s. In 1944, David and Bernadette Fields acquired both 16 Locust and an adjoining lot ("18 Locust"). At some point during that decade, a house was constructed on 18 Locust. In

1959, David and Bernadette Fields deeded 16 Locust to their daughter, Virginia Fields. Virginia Fields was Mr. Helfrich's aunt.[12]

In 1971, Baltimore County classified the zone containing 16 Locust as D.R. 5.5 – which permitted a density of 5.5 houses per acre. Under that classification, an owner of 16 Locust could have built a single-family house on that lot that complied with the density and area regulations applicable to it. No one did; nor does it appear from the record that anyone applied for a permit to build such a house.

In 1994, Virginia Fields died. The following year, Mr. Helfrich, as personal representative of her estate, took title to the property.

In 1996, Baltimore County adopted a comprehensive zoning map that rezoned nearly 500 acres in the Catonsville area,[13] including the subdivision where 16 Locust and 18 Locust are located, to reduce the density of new construction in the area. The new zoning classification, D.R. 2, permits only two houses per acre. The area regulations applicable to land in a D.R. 2 zone require a minimum lot size of 20,000 square feet to build a house. 16 Locust is far smaller than that. It is 50 feet wide by 100 feet deep and, not counting the area between the front sidewalk and the center of the street, comprises 5,000 square feet. Thus, 16 Locust is too small to accommodate a house consistent with the D.R. 2 classification.

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[12] Our summary generalizes the ownership of the two lots by various members of the Fields family at various times.

[13] The record reflects a request to rezone 488 acres in Catonsville from D.R. 5.5 to D.R. 2 but does not specify the number of acres actually rezoned. In its opinion, the Board referred to a rezoning of "nearly 500 acres" and the parties have not disputed that reference.

BCZR §304.1 contains a grandfathering provision that relaxes certain area and width requirements for the construction of a dwelling on an undersized lot in a subdivision recorded before 1955, such as the one in which 16 Locust is located. However, the parties agree that §304.1 does not provide the relief necessary for the construction of a dwelling at 16 Locust.

In 2012, Mr. Helfrich, as executor of Virginia Fields' estate, transferred 16 Locust to himself personally, as a beneficiary of her estate. In 2014, the members of the Fields family who had inherited 18 Locust from David and Bernadette Fields sold it to Julia and Ryan King. Mr. Helfrich subsequently entered into a contract to sell 16 Locust to Dominion Properties, LLC.

Since 1996, the D.R. 2 zoning applicable to 16 Locust has remained in effect throughout the County's quadrennial adoptions of new comprehensive zoning maps. There is no suggestion in the record that any owner of 16 Locust has sought to have it rezoned, whether through the quadrennial comprehensive rezoning process or through a petition invoking the change/mistake rule.

B. The Petition for Variances

In September 2020, Dominion, as contract purchaser, and Mr. Helfrich, as owner, filed a petition for several variances for 16 Locust with the Baltimore County Department of Permits, Approvals, and Inspection. As amended a month later, the petition sought variances from the lot area, width, and side and rear yard setback regulations, all as set forth in BCZR 1B02.3.C.1. Specifically, Applicants sought a variance from the minimum lot area requirement of 20,000 square feet, to allow for a lot area they described as 5,820

square feet.[14] They also sought variances to allow a lot width of 50 feet in lieu of the required minimum of 100 feet; to allow 10-foot side-yard setbacks totaling 20 feet in width, instead of the required minimum 15-foot side-yard setbacks totaling at least 40 feet; and a rear-yard setback of 25 feet, instead of the required minimum of 40 feet.

C. The Variance Proceedings

1. Hearing and Decision by the County ALJ

A Baltimore County administrative law judge ("ALJ") conducted a virtual hearing concerning the variance petition and issued a written opinion that denied each of the four requested variances. In his opinion, the ALJ described the testimony of Applicants' engineer to the effect that 16 Locust was "virtually identical" to the other lots in the subdivision but that it was "unique in a zoning sense" because it was the only vacant lot among them. However, the ALJ concluded that Applicants had not met their threshold burden of proving that "the parcel itself is unique." The ALJ further found that Applicants had not established a vested right to the pre-1996 zoning and had not established the elements of a taking.

2. *De Novo* Hearing before the Board

Applicants appealed the ALJ's decision to the Board, which conducted a *de novo* hearing. By then, the Applicants had dropped their request for a variance from the rear-yard setback requirement.

[14] The description of the property attached to the petition states that 16 Locust contains "a net area of 5,000 square feet." The reference to 5,820 square feet, the "gross" lot area, included footage between the front sidewalk and the center of the street.

The Board conducted a virtual hearing on September 9, 2021. Applicants introduced the testimony of Patrick Richardson, a civil engineer, and Brian Leibowitz, a Dominion employee. Ms. King, appearing *pro se*, testified in opposition, as did three other residents of the neighborhood.

Mr. Richardson had been hired by Dominion to prepare site plans and file the variance petition. The Board accepted him as an expert in zoning and land use and as a civil engineer. He testified to his opinions on whether 16 Locust was unique for purposes of the variance ordinance and whether the current density and setback laws created a practical difficulty for the owner. Regarding uniqueness, he testified that the only distinguishing characteristic between 16 Locust and the others in the subdivision was that 16 Locust had remained vacant. In that regard, he testified that 16 Locust had no physical characteristics, such as steep slopes, wetlands, an irregular shape, or other environmental conditions, that would distinguish it from other lots in the subdivision. He testified that its dimensions are average for the lots in the subdivision.

Regarding the effect of the D.R. 2 zoning and setback regulations on the ability of Dominion to build a house at 16 Locust, Mr. Richardson testified that the maximum allowable size of a house would be 10 feet wide by 35 feet deep – a size that would not meet the County's regulations for the minimum size of a house. He testified that he did not know of any principal use for the lot other than a house. Noting that D.R. 2 is a residential zone, he "guess[ed] you could try to put a garden on it or something, but you couldn't develop anything," and could only put an accessory building on it if it were combined with an adjacent lot.

Mr. Richardson testified that 16 Locust was zoned D.R. 5.5 in 1971 and that the variances would not be necessary if it were still zoned D.R. 5.5. Asked by Applicants' counsel whether the rezoning of the area as D.R. 2 had made "these lots … pretty much unique," Mr. Richardson testified:

> Yeah, because these lots were never contemplated to be zoned D.R. 2. That's why in 1971 they rated them all as D.R. 5.5 because … there's thousands and thousands of lots throughout Baltimore County that are all fifty-foot-wide lots and they all got zoned into D.R. 5.5, which is the closest thing the County had to being a fifty-foot-wide lot. These lots should be zoned D.R 5.5, but the community out there chose to downzone them to make them all non-conforming uses.

Asked to address the "practical difficulty" posed by the area and setback regulations, Mr. Richardson testified, "Practical difficulty is that this, the zoning, this zoning is being imposed on this property. The D.R. 2 being imposed on a substandard property." He also stated that the D.R. 2 zoning created a practical difficulty because a house on the parcel at 16 Locust could not meet the setbacks applicable to D.R. 2-zoned land.

Mr. Leibowitz testified about the design and siting of the house that Dominion proposed to construct on the lot. His testimony focused on Dominion's efforts to conform the proposed house to the design of the existing houses on the block and to address neighbors' concerns.

In her testimony in opposition to the petition, Ms. King said that she and her husband had offered to buy 16 Locust from Mr. Helfrich, and introduced the formal offer that they had made to Mr. Helfrich's realtor. She also introduced photographs and a property map to support the proposition that 16 Locust is not physically different from the other lots in the subdivision. She testified that she sought a denial of the application "in order to

maintain the integrity of the zoning regulations and ensure that a precedent is not set for future new home construction in our D.R. 2 zone."

Laura Scherer, a resident of the neighborhood since 1956, also questioned the compliance of the proposed construction with the D.R. 2 zoning. Stating that she "assume[d] that the current zoning codes implemented by Baltimore County were put in place to protect its residents from over development," she observed that "two houses to an acre or forty thousand square feet" – the density requirement – "translates into twenty thousand square feet for one house," and that 16 Locust consisted of only five thousand square feet.

Barry Sanders, another neighbor, also testified in opposition to the petition. The Board Chair remarked to Mr. Sanders that it "seemed as though" many undersized lots had been granted zoning relief in the "larger area." The Chair questioned Mr. Sanders on whether he had objected to a past application by his next door neighbors for a variance to expand the house there. After Mr. Sanders said that he was not aware of the nature of such a variance, the Chair stated that "it troubles me legally that someone could legally create a lot and not be treated in exactly the same way as every, literally every other parcel on the street." Next, Applicants' counsel examined Mr. Sanders on whether he had objected to his neighbors' application. When Mr. Sanders objected on the grounds that "whether or not someone else got a variance" was not relevant to the variance for 16 Locust, the Chair overruled the objection. Mr. Sanders then testified that he did not recall objecting to his neighbors' application.

Another neighbor, Aaron Neal, testified that all of the other variances in the neighborhood had pertained to houses that had been built before 1996, and that none had been for the 75% reduction in the square footage requirement that Applicants were seeking.

3. Deliberation and Written Opinion of the Board of Appeals

Two months later, on November 18, 2021, the Board deliberated on the application in open session, as required under the Open Meetings Act. In the course of the Board's discussion, all three members agreed that 16 Locust did not meet the threshold uniqueness condition under the *Cromwell* standard. However, the Chair and one other member felt that a variance should be granted on the ground that doing so was necessary in order to avoid a taking. The Chair summarized the majority's decision on that point:

> Then, in summary, we are finding that the application of the zoning regs, without a variance, would be a regulatory taking that would deny all physical use of the property to the owner. And accordingly, to avoid a takings claim, we will grant the variances as requested, over the objections of Mr. Evans [the Board's dissenting member], who believes that the offer by the adjoiner represents a reasonable economic use to the owner of property.

The Dissenting Member (Mr. Evans) clarified: "But the three of us do agree that no variance is justified under *Cromwell*." The Chair responded, "Yes," and the third member of the Board responded, "Correct."

On January 12, 2022, the Board later issued a written majority opinion, accompanied by Mr. Evans' written dissent. The majority opinion departed from the statements of those two members during their public deliberation of the matter. In their written opinion, the two members of the Board majority not only stated that a variance was necessary to avoid a taking, but also stated that 16 Locust met the uniqueness requirement,

apparently by virtue of the fact that 16 Locust was the only vacant lot in the subdivision. In doing so, the majority looked to a test that it purported to quote from this Court's opinion in *Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43 (2007), a case that involved D.R. 3.5 zoning. In its written opinion, the Board majority attributed the following language to this Court:

> While it appears from *Cromwell* that there must be some physical uniqueness in the size and shape or environment of the property to qualify for a variance, we believe the court did not address the imposition of new zoning regulations on old subdivisions. In such cases, the imposition of new regulations impacts the lots in the old subdivision disproportionately as compared to lots in the area developed after and in accordance with new regulations. We therefore find that, under these circumstances, the property passes the first test and is unique. This subdivision was recorded in the 1940s prior to D.R. 3.5 zoning, and denying the requested variance would result in a hardship and practical difficulty. [italics omitted[15]]

Thus, according to the Board Majority, this Court in *Mueller* created and applied a new species of uniqueness that applies to instances of downzoning.[16]

The Board then applied the purported *Mueller* test to 16 Locust: "Applying the *Cromwell* analysis, it is clear that the property fails the showing of unique physical characteristics different from surrounding properties. However, applying the *Mueller* analysis, the Property passes the first test and the uniqueness prong is satisfied."

In fact, as Applicants have conceded, this Court did not adopt in *Mueller* what the Board Majority referred to as the "*Mueller* analysis." Instead, in the passage from *Mueller*

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[15] Part of the language in the quotation is italicized in the *Mueller* opinion; the Board majority italicized some of that language differently. The font change is immaterial here.

[16] As noted earlier, the transcript of the Board's deliberations at the open meeting does not reflect this reasoning.

relied upon by the Board Majority, this Court was simply quoting the *Board's* rationale in *Mueller* for finding the property in that case to be unique. 177 Md. App. at 62. There is no indication in this Court's decision in *Mueller* that it adopted the Board's rationale,[17] as the Court resolved that case on other grounds. In effect, the Board Majority was simply reiterating a rationale that it had given in a prior case, but that had not been approved or adopted by any court.

After finding that the uniqueness condition had been satisfied, the Board proceeded to the second step of the *Cromwell* standard – whether failure to grant a variance would cause practical difficulty or unreasonable hardship to the landowner. In that regard, the Board majority looked to whether, in the absence of a variance, the owner would be deprived of beneficial use of the property for a reasonable purpose. It found that the neighbors' offer to buy 16 Locust did not amount to a beneficial use of it. Observing that "[z]oning laws should not amount to a deprivation of an owner's ability to use its property for a permitted purpose" and that "an inverse condemnation . . . includes conduct that effectively forces an owner to sell," the Board Majority noted that "the alternative favored by the courts is the granting of a variance to permit the use of the property for a permitted

[17] If we were to look for clues as to whether the *Mueller* Court viewed the Board's test favorably, we would note that the *Mueller* Court also quoted at length from the Circuit Court's "well-written opinion," in which the Circuit Court had reasoned that considering undeveloped lots to be unique on that circumstance alone "would effectively gut the impact of the rezoning." *Id*. at 65. However, in the end, the Court did not address the uniqueness issue; it ruled instead on the basis of a different regulation. It thus neither approved nor adopted the Board's test.

purpose." The Board did not explicitly address whether the requested variances satisfied the harmony condition.

The Board majority then addressed various arguments raised by the Protestants and concluded:

> Importantly, no Protestant identified any principal use, other than the proposed residence, that is permitted on the lot. Protestants historically have not opposed prior variances granted on this street – through one such variance nearly doubled the size of one house and increased its impervious area. There was no allegation that the proposed house design, as modified, was not in keeping with the other houses in the subdivision.

Accordingly, the Board granted the requested variances.

The third member of the Board, Mr. Evans, filed a lengthy dissent in which, among other things, he disagreed with the Board both on the question of whether the effect of the 1996 rezoning rendered 16 Locust "unique" for purposes of the *Cromwell* test and whether a taking had occurred.

The Kings, joined by more than 50 neighbors, petitioned for judicial review in the Circuit Court for Baltimore County. The Circuit Court held a hearing in October 2022 and later issued a written opinion affirming the Board's decision.[18]

The Protestants then filed a timely notice of appeal to this Court.

[18] The Circuit Court summarized the arguments of the parties and the opinions issued by the Board of Appeals, but did not elaborate on its own reasoning in any detail. As noted in the text, our role is not to review that decision but rather to directly evaluate the decision of the Board.

III

Discussion

In their appeal, the Protestants assert that the Board erred legally in concluding (1) that the threshold conditions for granting the variances had been satisfied and (2) that the 1996 downzoning amounted to a "taking" of 16 Locust that justified the granting of variances more than two decades later.

A. Standard of Review

When an appellate court reviews the final decision of an administrative agency, such as the Board of Appeals, it looks through any lower court decisions and directly evaluates the agency's decision. *See, e.g., Assateague Coastal Tr., Inc. v. Schwalbach*, 448 Md. 112, 124 (2016); *People's Counsel for Balt. Cnty. v. Surina*, 400 Md. 662, 681 (2007). When evaluating an agency decision, a court examines (1) whether the record as a whole contains substantial evidence that supports the agency's findings and conclusions, and (2) whether the agency premised its decision on an erroneous conclusion of law. *Nat'l Waste Managers, Inc. v. Forks of the Patuxent Improvement Ass'n, Inc.*, 453 Md. 423, 441 (2017). In doing so, a court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency. *United Parcel Serv., Inc. v. People's Couns. for Baltimore Cnty.*, 336 Md. 569, 586 (1994).

An agency's interpretation of a statute that it administers presents a question of law on which the appellate courts "occasionally apply agency deference." *Comptroller of Maryland v. FC-GEN Operations Invs. LLC*, 482 Md. 343, 360 (2022). Whether the agency correctly interpreted and applied applicable case law presents a legal question on

which the courts "do not apply any agency deference," as does the question of the agency's jurisdiction over the matter. *Id*.

B. Whether the Application Satisfies the Elements Required for a Variance

Protestants argue that the Board erred legally by (1) not applying the uniqueness prong of the variance test set forth in *Cromwell* and misapplying the "practical difficulty" prong; (2) failing to address the requirement that the requested variances be "in harmony" with the applicable area regulations, and (3) failing to make findings on the general welfare standards.

1. Whether the Board Applied the Wrong Test of "Uniqueness"

Protestants argue that the Board erred by exempting the application from the uniqueness test that this Court articulated in *Cromwell*. The Board did so on the strength of its own view that "[u]niqueness is not limited to [a property's] physical characteristics" and that uniqueness can arise when "imposition of new zoning regulations on old subdivisions" impacts the lots in those subdivisions "disproportionately as compared to lots in the area developed after and in accordance with new regulations." Those circumstances, the Board decided, made 16 Locust, and presumably every undeveloped lot in a downzoned old subdivision, "unique" for purposes of the variance regulation.

In support of the proposition that uniqueness can arise from the imposition of new regulations on old subdivisions, the Board cited this Court's opinion in *Mueller* but, as noted earlier, apparently mistook a quotation of the Board opinion under review in the background section of the Court's opinion for a holding by the Court itself. As indicated earlier, this Court's decision in *Mueller* did not hold that a rezoning would satisfy the

uniqueness test. The Board cited no other authority for its view that a petitioner for a variance can meet the uniqueness test for an undeveloped lot that is not physically unique by showing that new regulations impact the lot more than they impact the developed lots.

The Board erred in several ways when it created and applied its own uniqueness test; its test has no basis in statute, regulation, or case law. The shortest route is that the Board's view of uniqueness – that the disproportionate effect of a regulation on a property can by itself meet the uniqueness prong – contradicts the controlling law. That law is as follows: "Where a property's physical peculiarities do not cause the landowner to suffer disproportionately due to application of the zoning enactment in question, the property is not 'unique' in the law of variances." *Trinity*, 407 Md. at 82. As explained in *Cromwell*, 102 Md. App. at 726, and *Umerley*, 108 Md. App. at 507, the Baltimore County Board of Appeals errs when it bypasses the threshold requirement that the property be physically unique. In this case, too, the Board erred when it bypassed the well-established interpretation of the uniqueness requirement in the case law.

Further, the Board exceeded its role when it adopted its own uniqueness test for a defined class of properties in the absence of any statutory authority for doing so. To protect the integrity of the comprehensive zoning process, mechanisms for excepting a property from comprehensive zoning must be specified as part of the zoning ordinance, not created on a case-by-case basis. *Rylyns*, 372 Md. at 537-38. For the same reason, boards of appeals are to exercise their variance power "sparingly" and "only under exceptional circumstances." *Cromwell*, 102 Md. App. at 703; *see also Dan's Mountain*, 236 Md. App. at 494-95. The Baltimore County Council has spelled out the variance mechanism in the

County's zoning ordinance and regulations. They contain no exemption from the uniqueness requirement for undeveloped lots in subdivisions recorded before the zoning change in question. The Council did enact certain grandfathering provisions for small lots in older subdivisions, but the parties agree that none apply here. Had the County Council wished to adopt an exemption like the one fashioned by the Board, it presumably would have done so, through either the variance or the grandfathering provisions. It did not do so and we infer that the absence of such a provision was intentional. *See, e.g.*, *Lyles Consumer USA Inc. v. Santander*, 478 Md. 588, 602-03 (2022) (inferring from the absence of certain language in a statute that the General Assembly intended to omit it).

In short, the Board's role in addressing variance appeals does not include legislating exemptions from the variance regulations. As the dissenting Board member in this case concisely stated: "To say that a zoning restriction is what generates *Cromwell* uniqueness is to define away uniqueness as a requirement."

2. Whether the Correct Uniqueness Standard Was Met

When an administrative agency such as the Board applies the wrong legal standard, and "some evidence exists, however minimal, that could be considered appropriately under the correct standard," the court should remand the case to the agency for the agency's application of the correct standard. *Belvoir*, 355 Md. at 270. In this case, however, the Board considered the evidence under the *Cromwell* standard of uniqueness as well as under its own test. It concluded that the Applicants had not met the *Cromwell* standard. Specifically, the Board concluded that "[a]pplying the *Cromwell* analysis, it is clear that the property fails the showing of unique physical characteristics different from surrounding

properties." That conclusion is amply supported by the record in this case. In light of the Board's conclusion that 16 Locust does not meet the governing standard of uniqueness, we reverse, rather than remand, the Circuit Court judgment that affirmed the Board's grant of the variances.

The Board's conclusion that 16 Locust was not unique under *Cromwell* also answers the question of whether Applicants proved either practical difficulty or unreasonable hardship for purposes of the second prong. That is because the alleged difficulty or hardship must be caused by the particular uniqueness of the property. *See, e.g., Cromwell*, 102 Md. App. at 721. When the property does not satisfy the proper standard of uniqueness, there is no occasion to reach the second prong.

3. Whether the Board Applied the "Harmony" Condition Correctly

Protestants argue that the Board also erred legally when it granted the requested variances without addressing all of the conditions that BCZR §307.1 places on the Board's authority to grant a variance. Among those conditions is the requirement that a variance "shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations." The Board did not explicitly address that condition, either in its opinion or in its oral deliberations. Thus, there is no agency interpretation of BCZR §307.1 that might qualify for "a degree" of deference under *Comptroller of Maryland v. FC-GEN*, 482 Md. at 361-62.

Possibly, the Board intended to refer to the harmony condition in stating that "[t]here was no allegation that the proposed house design, as modified, was not in keeping

with the character of other homes in the subdivision."[19] However, that statement does not constitute a determination that Applicants met their burden of proving the harmony condition; it merely describes a lack of an allegation by members of the public – a circumstance irrelevant to whether Applicants met their burden to prove that the condition had been met. *See, e.g., Mueller*, 177 Md. App. at 70 ("The burden is on the applicant to show facts to warrant a variance"); *Angelini v. Harford Cnty.*, 144 Md. App. 369, 377 (2002) ("Generally speaking, property owners are not entitled to zoning changes automatically just because nobody opposes them."). The Board erred legally by not reaching a determination on a condition for granting a variance.

The next question is whether the record contains evidence, "however minimal," for the Board to address the harmony condition under the correct standard. *Belvoir Farms*, 355 Md. at 270. That standard, as unambiguously stated in BCZR §307.1, requires the Board to find that the requested variances would be "in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations." The "said" regulations are those from which the Applicants seek variances – here, the area regulations for the D.R. 2 zone.

At the hearing, Applicants introduced their expert's opinion that the style of the house that Dominion proposed to build would be consistent with that of the existing houses

[19] In that section of its majority opinion, the Board also stated: "Protestants historically have not opposed prior variances granted on this street – though one such variance nearly doubled the size of one house and increased its impervious area." The relevance of that finding to whether Applicants had proven the conditions needed for a variance is doubtful at best. See Part I.C.4 of this opinion above.

in the subdivision and that the siting would be compatible with that of those houses. Summarizing his opinion, he stated, "it'll be pretty much in … harmony and similar size and scope of what all the rest of the houses are here, on the street." However, that is not the test stated in the County's variance law, which instead requires harmony with the regulations from which an applicant seeks relief. As to those, Applicants' sole evidence was their expert's opinion that the D.R. 2 designation for the subdivision was a mistake and that the proposed dwelling would have complied with the D.R. 5.5 regulations.

For their part, Protestants asserted that variances of the magnitude sought by Applicants would not comport with the D.R. 2 regulations. Their testimony related to the standard in the regulation. Had Applicants introduced any evidence, however minimal, on the regulatory standard, this Court would remand the issue for the Board's application of it to Protestants' testimony and to the undisputed facts on the lot size and proposed house; that task would lie within the Board's function, not ours. Here, however, the position that Applicants took was that the D.R. 2 regulations were wrong for land in the subdivision, not that the proposed construction would be in harmony with the spirit and intent of the D.R. 2 regulations. Consistently with that position, Applicants did not introduce evidence, however minimal, of harmony with the current regulations.

We reverse the grant of the variances for lack of proof of the harmony condition. This basis of reversal is independent of our holding that the application fails because of the undisputed facts that 16 Locust is not unique.[20]

[20] In light of this holding, we do not reach Protestants' argument that the Board failed to address the "general welfare" condition on its authority to grant a variance.

4. Variances and Density

For purposes of guidance, we note that the Board may not grant a variance that increases a density limit[21] imposed by a zoning classification.[22] BCZR §307.1. The Board may grant a zoning re-classification that changes density under the change/mistake rule, or else the County Council may do so during the quadrennial comprehensive rezoning process. Here, the Board effectively changed the zoning classification of 16 Locust back to D.R. 5.5 by granting area variances that seemingly would result in a density permitted under the D.R. 5.5 classification, but not the D.R. 2 classification.

Generally, a board of appeals may not grant a variance to do that which another law precludes it from doing. *Kenyon v. Bd. of Zoning Appeals of Harford Cnty*., 235 Md. 388, 394 (1964) ("The various powers of the Board enumerated in the ordinance must be read together, and we do not think the Board could do under the variance provision what it manifestly could not do under the non-conforming use section…."); *see also, e.g.*, 101A C.J.S. Zoning and Land Planning §320 ("In particular, under the guise of a variance, the

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[21] As noted above, the density requirement is gauged by the average of the land in the subdivision. BCZR §1B02.2. In this case, Applicants described the subdivision as fully developed under the former D.R. 5.5 classification, with the sole exception of 16 Locust. Assuming that is correct, the grant of a variance from the area regulations in BCZR §1B02.3.C.1 would likely increase the density of the subdivision under the current D.R. 2 classification.

[22] Neither party addressed this issue. We do so because the Board may have overlooked the express limitation in the regulation on the Board's authority to grant variances that change the allowed density related to a property.

zoning board may not waive, suspend, disregard, or ignore the zoning regulations, depart from them, set them aside, or nullify them.").[23]

C. Whether a Potential Takings Claim Required the Granting of the Variances

In granting the requested variances to forestall a takings claim against the County, the Board implicitly assumed both that such a takings claim would be meritorious should the Board deny the application and that it fell to the Board to avoid such a claim. To the same effect, Applicants argue in this Court that because the BCZR grandfathering provision does not provide all of the relief needed to construct a house on 16 Locust, "the use of variances remains the sole remedy to the difficulty in compliance with the zoning requirements."

Neither the Board's assumption nor Applicants' argument accounts for the role of variances in the County's land use scheme. Under that scheme, as explained in Part I of this opinion, the variance procedure is not the sole route by which a property owner may seek relief from regulations applicable to the zone in which the property is located. Moreover, in this case, the variance procedure is not necessarily even a sufficient route, given the County Code's express prohibition on increasing density through a variance.

To bring a takings claim, a plaintiff must exhaust its available administrative remedies. *Maryland Reclamation*, 468 Md. at 359-61. The exhaustion issue is a jurisdictional question that a court may bring up *sua sponte*. *Id*. at 387. A board that

[23] Here, Applicants' remedy for a zoning classification that they deemed to be wrong for lots like Lot 16 would be the procedures that the County provides for rezoning requests. For example, as noted by the Kings in their closing memorandum to the Board, the owner of 16 Locust could have sought to exclude it from the 1996 rezoning.

considers whether to grant a variance on grounds that a taking would otherwise result should evaluate that same issue.

In this case, Applicants' expert made clear that the real problem was the County's classification of the small lots of the subdivision and other areas as part of a D.R. 2 zone.[24] To address such a problem, a landowner may seek a zoning reclassification under the County's rezoning procedures for such requests. The record contains no evidence that Applicants pursued those routes, whether under the change/mistake rule or during the six previous quadrennial comprehensive plan processes subsequent to 1996.

Relatedly, to prove a takings claim, a plaintiff must prove the element of causation – that is, that the governmental regulation at issue caused the taking. *See, e.g., Neifert v. Dep't of Env't*, 395 Md. 486, 517 (2006) ("Causation is a necessary element to establishing a valid takings claim.") Thus, a board that considers whether to grant a variance on takings grounds must consider whether the denial of the variance, by itself, would effect a taking. In this case, the Board erred by not considering whether Applicants had shown that attempts to have 16 Locust rezoned either had been unsuccessful or would be futile, by not examining whether the proposed variances were Applicants' only hurdle to constructing a house on 16 Locust or whether density regulations would also pose an obstacle, and by

[24] Consistently with that position, Applicants argue here that the "imposition of the D.R. 2 zone on this privately held piece of property" would work as an uncompensated dedication of the lot to open space. That argument, like their expert's testimony, challenges the County Council's legislative decisions concerning the zoning of the area during the County's comprehensive zoning process.

instead assuming that Applicants would be able to prove a taking if the Board did not grant a variance.

IV

Conclusion

The Baltimore County Board of Appeals erred when it concluded that it could grant the proposed variances without applying the test for uniqueness set forth in the controlling precedent. Because the Board itself concluded that the application did not meet that test, we direct the Circuit Court to reverse, rather than remand, the Board's decision.

In any event, the Board also erred legally by failing to reach a determination that the proposed variances were in harmony with the intent of the particular area regulations. Because the record does not contain evidence responsive to that condition to the grant of a variance, that error requires reversal of the grant of the variances. Further, the Board erred legally when it implicitly concluded that Applicants had both exhausted their remedies and proven causation for purposes of a takings claim.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED AND CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REVERSE THE DECISION OF THE BOARD OF APPEALS. COSTS TO BE PAID BY APPELLEES.

Entered: Clerk, Circuit Court for
Baltimore County, MD
August 30, 2024

CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND
401 Bosley Avenue, P.O. Box 6754
Towson, MD 21285-6754
Main: 410-887-2601

Case Number: **C-03-CV-22-000574**
Other Reference Numbers:

IN THE MATTER OF JULIA AND RYAN KING ET AL.

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF Case No. C-03-CV-22-000574
Julia and Ryan King, et. al. *
THE BALTIMORE COUNTY BOARD OF APPEALS
105 W. Chesapeake Avenue *
Towson, Maryland 21204
IN THE CASE OF: *
IN THE MATTER OF:
CORNELIUS DAVID HELFRICH, *
LEGAL OWNER
AND DOMINIUM PROPERTIES CONTRACT
PURCHASER (16 LOCUST DRVE) *

* *

MEMORANDIUM AND OPINION

Ryan, et. al. al the Petitioners in this case have filed a Petition for Judicial Review of a decision by the Board of Appeals of Baltimore County granting a variance to allow a property known at Lot 16 Locust Drive to be developed.[1] "ORDERED, that the variances to allow a 10-foot side yard in lieu of the required 15 feet and a combination of 20 feet in lieu of the required 40 feet; and a lot width of 50 feet in lieu of the required 100 feet;

[1] Upon analysis, the Majority Board of Appeals on 1/12/2022 granted the variances as requested on p. 10 of the Majority Opinion. *Cromwell v. Ward*, 102 Md. App. 691 (1995) at 702 states:

> The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.,* A. Rathkopf, 3 The Law of Zoning and Planning § 38 (1979).
> *Doorack v. Board of Adjustment,* 709 S.W.2d 140, 143 (Mo.App.1986). *See also McMorrow v. Board of Adjustment,* 765 S.W.2d 700, 701–02 (Mo.App.1989); *Taylor v. Board of Zoning Adjustment,* 738 S.W.2d 141, 144 (Mo.App.1987).

and a lot area of 5,850 sq. ft. in lieu of the minimum 20,000 sq. ft. at 16 Locust Drive are hereby **GRANTED.**" The Petitioners argue that the decision by the Board of Appeals of Baltimore County finding a variance is against the Law of the State of Maryland and should be set aside[2].

It is the opinion by the undersigned Judge addressing the Petition for Judicial Review that no error in the application of the law is to be found with the Majority Board Opinion and that the facts presented support the position taken by the Majority Board that the variances requested should be granted as per the Majority Board of Appeals opinion finding uniqueness and hardship set forth at pp. 10-11 of this Memorandum and Opinion. Granting the variances allows Lot 16 to be built in conformity with all other properties within the Subdivision. Thus, the Petition for Judicial Review filed in opposition to the Majority Board Opinion is **DENIED**.

This case is a bit different. It involves a parcel of property which was a part of a subdivision before Baltimore County had zoning.[3] Omnipresent are the differing arguments as to whether subsequent zoning enactments limiting construction of a home on that property should hold to preclude development or should be part of variances[4] granted to allow the home to be granted. Every other lot in the subdivision has been

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[2] An appellate Court reviews the decision by a Circuit Court passing on a Petition for Judicial Review of the Board of Appeals of Baltimore County on the Board of Appeals opinion. *Mueller v. Peoples Counsel of Baltimore County,* 177 Md. App. 43 (2007) at 82. In effect this means that the Agency must be right for the right reason. 177 Md. App. at 84.

[3] *Cromwell* stated the following at 102 Md. App. 691 at p.697:

> The State Zoning Enabling Act was first passed in 1927 by Chapter 705 of the Acts of 1927. It has since been codified as Article 66B of the Annotated Code of Maryland (1957, 1988 Repl. Vol., 1994 Cum. Supp.). While it was generally believed that local subdivisions did not have to enact zoning regulations (and some did not), if enacted, they normally had to conform to the provisions of Article 66B.
>
> Baltimore County, however, is a charter county and is exempt from many of the provisions in Md. Code Art. 66B. See Md. Code Art. 66B § 7.03 which provides "Except as provided in [sections not pertinent here] ... this article does not apply to the chartered counties of Maryland." Nevertheless, the language of Art. 66B relating to variances is virtually identical to the provisions of the Baltimore County ordinance.

The first zoning regulations in Baltimore County took effect January 2, 1945. *Mueller*, 177 Md. App. at 69.

[4] *Cromwell,* 102 Md. App. at 699 citing treatise writers:

> ... [A] variance is "authority ... to use his property in a manner forbidden ...," while an exception "allows him to put his property to a use which the enactment expressly permits."

Cromwell, 102 Md. at 721 states:

> We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been—a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists. Before applying the facts of the instant case to the law and, thus, resolving the case *sub judice,* we must touch upon two other aspects of the process, *i.e.,* the self-inflicted injury and the zoning authorities' acquiescence in issuing a building permit based on plans that left unclear the elevation of the structure and the subsequent inspection.

Cromwell, 102 Md. App. at 726 concluded:

> We resolve here only the issue of the granting of the variance sought and applied for by Ward.
>
> There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's impact upon

improved with a single-family residence. Many of the residences have been the subject of zoning variances (not delineated) to modify them, whatever zone was then applied to the property.[5]

A.

This case involves a parcel of real property, Lot 16 Locust Drive (owned by Cornelius Helfrich)[6] which is a 50 foot x 100 foot (5,000 square foot) lot in the middle of a quiet suburban neighborhood established in1959 in the Catonsville area of Baltimore County. Lot 16 is one of 20 lots recorded, by subdivision plan in the Land Records of Baltimore County back in 1933. In the 1940's, small single family homes were constructed on *all* other of the 19 lots. Lot 16 remains unimproved[7] but was used for decades in conjunction with the adjoining Lot 18 Locust Drive by members of the Field's family and their tenants[8]. (p. 2 of Petitioner's Memorandum referencing Prots' 1, 2, 3 exhibits). After the Kings purchased Lot 18, they offered to purchase Lot 16 from Mr. Helfrich for $25,000 with no contingences and no plans for development.

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the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper. We shall reverse.

[5] *See:* Positioning stated analysis transcript of the Members of the Board of Appeals of Baltimore Count, dated 11/18/2021. p. 9. The transcript shows that each of the three members of the Board of Appeals expressed their opinion as to whether the variances should be granted. At the time of this hearing the Chair of the Board of Appeals stated on p. 11 that the Board had no equity jurisdiction.

[6] David Fields owned Lot 16 & 18 beginning in 1944; he conveyed Lot 16 to Virginia Fields in 1959; and in 2012, the Estate of Virginia Fields conveyed Lot 16 to her nephew, Cornelius Helfrich. (p. 2 of Petitioner's Memo).

[7] Page 2 of the Majority Opinion by the Board of Appeals states that: (1) Lot 16 is part of a plat recorded among the Land Records of Baltimore County in Plat Book 10, page 109, which Plat predated zoning in Baltimore County; (2) ; after imposition of the Density Residential zones in 1971, the Lots in the plat were classified DR 5.5 though many houses had been built on lots by that time; (3) it was in 1966 that the DR 5.5 zone was replaced by application of DR 2 in nearly 500 acres of land in Catonsville; (4) Every version of the B.C.Z.R. has recognized the validity of previously subdivision lots, but the regulations specify that such plats must have been approved by the Planning Commission or Planning Board referencing B.C.Z.R. § 103; (5) "As such, there is no express recognition of the validity of a lot created prior to 1945, though, as the subject case demonstrates, these lots exist."

Accord, Answering Memo, pp. 1-2. "Lot 6 is similar in size, shape, topography and soils to all of the other lots in the Subdivision. "The location and size of the proposed dwelling is comparable with all the other dwellings in the Subdivision. Answering Memo, p. 2 referring to Tr. 21-25.

[8] Ms. Scherer, who has lived at 14 Locust Drive (on the other side of Lot 16) confirmed that Lot 16 was used for many years by the Fields family as an accessory parcel to Lot 18 until that lot was acquired in 2014 by Protestants Ryan and Julie King. She recalls Lot 16 being used as a garden and ballfield by the Fields family children. (p. 2 of the Petitioner's Memo referencing Tr. pp. 121. 142-43, 146-47, 152-152)

Mr. Helfrich entered into a contract with a builder, co-respondent Dominion Properties, to sell Lot 16 for $75,000, contingent upon Respondents obtaining the variances that are the subject of this case. (p. 3 of Petitioner's Memo).[9]

B.

Every four years, Baltimore County engages in a comprehensive zoning process by which all property is subject to rezoning by the County Council with considerable input from the public. (p. 3 of the Petitioner's Memo, referencing County Code §§ 32-3-301, *et seq.*). In 1996, as part of this process, the subject property, and hundreds of other properties around it were downzoned from DR 5.5 to DR 2. The minimum lot size in the DR 2 zone is 20,000 square feet with the minimum lot width of 15 feet and the minimum side yard setback of 15 feet for one side yard and a combination of 40 feet for both side yards. (p.3 of Petitioner's Memo referencing B.C.Z.R. (Baltimore County Zoning Regulations § 1B02.3.C.1).[10]

C.

Respondent Dominium Properties proposed the construction of a home on Lot 16, 30 feet in width and 35 feet in depth. Respondents filed a Petition with the County seeking variances from the minimum area width and side yard setbacks in a DR 2 zone, specifically (i) 5,850 sf in lieu of the required 20,000 minimum area; (ii) 10 ft. side yards in lieu of the required 15 ft. and a combination of 20 ft. in lieu of the required 40 ft., and (iii) 50 ft. lot width in lieu of the required 100 feet.[11] (pp. 3-4 of Respondent's Memo referencing Resp's Ex 2A and commenting in FN No. 2 on p. 2: "it was not explained why Respondents required a variance of 5,850 feet of for lot area. The undisputed evidence is that the Property is 5000 sq, feet, not 5,850. As argued by Protestant Aaron Neal, the requested variance would not be sufficient for the proposed development." Accordingly, the variance granted by the Board is moot.

> On April 19, 2021, the [Baltimore County] ALJ issued an Opinion and Order denying the petition for variances. The ALJ found the Property is "essentially identical to all others in the 1933 plat" and therefore is not unique[12] as required by the County variance standard. The ALJ rejected Respondents'

[9] References are made to Tr. pp. 100, 140. 153, Prots' Ex. 4, p.4)
[10] Accord Answering Memo, p. 3.
[11] See also p. 1 of Majority Opinion of the Board of Appeals of Baltimore County *de novo* appeal of the April 19, 2021 ALJ.
[12] *Cromwell*, 102 Md. App. at 698-99:

argument that the change in the zoning that occurred in 1966 could render the property unique. The ALJ further found that the evidence presented by Respondents "[did] not clear the precipitous hurdle" of a takings claim" because Mr. Helfrich has not been lost all beneficial use of the property. (p. 4 of the Petitioner's Memo referencing pp. 4 and 7 of the ALJ Opinion).

There is a Majority and Minority Opinion from the three Members of the Board of Appeals.

Testimony by an expert in land use[13] was that the proposed structure to be built on Lot 16 is a two story house of co placement size, design and materials as other homes on Locust Drive and those neighboring the lot, with comparable front, rear and side yards. He pointed out several prior zoning cases granting variance relief to other lots in the subdivision. He stated that strict adherence to the zoning regulations would render the lot unbuildable for any purpose. There were no negative comments from the Zoning Advisory Committee. He stated that the property could be used for accessory uses if it were owned by either adjoining property owner.[14]

Protestants offered statements in opposition opposing the variances sought. A Protestant stated the lot is not unique under the standards of *Cromwell v. Ward*, 102 Md. App. 691, 651 A. 2d. 424 (1995)[15], and that denial of the variances would not result in practical difficulty or hardship because the lot could be used as green space. Julia King, who lives at 18 Locust Drive, neighboring the lot states that she offered to purchase

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However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of *that* piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

[13] The Movant's Memo, pp. 9-12 stated: (1) Improvements on a property or the fact that the property is not improved is not, and cannot be, a basis for finding uniqueness; (2) "uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e. shape, topography, environmental factors, etc.; (3) no Maryland authority supports the proposition that a change in zoning can render a property unique or for that matter, constitute practical difficulty or hardship; (4) it is difficult to tell if the Majority Board did its review of the evidence limited to the situation in which Mr. Helfrich finds himself today, without considering his history with the Property or the choices he and his predecessors have made; and (5) several protestants spoke compellingly about the impacts they believed development of the lot would have on their community, including increased impervious surface of the area that already is very easily saturated, the fact that residents are currently experiencing basement water issues; the property's value as green space in the neighborhood and the elimination of long-standing green space in the neighborhood. Citing to Tr. Pages. 95-101, 107-09, 122-123, 125-125, 137-38, 152, Prots Exs. 9 & 10 (letters).

The undersigned Judge could fine no evidence to support the concern of protestants regarding a cause of water problems in other houses in the subdivision,

The Movant's Memo states that more than 40 residents signed a petition objecting to the development of the property.

The Majority Board is said not to have discussed or apply the "public health, safety, and general welfare" standard, nor determine whether the variances would be "in strict harmony with the spirit and intent of" the regulations, and to have erred in failing to consider and apply these standards.

[14] Majority Board of Appeals Opinion, p. 3.

[15] The Answering Memo discusses *Cromwell* at pp. 6-7.

the property, arguing that a sale to her is a reasonable use. Ms. King expressed apprehension that another dwelling would increase impermeable surfaces and create draining and water issues.[16]

Other individuals who resided on Locust Drive testified against the variances. Ms. Laura Scherer of 14 Locust Drive testified in opposition and states that the Property was accessory to the adjoining lot because in the past children played on the Property.[17]

D.

After an analysis of the facts and case decisions, the summary of the Majority Opinion of the Board of Appeals of Baltimore County was:

> Applying the *Cromwell* [*Cromwell v Ward*, 102 Md. App. 691, 694, 651 A. 2d. 424 (1995)][18] analysis, it is clear that the Property fails the showing of unique physical characteristics different from surrounding properties.[19] However, applying the *Mueller* [*Mueller v. People's Counsel*, 177 Md. App. 43, 934 A. 2d. 974 (2007)][20] analysis, the Property passes the first test, and the uniqueness is

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[16] Majority Board of Appeals Opinion, p. 4.
[17] Majority Board of Appeals Opinion, pp. 4-5.
[18] The *Cromwell* case involved a height variance for an accessory building, granted by the Baltimore County Board of Appeals, affirmed by the Circuit Court for Baltimore County, and reversed by the Court of Special Appeals.
[19] The undersigned Judge expresses no opinion as to the application or not of the *Cromwell* decision in this case.
[20] *Mueller* dealt with a petition for a variance to construct a dwelling on an undersized waterfront lot because of changes to Baltimore County zoning laws. 177 Md. App. at 49. The lots in question were purchased in 1978 and conformed to Baltimore County Zoning Regulations (BCZR) until 1970 when the Bauernschmidt Manor Subdivision was re-zoned Density Residential DR. 3.5 meaning an allowance of 3.5 units per acre. On April 27, 2004 a Petition for a Variance was filed to make Lot 67, an undersized lot per BCZR 304, a buildable lot. 177 Md. App. at p. 50. The Petition for a Variance was granted with restrictions. 177 Md. App. at 64.

Mueller stated at 177 Md. App. at 67-69 (citations omitted):

> "The very essence of zoning is territorial division [of land within a jurisdiction] according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the zone." The power to zone is a legislative function. The authority stems from the State's police power to regulate in the interest of the general welfare.
>
> At least one function of zoning is "to preserve various types of neighborhoods, be they residential, industrial, commercial or historical." Zoning and planning are separate functions, however. Planning is a broader concept, encompassing the development of a community and the creation of "goals for orderly growth and development including the establishment of viable neighborhoods for which it delineates appropriate boundaries," and "suggest[ing] methods for implementation and achievement of those goals, including proposals for future land use and zoning classifications." ("planning embraces zoning, in a general way, but the converse is not true"); *see also* 1 E. Yokley, *Zoning Law and Practice* §§ 1–2 (4th ed.1978) (noting that "zoning is almost exclusively concerned with use regulation, whereas planning is a broader term and indicates the development of a community...."); 101A C.J.S. *Zoning and Planning* § 5 (1979) (" 'Planning' contemplates the evolvement of an overall program or design of the present and future physical development of the total area and services of an existing or contemplated municipality, while 'zoning' is part of an end result or product of planning").

satisfied.[21] We find that the Petitioner has satisfied the practical difficulty requirement as well[22]. Without the variance granted, the owner is deprived of a beneficial use of the Property for a reasonable purpose.[23]

The Board of Appeals Majority Opinion discussed applicable law concerning the granting of variances: (1) that they are granted sparingly, and under exceptional circumstances citing *North v. St. Mary's County*, 99 Md. App. 502, 638 A. 2d 1175 (1974); (2) Zoning is an exercise of police power, which takes away for public good , some rights of individuals to use their property; (3) that it has been established that a zoning ordinance which permanently restricts use of property so extensively that it cannot be used for any reasonable purpose goes beyond permissible regulation, and must be regarded as a taking of property without compensation citing *Lone v. Montgomery County*, 85 Md. App. 477, 584 A. 2d. 142 (1991); (4) B.C.Z.R § 307.1, produced below, is cited

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[21] Majority Board of Appeals Opinion, p. 6.

Mueller, 177 Md. App. at 90-91 stated (citations omitted):

> As we see it, however, appellants' use of Lot 66 does not give rise to a claim of self-inflicted hardship with regard to Lot 67.[20] The "typical type of self-created hardship" arises from "an act of commission by the owner" or his predecessor. (recognizing that subdividing property in accordance with all applicable statutes does not, generally, constitute a self-created hardship, even though the act of subdivision was an act of commission). Put another way, a self-created hardship results from affirmative "actions of the landowner," rather than from the "impact ... of the zoning ordinance on the property."
>
> This case is unlike those in which the landowner took an affirmative action that resulted in the hardship. Here, the elder Muellers acquired Lot 67 several years after their residence was constructed on Lot 66. And, when they acquired Lot 67, it was a buildable lot. Neither Lot 66 nor Lot 67 was rendered nonconforming by virtue of actions taken by the elder Muellers, or appellants, *after* the zoning law in issue was enacted.
>
> To be sure, zoning ordinances often limit grandfather clauses to lots of record that are in single or separate ownership. Put another way, an ordinance may limit the grandfather clause by a provision that, in effect, merges contiguous, vacant, substandard lots under common ownership, so that they are treated as a single parcel for purposes of zoning area and frontage requirements. But appellants correctly argue that they did not own sufficient adjoining land to enable Lot 67 to comply with the zoning ordinances. This is because, with regard to Lot 67, appellants did not own an adjoining, *unimproved* parcel. Rather, the adjoining parcel, Lot 66, was improved before the change in the zoning law. Thus, appellants could not "borrow" land from Lot 66 to enlarge Lot 67 without making Lot 66 more substandard than it already is.

The *Muller* Court 177 Md. App. at pp. 91-102, not applicable to the case at Bar, determined that a merger did not exist.

[22] Majority Board of Appeals Opinion, p. 7. The Answering Memo at pp. 14-18 discusses what it argues to be the least restrictive standard of practical difficulty citing case law.

as the authority for the granting of variances from area regulations;[24] (5) the decision to grant a variance is a two-step process: "The first requires a determination of whether the property, in and of itself, is "unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provisions to disproportionately upon that property, citing *Cromwell v Ward*, 102 Md. App. 691, 694, 651 A. 2d. 424 (1995). If that "uniqueness" does not exist, no variance may be granted. If it does, the second hurdle is to determine whether practical difficulty and/or reasonable hardship result from the disproportionate impact of the zoning caused by the property's unique quality[25]. *Cromwell*, 102 Md. App. at 694-95.

B.C.Z.R §307.1. - Authority to grant variances; procedures and restrictions.

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

[Emphasis added)

Argued by the Answering Memo, B.C.Z.R. §307.1 articulates two standards (in the disjunctive) by which area and bulk variances may be granted – practical difficulty and unreasonable hardship. It is argued that "Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances such as the ones in this case because use variances are viewed as more drastic departures from zoning requirements" citing *Benvoir Farms*

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[23] Majority Board of Appeals Opinion, p. 8. The Answering Memo at p. 6 argues there are essentially 3 variance standards (1) most restrictive where zoning regulations would constitute an inverse condemnation of the property, (2) the intermediate standard of undue hardship most often associated with variances from the Chesapeake Bays Critical Area regulations, and (3) the least restrictive standard of practical difficulty which pertains to setback and area variances such as involved with the subject case. The Answering Memo at pp. 10-14 argues that "hardship standards referenced in various pieces of legislation are usually modified by words such as 'undue", "unreasonable," "unwarranted," or "unnecessary" but the Court of Appeals has stated that these modifications are not substantive differences" citing cases."

[24] Majority Board of Appeals Opinion, p. 5.

[25] Majority Board of Appeals Opinion, p. 6.

355 Md. 259, 276 n. 10, 734 A.2d. 227 (1999) and *Red Roof Inns v. People's Counsel for Baltimore County,* 96 Md. App. 219, 224, 624 A. 2d. 1281 (1993).[26]

According to the Majority Board Opinion, "uniqueness" is not limited to physical characteristics. "While it appears from *Cromwell* there must be physical uniqueness in the size and shape or environment of the property to qualify for a variance, we believe that the court did not address the imposition of new zoning regulations on old subdivisions. In such cases, *the imposition of new zoning regulations impacts the lots in the old subdivision disproportionately as compared to lots in the area* developed after and in accordance with new regulations. We therefore find that *under these circumstances the property passes the first test and is unique.* This subdivision was recorded in the 1940's prior to D.R. zoning and denying the requested variance would result in a hardship ad practical difficulty." *Mueller v. People's Counsel*, 177 Md. App. 43, 934 A. 2d. 974 (2007) (emphasis added)[27].

The Board of Appeals Dissent saw no reason to grant a *Cromwell* variance[28] stating that standard variance principles do not warrant the grant of a variance, that no taking occurred and even if it occurred it is time barred. More specifically, the Dissent opined: (1) there is no uniqueness of the Property, as Lot 16 is exactly like all other lots in the development;[29] (2) no authority is cited that that the zoning of a property can be the course of *Cromwell* uniqueness;[30] (3) it is not reasonable to claim hardship where the investment return is contingent upon overturning by variance a twenty-five year old zoning classification for a lot that is indistinguishable from every other lot in the subdivision;[31] (4) one cannot achieve a variance by arguing a constitutional taking[32]; (5) Mr. Helfrich should have understood at the outset the degree of difficulty and unlikelihood of obtaining a variance under these circumstances[33]; (6) as to the offer to purchase the property for $25,000, the record is silent as to the extent of the investment by Mr. Helfrich[34]; (7) even without the *Cromwell* uniqueness standard being met there may be a variance granted through the enactment of a zoning regulation that severely limits the property's value citing *Maryland Reclamation Associates v. Harford County*,

[26] Answering Memo, p. 5-6.
[27] Majority Board of Appeals Opinion, p. 6.
[28] Dissent. P. 14.
[29] Dissent, p. 12.
[30] Dissent, p. 13.
[31] Dissent, p. 13.
[32] Dissent, p. 13.
[33] Dissent, p. 14.
[34] Dissent, p. 14.

468 Md. 339, 404-04, 227 A.3d.230, (2020) but the applicant is required to prove there was an improper legislative enactment that deprived the owner of all beneficial use of the property *Id,* 392[35]; (8) *Cromwell* and a constitutional taking present independent analytic routes to achieve a variance[36]; (9) the taking claim is time barred because any regulatory taking in this case occurred with comprehensive zoning in 1996 where the zoning was changed from DR 5.5 to DR 2, and that rezoning occurred 25 years ago[37] where the applicable statute of limitations would have been 3 years from the rezoning event when the owner as the affected party knew or should have known of the unlawful action and its probable effect, citing *Electro-Nucleonics, Inc. v. Washington Suburban Sanitary Commission,* 315 Md. 361, 373-374, 554 A.2d.804 (1989)[38]; (10) there has been unreasonable delay in bringing an Inverse Condemnation Claim resulting in prejudice to the Protestants and/or Baltimore County and there has been no support brought by the Owner of Lot 16 to demonstrate such a finding[39]; (11) there was no basis that the property had been taken by reason of the Zoning change;[40] (12) no evidence has been produced to show that the Comprehensive Rezoning in 1996 was not legitimate;[41] (13) the Dissent saw no merit in the presentation of opinion concerning the absence of past opposition to other variances in the Subdivision;[42] (14) the economic impact on Mr. Helfrich is not extraordinary, as he has other options that are beneficial and viable and he knew the risk he was undertaking when he entered into a contract with a builder;[43] and (15) the rezoning that occurred in 1996 was part of a comprehensive rezoning undertake by the County Council, applicable to many properties, not just to Lot 16. “The downsizing that was effectuated

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[35] *See* Dissent, p. 15. In the *Maryland Reclamation* opinion, Judge Booth for the Court cited case law and summarized the applicable test for takings where zoning regulations are involved meaning that this occurs when the owner affirmatively shows that the “legislative or administrative determination deprives him of *all beneficial use of the property*, then the action will be held unconstitutional.” 468 Md. at 392. Later in the Opinion by the Court, it is stated: “. . . this Court has held that a variance is an appropriate land use tool that can be applied by an administrative agency to alleviate a constitutional violation arising out of the application of an otherwise valid zoning regulation.” 468 Md. at 403. Also stated: “We also held that ‘whether a property owner has been denied reasonable and significant use of his property is a question of fact best addressed by the expertise of the Board of Appeals, not the courts”. 468 Md. at 405.

The Movant’s Memo discussed Mr. Helfrich’s takings claim; and that any takings claim is time barred; and that the downsizing did not amount to taking. pp. 13-17. The Answering Memo discussed the takings standard at pp. 7-10.

[36] Board Dissent, p. 15.
[37] Dissent, p. 15.
[38] Dissent, pp. 16-17.
[39] Dissent, pp. 17-18. Laches would have had to be considered. Dissent, pp. 19-20. The Board Dissent opined that the passage of time bars Mr. Helfrich from asserting a taking claim to achieve a variance. Dissent, pp. 20-21.
[40] Dissent, pp. 21-22. The Dissent discussed the standard for determining the necessary lost value, and that the Helfrich Property has been shown to have more than token value discussing the $25,000 offer to purchase the property. Dissent, pp. 23-26.
[41] Dissent, pp. 26-27.
[42] Dissent, pp. 27-29.
[43] Movant’s Memo, p. 16.

is a perfect example of the legislature's attempt to 'control development based on density and other traditional zoning concerns.[44]"

According to the Majority Board of Appeals Opinion, it is stated that the courts have also addressed what constitutes a practical difficulty or hardship. In *Belvoir Farms Homeowners Association v. North,* 355 Md. 259, 281, 734 A. 2d 227 (1999), the Court explained that "authorities throughout the country . . . define the unnecessary, unreasonable, unwarranted, or simply worded hardship standard to be either the denial of beneficial or reasonable use or the denial of all viable economic use, the unconstitutional taking standard.[45]" Maryland appellate courts have offered two different definitions of what constitutes an unwarranted, undue, or unnecessary hardship. In *Loyola Federal Sav. & Loan Ass's v. Buschman*, 227 Md. 243, 248, 176 . A.2d 355, 358 (1961), The Court stated: "variances are customarily concerned with 'hardship' cases, where *the land cannot yield a reasonable return if used only in accordance with the use restrictions* or the ordinance and that a variance must be permitted to avoid confiscatory operation of the ordinance." *Belvoir Farms* 355 Md. at ??? (Emphasis added)[46].

Continuing its analysis, the Majority Board Opinion stated: To prove practical difficulty for an area variance, Petitioner must demonstrate: (i) whether strict compliance with the zoning requirements would unreasonably prevent use of the property for a permitted purpose or render conformance unnecessarily burdensome; (ii) 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 would give substantial relief; and (iii) whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety secured. *Anderson v. Chesapeake Beach*, 22 Md. App. 28, 322 A. 2d. 220 (1974). We find that Petitioner has satisfied the practical difficulty requirement as well[47].

The Answering Memo argues the Majority Board decision is correct because the imposition of the zoning regulations under the D.R. 2 zone on the small, undeveloped lot without variances results in an unbuildable property. Argued is the fact that the small size and shape of the Subdivision was a peculiar characteristic not ordinarily found in the D.R. 2 zone, which caused a practical difficulty in compliance with D.R. 2 requirements.

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[44] Movant's Memo, p. 17.
[45] Majority Board of Appeals Opinion, pp. 6-7
[46] Majority Board of Appeals Opinion, p. 7.
[47] Majority Board of Appeals Opinion, p. 7.

Also argued is that D.R. 2 zoning was established to create larger lot subdivisions, not to prevent development on already existing, individual lots.[48] The Answering Memo states that it would take four (4) of the recorded lots in the recorded Subdivision of the Plat of Locust Drive Extended to meet the minimum size of 20,000 sq. ft. required by D.R. 2.[49] The enactment of D.R. 2 applicable to the Subdivision should not be construed as being intended to take away all reasonable development rights of Lot 16 Locust Drive, an existing lot.[50]

The Majority commented that despite the suggestion by the ALJ that there are other conceivable uses for the property, neither he nor any party offered, nor could be discovered, any other principal use or structure permitted in the D.R. regulations of the B.C.Z.R. to which this Property could be put. As such, the owner is deprived of a beneficial use of the Property for a reasonable purpose[51]. The Board Majority disagreed that the Protestants offer to purchase the Property would amount to a reasonable use to the Petitioner as Maryland Courts and this Board Disagree. Conduct forcing a sale of property is a deprivation of use to the landowner who has rights in the property, not those of a third party with no cognizable interest in the property. Zoning laws are in derogation of those rights but should not amount to a deprivation of an owner's ability to use its property for a permitted purpose[52].

Argument in the Answering Memo is the Petitioners seeking the variances: (1) "produced irrefutable evidence that compliance with the strict letter of the restrictions governing area, setbacks and frontage would unreasonable prevent the owner from using the property for a permitted purpose;" and (2) "demonstrated to the Board's satisfaction, both in testimony and exhibits that the proposed dwelling would conform in size and placement of the lot to the size and lot placement on other lots in the district.[53]"

Finally, the Petitioners seeking variances argue that the Board was correct in stating that without the granting of variances, the impact of the zoning on this lot was effectively a taking citing case law.[54] The undersigned Judge does not view the Majority Board proceedings as containing sufficient background information and analysis that would have been attendant to a finding of a taking.

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[48] Answering Memo, p. 18.
[49] Answering Memo, pp. 18-19. Case law and treatise authority is cited at pp. 19-21 in support of these arguments.
[50] Answering Memo, pp. 21-22 citing case law.
[51] Majority Board of Appeals Opinion, p. 8.
[52] Majority Board of Appeals Opinion, p. 8
[53] Answering Mem, pp. 22 -24 citing case law and pointing to Petitioner's Exhibits 2A, 5A, B, C.
[54] Answering Memo, pp. 24

Within the Majority Opinion, it is stated: (1) forcing an owner to sell real property is a deprivation of the use of that property; (2) it does not agree with the Protestants that children living in 18 Locust Drive playing on the property does not mean that property has become merged with 18 Locust Drive; (3) that when Mr. Helfrich purchased the property he knew of the restrictions by the bulk regulations of the D.R. 2 zone but this is not to be considered a self-created hardship; (4) there is no evidence to support the Protestant concerns about increased storm water and flooding.[55] There is no allegation that the proposed house design, as modified was not in keeping with the character of other homes in the subdivision[56].

The Majority stated, "We find that Petitioner has effectively argued that our failure to grant the requested variances would deprive them of the permitted and beneficial use of the Property as provided in the zone[57]." The Majority Opinion discussed inverse condemnation.[58]

01/02/2023 5:09:21 PM

John F. Fader, II

John F. Fader II, Judge

Entered: Clerk, Circuit Court for Baltimore County, MD
January 3, 2023

16 LocustDrive.21022

[55] Majority Board of Appeals Opinion, pp. 9-10.
[56] Majority Board of Appeals Opinion, p. 10.
[57] Majority Board of Appeals Opinion, p. 8.
[58] Majority Board of Appeals Opinion, p. 8.

Board of Appeals of Baltimore County

JEFFERSON BUILDING
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TOWSON, MARYLAND, 21204
410-887-3180
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May 4, 2022

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Towson, Maryland 21204-5025

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-22-000574
In the Matter of: Cornelius David Helfrich – Legal Owner and
Dominion Properties – Contract Purchaser
Board of Appeals Case No.: 20-224-A

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
Legal Secretary

Duplicate Original Cover Letter
Enclosure

c: See Attached Distribution List

Cornelius David Helfrich
Dominion Properties, LLC
Julia and Ryan King
John Cruchelow and Dacia Gauer
Margaret Decker
Laura and Gary Scherer
Aaron D. Neal, Esquire
Kimberly Neal
Mary Kathleen and Barry Sanders
Mary Loretta Ellingsworth
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Rosemary Taylor
Tracy and Joseph Rehmert
Rebecca and Paul Dongarra
Lauren and Patrick Foley
Caitlin and Stephen Hook, Jr.
Lauren Nordeck and Evan Brown
Melissa and Gabriel Cohee

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
PETITION OF: JULIA AND RYAN KING, *et al.*	*	
FOR JUDICIAL REVIEW OF THE OPINION OF THE BOARD OF APPEALS	*	CIVIL ACTION NO.: C-03-CV-22-000574
OF BALTIMORE COUNTY Jefferson Building, Suite 203 105 W. Chesapeake Avenue Towson, MD 21204	*	
IN THE MATTER OF: CORNELIUS DAVID HELFRICH – LEGAL OWNER DOMINION PROPERTIES – CONTRACT PURCHASER Petitioners for Variance on the Property located at 16 Locust Drive	*	
1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	
BOARD OF APPEALS CASE NO.: 20-224-A	*	

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

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

September 4, 2020	Petition for Variance filed by Richardson Engineering, LLC on behalf of Cornelius D. Helfrich, Legal Owner and Dominion Properties, Contract Purchaser, pursuant to BCZR § 1A04.3.B.2 to allow a 10 feet side yard setback in lieu of the required 15 feet, and a combination of 20 feet in lieu

	of the required 40 feet; to allow a rear yard setback of 25 feet in lieu of the required 40 feet; and to allow a lot width of 50 feet in lieu of the required minimum 100 feet.
September 15, 2020	ZAC Agenda
September 18, 2020	ZAC Comment from the Department of Environmental Protection and Sustainability.
October 9, 2020	Revised Petition for Variance filed by Richardson Engineering, LLC on behalf of Cornelius D. Helfrich, Legal Owner and Dominion Properties, Contract Purchaser, pursuant to BCZR § 1B02.3.C.1 to allow a 10 feet side yard setback in lieu of the required 15 feet, and a combination of 20 feet in lieu of the required 40 feet; to allow a rear yard setback of 25 feet in lieu of the required 40 feet; to allow a lot width of 50 feet in lieu of the required minimum 100 feet; and to allow a lot area of 5,850 square feet in lieu of the minimum required 20,000 square feet.
December 22, 2020	Notice of Zoning Hearing
January 6, 2021	Certificate of Publication in newspaper.
January 11, 2021	ZAC Comment from the Department of Planning.
January 24, 2021	Certificate of Posting Recertification.
January 26, 2021	Administrative Law Judge hearing was opened and Motion to Postpone from Patrick Richardson was granted in order to obtain counsel.
January 26, 2021	Inter-Office Memorandum from Paul M. Mayhew, Managing Administrative Law Judge to the Office of Zoning Review advising of postponement and need to reschedule.
March 15, 2021	ZAC Comment from the Department of Environmental Protection and Sustainability.
March 17, 2021	Certificate of Publication in newspaper.
March 24, 2021	Email from Laura Scherer objecting to the variance request.
March 26, 2021	Letter from John B. Gontrum, Esquire filing Exhibits in advance of hearing.
April 1, 2021	Certificate of Posting Recertification

April 6, 2021	Administrative Law Judge convened for a hearing.
April 19, 2021	Opinion and Order issued by the Administrative Law Judge wherein the Petition for Variance pursuant to BCZR § 1B02.3.C.1 was DENIED.
May 11, 2021	Notice of Appeal filed by John B. Gontrum, Esquire on behalf of Cornelius Helfrich, Owner of 16 Locust Drive, and Dominion Properties, LLC, Contract Purchaser.
May 13, 2021	Appeal received by the Board.
July 22, 2021	Notice of Assignment issued by the Board.
August 16, 2021	Entry of Appearance filed by J. Carroll Holzer, Esquire on behalf of Ryan and Julia King, Protestants.
August 31, 2021	Email from the Office of People's Counsel advising they intend to participate at the hearing.
September 2, 2021	Letter from John B. Gontrum, Esquire filing Exhibits in advance of hearing.
September 8, 2021	Withdrawal of Appearance filed by J. Carroll Holzer, Esquire on behalf of Ryan and Julie King.
September 9, 2021	Board convened for a Hearing.
September 30, 2021	Petitioners' Memorandum filed by John B. Gontrum, Esquire on behalf of Cornelius David Helfrich.
October 12, 2021	Post-Hearing Brief of Protestant Aaron D. Neal.
October 13, 2021	Memorandum of Protestant Julia P. King.
October 15, 2021	Protestants Answering Memorandum filed by Mary K. Sanders and Barry M. Sanders.
October 21, 2021	Petitioners' Reply Memorandum filed by John B. Gontrum, Esquire on behalf of Cornelius David Helfrich.

Exhibits submitted at Hearing before the Board of Appeals:

Petitioners' Exhibit No.
1 – Richardson Curriculum Vitae
2 – Site Plan

2A – Redlined Site Plan
3 – Subdivision from 1933 – Plat of Locust Drive Extended
4 – Front and left side elevation
4A – Rear and right side elevation
4B – Elevation modified
5A – My Neighborhood photo
5B – Closer view of Exhibit 5A
5C – Blow-up of Exhibit 5B
5D – Photo from Magruder Avenue, looking north on Locust
5E – Houses on WS of Locust
5F – House at 18 Locust Street
5G – North on Locust, showing 14 Locust
5H – Shows subject lot, with 18 the 14 Locust
5I – Looking north from middle of site
5J – Looking north past site as houses approach Frederick Road
5K – Just north of site, showing houses on ES
5L – WS of Locust
5M – Looking south from north of subject property
5N – Northern end of subdivision, looking south on Locust
6 – Deed of subject property – 32178/253
7 – Official Zoning Map 3/1971 / CZMP Issue 1-045 / 1996 CZMP 1-045 My Neighborhood photo

Protestants' Exhibit No.

1 – Photo - aerial and property maps of Locust Drive both from My Neighborhood
2 – Plat of Locust Drive Extension from 1933
3 – 3 SDAT pages of 16 Locust Drive, 18 Locust Drive and 14 Locust Drive
4 – Emails from July 2020 showing interest in purchasing lot between the Kings, Realtor and Helfrich
5 – Official offer by the Kings
6 – Notice of Assignment, Site Plan, and Deed to 16 Locust Drive
7 – Petition in Opposition with 40 signatures
8 – 2 Pages with 4 photos of homes surrounding and adjoining the site
9 – Scherer letter
10 – Neal letter

November 18, 2021 Board convened for Public Deliberation.

January 12, 2022 Majority Opinion and Order issued by the Board wherein the Variances to allow a 10-foot side yard in lieu of the required 15 feet and a combination of 20 feet in lieu of the required 40 feet; and a lot width of 50 feet in lieu of the required minimum of 100 feet; and a lot area of 5,850 sq. ft. in lieu

of the minimum 20,000 sq. ft. at 16 Locust Drive were GRANTED. Dissent issued.

February 10, 2022 — Emails between Michael R. McCann, Esquire and the Board regarding reviewing case file and participating parties.

February 10, 2022 — Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michael R. McCann, Esquire on behalf of Julia and Ryan King, *et al.*, Protestants.

February 22, 2022 — Petition for Judicial Review correcting deficiency filed in the Circuit Court for Baltimore County by Michael R. McCann, Esquire on behalf of Julia and Ryan King, *et al.*, Protestants.

March 3, 2022 — Letter to Clerk from the Board of Appeals correcting address of the Board.

March 7, 2022 — Notice to Administrative Agency of Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.

March 8, 2022 — Certificate of Compliance filed in the Circuit Court for Baltimore County and sent to all parties.

May 4, 2022 — Transcript of testimony filed.

May 4, 2022 — 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

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 4th day of May, 2022 a copy of the foregoing was mailed first class mail, postage prepaid, or inter-office mail to the following:

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

Julia and Ryan King
18 Locust Drive
Catonsville, MD 21228

John Cruchelow and Dacia Gauer
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Margaret Decker
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Laura and Gary Scherer
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Aaron D. Neal, Esquire
Kimberly Neal
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Paula Raimondo
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Catonsville, MD 21228

Theresa and William Werner
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212 Newburg Avenue
Catonsville, MD 21228

Melissa and Gabriel Cohee
214 Newburg Road
Catonsville, MD 21228

Tammy A. Zahner

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
	*	
PETITION OF: JULIA AND RYAN KING, *et al.*	*	
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-22-000574
	*	
IN THE MATTER OF: CORNELIUS DAVID HELFRICH – LEGAL OWNER DOMINION PROPERTIES – CONTRACT PURCHASER Petitioners for Variance on the Property located at 16 Locust Drive	*	
	*	
1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	
BOARD OF APPEALS CASE NO.: 20-224-A	*	

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

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:

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

Julia and Ryan King
18 Locust Drive
Catonsville, MD 21228

John B. Gontrum, Esquire
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One West Pennsylvania Avenue
Towson, MD 21204-5025

Cornelius David Helfrich
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Mary Sue and Edward Cramer
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157 Sanford Avenue
Catonsville, MD 21228

Lauren Nordeck and Evan Brown
212 Newburg Avenue
Catonsville, MD 21228

Melissa and Gabriel Cohee
214 Newburg Road
Catonsville, MD 21228

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

I HEREBY CERTIFY that on this 9th day of March, 2022, 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

March 8, 2022

John B. Gontrum, Esquire
Whiteford, Taylor & Preston L.L.P.
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, Maryland 21204-5025

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-22-000574
In the Matter of: Cornelius David Helfrich – Legal Owner and
Dominion Properties – Contract Purchaser
Board of Appeals Case No.: 20-224-A

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed by Michael R. McCann, Esquire, on behalf of Julia and Ryan King, *et al.*, 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 March 7, 2022. 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. McCann, 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 hearing before the Board. The recording will be made available 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 contact our office upon receipt to discuss ordering the transcript.

Please be advised that the ORIGINAL transcript must be provided to the Board of Appeals no later than APRIL 29, 2022 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: Cornelius David Helfrich
Dominion Properties, LLC
Julia and Ryan King
John Cruchelow and Dacia Gauer
Margaret Decker
Laura and Gary Scherer
Aaron D. Neal, Esquire
Kimberly Neal
Mary Kathleen and Barry Sanders
Mary Loretta Ellingsworth
Linda and John Shifflett
Amy and Richard Stevens
Paula Raimondo
Theresa and William Werner
Laura Eddings and John Parry
Mary Bahr-Robertson and Richard Robertson
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Rebecca and Paul Dongarra
Lauren and Patrick Foley
Caitlin and Stephen Hook, Jr.
Lauren Nordeck and Evan Brown
Melissa and Gabriel Cohee

CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND
401 Bosley Avenue, P.O. Box 6754
Towson, MD 21285-6754

Main: 410-887-2601

Case Number: C-03-CV-22-000574
Administrative Agency: 20-224-A
Workers Compensation Number: N/A

To: BALTIMORE COUNTY BOARD OF APPEALS
105 WEST CHESAPEAKE AVENUE
SUITE 203
TOWSON, MD 21204

IN THE MATTER OF JULIA AND RYAN KING ET AL.

Date: 3/3/2022

NOTICE TO ADMINISTRATIVE AGENCY OF JUDICIAL REVIEW

You are advised that a petition for judicial review was filed on 02/10/2022 and assigned Civil Action No. C-03-CV-22-000574.

Pursuant to Maryland Rule 7-202(d) (1), a copy of the petition is enclosed for the agency.

Julie L. Ensor
Clerk of the Circuit Court

RECEIVED
MAR 07 2022
BALTIMORE COUNTY
BOARD OF APPEALS

cc:

CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND
401 Bosley Avenue, P.O. Box 6754
Towson, MD 21285-6754

Main: 410-887-2601

To: BALTIMORE COUNTY BOARD OF APPEALS
105 WEST CHESAPEAKE AVENUE
SUITE 203
TOWSON, MD 21204

Case Number: **C-03-CV-22-000574**
Other Reference Number(s):

IN THE MATTER OF JULIA AND RYAN KING ET AL.

RECEIVED
MAR 07 2022
BALTIMORE COUNTY
BOARD OF APPEALS

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

Phone: 410-887-3180 E-mail: appealsboard@baltimorecountymd.gov Fax: 410-887-3182

March 3, 2022

Clerk of the Court
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

RE: In the Matter of: Cornelius David Helfrich – Legal Owner and
Dominion Properties – Contract Purchaser
Circuit Court Civil Action No.: C-03-CV-22-000574

Dear Sir/Madam Clerk:

A Petition for Judicial Review was filed in the above-captioned case on February 22, 2022 which corrected a deficient Petition originally filed on February 10, 2022, a copy is enclosed. The Baltimore County Board of Appeals is noted as the Administration Agency with an address of 105 West Chesapeake Avenue, Towson, Maryland 21204. However, the Circuit Court Case Search indicates an incorrect address of 1100 North Eutaw Street, Room 515, Baltimore, Maryland 21201.

Please correct the address of the Baltimore County Board of Appeals as follows:

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

Please also send out a Notice to Administrative Agency pursuant to Maryland Rules.

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

Sincerely,

Tammy A. Zahner

Tammy A. Zahner
Legal Secretary

taz
Enclosure

c: Michael R. McCann, Esquire
John B. Gontrum, Esquire

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY *

PETITION OF: *

Julia and Ryan King *
18 Locust Drive
Catonsville, Md. 21228 *

Davia Gauer *
4 Locust Drive
Catonsville, Md. 21228 *

John Cruchelow *
6 Locust Drive
Catonsville, Md. 21228 *

Margaret Decker *
12 Locust Drive
Catonsville, Md. 21228 *

Laura Wehland *
14 Locust Drive
Catonsville, Md. 21228 *

Gary Scherer *
14 Locust Drive
Catonsville, Md. 21228 *

Kimberly and Aaron Neal *
20 Locust Drive
Catonsville, Md. 21228 *

Mary Kathleen and Barry Sanders *
21 Locust Drive
Catonsville, Md. 21228 *

Mary Loretta Ellingsworth *
22 Locust Drive
Catonsville, Md. 21228 *

Linda and John Shifflett *
23 Locust Drive
Catonsville, Md. 21228 *

Amy and Richard Stevens *
24 Locust Drive
Catonsville, Md. 21228 *

Paula Raimondo *
25 Locust Drive
Catonsville, Md. 21228 *

Theresa and William Werner *
27 Locust Drive
Catonsville, Md. 21228 *

Laura Eddings *
29 Locust Drive
Catonsville, Md. 21228 *

John Parry *
29 Locust Drive
Catonsville, Md. 21228 *

Mary Bahr-Robertson and Richard Robertson *
31 Locust Drive
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212 Newburg Avenue
Catonsville, Md. 21228 *

Evan Brown *
212 Newburg Avenue
Catonsville, Md. 21228 *

Melissa and Gabriel Cohee *
214 Newburg Avenue
Catonsville, Md. 21228 *

FOR JUDICIAL REVIEW OF THE DECISION OF: *

THE BALTIMORE COUNTY BOARD OF APPEALS * Civ. Action: C-03-CV-22-000574
*
105 W. Chesapeake Avenue
Towson, Maryland 21204 *

*

IN THE CASE OF:

*

IN MATTER OF:
CORNELIUS DAVID HELFRICH, LEGAL OWNER *
AND DOMINION PROPERTIES, CONTRACT
PURCHASER (16 LOCUST DRIVE) *

Case No. 20-224-A *

*

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

PETITION FOR JUDICAL REVIEW

Petitioners, Julia and Ryan King, Davia Gauer, John Cruchelow, Margaret Decker, Laura Wehland, Gary Scherer, Kimberly and Aaron Neal, Mary Kathleen and Barry Sanders, Mary Loretta Ellingsworth, Linda and John Shifflett, Amy and Richard Stevens, Paula Raimondo, Theresa and William Werner, Laura Eddings, John Parry, Mary Bahr-Robertson and Richard Robertson, Mary Sue and Edward Cramer, Temple Zito and Linda Dredger, Elizabeth and Agustin Nunez, Mary Elizabeth and John Naish, Allison and Brian Heldmann, Julie Sanders-Krach and John Krach, III, Rachel and Richard Waltermyer, Theresa and Joseph Wynn, Janet and Thomas McGlynn, Rosemary Taylor, Tracy and Joseph Rehmert, Rebecca and Paul Dongarra, Lauren and Patrick Foley, Caitlin and Stephen Hook, Jr., Lauren Nordeck, Evan Brown, and Melissa and Gabriel Cohee, by their attorney, Michael R. McCann, pursuant to Maryland Rule 7-201 *et*

al., file this petition for judicial review of the Majority Opinion and Order and Dissent of the Baltimore County Board of Appeals dated January 12, 2022. Petitioners were parties to the proceedings below and are aggrieved by the Board's decision.

Michael R. McCann
CPF No. 8112010099
118 W. Pennsylvania Avenue
Towson, Maryland 21204
michael@mmccannlaw.net
(410) 825-2150

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HERE BY CERTIFY that, on this 22nd day of February 2022, a copy of the foregoing Petition for Judicial Review was sent via MDEC and first class mail, postage prepaid, to:

Baltimore County Board of Appeals
105 W. Chesapeake Avenue
Towson, MD 21204

And via MDEC and first-class mail, postage prepaid, to:

John B. Gontrum, Esquire
Whiteford, Taylor & Preston, LLP
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, MD 21204-5025

Attorneys for Respondent

Michael R. McCann

RECEIVED
FEB 15 2022
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE CIRCUIT COURT FOR BALTIMORE CITY *

PETITION OF: **JULIA AND RYAN KING, et al.** *

FOR JUDICIAL REVIEW OF THE DECISION OF: *

THE BALTIMORE COUNTY BOARD OF APPEALS * Civ. Action _____

*

105 W. Chesapeake Avenue
Towson, Maryland 21204 *

*

IN THE CASE OF:

*

IN MATTER OF:
CORNELIUS DAVID HELFRICH, LEGAL OWNER *
AND DOMINION PROPERTIES, CONTRACT
PURCHASER (16 LOCUST DRIVE) *

Case No. 20-224-A *

*

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

PETITION FOR JUDICAL REVIEW

Petitioners, Julia and Ryan King, Davia Gauer, John Cruchelow, Margaret Decker, Laura Wehland, Gary Scherer, Kimberly and Aaron Neal, Mary Kathleen and Barry Sanders, Mary Loretta Ellingsworth, Linda and John Shifflett, Amy and Richard Stevens, Paula Raimondo, Theresa and William Werner, Laura Eddings, John Parry, Mary Bahr-Robertson and Richard Robertson, Mary Sue and Edward Cramer, Temple Zito and Linda Dredger, Elizabeth and Agustin Nunez, Mary Elizabeth and John Naish, Allison and Brian Heldmann, Julie Sanders-Krach and John Krach, III, Rachel and Richard Waltermyer, Theresa and Joseph Wynn, Janet and Thomas McGlynn, Rosemary Taylor, Tracy and Joseph Rehmert, Rebecca and Paul Dongarra, Lauren and Patrick Foley, Caitlin and Stephen Hook, Jr., Lauren Nordeck, Evan Brown, and Melissa and Gabriel Cohee, by their attorney, Michael R. McCann, pursuant to Maryland Rule 7-201 *et*

al., file this petition for judicial review of the Majority Opinion and Order and Dissent of the Baltimore County Board of Appeals dated January 12, 2022. Petitioners were parties to the proceedings below and are aggrieved by the Board's decision.

Michael R. McCann
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 10th day of February 2022, a copy of the foregoing Petition for Judicial Review was hand-delivered to:

Baltimore County Board of Appeals
105 W. Chesapeake Avenue
Towson, MD 21204

And mailed, via first-class mail, to:

John B. Gontrum, Esquire
Whiteford, Taylor & Preston, LLP
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, MD 21204-5025

Attorneys for Respondent

Michael R. McCann

Master FIRST-CLASS MAIL
01/12/2022 US POSTAGE $001.76⁹
ZIP 21204
041D10102750

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

M.S. 4203

RECEIVED
FEB 15 2022
BALTIMORE COUNTY
BOARD OF APPEALS

To: Cornelius D. Helfrich
31 E. Lee Street
Bel Air, MD 21014

-R-T-S- 210145303-1N 02/03/22

RETURN TO SENDER
UNABLE TO FORWARD
UNABLE TO FORWARD
RETURN TO SENDER

From: Krysundra Cannington
To: Michael McCann; Tammy Zahner
Subject: RE: Helfrich (Locust Drive) 20-224-A
Date: Friday, February 11, 2022 9:36:00 AM

Good morning Mr. McCann,

Can we schedule an appointment for you to come in to review the file on Monday? Please let me know what time works best for you between 8 a.m. and 4 p.m. Or I can send you the file electronically.

As you know, we do not have people register in advance of the hearing. The transcript will provide you with the people who actively participated. The people on the distribution list are usually people who actively participated below, filed the appeal, or asked to be notified.

Thanks,

Sunny

From: Michael McCann <michael@mmccannlaw.net>
Sent: Thursday, February 10, 2022 11:15 AM
To: Tammy Zahner <tzahner@baltimorecountymd.gov>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: RE: Helfrich (Locust Drive) 20-224-A

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.

Also, since I was not involved at the hearing, I'd like to review the file. I don't want to interfere with your preparation of the record so let me know what works. Tx

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: Michael McCann
Sent: Thursday, February 10, 2022 11:09 AM
To: 'Tammy Zahner' <tzahner@baltimorecountymd.gov>; 'Krysundra Cannington' <kcannington@baltimorecountymd.gov>
Subject: Helfrich (Locust Drive) 20-224-A

Hey guys. Do you keep a list of folks who registered for this hearing or contact you about testifying? Or are those the folks on the distribution list on your cover letter accompanying the decision?

I am filing a petition for judicial review in this case and need to identify the appealing parties. There are a lot of people who are in the community who want to join the appeal, but are not on the distribution list.

Hope that makes sense.

Tx

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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From: Michael McCann
To: Tammy Zahner; Krysundra Cannington
Subject: Helfrich (Locust Drive) 20-224-A
Date: Thursday, February 10, 2022 11:09:01 AM

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.

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From: Michael McCann
To: Tammy Zahner; Krysundra Cannington
Subject: RE: Helfrich (Locust Drive) 20-224-A
Date: Thursday, February 10, 2022 11:15:40 AM

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.

Also, since I was not involved at the hearing, I'd like to review the file. I don't want to interfere with your preparation of the record so let me know what works. Tx

Michael

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Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

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From: Michael McCann
Sent: Thursday, February 10, 2022 11:09 AM
To: 'Tammy Zahner' <tzahner@baltimorecountymd.gov>; 'Krysundra Cannington' <kcannington@baltimorecountymd.gov>
Subject: Helfrich (Locust Drive) 20-224-A

Hey guys. Do you keep a list of folks who registered for this hearing or contact you about testifying? Or are those the folks on the distribution list on your cover letter accompanying the decision?

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Hope that makes sense.

Tx

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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IN THE MATTER OF CORNELIUS DAVID HELFRICH LEGAL OWNER AND DOMINION PROPERTIES, LLC, CONTRACT PURCHASER AND PETITIONERS FOR VARIANCE ON THE PROPERTY LOCATED AT 16 LOCUST DRIVE 1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 20-224-A

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

MAJORITY OPINION

This matter comes to the Board of Appeals for Baltimore County (the "Board") as a *de novo* appeal of an April 19, 2021 Opinion and Order of the Administrative Law Judge ("ALJ") denying a Petition for Variances (the "Petition") filed by Cornelius David Helfrich, Owner, and Dominion Properties, LLC, contract purchaser (collectively, "Petitioner") of the property at 16 Locust Drive in Catonsville (the "Property"). The Petition was filed pursuant to Baltimore County Zoning Regulations ("B.C.Z.R.") §1B02.3.C.1 to allow a 10-foot side yard in lieu of the required 15 feet and a combination of 20 feet in lieu of the required 40 feet;and a lot width of 50 feet in lieu of the required minimum of 100 feet; and a lot area of 5,850 sq. ft. in lieu of the minimum 20,000 sq. ft.

The Board held a virtual public hearing on September 9, 2021 and a virtual public deliberation on November 18, 2021. Petitioner was represented by John B. Gontrum, Esquire of Whiteford Taylor & Preston, LLP; also appearing for Petitioner was Patrick Richardson, a civil engineer registered and licensed in the State of Maryland, and Brian Leibowitz, the Director of Acquisition for Dominion Properties, LLC, the contract purchaser.

Protestants Ryan and Julie King, Barry Sanders and Laura Scherer appeared *pro se*. Also attending in opposition were Aaron and Kimberly Neal.

BACKGROUND

The subject parcel is located at 16 Locust Drive in Catonsville, and it is the last unimproved lot on a Plat titled "Locust Drive Extension" dated March 13, 1933, and recorded among the Plat Records of Baltimore County in Plat Book 10, page 109. The plat predated zoning in Baltimore County. After the imposition of the Density Residential zones in 1971, the lots in the plat were classified D.R. 5.5, though many houses had been built by that time. In 1996, the D.R. 5.5 zone was replaced by the application of D.R. 2 on nearly 500 acres of land in Catonsville. Every version of the B.C.Z.R. has recognized the validity of previously approved subdivision lots, but the regulations specify that such plats must have been approved by the Planning Commission or Planning Board. (B.C.Z.R. §103.) As such, there is no express recognition of the validity of a lot created prior to 1945, though, as the subject case demonstrates, these lots exist.

Petitioner Helfrich acquired the lot from the estate of Virginia Fields by Deed dated May 16, 2012 and recorded among the Land Records of Baltimore County at Liber 32178 folio 253. The adjoining lots on either side are improved by single family dwellings, which like most of the other houses in the subdivision were built in the 1930's or 1940's. To the rear of the Property is an undeveloped swath of land approved for use as commercial parking in a residential zone under Baltimore County zoning Case no. 89-307 SPH.

Testifying at the hearing for Petitioner was Patrick Richardson, who was accepted as an expert in zoning and land use. Mr. Richardson described the Property as lying on the west side of Locust Drive and being the last unimproved lot on the block and in the subdivision. Mr.

Richardson testified the proposed structure is a two-story house of co placement, size, design and materials as other homes on Locust Drive and of those neighboring the lot, with comparable front, rear and side yards. He also stated that the original architectural plans were modified to eliminate an attached garage, to shorten the house and to add dormers. The proposed house design was approved by the Department of Planning.

Using photographs and data from Baltimore County's My Neighborhood, Mr. Richardson pointed out several prior zoning cases granting variance relief to other lots in the subdivision.

Though the Property is a flat, rectangular lot, Mr. Richardson attributed the imposition of the D.R. 2 zone to the Property as contributing to its unique character. He opined that strict adherence to the zoning regulations would render the lot unbuildable for any purpose. He stated that the Property is served by public utilities. Mr. Richardson also testified that as part of the building permit process, the County agencies will review the application to assure compliance with storm water management and sediment control regulations.

There were no negative comments from the Zoning Advisory Committee.

Upon cross-examination by Protestants, Mr. Richardson confirmed the lot as having no steep slopes, no wetlands, no irregular shape or topography. When questioned regarding storm water run-off, Mr. Richardson reiterated that prior to the issuance of a building permit, the lot would have to comply with the applicable regulations. He was also asked and confirmed that the Property could be used for accessory uses if it were owned by either adjoining property owner.

On redirect questioning, Mr. Richardson explained that before an adjoining property could use the lot, both lots would have to be reconfigured.

Brian Leibowitz of Dominion Properties then testified. Dominion constructs new homes in Baltimore County and has constructed a number of such homes in the Catonsville area over the company's 25 years in business. Mr. Leibowitz explained that after discussions with counsel for one of the neighbors, the proposed house design was modified to have a smaller footprint and to eliminate a front garage to be more like existing residences. The house exterior would be brick on front and siding on the sides and rear.

Upon cross-examination, Mr. Leibowitz said that though there is room on the lot for a rear garage, there are no plans for one.

Following Petitioner's testimony, Protestants offered statements in opposition.

Julia King lives at 18 Locust Drive, neighboring the lot, and opposes the variances. She asserted that the lot is not unique under the standards of *Cromwell v. Ward,* 102 Md. App. 691, 651 A.2d 424 (1995). Ms. King further asserted that denial of the variances would not result in practical difficulty or hardship because the lot could be used as green space. She also said she offered to purchase the Property, arguing that a sale to her is a reasonable use.

Ms. King expressed apprehension that another dwelling would increase impermeable surfaces and create drainage and water issues.

Barry Sanders of 21 Locust Drive also testified against the variances. Upon cross-examination, he acknowledged that he did not object to the variances granted for his next door neighbor in Case No. 2010-0020.

Aaron Neal of 20 Locust Drive testified in opposition. He referenced the title history of the Property, citing common ownership of 16 and 18 Locust Drive prior to 2012, and alleged the subject lot was used in connection with 18 Locust Drive. However, Mr. Neal offered no evidence to support his assertion. He posited that other lots in the subdivision that benefited

from variance relief were distinguishable because those lots were already improved by houses. He did not distinguish whether the relief granted in those cases had a greater impact than the subject petition.

Laura Scherer of 14 Locust Drive testified in opposition, asserting that the Property was accessory to the adjoining lot because in the past children played on the Property.

DISCUSSION

"As a general rule, [variances] are granted sparingly, and under exceptional circumstances. *North v. St. Mary's County,* 99 Md.App. 502, 638 A.2d 1175 (1994).

Zoning is an exercise of the police power, which takes away, for public good, some rights of individuals to use their property. ... [I]t has been established that a zoning ordinance which permanently restricts the use of property so extensively that it cannot be used for any reasonable purpose and goes beyond permissible regulation, must be regarded as a taking of property without compensation. *Lone v. Montgomery County*, 85 Md. App 477, 584 A.2d 142 (1991).

Pursuant to B.C.Z.R. §307.1, the Board has the power to grant a variance from the area regulations "only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with Zoning Regulations... would result in practical difficulty or unreasonable hardship." In addition, "any such variance shall be granted only if in strict harmony with spirit and intent of said....area... regulations, and only in such a manner as to grant relief without injury to public health, safety and general welfare."

The analytical framework for considering a variance request is well established:

The decision of whether to grant a variance is a two-step process. "The first requires a determination of whether the property, in and of itself, is "unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provisions to impact disproportionately upon that property." *Cromwell v. Ward*, supra, at 694 (1995). If that "uniqueness" does not exist, no variance may be granted. If it does, then the second hurdle is to determine whether practical difficulty and/or unreasonable hardship result from the disproportionate impact of the zoning ordinance caused by the property's unique quality. *Cromwell*, supra at 694-695.

Uniqueness is not limited to physical characteristics. "While it appears from *Cromwell* that there must be some physical uniqueness in the size and shape or environment of the property to qualify for a variance, we believe that the court did not address the imposition of new zoning regulations on old subdivisions. In such cases, *the imposition of new regulations impacts the lots in the old subdivision disproportionately as compared to lots in the area* developed after and in accordance with new regulations. We therefore find that, *under these circumstances, the property passes the first test and is unique*. This subdivision was recorded in the 1940s prior to D.R. 3.5 zoning, and denying the requested variance would result in a hardship and practical difficulty." *Mueller v. People's Counsel*, 177 Md. App. 43, 934 A.2d 974 (2007) (emphasis added)

Applying the *Cromwell* analysis, it is clear that the Property fails the showing of unique physical characteristics different from surrounding properties. However, applying the *Mueller* analysis, the Property passes the first test and the uniqueness prong is satisfied.

The courts have also addressed what constitutes a practical difficulty or hardship. In *Belvoir Farms Homeowners Association v. North,* 355 Md. 259, 734 A.2d 227 (1999), the

Court explained that "authorities throughout the country ...define the unnecessary, unreasonable, unwarranted, or similarly-worded hardship standard to be either the denial of beneficial or reasonable use or the denial of all viable economic use, the unconstitutional taking standard."

Maryland appellate courts have offered two different definitions of what constitutes an unwarranted, undue, or unnecessary hardship. In *Loyola Federal Sav. & Loan Ass'n v. Buschman,* 227 Md. 243, 248, 176 A.2d 355, 358 (1961), the Court stated "variances are customarily concerned with `hardship' cases, where *the land cannot yield a reasonable return if used only in accordance with the use restrictions* of the ordinance and that a variance must be permitted to avoid confiscatory operation of the ordinance. *Belvoir Farms Homeowners Association, Inc. V. North,* 355 Md. 259, 734 A.2d 227 (1999) (emphasis added.)

To prove practical difficulty for an area variance, Petitioner must demonstrate i) whether strict compliance with the zoning requirements would unreasonably prevent use of the property for a permitted purpose or render conformance unnecessarily burdensome; ii) 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 iii) whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured. *Anderson v. Chesapeake Beach*, 22 Md. App 28, 322 A. 2d 220 (1974). We find that Petitioner has satisfied the practical difficulty requirement as well.

Despite the suggestion by the ALJ that there are other conceivable uses for the Property, neither he nor any party offered, nor could we discover, any other principal use or structure

permitted under the D.R. regulations of the B.C.Z.R. to which this Property could be put. As such, the owner is deprived of a beneficial use of the Property for a reasonable purpose.

Protestants argue that because they are willing to purchase the Property, thus forcing a sale, the sale would amount to a reasonable use to the Petitioner. Maryland Courts and this Board disagree.

In *Belvoir*, the court emphasized that "it is important to note...that the purpose of a variance is to protect the *landowner's rights.*" (emphasis added.) We find that Petitioner has effectively argued that our failure to grant the requested variances would deprive them of the permitted and beneficial use of the Property as provided in the zone.

Conduct forcing a sale of property is a deprivation of use to the landowner who has rights in the property, not those of a third party with no cognizable interest in the property. Zoning laws are in derogation of those rights but should not amount to a deprivation of an owner's ability to use its property for a permitted purpose.

Ordinarily, such a deprivation may be treated as a taking – an inverse condemnation. An inverse condemnation can take many forms, and includes conduct that effectively forces an owner to sell. *College Bowl, Inc. v. Baltimore,* 394 Md. 482, 907 A.2d 153 (2006) This proceeding would be a necessary prerequisite to pursuing a suit for inverse condemnation as an aggrieved party is obliged to exhaust administrative remedies.

However, Maryland case law seeks to avoid such an extreme measure as requiring a property owner to sue a local government. The alternative favored by the courts is the granting of a variance to permit the use of the property for a permitted purpose.

In the case of *Maryland Reclamation Associates, Inc. v. Harford County, Md.*, 468 Md. 339, 227 A.3d 230 (2019), the Court of Appeals described a variance as an "essential tool" to

be used in such situations. The variance can correct "occasional inequities" that may be created under general zoning ordinances. The Court has similarly held that a variance is an appropriate land use tool that this Board can apply to alleviate a deprivation of use arising out of otherwise valid zoning.

The *Belvoir* Court stated that the determination of such use or loss thereof is "a question of fact best addressed by...Board of Appeals." *Belvoir,* supra at 282. Essential to that determination is an analysis of other uses that could be made of the Property. The ALJ cited no such uses. The Protestants propose open space or forcing a sale to them so the land could become accessory to their homes. The uses do not equate to a reasonable use to the aggrieved property owner.

PROTESTANTS ARGUMENTS

Protestants in their written submissions raise a number of arguments.

The Kings advance the position that the sale of the Property has an economically viable use to the landowner. They cite no authority for this proposition nor could we find any cases to support it. The use must be one of value to the aggrieved landowner, while conduct that effectively forces an owner to sell is deemed a deprivation of use. Further, though all the D.R. zones permit a variety of accessory uses, these can, by definition, only exist if there is first a principal use of the lot. See B.C.Z.R. §101. An accessory use cannot stand alone.

The Protestants also argue that children living in 18 Locust Drive played on the subject Property, suggesting that the lot at 16 Locust Drive had become merged with 18 Locust Drive. The same proposition was rejected by the Court of Special Appeals in *Mueller.* Use as open space was also deemed to offer no viable economic value by the Court in *Steel v. Cape*, 111 Md. 1, 677 A.2d 634 (1996).

Both Protestants King and Neal argue that when he acquired the lot, Mr. Helfrich knew that its use was restricted by the bulk regulations of the D.R. 2 zone, and therefore variance relief should be denied. In Maryland, the law is that, at the time of acquisition, having knowledge of existing zoning regulations limiting a property's use *is not* a self-created hardship prohibiting variance relief. *Roeser v. Anne Arundel County*, 368 Md. 294, 793 A.2d 545 (2002). The *Roeser* court surveyed the case law in Maryland and other states in reaching its decision. The decision was based, in part, on the general property-law goal to preserve free alienability of property.

Protestant King also raises concerns about increased storm water and flooding, but offered no evidence in support of those allegations and no testimony to rebut Petitioner's expert witness.

Importantly, no Protestant identified any principal use, other than the proposed residence- that is permitted on the lot. Protestants historically have not opposed prior variances granted on this street – though one such variance nearly doubled the size of one house and increased its impervious area. There was no allegation that the proposed house design, as modified, was not in keeping with the character of other homes in the subdivision.

CONCLUSION

For the reasons cited above, the Board will grant the variances as requested.

ORDER

THEREFORE, IT IS THIS 12th day of January, 2022 by the Board of Appeals of Baltimore County

ORDERED, that the Variances to allow a 10-foot side yard in lieu of the required 15 feet and a combination of 20 feet in lieu of the required 40 feet; and a lot width of 50 feet in lieu of the required minimum of 100 feet; and a lot area of 5,850 sq. ft. in lieu of the minimum 20,000 sq. ft. at 16 Locust Drive are hereby **GRANTED.**

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

BOARD OF APPEALS
OF BALTIMORE COUNTY

Deborah C. Dopkin, Chair

Sharonne R. Bonardi

IN THE MATTER OF CORNELIUS DAVID HELFRICH LEGAL OWNER AND DOMINION PROPERTIES, LLC, CONTRACT PURCHASER AND PETITIONERS FOR VARIANCE ON THE PROPERTY LOCATED AT 16 LOCUST DRIVE 1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 20-224-A

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

DISSENT

I dissent from my colleagues' conclusion that a variance is warranted.

I. A VARIANCE IS NOT JUSTIFIED UNDER *CROMWELL*

Under *Cromwell v. Ward*, 102 Md. App. 691 (1995), a property owner can receive a variance from a zoning restriction if the property is unique **and** if the property owner would otherwise suffer practical difficulty or unreasonable hardship. These dual requirements are codified in the Baltimore County Zoning Regulations (BCZR) at § 307.

The uncontroverted testimony was that the Helfrich lot is exactly like all of the other lots in the development. There is nothing unique about the property in terms of topography, shape, dimension, placement, or any other characteristic of the land that satisfies *Cromwell* uniqueness.[1] The only uniqueness asserted by Mr. Helfrich is that the present zoning prohibits the development he desires. This is, of course, no uniqueness at all. *North v. St. Mary's County*, 99 Md. App. 502, 514-15 (1994) (no uniqueness where the only evidence offered in support of uniqueness was the

[1] Because there is no building on the property, there is no feature "peculiar to the structure" that makes the property unique. *See* BCZR § 307.

testimony that the property owner could not do what he wanted to do). A variance request presupposes a zoning restriction. To say that a zoning restriction is what generates *Cromwell* uniqueness is to define away uniqueness as a requirement. Mr. Helfrich has presented us with no authority that the zoning of a property can be the source of *Cromwell* uniqueness. In the interests of brevity, I hereby adopt the reasoning and cited authorities from Judge Mayhew's decision in this matter.[2] *See* ALJ Opinion of April 19, 2021, at p. 3-6.

I also disagree that there is unwarranted hardship or practical difficulty under *Cromwell.* It is certainly true that *Cromwell* hardship is not "self-created" and thereby disqualifying simply by acquiring a property where the zoning does not allow for a purchaser's desired use. *Richard Roeser, Inc. v. Anne Arundel County*, 368 Md. 294, 297 (2002). However, the logic works in both directions: undue hardship is not automatically **created** if the purchaser's desired zoning change does not happen. In other words, where someone engages in financial speculation hinged upon a zoning change, he does not automatically achieve practical difficulty or incur unreasonable hardship under the theory that to deprive him of his zoning request would mean that he would lose his gamble. Pursuant to § 307, the hardship to be avoided must be one that is "unreasonable". It is most assuredly **not** reasonable to claim hardship where the investment return is contingent upon overturning by variance a twenty-five year old zoning classification for a lot that is indistinguishable from every other lot in the development. Moreover, the attempt to achieve a variance by arguing a constitutional taking is nothing short of a "Hail Mary" pass. Anyone in Mr.

[2] To avoid any misunderstanding, I want it to be clear that I am adopting **only** Judge Mayhew's legal reasoning and not any factual findings he may have made. The Board's factual review is *de novo*. My factual conclusion that there is nothing unique about the Helfrich lot is founded solely and completely on the testimony and evidence presented before the Board.

Helfrich's position should have understood at the outset the degree of difficulty and the unlikelihood of obtaining a variance under these circumstances.[3]

In addition, the availability of the $25,000 offer from the Kings means that he can recoup some (if not all) of his investment. Some cases speak of undue hardship in the context of the denial of a **reasonable** investment-backed return. *Cf. Casey v. Mayor and City Council of Rockville*, 400 Md. 259 312-15 (2007). This is just another way of saying that the hardship requirement cannot be founded on a business expectation that is nothing more than a crapshoot. **The record is silent as to the size of Mr. Helfrich's investment.** Therefore, while $25,000 is not $75,000, we do not know whether the $25,000 is a good, bad, or neutral return on his investment. This would be a useful, if not necessary, fact for Mr. Helfrich to have provided so that the extent of any authentic hardship could be evaluated. *William F. Chesly v. City of Annapolis*, 176 Md. App. 413, 432-36 (2007) (applicant is required to affirmatively prove unreasonable or unwarranted hardship and the record must so demonstrate). After all, if he bought out the heirs for $10,000, a $25,000 return is quite handsome. So, I am not saying that there is self-created hardship. I am saying that there is no proven hardship *ab initio* because frustrated financial speculation under these circumstances and with this incomplete record is insufficient proof of an "unreasonable" hardship.

I see no basis whatsoever to grant a *Cromwell* variance.

II. A VARIANCE CANNOT BE JUSTIFIED BECAUSE A CONSTITUTIONAL TAKING HAS NOT OCCURRED AND BECAUSE THE ASSERTION OF A CONSTITUTIONAL CLAIM IS TIME-BARRED.

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[3] The rather amusing irony is not lost on me that I am writing these words in a Dissent from a finding that is precisely what I am saying is so unlikely. In my defense, the small chance of success does not mean there is **no** chance of success, but it does inform on the reasonableness and riskiness of the initial investment. And, of course, sometimes the Hail Mary pass is caught. It doesn't make it any less of a Hail Mary.

A. The Analyses Under *Cromwell* and Constitutional Taking Are Independent

Even where the *Cromwell* uniqueness standard is not met, a variance can also be granted if the applicant can show that there was a constitutional deprivation of property by reason of the enactment of a zoning regulation that severely limits the property's value. *Maryland Reclamation Associates v. Harford County*, 468 Md. 339, 404-05 (2020) (hereinafter "*MRA*"). In order to show a taking, the applicant is required to prove that there was an improper legislative enactment that deprived the owner of all beneficial use of the property. *Id.* at 392. I differ from my colleagues because it is my view that, analytically, the finding that a taking occurred does not feed into *Cromwell*; it trumps *Cromwell*. While there is some overlap between the two analyses, they are distinct. For example, they both consider the property's diminished value though the requirement of the elimination of all beneficial use for a taking is more stringent than *Cromwell* hardship. *Belvoir Farms Homeowners Association v. North*, 355 Md. 259, 282 (1999) (". . .the necessary or unwarranted hardship standard [for a regular variance], or similar standards, **are less restrictive than the unconstitutional taking standard"**)(emphasis supplied). On the other hand, the uniqueness requirement is irrelevant to a taking. In addition, it does remain necessary for the proponent of a taking to show that the zoning action in question was an improper exercise of a jurisdiction's authority to promote the general welfare, a concern that is not relevant under *Cromwell*. In other words, *Cromwell* and constitutional taking present independent analytic routes to achieve a variance.

It is my view that the taking claim in this case is both time-barred and unavailable on the merits. I begin with the question of the timeliness of Mr. Helfrich's taking claim because it is the simplest.

B. Any Claim Of A Constitutional Taking Is Time Barred

1. The Statute of Limitations

The basis for the regulatory taking at issue here is the comprehensive rezoning in 1996 in which the zoning was changed from DR 5.5 to RC 2. Based on that change, this lot became unbuildable for a house. The rezoning occurred twenty-five years ago.

How does the legal system cope with a situation where the core allegation is so old? One way, of course, is with the statute of limitations. Mr. Helfrich acquired the property and assumed all of the rights of the predecessors, but he also assumed all of the restrictions that limited the rights of his predecessors. *See Richard Roeser, Inc. v. Anne Arundel County*, 368 Md. at 319 ("In Maryland, when title is transferred, it takes with all the encumbrances and burdens that attach to title. . ."). One such restriction is the statute of limitations that attends such claims.

An action based on a regulatory taking is known as an inverse condemnation claim. The established rule in Maryland is that an owner of a property has three years to initiate an inverse condemnation action. *Electro-Nucleonics, Inc. v. Washington Suburban Sanitary Commission*, 315 Md. 361, 373-74 (1989); *Millison v. Wilzak*, 77 Md. App. 676, 684-86 (1989). The cause of action accrues as of the time the taking is final. *Litz v. Maryland Department of the Environment, et al.*, 434 Md. 623, 654 (2013). A final taking has occurred when "the taking becomes permanent or stabilized." *Id.* Stated differently, the statute of limitations begins to run when "the affected party knew or should have known of the unlawful action and its probable effect." *Duke St. Ltd. Partnership v. Board of Commissioners of Calvert City*, 112 Md. App. 37, 49 (1996). In this matter, the taking -- if indeed one occurred -- was "permanent or stabilized" in 1996. That is when the new zoning took effect, and it was then known that the property could not accommodate a

house under the new zoning. That was the point in time when the loss of value or use occurred, and the probable effect of the rezoning was known. Therefore, any inverse condemnation case was required to be started sometime in 1999, and not twenty-two years after the expiration of the three year limitations period. Accordingly, the relief that Mr. Helfrich seeks is legally barred, and he is foreclosed from seeking a variance on this basis.

2. Laches

(a) There Was Unreasonable Delay in Bringing an Inverse Condemnation Claim Resulting in Prejudice to the Protestants and/or Baltimore County

If, for some reason, it is believed that the statute of limitations does not shut out the Helfrich claim, then the other basis to dispense with stale claims, *i.e.*, laches, should apply. Laches is the equitable principle that a claim is barred where there has been an inexcusable delay in the assertion of a claim and where the party asserting laches has suffered prejudice by reason of the delay. *Schaeffer v. Anne Arundel County*, 338 Md. 75, 83 (1995). In this matter, there is certainly no excuse for the delay in bringing the taking case except, one supposes, that the predecessor owners had no interest in doing so.

There has been prejudice incurred by the delay. To prove a taking, Mr. Helfrich must demonstrate that the 1996 comprehensive rezoning was an improper exercise of legislative authority by the Baltimore County Council. The Petitioner blithely asserts that this was (or must have been) a directed zoning modification designed to influence this property alone and that the 1996 zoning action was motivated by a legislative desire to secure open space at the direct expense of Mr. Helfrich's predecessors. While this may be a useful picture to promote, it is at its core a baseless assertion conjured up out of thin air. In point of fact, there is absolutely nothing in the

record to support such an allegation, and Mr. Helfrich made no effort before the Board to demonstrate such a finding.[4]

The Board has been presented with no information about what happened in 1996. We know based on longstanding practice that the councilperson for the district in which the lot is found supported the change. That is about **all** that we know about the 1996 change. Here is what we do not know: why the change was made, who proposed the change, whether the then owner of this lot supported or opposed the change, whether the County planning and zoning authority supported or opposed the change, the geographic scope of the change, the number of other properties that were affected by the change, the nature of the debate that was associated with the change, and any other detail that might be pertinent to a **present** consideration as to whether this zoning change was a valid regulatory action or whether it was a taking giving this successor owner the right to seek relief.

It is true that zoning legislation carries "the strong presumption of correctness." *Stratakis v. Beauchamp*, 268 Md. 643, 652-53 (1973). Even more, this presumption is ". . .heavier in the case of comprehensive rezoning. . ." than in individualized zoning. *Reese v. Mandel*, 224 Md. 121, 128 (1961). *See also Anderson House, LLC v. City of Rockville*, 402 Md. 689, 723-24 (2008) (listing Maryland cases emphasizing the "strong presumption of correctness" that attends comprehensive rezoning). Nonetheless, waiting twenty-five years to assert the taking claim hampers the opponents of the claim from martialing the kind of information itemized in the

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[4] In order to prove an inverse condemnation claim, the party seeking to establish the claim must present evidence that there was an improper exercise of legislative authority. *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 127(1978). The absolute dearth of evidence presented by Mr. Helfrich on this point is one of the bases for concluding that his case failed on its merits. *See infra* at p. 26-27.

preceding paragraph – evidence by which one could rationally evaluate the propriety of the zoning legislation at issue. The ability of the Protestants (and even Baltimore County were the taking claim to go to Circuit Court) to present evidence beyond the presumption is substantially hampered by the twenty-five year delay. Maybe the presumption of validity is enough to prevail, but just because a party has "enough" evidence as assessed before the fact, does not mean that the party is not prejudiced by the inability to gather more for use at the actual trial. In other words, the presumption notwithstanding, there is legal prejudice occasioned by the delay.[5]

(b) Does Laches Apply to An Inverse Condemnation Claim in Maryland?

Assuming the elements of laches are established, the next question is whether laches applies to a case of this sort. I have not attempted to survey the country on the applicability of laches to a regulatory taking though laches does apply to this type of case in at least two other states. *Menconi v. State of Texas*, 480 S.W.2d 417, 419 (Texas 1972) (over 20 year delay in bringing inverse condemnation triggers laches); *George Rauser, et al. v. Toston Irrigation District, et al.*, 565 P.2d 632, 638 (Montana 1977) (though doctrine of laches is available in inverse condemnation, it did not apply on the *Rauser* facts). On the other hand, laches was found to be inapplicable in at least one state because inverse condemnation is a claim at law and not at equity. *Olsen v. Township of Spooner, et al.*, 395 N.W.2d 808, 810-11 (Wisconsin 1986) (laches was not

[5] Nothing said in this argument should be interpreted as placing the burden of persuasion on the Protestants (or the County). It is clearly the obligation of the party seeking to establish a taking to prove the impropriety of the legislative enactment. *MRA*, 468 Md. at 393-94. *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 484-85 (1987). I am merely noting that in a hypothetical case in which Mr. Helfrich were to somehow present evidence of a legislative overreach, his opponents are hampered because of the passage of time in obtaining evidence and/or witnesses that may well be relevant to rebut that assertion.

available to foreclose a three year old claim because inverse condemnation is not an equitable action, but the claimant's failure to give the State notice within 120 days of the loss did).

It is not clear whether laches applies to an inverse condemnation in Maryland. Laches is an equitable defense, and it harkens back to Maryland's historical split between actions at law and at equity. While eminent domain is technically an action at law, it has such peculiar and unique characteristics that it is sometimes viewed as straddling the line between law and equity. *Utilities Inc. v. Washington Suburban Sanitary Commission*, 362 Md. 37, 46-50 (2000) ("Condemnation proceedings are peculiar civil actions and are often described as being *sui generis*. . .[and] while regarded as proceedings at law, are not ordinary suits at law. . ."). Among the unusual features of condemnation cases are the following: the special condemnation juries are not common law juries; the question of just compensation is for the jury, but the other factual issues like the right, necessity, and/or public purpose for the condemnation are reserved for the judge; the jurisdiction is *in rem*, not *in personam*; and the authority of a governmental agency to initiate condemnation proceedings may be challenged in a separate action in equity. *Utilities Inc. of Maryland v. Washington Suburban Sanitary Commission, supra*, 362 Md. at 48-50.

The starting point for the staleness argument in this matter is the clearly established three year limitations period for an inverse condemnation proceeding. This should be enough to end the debate. If, however, an alternative to a limitations argument is needed, I would find that this matter is barred by laches unless and until a Maryland court of general jurisdiction indicates otherwise.

3. Conclusion

In summary, it is my view that the passage of time bars Mr. Helfrich from asserting a taking claim to achieve a variance. I cannot believe that the law would enable a real estate speculator to

take ownership of a parcel with full knowledge of its zoning and then make a significant profit because, according to him, there had been a regulatory taking twenty-five years and several predecessors earlier. To me, this is an outlandish proposition. Whatever the legal rationale, the logic of the taking claim being time-barred is compelling. In the event that Mr. Helfrich's taking argument is rejected and if Mr. Helfrich's claim is not stale, then he can go to circuit court and seek money compensation from Baltimore County. If he prevailed, the citizens of Baltimore County would have to pay him the lost value of the property.[6] Whether this matter is barred by limitations or laches or both, the point is the same: the area residents, the County government, the taxpayers of Baltimore County, and indeed the County fisc itself have the right to expect just a bit of repose after twenty-five years.

C. On The Merits, There Was No Basis To Find That The Property Had Been Taken By Reason Of The Zoning Change

1. The Background of Regulatory Taking

Historically, regulatory taking has been a rather vexing problem. *See generally Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413-15 (1922) (recognizing the possibility of a taking by the legislative exercise of normal police powers). Garden-variety condemnation relates to the straightforward situation where a government unit needs to take a property for the public good and pays the fair market value to the involuntary "seller." The title to the property is transferred. There is typically a "physical invasion" of the property. It is a constitutionally based

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[6] As to value, some perplexing questions do present themselves. Just what is the supposed lost value? Is it the difference in 1996 dollars between the property's value the day before the zoning change compared to its value the day after? Do the offers to buy for $75,000 and $25,000 even matter twenty-five years after the taking or are they just *non sequiturs*? Even though the Majority Opinion, the Parties and this Dissent find it convenient to talk about the value in terms of the present competing offers and the other bases in 2021 for valuing a property, I see no reason to automatically assume that that is the proper metric. The passage of time skews the valuation analysis, which is another reason the passage of time is a fundamental defect in this entire matter.

process that seeks to balance public necessity with the private ownership of property. Regulatory taking, however, arises in a different context. Here, a presumptively valid legislative action taken to enhance the general welfare can have the unintended effect of diminishing the value of a piece of property. The governmental unit is not seeking to take title to the property nor is it attempting to encroach on the physical boundaries of that property. *City of Annapolis v. Waterman*, 357 Md. 484, 508-09, 523 (2000). It is simply limiting the use that can be made of the property.

As the courts have often stated, it is difficult to imagine a piece of zoning legislation that does not affect the value of someone's private property, either positively or negatively. Where the legislation was in good faith and not the result of cognizable mistake or over-reaching, this gain or loss in property value is viewed as a necessary but fortunate, or necessary but unfortunate, collateral consequence of the legislative exercise of police powers. *County Commissioners of Queen Anne's County v. Miles*, 246 Md. 355, 368 (1967); *Ark Readi-Mix Concrete Corp v. Smith*, 251 Md. 1, 5 (1968). No one has a *per se* vested property right in the continuation of a zoning classification, whether their own or others. *Norbeck Village Joint Venture v. Montgomery County Council*, 254 Md. 59, 66 (1969). Rezoning may cause some people to win and some people to lose, but the public does not have a claim on the enhanced rewards of the winners, nor does it have to pay the losers for their lost value. To do otherwise, except in one narrow situation, would be to create a massively unwieldy system of immense complexity. We just cannot enter into an adversary process every time someone's property is down-zoned with a resulting loss of optimal value. No one seriously suggests otherwise. The one exception is where the loser has lost **ALL** value. Then and only then is the public required to compensate the property owner who has retained title to their property for the lost value. There is no effort to measure the gradation of that lost value – there is no battle of experts, one who says there is a 50% loss or another who says

there is a 65% loss or yet another who says it's 80%. In the world of regulatory taking, it is all or nothing.

2. The Standard For Determining the Necessary Lost Value

In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), the Court stated the standard for measuring the loss necessary to establish a regulatory taking. *Lucas* involved two beachfront properties that Lucas had purchased with intent to build and sell houses, but the lots were made less valuable by a newly enacted local building restriction for beachfront properties. The Court expressly stated that the proper measure of a taking is whether the regulation has resulted in the loss of "**all** economically beneficial uses . . ." 505 U.S. at 1019. (emphasis in original). It is not a question of whether the use or value has been diminished – even substantially diminished. There must be a complete and total elimination of value. 505 U.S. at 1019n.8. *See e.g., Steel Hill Development Inc. v. Town of Sanbornton*, 469 F.2d 956, 963 (1st Cir. 1972) ("The estimated worth, had Steel Hill's original plans been approved, is irrelevant. Though the value . . . has been decreased considerably, it is not worthless or useless so as to constitute a taking."); *C.F. Lytle Co. v. Clark*, 491 F.2d 834, 838 (10th Cir.1974) (a taking occurs only where the property owner "has been deprived of all reasonable uses."); *Kent Island Joint Venture v. Smith*, 452 F.Supp. 455, 460 (D.Md.1978) (". . . there is no taking in the constitutional sense unless the interference is so substantial as to render the property worthless or useless."). Lest there be any doubt about the long history of this principle, one need only examine ninety-five year old *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (holding that a 75% diminution of value not a taking) and one hundred and five year old *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (reduction in value from $800,000 to $60,000 – approximately 92% -- does not constitute taking).

The Court revisited the issue in *Palazzo v. Rhode Island*, 533 U.S. 606 (2001). In that decision, the Court determined that the standard to measure a taking is satisfied if the owner is left only with "a token interest." *Id.* at 631. The difference between having no value and having only token value seems a distinction almost too fine to measure. Certainly, the residual value of the Helfrich property, particularly given the outstanding King offer, is vastly greater than a mere token.

Whatever wiggle room is generated by the reference to token value, it is difficult to find any decision – including any Maryland case -- that strays from the categorical requirement. The recent Maryland decisions on this issue have had no trouble citing the categorical rule as the operative one in Maryland. *MRA*, *supra*, 468 Md. at 416 (indicating that MRA had "the burden of demonstrating that no other beneficial uses could be made of its property. . ."); *Belvoir Farms v. North*, *supra*, 355 Md. at 282 (the constitutional standard is ". . .the denial of beneficial use or the denial of all viable economic use. . .").

MRA is from 2020, and *Belvoir Farms* is from 1999. One can go back much further. For example, in *Mayor of Rockville v. Stone*, 271 Md. 655, 662 (1974), the Court addressed a situation where rezoning had caused a two-thirds diminution of the owners' original investment.[7] The Court roundly rejected the argument that the zoning was confiscatory and therefore improper, stating "[t]he record is devoid of evidence which would demonstrate that the owners were denied **all** reasonable use. . ." (emphasis supplied). While the Court expressed sympathy for the "details of financial disaster" wrought by the zoning, the Court stated that the law simply required a complete

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[7] There is a two-thirds diminution of **sale** value in this case – the difference between the $75,000 developer price and the $25,000 King price. This is not a two-thirds diminution of investment value. What we do not know, as indicated above, is the amount of the original Helfrich investment. *See* discussion *supra* at 13-14 regarding the difficulty of evaluating *Cromwell* hardship and/or return on investment without that information.

deprivation of value before an unconstitutional taking can be found to have occurred by reason of the enactment of regulations. *Id.* at 664. *See also Hagerstown Kitchens, Inc. v. Board of County Commissioners*, 547 F.Supp. 46, 48 (D.Md.), *aff'd* 707 F.2d 506 (4th Cir.1983); *State v. Good Samaritan Hospital*, 299 Md. 310, 324-25 (1984); *Pilsenberger v. Pilsenberger*, 287 Md 20, 34 (1980); *Pallace v. Inter City Land Co.*, 239 Md. 549, 558 (1965), *City of Baltimore v. Borinsky*, 239 Md. 611, 618-22 (1965) (discussed at length and with approval in *MRA*), all applying the categorical rule in assessing whether the diminution of value led to a taking.

3. The Helfrich Property Has More Than Token Value

As has been said throughout, the $25,000 King offer is an indicator of real and actual value. For example, in *Quinn v. Board of County Commissioners of Queen Annes's County*, 124 F.Supp.3d 586 (D.Md.2015), the Court noted that merging small lots into larger ones creating more open space meant that the smaller lot still retained demonstrable value.[8] *Id.* at 595-96. Moreover, the Helfrich property has cognizable value apart from the $25,000 King offer. If Mr. Helfrich does not want to sell for $25,000, he can put a fence around the property and use it for himself. He could dig a fire pit for picnics or set up a volleyball net, or both. He could pave part of it and put up a basketball net. He can use it for storage of various items. Those uses do not necessarily maximize his financial return, but they do have measurable value. It has long been recognized that an undeveloped lot can have recreational and aesthetic value. *See e.g., Turner v. County of Del Norte*, 24 Cal.App. 3d 311, 315, 101 Cal. Rptr. 93,96 (1972); *Turnpike Realty Co. v. Town of*

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[8] Mr. Justice Blackmun in his *Lucas* dissent described various attributes of value that the Lucas' property retained. Among those attributes was "**. . .the right to alienate the land, which would have value for neighbors and for those prepared to enjoy proximity to the ocean without a house.** (emphasis supplied). *Lucas, supra*, 505 U.S. at 1043-44 (Blackmun, J., dissenting). In other words, selling a property to a neighbor who wants the lot to be vacant is a type of recognized value.

Dedham, 284 NE2d 891, 899-900 (Me.1972); *Hall v. Board of Environmental Protection*, 528 A.2d 453, 455-56 (Me. 1987), all finding recreational and aesthetic value in building-less lots. *See also City of Annapolis v. Waterman, supra*, 357 Md. at 484 (indicating in general that there is nothing improper in imposing conditions in subdivisions for open space and recreation).

There is nothing in this Dissent that supports a finding that Mr. Helfrich is the victim of a "forced sale." It is true enough that the under Maryland caselaw, a requirement that **forces** someone to sell their property is improper. No one is forcing Mr. Helfrich to sell. In fact, he wants to sell. He just wants to sell to a builder for $75,000 and not to an abutting property owner for $25,000. But if he chooses not to sell to the Kings, he can retain the property for his own use as discussed above. The retention of the property may have a monetized value less than the $25,000, but it still has more than token value.[9] The question here is not whether Mr. Helfrich is able to obtain top dollar for his lot; the question here is whether the lot nonetheless retained more than token value after the restrictive zoning. The answer to that question is most assuredly yes.[10]

4. There Is No Evidence That the Comprehensive Rezoning in 1996 Was Not Legitimate

There is a requirement that the party seeking to establish inverse condemnation must affirmatively demonstrate that the zoning in question was inappropriate or lacked a legitimate public purpose. *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 484-85 (1987). I have already indicated in the laches argument above that Mr. Helfrich presented **no** evidence to prove that point. *Supra* at p. 17-19. Additionally, there is the very strong presumption of

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9 The record is silent regarding the payment of property taxes over the last twenty-five years for this property. One can infer that if no taxes were paid, or no taxes levied because of the valueless nature of the property, such evidence would have been presented.

10 At the risk of being repetitive, the missing evidence as to the size of Mr. Helfrich's original investment impacts on an assessment of value as well. *Supra* at p. 13-14.

correctness that attends comprehensive rezoning. Just as Mr. Helfrich made no affirmative showing that the rezoning was not proper, he made no effort to rebut the presumption of validity. Those cases are also cited above. *Supra* at p. 18-19. Accordingly, there is a massive failure of proof on this required element of inverse condemnation.

5. Conclusion On the Substantive Taking Claim

Because Mr. Helfrich has failed to demonstrate the required diminution of value for an inverse condemnation and/or because he has not presented any evidence to undermine the legitimate government interest in the 1996 comprehensive rezoning, his inverse condemnation claim fails on the merits.

III. THE CONDUCT OF THE AREA RESIDENTS DOES NOT WARRANT CRITICISM

During the deliberations, there was some pique expressed towards a Protestant who had not opposed a variance for a small addition to a nearby preexisting home yet did oppose the construction of a new home on the vacant Helfrich lot. This was coupled with a suggestion that the pending $25,000 offer to buy the Helfrich property takes unfair advantage of the present zoning. Normally, I would let those remarks pass because at the end of the day, they are largely irrelevant. Nonetheless, I feel obliged to let the Protestants know that the sentiment is not shared by the Board as a whole.

First, there is a vast difference between a small addition and the construction of a whole house. Maybe the past situation involved an alteration to the house that was so minor that a challenge just was not worth the time nor the effort. Second, we do not know what other facts, considerations, and backstory may have attended that other situation that could make it

distinguishable from this matter. Third, and most importantly, there is no requirement that someone who seeks to rely on and enforce the law today did not do so at some time in the past. The law does not demand purity from a citizen seeking to rely on established principle. To justify the demand for consistency by saying that it bears on credibility may in some situations be valid. Here, however, none of the operative legal issues turns on credibility. The lot is either unique or not under *Cromwell*; there was either a regulatory deprivation of value significant enough to constitute a taking, or there was not; there was a either a showing of improper legislative action, or not; the claim of a constitutional taking is time-barred or not. None of these issues requires a credibility finding. Indeed, if credibility were a factor, I would find that Mr. Helfrich's *failure* to testify raises significant questions about his thought process in electing to buy out the other heirs and speculate on the resale of this property.

Further, there is nothing extortionate or even slightly untoward in people negotiating a sale or purchase of real estate with an understanding for what the present – not to mention longstanding -- zoning will permit. Having a sound appreciation for the existing legal landscape (no pun intended) is not an unfair business advantage nor the exercise of predatory leverage. It is the normal and commonplace recognition and assessment of the possible upsides and downsides of any business transaction.

People make offers based on their understanding of the current legal posture. Sometimes they win, and sometimes they lose. Before all of this litigation began, Mr. Helfrich could have sold the parcel to the Kings for $25,000. Presumably, he still can.[11] He has chosen, however, to

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[11] I must say that I actually view the $25,000 offer as quite generous. The Kings want the Helfrich parcel to be open space for use in conjunction with their home on the adjoining lot. They could have, I suppose, simply fought the Helfrich development and if successful, achieved the same practical effect without paying anything. That they have kept the offer open speaks well for them. Of course, had they taken the approach of not seeking to

contract to sell that parcel for $75,000 to a builder contingent on a zoning change. Once he has paid for representation for two administrative hearings and appeals in the Circuit Court and the Court of Special Appeals (and given the central legal issue, possibly the Court of Appeals), his net gain on the $75,000 even if he wins at every subsequent level (which I doubt) will be paltry -- not to mention the value lost because of the time delay on his receipt of the sale proceeds.

Personally, I have no sympathy for someone who purchases property knowing that the present zoning inhibits development and then loses his bet that the zoning will change. There is nothing remotely reasonable about an investment founded on obtaining a variance on a cookie cutter lot or on establishing that a twenty-five year old zoning reclassification was a constitutional taking. But this viewpoint from me has no more worth in deciding this matter than does concern with the neighbors' reliance on the existing zoning to fashion an offer to buy or their past failure to object to some modification to a preexisting structure or two. As I indicated above, the issues in this case turn on stark legal determinations alone.

CONCLUSION

Because it is my view that standard variance principles do not warrant the grant of a variance, that no taking occurred, and that even if a taking had occurred, it is time barred, I respectfully dissent from the grant of a variance in this case.

Date January 18, 2022

Joseph L. Evans

purchase the property, they would run the risk that Mr. Helfrich would fence off the property and exclude them from it. The ability to restrict access is recognized as a property right of significant value. *City of Annapolis v. Waterman*, 357 Md. 484, 522 (2000) (recognizing the "right to exclude" as an essential property right).

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
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January 12, 2022

John B. Gontrum, Esquire
Whiteford, Taylor & Preston L.L.P.
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, Maryland 21204-5025

RE: In the Matter of: *Cornelius David Helfrich – Legal Owner*
Dominion Properties, LLC – Contract Purchaser and Petitioners
Case No.: 20-224-A

Dear Mr. Gontrum:

Enclosed please find a copy of the final Majority Opinion and Order, and Dissent, 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

c: See Distribution List following

In the matter of: Cornelius Helfrich, Legal Owner
Dominion Properties, LLC, Contract Purchaser
Case No.: 20-224-A
January 12, 2022
Distribution List

Cornelius D. Helfrich
Dominion Properties, LLC
Ryan and Julie King
Amy Stevens
Barry and Kathleen Sanders
Gabe Cohee
Gary Scherer
Laura Scherer
Lindsay Scherer
Richard Robertson
Mary Bahr-Robertson
Rachel Waltermyer
Theresa Warner
Aaron D. Neal, Esquire
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

IN THE MATTER OF CORNELIUS DAVID HELFRICH	*	BEFORE THE
LEGAL OWNER DOMINION PROPERTIES, LLC	*	BOARD OF APPEALS
CONTRACT PURCHASER PETITIONERS FOR VARIANCE ON THE	*	OF
PROPERTY LOCATED AT 16 LOCUST DRIVE	*	BALTIMORE COUNTY
	*	CASE NO. 20-224-A
1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	

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

PETITIONERS' REPLY MEMORANDUM

Protestants' argument is based on two main premises: one, the subject site has no special characteristics peculiar to the land such that the imposition of the zoning requirements creates a practical difficulty with strict compliance; and two, the open space use of the site is a productive and economically beneficial use of the land.

I. DOES THE SITE POSSESS SPECIAL OR UNIQUE CHARACTERISTICS SUCH THAT THE IMPOSITION OF THE ZONING REQUIREMENTS CREATES A PRACTICAL DIFFICULTY WITH STRICT COMPLIANCE OF THE BALTIMORE COUNTY ZONING REGULATIONS?

Within the context of the D.R. 2 zone the lot's size is very much unique. D.R. 2 zoning was established to create larger lot subdivisions, not to prevent development on already existing, individual lots. The imposition of the D.R. 2 zoning sets up a unique situation where none of the lots can comply with the regulations without some sort of variance or expansion of a non-conforming use. This was neither the purpose nor the overwhelming actual application of D.R. 2 zoning in Baltimore County. With this community being a major exception, D.R. 2 zoning has been applied to larger lot subdivisions. Like the circumstances found by the *Court in Steel v.*

Cape Corp., 111 Md. App. 1, 677 A.2d 634 (1996), the strict application of this zone to this piece of property becomes an unconstitutional application of the zoning. It would effectively zone the property for open space. While that may seem like a good thing to the neighbors, it is only because their properties have been fully developed.

The D.R. 2 zone permits new developments at a density of two dwellings per acre. B.C.Z.R. §100.1. If a new, small lot subdivision is proposed, B.C.Z.R. §1B02.3.C.1 requires a minimum lot size of 20,000 square feet with a 100 foot minimum lot width. This section applies not only to new lots but also to existing lots in old subdivisions per Section 1B02.3.B.

After 1971, when D.R. 5.5 zoning was imposed on the subject property and the other lots in the area, the lot owners were permitted to seek relief under B.C.Z.R. §304 assuming that no setback variances were necessary. In this case, under D.R. 5.5 zoning, Petitioners' proposal would not have required any zoning variance, and the undersized lot provisions would have applied.

Protestants use the case of *North v. St. Mary's County*, 99 Md. App. 502 (1994) to support their argument that the fact that all of the other lots in the subdivision have dwellings does not have any bearing on whether the Petitioner should be allowed variances to permit a dwelling on the subject property. *North* was adjudicated under very different legal provisions, with a more difficult legal standard than is applicable to this case, and with a much different factual situation. *Id*. at 515-516. In *North* the petitioner John Enoch had a fully improved waterfront property. He desired to add an accessory structure, a gazebo, in close proximity to the waterfront in order to enhance his enjoyment of the waterfront. Other properties in the area had gazebos or similar structures, but the Chesapeake Bay Critical Area regulations now prohibited such structures in such close proximity to tidal waters. He sought a variance to the regulations using the argument that he was encountering an unwarranted hardship because he was not allowed an accessory

structure as allowed his neighbors. The Court reviewed the case under the unnecessary or unwarranted hardship standard, which involved meeting five specific, statutory criteria and found that that there was no unnecessary hardship in the denial of the gazebo.

The *North* case is distinguishable for several reasons. In *North* the property owner had a fully improved parcel with a dwelling that took full advantage of the waterfront views. What was sought certainly was not a principal use of the site. The Court stated:

> "The property at issue here is the 4+ acre site already developed with a ranchhouse of approximately 1,100 square feet with extensive decking, an improved walkway, and a pier, from which expansive views are present. Thus, the property already is subject to a reasonable use.
>
> "The instant case focuses on unwarranted hardship; it is a denial of *reasonable* use that creates an unwarranted hardship. If reasonable use exists, generally an unwarranted hardship would not. In the present case, extensive reasonable use already is being made of the property." *Id.* at 517-518. [italics in original]

The substantial and reasonable use of Enoch's property was a dwelling on the property. He already had improvements designed to take advantage of the waterfront. Unlike the property owner in *Assateague Coastal Trust, Inc. v. Schwalbach*, 448 Md. 112, 136 A.3d 866 (2016), Enoch was not being denied riparian rights by the denial of the gazebo. Similarly, he was not being allowed the reasonable and substantial rights to build a dwelling as the owner of the island in *Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC*, 429 Md. 588, 97 A.3d 135 (2014).

It also should be pointed out that Judge Cathell, the author of *North* by the Court of Special Appeals, also authored *Belvoir Farms Homeowners Ass'n. v. North,* 355 Md. 259,734 A. 2d 227 (1998) and subsequent cases on the Court of Appeals reviewing the hardship standard and finding that the hardship standard was the equivalent of reasonable and significant use of the property. *Id.* at 282; 734 A. 2d at 240. It is just that within the context of Enoch's property and what he desired

to do with it, the denial of the gazebo was not the denial of a reasonable and significant use of the property.

Furthermore, the argument that others had gazebos on their waterfront was an argument specifically prohibited to be used under the Critical Area Regulations in place. The Court pointed out that the Critical Area Regulations specifically prohibited justifying a variance based on improvements on other lots. *Id.* at 515. That language is not in B.C.Z.R. Section 307.

Finally, Mr. Enoch also all but admitted that the gazebo in its desired location was primarily for his convenience to read and contemplate nature. The Court responded that he already had 178,361 square feet of property to use in contemplation. (*Id*. at 519.)

The Petitioners here submit that the denial of a dwelling is the denial of a reasonable and significant use of the lot, attested to by the dwellings on all of the other lots and most certainly creates a practical difficulty. The denial of a residential dwelling in a fully developed residential community goes well beyond the convenience of the property owner. It is a right enjoyed by every other property owner and is not only a reasonable use, but also the most reasonable use of this residentially zoned property. The fact that there are dwellings on every other lot in the subdivision buttresses the argument that a dwelling on this lot of the size proposed by the Petitioners is a reasonable use and will not be detrimental to the health, safety or general welfare of the community. Denial of the dwelling on this lot under the current zoning not only deprives the lot of all development value under the residential zoning use, but also deprives the property of a reasonable, permitted use. Consequently, the variance requests meet the rigorous hardship test.

Leaving the property as open space creates as much a taking of use as if the Neighborhood Commons ("N.C.") Overlay District had been imposed on the property. The statement of legislative intent for the N.C. District is as follows:

> The Neighborhood Commons (N.C.) Overlay District is established to promote more livable communities through the preservation of land for the purpose of community parks, gardens and natural areas. It is intended that the N.C. District be applied only to areas located inside the urban/rural demarcation line (URDL) that are local to established neighborhoods, and that residential, commercial, or industrial development not be permitted on tracts with the N.C. District designation. The N.C. District is not intended to remove or replace or limit any open space requirements in these regulations, the Baltimore County Code, or the Baltimore County Open Space Manual. B.C.Z.R. §259.14.

Had the Council intended that this vacant lot should remain vacant for the benefit of the community it could have imposed this district overlay in the last couple of zoning maps as it did for other community spaces. It did not.

Protestants argue that the zoning of D.R. 2 was put in place to prevent development on small lots under 20,000 square feet to preserve green space. (King Memorandum at 2) This is simply not true. In fact, the zoning regulations explicitly provide a mechanism to provide for development of undersized lots and also provide for variances. The zoning of D.R. 2 would have restricted new, infill development regulated by Article 32 of the Baltimore County Code, but the development of single-family dwellings on individual lots is exempt from virtually all of the development regulations. The placement of D.R. 2 on these lots is truly an anomaly and these lots are uniquely impacted as were the lots bordering the wetlands in *Assateague Coastal Trust, Inc. v. Schwalbach*, 448 Md. 112, 136 A.3d 866 (2016).

Protestants interestingly do not see any problem with granting variances for additions to dwellings from the D.R. 2 provisions. (King Memorandum p. 4.) For the obvious reason the expansion of an existing dwelling on the non-conforming lot is viewed as within the parameters of the variance requirements but the provision of a new dwelling on a lot is not. In their view the zoning was intended to preserve green space, and once the green space is no longer in existence due to the presence of a dwelling then the zoning no longer makes a difference. Again, that is not

the intent of the D.R. 2 zone, nor is it a correct application of zoning variance criteria. Their view also demonstrates the disparate and unique impact that the D.R. 2 zone has on the vacant lot in this case.

II. IS THE OPEN SPACE USE OF THE SITE A PRODUCTIVE AND ECONOMICALLY BENEFICIAL USE OF THE LAND WITHIN THE CONTEXT OF A REGULATORY TAKING?

A. Open Space As a Viable Use.

The Supreme Court and the Maryland Court of Appeals have held that maintaining land in open space is not an economically viable use of land despite its potential value to neighbors. *See Steel v. Cape Corp.*, 111 Md. App. 1, 677 A.2d 634 (1996).

Protestants argue that the land has a value to them as unbuilt, open space and that as such there can be no claim for a taking under *Lucas v. South Carolina Coastal Council*, 505 U.S 1003 (1992). (King Memorandum at 3) This argument was rejected by the majority of the Supreme Court in that case as noted in the dissent of Justice Blackmun. He argued that as vacant, coastal property the lots in question surely had value to the owner and to neighbors. *Id.* at 1044. The argument was also rejected in *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), where value was found not in the undevelopable wetland areas, but in the developable area of the tract where a dwelling could be placed (*Id*. at 630-631).

Protestants argue that the intent of the imposition of the D.R. 2 zoning on the area was to create open space serving the general community (Neal at 12). That is precisely what government takings are about, the taking of property for a public purpose and the compensation, by government, for the taking. Petitioners respectfully disagree that the imposition of D.R. 2 zoning

on this area was meant to prevent all new development. Clearly, Protestants don't even accept that proposition, for apparently there was no disagreement with variances sought to enlarge existing dwellings. Furthermore, the regulations provide means to allow undersized lots to be developed. (B.C.Z.R. §403) It is just that those lots have to show that the development would be compatible with the balance of the neighborhood. Petitioners in this case have met that burden. Not one Protestant has opposed the size or the look of the proposed dwelling. The Department of Planning has taken the position of not opposing the dwelling. There is no proof in the record that the public services in the area cannot accommodate this structure.

The Protestants argue that they would like to purchase the property to be used as an accessory lot. Doubtless the owners of adjoining lots in the *Lucas* case would have had potential interest in the purchase of additional coastal property at the right price. Arguments of potential value for open space, however, have uniformly been rejected.

It is likely that a piece of vacant property as raw land has value to an adjoining property, but not as a separate, beneficial use. Its value is purely that of an accessory property, dependent upon the primary, beneficial use of another parcel. It has no beneficial use on its own except as open space. Neither *Lucas* nor *Palazzolo* attach any value to land that cannot have a developable use or a use other than open space.

B. Knowledge of the Zoning at Time of Title Transfer.

Palazzolo also puts to rest any argument that the Protestants have that the Petitioners knew of the zoning when they came into title. Also, in *Richard Roeser Professional Building, Incorporated v. Anne Arundel County*, 368 Md. 294 (2002), a property owner purchased property aware of the impact of the development restrictions on the property. That knowledge, however,

was found by the Court to be immaterial to the issue of whether variances should be granted. The Court discussed the impact of *Palazzolo* and the finding that knowledge of an existing law's impact is immaterial to whether the law effects a taking. *Id*. at 311-312. If the impact of the regulation is to take away all development use of the property or even create a practical difficulty with compliance based on the characteristics of the property, it makes no difference if the owner took with knowledge of the regulation.

C. Lots Used in Combination.

Quinn v. Board of County Commissioners for Queen Anne's County, 124 F. Supp. 3d 586 (2015*) aff'd* 862 F. 2d 433 (2017), involved a developer who purchased and developed numerous lots on the southern part of Kent Island, when the land was dependent on private well and septic. Queen Anne's County received funding under certain conditions to extend public services to this area of Kent Island to relieve failing septic systems. The developer objected to the fact that it would have to combine some lots for service and that other lots would not have service. The courts held that the developer had no claims of taking because there was no right to public water and sewer service and the developer knew that this public service might never be granted to the area when it purchased the lots. The developer could never have had an expectation that sewer would be provided to the property. By combining lots in the same ownership not all value of the property would be lost. The Court stated:

> "The Grandfather/Merger provision merely merges the individual lots to form a larger residential lot. While the challenged action does cause some economic harm associated with the loss of individual unrestricted rights of access to the private beachfront and certain Transferrable Development Rights of each individual lot, the Court finds that the lots are not stripped of all beneficial use because they are simply developable as larger residential lots." Id. at 596.

Protestants argue that *Quinn* stands for the proposition that properties can be combined and, therefore, have value. It is true that properties in common ownership may be combined to avoid the impact of zoning area requirements. The idea that properties may be combined has been incorporated into the criteria for undersized lots in Baltimore County Zoning Regulations (B.C.Z.R.) §304.1.C. The subject lot, however, has not been in the same ownership as any other lot for over 60 years. Even if it were in the same ownership, adding it to another lot would not bring both lots into conformance with the D.R. 2 zone. At no point does *Quinn* stand for the proposition that value still exists because vacant lots can be combined with properties owned by other owners or that vacant properties stripped of all development value by government action still have value.

In *Mueller v. People's Counsel*, 177 Md. App. 43, 934 A.2d 974 (2007), one of the reasons that the undersized lot provisions were held to apply to the vacant lot was that there was nothing that the lot with the dwelling could add to it that would make it conforming. It should also be noted that it was argued to the Board in *Mueller* that the vacant lot was always part of the developed lot. Indeed, in that case there was even a shed on the lot sought to be improved. *In the Matter of Grace M. Mueller & Herman Mueller*, Jr., Case No. 04-487-A at page 2. The Board held and the Court upheld the notion that simply using a vacant piece of adjoining property for recreational use or "accessory" use did not merge the properties, nor deny the rights of the individual owner of the vacant lot to develop it.

Protestants clearly view this lot as an "accessory" lot having value only for the adjoining lots. It would not be uncommon for adjoining property owners to use a vacant lot for recreation use or with permission for a garden. That does not mean the lots have merged. The fact is that the subject lot has not been in common ownership with any other lot for over sixty (60) years.

Although Protestants speculate without relevant evidence as to why the lot has not been developed, their speculation is immaterial as to whether this single lot should be allowed to be used for a viable and reasonable purpose.

CONCLUSION

In conclusion, Petitioners are not asking for anything more than what others in the community have received in the form of a residential dwelling on a single lot of record. They believe that they have met not only the least restrictive standard, applicable to this case, of practical difficulty, but also the standard of unnecessary hardship because it is denying them a substantial use allowed in the community, and even the regulatory taking standard. Their property is unique, for the application of D.R. 2 to an existing undersized lot such as this is an anomaly within the context of the D.R. 2 zone creating a practical difficulty with compliance. We ask that the Board grant the requested variances for lot size, lot width and side yard variances.

Respectfully submitted,

_____

John B. Gontrum
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue, Suite 300
Towson, Maryland 21204
410-832-2055
jgontrum@wtplaw.com

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2021, a copy of the foregoing Petitioners' Memorandum was electronically mailed and/or sent to the following individuals by first class mail, postage prepaid:

Ryan King
Julia King
18 Locust Drive
Baltimore, Maryland 21228
julieking815@gmail.com

Laura G. Wheland-Scherer
14 Locust Drive
Baltimore, Maryland 21228
sgarylaura@gmail.com

Aaron Neal
Kimberly Neal
20 Locust Drive
Baltimore, Maryland 21228
aneal@mhlawyers.com

Barry M. Sanders
Mary K. Sanders
21 Locust Drive
Baltimore, Md. 21228
msandbox321@aol.com

_____
John B. Gontrum

IN THE MATTER OF	:	BEFORE THE
CORNELIUS DAVID HELFRICH Legal Owner	:	BALTIMORE COUNTY
DOMINION PROPERTIES, LLC Contract Purchaser	:	BOARD OF APPEALS
16 Locust Drive 1st Election District 1st Council District	:	Case No. **20-224-A**
	:	

::

Protestants Answering Memorandum

Protestants Mary K. Sanders and Barry M. Sanders hereby adopt by reference herein the Post-Hearing Brief submitted by Protestant Aaron D. Neal in support of the Protestant's position that the Appellant's lot is not unique and cannot satisfy the requirements for the granting of a variance under Baltimore County Zoning Regulations and that Appellant cannot show that a taking occurred, because the lot retains economically viable uses even with the application of the Baltimore Zoning Regulations. The variances requested should be denied.

_____/s/_____
Mary K. Sanders/Barry M. Sanders
21 Locust Drive
Catonsville, Maryland 21228
sandbox321@aol.com
Protestants, *pro se*

Certificate of Service

I hereby certify that on this 15th day of October 2021, a copy of the foregoing Protestants Answering Memorandum was electronically served upon the interested parties or their counsel, as follows:

Baltimore County Board of Appeals (appealsboard@baltimorecountymd.gov)
John Gontrum, Esq. (jgontrum@wtplaw.com)
Julie King (julieking815@gmail.com)
Laura Scherer (sgarylaura@gmail.com)

Aaron Neal (aneal@mhlawyers.com)

BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY

CASE NO. 20-224-A

IN THE MATTER OF
CORNELIUS DAVID HELFRICH
LEGAL OWNER
DOMINION PROPERTIES, LLC
CONTRACT PURCHASER
PETITIONERS FOR VARIANCE RELIEF ON THE
PROPERTY LOCATED AT
16 LOCUST DRIVE

1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT

MEMORANDUM OF PROTESTANT JULIA P. KING

During the recent hearing before the Board of Appeals of Baltimore County in the matter of Cornelius David Helfrich, Legal Owner, and Dominion Properties, LLC, Contract Purchaser, as Petitioners for variance relief on the property located at 16 Locust Drive, I participated, on behalf of my husband and myself, as Protestants to this case. The Petitioners in this case are seeking variance relief from Baltimore County Zoning Regulations (B.C.Z.R.) to allow for a new home to be built on a lot with a net area of 5,000 square feet in lieu of the required minimum 20,000 square feet, with side yard setbacks of ten feet in lieu of the required fifteen feet, and a combination of side yard setbacks of twenty feet in lieu of the required forty feet. The Petitioners' original request also included variance relief of the rear yard setback of twenty-five feet in lieu of the required forty feet; however, during the hearing before the Board of Appeals, a red-lined site plan was submitted by the Petitioners to show a reduced footprint of the proposed home, which now meets the criteria for rear yard setback requirements per the B.C.Z.R.

My husband, Ryan King, and I have owned our home at 18 Locust Drive for over 7 years, and are direct neighbors to the lot at 16 Locust Drive. We object to the proposed variance requests made by the Petitioners in this case. Although the hearing before the Board of Appeals of Baltimore County was *de novo,* we would ask that you please cite Administrative Law Judge Mayhew's decision in this case as persuasive authority. We respectfully request that you not make an exception to the zoning laws in this case, in order to maintain the integrity of the current zoning regulations, and ensure that a precedent is

not set for future new home construction that does not fall within the limitations of the zoning laws in this area.

As I stated during my testimony, the lot at 16 Locust Drive is not physically unique based on the similarity in size, shape, and topography of this property and the adjoining lots (Protestant's Exhibits 1, 2, 3). Although it is clear from the physical characteristics of this property that it is not unique, it is argued by the Petitioners that the uniqueness of the lot comes from the fact that in 1996, it was downzoned from a DR 5.5 zone to a DR 2 zone, as well as the fact that it is the only undeveloped lot on the street. However, the downzoning changes made in 1996, which occurred sixteen years before the property owner acquired the lot in 2012, do not deem the property unique, given that the uniqueness of the property must come from the property itself and not the practical difficulties relating to the property, based on the findings in the case of Mueller v. Baltimore County. Furthermore, if downzoning is cited as the basis for proving the uniqueness of a property, then every downzoned property would be considered unique and it would effectively nullify the impact and purpose of rezoning. Additionally, the property is not subject to any grandfathering protection from zoning changes, per B.C.Z.R. Section 304, based on the fact that the plat for Locust Drive was not recorded as an approved subdivision prior to March 30, 1955. It is our understanding from the case of Cromwell v. Ward, and based on the above facts, that the variance requests should be denied without consideration of any practical difficulties or hardship to the Legal Owner of the property, given that the property itself is not in any way unique.

We strongly believe that Mr. Helfrich, the Legal Owner of the property, will not experience a practical difficulty or hardship if variance relief is not granted in this case. We do understand that a property owner has a right to do with his property what he finds will be most beneficial, within the limitations set forth by the law. We also recognize that zoning laws have been put in place to prevent the building of homes in an area smaller than 20,000 square feet to preserve green space, and to stop overcrowding and overuse of the current infrastructure. In this instance, Mr. Helfrich has a sale contract in place with Dominion Properties, LLC, a real estate investment company, contingent upon the variance relief requested, to allow for a home to be built at 16 Locust Drive. We understand that this option would provide the greatest economic benefit to Mr. Helfrich, given that this would yield the highest profit. However, we feel that the property has great value in our neighborhood as a green space, especially from

an environmental standpoint. Although zoning changes have altered the potential to build a home on this property, which in turn alters the financial gain to Mr. Helfrich, we do not agree that all beneficial use of the property will be lost if the requested variances are not granted. We have offered to purchase the lot from Mr. Helfrich with zero contingencies and no plans for development (Protestant's Exhibits 4, 5), and although this option would not yield as high a profit for Mr. Helfrich as would an offer from a real estate investor or developer, it would still provide an economic gain for the property owner.

The Petitioners argue that "a dwelling on this lot must be deemed to be a reasonable and significant use of the property" and that it causes "unreasonable hardship to prevent the use of this property for any structure." We respectfully disagree that unreasonable hardship will occur if a structure is prevented from being built on this lot, given that there are other reasonable uses for the property, which include leaving it as a green space. Economic value can exist without development on this lot. Protestants want this lot to remain a green space, and my husband and I are willing to use our personal funds to purchase the lot in order to ensure that it remains undeveloped. We are absolutely not proposing, nor have we ever suggested, that the property should serve as a public purpose, as the Petitioners have suggested. We are not asking for the government, or any public entity, to compensate Mr. Helfrich in order to keep the land as open space. The denial of the requested variances should in no way be considered an unconstitutional application of zoning or a taking.

The Petitioners also question why placing a dwelling on this lot would be unreasonable since every other lot has a dwelling of similar size. It should be noted that other lots with existing homes of similar size on Locust Drive were built in the 1940s and 1950s, in compliance with zoning regulations set in place at that time. The building of a new home now versus the building of homes eighty years ago does not draw a similar comparison, given that zoning regulations have been modified since the neighborhood was first established. Therefore, we disagree with the Petitioners' argument that Mr. Helfrich and Dominion Properties, LLC are not seeking a special privilege. We believe a special privilege is exactly what the Petitioners are seeking, given the fact that their plans include the building of a home on a piece of property which no longer conforms with the current zoning regulations.

The Petitioners' discussion regarding administrative variances that were previously granted to two property owners for rear additions to their homes across the street from 16 Locust Drive, (specifically 23

and 31 Locust Drive), are irrelevant to this case, in our opinion. These variances were granted to existing homes in order to allow for a rear addition, due the non-conforming nature of the side yard setbacks that were modified in 1996, which was well after the homes were built in the 1950s. These were not variance relief requests to allow for an entirely new dwelling to be built in a lot area that is grossly undersized based on the zoning laws put in place prior to Mr. Helfrich's ownership of the property. There have not been any zoning variances granted that would allow for a new home to be built on any of the lots in the entirety of Locust Drive since the current zoning regulations took effect in 1996.

The Petitioners noted that "this vacant lot is truly an outlier in the D.R. 2 zone", which is, perhaps, how it was intended to remain when this neighborhood was originally developed in the 1940s. Copies of the deeds from both 16 and 18 Locust Drive are attached for reference of the summary below. Based on our understanding of the details listed on the deeds of both properties at 16 and 18 Locust Drive, referenced as Lot 6 and Lot 5, respectively, on the 1933 plat of Locust Drive Extension (Protestant's Exhibit 2), both lots were purchased together by the original owners, Eugene and Anastasia Fields, along with David Fields as a third party, in 1944. In 1959, both lots were then granted in full to David and his wife, Bernadette Fields, after the deaths of Eugene and Anastasia Fields, in 1947 and 1959, respectively. Lot 6 (16 Locust Drive) was then separately granted to Virginia Fields in 1959. During this time, David and Bernadette Fields maintained ownership of Lot 5 (18 Locust Drive) until the death of David Fields in 1975, at which time Bernadette Fields became the sole owner of Lot 5. After Bernadette Fields' death in 2013, her six children inherited Lot 5, who then went on to sell the family's home and property to my husband and me. After the death of Virginia Fields in 1994, Mr. Helfrich was granted administration of the Estate of Virginia Fields as Personal Representative, and in 2012, he conveyed the property at 16 Locust Drive to himself. In the over 50 years of time that passed between 1959 and 2012, when both Lots 5 and 6 were owned by different family members, it was never decided upon to develop Lot 6. Perhaps, if the previous owner(s) had intended to build a home on this piece of property, or wanted to allow for the eventual development of the land, they would have requested from the Zoning Commissioner that this lot be specifically excluded from the downzoning that was to occur in 1996. Although Lots 5 and 6 have not been in joint ownership for over 60 years, perhaps it was understood by family members that this lot was never intended to be developed.

There are many residents in the neighborhood who are opposed to the change in use of this space. Both direct neighbors and residents from surrounding streets have expressed concern over new home construction on this lot, as well the precedent that would be set if zoning variances were granted in this case. Protestant's Exhibit 7 showed the over forty signatures we collected petitioning against the proposed variances and the community's wish to keep this area a green space.

It is worth noting, from a community standpoint, our collective concern that the construction of a new home on this property, which will eliminate much of the current open landscape, will bring impermeable surfaces to an area that is already very easily saturated. This will directly affect the surrounding neighbors, most of whom have experienced basement water issues due to the ground moisture and lack of adequate storm water drainage in this area. While we can appreciate that the original plans for the proposed home were revised to show a smaller footprint on the lot, Mr. Brian Leibowitz of Dominion Properties, LLC testified that there are plans in place for the addition of a driveway and detached rear garage. While site plans for these modifications were not provided during the hearing, it is clear that the addition of a driveway and garage to the previously proposed home would bring even more impervious surfaces to this area, which is extremely concerning. We remain fearful that the building of a home on the lot at 16 Locust Drive, and the disruption it will cause to our area and the existing infrastructure, will cause even more damage to our homes and our street than currently exists whenever we experience a heavy rainfall. We note that B.C.Z.R. Section 307 states that "any such variance shall be granted...only in such manner as to grant relief without injury to public health, safety, and general welfare."

It is clear that Mr. Helfrich's goal is to sell the property. In order to complete the sale with the current Contract Purchaser, Dominion Properties, LLC, several zoning variances must be granted. We ask that the Board of Appeals not grant these changes to the zoning laws for the sale of this property to a Purchaser that requires variances to be granted, when there are opportunities to sell the property to a buyer who would not require variances at all. Additionally, we do not believe that the downzoning changes made in 1996, and the denial of the requested variances on this property would constitute a taking based on the fact that Mr. Helfrich is not being deprived of all beneficial use of the property. While we understand that the proposed plans for a new home on this lot may be considered reasonable use of the

property, it cannot be considered the only reasonable use for the property and should not be treated as such. There are other reasonable uses for the property that exist under the current zoning regulations and without the need for the requested variances, as noted throughout.

In the case of Palazzolo v. Rhode Island, referenced by the Petitioners, the Court ruled that a property owner can bring a takings claim even if the land was acquired after a regulation restricted its use, as well as stating that a taking has not occurred when a property retains six percent of its total development value. Relative to the case for the property at 16 Locust Drive, which has been tax assessed at $40,000 per the SDAT Real Property Search (Protestant's Exhibit 6, page 7) and listed for a sale price of $75,000 (Protestant's Exhibit 5, pages 3 and 4), it can be argued that our offer to purchase the property for $25,000 (Protestant's Exhibit 5, page 5) would potentially be equal to or greater than six percent of the development value if variances were granted and a new home was built and sold in this space, given the current market for similar homes sold in this area. Therefore, as found in the Palazzolo ruling, it should not be considered a taking if variance relief is not granted in this case, due to the fact that there is potential for Mr. Helfrich to economically benefit from at least six percent of development value, by simply choosing to accept our offer to purchase the property.

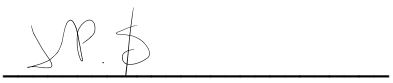
In the case of Lucas v. South Carolina Coastal Council, also referenced by the Petitioners, the Court ruled that a property owner has suffered a taking if he has had to sacrifice all economically beneficial use of the property in the name of the common good, or to leave his property economically idle. We do not agree that the zoning regulations currently set in place have caused Mr. Helfrich to sacrifice all economically beneficial use of his property, as we have stated previously. By offering to purchase the lot, we have given Mr. Helfrich the option to sell his land without the need for variance relief, thus not forcing him to leave his property economically idle if the requested variances are not granted.

In the case of Penn Central Transportation Company v. New York City, also referenced by the Petitioners, the Court set forth a standard that a taking has occurred only if the property is rendered completely useless or if it frustrates the owner's reasonable investment-backed expectations. We do not agree that the land will be rendered completely useless if variances are not granted in this case. We feel very strongly that the property has great value as a green space in our community, and are willing to use our private funds to purchase the land and maintain it as such, as our offer to Mr. Helfrich explains. We

also do not believe it is reasonable for Mr. Helfrich to have had any investment-backed expectations for this land, due to the fact that he acquired the property after the 1996 downzoning, which changed the standards by which a home could be built on this lot.

Lastly, for the purpose of clearing up any confusion regarding the Petitioners' interpretation of our issue with the gross versus net lot area usage; we were never uncertain about the undersized nature of the lot, nor the fact that the lot measures fifty feet wide by one hundred feet deep, totaling an area of 5,000 square feet. It is well understood that the variance being sought should be based on the net lot area of 5,000 square feet. We merely question the reasoning behind why the gross lot area was displayed on the variance request and public hearing notice signage versus showing the net lot area, which is the only area considered to be usable space. We felt that it was misleading to reference the larger gross lot area of 5,850 square feet on all requests, signage, and notices, when the actual net square footage of usable space on the lot is only 5,000 square feet (a mere twenty-five percent of the required 20,000 square foot minimum for new home construction in a D.R. 2 zone in Baltimore County).

In closing, we do not feel that we are unfairly objecting to the requested variances, nor do we believe that Mr. Helfrich is being forced to sacrifice all economic value of his land if variance relief is not granted. We are simply requesting that the current zoning regulations be maintained in this case. We very much appreciate your time and consideration in closely reviewing our arguments against the requested zoning variances and respectfully ask that you deny the Petitioners' request for variance relief of the lot area and side yard setbacks for the property located at 16 Locust Drive.



Julia P. King
18 Locust Drive
Catonsville, MD 21228
443.463.7601
julieking815@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 2021, a copy of the foregoing Memorandum of Protestant Julia P. King was submitted electronically to the following individuals, in accordance with the instructions given by the Board of Appeals of Baltimore County during the virtual hearing on September 9, 2021:

Board of Appeals of Baltimore County (appealsboard@baltimorecountymd.gov)
John B. Gontrum, Esquire (jgontrum@wtplaw.com)
Laura and Gary Scherer (sgarylaura@gmail.com)
Aaron and Kimberly Neal (aneal@mhlawyers.com)
Barry and Kathleen Sanders (msandbox321@aol.com)



Julia P. King

assigns in fee simple

Witness the hand and seal of said Grantor

Test

Jeannette H Marshall

Thos C Hunter (Seal)

Treasurer of Baltimore County
Collector of State and County
Taxes for said County

State of Maryland Baltimore County to wit

I Hereby Certify that on this 11th day of September in the year nineteen hundred and forty-two before me the subscriber a Notary Public of the State of Maryland in and for Baltimore County aforesaid personally appeared Thomas C Hunter Treasurer of Baltimore County and Collector of State and County taxes for said County and he acknowledged the foregoing deed to be his act

Witness My hand and Notarial Seal

(NotariaL Seal)

Jeannette H Marshall - Notary Public

Recorded May 24 1944 at 12.00 noon & exd per

Robert J Spittel - Clerk

Examiners (J&P)

(Rcd by MEB)

63360

Jas K Cullen & wf

Deed to

Eugene J Fields & wf et al

Del to Rowe & [illegible] 7/14/44

This Deed Made this 17th day of December 194[illegible] between James K Cullen and Helen A Cullen his wife of Baltimore County parties of the first part and Eugene J Fields and Anastasia Fields his wife parties of the second part and David A Fields party of the third part

Witnesseth that in consideration of the sum of Five (5) Dollars the receipt of which is hereby acknowledged the said parties of the first part do grant and convey unto the said parties of the second part for and during the term of their natural lives with power of disposition as hereinafter mentioned and from and after the death of said parties of the second part unto the party of the third part his heirs and assigns in fee simple all those two lots of ground situate in Baltimore County and described as follows

Being known and designated as Lots Nos 5 and 6 as shown on a Plat entitled Locust Drive extended which Plat is recorded among the Plat records of Baltimore County in Plat Book CWB Jr No 10 folio 109

Being the same two lots of ground which by deed of even date herewith and intended to be recorded among the Land Records of Baltimore County immediately prior hereto were granted and conveyed by David A Fields unmarried to the said Grantors

Together with the building and improvements thereupon and all the rights alleys ways waters privileges appurtenances and advantages thereto belonging or in anywise appertaining

To Have and to Hold said lots of ground and premises unto and to the use of the said parties of the second part and the survivor for and during the term of their natural lives and the life of the survivor with power to the said parties of the second part and the survivor to sell lease mortgage or otherwise convey or encumber the entire estate in the property hereby conveyed and from and after the death of the said parties of the second part and the survivor as to so much thereof or as to such interest therein as may not have been conveyed or encumbered by said parties of the second part and the survivor in the exercise of the power hereby vested in them unto the said party of the third part

BALTIMORE COUNTY CIRCUIT COURT (Land Records) RJS 1340, p. 0392, MSA_CE62_1195. Date available 11/02/2006. Printed 08/31/2021.

his heirs and assigns in fee simple

It being the intention of these presents that any exercise of the power hereby vested in the said parties of the second part to sell or encumber the property hereby conveyed shall operate to defeat any interest that the said party of the third part may take hereunder and said power shall extend to the interest in remainder as well as the life estate of said party of the second part

And the said parties of the first part hereby covenant that they have not done nor suffered to be done any act matter or thing whatsoever to encumber the property hereby conveyed that they will warrant specially the property hereby granted and will execute such further assurances of the same as may be requisite

Witness the hands and seals of the said grantors

Nancy B Edwards — James K Cullen (Seal)

Helen A Cullen (Seal)

State of Maryland City of Baltimore to wit

I Hereby Certify that on this 17th day of December 1943 before me the subscriber a Notary Public of the State of Maryland in and for Baltimore City personally appeared James K Cullen and Helen A Cullen his wife and they acknowledged the aforegoing deed to be their act

Witness my hand and Notarial Seal

(Notarial Seal) Nancy B Edwards - Notary Public

Recorded July 14 1944 at 10.10 a m & exd per

Robert J Spittel - Clerk

Examiners W & W (Rcd by MEB)

60457
Robert C Smith
Mtg to
First Fed S & L Assn

This Mortgage made this 17th day of May in the year one thousand nine hundred and forty-four between Robert C Smith widower of Baltimore County in the State of Maryland Mortgagor and First Federal Savings & Loan Association of Brooklyn a body corporate duly incorporated Mortgagee

Whereas the said First Federal Savings & Loan Association of Brooklyn has this day loaned to Robert C Smith the sum of Sixty-three hundred (6300) dollars being the balance of the purchase money for the property herein described which said sum the said Mortgagor agree(s) to repay in installments with interest thereon from the date hereof at the rate of 5½% per annum in the manner following

By the payment of Fifty-one and 75/100 (51.75) dollars plus 1/12 of the annual taxes water rents insurance premiums and other public charges & assessments on or before the first day of each and every month from the date hereof until the whole of said principal sum and interest shall be paid which interest shall be computed by the calendar month

The said installment payments may be applied by the mortgagee in the following manner

First: To the payment of interest

Second: To the payment of all taxes water rents assessments or public charges of every nature and description ground rent insurance premiums and other charges affecting the hereinafter described premises

Third: Towards the payment of the aforesaid principal sum

BALTIMORE COUNTY CIRCUIT COURT Land Records RJS 1340, p. 0393, MSA_CE62_1199. Date available 11/02/2006. Printed 08/31/2021

T-102

LIBER 3649 PAGE 398

THIS DEED, Made this 19 day of December, in the year one thousand nine hundred and fifty-nine, by and between DAVID A. FIELDS and BERNADETTE K. FIELDS, his wife, of Baltimore County, State of Maryland, of the first part, Grantors, and VIRGINIA T. FIELDS, of Baltimore County, State of Maryland, of the second part, Grantee.

NO STAMPS NECESSARY

WITNESSETH, that in consideration of the sum of Five ($5.00) Dollars and other valuable considerations, the receipt whereof is hereby acknowledged, the said Grantors do hereby grant and convey unto the said Grantee, her heirs and assigns, in fee simple, all that lot of ground situate in Baltimore County, State of Maryland, and described as follows, that is to say:

BEING known and designated as Lot No. 6, as shown on a Plat entitled "Locust Drive Extended", which Plat is recorded among the Plat Records of Baltimore County in Plat Book C.W.B.Jr. No. 10, folio 109.

BEING one of the lots of ground which by Deed dated December 17, 1943 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1340, folio 392, was granted and conveyed by James K. Cullen and wife to Eugene J. Fields and Anastasia Fields, his wife, for and during the term of their natural lives, remainder to David A. Fields, in fee simple; the said Eugene J. Fields departed this life on August 10, 1947 and the said Anastasia Fields departed this life on August 20, 1959, thereby vesting absolute title in the said David A. Fields.

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

TO HAVE AND TO HOLD said described lot of ground and premises, unto and to the use of the said VIRGINIA T. FIELDS, her heirs and assigns, in fee simple.

AND the said Grantors covenant that they will warrant specially the property hereby granted and conveyed and that they will execute such further assurances of said land as may be requisite.

WITNESS the hands and seals of the said Grantors.

WITNESS:

David A. Fields (SEAL)
David A. Fields

Campbell V. Helfrich
CAMPBELL V HELFRICH

Bernadette K. Fields (SEAL)
Bernadette K. Fields

BALTIMORE COUNTY CIRCUIT COURT (Land Records) WJR 3649, p. 0398, MSA_CE62_3504. Date available 11/28/2005. Printed 08/31/2021.

T-102

LIBER 3649 PAGE 399

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY that on this 19 day of December, 1959, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared DAVID A. FIELDS and BERNADETTE K. FIELDS, his wife, known to me, or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged, in my presence, that they executed the same for the purposes therein contained.

WITNESSmy hand and Notarial Seal.

Stanley Kaufman
Notary Public

STANLEY KAUFMAN

My commission expires: May 1, 1961.

NO EXAMINATION OF TITLE MADE BY
HARLEY, WHELTLE & VICTOR

Rec'd for record DEC 30 1959 at 11 a M
Per Walter J. Rasmussen, Clerk
Mail to Harley Whelte & Victor
Receipt No. 10364 $ 5.50

BALTIMORE COUNTY CIRCUIT COURT (Land Records) WJR 3649, p. 0399, MSA_CE62_3504. Date available 11/28/2005. Printed 08/31/2021.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0253, MSA_CE62_32034. Date available 06/14/2012. Printed 08/11/2021.

0032178 253

PREPARED WITHOUT TITLE SEARCH

This Personal Representative's Deed, made this 16TH day of **May, 2012**, by and between Cornelius David Helfrich, Personal Representative of The Estate of **VIRGINIA T. FIELDS**, GRANTOR; and, **CORNELIUS DAVID HELFRICH,** party of the second part, GRANTEE.

Whereas, Virginia T. Fields died on December 1, 1994, and on June 1, 1995, the Orphans' Court of Harford County, State of Maryland (the "Court") granted administration of the Estate of the Decedent to Cornelius David Helfrich as Personal Representative of the Estate of the Decedent in Estate No. 28268.

Whereas, Grantor in the capacity as Personal Representative in the Estate of the Decedent has complete and full power and authority by law, to grant and convey the entire fee simple interest in the hereinafter described property; and

Whereas, as part of the administration of the Estate of the Decedent, Grantor desires to convey the entire fee simple estate in the hereinafter described property to the Grantee.

- Witnesseth -

That in consideration of the sum of **Zero Dollars 00/100 ($0.00)**, which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said GRANTOR as Personal Representative on the Estate of the Decedent, does hereby grant and convey to Cornelius David Helfrich, in fee simple, all that lot of ground situate in Baltimore County, State of Maryland and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot 6, as shown on the plat entitled "Locust Drive Extended", which plat is recorded among the Plat Records of Baltimore County in Plat Book C.W.B. Jr No. 10 folio 109.

BEING THE SAME and all that property which by fee simple deed dated December 19, 1959 and recorded among the Land Records of Baltimore County in Liber No. 3649, folio 398, was granted and conveyed by David A. Fields and Bernadette Fields, his wife to Virginia T. Fields.

Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have and To Hold the said tract 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 Grantee his Personal Representative, heirs and assigns, forever, in fee simple.

And Grantor does hereby covenant to execute such further assurances of the same as may be requisite.

Witness the hand and seal of Grantor the day and year first above written.

By: Cornelius David Helfrich
Personal Representative of
The Estate of **Virginia T. Fields**.

STATE OF MARYLAND

COUNTY OF Harford, to wit:

I hereby certify that on this 16TH day of **May, 2012** before me, the undersigned officer, a Notary Public in and for the State aforesaid, personally appeared Cornelius David Helfrich, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged herself to be the Personal Representative of the Estate of Virginia T. Fields, and who, in my presence, signed and sealed the foregoing Deed and acknowledged it to be his act and deed as Personal Representative of the foregoing Estate, giving oath under penalties of perjury that the consideration recited herein is correct.

IN WITNESS WHEREOF, I have hereto set my hand and official seal.

DIANE LEONARD SEAGO NOTARY PUBLIC HARFORD CO. MD.

Notary Public
My commission expires: 10/25/2014

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Cornelius D. Helfrich, Attorney

AFTER RECORDING, PLEASE RETURN TO:
Helfrich Law Office
31 E. Lee Street
Bel Air, MD 21014

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0254, MSA_CE62_32034. Date available 06/14/2012. Printed 08/11/2021.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0255, MSA_CE62_32034. Date available 06/14/2012. Printed 08/11/2021.

0032178 255

2012
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 Section 10-912 of Maryland's Tax General Article. Section 10-912 states that certain tax payments must be withheld when a deed or other instrument that affects a change in ownership of real property is recorded. The requirements of Section 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(s) Information

Name of Transferor:
Cornelius David Helfrich, Personal Representative of the Estate of Virginia T. Fields

2. Reason for Exemption

Resident Status	☒ I/We, Transferor(s), am/are residents of the State of Maryland. ☐ Transferor(s) is a/are resident(s) entity under Section 10-912(A)(4) of the Tax General Article of the Annotated Code of Maryland, 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 section 121.

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

3a. Individual Transferor(s)

Witness

Cornelius David Helfrich, **Personal Representative of the Estate of** Virginia T. Fields

3b. Entity

Title

0032178 256

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)

INP FD SURE 40.00
RECORDING FEE 20.00
TOTAL 60.00
Rcpt # BAR2 Rcpt # 29348
JLE BC Blk # 723
Jun 12, 2012 09:37 am

Space Reserved for Circuit Court Clerk Recording Violation

1	Type(s) of Instruments	X	Deed		Mortgage		Other: DoT	
			Deed of Trust		Lease			
2	Conveyance Type Check Box		Improved Sale Arms-Length [1]		Unimproved Sale Arms-Length [2]		Mult. Accounts Arms-Length [3]	X Not an Arms-Length Sale [9]
3	Tax Exemptions (if Applicable) Cite or Explain Authority	Recordation						
		State Transfer						
		County Transfer	Estate Dist					

4				Finance Office Use Only	
	Consideration and Tax Calculations	Consideration Amount		Transfer and Recordation Tax Consideration	
		Purchase Price/Consideration	0.00	Transfer Tax Consideration	$
		Any New Mortgage - First		X ( )% =	$
		Balance of Existing Mortgage		Less Exemption Amount -	$
		Other New Mortgage - Second		Total Transfer Tax =	$
		Other		Recordation Tax Consideration	$
				X ( )% =	$
		Full Cash Value		TOTAL DUE	$

5					
	Fees	Amount of Fees	Doc. 1	Doc. 2	Agent
		Recording Charge	40.00		
		Surcharge	20.00		Tax Bill:
		State Recordation Tax			
		State Transfer Tax			C.B. Credit:
		County Transfer Tax (if Applicable)			
		Other			Ag. Tax/Other:
		Other			

6								
	Description of Property	District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG ☐	
		01	0106201150	5672/465	101	258		
	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).	Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	Sq. Ft./Acreage (4)	
		Locust Drive	6		A	10/109	50 x 100	
		Location/Address of Property Being Conveyed (2)						
		Locust Drive						
		Other Property Identifiers (if applicable)					Water Meter Account No.	
		Residential ☑ or Non-Residential ☐	Fee Simple ☒ or Ground Rent ☐ Amount:					
		Partial Conveyance? ☐Yes ☑ No	Description/Amt. Of Sq. Ft./Acreage Transferred:					
		If Partial Conveyance, List Improvements Conveyed:						

7			
	Transferred From	Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
		Cornelius David Helfrich, Personal Representative of the Estate of Virginia T. Fields	
		Doc. 1 - Owner(s) of Records, if Different from Grantor(s)	Doc. 2 - Owner(s) of Record, if Different from Grantor(s)

8			
	Transferred To	Doc. 1 - Grantee(s) Names	Doc. 2 - Grantee(s) Name(s)
		Cornelius David Helfrich	
		New Owner's (Grantee) Mailing Address	
		31 E. Lee Street, Bel Air, MD 21014	

9			
	Other Names to be Indexed	Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optioned)

10			
	Contact/Mail Information	Instrument Submitted By or Contact Person	X Return to Contact Person
		Name: Diane Sengstacke, President	☐ Hold for Pickup
		Firm: Home Title Company of MD	
		Address: 112 South Main Street, Suite 101, Bel Air, Maryland 21014	☐ Return Address Provided
		Phone: 410-893-3061	

Space Reserved for County Validation

11					
	Assessment Information	IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER			
			Yes	X No	Will the property being conveyed be the grantee's principal residence?
			Yes	X No	Does transfer include personal property? If yes, identify:
			Yes	X 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 Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number:		Date Received:		Deed Reference:		Assigned Property No:	
Year	19	19	Geo.		Sub	Block	
Land			Zoning		Plat	Lot	
Buildings			Use		Section	Occ. Cd.	
Total			Town Cd.	Ex. St.	Ex. Cd.		

REMARKS:

☐ COUNTY TRANSFER TAX
Per _____ ART 11 TITLE 3 SUBTITLE 2, 11-3-202

☐ RECORDATION TAX
Per _____ T.P. ART 12-108

Date 6-11-12

TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND

Distribution Clerk's Office
SDAT
Office of Finance
Prepare

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0256, MSA_CE62_32034. Date available 06/14/2012. Printed 08/11/2021.

DEED – FEE SIMPLE- INDIVIDUAL GRANTOR
Lakeview Title Company
File No. **14-24715**
Tax ID # **01-0106200230**

This Deed, made this 14th day of **July, 2014**, by and between **Joseph J. Fields, John P. Fields, Eugene J. Fields, David A. Fields, Bernadette A. Malec and Mary T. Elliott** (erroneously recited as Mary T. Elliot in prior deed), GRANTORS, and **Ryan King** and **Julia King**, GRANTEES.

- Witnesseth -

That for and in consideration of the sum of Three Hundred Five Thousand And 00/100 Dollars ($305,000.00), which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said Grantors do grant and convey to the said Ryan King and Julia King, as tenants by the entirety unto the survivor of them, his or her heirs and assigns, in fee simple, all that lot of ground situate in the County of Baltimore, State of Maryland and described as follows, that is to say:

Being known and designated as Lot 5, Section A, as shown on a Plat entitled Locust Drive extended, which Plat is recorded among the Plat Records of Baltimore County in Plat Book C.W.B., Jr. Number 10, Folio 109.

The improvements are hereby designated as: 18 Locust Drive

Being the same lot of ground which by deed dated October 15, 2013 and recorded November 26, 2013 among the Land Records of Baltimore County, Maryland in Liber JLE 34470, folio 67 was granted and conveyed by David A. Fields and Eugene J. Fields, Personal Representatives of the Estate of Bernadette K. Fields and David A. Fields and Eugene J. Fields, Trustees of the Residuary Trust established under the Last Will and Testament of Bernadette K. Fields unto Joseph J. Fields, John P. Fields, Eugene J. Fields, David A. Fields, Bernadette A. Malec and Mary T. Elliot, tenants in common

Note: Current Title Deed has incorrect legal description Lot 6 was sold on December 19, 1959 in Liber WJR 3649, Folio 398 - also omits "Section A".

Being also the same lot of ground which by confirmatory deed dated August 18, 1976 and recorded September 3, 1976 among the Land Records of Baltimore County, Maryland in Liber EHK 5672, folio 465 was granted and conveyed by Bernadette K. Fields, Personal Representative of the Estate of David A. Fields, late of Baltimore County, Maryland unto Bernadette K. Fields, heir of the Estate of David A. Fields.

Being also the same lot of ground which by deed dated September 22, 1975 and recorded October 6, 1975 among the Land Records of Baltimore County, Maryland in Liber EHK 5572, folio 747 was granted and conveyed by Bernadette K. Fields, Personal Representative of the Estate of David A. Fields, late of Baltimore County, Maryland unto Bernadette K. Fields, heir of the Estate of David A. Fields, of the same County and State.

Being also the same lot of ground which by deed dated December 17, 1943 and recorded July 14, 1944 among the Land Records of Baltimore County, Maryland in Liber RJS 1340, folio 392 was granted and conveyed by James K. Cullen and Helen

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0455, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

A. Cullen, his wife and Eugene J. Fields and Anastasia Fields, his wife unto David A. Fields.

Subject to Covenants, Easements and Restrictions of record.

Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have and To Hold the said tract 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 Ryan King and Julia King, as tenants by the entirety unto the survivor of them, his or her heirs and assigns, in fee simple.

And the Grantors 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 hereby granted; and that they will execute such further assurances of the same as may be requisite.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0456, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

F. MA

Joseph J. Fields (Seal)
Joseph J. Fields

(Seal)

(Seal)

STATE OF Maryland
COUNTY OF Baltimore } ss

I hereby certify that on this 10th day of July, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Joseph J. Fields the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

F. MA

Notary Public
My commission expires

E. MICHAEL GRACE
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
My Commission Expires 12-15-2016

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0457, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

F. [illegible] _____ _____ (Seal)
David A. Fields

_____ _____ (Seal)

_____ _____ (Seal)

STATE OF Maryland
COUNTY OF Baltimore } ss

I hereby certify that on this 11th day of July, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared David A. Fields the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

F. [illegible]
Notary Public
My commission expires _____

F. MICHAEL GRACE
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
My Commission Expires 12-15-2016

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0458, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

JANIS E CARREIRO

John P. Fields (Seal)
John P. Fields

(Seal)

(Seal)

STATE OF
COUNTY OF Nantucket MA } SS

I hereby certify that on this 9th day of July, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared John P. Fields the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

Janis E Carreiro
Notary Public
My commission expires 9/19/19

JANIS E CARREIRO
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
September 19, 2019

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0459, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

_____ _____ (Seal)
Eugene J. Fields

_____ _____ (Seal)

_____ _____ (Seal)

STATE OF Maryland }
COUNTY OF Howard } ss

I hereby certify that on this 14th day of July, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Eugene J. Fields the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

STEPHANIE SHEINBACH DIETZ
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 10, 2017

_____
Notary Public
My commission expires 5-10-2017

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0460, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

Stephanie Dietz

Bernadette A. Malec (Seal)
Bernadette A. Malec

_____ (Seal)

_____ (Seal)

STATE OF Maryland }
COUNTY OF Howard } ss

I hereby certify that on this 10th day of July, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Bernadette A. Malec the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

STEPHANIE SHEINBACH DIETZ
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 10, 2017

Stephanie Sheinbach Dietz
Notary Public
My commission expires 5-10-2017

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0461, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

Stephanie Dietz

Mary T. Elliott (Seal)
Mary T. Elliott

_____ (Seal)

_____ (Seal)

STATE OF Maryland
COUNTY OF Howard } ss

I hereby certify that on this 14th day of July, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Mary T. Elliott the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

Stephanie Sheinbach Dietz
Notary Public
My commission expires 5-10-2017

STEPHANIE SHEINBACH DIETZ
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 10, 2017

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0462, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Kevin S. Gunaman Attorney

AFTER RECORDING, PLEASE RETURN TO:
Lakeview Title Company
Suite 304
10025 Gov. Warfield Parkway
Columbia, MD 21044

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0463, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

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: **John P. Fields**

2. Reasons for Exemption

Resident Status

- [x] 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: John P. Fields

Signature: John P Fields

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

File No. 14-24715 Re: 18 Locust Drive, Baltimore, MD 21228

14-49

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0464, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

0035196 465

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: **Joseph J. Fields**

2. Reasons 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

Joseph J. Fields
Name

Joseph J Fields
Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

File No. 14-24715 Re: 18 Locust Drive, Baltimore, MD 21228

14-49

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0465, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

0035196 466

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: **David A. Fields**

2. Reasons 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

David A. Fields
Name

Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

File No. 14-24715 Re: 18 Locust Drive, Baltimore, MD 21228

14-49

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0466, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

0035196 467

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 **Mary T. Elliott**

2. Reasons 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

Mary T. Elliott
Name

Mary T. Elliott
Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

File No. 14-24715 Re: 18 Locust Drive, Baltimore, MD 21228

14-49

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0467, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

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 **Bernadette A. Malec**

2. Reasons for Exemption

Resident Status

- [x] 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

Bernadette A. Malec
Name

Bernadette A Malec
Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

File No. 14-24715 Re: 18 Locust Drive, Baltimore, MD 21228

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0468, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

0035196 469

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 **Eugene J. Fields**

2. Reasons for Exemption

Resident Status

- [x] 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 **Eugene J. Fields**

Signature Eugene J Fields

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

File No. 14-24715 Re: 18 Locust Drive, Baltimore, MD 21228

14-49

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0469, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

File No. 14-24715

AFFIDAVIT MADE PURSUANT TO 12-103(B) AND 13-203
OF THE TAX-PROPERTY ARTICLE OF THE
ANNOTATED CODE OF MARYLAND

THE undersigned Grantee(s), being purchaser(s) of the property known as:

18 Locust Drive
Baltimore, MD 21228

make(s) oath, in due form of law and under penalties of perjury, that the following is true to the best of the knowledge, information, and belief of Grantee(s), in accordance with Sections 12-103(b) and 13-203 of the Tax Property Article of the Annotated Code of Maryland as follows:

1. We are/I am a "First-Time Maryland Home Buyer", having never owned residential real property in the State of Maryland used as our/my principal residence; and
2. We/I will occupy the property as our/my principal residence.
3. I/we am/are over eighteen (18) years old and fully qualified to make this affidavit.

DATED this 14th, July, 2014

Witness — Ryan King

Witness — Julia King

Witness

Witness

STATE OF MARYLAND, HOWARD COUNTY, to wit:

I HEREBY CERTIFY, That on this 14th day of July, 2014 before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Ryan King and Julia King the GRANTEE(S) herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same.

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

STEPHANIE SHEINBACH DIETZ
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 10, 2017

Notary Public

My commission expires: 5-10-2017

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0470, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

OWNER OCCUPANCY AFFIDAVIT

Ryan King and Julia King, the Grantees in the within Deed hereby certify under the penalties of perjury, as evidenced by the joinder herein, that the land conveyed in this Deed is residentially improved owner-occupied real property and that the residence will be occupied by us as my/our principal residence for at least seven (7) months of the twelve (12) month period immediately following the date of the attached Deed /Assignment.

Witness

Witness

Ryan King

Julia King

Witness

Witness

STATE OF MARYLAND, Howard COUNTY to wit:

I HEREBY CERTIFY, that on this 7/14/14 before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Ryan King and Julia King, the parties herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the foregoing to be their act, and in my presence signed and sealed the same.

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

STEPHANIE SHEINBACH DIETZ
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 10, 2017

Notary Public

My Commission Expires: 5-10-2017

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0471, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

0035196 472

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)

Space Reserved for Circuit Court Clerk Recording Validation

INF TO SURE 40.00
RECORDING FEE 20.00
TR TAX STATE 762.50
TOTAL 822.50
Rec# BAB6 Rcpt # 3325
JLE JLF Blk # 1195
Jul 25, 2014 01:57 pm

1 Type(s) of Instruments (☐ Check Box if addendum Intake Form is Attached.)

X Deed / Deed of Trust	☐ Mortgage / Lease	☐ Other	☐ Other

2 Conveyance Type Check Box

X 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	00
State Transfer	First Time Maryland Homebuyer
County Transfer	

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$ 305,000.00	Transfer Tax Consideration	$
Any New Mortgage	$	X ( ) % =	$
Balance of Existing Mortgage	$	Less Exemption Amount –	$
Other:	$	Total Transfer Tax =	$ 4245.00
Other:	$	Recordation Tax Consideration	$ 1525.00
		X ( ) per $500 =	$
Full Cash Value:	$	TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$
Surcharge	$ 40.00	$
State Recordation Tax	$ 1,525.00	$
State Transfer Tax	$ 762.50	$
County Transfer Tax	$ 4,245.00	$
Other	$	$
Other	$	$

Agent: BP
Tax Bill: PAID
C.B. Credit: —
Ag. Tax/Other: N

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
01	01-0106200230				☐ (5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	SqFt/Acreage (4)

Location/Address of Property Being Conveyed (2): 18 Locust Drive, Baltimore, MD 21228

Other Property Identifiers (if applicable): | Water Meter Account No.:

Residential [X] or Non-Residential [ ] | Fee Simple [X] or Ground Rent [ ] | Amount: N/A

Partial Conveyance? ☐ Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred: N/A

If Partial Conveyance, List Improvements Conveyed: N/A

7 Transferred From

Doc. 1 – Grantor(s) Name(s)	Doc. 2 – Grantor(s) Name(s)
Eugene J. Fields, Bernadette A. Malec	
Mary T. Elliott, Joseph J. Fields,John P. Fields Eugene J. Fields	
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)
Ryan King	CASH
Julia King	

New Owner's (Grantee) Mailing Address: 18 Locust Drive, Baltimore, MD 21228

9 Other Names to Be Indexed

Doc. 1 – Additional Names to be Indexed (Optional)	Doc. 2 – Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: Patricia Cronin
Firm: Lakeview Title Company
Address: Suite 304, 10025 Gov. Warfield Parkway
Columbia, MD 21044 Phone: (410) 992-4447

☒ Return to Contact Person
☐ Hold for Pickup
☐ Return Address Provided

11 Assessment Information

IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

X Yes ☐ No Will the property being conveyed be the grantee's principal residence?
☐ Yes X No Does transfer include personal property? If yes, identify:
☐ Yes X 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 Verification | Whole | Part | Tran. Process Verification

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

	Year	20	20	Geo.	Map	Sub	Block
Land				Zoning	Grid	Plat	Lot
Buildings				Use	Parcel	Section	Occ. Cd.
Total				Town Cd.	Ex. St.	Ex. Cd.	

REMARKS:

☐ Clerk's Office ☐ Office of Finance ☐ SDAT ☐ Preparer

AOC-CC-300 (5/2007)

14-24715

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0472, MSA_CE62_35052. Date available 08/01/2014. Printed 09/16/2021.

DUPLICATE PAID RECEIPT
ACTUAL TIME DRW
7/24/2014 14:35:30 8
REG WSO4 WALKING SHIL SAH
>>RECEIPT # 6249<< 7/24/2014 OFLN
Dept 7 701 RECORDATION TAXES
ACCOUNT NO 0160023
$5,770.00
$5,770.00 CA
$.00
Land Recrd
Buildings
Total
Space Reserved for County Validation
Baltimore County, Maryland

BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF **CORNELIUS D. HELFRICH** **LEGAL OWNER** **DOMINION PROPERTIES, LLC** **CONTRACT PURCHASER** **PETITION FOR VARIANCE ON THE PROPERTY LOCATED AT** **16 LOCUST DRIVE** 1st Election District 1st Council District	**Case No. 20-224-A**

POST-HEARING BRIEF OF PROTESTANT AARON D. NEAL

One of the Protestants, Aaron D. Neal (hereinafter, "Protestant"), proceeding in proper person, submits his Post-Hearing Brief, and says:

I. OVERVIEW.

In this proceeding, the Appellant asks the Board to fashion a standard for granting variances that would render the zoning regulations functionally meaningless. It is without question that Appellant's lot is not physically unique in any way, shape or form. Appellant's own witness admitted that the lot is the absolute median lot in the neighborhood in terms of size, shape and topography. Under the case law and regulations governing the grant (or denial) of variances, the analysis ends at the lack of physical uniqueness.

However, Appellant wisely focuses on a takings argument, but stretches that analysis too far. Appellant's position is that the prohibition of *any* particular use gives rise to a governmental taking and thus requires a variance. By that circular logic, the mere existence of the restriction justifies the grant of a variance. A taking arises when there is no viable economic use of property, not simply because the *desired* use is not permitted.

Under the correct takings analysis, Appellant's argument fails. There are viable economic uses for Appellant's lot, as an accessory lot. The real issue for Appellant is one of profit margin, not that there is a complete absence of viable uses. Appellant is seeking this variance in furtherance of selling the lot to a developer. Appellant expects to obtain a *larger* profit from the $75,000 sale to a developer than by taking the $25,000 offer from a neighbor to use the lot as an accessory lot. Where there are viable economic uses and the question is one of degree of economic loss, the Supreme Court has definitively stated that a regulatory taking has not occurred. While Protestant is sympathetic to Appellant's desire to maximize his profit on the sale of his lot, profit maximization is not an element for the Board to consider under the variance or takings standards. Appellant cannot show that he is entitled to a variance pursuant to the Baltimore County Zoning Regulations or under the takings analysis, and the Board should deny the requested variance, consistent with the reasoning of Managing Administrative Law Judge Paul M. Mayhew in his Opinion and Order.

II. MATERIAL FACTS.

A. HISTORY OF THE LOT.

In 1933 a parcel of land along Locust Drive between Frederick Road and Magruder Avenue in Catonsville, Maryland was subdivided into twenty (20) lots by the "Plat of Locust Drive Extension". Appellant's Exhibit 3. Those lots are all roughly rectangular, with 50 feet or so of road frontage and depths of 70 feet to 150 feet. Id. The lot at issue – 16 Locust Drive – was designated as Lot 6 on that Plat and is an exact 50 foot by 100 foot rectangle, with 50 feet of road frontage on its Eastern boundary. Id. Lot 6 is precisely in the middle of all twenty lots in terms of size, as it is the largest of the ten smaller lots on the west side of Locust Drive, and smaller than

all of the ten larger lots on the east side of Locust Drive. Id.; *See also* Testimony of Patrick C. Richardson Jr.

Sometime in the late 1930's or early 1940's, a house was built on Lot 5 (now 18 Locust Drive, owned by Protestant Julie King and her husband, Ryan King). *See* Testimony of Laura Wehland-Scherer. On December 17, 1943, Lot 5 and Lot 6 were conveyed to Eugene J. Fields and his wife, and David A. Fields in an apparent straw[1] transaction.[2] *See* Exhibit 1. The 1943 deed granted a life estate to Eugene Fields and his wife, with David Fields as the sole remainderman. Id. In addition to any pre-1943 period when both lots were owned by Eugene Fields and his wife, from 1943 to 1959, both lots were owned together by Eugene Fields, his wife and David Fields. Id. Fee simple title to both lots was vested in David Fields by virtue of the 1947 death of Eugene Fields and the 1959 death of Anastasia Fields (the "wife" in the 1943 deed). Exhibit 2. In 1959, after Anastasia Fields died, David Fields conveyed 18 Locust to Virginia Fields. Id.

From 1959 through 2014, both lots remained in the Fields family and were treated as an assemblage. *See* Testimony of Laura Scherer. Lot 6, being unimproved, was used by the occupants

[1] Protestant suspects that the straw deed was preceded by title to both lots solely in Eugene Fields and his wife, and that the straw deed was used to at David Fields to title, based on the language of the 1943 deed and the common uses of straw deeds during that time frame. However, Protestant could not review title any farther back in time, as the grantor/grantee index is not available online that far in the past.

[2] There was no objection at the hearing to Protestant's presentation of title evidence and opinions relating thereto on the basis of improper expert opinion. As such, that objection is waived. However, to the extent that the facts and opinions presented at the hearing and herein are objected to by Appellant as improper opinion testimony, the undersigned is qualified to provide expert testimony in the areas of title abstracting and title review / interpretation. Had appellant timely objected at the hearing, the undersigned would have provided voir dire in the form of his expertise in those areas, including 14+ years as a licensed attorney in Maryland (along with licensure for a similar time in DC and Virginia, along with the US District, Bankruptcy and Appellate courts for those jurisdictions) with a practice focusing largely on real estate title disputes and title insurance defense litigation. During those years of practice I have litigated literally hundreds of real estate title disputes, involving complex issues of title interpretation ranging from whether railroad deeds from the 1800's grant a fee simple determinable estate or a fee simple subject to a condition subsequent, to the applicability of the Maryland Contract Lien Act and Rule Against Perpetuities to Declarations of Water and Sewer Front Foot Benefits. I have personally reviewed between 2,500-3,000 title abstracts and personally abstracted 300-400 titles. I have briefed and argued numerous reported opinions in real estate title cases, including *Fishman v. Murphy*, 433 Md. 534 (2013), *Henok v. Chase Home Finance*, 890 F.Supp.2d 65 (D. D.C. 2012), and *Select Portfolio Servicing, Inc. v. Saddlebrook West Utility Company, LLC*, 455 Md. 313 (2017).

(whether the Fields or their tenants) as a garden space, as a ball-field for their children, and other typical accessory uses of an unimproved lot. Id. During the intervening 55 years, 18 Locust went from the Estate of David Fields to Bernadette Fields [Exhibit 3] in 1975, then from the Estate of Bernadette Fields to Joseph Fields, John P. Fields, Eugene J. Fields, David A. Fields, Bernadette Malec and Mary Elliot [Exhibit 4] in 2013, then finally to the Kings in 2014 [Exhibit 5]. 16 Locust remained in the hands of Virginia Fields until her estate conveyed it to her nephew, the Appellant, in 2012. Exhibit 6; *see also* Testimony of Cornelius Helfrich. When 18 Locust was ultimately conveyed out of the Fields family to the Kings in 2014, the Fields family initially sought to sell it with 16 Locust as an assemblage, with 16 Locust remaining an accessory lot as it had been for the past 70+ years. Testimony of Aaron Neal; Testimony of Laura Wehland-Scherer.[3] When the family could not agree on a splitting on the sale proceeds, Appellant decided not to sell 16 Locust with 18 Locust. Id. The Kings made several attempts over the years to purchase 16 Locust from the Appellant, but they were consistently rebuffed. Id.; Testimony of Julie King; King Exhibit 5.

B. THE VARIANCE REQUEST.

Appellant requests a variance to the lot size and set-back restrictions in the Baltimore County Zoning Regulations. In pertinent part, Appellant requests a variance with respect to the minimum buildable lot size from 20,000 net square feet to 5,850 net square feet. Exhibit 7. 16 Locust Drive is 5,000 net square feet. Testimony of Patrick Richardson; King Exhibit 3, Appellant's Exhibits 2 & 2A. 16 Locust Drive does not have any unique physical characteristics. Id. 16 Locust Drive is identical to the other lots in the neighborhood in terms of shape, orientation, road frontage and topography. Id. 16 Locust Drive is the median size of the lots in the

[3] Appellant's counsel objected at the hearing to testimony regarding the historic use and proposed sale of 16 and 18 Locust Drive, contending that it was inadmissible hearsay. As Protestant noted at the hearing, hearsay relating to the historic use of property is admissible under Md. Rule 5-803(b)(20).

neighborhood – 5,000 net square feet. Id; Appellant Exhibit 3. The *only* thing that differentiates 16 Locust Drive from other lots in the neighborhood is that it has been historically used as an accessory lot rather than having a house built on it when the other homes were built in the 1930's and 1940's. Id. 16 Locust Drive has historically been used as an accessory lot for the occupants of 16 Locust Drive, whether those occupants were the Fields family members or their tenants. Testimony of Laura Wehland-Scherer.

III. ARGUMENT.

A. 16 LOCUST DRIVE DOES NOT SATISFY THE UNIQUENESS REQUIREMENT FOR OBTAINING A VARIANCE.

Appellant attempts to treat the uniqueness and hardship elements of the variance standard as disjunctive rather than conjunctive. The regulation is clear – for a variance to be appropriate, a petitioner must first show that the property is physically unique. BCZR §307.1. Only after uniqueness is shown can the petitioner (or in this case, the Board) move on to the question of whether enforcement of the zoning regulation would "result in practical difficulty or unreasonable hardship." Id.; *See* North v. St. Mary's County, 99 Md.App. 502, 511 (1994); Cromwell v. Ward, 102 Md.App. 691, 721 (1995).

The uniqueness element was discussed at some length in Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County, 178 Md.App. 232 (2008), *aff'd* 407 Md. 53 (2008). The petitioner in that case wanted a variance to install a large sign for their church. The petitioner focused its uniqueness argument on the fact that a smaller sign would not be seen from the Beltway, to which the property was adjacent, and that proximity to the Beltway and lack of visibility made the property unique. This Board disagreed with that analysis and the courts affirmed, holding that practical need cannot be used to get past the uniqueness requirement – the first step is always uniqueness before individual hardship or practical need could be

considered. The Board noted that being adjacent to the Beltway and partially obscured by sound barriers did not make the property unique, as numerous other properties in the area, including churches, were adjacent to the Beltway (which runs for miles and passes innumerable properties) and partially obscured. The question was not whether the location next to the Beltway, behind sound barriers, created a hardship to the church, but whether it was any different – i.e. unique – *as compared to other properties in the area*. Because this church was hardly in a unique situation, the degree of hardship was irrelevant.

The distinction between the uniqueness and hardship elements is highlighted when one examines a holding where a property was actually unique. In Mills v. Godlove, 200 Md.App. 213 (2011) petitioners sought a special exception and variance to park paving equipment on their property. There, the lot at issue was a different shape (triangular) than others in the area, it was smaller than most of the other properties in the area, it was unnaturally shallow because it was bisected by Licking Creek Road, and the topography was different than other lots in the area due to a steep drop off at the rear of the property. Because this lot was significantly, fundamentally different in physical characteristics from the other properties in the area, it was unique for purposes of zoning analysis. Thus, the Court then moved to the hardship element, finding that enforcement of the zoning regulations, due to the unique physical characteristics of the lot, would prevent a use that was permitted on other properties, creating a hardship to the petitioner.

Appellant's *only* argument for uniqueness is that 16 Locust Drive is unique by virtue of the fact that it is the only lot in the neighborhood that is not improved by a residence. The Court of Special Appeals addressed this precise issue in North v. St. Mary's County, 99 Md.App. 502 (1994). In North, the property owner sought a variance to permit construction of a gazebo in the critical area. The county board of appeals granted the variance and the Circuit Court affirmed,

giving rise to an appeal by the chairman of the critical area commission. The homeowner argued that the land was "unique" because the particular portion of the land was unimproved. The Court of Special Appeals noted the uniqueness standard before addressing that evidence:

> ***In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property***. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.
>
> An example of uniqueness is found in the use variance case of Frankel v. Mayor and City Council, 223 Md. 97, 104, 162 A.2d 447 (1960), where the Court noted: "[H]e met the burden: the irregularity of the ... lot ... that it was located on a corner of an arterial highway and another street, that it is bounded on two sides ... by parking lots and public ... institutions, that immediately to its south are the row houses...."
>
> North, *supra* at 514 (***emphasis*** added).

In applying that standard, the Court held that "[t]he evidence in this case relied upon by appellees is just the opposite." Rather than showing that the subject property was physically unique:

> Mr. Enoch proffered that the neighboring properties were similarly situated, including having points of land with views. His argument was basically that his land was unique because he had not already built on the point of land and the other property owners had. In other words, his uniqueness claim was based on the existence of permitted (or probably non-conforming, the record is not clear as to which) structures and uses on adjoining properties.
>
> Id. at 515.

The fact that the subject property was the only lot without a gazebo did not make it unique for zoning purposes. The fact that the neighboring properties had non-conforming improvements and would have otherwise required (or perhaps previously obtained) variances for their improvements also did not make *the subject property* unique. Uniqueness rises and falls based on the physical condition of the lot at issue, not on the existence of improvements or the uses (non-conforming or

otherwise) of neighboring properties. Id. at 519-520. Like the lot at issue in this case, the lot in North could not be deemed unique based on the lack of improvements compared with neighboring properties.

As 16 Locust Drive is not unique, Appellant's "unwarranted hardship" and "practical difficulty" arguments are moot. No matter how onerous or restrictive a zoning regulation might be, if the lot to which it is applied is not unique, the degree of restriction is irrelevant. Appellant cannot satisfy the uniqueness requirement of BCZR §307.1 and is not entitled to a variance.

B. ENFORCEMENT OF THE ZONING REGULATION DOES NOT AMOUNT TO A REGULATORY TAKING.

Appellant rightly focuses on the notion that application of the zoning regulation amounts to a regulatory taking, inherently acknowledging that he is not entitled to a variance under the traditional standard. However, Appellant has not set forth a viable regulatory taking claim either. While Appellant advocates for the application of lesser standards than the "no beneficial use" standard, the lesser standard does not provide relief either. Quite simply, Appellant cannot satisfy the applicable "takings" standard and the lesser standards either do not apply or are not satisfied.

The Supreme Court in Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992) addressed the "no economically beneficial or productive use of land" standard of regulatory takings. Justice Scalia, writing for the majority, noted that the standard required just what it says, that there be no economically viable use of the land for a taking to have occurred. In addressing the dissent by Justice Stevens, the majority noted that even where 95% of the beneficial use is eliminated, a taking still has not occurred, even if that result might seem harsh or arbitrary. Lucas, *supra* at 1019 fn.8.

16 Locust Drive cannot satisfy the "total taking" standard. Appellant is under contract to sell the property to Dominion Properties, assuming Appellant can get a variance to permit

construction of a residence. The Kings offered to purchase the Property for a different economically viable use – as an accessory lot. While the choice might be Hobbesian for Appellant, there is nonetheless a choice available – selling the lot for less to the Kings is an available, economically viable option for Appellant and using the lot as an accessory lot is an economically productive one, as admitted by Appellant's witness, Patrick Richardson.

In apparent acknowledgement that he cannot satisfy the "total taking" analysis under Lucas, Appellant turns to Palazzolo v. Rhode Island, 533 U.S. 606 (2001) for the proposition that a lesser restriction can still result in a taking. However, that analysis depends "on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action." Palazzolo, *supra* at 617; *See* Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 124 (1978). Appellant did not provide evidence at the hearing to sufficient to satisfy any of those factors.

Diminution in value, standing alone, has been uniformly rejected as a basis for finding a taking. *See* Penn Central, 438 U.S. at 131; *see also* Euclid v. Ambler Realty Co., 272 U.S. 365 (1926) (75% diminution in value caused by zoning law); Hadacheck v. Sebastian, 239 U.S. 394 (1915) (87½ % diminution in value). Here, the diminution in value is about two-thirds, from $75,000 (the Dominion Properties contract) to $25,000 (the King offer). That is significantly less than the diminution found insufficient for takings purposes in Euclid and Hadacheck. Furthermore, "interference with the property owner's personal plans and desires relative to his property is insufficient to invalidate a zoning ordinance or to entitle him to a variance or rezoning." City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 674 fn.8 (1976); *quoting* 8 E. McQuillan, Municipal Corporations §25.44, p.111 (3rd ed. 1965). Unless the regulation eliminates

the majority of reasonable uses or diminishes the value below the value when the owner acquired it, the effect of the regulation does not give rise to a taking. Id. 16 Locust Drive still has a variety of available accessory uses and is worth more ($25,000.000) than the Appellant's acquisition cost ($0.00) even with the restrictions imposed by the Baltimore County Zoning Regulation. *See* Exhibit 6; King Exhibit 5.

Appellant attempts to argue that the inability to build accessory structures robs the lot of all viable economic use. In so doing, Appellant ignores the fact that (1) economically viable use is not limited to construction of structures and (2) Appellant's own witness acknowledged that accessory structures could be built, though it may require merger of 16 Locust and 18 Locust Drive. *See* Testimony of Patrick Richardson. The United States District Court for the District of Maryland considered a similar issue in Quinn v. Board of County Commissioners of Queen Anne's County, 124 F.Supp.3d 586 (D. Md. 2015). There, the landowner argued that the zoning restrictions applicable to small lots constituted a taking because he could not build on the sub-standard lots. The Court disagreed, finding that the regulations permitted smaller lots to be merged into larger lots to satisfy the area requirements. While the small lots lost some value, they could be were not stripped of all economic use. Selling 16 Locust Drive to someone that can merge it into a neighboring lot may not be as profitable as selling it to a developer, but that is not the standard. 16 Locust Drive has viable economic use, as evidenced by the Kings' offer to purchase same and the available accessory uses noted by Mr. Richardson.

The second factor, interference with a reasonable investment-backed expectation, "must be more than a unilateral expectation or abstract need." Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1005-06 (1984). "Knowledge of existing zoning is to be considered in determining whether the regulation interferes with investment-backed expectations." Mayhew v. Town of Sunnyvale,

964 S.W.2d 922, 936 (Tx. 1998); *citing* Pompa Constr. Corp. v. City of Saratoga Springs, 706 F.2d 418, 424-25 (2nd Cir. 1983); Quinn, *supra* at 595-96; Pulte Home Corp. v. Montgomery County, Md., 271 F.Supp.3d 762, 777 (D. Md. 2017). "[C]ourts have traditionally looked to the existing use of property as a basis for determining the extent of interference with the owner's 'primary expectation concerning the use of the parcel'." Id.; *quoting* Esposito v. South Carolina Costal Council, 939 F.2d 165, 170 (4th Cir. 1991) *cert. denied,* 505 U.S. 1219 (1992).

16 Locust Drive was subject to the zoning regulations when the Appellant acquired it and those regulations had been in place for some twenty (20) years at the time. Perhaps more importantly, 16 Locust Drive had been used as an accessory lot to 18 Locust Drive for more than eighty (80) years at the time that Appellant took title and was still being used as an accessory lot at that time. Indeed, Appellant acquired the lot with the apparent intention of selling it along with 18 Locust Drive as an assemblage when his cousins were selling 18 Locust Drive. Appellant could not have had a reasonable investment-backed expectation when he acquired 16 Locust Drive that he could take what had been an accessory lot for nearly a century and build a house on it in direct contravention of decades-old zoning regulations.

Finally, the character of the governmental action tips in favor of denial of the variance. In considering this element, "courts should take a deferential stance regarding what constitutes a legitimate public purpose." Kelo v. City of New London, 545 U.S. 469, 487-88 (2005). There is no viable argument that the Baltimore County Zoning Regulations lack a legitimate public purpose. The stated purposes of the Baltimore County Zoning Regulations include, among other things, halting the "removal or undesirable transformation of natural vegetation and other features more properly left in their natural or previous states" and to [a]llow more feasible preservation of natural features and induce the reservation of ample and more suitably designed open spaces and

parks." *See* BCZR 1B00.1 and 1B00.2. Pertinent to this proceeding, the regulations are also intended to "[p]rovide greater certainty about…densities within existing communities with the goal of preserving and maintaining these areas." BCZR 1B00.2. Appellant would have the Board toss out the entire purpose of the regulation – limiting density and development of open spaces in the D.R. zone. Density and open space zoning restrictions have been roundly upheld as serving a legitimate public purpose and Appellant's desire to maximize his profit on the sale of 16 Locust Drive should not be allowed to subvert that legitimate purpose. *See* 3 Rathkopf's The Law of Zoning and Planning §51:11 (4th Ed. 2021) (citations omitted).

As the North court noted (albeit, in the variance, not takings, context), "[u]nder the appell[ant's] theory, it would be unreasonable and an unwarranted hardship to deny Mr. [Helfrich] anything he wants." Keying the takings analysis on the loss of a single desired use would do just what the North court rejected – allow the exception to consume the rule. If the standard was the inability to make a particular use rather than the inability to make any beneficial use, then a taking would occur anytime any use was denied. That is not and cannot be the standard. The Appellant here has economically viable uses of 16 Locust Drive as an accessory lot. The fact that it is *less valuable* as an accessory lot does not mean that the zoning regulations cause a regulatory taking. Appellant is not entitled to a variance based on his regulatory taking argument.

C. THE REQUESTED VARIANCE IS MOOT, AS IT WILL NOT PERMIT THE PROPOSED CONSTRUCTION.

Strangely, the variance sought by the Appellant, even if granted, would not render the planned development possible. The zoning regulation at issue, BCZR §1B02.3(C), provides that a buildable lot in this zone must be at least 20,000 *net square feet*. As the Appellant's own witness testified, net square footage is defined as the land actually owned by the person seeking the variance. *See* Appellant's Exhibits 2 & 2A; Testimony of Patrick Richardson. Appellant seeks a

variance to allow it to build on a 5,850 net square foot lot. Exhibit 7. 16 Locust Drivee is 5,000 net square feet and 5,850 *gross* square feet. Appellant's Exhibits 2 & 2A. Appellant would need a variance to reduce the square footage requirement to 5,000 net square feet in order to develop 16 Locust Drive. Even if the Board granted all of the variance requests, Appellant would still have a 5,000 net square foot lot with a variance allowing them to build on a lot as small as 5,850 net square feet. Unless Appellant somehow enlarges 16 Locust after the fact, the variance would be nugatory as Appellant still could not proceed with the planned development, as it needs *all* of the many requested variances in order to make the lot buildable. As requested, the variance is and will be moot, even if granted.

III. CONCLUSION.

Appellant's lot is not unique and cannot satisfy the requirements for the granting of a variance under the Baltimore County Zoning Regulations. Appellant cannot show that a taking occurred, because the lot retains economically viable uses even with application of the Baltimore County Zoning Regulations. The variance request should be denied.

Respectfully submitted,

/s/ Aaron D. Neal
Aaron D. Neal
20 Locust Drive
Catonsville, Maryland 21228
Tel. 301-441-2420
Fax 301-982-9450
aneal@mhlawyers.com

Protestant, pro se

Certificate of Service

I hereby certify that on this 12th day of October, 2021, pursuant to the Board's instructions at the hearing on September 9, 2021, copies of the foregoing brief are being submitted *electronically only* and served upon the interested parties (or their counsel, where appropriate), as follows:

Baltimore County Board of Appeals (appealsboard@baltimorecountymd.gov)
John Gontrum, Esq. (jgontrum@wtplaw.com)
Julie King (julieking815@gmail.com)
Laura Scherer (sgarylaura@gmail.com)
Barry and Kathleen Sanders (msandbox321@aol.com)

/s/ Aaron D. Neal
Aaron D. Neal

assigns in fee simple

Witness the hand and seal of said Grantor

Test

Jeannette H Marshall

Thos C Hunter (Seal)

Treasurer of Baltimore County
Collector of State and County Taxes for said County

State of Maryland Baltimore County to wit

I Hereby Certify that on this 11th day of September in the year nineteen hundred and forty-two before me the subscriber a Notary Public of the State of Maryland in and for Baltimore County aforesaid personally appeared Thomas C Hunter Treasurer of Baltimore County and Collector of State and County taxes for said County and he acknowledged the foregoing deed to be his act

Witness My hand and Notarial Seal

(NotariaL Seal)

Jeannette H Marshall - Notary Public

Recorded May 24 1944 at 12.00 noon & exd per

Robert J Spittel - Clerk

Examiners (J&P)

(Rcd by MEB)

Del to Rowe & [illegible] 7/14/44

63360

Jas K. Cullen & wf

Deed to

Eugene J Fields & wf et al

This Deed Made this 17th day of December 194[illegible] between James K Cullen and Helen A Cullen his wife of Baltimore County parties of the first part and Eugene J Fields and Anastasia Fields his wife parties of the second part and David A Fields party of the third part

Witnesseth that in consideration of the sum of Five (5) Dollars the receipt of which is hereby acknowledged the said parties of the first part do grant and convey unto the said parties of the second part for and during the term of their natural lives with power of disposition as hereinafter mentioned and from and after the death of said parties of the second part unto the party of the third part his heirs and assigns in fee simple all those two lots of ground situate in Baltimore County and described as follows

Being known and designated as Lots Nos 5 and 6 as shown on a Plat entitled Locust Drive extended which Plat is recorded among the Plat records of Baltimore County in Plat Book CWB Jr No 10 folio 109

Being the same two lots of ground which by deed of even date herewith and intended to be recorded among the Land Records of Baltimore County immediately prior hereto were granted and conveyed by David A Fields unmarried to the said Grantors

Together with the building and improvements thereupon and all the rights alleys ways waters privileges appurtenances and advantages thereto belonging or in anywise appertaining

To Have and to Hold said lots of ground and premises unto and to the use of the said parties of the second part and the survivor for and during the term of their natural lives and the life of the survivor with power to the said parties of the second part and the survivor to sell lease mortgage or otherwise convey or encumber the entire estate in the property hereby conveyed and from and after the death of the said parties of the second part and the survivor as to so much thereof or as to such interest therein as may not have been conveyed or encumbered by said parties of the second part and the survivor in the exercise of the power hereby vested in them unto the said party of the third part

BALTIMORE COUNTY CIRCUIT COURT (Land Records) RJS 1340, p. 0392, MSA_CE62_1195. Date available 11/02/2006. Printed 08/31/2021.

his heirs and assigns in fee simple

It being the intention of these presents that any exercise of the power hereby vested in the said parties of the second part to sell or encumber the property hereby conveyed shall operate to defeat any interest that the said party of the third part may take hereunder and said power shall extend to the interest in remainder as well as the life estate of said party of the second part

And the said parties of the first part hereby covenant that they have not done nor suffered to be done any act matter or thing whatsoever to encumber the property hereby conveyed that they will warrant specially the property hereby granted and will execute such further assurances of the same as may be requisite

Witness the hands and seals of the said grantors

Nancy B Edwards — James K Cullen (Seal)

Helen A Cullen (Seal)

State of Maryland City of Baltimore to wit

I Hereby Certify that on this 17th day of December 1943 before me the subscriber a Notary Public of the State of Maryland in and for Baltimore City personally appeared James K Cullen and Helen A Cullen his wife and they acknowledged the aforegoing deed to be their act

Witness my hand and Notarial Seal

(Notarial Seal) Nancy B Edwards - Notary Public

Recorded July 14 1944 at 10.10 a m & exd per

Robert J Spittel - Clerk

Examiners W & W (Rcd by MEB)

60457
Robert C Smith
Mtg to
First Fed S & L Assn

This Mortgage made this 17th day of May in the year one thousand nine hundred and forty-four between Robert C Smith widower of Baltimore County in the State of Maryland Mortgagor and First Federal Savings & Loan Association of Brooklyn a body corporate duly incorporated Mortgagee

Whereas the said First Federal Savings & Loan Association of Brooklyn has this day loaned to Robert C Smith the sum of Sixty-three hundred (6300) dollars being the balance of the purchase money for the property herein described which said sum the said Mortgagor agree(s) to repay in installments with interest thereon from the date hereof at the rate of 5½% per annum in the manner following

By the payment of Fifty-one and 75/100 (51.75) dollars plus 1/12 of the annual taxes water rents insurance premiums and other public charges & assessments on or before the first day of each and every month from the date hereof until the whole of said principal sum and interest shall be paid which interest shall be computed by the calendar month

The said installment payments may be applied by the mortgagee in the following manner

First: To the payment of interest

Second: To the payment of all taxes water rents assessments or public charges of every nature and description ground rent insurance premiums and other charges affecting the hereinafter described premises

Third: Towards the payment of the aforesaid principal sum

BALTIMORE COUNTY CIRCUIT COURT Land Records RJS 1340, p. 393, MSA_CE62_1197. Date available 11/02/2006. Printed 08/31/2021.

T-102

LIBER 3649 PAGE 398

THIS DEED, Made this 19 day of December, in the year one thousand nine hundred and fifty-nine, by and between DAVID A. FIELDS and BERNADETTE K. FIELDS, his wife, of Baltimore County, State of Maryland, of the first part, Grantors, and VIRGINIA T. FIELDS, of Baltimore County, State of Maryland, of the second part, Grantee.

NO STAMPS NECESSARY

WITNESSETH, that in consideration of the sum of Five ($5.00) Dollars and other valuable considerations, the receipt whereof is hereby acknowledged, the said Grantors do hereby grant and convey unto the said Grantee, her heirs and assigns, in fee simple, all that lot of ground situate in Baltimore County, State of Maryland, and described as follows, that is to say:

BEING known and designated as Lot No. 6, as shown on a Plat entitled "Locust Drive Extended", which Plat is recorded among the Plat Records of Baltimore County in Plat Book C.W.B.Jr. No. 10, folio 109.

BEING one of the lots of ground which by Deed dated December 17, 1943 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1340, folio 392, was granted and conveyed by James K. Cullen and wife to Eugene J. Fields and Anastasia Fields, his wife, for and during the term of their natural lives, remainder to David A. Fields, in fee simple; the said Eugene J. Fields departed this life on August 10, 1947 and the said Anastasia Fields departed this life on August 20, 1959, thereby vesting absolute title in the said David A. Fields.

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

TO HAVE AND TO HOLD said described lot of ground and premises, unto and to the use of the said VIRGINIA T. FIELDS, her heirs and assigns, in fee simple.

AND the said Grantors covenant that they will warrant specially the property hereby granted and conveyed and that they will execute such further assurances of said land as may be requisite.

WITNESS the hands and seals of the said Grantors.

WITNESS:

David A. Fields (SEAL)
David A. Fields

Campbell V. Helfrich
CAMPBELL V HELFRICH

Bernadette K. Fields (SEAL)
Bernadette K. Fields

BALTIMORE COUNTY CIRCUIT COURT (Land Records) WJR 3649, p. 0398, MSA_CE62_3504. Date available 11/28/2005. Printed 08/31/2021.

T-102

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY that on this 19 day of December, 1959, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared DAVID A. FIELDS and BERNADETTE K. FIELDS, his wife, known to me, or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged, in my presence, that they executed the same for the purposes therein contained.

WITNESS my hand and Notarial Seal.

Stanley Kaufman
Notary Public

STANLEY KAUFMAN

My commission expires: May 1, 1961.

NO EXAMINATION OF TITLE MADE BY
HARLEY, WHELTLE & VICTOR

Rec'd for record DEC 30 1959 at 11 15 a M
Per Walter J. Rasmussen, Clerk
Mail to Harley, Whettle & Victor
Receipt No. 10362 $ 5.50

BALTIMORE COUNTY CIRCUIT COURT (Land Records) WJR 3649, p. 0399, MSA_CE62_3504. Date available 11/28/2005. Printed 08/31/2021.

CONFIRMATORY DEED

No Title Search - No Stamps

THIS CONFIRMATORY DEED, made this 18 day of August, in the year One Thousand Nine Hundred and Seventy-Six, between Bernadette K. Fields, Personal Representative of the Estate of David A. Fields, late of Baltimore County, Maryland, of the first part, and Bernadette K. Fields, heir of the Estate of David A. Fields, of the same County and State, of the second part.

WHEREAS, by Deed dated September 22, 1975, and recorded among the Land Records of Baltimore County in Liber 5572, Page 747, the said party of the first part granted and conveyed unto the said party of the second part, a parcel of ground known as Lots 5 and 6 as shown on a Plat entitled Locust Drive extended, which Plat is recorded among the Plat Records of Baltimore County, in Plat Book CWB, J.R. Number 10, Folio 109; and

WHEREAS, through inadvertence, the description of said property was erroneous in that it contained property previously conveyed by the late David A. Fields and Bernadette K. Fields, his wife, during the life of the decedent, namely, Lot 6 of the aforedescribed lots of ground; and

WHEREAS, the said party of the second part has requested the said party of the first part to execute the within Confirmatory Deed to correct the description of the property, which the said party of the first part has agreed to do.

NOW, THEREFORE, THIS CONFIRMATORY DEED WITNESSETH, that in consideration of the premises and the sum of One ($1.00) Dollar cash in hand paid to the other, the said party of the first part does hereby grant, convey and confirm unto the said party of the second part, all that lot of ground situate in Baltimore County, Maryland, and described as follows, that is to say:

Being known and designated as Lot 5 as shown on a

BALTIMORE COUNTY CIRCUIT COURT (Land Records) EHK 5672, p. 0465, MSA_CE62_5527. Date available 11/29/2005. Printed 10/12/2021.

Plat entitled Locust Drive extended, which Plat is recorded among the Plat Records of Baltimore County, Maryland, in Plat Book CWB, J.R. Number 10, Folio 109, and

Being the same lot of ground which by Deed dated December 17, 1944, was conveyed by James K. Cullen and Helen A. Cullen, his wife, grantors, to Eugene J. Fields and Anastasia Fields, his wife, grantees, for the term of their natural lives, and to David A. Fields, grantee, in fee simple upon the death of Eugene J. Fields and Anastasia Fields, and recorded among the Land Records of Baltimore County in Liber R.J.S. 1340, Folio 392.

TOGETHER WITH the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages, thereto belonging, or in any wise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises, unto and to the use of the said Bernadette K. Fields, her Personal Representatives, heirs and assigns, in fee simple.

And the said party of the first part hereby covenants that she has not done nor suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed, that she will warrant specially this property hereby granted and will execute such further assurances of the same as may be requisite.

Witness the hand and seal of the said grantor.

TEST:

Christine M. Cooney

Bernadette K. Fields

Bernadette K. Fields, Personal Representative of the Estate of David A. Fields

TRANSFER TAX NOT REQUIRED
9-2-76
Walter R. Richardson
Director of Finance
Per Bonnie S. DeLuca
Authorized Signature
Reg 11-80 I

BALTIMORE COUNTY CIRCUIT COURT (Land Records) EHK 5672, p. 0466, MSA_CE62_5527. Date available 11/29/2005. Printed 10/12/2021.

STATE OF MARYLAND: Baltimore County : TO WIT:

I hereby certify that on this 18th day of August, in the year One Thousand Nine Hundred and Seventy-Six before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County aforesaid, personally appeared Bernadette K. Fields, Personal Representative of the Estate of David A. Fields, late of Baltimore County, Maryland, and acknowledged the foregoing Deed to be her act as Personal Representative aforesaid.

AS WITNESS my hand and notarial seal.

GLEN C. GILLIGAN NOTARY PUBLIC HOWARD COUNTY, MD.

Notary Public

My Commission expires 7/1/78

Rec'd for record SEP 3 1976 at 10 47 M

Per Elmer H. Kahline, Jr., Clerk

Mail to Steans, Haughey & Siegel

Receipt No. $10.50

SEP -3-76 2556960M ****1050

SEP -3-76 2556960A ****1050

BALTIMORE COUNTY CIRCUIT COURT (Land Records) EHK 5672, p. 0467, MSA_CE62_5527. Date available 11/29/2005. Printed 10/12/2021.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34470, p. 0067, MSA_CE62_34326. Date available 12/03/2013. Printed 10/12/2021.

NO TITLE EXAMINATION, NO JUDGMENTS, NO TITLE INSURANCE

DEED IN DISTRIBUTION

THIS DEED IN DISTRIBUTION, made this 15th day of October in the year two thousand thirteen by and between **DAVID A. FIELDS** and **EUGENE J. FIELDS, Personal Representatives of the Estate of Bernadette K. Fields**, parties of the first part, **DAVID A. FIELDS** and **EUGENE J. FIELDS, Trustees of the Residuary Trust established under the Last Will and Testament of Bernadette K. Fields**, parties of the second part, and **JOSEPH J. FIELDS, JOHN P. FIELDS, EUGENE J. FIELDS, DAVID A. FIELDS, BERNADETTE A. MALEC** and **MARY T. ELLIOT**, parties of the third part.

WHEREAS, Bernadette K. Fields, late of Baltimore County, Maryland departed this life on or about April 13, 2012 leaving a Last Will and Testament which was duly admitted to probate by the Register of Wills for Baltimore County as Estate No. 168053; and

WHEREAS, pursuant to the terms of the Last Will and Testament, the hereinafter property, as part of the residuary estate, was devised unto the children of the said Bernadette K. Fields, namely, **JOSEPH J. FIELDS, JOHN P. FIELDS, EUGENE J. FIELDS, DAVID A. FIELDS, BERNADETTE A. MALEC** and **MARY T. ELLIOT**; and

WHEREAS, the residuary devise to Bernadette A. Malec and Mary T. Elliot was in Trust to David A. Fields and Eugene J. Fields under the Residuary Trust established under the Last Will and Testament of Bernadette K. Fields; and

WHEREAS, said Trustees join herein to convey to the said Bernadette A. Malec and Mary T. Elliot free of the terms of that Residuary Trust; and

WHEREAS, the Personal Representatives and Trustees execute this testamentary/trust distribution to evidence the title to the said **JOSEPH J. FIELDS, JOHN P. FIELDS, EUGENE J. FIELDS, DAVID A. FIELDS, BERNADETTE A. MALEC** and **MARY T. ELLIOT**, the parties of the third part herein.

NOW WHEREFORE WITNESSETH, that in and for **ZERO CONSIDERATION**, the said parties of the first and second part do hereby grant and convey unto the said parties of the third part, in fee simple, all that lot of ground situate, lying and being in **Baltimore County**, State of Maryland, and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lots 5 and 6 as shown on a Plat entitled Locust Drive extended, which Plat is recorded among the Plat Records of Baltimore County in Plat Book C.W.B., Jr. Number 10, folio 109

The improvements thereon being commonly known as 18 Locust Drive, Baltimore, Maryland 21228.

ID# 01-01-06-200230

BEING the same lot of ground which by Deed dated September 22, 1975 and recorded among the Land Records of Baltimore County in Liber E.H.K., Jr. No. 5572, folio 747 was granted and conveyed by Bernadette K. Fields, Personal Representative of the Estate of David A. Fields unto Bernadette K. Fields unto Bernadette K. Fields, the decedent herein.

THIS DEED IS EXEMPT FROM DOCUMENTARY STAMPS AND TRANSFER TAXES PURSUANT TO TAX PROPERTY ARTICLE 12-108(dd) AND ESTATES & TRUSTS ARTICLE SECTION 9-105(c).

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34470, p. 0068, MSA_CE62_34326. Date available 12/03/2013. Printed 10/12/2021.

TOGETHER with the improvements thereon and the rights and appurtenances thereto belonging or appertaining.

TO HAVE AND TO HOLD the above described lot of ground unto the said parties of the second part, as tenants in common, their respective personal representatives and assigns, in fee simple.

WITNESS the hands and seals of the parties of the first part.

WITNESS

(SEAL)
DAVID A. FIELDS, Personal Representative of the Estate of Bernadette K. Fields

WITNESS

(SEAL)
EUGENE J. FIELDS, Personal Representative of the Estate of Bernadette K. Fields

WITNESS

(SEAL)
DAVID A. FIELDS, Trustee of the Residuary Trust established under the Last Will and Testament of Bernadette K. Fields

WITNESS

(SEAL)
EUGENE J. FIELDS, Trustee of the Residuary Trust established under the Last Will and Testament of Bernadette K. Fields

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34470, p. 0069, MSA_CE62_34326. Date available 12/03/2013. Printed 10/12/2021.

STATE OF Maryland, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 15th day of October, 2013, before me, the subscriber, a Notary Public of the State of Maryland, for the County of Baltimore, personally appeared **DAVID A. FIELDS, Personal Representative of the Estate of Bernadette K. Fields**, 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 his capacity as Personal Representative.

AS WITNESS my hand and my Notarial Seal.

F. MICHAEL GRACE
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
My Commission Expires 12-15-2016

Notary Public
My Commission Expires:

STATE OF Maryland, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 15th day of October, 2013, before me, the subscriber, a Notary Public of the State of Maryland, for the County of Baltimore, personally appeared **EUGENE J. FIELDS, Personal Representative of the Estate of Bernadette K. Fields**, 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 his capacity as Personal Representative.

AS WITNESS my hand and my Notarial Seal.

F. MICHAEL GRACE
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
My Commission Expires 12-15-2016

Notary Public
My Commission Expires:

STATE OF Maryland, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 15th day of October, 2013, before me, the subscriber, a Notary Public of the State of Maryland, for the County of Baltimore, personally appeared **DAVID A. FIELDS, Trustee of the Residuary Trust established under the Last Will and Testament of Bernadette K. Fields**, 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 his capacity as said Trustee.

AS WITNESS my hand and my Notarial Seal.

F. MICHAEL GRACE
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
My Commission Expires 12-15-2016

Notary Public
My Commission Expires:

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34470, p. 0070, MSA_CE62_34326. Date available 12/03/2013. Printed 10/12/2021.

STATE OF Maryland, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 15th day of October, 2013, before me, the subscriber, a Notary Public of the State of Maryland, for the County of Baltimore, personally appeared **EUGENE J. FIELDS, Trustee of the Residuary Trust established under the Last Will and Testament of Bernadette K. Fields**, 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 his capacity as said Trustee.

AS WITNESS my hand and my Notarial Seal.

F. M.

Notary Public
My Commission Expires:

F. MICHAEL GRACE
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
My Commission Expires 12-15-2016

ATTORNEY CERTIFICATION

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

F. M.

F. Michael Grace, Esquire

AFTER RECORDING RETURN TO:

F. Michael Grace, Esquire
Bouland & Brush, LLC
300 Frederick Road
Suite 100
Catonsville, Maryland 21228

LWB 1682

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34470, p. 0071, MSA_CE62_34326. Date available 12/03/2013. Printed 10/12/2021.

0034470 072

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)

Circuit Court Clerk Recording Validation

SUP FD SURE 40.00
RECORDING FEE 20.00
TOTAL 60.00
Rcpt # 36357
Blk # 2993
Nov 26, 2013 10:23 am

1 Type(s) of Instruments (☐ Check Box if addendum Intake Form is Attached.)

Deed IN DISTRIB	Mortgage	Other	Other
Deed or 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 / County Transfer

THIS DEED IS EXEMPT FROM DOCUMENTARY STAMPS AND TRANSFER TAXES PURSUANT TO TAX PROPERTY ARTICLE 12-108(dd) AND ESTATES & TRUSTS ARTICLE SECTION 9-105(c).

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only — Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$ 0	Transfer Tax Consideration	$
Any New Mortgage	$	X ( ) % =	$
Balance of Existing Mortgage	$	Less Exemption Amount –	$
Other:	$	Total Transfer Tax =	$
Other:	$	Recordation Tax Consideration	$
		X ( ) per $500 =	$
Full Cash Value:	$	TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$
Surcharge	$ 40.00	$
State Recordation Tax	$	$
State Transfer Tax	$	$
County Transfer Tax	$	$
Other	$	$
Other	$	$

Agent:
Tax Bill:
C.B. Credit:
Ag. Tax/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
01	0106 209230	5592 - 747			☐ (5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	SqFt/Acreage (4)

Location/Address of Property Being Conveyed (2): 18 Locust Dr. Balto. MD 21228 — 60

Other Property Identifiers (if applicable) | Water Meter Account No.

Residential ☐ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ Amount:

Partial Conveyance? ☐ Yes ☐ No | Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	~~Doc. 2 - Grantor(s) Name(s)~~
David A. Fields & Eugene J. Fields, Per Rep of the Estate of Bernadette K. Fields	
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)~~
David A Fields & Eugene J. Fields, Trustee of the Residuary Trust, under the Last Will & Testament of Bernadette K. Fields and	

New Owner's (Grantee) Mailing Address: C/O Gene Fields, 300 Frederick Road, Suite 105, Catonsville, MD

9 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc 2 - Additional Names to be Indexed (Optional) 21228
Joseph J. Fields, John P. Fields & Eugene J. Fields, David A Fields, Bernadette A. Maltz and Mary T Elliot	

10 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: F. MICHAEL GRACE, ESQUIRE
Firm: BOULAND & BRUSH, LLC — BAR 1682
Address: 300 FREDERICK ROAD, SUITE 100
CATONSVILLE, MARYLAND 21228
Phone: (410) 744-5724

☒ Return to Contact Person
☐ Hold for Pickup
☐ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☐ Yes ☒ No Will the property being conveyed be the grantee's principal residence?
☐ 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 Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

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

	Year	20	20	Geo.	Map	Sub	Block
Land				Zoning	Grid	Plat	Lot
Buildings				Use	Parcel	Section	Occ. Cd.
Total				Town	Other	Ex. Cd.	

REMARKS:

TAX AMT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND
☒ COUNTY TRANSFER TAX For ART 11 TITLES SUBTITLE 2, 11-3-202
☒ RECORDATION TAX Per T.P. ART 12-108
Date 11-26-13

Space Reserved for County Validation

Distribution: White - Clerk's Office; Canary - SDAT; Pink - Office of Finance; Goldenrod - Preparer

AOC-CC-300 (6/95)

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 34470, p. 0072, MSA_CE62_34326. Date available 12/03/2013. Printed 10/12/2021.

DEED – FEE SIMPLE- INDIVIDUAL GRANTOR
Lakeview Title Company
File No. **14-24715**
Tax ID # **01-0106200230**

This Deed, made this 14th day of **July, 2014**, by and between **Joseph J. Fields, John P. Fields, Eugene J. Fields, David A. Fields, Bernadette A. Malec and Mary T. Elliott** (erroneously recited as Mary T. Elliot in prior deed), GRANTORS, and **Ryan King** and **Julia King**, GRANTEES.

- Witnesseth -

That for and in consideration of the sum of Three Hundred Five Thousand And 00/100 Dollars ($305,000.00), which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said Grantors do grant and convey to the said Ryan King and Julia King, as tenants by the entirety unto the survivor of them, his or her heirs and assigns, in fee simple, all that lot of ground situate in the County of Baltimore, State of Maryland and described as follows, that is to say:

Being known and designated as Lot 5, Section A, as shown on a Plat entitled Locust Drive extended, which Plat is recorded among the Plat Records of Baltimore County in Plat Book C.W.B., Jr. Number 10, Folio 109.

The improvements are hereby designated as: 18 Locust Drive

Being the same lot of ground which by deed dated October 15, 2013 and recorded November 26, 2013 among the Land Records of Baltimore County, Maryland in Liber JLE 34470, folio 67 was granted and conveyed by David A. Fields and Eugene J. Fields, Personal Representatives of the Estate of Bernadette K. Fields and David A. Fields and Eugene J. Fields, Trustees of the Residuary Trust established under the Last Will and Testament of Bernadette K. Fields unto Joseph J. Fields, John P. Fields, Eugene J. Fields, David A. Fields, Bernadette A. Malec and Mary T. Elliot, tenants in common

Note: Current Title Deed has incorrect legal description Lot 6 was sold on December 19, 1959 in Liber WJR 3649, Folio 398 - also omits "Section A".

Being also the same lot of ground which by confirmatory deed dated August 18, 1976 and recorded September 3, 1976 among the Land Records of Baltimore County, Maryland in Liber EHK 5672, folio 465 was granted and conveyed by Bernadette K. Fields, Personal Representative of the Estate of David A. Fields, late of Baltimore County, Maryland unto Bernadette K. Fields, heir of the Estate of David A. Fields.

Being also the same lot of ground which by deed dated September 22, 1975 and recorded October 6, 1975 among the Land Records of Baltimore County, Maryland in Liber EHK 5572, folio 747 was granted and conveyed by Bernadette K. Fields, Personal Representative of the Estate of David A. Fields, late of Baltimore County, Maryland unto Bernadette K. Fields, heir of the Estate of David A. Fields, of the same County and State.

Being also the same lot of ground which by deed dated December 17, 1943 and recorded July 14, 1944 among the Land Records of Baltimore County, Maryland in Liber RJS 1340, folio 392 was granted and conveyed by James K. Cullen and Helen

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0455, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

A. Cullen, his wife and Eugene J. Fields and Anastasia Fields, his wife unto David A. Fields.

Subject to Covenants, Easements and Restrictions of record.

Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have and To Hold the said tract 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 Ryan King and Julia King, as tenants by the entirety unto the survivor of them, his or her heirs and assigns, in fee simple.

And the Grantors 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 hereby granted; and that they will execute such further assurances of the same as may be requisite.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0456, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

F. MN

Joseph J. Fields (Seal)
Joseph J. Fields

(Seal)

(Seal)

STATE OF Maryland }
COUNTY OF Baltimore } ss

I hereby certify that on this 10th day of July, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Joseph J. Fields the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

F. MN

Notary Public
My commission expires

F. MICHAEL GRACE
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
My Commission Expires 12-15-2016

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0457, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

F. [illegible]

David A. Fields (Seal)

(Seal)

(Seal)

STATE OF Maryland }
COUNTY OF Baltimore } ss

I hereby certify that on this 11th day of July, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared David A. Fields the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

F. [illegible]

Notary Public
My commission expires _____

F. MICHAEL GRACE
NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
My Commission Expires 12-15-2016

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0458, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

JANIS E CARREIRO

John P. Fields (Seal)
John P. Fields

(Seal)

(Seal)

STATE OF
COUNTY OF Nantucket MA } ss

I hereby certify that on this 9th day of July, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared John P. Fields the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

Janis E Carreiro
Notary Public
My commission expires 9/19/19

JANIS E CARREIRO
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
September 19, 2019

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0459, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

Stephanie Dietz

Eugene J. Fields (Seal)
Eugene J. Fields

_____ (Seal)

_____ (Seal)

STATE OF Maryland
COUNTY OF Howard } SS

I hereby certify that on this 14th day of July, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Eugene J. Fields the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

STEPHANIE SHEINBACH DIETZ
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 10, 2017

Stephanie Sheinbach Dietz
Notary Public
My commission expires 5-10-2017

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0460, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

Bernadette A. Malec (Seal)
Bernadette A. Malec

_____ (Seal)

_____ (Seal)

STATE OF Maryland }
COUNTY OF Howard } ss

I hereby certify that on this 10th day of July, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Bernadette A. Malec the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

STEPHANIE SHEINBACH DIETZ
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 10, 2017

Notary Public
My commission expires 5-10-2017

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0461, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

Mary T. Elliott (Seal)

(Seal)

(Seal)

STATE OF Maryland
COUNTY OF Howard } ss

I hereby certify that on this 14th day of July, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Mary T. Elliott the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

Notary Public
My commission expires 5-10-2017

STEPHANIE SHEINBACH DIETZ
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 10, 2017

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0462, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Kevin S. Gunaman Attorney

AFTER RECORDING, PLEASE RETURN TO:
Lakeview Title Company
Suite 304
10025 Gov. Warfield Parkway
Columbia, MD 21044

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0463, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

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: **John P. Fields**

2. Reasons 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: John P. Fields

Signature: John P Fields

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

File No. 14-24715 Re: 18 Locust Drive, Baltimore, MD 21228

14-49

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0464, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

0035196 465

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 **Joseph J. Fields**

2. Reasons 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

Joseph J. Fields
Name

Joseph J. Fields
Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

File No. 14-24715 Re: 18 Locust Drive, Baltimore, MD 21228

14-49

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0465, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

0035196 466

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: **David A. Fields**

2. Reasons 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

David A. Fields
Name

Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

File No. 14-24715 Re: 18 Locust Drive, Baltimore, MD 21228

14-49

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0466, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

0035196 467

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 **Mary T. Elliott**

2. Reasons 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

Mary T. Elliott
Name

Mary T. Elliott
Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

File No. 14-24715 Re: 18 Locust Drive, Baltimore, MD 21228

14-49

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0467, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

0035196 468

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 **Bernadette A. Malec**

2. Reasons 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

Bernadette A. Malec
Name

Bernadette A Malec
Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

File No. 14-24715 Re: 18 Locust Drive, Baltimore, MD 21228

14-49

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0468, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

0035196 469

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 **Eugene J. Fields**

2. Reasons 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

Eugene J. Fields
Name

Eugene J Fields
Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

File No. 14-24715 Re: 18 Locust Drive, Baltimore, MD 21228

14-49

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0469, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

File No. 14-24715

AFFIDAVIT MADE PURSUANT TO 12-103(B) AND 13-203
OF THE TAX-PROPERTY ARTICLE OF THE
ANNOTATED CODE OF MARYLAND

THE undersigned Grantee(s), being purchaser(s) of the property known as:

18 Locust Drive
Baltimore, MD 21228

make(s) oath, in due form of law and under penalties of perjury, that the following is true to the best of the knowledge, information, and belief of Grantee(s), in accordance with Sections 12-103(b) and 13-203 of the Tax Property Article of the Annotated Code of Maryland as follows:

1. We are/I am a "First-Time Maryland Home Buyer", having never owned residential real property in the State of Maryland used as our/my principal residence; and
2. We/I will occupy the property as our/my principal residence.
3. I/we am/are over eighteen (18) years old and fully qualified to make this affidavit.

DATED this 14th, July, 2014

Witness — Ryan King

Witness — Julia King

Witness

Witness

STATE OF MARYLAND, HOWARD COUNTY, to wit:

I HEREBY CERTIFY, That on this 14th day of July, 2014 before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Ryan King and Julia King the GRANTEE(S) herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same.

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

STEPHANIE SHEINBACH DIETZ
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 10, 2017

Notary Public

My commission expires: 5-10-2017

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0470, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

OWNER OCCUPANCY AFFIDAVIT

Ryan King and Julia King, the Grantees in the within Deed hereby certify under the penalties of perjury, as evidenced by the joinder herein, that the land conveyed in this Deed is residentially improved owner-occupied real property and that the residence will be occupied by us as my/our principal residence for at least seven (7) months of the twelve (12) month period immediately following the date of the attached Deed /Assignment.

Witness

Witness

Ryan King

Julia King

Witness

Witness

STATE OF MARYLAND, Howard COUNTY to wit:

I HEREBY CERTIFY, that on this 7/14/14 before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Ryan King and Julia King, the parties herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the foregoing to be their act, and in my presence signed and sealed the same.

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

STEPHANIE SHEINBACH DIETZ
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 10, 2017

Notary Public

My Commission Expires: 5-10-2017

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0471, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

0035196 472

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)

Space Reserved for Circuit Court Clerk Recording Validation

IMP FD SURE 40.00
RECORDING FEE 20.00
TR TAX STATE 762.50
TOTAL 822.50
Rcpt# BA66 Rcpt # 3325
JLE JLF Blk # 1195
Jul 25, 2014 01:57 pm

1 Type(s) of Instruments (☐ Check Box if addendum Intake Form is Attached.)

X Deed / Deed of Trust	☐ Mortgage / Lease	☐ Other	☐ Other

2 Conveyance Type Check Box

X 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	00
State Transfer	First Time Maryland Homebuyer
County Transfer	

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$ 305,000.00	Transfer Tax Consideration	$
Any New Mortgage	$	X ( )% =	$
Balance of Existing Mortgage	$	Less Exemption Amount –	$
Other:	$	Total Transfer Tax =	$ 4245.00
Other:	$	Recordation Tax Consideration	$ 1525.00
		X ( ) per $500 =	$
Full Cash Value:	$	TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$
Surcharge	$ 40.00	$
State Recordation Tax	$ 1,525.00	$
State Transfer Tax	$ 762.50	$
County Transfer Tax	$ 4,245.00	$
Other	$	$
Other	$	$

Agent: BP
Tax Bills: PAID
C.B. Credit: —
Ag. Tax/Other: N

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
01	01-0106200230				☐ (5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	SqFt/Acreage (4)

Location/Address of Property Being Conveyed (2): 18 Locust Drive, Baltimore, MD 21228

Other Property Identifiers (if applicable): | Water Meter Account No.:

Residential [X] or Non-Residential [ ] | Fee Simple [X] or Ground Rent [ ] | Amount: N/A

Partial Conveyance? ☐ Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred: N/A

If Partial Conveyance, List Improvements Conveyed: N/A

7 Transferred From

Doc. 1 – Grantor(s) Name(s)	Doc. 2 – Grantor(s) Name(s)
Eugene J. Fields, Bernadette A. Malec	
Mary T. Elliott, Joseph J. Fields,John P. Fields Eugene J. Fields	
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)
Ryan King	CASH
Julia King	

New Owner's (Grantee) Mailing Address: 18 Locust Drive, Baltimore, MD 21228

9 Other Names to Be Indexed

Doc. 1 – Additional Names to be Indexed (Optional)	Doc. 2 – Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: Patricia Cronin
Firm: Lakeview Title Company
Address: Suite 304, 10025 Gov. Warfield Parkway
Columbia, MD 21044 Phone: (410) 992-4447

☒ Return to Contact Person
☐ Hold for Pickup
☐ Return Address Provided

11 Assessment Information

IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

X Yes	☐ No	Will the property being conveyed be the grantee's principal residence?
☐ Yes	X No	Does transfer include personal property? If yes, identify:
☐ Yes	X 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 Verification | Whole | Part | Tran. Process Verification
Transfer Number | Date Received: | Deed Reference: | Assigned Property No.:

Year	20	20
Land		
Buildings		
Total		

Geo.	Map	Sub	Block
Zoning	Grid	Plat	Lot
Use	Parcel	Section	Occ. Cd.
Town Cd.	Ex. St.	Ex. Cd.	

REMARKS:

☐ Clerk's Office ☐ Office of Finance ☐ SDAT ☐ Preparer

AOC-CC-300 (5/2007)

14-24715

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 35196, p. 0472, MSA_CE62_35052. Date available 08/01/2014. Printed 10/12/2021.

DUPLICATE PAID RECEIPT
ACTUAL TIME DRW
7/24/2014 14:35:30 81
REG WSO4 WALK NS
>>RECEIPT # 634
7/24/2014 OFLN
RECORDATION TAXES
Dept 7 701
ACCOUNT NO 0106200230
$5,770.00 CA
$.00 CA
Baltimore County, Maryland
Space Reserved for Circuit Court Clerk Recording Validation

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0253, MSA_CE62_32034. Date available 06/14/2012. Printed 10/12/2021.

PREPARED WITHOUT TITLE SEARCH

This Personal Representative's Deed, made this 16th day of **May**, **2012**, by and between Cornelius David Helfrich, Personal Representative of The Estate of **VIRGINIA T. FIELDS**, GRANTOR; and, **CORNELIUS DAVID HELFRICH,** party of the second part, GRANTEE.

Whereas, Virginia T. Fields died on December 1, 1994, and on June 1, 1995, the Orphans' Court of Harford County, State of Maryland (the "Court") granted administration of the Estate of the Decedent to Cornelius David Helfrich as Personal Representative of the Estate of the Decedent in Estate No. 28268.

Whereas, Grantor in the capacity as Personal Representative in the Estate of the Decedent has complete and full power and authority by law, to grant and convey the entire fee simple interest in the hereinafter described property; and

Whereas, as part of the administration of the Estate of the Decedent, Grantor desires to convey the entire fee simple estate in the hereinafter described property to the Grantee.

- Witnesseth -

That in consideration of the sum of **Zero Dollars 00/100 ($0.00)**, which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said GRANTOR as Personal Representative on the Estate of the Decedent, does hereby grant and convey to Cornelius David Helfrich, in fee simple, all that lot of ground situate in Baltimore County, State of Maryland and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot 6, as shown on the plat entitled "Locust Drive Extended", which plat is recorded among the Plat Records of Baltimore County in Plat Book C.W.B. Jr No. 10 folio 109.

BEING THE SAME and all that property which by fee simple deed dated December 19, 1959 and recorded among the Land Records of Baltimore County in Liber No. 3649, folio 398, was granted and conveyed by David A. Fields and Bernadette Fields, his wife to Virginia T. Fields.

Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have and To Hold the said tract 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 Grantee his Personal Representative, heirs and assigns, forever, in fee simple.

And Grantor does hereby covenant to execute such further assurances of the same as may be requisite.

Witness the hand and seal of Grantor the day and year first above written.

By: Cornelius David Helfrich
Personal Representative of
The Estate of **Virginia T. Fields**.

STATE OF MARYLAND

COUNTY OF Harford, to wit:

I hereby certify that on this 16TH day of **May, 2012** before me, the undersigned officer, a Notary Public in and for the State aforesaid, personally appeared Cornelius David Helfrich, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged herself to be the Personal Representative of the Estate of Virginia T. Fields, and who, in my presence, signed and sealed the foregoing Deed and acknowledged it to be his act and deed as Personal Representative of the foregoing Estate, giving oath under penalties of perjury that the consideration recited herein is correct.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

DIANE LEONARD SEMOSKI NOTARY PUBLIC HARFORD CO., MD.

Notary Public
My commission expires: 10/25/2014

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Cornelius D. Helfrich, Attorney

AFTER RECORDING, PLEASE RETURN TO:
Helfrich Law Office
31 E. Lee Street
Bel Air, MD 21014

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0254, MSA_CE62_32034. Date available 06/14/2012. Printed 10/12/2021.

0032178 255

2012
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 Section 10-912 of Maryland's Tax General Article. Section 10-912 states that certain tax payments must be withheld when a deed or other instrument that affects a change in ownership of real property is recorded. The requirements of Section 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(s) Information

Name of Transferor:
Cornelius David Helfrich, Personal Representative of the Estate of Virginia T. Fields

2. Reason for Exemption

Resident Status	☒ I/We, Transferor(s), am/are residents of the State of Maryland. ☐ Transferor(s) is a/are resident(s) entity under Section 10-912(A)(4) of the Tax General Article of the Annotated Code of Maryland, 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 section 121.

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

3a. Individual Transferor(s)

Witness

Cornelius David Helfrich, **Personal Representative of the Estate of** Virginia T. Fields

3b. Entity

Title

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0255, MSA_CE62_32034. Date available 06/14/2012. Printed 10/12/2021.

0032178 256

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)

INP FD SURE 40.00
RECORDING FEE 20.00
TOTAL 60.00
Rest# BA02 Rcpt # 29348
JLE BC Blk # 723
Jun 12, 2012 09:37 am

Space Reserved for Circuit Court Clerk Recording Violation

1	Type(s) of Instruments	X	Deed		Mortgage		Other: DoT	
			Deed of Trust		Lease			
2	Conveyance Type Check Box		Improved Sale Arms-Length [1]		Unimproved Sale Arms-Length [2]		Mult. Accounts Arms-Length [3]	X Not an Arms-Length Sale [9]
3	Tax Exemptions (if Applicable) Cite or Explain Authority	Recordation						
		State Transfer						
		County Transfer	Estate Dist					

4	Consideration and Tax Calculations			Finance Office Use Only	
	Consideration Amount			Transfer and Recordation Tax Consideration	
	Purchase Price/Consideration	0.00		Transfer Tax Consideration	$
	Any New Mortgage - First			X ( )% =	$
	Balance of Existing Mortgage			Less Exemption Amount -	$
	Other New Mortgage - Second			Total Transfer Tax =	$
	Other			Recordation Tax Consideration	$
				X ( )% =	$
	Full Cash Value			TOTAL DUE	$

5	Fees	Amount of Fees	Doc. 1	Doc. 2	
		Recording Charge	40.00		Agent
		Surcharge	20.00		Tax Bill:
		State Recordation Tax			
		State Transfer Tax			C.B. Credit:
		County Transfer Tax (if Applicable)			
		Other			Ag. Tax/Other:
		Other			

6	Description of Property	District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
	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).	01	0106201150	5672/465	101	258	☐

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	Sq. Ft./Acreage (4)
Locust Drive	6		A	10/109	50 x 100

Location/Address of Property Being Conveyed (2): Locust Drive

Other Property Identifiers (if applicable): | Water Meter Account No.:

Residential ☑ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ Amount:

Partial Conveyance? ☐Yes ☑ No | Description/Amt. Of Sq. Ft./Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7	Transferred From	Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
		Cornelius David Helfrich, Personal Representative of the Estate of Virginia T. Fields	
		Doc. 1 - Owner(s) of Records, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**

8	Transferred To	Doc. 1 - Grantee(s) Names	Doc. 2 - Grantee(s) Name(s)
		Cornelius David Helfrich	
		New Owner's (Grantee) Mailing Address	
		31 E. Lee Street, Bel Air, MD 21014	

9	Other Names to be Indexed	Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optioned)

10	Contact/Mail Information	Instrument Submitted By or Contact Person		
		Name:	Diane Sengstacke, President	X Return to Contact Person
		Firm:	Home Title Company of MD	☐ Hold for Pickup
		Address:	112 South Main Street, Suite 101, Bel Air, Maryland 21014	☐ Return Address Provided
		Phone:	410-893-3061	

Space Reserved for County Validation

11	Assessment Information	IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER			
		☐ Yes	X No	Will the property being conveyed be the grantee's principal residence?	
		☐ Yes	X No	Does transfer include personal property? If yes, identify:	
		☐ Yes	X 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 Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number:	Date Received:		Deed Reference:		Assigned Property No:	
Year	19	19	Geo.	Map	Sub	Block
Land			Zoning	Grid	Plat	Lot
Buildings			Use	Parcel	Section	Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.	

TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND

REMARKS:

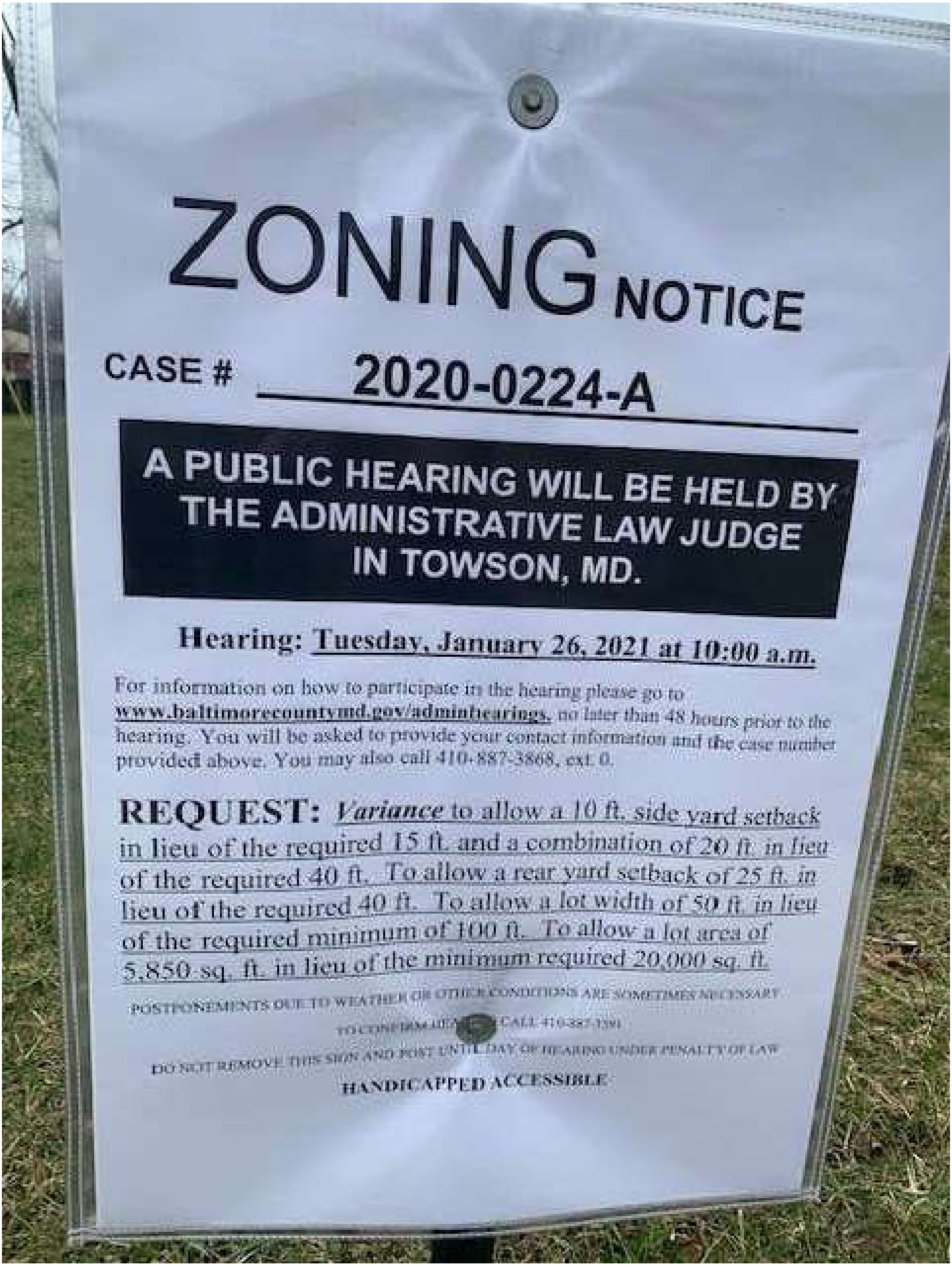
☐ COUNTY TRANSFER TAX
Per ART 11 TITLE 3 SUBTITLE 2, 11-3-202

☐ RECORDATION TAX
Per T.P. ART 12-108

Date 6-11-12

Distribution: Clerk's Office, SDAT, Office of Finance Prepare

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0256, MSA_CE62_32034. Date available 06/14/2012. Printed 10/12/2021.


ZONING NOTICE
CASE # 2020-0224-A
A PUBLIC HEARING WILL BE HELD BY THE ADMINISTRATIVE LAW JUDGE IN TOWSON, MD.
Hearing: Tuesday, January 26, 2021 at 10:00 a.m.
For information on how to participate in the hearing 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.
REQUEST: Variance to allow a 10 ft. side yard setback in lieu of the required 15 ft. and a combination of 20 ft. in lieu of the required 40 ft. To allow a rear yard setback of 25 ft. in lieu of the required 40 ft. To allow a lot width of 50 ft. in lieu of the required minimum of 100 ft. To allow a lot area of 5,850 sq. ft. in lieu of the minimum required 20,000 sq. ft.
POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 410-887-3391
DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW
HANDICAPPED ACCESSIBLE

Tammy Zahner

From: Appeals Board
Sent: Tuesday, October 12, 2021 2:01 PM
To: 'Aaron D. Neal'
Subject: RE: Protestant's Brief - Case No. 20--2224-A

Dear Mr. Neal:

We have received your Brief, and 7 Exhibits.
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

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.

From: Aaron D. Neal <aneal@mhlawyers.com>
Sent: Tuesday, October 12, 2021 1:58 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: jgontrum@wtplaw.com; julieking815@gmail.com; sgarylaura@gmail.com; msandbox321@aol.com; Neal, Kimberly <NealK@ChildrensGuild.org>
Subject: Protestant's Brief - Case No. 20--2224-A

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

Dear Sir or Madam,

Attached please find my response brief (with exhibits) in the above-referenced matter. Please confirm receipt.

Regards,



Aaron D. Neal
*Principal**

McNamee Hosea
6411 Ivy Lane, Suite 200 O 301.441.2420
Greenbelt, Maryland 20770 F 301.982.9450

Facebook | mhlawyers.com

*Admitted in Maryland, Virginia, and the District of Columbia

The information contained herein is confidential and intended for the exclusive use of the addressee(s). If you are not the intended recipient, you are hereby notified that any review, use, dissemination, distribution or copying of this message is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and delete the message. ***Disclosure Required by IRS Circular 230:*** *In accordance with IRS requirements, we wish to inform you that, to the extent this communication contains tax advice, it is not intended or written to be used for the purpose of 1) avoiding tax penalties that may be imposed on the taxpayer by the Internal Revenue Service, or 2) promoting, marketing or recommending to another party any transaction or matter addressed herein.*

IN THE MATTER OF CORNELIUS DAVID HELFRICH LEGAL OWNER DOMINION PROPERTIES, LLC CONTRACT PURCHASER PETITIONERS FOR VARIANCE ON THE PROPERTY LOCATED AT 16 LOCUST DRIVE 1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 20-224-A

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

PETITIONERS' MEMORANDUM

STATEMENT OF THE CASE

This matter comes before the Board of Appeals for Baltimore County as an appeal of Baltimore County Administrative Law Judge Paul Mayhew's April 19, 2021 Opinion and Order denying the Petition for Variances. The Petition was filed by Cornelius David Helfrich as the owner and by Dominion Properties LLC as the contract purchaser of the property at 16 Locust Drive in the Catonsville area of Baltimore County. An appeal was noted timely from the Opinion and Order by John B. Gontrum, Esquire, on behalf of appellants Cornelius Helfrich and Dominion Properties, LLC.

The Petitioners are seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a dwelling with a side yard setback of ten feet in lieu of the required fifteen feet; to allow a combination of side yard setbacks of twenty feet in lieu of the required forty feet; to allow a rear yard setback of twenty-five feet in lieu of the required forty feet; a lot width of fifty feet in lieu of t he required minimum lot width of one hundred feet; and to allow a gross lot area of 5,850 square feet (net lot area 5,000 square feet) in lieu of the required minimum of 20,000 square feet.

A hearing was held remotely using Webex for audio and video participation before the Board on September 9, 2021. John B. Gontrum, Esquire appeared on behalf of the Petitioners. Also appearing for the Petitioners were Patrick Richardson of Richardson Engineering and Brian Leibowitz, vice-President in charge of land acquisition for Dominion Properties, LLC.

Protestants Julie King, Barry Sanders, Laura Scherer appeared and testified pro se. Aaron and Kimberly Neal, owners of 20 Locust Drive, also appeared and testified pro se.

STATEMENT OF FACTS

The subject property is in western Baltimore County just south of Frederick Road in the Catonsville community. It is located on the west side of Locust Drive. It consists of Lot 6 of Section A, Plat of Locust Drive Extension, recorded among the land records of Baltimore County in Plat Book 10, page 109. The record plat was prepared in March, 1933, well before zoning was regulated in Baltimore County. The lot itself is fifty feet wide at the street line and one hundred feet deep for a net area of 5,000 square feet. (Petitioners' Exhibit 3).

Mr. Richardson, who prepared the Petition for Variance and the accompanying site plan, testified for the Petitioners. He was accepted as an expert in zoning and land use. The site plan was presented as Petitioners' Exhibit 2. In addition, he presented a red-lined site plan showing a reduced footprint for the proposed dwelling on the lot, meeting the required rear yard setback pursuant to the B.C.Z.R. (Petitioners' Exhibit 2A). Both site plans state the gross and net areas of the lot as prescribed by the B.C.Z.R. and as required by the Baltimore County Zoning Bureau. The site plans' notes also state that the lot is served by public water and sewer. There is no notation in the file or in the agency comments on the zoning request that the site is in a deficient public services area. The amended site plan (Petitioners' Exhibit 2A) depicts a rectangular

dwelling with a footprint of thirty feet in width and thirty-five feet in depth. The proposed dwelling sets back twenty-five feet from Locust Drive, which setback is achieved by averaging the setbacks of the dwellings on either side of the subject lot pursuant to Section 303 of the B.C.Z.R. The setbacks of the adjacent dwellings are depicted on Petitioners' Exhibits 2 and 2A. Mr. Richardson testified that the setback variances requested are consistent with the dwellings in the subdivision, and the nearby dwellings are shown in faint outline on Petitioners' Exhibits 2 and 2A.

The Plat of Locust Drive Extended depicts twenty lots. Mr. Richardson testified that each lot in the subdivision, but for the subject lot, is now occupied by a dwelling. The dwellings appear to have been built in the 1940's and 1950's but some appear to have been upgraded since that time.

Mr. Richardson further testified that the revised footprint of the proposed dwelling is comparable to the footprints of the other dwellings in the area. In addition, both the originally submitted and revised elevations (depicting the smaller footprint) show that the garage has been eliminated from the front of the dwelling. (Petitioners' Exhibits 4, 4A, 4B). The front of the house will now have a dormer similar to the style of nearby dwellings. Like most of the lots in the subdivision and area, parking will be in the rear of the dwelling. Mr. Richardson noted that any future garage would have to comply with Section 400.1, which limits the size of the structures as well as height and setbacks. Mr. Richardson also testified that the Planning Department would be reviewing the elevations and materials to ensure compatibility with nearby dwellings.

Three aerial photographs showing the extent of development in the neighborhood were introduced by Mr. Richardson. (Petitioners' Exhibits 5A, 5B, 5C). The aerials, which were taken from the Baltimore County My Neighborhood website, also showed a couple of previous zoning cases on Locust Drive. Copies of those zoning cases, which are a matter of public record from Baltimore County, are attached hereto. Petitioners' 5D-5N are photos, derived from on-line street

photography, depicting the housing types and facades of dwellings on both sides of Locust Drive and are comprised of the same materials as those proposed for the dwelling at 16 Locust Drive.

Mr. Richardson also testified with respect to the zoning history of the subject site and surrounding neighborhood. From 1971-1996 the property like others in the subdivision was zoned D.R. 5.5. Under the D.R. 5.5 zoning the lot would have been considered an undersized lot pursuant to Section 304.1 of the B.C.Z.R. No variances would have been needed under that section, and the lot had been held in unique ownership since 1959. (Petitioners' Ex. 6). Although for a long period the adjoining lot at 18 Locust was owned by other members of the Fields family, the lots had not been in joined ownership for over sixty years.

Mr. Richardson further testified that in 1996, the subject lot, along with other properties in an area of over four hundred acres was rezoned from D.R. 5.5 to D.R. 2 (Petitioners' Exhibit 7). Effectively, this made virtually every lot or parcel in the area non-conforming to the requirements of the D.R. 2 zone as shown in the aerials' depictions. Mr. Richardson testified that dwellings which did not conform to the zoning regulations would be permitted to expand up to twenty-five percent of their area provided the dwelling adhered to the existing setbacks; expansions greater than twenty-five percent of the dwelling would need variances from the current regulations.

As explained by Mr. Richardson, on this vacant lot without variances no structure of any kind would be permitted. The undersized lot provisions of Section 304 pertaining to dwellings does not apply because variances would be necessary. Without variances a dwelling on this lot could only be ten feet in width, and even townhouse or multi-family dwellings in Baltimore County are required to be a minimum of twenty feet in width. Comprehensive Manual of Development Policies, Residential Standards, at 28. *See also* Baltimore County Council Resolution 46-2021 attached hereto. Consequently, no dwelling would be permitted on this site without variances. In

addition, not even an accessory structure such a garage or gazebo would be permitted unless the lot were merged with another lot, for accessory structures are not permitted without a principal structure on the same lot.

Although other lots in the subdivision contain roughly the same area as the subject property and the same lot width, Mr. Richardson testified that this lot was unique in that it was the only lot of these non-conforming lots which lacked a dwelling. He testified that the application of the zoning regulations to this vacant, recorded lot create an unnecessary hardship as well as a practical difficulty with conformance to the zoning regulations.

The relief sought is no more than that now enjoyed by other dwellings in the neighborhood based on the reduced dwelling footprint. Mr. Richardson testified that the dwelling would have to comply with sediment and erosion control matters and could not burden other lots with the runoff from the dwelling. Runoff could be directed toward the street.

Mr. Brian Leibowitz of Dominion Properties, LLC also testified. He stated that his company had been in existence for many years and built on numerous properties of similar size in the Baltimore area. He agreed with the submittal of the diminished footprint of the proposed dwelling and the revised elevations to provide for a rear garage. He testified that like the other dwellings in the area the proposed dwelling would have brick on the lower part of the front with the upper part of the front and the sides and rear being siding.

Julia King has been an owner of 18 Locust Drive for seven years. She objects to the variance requests because she believes there is nothing physically unique about the property in size, shape or topography. She introduced several exhibits. Protestants' Exhibit 1, a copy of a My Neighborhood aerial, shows that all the properties are rectangular and have no topographic issues. It also shows that this is the only lot in the photo without a dwelling on it. She also

introduced another copy of the record plat demonstrating the physical similarities of the lots. Finally, addressing the same issue she introduced the SDAT Real Property summary sheet indicating that the subject lot and its neighboring lots are 4,950 or 5,000 square feet in size.

In addition, she testified that in her opinion there would be no hardship for the property owner without the variances because it could be sold as open space. She testified that she believed the property had value as green space, and as green space not all beneficial use would be lost. Protestants' Exhibits 4 and 5 were introduced as her proof of her desire to purchase the property.

Ms. King also is concerned over the runoff from the proposed dwelling. She testified that the rear of her lot is already a saturated area and that additional impervious area would create additional runoff. She also raised the issue that one of the variances sought relief of the area variance based on the gross lot area of 5,850 square feet instead of the net lot area of 5,000 square feet even though both were referenced on the site plan. She did not contest the accuracy of the site plan.

Barry Sanders, whose residence is at 21 Locust Drive, which is across Locust Drive from the subject site, has lived in the community for approximately 25 years and does not believe variances to the D.R. 2 zone requirements are warranted. Like Ms. King he does not believe that there are any unique physical features to the subject site, or that the lot not conforming to the zoning regulations imposed in 1996 is a valid reason to grant variances. He testified that he was familiar with the construction of an addition to the dwelling at 23 Locust adjoining his property and did not oppose it, but he had no recollection of the zoning variance preceding the construction.

Aaron Neal testified on behalf of his wife and himself and introduced Protestants' Exhibit 10. He also argued against the uniqueness of the property, and believed that there would be no hardship if not developed, for it had not been developed over the years. He believed it was simply

an issue over money and whether the lot was worth more as a building lot or as open space. He also believed that granting the variances would create a precedent and encourage overdevelopment of the area.

The final Protestant to testify was Laura Wehland-Scherer, who also entered Protestants' Exhibit 9. She has lived at 14 Locust Drive for 65 years and like the Kings did not wish to see the lot developed. She felt that allowing an additional dwelling would not only increase runoff but tax the existing water and sewer services. She felt that reducing the size of the lot from 20,000 square feet to 5,000 square feet was too much and could place "a looming structure on a grossly undersized lot." She also testified that the previous owner of 18 Locust allowed tenants to have a garden on 16 Locust and that children from the dwelling at 18 Locust played on the vacant lot.

In the file are comments from the Department of Planning and the Department of Environmental Protection and Sustainability. Neither department objected to the variance requests.

LEGAL STANDARD

Application was made in this case for zoning variances pursuant to Section 307 of the B.C.Z.R. This is not a case to be decided under Section 304 of the B.C.Z.R. as an undersized lot because not only does the lot fail to meet the minimum width and area provisions of the current zoning classification but also setback variances are necessary. Section 304.1.B specifically states that for the Section to apply there must be compliance with all other height and area requirements. While features of compatibility and dwelling size are directly mentioned in Section 304 but not in Section 307, these features are inherently part of the discussion as to whether variance relief would be deleterious to the public health, safety or general welfare.

Section 307.1 states:

"§ 307.1. - Authority to grant variances; procedures and restrictions.

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

The section articulates two standards by which area or bulk variances may be granted: practical difficulty and unreasonable hardship. The two standards are referenced in the disjunctive so that it is not necessary to meet both standards with a requested variance, only one. There also exists a third standard, and that is where the zoning regulations would result in an inverse condemnation of property contrary to the "takings clause" of the United States Constitution.

In *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001) the Court reviewed two types of regulatory taking. One form is where the regulation "denies all economically beneficial or productive use of land" *Id.* at 617, quoting *Lucas v. South Carolina Coastal Council*, 505 U.S 1003 (1992). In *Palazzolo*, the Court found that there was a portion of the property that was developable despite the imposition of regulations and because of that fact, not all economic value had been taken by the regulation. In *Lucas*, however, the property owner purchased two lots with the purpose of erecting dwellings. At the time of the purchase the zoning allowed the construction of dwellings on the lots. The State of South Carolina then adopted regulations forbidding the construction of new dwellings on lots such as those purchased by the property owner. Lucas filed

suit attacking not the regulations themselves but their application to his lots. The Court determined that the regulations may well have precluded all beneficial use of the land by prohibiting the structures and remanded the case for further action. Although there were other issues in *Lucas*, one of the more pertinent issues was the discussion about when the application of a regulation "goes too far" for the purposes of the Fifth Amendment yet does not involve physical invasion of the property. *Id.* at 1015 – 1017. The Court went on to discuss the impact of leaving a property vacant:

> "On the other side of the balance, affirmatively supporting a compensation requirement, is the fact that regulations that leave the owner of land without economically beneficial or productive options for its use – typically as here, by requiring land to be left substantially in its natural state – carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm. See, *e.g., Annicelli v. South Kingstown*, 463 A.2d 133, 140-141 (R. I. 1983) (prohibition on construction adjacent to beach justified on twin grounds of safety and "conservation of open space"); *Morris County Land Improvement Co. v. Parsippany-Troy Hills Township*, 40 N.J. 539, 552-553, 193 A.2d 232, 240 (1963) (prohibition on filling marshlands imposed in order to preserve region as water detention basin and create wildlife refuge). As Justice Brennan explained: "From the government's point of view, the benefits flowing to the public from preservation of open space through regulation may be equally great as from creating a wildlife refuge through formal condemnation or increasing electricity production through a dam project that floods private property." *San Diego Gas & Elec. Co., supra*, at 652 (dissenting opinion). The many statutes on the books, both state and federal, that provide for the use of eminent domain to impose servitudes on private scenic lands preventing developmental uses, or to acquire such lands altogether, suggest the practical equivalence in this setting of negative regulation and appropriation. See, *e.g.*, 16 U.S.C. § 410ff-1(a) (authorizing acquisition of "lands, waters, or interests [within Channel Islands National Park] (including but not limited to scenic easements)"); § 460aa-2(a) (authorizing acquisition of "any lands, or lesser interests therein, including mineral interests and scenic easements" within Sawtooth National Recreation Area); §§ 3921-3923 (authorizing acquisition of wetlands); N. C. Gen. Stat. § 113A-38 (1990) (authorizing acquisition of, *inter alia*, "'scenic easements'" within the North Carolina natural and scenic rivers system); Tenn. Code Ann. §§ 11-15-101 to 11-15-108 (1987) (authorizing acquisition of "protective easements" and other rights in real property adjacent to State's historic, architectural, archaeological, or cultural resources).
>
> We think, in short, that there are good reasons for our frequently expressed belief that when the owner of real property has been called upon to sacrifice *all* economically

beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking." *Id.* at 1018-1019.

At no time in either *Palazzolo* or in *Lucas* was allowing the land to remain "open space" considered to be an economically beneficial or productive use of the land despite its possible value either to abutting properties or to the public as open space. The Court in *Lucas* specifically referenced cases where the public entity compensated property owners by purchasing easements to allow land to remain undeveloped.

In Maryland, a change in zoning, which prohibited all development on a parcel of land, was found to be unconstitutional as applied because the parcel was left with no economically viable development rights. *Steel v. Cape Corp.*, 111 Md. App. 1, 677 A.2d 634 (1996). The property was rezoned from residential use to open space. Under open space zoning permitted uses of the land existed, but were very limited and had no practical application to the subject property. The Court found that the application of the zoning to the land was error and that while the zone served a valid, public purpose, its application to the site was unconstitutional. *Id.* at 33-36.

There is a corollary to the taking of all economically beneficial use and that was articulated by the case of *Penn Central Transp. Co. v. New York City*, 438 U. S. 104 (1978) where the Court articulated a standard that a taking could occur if it defeated reasonable, investment-backed expectations. In either a full takings case or a case under the *Penn Central* standard, the issue is to what degree has the regulation impacted permitted development. *Palazzolo v. Rhode Island*, 533 U.S. 606 at 618. (2001). The Court in *Palazzolo* determined that not all value had been taken because a part of the property remained developable despite the regulation. However, if the regulation imposition on a piece of property is so unreasonable as to compel compensation, it

effectuates a taking even against a purchaser who took ownership after the imposition of the regulation. *Id.* at 627.

For a zoning variance to be granted, however, the total taking of value described in *Lucas* or *Palazzolo* does not have to occur.

Hardship standards referenced in various pieces of legislation are usually modified by words such as "unreasonable", "unwarranted" or "unnecessary", but the Court of Appeals has said that these modifications are not substantive differences. In *Belvoir Farms Homeowners Ass'n. v. North,* 355 Md. 259,734 A. 2d 227 (1998), after discussing how the standard was treated in other jurisdictions, the Court through Judge Cathell stated: " We hold, therefore, that the unnecessary or unwarranted hardship standard, or similar standards, are less restrictive than the unconstitutional taking standard. The unwarranted hardship standard, and its similar manifestations, are equivalent to the denial of reasonable and significant use of the property." *Id.* at 282; 734 A. 2d at 240. The appellate courts in Maryland generally review the unreasonable hardship standard either in the context of a use variance, which does not exist in Baltimore County, or in the context of the Chesapeake and Coastal Bay Critical Area regulations.

In *White v. North,* 356 Md. 31, 736 A.2d 1072 (1999) Judge Cathell further reviewed the Critical Area regulations and the required finding of unnecessary hardship. Although the Court's interpretation of the Critical Area regulations was overturned by legislation, its review of unreasonable hardship remains relevant. In its review of the Critical Area Act the Court found that the listed required findings were subsumed into the essential determination of unwarranted hardship and were part of the overall definition. One of the factors was whether denial of the variance would lead to a deprivation of rights commonly enjoyed by others. The Court stated that the grant of a variance must consider the relationship of the proposed use,

> "to the existing uses, whether permitted as of right under the general ordinance or whether they resulted from other variance grants, or are legal nonconforming uses, or were established in any other proper manner. That was the position of the Board, which we perceive to be correct. We also agree with the Board that 'for the same reason, the granting of this variance [would] not confer... any special privilege' when viewed in comparison to *all* similar uses in the neighboring area." *Id.* at 52 [Italics in original.]

The unnecessary or unreasonable hardship standard was further reviewed in *Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC*, 429 Md. 588, 97 A.3d 135 (2014), and *Assateague Coastal Trust, Inc. v. Schwalbach*, 448 Md. 112, 136 A.3d 866 (2016). In the former case the owner of an island decided to replace an existing dwelling that was perilously close to being lost to erosion with a new, larger dwelling and accessory structures. The entire area of the island was within the Chesapeake Bay Critical Area buffer. Variances to build were necessary, and they were evaluated under the "unwarranted hardship" standard. The Court affirmed the standard stated in *Belvoir Farms*. Because no dwelling could be built on the island without a variance, the Board had felt that the unwarranted hardship standard had been met. The fact that the structures had been built without permits or permission did not create such self-inflicted hardship as to deny relief because relief was justified in any event. The Executive Director of the Critical Area Commission stated that for a grandfathered lot, "it would be an unwarranted hardship if an applicant was not able to build a residence on a residential lot." *Id.* at 619 n. 25.

In *Assateague Coastal Trust, Inc. v. Schwalbach*, 448 Md. 112, 136 A.3d 866 (2016), the issue was whether to allow a variance under the Critical Area regulations for a pier extending out from a lot across wetlands to the water. The Court held that denial of access to the water for a waterfront lot constituted unwarranted hardship. The Critical Area Law defined "unwarranted hardship" to mean that "without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested." *Id.* at 120 quoting *Annotated Code of Maryland, Natural Resources*, §8-108(d)(1). The property consisted of five

and a half lots platted in a 1924 subdivision. Two of the lots were within a tidal marsh, and a dwelling occupied another lot. The Court noted that many of the nearby residences had piers that extended out across the marsh. *Id.* at 121. The property owner wished to build a walkway or pier across the marsh similar to walkways on neighboring properties. To do so, the structure needed a variance. The Board of Zoning Appeals of Worcester County found that it would be an unwarranted hardship not to grant the variance. The Assateague Coastal Trust argued that the unwarranted hardship test had not been met.

To prove unwarranted hardship, the Worcester County Code and the Critical Area Law require proof "that special conditions or circumstances exist that are peculiar to the applicant's land or structure and that a literal enforcement of provisions and requirements of the County's Atlantic Coastal Bays Critical Area Program would result in unwarranted hardship." *Id.* at 125 quoting WCC NR §3-111(b)(1); NR §8-1808(d)(5)(i). The hardship was found to be generated by the wetlands separating the upland from the water. This was found by the Court to be a special condition or circumstance even though other lots in the area had the same issue. The Court noted: "Unsurprisingly, the record before the Board indicates that there are numerous properties in the area of Mr. Schwalbach's property with piers that extend more than 100 feet across the tidal marsh to reach navigable water. Without a variance allowing an extended pier, Mr. Schwalbach could not have a pier that would reach the navigable water adjoining his property." *Id.* at 126.

The Court then proceeded to address the following issue: "To prove an "unwarranted hardship," must an applicant demonstrate a denial of *all* reasonable and significant use of the entire property, or must the applicant show *a* denial of a reasonable and significant use of the entire property." *Id.* at 127 [Italics in original opinion.] The Court found that denial of all reasonable and significant use of the entire property would be the "takings" standard stated in *Palazzolo v. Rhode*

Island, 533 U.S. 606 at 618. (2001). The Court also found that the "unwarranted hardship" standard in the Critical Area law codified the *Belvoir Farms* standard. *Id.* at 135. The standard was never intended to be an application of the "unconstitutional taking" standard, and the Assistant Attorney General for the State so testified at a hearing on the legislation responding to *Lewis* and *Mastandrea v. North*, 361 Md. 107 (2000). *Id.* at 137. Consequently, the Court resolved issue posed by the application of the "unwarranted" or "unreasonable" hardship standard as "whether, without the variance, the applicant is denied '*a* reasonable and significant use' that cannot be accomplished somewhere else on the property." *Id.* at 139 [Italicized word in original opinion.]

The least restrictive standard for variance relief is that of practical difficulty. Where local regulations apply this standard, it is applied to area and bulk regulation provisions. When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive ("or"), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements. *Belvoir Farms Homeowners Ass'n, Inc. v. North*, 355 Md. 259, 276 n. 10, 734 A.2d 227 (1999). In cases such as *Loyola Federal Savings & Loan Assoc. v. Buschman*, 227 Md. 243, 176 A.2d 355 (1961) and *McLean v. Soley*, 270 Md. 208, 310 A. 2d 783 (1973), the issues involved defining practical difficulty as it applied to a property and then determining if the request was justified by circumstances involving the property.

> "In determining whether practical difficulties exist, the zoning board must consider three factors:
>
> 1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

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

3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." *McLean v. Soley*, 270 Md. 208, 214-15, 310 A.2d 783 (1973).

The issue to be resolved in those cases involved how the practical difficulty arose: out of some action by the variance petitioner, out of convenience for the petitioner, or by some condition of the property on which the imposition of zoning created a difficulty in compliance.

Montgomery County v. Rotwein, 169 Md. App. 716, 906 A.2d 959 (2006), discussed practical difficulty at length in distinguishing it from being a matter of an inconvenience. *Id.* at 731. The Court stated that the practical difficulty standards requires more than that the variance would be suitable or desirable or could do no harm or would be convenient or profitable for the owner. *Id.* at 731.

Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995) discussed the practical difficulty standard in the context of self-inflicted hardship. In *Cromwell*, the case arose because the petitioner not only increased the height of the accessory structure beyond that allowed by zoning but also beyond that shown on the building permit application. Consequently, compliance with the zoning regulations required the building come down or at least have a substantial amount of the building chopped off. Certainly, compliance with the regulations created a practical difficulty. The issue was how did the practical difficulty arise. The Court stated:

"We conclude that the law in Maryland and in Baltimore County under its charter ad ordinance remains as it has always been – a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists...." *Id.* at 721.

The Court ultimately determined that the hardship was self-inflicted in that the property owner built a building higher than that permitted. No evidence of any form of the property's peculiarity or uniqueness was presented. *Id.* at 726.

The "uniqueness" or "peculiar characteristic" of a property is a standard common to both unreasonable hardship or practical difficulty. The standard to some degree has evolved in its application after *Cromwell*. Typically, one looks to the shape or topography of a piece of property. Application of lot width or setbacks may be a problem with a pie shaped lot, even though there may be numerous pie shaped lots within a zone. Soil conditions were cited in *Mastandrea* even though there were likely numerous properties with similar soil in the area, and clearly in *Assateague Coastal Trust, Inc. v. Schwalbach*, 448 Md. 112, 136 A.3d 866 (2016), numerous properties in the area suffered the same issue of marsh between upland buildable property and water.

Belvoir Farms was not the only variance case authored by Judge Cathell after *Cromwell* and which commented on the same issues as *Cromwell*. *Stansbury v. Jones*, 372 Md. 172, 812 A.2d 312 (2002), involved an Anne Arundel County variance for a substandard lot. The opinion is particularly interesting on the topics of hardship and uniqueness due to the facts recited in Judge Wilner's dissent. In *Stansbury*, the Petitioner re-subdivided property and in so doing created an undersized lot which required variances for it to be developed. In contrast to *Cromwell*, which emphasized the rarity with which variances should be granted, the *Stansbury* Court emphasized that zoning regulations are in derogation of common law rights and that the only justification for the use of restrictions on private property is to protect the "public health, safety or morals." *Id.* at 187-188. The Court also stated that restrictions against development should be read narrowly. The Court held that creation of a substandard lot in need of variances was not a self-inflicted

hardship and that the economic benefit to be derived from this subdivision did not prevent variance relief. *Id.* at 201, 204. Similarly, taking ownership of a lot known to need variances to be developed was not a self-inflicted hardship. *Id.* at 188 quoting *Richard Roeser Professional Building, Incorporated v. Anne Arundel County*, 268 Md. 294, 297 n.3, 793 A2d 545, 547 n.3 (2002).

The case of *Lewis v. Department of Natural Resources*, 377 Md. 382, 833 A.2d 563 (2003) was also authored by Judge Cathell. The findings as to the application of the Chesapeake Bay Critical Area regulations were overturned subsequently by legislation, but the analyses of "uniqueness" as it applies to property and unnecessary hardship remain relevant. The initial fact-finding Board never made findings as to the uniqueness of the property because the property owner had already proceeded to put buildings on the property so the Board found this to be a self-inflicted hardship. The Court declared the presence of buildings without permits to be a "red herring", for variances would have been necessary due to the size and configuration of the site. *Id.* at 425. There was a buildable area on the property, but it was not desired by the property owner. The Court said that the issue should have been whether there was some physical characteristic of the property which created an undue hardship in compliance with the regulations. The Court looked at a totality of circumstances and found that in all events variances would be necessary. It remanded the matter to Board to make findings as to whether there were unique characteristics of the site, which the Court obviously believed existed.

DISCUSSION

In this case the Petitioners have sought variances to build a dwelling on a lot in a very old subdivision. Every other lot in the subdivision has a dwelling on it (Pet. Ex. 2A). Virtually every lot in the neighborhood is occupied by a dwelling (Pet. Ex. 5A, 5B). Petitioners, therefore, are seeking a right already used by others on their non-conforming lots. They are not seeking a special privilege. See *White v. North,* 356 Md. 31at 52, 736 A.2d 1072 (1999). The fact that the lot lacks a dwelling or that the lot is undersized for the existing D.R. 2 requirements is not the fault of the Petitioners. The house has been sized to be the same or smaller than the other dwellings in the subdivision. Neither the location of the dwelling, nor its size is simply a matter of convenience. The house has been placed to require as few variances as possible.

The simple fact is that the dwellings on the lots in the neighborhood are nonconforming to the existing zoning. If the area now zoned D.R. 2 in this area of Catonsville was open land and proposed for a new development, the density in the area would be reduced by more than half. When the small lot table in B.C.Z.R. §1B02.3.C.1 is applied to the D.R. 2 lots, the construction of any structure becomes an impossibility on the lots in the subdivision. The required sum of the side yard setbacks is forty feet. Every lot in the subdivision has a fifty-foot width. A ten-foot-wide building is not only not permitted under the regulations, its appearance would be incompatible with the appearance of every other building in the area. This lot is located in an historic district, and one of the purposes of an historic district is to maintain compatibility.

It would take four of the recorded lots in the recorded subdivision to meet the minimum lot size of 20,000 square feet. It would take at least two lots to meet the setback and lot width requirement, yet each of the lots already has a dwelling on it.

The application of the current zoning regulations to this lot, furthermore, prevents the construction of any structure on the lot. The B.C.Z.R. even prevents the construction of an accessory structure. The Zoning Commissioner's Policy Manual, which is part of the County's Code of Regulations states that variances for accessory structures on vacant lots are prohibited. (*Id.* at page 4-2). Consequently, the imposition of the current zoning on this property without variances deprives it of all economically beneficial or productive use. *Lucas v. South Carolina Coastal Council*, 505 U.S 1003 (1992). In fact, Protestants have urged the Board to allow it remain open space as the only green area in the community. The Court in *Lucas* found that keeping a property open space for the enjoyment of the public was a proper function of government which is why government took property for public use. The *Fifth Amendment*, however, requires compensation. In this case the Protestants would urge the Board to allow the County to accomplish the same end by zoning.

In Baltimore County, we have numerous examples where the County uses open space money or other funds to acquire conservation easements or to acquire open space. The County is required, however, to pay market value for the property. It has been looked upon as a form of taking for government to lower the value of a property by zoning in order to make it more affordable for ultimate acquisition.

In virtually every case where regulatory taking has been at issue, the discussion has centered around the value of the property as occupied by some development versus leaving it as open space. In *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001) a taking was not found only because there was an area on the property where a dwelling could be placed despite the impact of the regulations on most of the land. If no dwelling could be placed on the property, and it all had to remain open space, the assumption is that a taking would have occurred. The Court in both

Lucas and *Palazzolo* recognized that open space has value and that preventing development may also serve a public purpose, but subjecting property to that public purpose is a taking. That is what is being proposed by Protestants in this case. In this case it would be an unconstitutional application of zoning. *See Steel v. Cape Corp.*, 111 Md. App. 1, 677 A.2d 634 (1996).

Obviously, if the imposition of zoning on this small lot without variances constitutes a taking, it creates an unreasonable hardship pursuant to Section 307.1 of the B.C.Z.R. As the Court of Appeals stated in *Belvoir Farms Homeowners Ass'n. v. North,* 355 Md. 259, 282 734 A. 2d 227, 240 (1998): "We hold, therefore, that the unnecessary or unwarranted hardship standard, or similar standards are less restrictive than the unconstitutional taking standard. The unwarranted hardship standard, and its similar manifestations, are equivalent to the denial of reasonable and significant use of the property." The Court of Appeals further it explained that "unreasonable hardship" is not the prohibition of all reasonable and significant uses but of a single reasonable and significant use. *Assateague Coastal Trust, Inc. v. Schwalbach*, 448 Md. 112 127, 139, 136 A.3d 866 (2016). A dwelling on this lot must be deemed to be a reasonable and significant use of the property. Every other lot has a dwelling of similar size. A dwelling is permitted elsewhere in the community under the residential zoning in place. Why would placing a dwelling on this lot be unreasonable? If all other property owners are allowed a dwelling and are permitted to expand their dwellings as non-conforming uses by twenty-five percent, why is it not an unreasonable hardship to prevent the use of this property for any structure? Contrary to Protestant Scherer's opinion the proposed dwelling on this lot would not have any more of an impact on her lot than the dwelling now in place on her lot has on this lot or the lot on the other side of it. In fact, the proposed dwelling appears smaller or at least similarly sized to her dwelling. See Petitioners' Exhibit 2A.

Protestants argue that the lot does not meet the test of special circumstances or conditions existing that are peculiar to the land or structure. They accurately argue that the lot is similar in size and shape and topography to every other lot in the subdivision and indeed to the neighborhood, and that the D.R. 2 zone applies to all these properties. However, it cannot be contested that the application of the D.R. 2 regulations to this particular lot has an impact that is very different than the impact on all the other lots in the neighborhood. That peculiar impact does not come from any action by the Petitioners. It derives solely from the fact that it is the only nonconforming lot without a dwelling on it in the subdivision. The application of the zoning regulations to this lot is unique. The property owner's lot in *Assateague Coastal Trust* was uniquely impacted from its use of riparian rights by the application of the Coastal Bays Critical Area regulations. Many other lots in the area were similarly disproportionately impacted, but that did not make those lots less peculiar or less unique. They all needed variances to access the water and to enjoy a reasonable and substantial right. There was no issue of voiding the validity of the Critical Area law by the granting of these variances.

In this case it was highly unusual to apply D.R. 2 zoning to an existing community this dense in dwelling units. It meant that any new dwellings would need variances to be built on existing lots or parcels. It meant that existing dwellings would need variances to expand beyond twenty-five percent. Perhaps, the Council believed that subjecting these undersized properties to a public process was more important than the issues it created for the property owners. Because the subdivisions were part of an historic district, by definition, it was fully developed but for the odd lot. Constitutionally, the imposition of the D. R. 2 zoning was not intended to create open space by zoning ordinance on a vacant lot, but the application of the zoning ordinance to the small,

vacant lot has an inordinate impact. It is not just the size of the lot, but also the fact that it is uniquely undeveloped. No other lot has that characteristic.

The Board of Appeals recognized in *In the Matter of Grace M. Mueller & Herman Mueller*, Jr., Case No. 04-487-A that the imposition of zoning on substandard lots could create a unique condition to justify a variance. It was a recognition that lot size could be a unique characteristic when it was the only non-conforming lot without improvement. The Board stated: "In such cases, the imposition of the new regulations impacts the lots in the old subdivision disproportionately as compared to lots in the area developed after and in accordance with the new regulations." *Id.* at 5. See *Mueller v. People's Counsel*, 177 Md. App. 43, 934 A.2d 974 (2007) affirming the Board on other grounds. *Mueller,* of course, addressed also the concepts of zoning merger and undersized lots, but the Board also applied the criteria of Section 307.1 to the two lots at issue.

The least restrictive standard of practical difficulty most certainly should apply to these variance requests. If the application of the zoning ordinances deprives the property of all substantial development rights, and if it deprives the property of a reasonable and substantial right, then surely the application of the zoning restrictions to the lot creates a practical difficulty with compliance with the regulations.

Although the Court in *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995) discussed how rarely variances should be given, the same author of *Cromwell* appeared somewhat more generous after elevation to the Court of Appeals in approving variances or issues related to variances in *White*, *Mastandrea, Stansbury* and *Lewis* when the standard was more rigorous than that of practical difficulty.

Cromwell should be read in the context of how it came before the Court. It arrived as a clear case of self-inflicted hardship. There was no evidence other than the property owner's own

disregard of the regulations and the fact that the accessory building was already constructed to justify the variance. Neither size, nor shape nor topography was at issue. In later cases, however, Judge Cathell did not find self-inflicted hardship even when the variances were necessitated by the petitioner's actions in subdivision (*Stansbury*), desire for an amenity (White) or desire to locate a hunting camp in a restricted location as opposed to a permitted location (*Lewis*). In *Stansbury*, *White* and *Lewis* the Court quoted *Landay v. Board of Appeals*, 173 Md. 460, 466, 196 A. 293 (1938) for the proposition that zoning regulations "are in derogation of the common law right to so use property as to realize its highest utility, and while they should be liberally construed to accomplish their plain purpose and intent, they should not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language."

The D.R. 2 zone was never intended to apply to existing lots of record that were 5,000 square feet in size and properly recorded in order to prevent all development. This is clear from the vesting provisions for new development under the Baltimore County Code. A more recent, duly recorded subdivision plat under current regulations becomes vested, particularly when developed, against future changes in the regulations, particularly zoning. Baltimore County Code, §32-4-264. In this case the D.R. 2 zone may have been intended to provoke a public hearing and an airing of the issues with respect to conformity of the dwelling, but it was not intended to take away all reasonable development rights of the lot. Granting a variance in this case does not in any way invalidate the D.R. 2 zone in Baltimore County. The unique conditions present with this lot do not create a precedent on every lot in D.R. 2 because of the non-conformance of this vacant lot with the D.R. 2 standards.

With respect to the standards of practical difficulty the Petitioners produced irrefutable evidence that compliance with the strict letter of the restrictions governing area, setbacks and

frontage would unreasonable prevent the owner from using the property for a permitted purpose. The Petitioners also demonstrated, both in testimony, and exhibits that the proposed dwelling would conform in size and placement on the lot to the size and lot placement on other lots in the district. See, ex. Petitioners' Exhibits 2A, 5A, B, C. Because of the uniqueness of the lot within the area and within the zone, the granting of the variance would not create a presumption that all lots within the D.R. 2 should be 5,000 square feet in size and fifty feet wide. This vacant lot is truly an outlier in the D.R. 2 zone. The requirement of a hearing and of the variance relief maintains the spirit of the zoning regulations and that public safety and welfare are secured. *McLean v. Soley*, 270 Md. 208, 214-15, 310 A.2d 783 (1973).

Protestants have argued that there may be issues with runoff or with construction. It must be presumed that there will be adherence to other elements of Baltimore County regulations and ordinances. The Petitioners will have to build the dwelling in conformance with sediment and erosion control ordinances, address water runoff appropriately, and adhere to public works and building standards. The elevations for the dwelling will have to be reviewed by the Department of Planning.

Finally, the only evidence in the record is that the property is served by all public utilities and that the site is not in a deficient area. Protestants conceded that the proposed dwelling's reduced size is comparable to other dwellings as is its setbacks. Any future location and size of a rear garage must comply with the standards in B.C.Z.R. § 400. Many of the lots have garages in the rear yard, and that is what was requested for this lot as opposed to a front entry garage to keep the dwelling comparable to other dwellings.

Protestants argued that amending the plan to show a reduced footprint for the dwelling is impermissible at the Board level. By reducing the footprint of the proposed dwelling a rear yard

variance was eliminated. The same result would be accomplished if the Board denied the rear yard variance and conditioned the approval of the dwelling on the elevations shown in Petitioners' Ex. 4-B. The Board always has these abilities. The argument is one of form and not of substance and has never been applied when Petitioner offers to withdraw a variance request and diminish the relief sought, and the Board can accomplish that on its own.

Protestants also argue that there is a fatal flaw in the requested relief of property of 5,850 square feet in lieu of the permitted 20,000 square feet. Again, this is a celebration of form over substance. The site plan, which is part of the zoning package, clearly shows that the gross area of the lot is 5,850 square feet. The net area of the lot is also shown as 5,000 square feet. None of the parties has contested either of these measurements. The confusion usually is between the net area of a lot and the gross area of the lot, but in this case, no one is confused over the measurements. The lot is both. The standard is 20,000 square feet of net lot area, which was correctly recited. Gross lot area may vary based on road width and frontage. No one has approached these variances with any confusion as to what is being sought.

CONCLUSION

In conclusion, for the reasons set forth above, Petitioners respectfully request that the Board grant the variances sought with respect to lot size, lot frontage, and side yard individual and cumulative setbacks.

John B. Gontrum
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue, Suite 300
Towson, Maryland 21204
410-832-2055
jgontrum@wtplaw.com

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2021, a copy of the foregoing Petitioners' Memorandum was electronically mailed and/or sent to the following individuals by first class mail, postage prepaid:

Ryan King
Julia King
18 Locust Drive
Baltimore, Maryland 21228
julieking815@gmail.com

Laura G. Wheland-Scherer
14 Locust Drive
Baltimore, Maryland 21228
sgarylaura@gmail.com

Aaron Neal
Kimberly Neal
20 Locust Drive
Baltimore, Maryland 21228
aneal@mhlawyers.com

Barry M. Sanders
Mary K. Sanders
21 Locust Drive
Baltimore, Md. 21228
msandbox321@aol.com

John B. Gontrum

11955313

IN RE: PETITION FOR ADMIN. VARIANCE NE side of Locust Drive; 497 feet S of Frederick Road 1st Election District 1st Councilmanic District **(23 Locust Drive)** John and Linda Shifflett *Petitioners*	*	BEFORE THE DEPUTY ZONING COMMISSIONER FOR BALTIMORE COUNTY **Case No. 2010-0020-A**

* *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject property, John and Linda Shifflett for property located at 23 Locust Drive. The variance request is from Sections 1B02.3.A.5 and 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an addition with a side yard setback of 10 feet and combination of 27 feet in lieu of the minimum required 15 feet and 40 feet, respectively. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1. Petitioners wish to construct a one-story addition containing a family room, full bathroom and walk-in closet. The proposed addition can only be constructed at the rear of the home. This addition will not be wider than the existing dwelling.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated August 5, 2009 which indicates that the property is located within the Central Catonsville National Register Historic District. The proposed addition shall be architecturally consistent with the existing main building.

RECEIVED FOR FILING
8-18-09
By

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on July 26, 2009 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Deputy Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 18th day of August, 2009 that a variance from Sections 1B02.3.A.5 and 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an addition with a side yard setback of 10 feet and combination of 27 feet in lieu of the minimum required 15 feet and 40 feet, respectively is hereby GRANTED, subject to the following:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

RECEIVED FOR FILING
8.18.09
PB

2. The proposed addition shall be architecturally consistent with the existing main dwelling.

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

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

ORDER RECEIVED FOR FILING
Date 8.18.09
By

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

THOMAS H. BOSTWICK
Deputy Zoning Commissioner

August 18, 2009

JOHN AND LINDA SHIFFLETT
23 LOCUST DRIVE
CATONSVILLE MD 21228

Re: Petition for Administrative Variance
Case No. 2010-0020-A
Property: 23 Locust Drive

Dear Mr. and Mrs. Shifflett:

Enclosed please find the decision rendered in the above-captioned case.

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,

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

Enclosure

TAX. ACCOUNT # 0 1 0 9 5 0 0 2 9 0

Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at x 23 Locust DR.

which is presently zoned x DR 2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1B02.3A.5., 1B02.3B. (BCZR)

TO PERMIT AN ADDITION WITH A SIDE YARD SETBACK OF 10-FEET AND COMBINATION OF 27-FEET IN LIEU OF THE MINIMUM REQUIRED 15-FEET AND 40-FEET, RESPECTNELY.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

John R. Shifflett
Name - Type or Print

John R. Shifflett
Signature

Linda K. Shifflett
Name - Type or Print

Linda K. Shifflett
Signature

23 Locust Dr. 410-788-4795
Address Telephone No.

Catonsville, MD 21228
City State Zip Code

Representative to be Contacted:

Name

Address Telephone No.

City State Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this [illegible] day of [illegible] that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

CASE NO. [illegible] Reviewed By D.T. Date 7/15/09

REV 10/25/01 8:18:09 Estimated Posting Date 7/26/09

B3

Affidavit in Support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows: That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 23 Locust Drive
Address

Catonsville MD 21228
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty):

The current zoning restrictions will allow for an addition that is approximately 10 feet wide. The proposed addition is single story without a basement. The proposed addition includes a small family room, full bathroom and walk-in closet. Current setback requirements will significantly restrict our options for adding needed living space and providing a second bathroom within our residence.

That the Affiant(s) acknowledge(s) that if a formal demand is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

Signature John R. Shifflett
John R. Shifflett
Name - Type or Print

Signature Linda K. Shifflett
Linda K. Shifflett
Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 14th day of July 2009, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared John R. Shifflett & Linda K Shifflett the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

Franklin Blatt
Notary Public

My Commission Expires

Franklin Blatt
Notary Public
Baltimore County, Maryland
My commission expires November 10, 2011

REV 10/25/01

ZONING DESCRIPTION FOR **23 Locust Drive, Catonsville, Maryland 21228**

Beginning at a point on the northeast side of Locust Drive, thirty-four feet wide, at a point distant four hundred ninety-seven feet five and one-half inches southeasterly measured along said northeast side of Locust Drive from the corner formed by the intersection of said northeast side of Locust Drive with the southeast side of Frederick Road, said point being at the division line between Lot No. 6 and Lot No. 7, Section B, as laid out on the Plat of "Locust Drive Extension", recorded among the Land Records of Baltimore County in Plat Book No. 10, folio 109; and running thence binding on said northeast side of Locust Drive, South sixteen degrees thirty-three minutes east fifty feet (S 16 33' E 50') to the division line between Lot No. 5 and Lot No. 6, Section B, as laid out on said Plat; thence binding on said last mentioned dividing line, North seventy-three degrees twenty-seven minutes east one hundred twenty-seven feet eleven inches (N 73 27' E 127' 11") to the northeastmost outline of the whole tract of which this lot is part; thence binding on said outline North sixteen degrees forty-four minutes west fifty feet (N 16 44' W 50') to the division line between Lot No. 6 and Lot No. 7, first herein referred to; and thence binding on said first mentioned division line, South seventy-three degrees twenty-seven minutes west one hundred twenty-seven feet nine inches (S 73 27' W 127' 9") to the place of beginning. The courses in the above description are approximate True Meridian Courses.

BEING Lot Numbered Six (6), Section B, on the Plat of Locust Drive Extension, "POWERS PLAT" which Plat is recorded among the Land Records of Baltimore County in Plat Book C.W.B.Jr. No. 10, folio 109. Also known as 23 Locust Drive, Catonsville, Maryland 21228 and located in the First Election District, 1st Councilmanic District. CONTAINING 6,350 SQUARE FEET OF LAND.

2010-0020-A

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

No.

Date:

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount

Total:

Rec From:

For:

CASHIER'S VALIDATION

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

CERTIFICATE OF POSTING

RE: Case No 2010-0020-A

Petitioner/Developer SHIFFLETT

Date Of Hearing/Closing: 8/10/09

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

Attention:

Ladies and Gentlemen

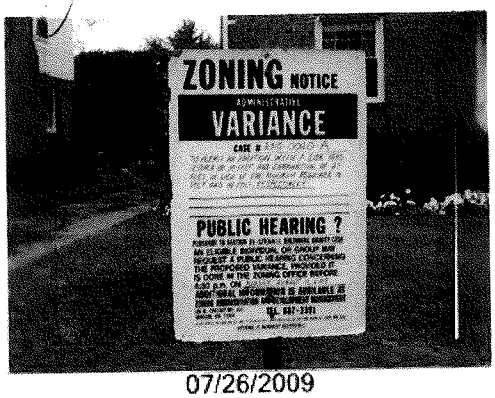
This letter is to certify under penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property at 23 LOCUST DRIVE

This sign(s) were posted on July 26,2009
Month,Day,Year

Sincerely,

Martin Ogle 7/26/09
Signature of Sign Poster and Date
Martin Ogle
60 Chelmsford Court
Baltimore,Md,21220
443-629-3411

Martin Ogle 7/26/09



07/26/2009

BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number (2010) 20[00]-0020-A Address 23 Locust Drive

Contact Person: Donna Thompson Phone Number: 410-887-3391
Planner: Please Print Your Name

Filing Date: 7/15/09 **Posting Date:** 7/26/09 **Closing Date:** 8/10/09

Any contact made with this office regarding the status of the administrative variance should be through the contact person (planner) using the case number.

1. **POSTING/COST:** The petitioner must use one of the sign posters on the approved list (on the reverse side of this form) and the petitioner is responsible for all printing/posting costs. Any reposting must be done only by one of the sign posters on the approved list and the petitioner is again responsible for all associated costs. The zoning notice sign must be visible on the property on or before the posting date noted above. It should remain there through the closing date.

2. **DEADLINE:** The closing date is the deadline for an occupant or owner within 1,000 feet to file a formal request for a public hearing. Please understand that even if there is no formal request for a public hearing, the process is not complete on the closing date.

3. **ORDER:** After the closing date, the file will be reviewed by the zoning or deputy zoning commissioner. He may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. You will receive written notification, usually within 10 days of the closing date if all County agencies' comments are received, as to whether the petition has been granted, denied, or will go to public hearing. The order will be mailed to you by First Class mail.

4. **POSSIBLE PUBLIC HEARING AND REPOSTING:** In cases that must go to a public hearing (whether due to a neighbor's formal request or by order of the zoning or deputy zoning commissioner), notification will be forwarded to you. The sign on the property must be changed giving notice of the hearing date, time and location. As when the sign was originally posted, certification of this change and a photograph of the altered sign must be forwarded to this office.

(Detach Along Dotted Line)

Petitioner: This Part of the Form is for the Sign Poster Only

USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT

Case Number (2010) 20[00]-0020-A Address 23 Locust Drive

Petitioner's Name SHIFFLETT Telephone 410-788-4795

Posting Date: 7/26/09 **Closing Date:** 8/10/09

Wording for Sign: To Permit AN ADDITION WITH A SIDE YARD SETBACK OF 10-FEET AND COMBINATION OF 27-FEET IN LIEU OF THE MINIMUM REQUIRED 15-FEET AND 40-FEET, RESPECTIVELY.

WCR - Revised 7/7/08

BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

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: 2010-0020-A

Petitioner: SHIFFLETT

Address or Location: 23 LOCUST DRIVE

PLEASE FORWARD ADVERTISING BILL TO:

Name: MR. & MRS. JOHN R. SHIFFLETT

Address: 23 LOCUST DRIVE

CATONSVILLE, MD 21228

Telephone Number: 410-788-4795

Revised 2/20/98 - SCJ

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

August 11, 2009

John & Linda Shifflett
23 Locust Dr.
Catonsville, MD 21228

Dear: John & Linda Shifflett

RE: Case Number 2010-0020-A, 23 Locust Dr.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on July 15, 2009. 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:lnw

Enclosures

c: People's Counsel

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: August 5, 2009

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

SUBJECT: Zoning Advisory Petition(s): **Case(s) 10-020- Administrative Variance**

The Office of Planning has reviewed the above referenced case(s) and offers the following:

The subject property is located within the Central Catonsville national Register Historic District. The proposed addition shall be architecturally consistent with the existing main building.

For further questions or additional information concerning the matters stated herein, please contact Dennis Wertz in the Office of Planning at 410-887-3480.

Prepared By:
CM/LL

RECEIVED

AUG 06 2009

ZONING COMMISSIONER

W:\DEVREV\ZAC\10-020.doc

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: August 7, 2009

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

SUBJECT: Zoning Advisory Committee Meeting
For August 3, 2009
Item Nos. 2010-015, 020, 022, 023, 024
and 025

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

DAK:CEN:kmt
cc: File
G:\DevPlanRev\ZAC -No Comments\ZAC-08032009-NO COMMENTS doc

AV
8-1009
Closing

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED

SEP 10 2009

ZONING COMMISSIONER

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination

DATE: September 10, 2009

SUBJECT: Zoning Item # 10-020-A
Address 23 Locust Drive
(Shifflett Property)

Zoning Advisory Committee Meeting of July 27, 2009

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

Reviewer: JWL Date: 9/9/09

Patricia Zook - Re: Case 2010-0020-A - comments needed

From: Dennis Kennedy
To: Zook, Patricia
Date: 8/17/2009 4:01 PM
Subject: Re: Case 2010-0020-A - comments needed
CC: Richards, Carl

PATTI:
Our comments were sent to the zoning office on August 11. I don't know why they weren't in the file. We had no comment on this one.
Dennis
>>> Patricia Zook 8/17/2009 10:40 AM >>>
Good morning Dennis -

The below-described administrative variance case file is missing comments from your office. If you have no comment, just reply to this e-mail and I'll place it in the file.

CASE NUMBER: 2010-0020-A
23 Locust Drive
Location: NE side of Locust Drive; 497 feet S of Frederick Road.
1st Election District, 1st Councilmanic District
Legal Owner: John and Linda Shifflett
Closing Date: 8/10/2009

ADMINISTRATIVE VARIANCE To permit an addition with a side yard setback of 10 feet and combination of 27 feet in lieu of the minimum required 15 feet and 40 feet, respectively.

As always, thanks for your help.

Patti Zook
Baltimore County
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson MD 21204
410-887-3868
pzook@baltimorecountymd.gov

Patricia Zook - Case 2010-0020-A - comments needed

From: Patricia Zook
To: Kennedy, Dennis
Date: 8/17/2009 10:40 AM
Subject: Case 2010-0020-A - comments needed

Good morning Dennis -

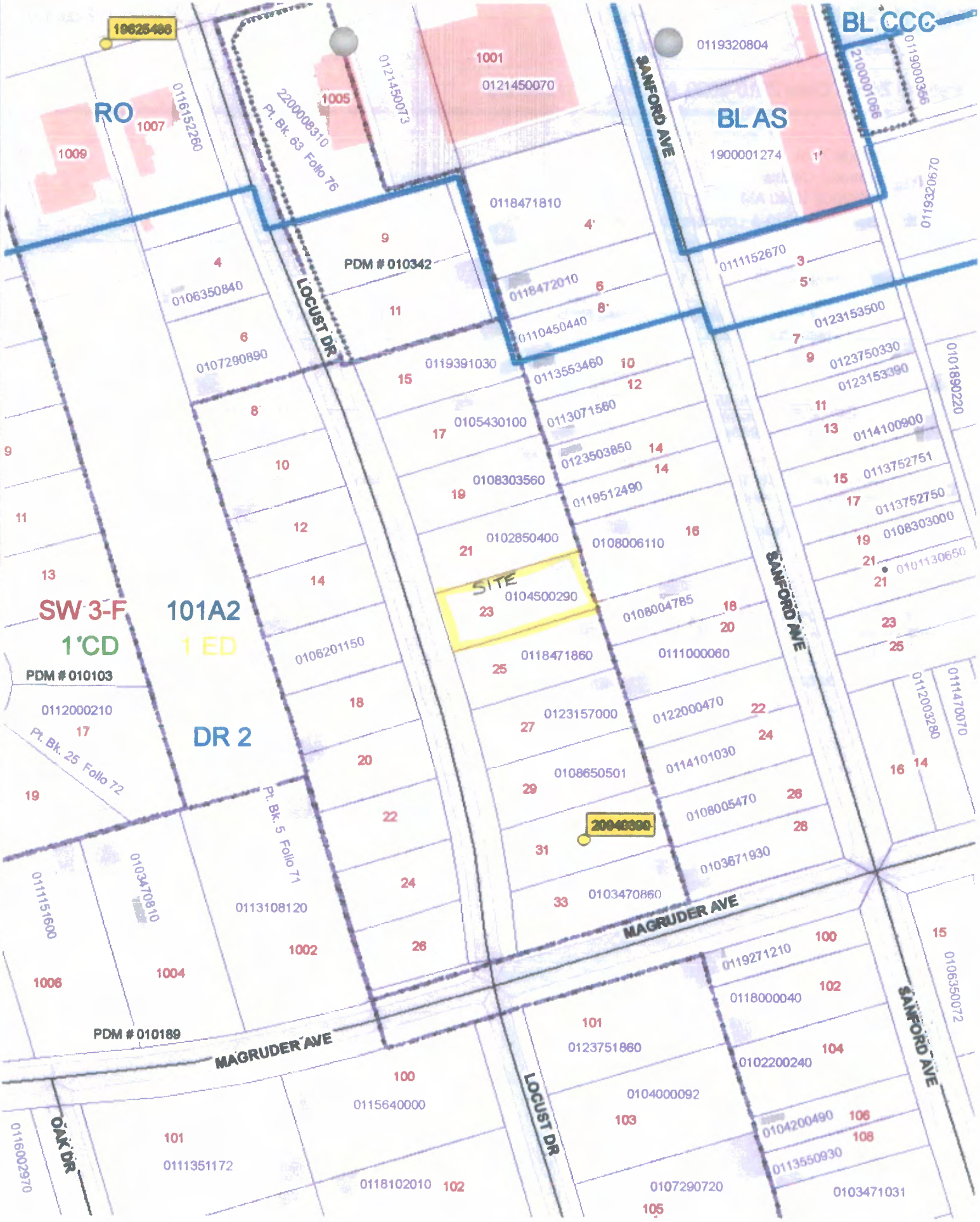
The below-described administrative variance case file is missing comments from your office. If you have no comment, just reply to this e-mail and I'll place it in the file.

CASE NUMBER: 2010-0020-A
23 Locust Drive
Location: NE side of Locust Drive; 497 feet S of Frederick Road.
1st Election District, 1st Councilmanic District
Legal Owner: John and Linda Shifflett
Closing Date: 8/10/2009

ADMINISTRATIVE VARIANCE To permit an addition with a side yard setback of 10 feet and combination of 27 feet in lieu of the minimum required 15 feet and 40 feet, respectively.

As always, thanks for your help.

Patti Zook
Baltimore County
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson MD 21204
410-887-3868
pzook@baltimorecountymd.gov


RO
BL CCC
BL AS
SW 3-F
1 CD
101A2
1 ED
DR 2
SITE
SANFORD AVE
LOCUST DR
MAGRUDER AVE
OAK DR
PDM # 010342
PDM # 010103
PDM # 010189
Pt. Bk. 63 Folio 76
Pt. Bk. 25 Folio 72
Pt. Bk. 5 Folio 71
0121450070
0121450073
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0118472010
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0111152670
0119320804
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0108005470
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0103470810
0115640000
0111351172
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0123751860
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0123153500
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0101890220
0112000210
0106201150
0111470070
0112003280
0106350072
0116002970
1001
1005
1007
1009
1002
1004
1006
100
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2010-0020-A

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw3.1)

Go Back
View Map
New Search

Account Identifier: **District** - 01 **Account Number** - 0104500290

Owner Information

Owner Name:	SHIFFLETT JOHN R SHIFFLETT LINDA K	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	23 LOCUST DR BALTIMORE MD 21228-5002	**Deed Reference:**	1) /19207/ 448 2)

Location & Structure Information

Premises Address
23 LOCUST DR

Legal Description
POWERS PLAT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
101	7	258			B		6	1	**Plat Ref:** 10/ 109

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1950	1,188 SF	6,350.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	1/2 BRICK SIDING

Value Information

	Base Value	Value As Of 01/01/2007	Phase-in Assessments As Of 07/01/2008	As Of 07/01/2009
Land	84,350	180,350		
Improvements:	112,920	175,640		
Total:	197,270	355,990	303,082	355,990
Preferential Land:	0	0	0	0

Transfer Information

Seller:	DORSEY RIDGELY H	**Date:**	11/24/2003	**Price:**	$200,900
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/19207/ 448	**Deed2:**	
Seller:	WHEELER MICHAEL J & CLAYTO	**Date:**	07/01/1949	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2008	07/01/2009
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *









PLAT TO ACCOMPANY PETITION FOR ZONING [X] VARIANCE [ ] SPECIAL HEARING

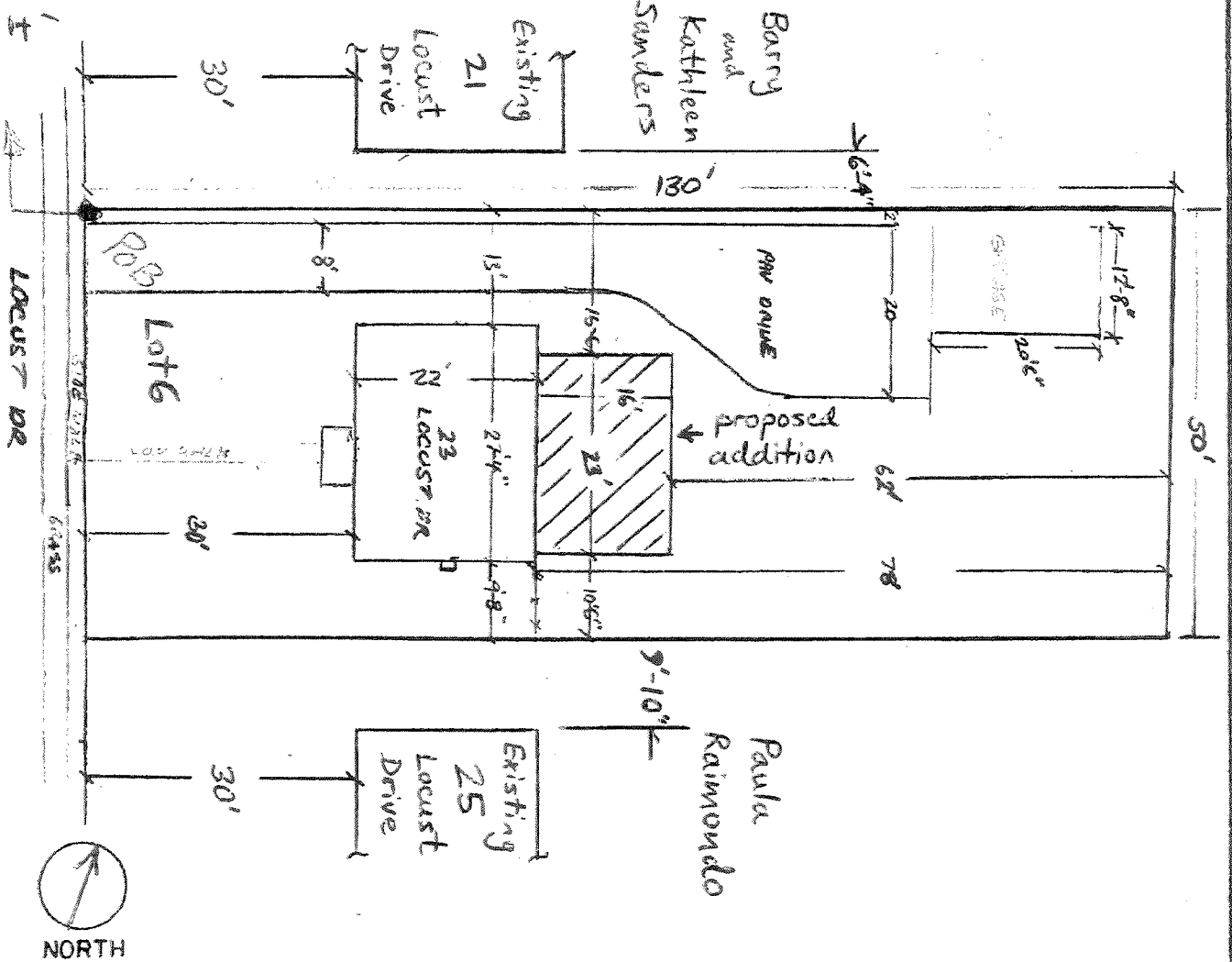
PROPERTY ADDRESS 23 Locust Drive

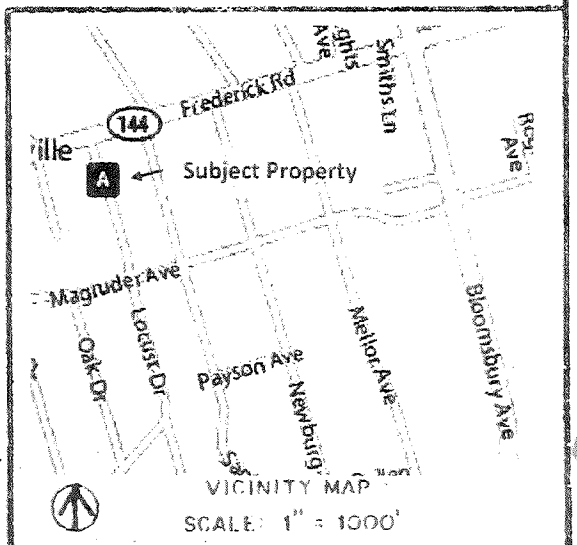
SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME Powers of Locust

PLAT BOOK # 10 FOLIO # 109 LOT # 6 SECTION # B

OWNER John and Linda Shifflett





LOCATION INFORMATION

ELECTION DISTRICT 1

COUNCILMANIC DISTRICT 1

1" = 200' SCALE MAP # 101A2

ZONING DR 2

LOT SIZE 0.15 ACREAGE 6350 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	[X]	[ ]
WATER	[X]	[ ]

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	[ ]	[X]
100 YEAR FLOOD PLAIN	[ ]	[X]
HISTORIC PROPERTY/ BUILDING	[ ]	[X]

PRIOR ZONING HEARING NONE

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #
D.T.	0020	2010-0020-A

PREPARED BY John Shifflett

SCALE OF DRAWING: 1" = 20'

-15-

IN RE: PETITION FOR ADMIN. VARIANCE
NE/S Locust Drive, 697.7' SE of the c/l
Frederick Road
(31 Locust Drive)
1st Election District
1st Council District

Richard W. Robertson, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 04-390-A
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Administrative Variance filed by the owners of the subject property, Richard W. Robertson, and his wife, Mary Bahr-Robertson. The Petitioners seek relief from Sections 104.3 and 1B02.3.C of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an addition that expands the exiting nonconforming structure by 94% in lieu of the maximum allowed 25%, and a side yard setback of 8 feet in lieu of the required 15 feet, and a side yard setback sum of 18 feet in lieu of the required 40 feet for a D.R.2 zoned lot. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

The Petition was filed through the administrative variance process, pursuant to Section 26-127 of the Baltimore County Code. That Section allows an individual to seek variance relief for an owner-occupied residential property without the need for a public hearing. Under the Code, any property owner residing within 1,000 feet of the property in question who objects to the relief requested has 15 days from the date of the sign posting to demand a public hearing for a determination as to the merits of the request. Additionally, the Zoning Commissioner/Deputy Zoning Commissioner can schedule the matter for a public hearing if deemed appropriate.

In this case, the Zoning Commissioner determined that relief from a nonconforming use requirement (Section 104) cannot be granted through the administrative variance process and

ORDER RECEIVED FOR FILING
Date 4/14/04
By

the matter was referred to the Department of Permits and Development Management (DPDM) to schedule for a public hearing. Subsequently, a call was received from Calvin Boone, a representative for the Petitioners, after which the Zoning Commissioner determined that the Petition should be amended to eliminate the nonconforming use requirement.

The Petitioners have filed the supporting affidavits as required by Section 26-127 (b)(1) of the Baltimore County Code. The subject property having been posted and there being no requests for a public hearing, a decision shall be rendered based upon the documentation contained within the case file. That information, including signed statements of support from adjacent property owners, is sufficient to support a finding that the relief requested meets the spirit and intent of Section 307.1 of the B.C.Z.R. and will not result in any detriment to the health, safety and general welfare of the surrounding locale. The site plan indicates that the proposed addition will be a two-story structure, approximately 32' wide by 18' deep, and located to the rear of the existing dwelling. It was indicated that the proposed addition is needed to provide living space for this growing family. It is also to be noted that the Petitioners submitted signed statements from the adjacent property owners on both sides indicating that they have no objections to the proposal. Moreover, there were no adverse comments submitted by any County reviewing agency. For all of these reasons, I am persuaded to grant the variance.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the B.C.Z.R. having been met, and for the reasons set forth above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 19th day of April 2004 that the Petition for Administrative Variance seeking relief (as amended) from Section 1B02.3.C of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 8 feet in lieu of the required 15 feet, and a side yard setback sum of 18 feet in lieu of the required 40 feet for D.R.2 zoned land, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

ORDER RECEIVED FOR FILING
Date 4/19/04
By JGG

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the 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.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 104.3 of the B.C.Z.R. to allow an addition that expands the exiting nonconforming structure by 94% in lieu of the maximum allowed 25%, be and is hereby DISMISSED AS MOOT.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 7/19/04
By BJS

Zoning Commissioner

Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
Tel: 410-887-3868 • Fax: 410-887-3468

Baltimore County

James T. Smith, Jr., County Executive
Lawrence E. Schmidt, Zoning Commissioner

April 19, 2004

Mr. & Mrs. Richard W. Robertson
31 Locust Drive
Baltimore, Maryland 21228

RE: PETITION FOR VARIANCE
NE/S Locust Drive, 697.7' SE of the c/l Frederick Road
(31 Locust Drive)
1st Election District – 1st Council District
Richard W. Robertson, et ux - Petitioners
Case No. 04-367-A

Dear Mr. & Mrs. Robertson:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for 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 the Department of Permits and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Calvin Boone
506 Acorn Court, Mt. Airy, Md. 21771
Ms. Anne L. Bowen, 29 Locust Drive, Catonsville, Md. 21228
Mr. & Mrs. Edward L. Cramer, 33 Locust Drive, Catonsville, Md. 21228
People's Counsel; Case File

Printed on Recycled Paper

Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 31 Locust Drive
which is presently zoned DR2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 104.3 & 1B01.3.C.1.a to permit an addition that extends the existing non-conforming structure 54.94% in lieu of the required 25% and a side yard setback of 8 ft. in lieu of 15 ft. on one side and a sum of 18 ft. in lieu of 40 ft. in a DR.2 zone.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

Richard W. Robertson
Name - Type or Print
Richard Roberts
Signature
MARY BAHR-Robertson
Name - Type or Print
Mary Bahr-Robertson
Signature
31 Locust Dr 410 788-551
Address Telephone No.
Catonsville MD 21228
City State Zip Code

Representative to be Contacted:

Calvin Boone
Name
506 Acorn Ct 410-984-5045
Address Telephone No.
Mt Airy Md 21771
City State Zip Code

ORDER RECEIVED/FOR FILING
Date 2/10/04
By

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ___ day of _____ that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

CASE NO. 04-390-A

Reviewed By SDT Date 02-24-04

REV 10/25/01

Estimated Posting Date 03-07-04

Affidavit in Support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows: That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 31 Locust Drive
Address
Catonsville MD 21228
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (Indicate hardship or practical difficulty):

① Small Lot (50' width)
② Can't meet side yard setbacks of 15' & total of 40' for DR2 zoning
③ This addition is to add space for a growing family. Master Bedroom & Family Room

That the Affiant(s) acknowledge(s) that if a formal demand is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

Mary K. Bahr-Robertson
Signature

MARY K. BAHR-Robertson
Name - Type or Print

Richard W Robertson
Signature

Richard W. Robertson
Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 3 day of February 2004, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Maryland the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

Esther Shock
Notary Public

My Commission Expires 4-1-04

REV 10/25/01

Affidavit in Support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows: That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 31 Locust Drive
Address
Catonsville MD 21228
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty):

① Small Lot (50' width)
② Can't meet side yard setbacks of 15' & total of 40' for DR2 Zoning
③ This addition is to add space for a growing family. Master Bedroom & Family Room

That the Affiant(s) acknowledge(s) that if a formal demand is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

Mary K. Bahr-Robertson
Signature

Mary K. Bahr-Robertson
Name - Type or Print

Richard W Robertson
Signature

Richard W. Robertson
Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 3 day of February 2004, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared

Maryland

the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

Esther Shock
Notary Public

My Commission Expires 4-1-04

REV 10/25/01

Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 31 Locust Drive

which is presently zoned DR2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 104.3 & 1B01.3.C.1.b TO PERMIT AN ADDITION THAT EXTENDS THE EXISTING NON-CONFORMING STRUCTURE 54.94% IN LIEU OF THE REQUIRED 25% AND A SIDE YARD SETBACK OF 8 FT. IN LIEU OF 15 FT. ON ONE SIDE AND A SUM OF 18 FT. IN LIEU OF 40 FT. IN A DR.2 ZONE.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

Richard W. Robertson
Name - Type or Print

Richard Robertson
Signature

MARY BAHR-Robertson
Name - Type or Print

Mary Bahr-Robertson
Signature

31 LOCUST DR 410 788-5511
Address Telephone No.

CATONSVILLE MD 21228
City State Zip Code

Representative to be Contacted:

Calvin Boone
Name

506 Acorn Ct 410-984-5045
Address Telephone No.

Mt Airy Md 21771
City State Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ____ day of _____ that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

CASE NO. 04-390-A

Reviewed By SDM **Date** 07-24-04

Estimated Posting Date 08-07-04

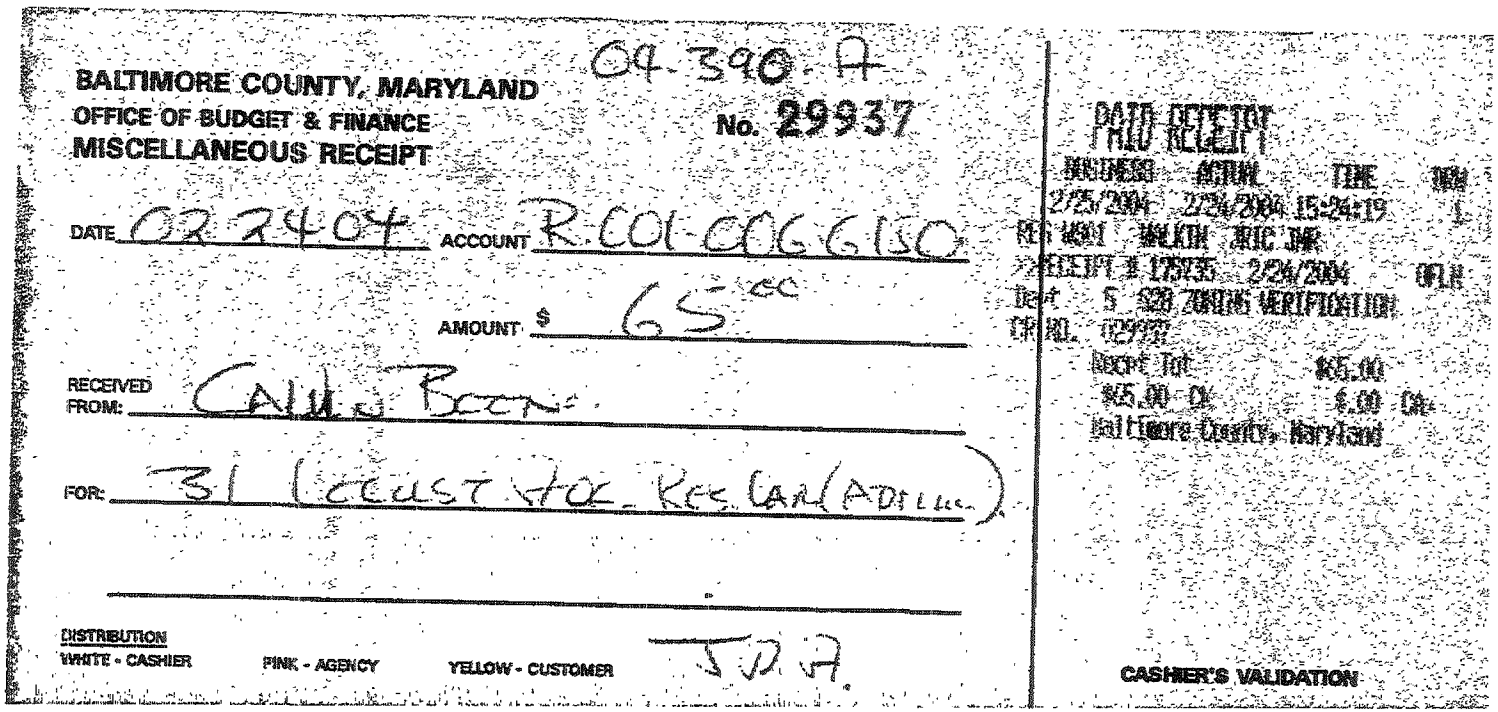
REV 10/25/01

ZONING DESCRIPTION FOR 31 Locust Drive, Catonsville Md.

Beginning at a point on the northeast side of Locust Drive which is 34 feet wide at the distance of 697 feet and 7-1/2 inches southeasterly of the centerline of the nearest improved intersecting street Frederick Road which is 50 feet and 6 inches wide. Being lot # 285, block 300, section # B in the subdivision of Locust Drive Extension/Powers of Locust as recorded in Baltimore County Plat Book # 10, Folio # 109, containing 6,800 square feet. Also known as 31 Locust Drive and located in the 1st Election District, 1st Councilmanic District.

Submitted by: **Richard and Mary Robertson**
31 Locust Drive
Catonsville, Maryland 21228
410 788-5517

04-390-A



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

04-390-A

No. 29937

DATE 02/24/04 ACCOUNT R-001-006150

AMOUNT $ 65.00

RECEIVED FROM: Carl J Beck

FOR: 31 Locust Hill Rec Land Addition

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

JDA

DATE RECEIPT PRINTED
BUSINESS ACTUAL TIME
2/25/2004 2/24/2004 15:24:19

Rec'd from WALKIN, RIC INC

RECEIPT # 175135 2/24/2004 OFLR
Dept 5 528 ZONING VERIFICATION
DPRM 02937

Recpt Tot $65.00
$65.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

ZONING NOTICE
ADMINISTRATIVE
VARIANCE
PUBLIC HEARING ?

ZONING NOTICE
ADMINISTRATIVE
VARIANCE
CASE # 04-390-A
TO PERMIT EXTENSION OF NON-CONFORMING
SIDEWALL BY 0A% AND SIDE YARD
SETBACKS OF 8FEET AND SUM OF 15 FEET
PUBLIC HEARING ?

CERTIFICATE OF POSTING

RE: Case No.: 04-390-A

Petitioner/Developer: RICK & MARY ROBERTSON

Date of Hearing/ Closing: MAR. 22, 2004

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

Attention: Becky Hart

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 #31 LOCUST AVENUE

The sign(s) were posted on MARCH 4, 2004
(Month, Day, Year)

Sincerely,

Garland E. Moore
(Signature of Sign Poster and Date)

GARLAND E. MOORE
(Printed Name)

3225 RYERSON CIRCLE
(Address)

BALTIMORE, MD. 21227
(City, State, Zip Code)

(410) 242-4270
(Telephone Number)

RECEIVED
MAR 5 2004
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number 04-390-A Address #30 Locust Ave

Contact Person: JOHN R ALEXANDER Phone Number: 410-887-3391
Planner Please Print Your Name

Filing Date: 02-24-04 **Posting Date:** 03-07-04 **Closing Date:** 03-22-04

Any contact made with this office regarding the status of the administrative variance should be through the contact person (planner) using the case number.

1. **POSTING/COST:** The petitioner must use one of the sign posters on the approved list (on the reverse side of this form) and the petitioner is responsible for all printing/posting costs. Any reposting must be done only by one of the sign posters on the approved list and the petitioner is again responsible for all associated costs. The zoning notice sign must be visible on the property on or before the posting date noted above. It should remain there through the closing date.

2. **DEADLINE:** The closing date is the deadline for an occupant or owner within 1,000 feet to file a formal request for a public hearing. Please understand that even if there is no formal request for a public hearing, the process is not complete on the closing date.

3. **ORDER:** After the closing date, the file will be reviewed by the zoning or deputy zoning commissioner. He may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. You will receive written notification (typically within 7 to 10 days of the closing date) as to whether the petition has been granted, denied, or will go to public hearing. The order will be mailed to you by First Class mail.

4. **POSSIBLE PUBLIC HEARING AND REPOSTING:** In cases that must go to a public hearing (whether due to a neighbor's formal request or by order of the zoning or deputy zoning commissioner), notification will be forwarded to you. The sign on the property must be changed giving notice of the hearing date, time and location. As when the sign was originally posted, certification of this change and a photograph of the altered sign must be forwarded to this office.

(Detach Along Dotted Line)

Petitioner: This Part of the Form is for the Sign Poster Only

USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT

Case Number 04-390-A Address #30 Locust Ave.

Petitioner's Name Ricks Mary Robertson Telephone 410-788-551.

Posting Date: 03-07-04 **Closing Date:** 03-22-04

Wording for Sign: To Permit Extension of Non-Conforming Side Wall By 94% & Side Yard Setbacks of 8 Ft & Sum of 18 Ft.

WCR - Revised 6/28/00

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: _____

Petitioner: Rick & Mary Robertson

Address or Location: 31 Locust Ave Catonsville Md 21228

PLEASE FORWARD ADVERTISING BILL TO:

Name: Calvin Boone

Address: 506 Acorn Ct
Mt Airy Md 21771

Telephone Number: 410-984-5045

Revised 2/20/98 - SCJ

04-390-A

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

March 22, 2004

Richard W. Robertson
Mary Bahr-Robertson
31 Locust Drive
Catonsville, Maryland 21228

Dear Mr. and Mrs. Robertson:

RE: Case Number: 04-390-A, 31 Locust Drive

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 24, 2004.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Calvin Boone 506 Acorn Court Mt. Airy 21771

Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
Tel: 410-887-4500

Baltimore County

James T. Smith, Jr., County Executive
John J. Hohman, Chief

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

March 9, 2004

ATTENTION: Rebecca Hart

Distribution Meeting of: March 9, 2004

Item No.: 361, 364, ~~390~~ 395, 397 & 398

Dear Ms. Hart:

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.

The Fire Marshal's Office has no comments at this time.

LIEUTENANT JIM MEZICK
Fire Marshal's Office
PHONE 887-4881
MS-1102F

cc: File

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

SHA Driven to Excel
State Highway Administration

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

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 3.5.04

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

RE: Baltimore County
Item No. 390 JRA

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,

K. A. McDonald

for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: R. Bruce Seeley RBS

DATE: April 5, 2004

SUBJECT: Zoning Items # See List Below

Zoning Advisory Committee Meeting of March 8, 2004

__X__ The Department of Environmental Protection and Resource Management has no comments on the following zoning items:

04-361
(04-390)
04-391
04-393
04-395
04-396
04-397

Reviewers: Sue Farinetti, Dave Lykens

S:\Devcoord\ZAC SHELL 11-20-03.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 10, 2004

RECEIVED

MAR 11 2004

ZONING COMMISSIONER

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

SUBJECT: Zoning Advisory Petition(s): **Case 4-364 and 4-390 – Administrative Variance**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared By: Mark A Cunningham

Section Chief: Lynn Lanham

AFK/LL

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: March 16, 2004

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For March 15, 2004
Item Nos. 364, 390, 391, 392, 393,
394, 395, 396, and 397

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

RWB:CEN:jrb

cc: File

ZAC-03-15-2004-NO COMMENT ITEMS 361 364 390-398-03162004

BALTIMORE COUNTY, MARYLAND

Inter-Office Memorandum

TO: Kristen Matthews
Dept. of Permits & Development Mgmt.

DATE: April 6, 2004

FROM: Robin Jameson, Secretary to
John V. Murphy
Deputy Zoning Commissioner

SUBJECT: Petitions for Administrative Variance
Case No. 04-342-A (8008 Highpoint Road – Wolfe) 2/23/04 closing
Case No. 03-490-A (31 Locust Drive – Robertson) 3/22/04 closing

---

Attached please find two administrative variance files that Larry Schmidt has requested hearings be scheduled for in the not too distant future.

It would be appreciated if you would have Dave Duvall prepare "Notice of Hearing" signs for each and have Gary Freund post the properties.

Thank you for your attention and cooperation in this matter.

:raj

RE:	PETITION FOR ADMINSTRATIVE VARIANCE	*	BEFORE THE
	31 Locust Drive; NE/side Locust Drive, 697' SE of c/line of Frderick Road	*	ZONING COMMISSIONER
	1st Election & 1st Councilmanic Districts	*	FOR
	Legal Owner(s): Richard W. & Mary Bahr-Robertson Petitioner(s)	*	BALTIMORE COUNTY
		*	04-390-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/ 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 9th day of March, 2004, a copy of the foregoing Entry of Appearance was mailed to, Calvin Boone, 506 Acorn Court, Mount Airy, MD 21771, Representative for Petitioner(s).

RECEIVED
MAR 0 9 2004
Per.....

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

Norm / Eddie –

Section 26-122 of the Code allows the ZC to grant admin. variances w/o a public hearing.

Admin. variance can be granted from "height" & "area" requirements.

I do not think they can get a variance from a non-conforming use requirement (Section 104 of the BCZR) through the admin. variance process.

Seth for Kathy

SEB

3-29-04

To: Larry Schmidt
410 887-3468

From: Richard W. Robertson
Mary K. Bahr-Robertson
31 Locust Drive
Catonsville, Maryland 21228
410 788-5517
CASE # 04-390-A

Re: Required letter from neighbors bordering our property to satisfy requirement for construction permit

I have no objection to the petition filed at 31 Locust Drive for an administrative variance. The petition is for an 8 Foot set back to the side of 29 Locust Drive and a 10 foot set back to the side of 33 Locust Drive.

Anne L. Bowen
29 Locust Drive
Catonsville MD 21228

To: Larry Schmidt
410 887-3468

From: Richard W. Robertson
Mary K. Bahr-Robertson
31 Locust Drive
Catonsville, Maryland 21228
410 788-5517
CASE #04-390-A

Re: Required letter from neighbors bordering our property to satisfy requirement for construction permit

We have no objection to the petition filed at 31 Locust Drive for an administrative variance. The petition is for an 8 Foot set back to the side of 29 Locust Drive and a 10 foot set back to the side of 33 Locust Drive.

Edward L Cramer
Edward L. Cramer
33 Locust Drive
Catonsville MD 21228

Mary S Cramer
Mary S. Cramer
33 Locust Drive
Catonsville MD 21228

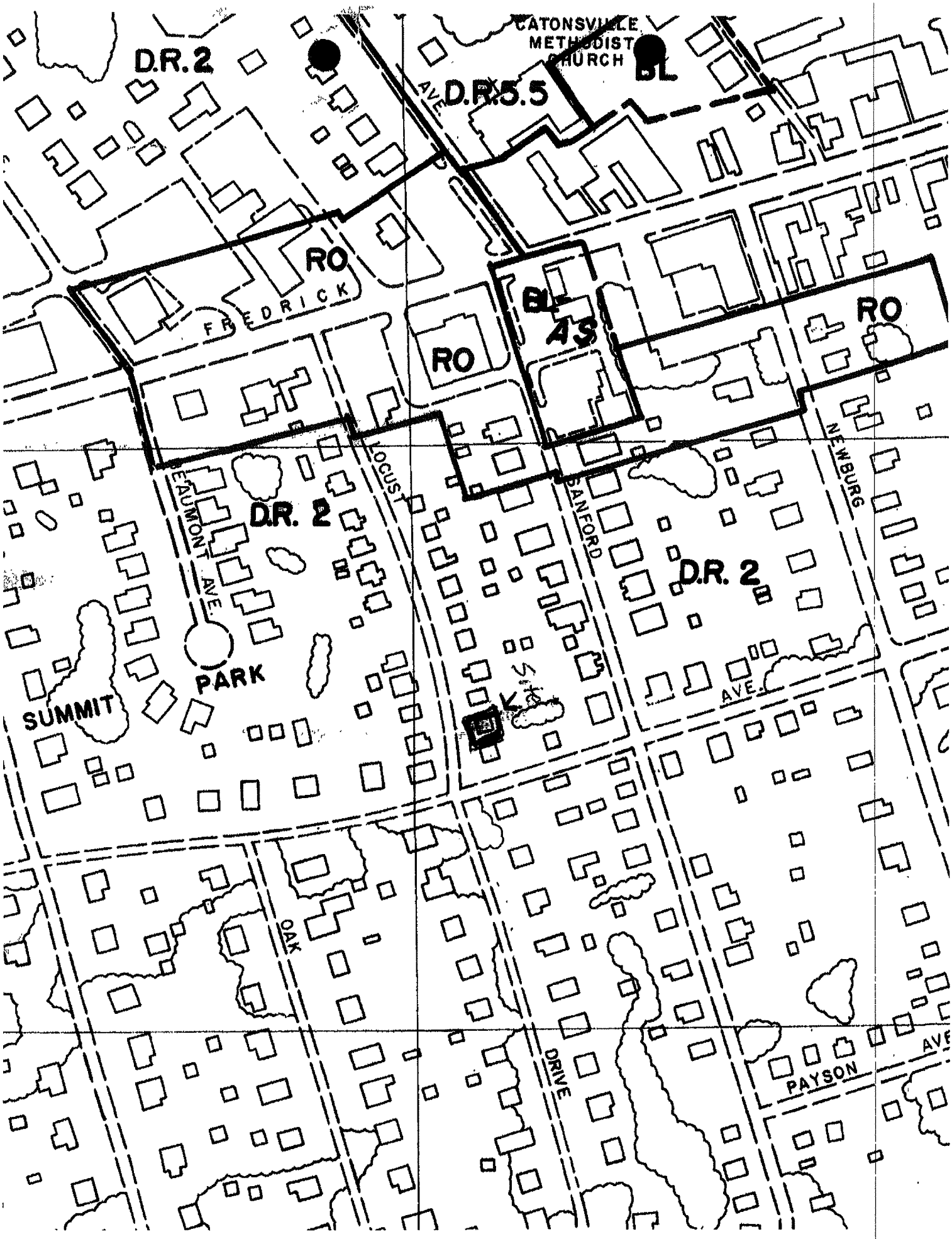
Case # 04-390-A
31 Locust Drive
Catonsville MD 21228

I (we) have no objection to the petition filed at 31 Locust Drive for an administrative variance. The petition is for an 8 Foot set back to the side of 29 Locust Drive and a 10 foot set back to the side of 33 Locust Drive.

Anne L. Bowen
29 Locust Drive
Catonsville MD 21228

Edward L. Cramer
33 Locust Drive
Catonsville MD 21228

Mary S. Cramer
33 Locust Drive
Catonsville MD 21228


D.R.2
CATONSVILLE METHODIST CHURCH
BL
AVE.
D.R.5.5
RO
FREDERICK
RO
BL
AS
RO
LOCUST
D.R. 2
EAUMONT AVE.
SUMMIT
PARK
SANFORD
D.R. 2
NEWBURG
AVE.
OAK
DRIVE
PAYSON
AVE

04-390-A

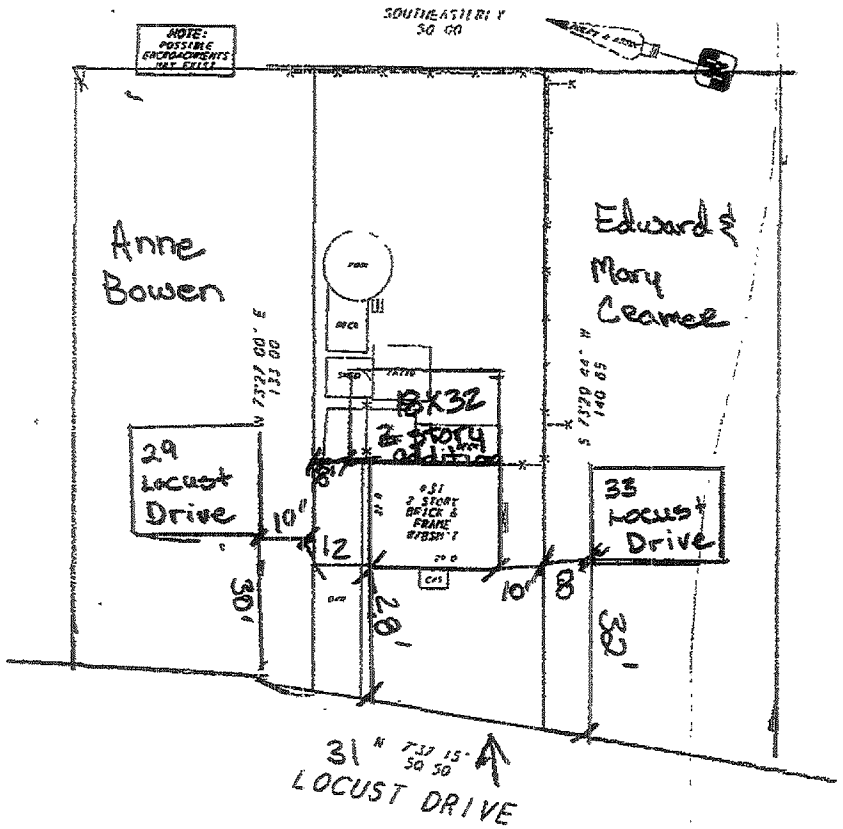
PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

PROPERTY ADDRESS 31 Locust Drive — SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

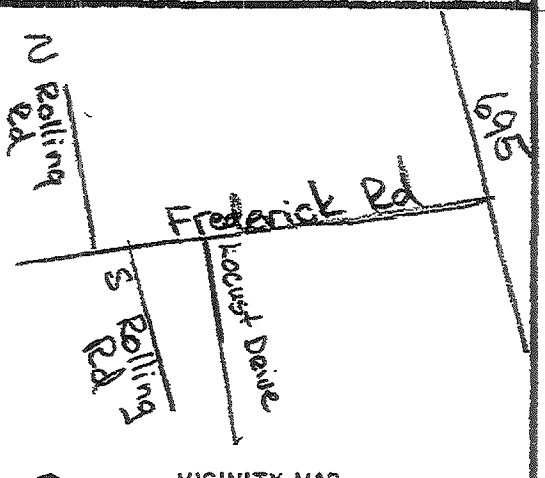
SUBDIVISION NAME Locust Drive Extension

PLAT BOOK # 10 FOLIO # 109 LOT # 2 SECTION # ____

OWNER Richard & Mary Robert Robertson



NORTH



VICINITY MAP
SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT 1ST

COUNCILMANIC DISTRICT 1ST

1"=200' SCALE MAP # SW3F

ZONING DR2

LOT SIZE .158 ACREAGE / 6875 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

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

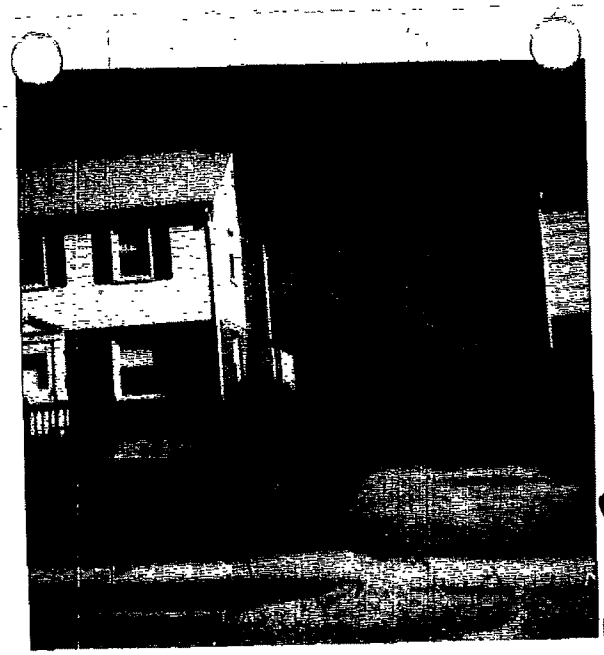
PRIOR ZONING HEARING

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #
SJT		02-240A

PREPARED BY Calvin Boone

SCALE OF DRAWING: 1" = 40'



29 Locust Drive on left
31 Locust Drive on Right

04-390-A



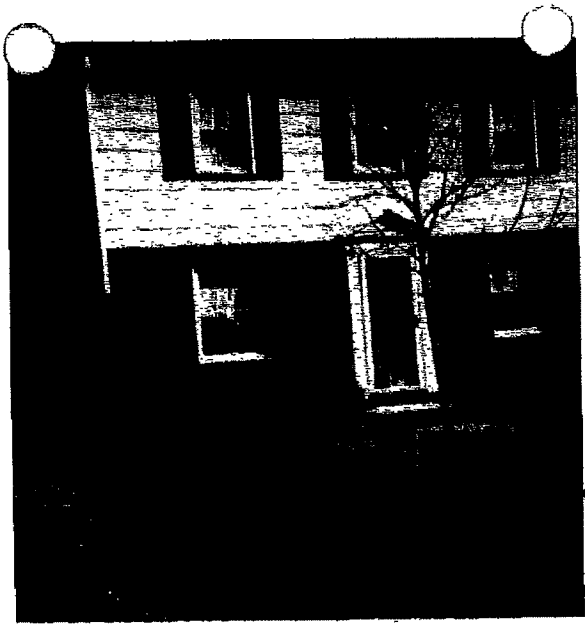
Rear of property @ addition
29 Locust on Right

04-390-A



Rear of property @ addition
33 Locuse on left

04-390-A



31 Locust Drive
Subject property

04-390-A

Center for Integrative Medicine
The University of Maryland ~ School of Medicine
Kernan Mansion, James L. Kernan Hospital
2200 Kernan Drive, Baltimore, Maryland 21207-6697
(410)448-6871 *Voice* (410)448-6875 *Fax*
Website: www.compmed.umm.edu

Please deliver the following pages

TO: LARRY Schmidt

Fax: 410 887-3468

From: MARY BAHR-Robertson
Rick Robertson
CALVIN KOONS

Date:
4/16/04

Number of pages including cover: 4

RE:
CASE# 04-390-A

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2021, Legislative Day No. 7

Resolution No. 46-21

Mr. David Marks, Councilman

By the County Council, April 5, 2021

A RESOLUTION of the Baltimore County Council requesting the Baltimore County Planning Board to review the laws, regulations, and policies associated with the minimum width requirement of town houses or group houses, study the feasibility and efficacy of amending the minimum width requirement as proposed by the Baltimore County Chapter of the Maryland Building Industry Association (MBIA), and report its findings and recommendations on the results of its studies to the County Council on or before August 1, 2021.

WHEREAS, the Baltimore County Comprehensive Manual of Development Policies states on page 28 of Division II, Section A, that "town houses shall not be less than 20 feet in width unless approved via the PUD Process"; and

WHEREAS, this same width restriction is set forth in the Baltimore County Zoning Regulations, Section 1B01.2.C.1.c regarding the permitted measurement of a Group House from side building face to side building face and may appear in other sections of the Baltimore County Code or Zoning Regulations; and

WHEREAS, a recent MBIA presentation on 16 foot and 18 foot wide town homes avers that the current width requirement was put in place in the mid 1990's; and

WHEREAS, the MBIA presentation proposes that several of the perceived disadvantages of narrower town homes can be ameliorated with taller and deeper structures, modern floorplans, architectural improvements, better materials, and adherence to the pattern books and the

performance standards set forth in Section 260 of the Zoning Regulations; and

WHEREAS, the MBIA presentation also avers that permitting narrower town homes will benefit Baltimore County by allowing the creation of more affordable workforce housing, facilitating infill redevelopment, and increasing housing and socioeconomic diversity; now, therefore

BE IT RESOLVED by the County Council of Baltimore County, Maryland, that the Baltimore County Planning Board is hereby requested to review the laws, regulations, and policies associated with the minimum width requirement of town houses or group houses, to study the feasibility and efficacy of amending the minimum width requirement as proposed by the Baltimore County Chapter of the Maryland Building Industry Association (MBIA), and to report its findings and recommendations on the results of its studies to the County Council on or before August 1, 2021; and

BE IT FURTHER RESOLVED, that a copy of this Resolution be sent to the Baltimore County Planning Board; and

AND BE IT FURTHER RESOLVED, that this Resolution shall take effect from the date of its passage by the County Council.

LEGISLATION DETAIL

LEGISLATION	RESOLUTION 46-21
DISPOSITION	PASSED
ENACTED	N/A
EFFECTIVE	N/A
AMENDMENTS	NO

ROLL CALL - LEGISLATION

MOTION SECOND

AYE	NAY	
☑	☐	Councilman Quirk
☑	☐	Councilman Patoka
☐	☐	Councilman Kach *ABSENT
☑	☐	Councilman Jones
☑	☐	Councilman Marks
☑	☐	Councilwoman Bevins
☑	☐	Councilman Crandell

ROLL CALL - AMENDMENTS

MOTION SECOND

AYE	NAY	
☐	☐	Councilman Quirk
☐	☐	Councilman Patoka
☐	☐	Councilman Kach
☐	☐	Councilman Jones
☐	☐	Councilman Marks
☐	☐	Councilwoman Bevins
☐	☐	Councilman Crandell

ROLL CALL - AMENDMENTS

MOTION SECOND

AYE	NAY	
☐	☐	Councilman Quirk
☐	☐	Councilman Patoka
☐	☐	Councilman Kach
☐	☐	Councilman Jones
☐	☐	Councilman Marks
☐	☐	Councilwoman Bevins
☐	☐	Councilman Crandell

ROLL CALL - AMENDMENTS

MOTION SECOND

AYE	NAY	
☐	☐	Councilman Quirk
☐	☐	Councilman Patoka
☐	☐	Councilman Kach
☐	☐	Councilman Jones
☐	☐	Councilman Marks
☐	☐	Councilwoman Bevins
☐	☐	Councilman Crandell

Krysundra Cannington

From: Gontrum, John <JGontrum@wtplaw.com>
Sent: Thursday, September 30, 2021 3:11 PM
To: Appeals Board
Cc: julieking815@gmail.com; sgarylaura@gmail.com; Aaron D. Neal; msandbox321@aol.com; neil@helfrichlaw.com; Brian Leibowitz
Subject: 16 Locust Drive - Case No. 20-224-A
Attachments: CopitrakScan.PDF

CAUTION: This message from prvs=1907d6607e=jgontrum@wtplaw.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 please find Petitioners' Memorandum in lieu of closing argument in the above-referenced matter. The attachments should include the memorandum and 2 attached zoning cases and County Council Resolution 46-21.

Thank you,

John Gontrum

This transmission contains information from the law firm of Whiteford, Taylor & Preston LLP which may be confidential and/or privileged. The information is intended to be for the exclusive use of the planned recipient. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately.

Krysundra Cannington

From: Appeals Board
Sent: Thursday, September 30, 2021 3:31 PM
To: Gontrum, John; Appeals Board
Cc: julieking815@gmail.com; sgarylaura@gmail.com; Aaron D. Neal; msandbox321@aol.com; neil@helfrichlaw.com; Brian Leibowitz
Subject: RE: 16 Locust Drive - Case No. 20-224-A

Hello Mr. Gontrum,

Upon quick review of your attachment, we did receive your Memo, the two zoning cases, and the Council resolution. It was 82 pages in total.

Thank you,

Sunny

Krysundra Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
Phone: (410) 887-3180
Fax: (410)887-3182

Confidentiality Statement

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From: Gontrum, John <JGontrum@wtplaw.com>
Sent: Thursday, September 30, 2021 3:11 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: julieking815@gmail.com; sgarylaura@gmail.com; Aaron D. Neal <aneal@mhlawyers.com>; msandbox321@aol.com; neil@helfrichlaw.com; Brian Leibowitz <brian@thedominiongroup.com>
Subject: 16 Locust Drive - Case No. 20-224-A

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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

September 30, 2021

NOTICE OF DELIBERATION

IN THE MATTER OF: Cornelius David Helfrich– Legal Owners
Dominion Properties, LLC – Contract Purchaser
20-224-A 16 Locust Drive
1st Election District; 1st Council District

Re: Petition for Variance pursuant to BCZR § 1B02.3.C.1 to:
- allow a 10 ft. side yard setback in lieu of the required 15 ft. and a combination of 20 ft. in lieu of the required 40 ft.; and
- allow a rear yard setback of 25 ft. in lieu of the required 40 ft.; and
- allow a lot width of 50 ft. in lieu of the required minimum of 100 ft.; and
- allow a lot area of 5,850 sq. ft. in lieu of the minimum required 20,000 sq. ft.

4/19/21 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was DENIED.

This matter having been heard and concluded on September 9, 2021, a public deliberation has been

ASSIGNED FOR: NOVEMBER 18, 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/departments/appeals.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 from **Petitioner** on **October 1, 2021** no later than **3:00 p.m.**
Closing briefs are due from **Protestants** on **October 15, 2021** no later than **3:00 p.m.**
Reply memoranda are due from **Petitioner** on **October 25, 2021** no later than **3:00 p.m.**
(Electronic copy emailed 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/Appellants : John B. Gontrum, Esquire
Legal Owner : Cornelius D. Helfrich
Contract Purchaser : Dominion Properties, LLC

Protestants, *pro se* : Ryan and Julie King, Amy Stevens, Barry and Kathleen Sanders, Gabe Cohee, Gary Scherer, Laura Scherer, Lindsay Scherer, Richard Robertson, Mary Bahr-Robertson, Rachel Waltermyer, Theresa Werner

Patrick Richardson, Jr./Richardson Engineering, LLC

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

Meeting Name	Meeting Start Time	Meeting End Time	Name	Attendee Email
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Deborah Dopkin	ddopkin@baltimorecountym
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	rking316@gmail.com rking3:	rking316@gmail.com
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Amy Stevens	astevens314@yahoo.com
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Julie King	julieking815@gmail.com
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Theresa Werner	werner.27@comcast.net
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Brian Leibowitz	brian@thedominiongroup.cc
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Laura Scherer	sgarylaura@gmail.com
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Joseph Evans	jevans@baltimorecountymd
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Darren McShane	jack@thedominiongroup.cor
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Lindsay Scherer	lindsayscherer@gmail.com
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Barry Sanders	msandbox321@aol.com
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Patrick Richardson	rick@richardsonengineering.
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Sharonne Bonardi	sbonardi@baltimorecountyn
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	John Gontrum	jgontrum@wtplaw.com
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Aaron Neal	aneal@mhlawyers.com
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Rachel Waltermyer	rkwaltermyer@gmail.com
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	mary Bahr-Robertson	mbahr@som.umaryland.edu
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Dominion Properties	soldbybl@gmail.com
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Kimberly Neal	kimberlyneal1205@yahoo.cc
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	John Shifflett	jrshiffl@yahoo.com
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	Tammy Zahner	tzahner@baltimorecountym
Board of Appeals Helfrich/Dc	2021-09-09 10:00:00	2021-09-09 16:00:00	John Shifflett	jrshiffl@yahoo.com

Join Time	Leave Time	Attendance Duration	Connection Type
2021-09-09 09:36:36	2021-09-09 14:38:39	303 mins	Desktop app
2021-09-09 09:45:03	2021-09-09 14:38:39	294 mins	Mobile app
2021-09-09 09:45:42	2021-09-09 14:38:39	293 mins	Desktop app
2021-09-09 09:45:44	2021-09-09 14:38:27	293 mins	Desktop app
2021-09-09 09:45:51	2021-09-09 14:38:17	293 mins	Desktop app
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2021-09-09 09:53:15	2021-09-09 14:38:28	286 mins	Desktop app
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2021-09-09 10:00:49	2021-09-09 14:31:17	271 mins	Desktop app
2021-09-09 10:11:36	2021-09-09 14:38:39	268 mins	Desktop app
2021-09-09 11:35:11	2021-09-09 14:21:53	167 mins	Desktop app
2021-09-09 09:54:03	2021-09-09 12:15:30	142 mins	Desktop app
2021-09-09 10:00:15	2021-09-09 11:54:50	115 mins	Desktop app
2021-09-09 09:41:01	2021-09-09 10:51:29	71 mins	Desktop app
2021-09-09 09:55:43	2021-09-09 09:59:35	4 mins	Web app

Board of Appeals

Exhibit List

Case No.: 20-224-A Case Name: Helfrich / Dominion Properties

Party: Helfrich Date: 9/9/2021

Exhibit No.	Description	ID Only
1.	Richardson CV	
2	Site Plan	
2A	Redlined Site Plan	
3	Subdivision from 1933 - Plat of Locust De Extended	
4	Front & Side left side elevate	
4A	Rear & right side "	
4B	Elevation modified	
5A	My Neighborhood Photo	
5B	Closer View of & 5A	
5C	Blow-up of 5B	
5D	Photo - from Majorder, looking N on Locust	
5E	Houses on W/S of Locust	
5F	House @ 18 Locust St.	
5G	N on Locust, showing 14 Locust	
	VERIFIED BY: _____ DATE: _____	

Board of Appeals

Exhibit List

Case No.: 20-224-A Case Name: _____

Party: Helfrich Date: _____

Exhibit No.	Description	ID Only
5H	Shows Subject lot, ML # 18 and # 14	
5I	Looking N from Middle of site	
5J	" N past site as houses approach Frederick Rd	
5K	Just N of site, showing houses on ES	
5L	WS of Locust	
5M	Looking S from N of subject property	
5N	Northern end of subdivision, looking S on Locust	
6	Deed of subject property - 32178/253	
7	Official Zoning Map - 3/1971 -	
	CZMP - Issue. 1 - 045	
	1996 - CZMP - 001-045 My Neighborhood Photo	
	VERIFIED BY: _____ DATE: _____	

Richardson Engineering, LLC

7 Deneison Street
Timonium, Maryland 21093

tel. 410-560-1502
richardsonengineering.net

Patrick C. Richardson, Jr., PE

EDUCATION

BSCE University of Delaware, 1982
Professional Engineer in Maryland 1988, Virginia 1993, Washington DC 1997, Delaware 1997

WORK EXPERIENCE

October 1999 to Present, Richardson Engineering, LLC
Owner of engineering firm specializing in Commericial and Residential Land Development. Work includes preparation of zoning plats, site development plans and project management for site development projects. Projects including: Cockeysville Elementary School PAL Center, Soukup Arena Recreation Center in Honeygo, Club House for Roland Run Club, Pizza Hut Stores in Baltimore and Anne Arundel Counties, Giant Food Stores in Baltimore City and County, Krispy Kreme Stores in Maryland, Verizon switch station expansions in Maryland, Parkway 100 and Techwood Center in Anne Arundel County, and Columbia Technology Campus in Howard County, Elkridge Crossing mixed use development in Howard County.

July 1999 to September 1999, Purdum and Jeschke, LLC
Chief engineer responsible for preparation of layout and construction documents for commercial land developments. Work included preparation of zoning plats, site development plans and project management for sites in Maryland. Projects including: Loyola College play fields, Baltimore City. Md.; St Paul's Lutheran Church, Baltimore Co.; Red Star Yeast, Baltimore City; Giant Food Stores in Baltimore City.

February 1997 to June 1999, William Monk, Inc.
Chief engineer responsible for preparation of layout and construction documents for commercial land developments. Work included preparation of zoning plats, site development plans and project management for sites in Maryland and Washington DC.
Major projects including: Edmondson Square Shopping Center, Baltimore City, Md. Amoco Oil Company, sites in Baltimore, Anne Arundel, Prince George's, Howard and Baltimore City. Chick-fil-A Restaurant, Baltimore, Anne Arundel and Frederick Co., Md. International Trade Center Office Warehouse, Anne Arundel Co. Md. KFC Restaurants in Maryland and Washington DC.

April 1986 to Jan. 1997, STV Incorporated
Project Manager in the Site Development Department. Responsible for supervision of the preparation of design documents for the department, including review and sealing all documents submitted to reviewing agencies.
Major projects including: The New International Terminal at BWI Airport: Responsible for management of the civil aspects of the site construction including airfield taxiway and hardstand construction, reconstruction of the existing roadways and extention of the upper level roadway bridge to service the building addition. FILA Warehouse - 650,000 SF warehouse in Brandon Woods Industrial Park, Anne Arundel County, Md. Work included coordination with ongoing infrastructure grading, utilities, construction and sediment control for the adjacent activities. FILA Warehouse - 500,000 SF warehouse in Holabird Industrial Park, Baltimore City, Md. Work included getting permission to construct across Municipal Utilities, and Chesapeake Bay Critical Area mitigation. Amoco Oil Company Convenience Mart on Route 140 and Sandymount Road, Carroll County, Md. Blockbuster Video - New store in Jacksonville, Baltimore County, Md. EXXON Company USA - Demolish and Rebuild' Belvedere and



York Roads, Baltimore City, Md. Parkway Crossing Shopping Center - Work included reconstruction for several stores, and a new culvert and access from Perring Parkway including a State Highway Access Permit and WRA approval. Old Dominion Freight Lines - 25,000 SF Addition to existing warehouse, Howard County, Md. Ashton Meadows 300 unit apartment complex in Howard County, Md. Sunrise House of Towson 56 unit three story assisted living facility, Baltimore County, Md. SCM Chemicals Hawkins Point Plant Numerous projects including (2) million gallon tanks and secondary containment, chlorinator replacement, railroad track improvements, technical center building addition and secondary containment for existing tanks. Work included a stormwater management master plan for the facility, Chesapeake Bay Critical Area mitigation and railroad track design. National Gypsum - Canton Plant expansion including dock improvements, storm water management for the Chesapeake Bay Critical Area, grading, utilities, and sediment control. Bayview Medical Campus - Design of infrastructure for the first phase of development of the campus including 0.6 mile road and utilities, and a 19 acre park with a pond.

February 1985 to March 1986, Spellman, Larson and Associates
Engineer/Designer/Draftsman for land development projects in Baltimore County

May 1982 to January 1985, CBI Industries
Engineer for construction of steel plate structures. Field engineer responsible for layout of materials, and coordination with field personnel. Worked on the Peach Bottom No. 2 Recirculation and Reheat Piping Replacement preparing procedures and policies for the construction and field supervision of the work.


LOCUST DRIVE
EX 8" WATER
EX 8" SEWER
EX DWELLING
EX GARAGE
PROPOSED 1 STORY DWELLING
N 177700" E 100.00
S 177700" W 100.00
25' R/W
25' B.R.L.
10' SIDE
25' REAR
EX 4" WATER SERVICE
EX 4" SEWER SERVICE
EX DRIVEWAY
EX 6" WATER SERVICE
EX 6" SEWER SERVICE
EX 4" WATER SERVICE
EX 4" SEWER SERVICE





LOCATION MAP

SCALE: 1" = 1000'

GENERAL NOTES:

1. OWNER: CORNELIUS DAVID MELFTRICH
   31 E LEE ST
   BEL AIR MD 21014-8876
   CONTRACT PURCHASER:
   THE DOMINION GROUP
   1029 N CALVERT ST
   BALTIMORE, MD 21202
2. SITE AREA:
   NET: 5,000 SF OR 0.11 Ac.±
   GROSS: 5,850 SF OR 0.13 AC.±
3. USE:
   EXISTING: VACANT
   PROPOSED: 1 RESIDENTIAL DWELLING
4. UTILITIES: PUBLIC WATER AND SEWER
5. DEED REF: 3216/253
6. TAX ACCOUNT: 0106201150
7. ZONING: DR 2
   (PER 1"=200' ZONING MAP 061C3)
8. TAX MAP: 101
   GRID: 7
   PARCEL: 258
   LOT: 6 "LOCUST DRIVE (EXTENDED" PLAT 10/109
9. LOCATED IN ZONE X PER FLOOD INSURANCE RATE MAP (FIRM) PANEL 2400100388F DATED SEPTEMBER 26, 2008.
10. PREVIOUS ZONING CASES: NONE ON FILE.
11. PREVIOUS PERMITS: NONE ON FILE.
12. SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
13. THERE ARE NO HISTORIC FEATURES ON SITE NOR IS THE SITE ITSELF HISTORIC.
14. SETBACKS FOR DR 2

	REQUIRED	PROVIDED
FRONT	25'*	25'±
SIDE	20'	10'
REAR	40'	42'±[illegible]

* AVG SETBACK OF 25+24/2 = 25'

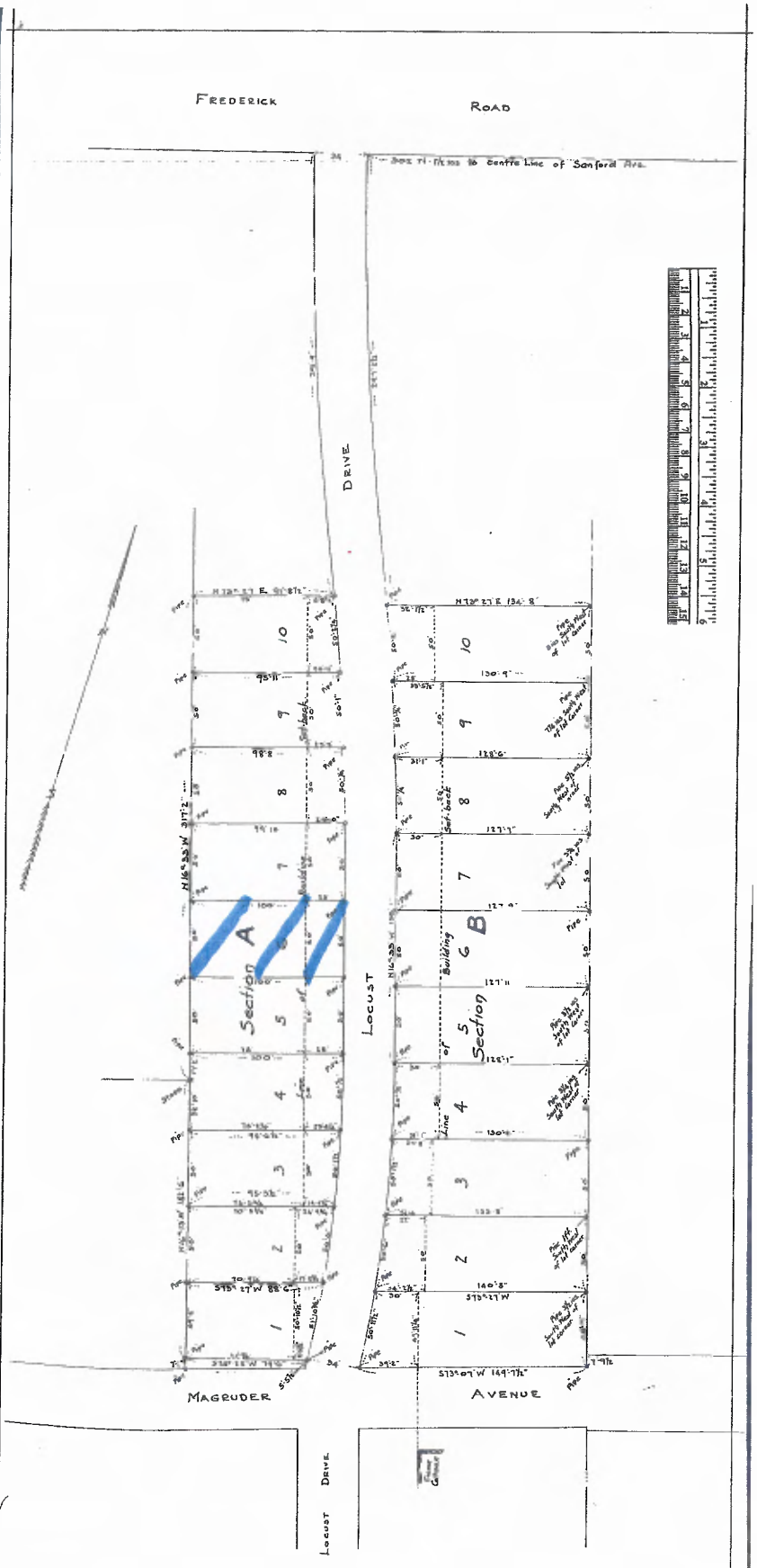
Richardson ENGINEERING
7 Deneison Street
Timonium, Maryland 21093
Phone: 410-560-1502, info@richardsonengineering.net

PLAN TO ACCOMPANY ZONING PETITION
FOR
PROPOSED RESIDENCE
DOMINION PROPERTIES
16 LOCUST DRIVE

BALTIMORE COUNTY — MARYLAND
1ST ELECTION DISTRICT — 1ST COUNCILMANIC DISTRICT

REVISIONS	DRAWN BY:	CHECKED BY:	SCALE:
REVISED TO 2 STORY DWELLING 8-31-21 REVISED BUILDING SIZE	LNR	PCR	1" = 20'
	DATE: 08-14-20	JOB NO.: 20110	SHEET NO.: 1 OF 1

EXHIBIT
2A
tabbies



PLAT OF
LOCUST DRIVE EXTENSION
CATONSVILLE-BALTO. CO.-MARYLAND.

Scale = 40 Feet to one inch.

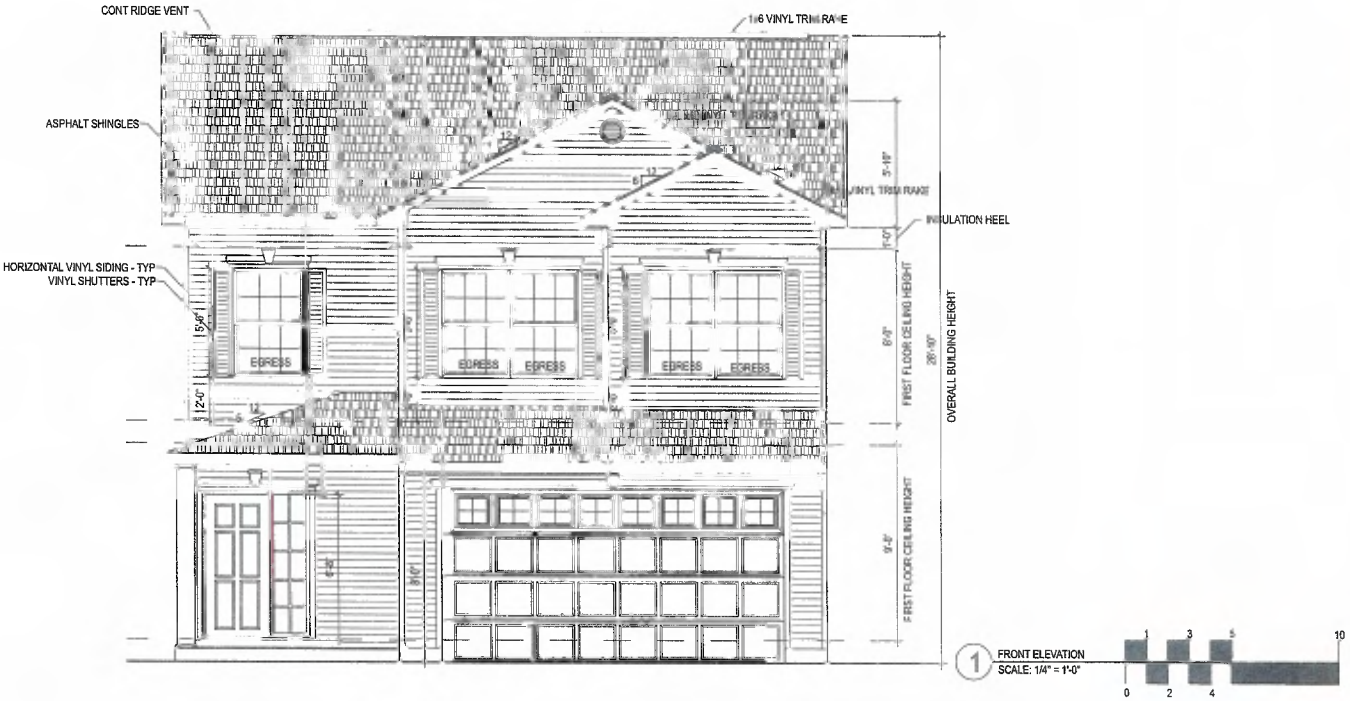
S. J. Martenet & Co.
Surveyors & Civil Engrs.
Balto. March 13-1933.

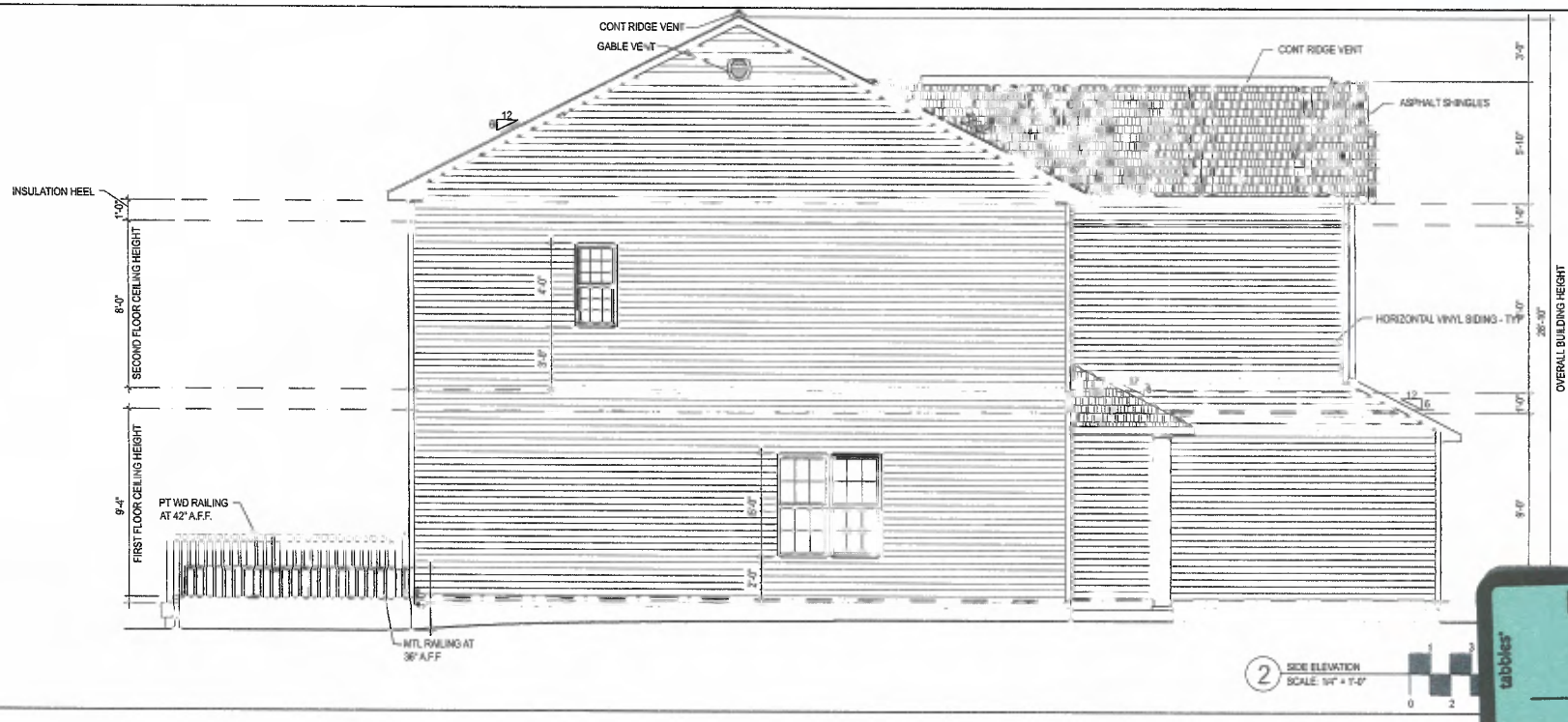
Note:-
The courses are referred approximately to the True Meridian.

Plat Book 10/109

EXHIBIT 3

BALTIMORE COUNTY CIRCUIT COURT (Plats) Plat Book LMGLM 10, p. 109, MSA_C2136_2712. Date available 1936/12/21. Printed 08/14/2020.





PROFESSIONAL CERTIFICATION. I CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED ARCHITECT UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NUMBER 15709, EXPIRATION DATE 3 / 27 / 2021.

CONTRACT DOCUMENTS HAVE BEEN PREPARED BY A LICENSED ARCHITECT FOR BOTH ARCHITECTURE & STRUCTURAL DESIGN. MD Lic # 15709.

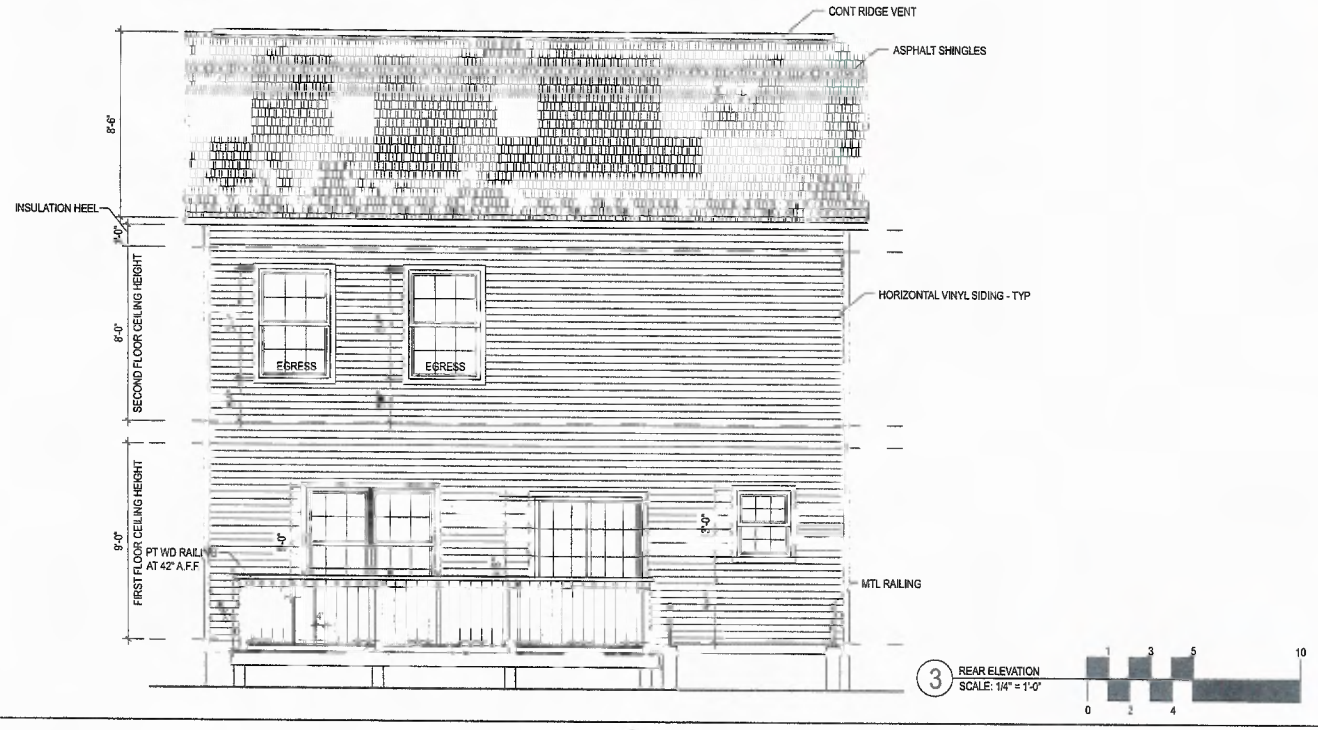
CLIENT
DOMINION PROPERTIES

ADAM CARBALLO, ARCHITECT
MD LIC# 15709
443-745-1100

EA5

4 FAIRVIEW RD
JOB # 19-407
SEPTEMBER 2019

EXHIBIT
4





PROFESSIONAL CERTIFICATION:
I CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED ARCHITECT UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NUMBER 15709, EXPIRATION DATE 3 / 27 / 2021.

CONTRACT DOCUMENTS HAVE BEEN PREPARED BY A LICENSED ARCHITECT FOR BOTH ARCHITECTURE & STRUCTURAL DESIGN. MD Lic # 15709.

CLIENT
DOMINION PROPERTIES

ADAM CARBALLO, ARCHITECT
MD LIC# 15709
443-745-1100

ELEVATIONS

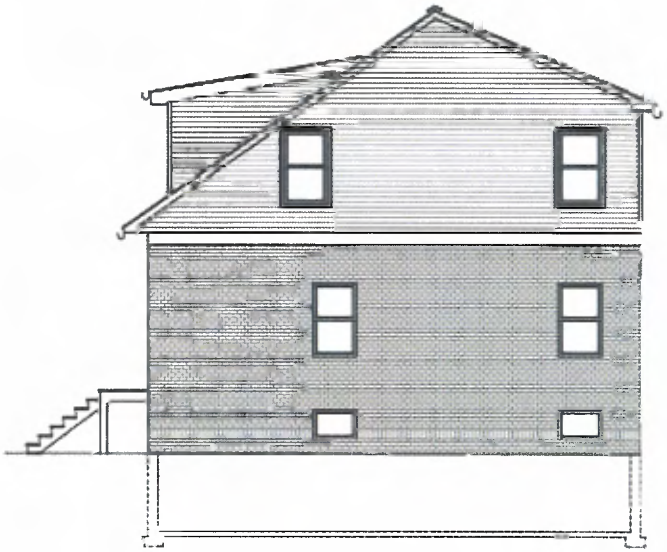
A6

4 FAIRVIEW RD
JOB # 19-407
SEPTEMBER 2019

EXHIBIT
4-A



1 PROPOSED FRONT ELEVATION



2 PROPOSED SIDE ELEVATION

EXHIBIT
4-B

Baltimore County - My Neighborhood



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

EXHIBIT

tabbies

5A

Baltimore County - My Neighborhood



Baltimore County - My Neighborhood



Google Maps 98 Magruder Ave



Image capture: Jul 2018 © 2021 Google

Catonsville, Maryland

Google

Street View - Jul 2018

EXHIBIT

tabbies

5d

Google Maps 27 Locust Dr



Image capture: Nov 2020 © 2021 Google

Catonsville, Maryland

Google

Street View - Nov 2020

EXHIBIT

tabbies'

5e

Google Maps 23 Locust Dr



Image capture: Nov 2020 © 2021 Google

Catonsville, Maryland

Google

Street View - Nov 2020

EXHIBIT

tabbies

5 F

Google Maps 23 Locust Dr



Image capture: Nov 2020 © 2021 Google

Catonsville, Maryland

Google

Street View - Nov 2020

EXHIBIT

tabbies

5 G

Fusting Ave

Google Maps 23 Locust Dr



Image capture: Nov 2020 © 2021 Google

Catonsville, Maryland

Google

Street View - Nov 2020

EXHIBIT

tabbies

5H

Fusting Ave

Google Maps 21 Locust Dr



Image capture: Nov 2020 © 2021 Google

Catonsville, Maryland

Google

Street View - Nov 2020

EXHIBIT

tabbies

5I

Fusting Ave

Google Maps 27 Locust Dr



Image capture: Nov 2020 © 2021 Google

Catonsville, Maryland

Google

Street View - Nov 2020

EXHIBIT

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Fusting Ave

Google Maps 17 Locust Dr



Image capture: Nov 2020 © 2021 Google

Catonsville, Maryland

Google

Street View - Nov 2020

EXHIBIT

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5K

Fusting Ave

Google Maps 19 Locust Dr



Image capture: Nov 2020 © 2021 Google

Catonsville, Maryland

Google

Street View - Nov 2020

EXHIBIT

tabbies'

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Fusting Ave

Google Maps 10 Locust Dr



Image capture: Nov 2020 © 2021 Google

Catonsville, Maryland

Google

Street View - Nov 2020

EXHIBIT

tabbies

5M

Google Maps 9 Locust Dr

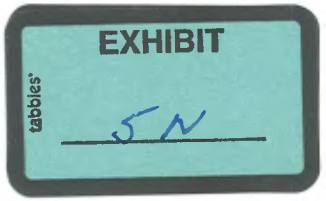


Image capture: Nov 2020 © 2021 Google

Catonsville, Maryland

Google

Street View - Nov 2020



Fusting Ave

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0253, MSA_CE62_32034. Date available 06/14/2012. Printed 01/19/2021.

PREPARED WITHOUT TITLE SEARCH

This Personal Representative's Deed

This Personal Representative's Deed, made this 16TH day of **May, 2012**, by and between Cornelius David Helfrich, Personal Representative of The Estate of **VIRGINIA T. FIELDS**, GRANTOR; and, **CORNELIUS DAVID HELFRICH,** party of the second part, GRANTEE.

Whereas, Virginia T. Fields died on December 1, 1994, and on June 1, 1995, the Orphans' Court of Harford County, State of Maryland (the "Court") granted administration of the Estate of the Decedent to Cornelius David Helfrich as Personal Representative of the Estate of the Decedent in Estate No. 28268.

Whereas, Grantor in the capacity as Personal Representative in the Estate of the Decedent has complete and full power and authority by law, to grant and convey the entire fee simple interest in the hereinafter described property; and

Whereas, as part of the administration of the Estate of the Decedent, Grantor desires to convey the entire fee simple estate in the hereinafter described property to the Grantee.

- Witnesseth -

That in consideration of the sum of **Zero Dollars 00/100 ($0.00)**, which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said GRANTOR as Personal Representative on the Estate of the Decedent, does hereby grant and convey to Cornelius David Helfrich, in fee simple, all that lot of ground situate in Baltimore County, State of Maryland and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot 6, as shown on the plat entitled "Locust Drive Extended", which plat is recorded among the Plat Records of Baltimore County in Plat Book C.W.B. Jr No. 10 folio 109.

BEING THE SAME and all that property which by fee simple deed dated December 19, 1959 and recorded among the Land Records of Baltimore County in Liber No. 3649, folio 398, was granted and conveyed by David A. Fields and Bernadette Fields, his wife to Virginia T. Fields.

Together with the buildings and improvements thereon erected, ma and every, the rights, alleys, ways, waters, privileges, appurtenances an belonging, or in anywise appertaining.

EXHIBIT tabbies 6

To Have and To Hold the said tract 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 Grantee his Personal Representative, heirs and assigns, forever, in fee simple.

And Grantor does hereby covenant to execute such further assurances of the same as may be requisite.

Witness the hand and seal of Grantor the day and year first above written.

By: Cornelius David Helfrich
Personal Representative of
The Estate of **Virginia T. Fields**.

STATE OF MARYLAND

COUNTY OF Harford, to wit:

I hereby certify that on this 16th day of **May, 2012** before me, the undersigned officer, a Notary Public in and for the State aforesaid, personally appeared Cornelius David Helfrich, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged herself to be the Personal Representative of the Estate of Virginia T. Fields, and who, in my presence, signed and sealed the foregoing Deed and acknowledged it to be his act and deed as Personal Representative of the foregoing Estate, giving oath under penalties of perjury that the consideration recited herein is correct.

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

DIANE LEONARD SEARS NOTARY PUBLIC HARFORD CO., MD.

Notary Public
My commission expires: 10/25/2014

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Cornelius D. Helfrich, Attorney

AFTER RECORDING, PLEASE RETURN TO:
Helfrich Law Office
31 E. Lee Street
Bel Air, MD 21014

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0254, MSA_CE62_32034. Date available 06/14/2012. Printed 01/19/2021.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0255, MSA_CE62_32034. Date available 06/14/2012. Printed 01/19/2021.

2012
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 Section 10-912 of Maryland's Tax General Article. Section 10-912 states that certain tax payments must be withheld when a deed or other instrument that affects a change in ownership of real property is recorded. The requirements of Section 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(s) Information

Name of Transferor:
Cornelius David Helfrich, Personal Representative of the Estate of Virginia T. Fields

2. Reason for Exemption

Resident Status	☒ I/We, Transferor(s), am/are residents of the State of Maryland. ☐ Transferor(s) is a/are resident(s) entity under Section 10-912(A)(4) of the Tax General Article of the Annotated Code of Maryland, 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 section 121.

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

3a. Individual Transferor(s)

Witness

Cornelius David Helfrich, **Personal Representative of the Estate of** Virginia T. Fields

3b. Entity

_____ Title

0032178 256

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)

INP FD SURE 40.00
RECORDING FEE 20.00
TOTAL 60.00
Reg# BA82 Rcpt # 29348
JLE BC Blk # 723
Jun 12, 2012 09:37 am

Space Reserved for Circuit Court Clerk Recording Violation

1	Type(s) of Instruments	X	Deed		Mortgage		Other: DoT	
			Deed of Trust		Lease			
2	Conveyance Type Check Box		Improved Sale Arms-Length [1]		Unimproved Sale Arms-Length [2]		Mult. Accounts Arms-Length [3]	X Not an Arms-Length Sale [9]
3	Tax Exemptions (if Applicable) Cite or Explain Authority	Recordation						
		State Transfer						
		County Transfer	Estate Dist					

4	Consideration and Tax Calculations			Finance Office Use Only	
	Consideration Amount			Transfer and Recordation Tax Consideration	
	Purchase Price/Consideration	0.00		Transfer Tax Consideration	$
	Any New Mortgage - First			X ( )% =	$
	Balance of Existing Mortgage			Less Exemption Amount -	$
	Other New Mortgage - Second			Total Transfer Tax =	$
	Other			Recordation Tax Consideration	$
				X ( )% =	$
	Full Cash Value			TOTAL DUE	$

5	Fees	Amount of Fees	Doc. 1	Doc. 2	Agent
		Recording Charge	40.00		
		Surcharge	20.00		Tax Bill:
		State Recordation Tax			
		State Transfer Tax			C.B. Credit:
		County Transfer Tax (if Applicable)			
		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
		01	0106201150	5672/465	101		258	☐
		Subdivision Name		Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	Sq. Ft./Acreage (4)
		Locust Drive		6		A	10/109	50 x 100
		Location/Address of Property Being Conveyed (2)						
		Locust Drive						
		Other Property Identifiers (if applicable)					Water Meter Account No.	
		Residential ☑ or Non-Residential ☐		Fee Simple ☒ or Ground Rent ☐ Amount:				
		Partial Conveyance? ☐ Yes ☑ No		Description/Amt. Of Sq. Ft./Acreage Transferred:				
		If Partial Conveyance, List Improvements Conveyed:						

7	Transferred From	Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
		Cornelius David Helfrich, Personal Representative of the Estate of Virginia T. Fields	
		Doc. 1 - Owner(s) of Records, if Different from Grantor(s)	Doc. 2 - Owner(s) of Record, if Different from Grantor(s)

8	Transferred To	Doc. 1 - Grantee(s) Names	Doc. 2 - Grantee(s) Name(s)
		Cornelius David Helfrich	
		New Owner's (Grantee) Mailing Address	
		31 E. Lee Street, Bel Air, MD 21014	

9	Other Names to be Indexed	Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optioned)

10	Contact/Mail Information	Instrument Submitted By or Contact Person	
		Name: Diane Sengstacke, President	X Return to Contact Person
		Firm: Home Title Company of MD	☐ Hold for Pickup
		Address: 112 South Main Street, Suite 101, Bel Air, Maryland 21014	☐ Return Address Provided
		Phone: 410-893-3061	

Space Reserved for County Validation

11	Assessment Information	IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER		
		☐ Yes	X No	Will the property being conveyed be the grantee's principal residence?
		☐ Yes	X No	Does transfer include personal property? If yes, identify:
		☐ Yes	X 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 Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number:		Date Received:		Deed Reference:		Assigned Property No:	
Year	19	19		Geo.		Sub	Block
Land				Zoning		Plat	Lot
Buildings				Use		Grid	Section
Total				Town Cd.	Ex. St.	Ex. Cd.	Occ. Cd.

REMARKS:

TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND

☐ COUNTY TRANSFER TAX
Per _____ ART 11 TITLE 3
SUBTITLE 2, 11-3-202

☐ RECORDATION TAX
Per _____ T.P. ART 12-108

Date 6-11-12

Distribution: Clerk's Office, SDAT, Office of Finance, Prepare

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0256, MSA_CE62_32034. Date available 06/14/2012. Printed 01/19/2021.



ADOPTED BY THE
BALTIMORE COUNTY COUNCIL
MARCH 24, 1971
BY BILLS NOS. 28, 29, 30, 31, and 32

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA
OFFICIAL ZONING MAP

REVISIONS	BY	DATE

SCALE 1" = 200'

DATE OF PHOTOGRAPH APRIL 1953

Compiled By Photogrammetric Methods
ERO SERVICE CORPORATION—PHILADELPHIA Pa.

LOCATION CATONSVILLE

SHEET S.W. 3-F

PLAN HOLD

DRAWING NUMBER SW-3-F

EXHIBIT

tabbies

7

Baltimore County 1996 Comprehensive Zoning Map Issues

6/25/96

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	Comment
1-042	Leroy M. Merritt	East side of I-695, 400' north of Washington Blvd. (3700 Commerce Drive).	MLR IM 25.570 Total 25.570	ML IM 25.570 Total 25.570	ML IM 25.570 Total 25.570	
1-043	Chew Limited Partnership	South side Of Old Court Road, 4800' east of Dogwood Road.	RC 2 250.910 Total 250.910	RC 5 250.910 Total 250.910	RC 2 250.910 Total 250.910	RC·3 250.910
1-044	Gun Road Historical & Protective Assoc.	North side of I-95, 400' south of Gun Road (1450 S. Rolling Road).	OR 2 30.130 Total 30.130	DR 1 30.130 Total 30.130	OR 2 30.130 Total 30.130	
1-045	South Rolling Road Community Association	East and West side of Rolling Road, south of Frederick Road.	DR 3.5 277.000 DR 5.5 211.000 Total 488.000	DR 2 488.000 Total 488.000	DR 3.5 277.000 DR 5.5 211.000 Total 488.000	D.R. 3.5 42.5.01 3.5 - 42.99 See Issue 1-037 and 1-057.
1-046	Coalition for Preserv. of S. W. Balt. County	Northwest side of Shelbourne Road, 2000' northeast of Sulphur Spring Road.	OT 80.000 Total 80.000	DR 2 80.000 Total 80.000	OT 80.000 Total 80.000	See Issue 1-027.

1996 CZMP 1-045

Baltimore County - My Neighborhood



Board of Appeals

Exhibit List

Case No.: 20-224-A Case Name: Helfrich/Dominion Properties

Party: Protestants Date: 9/9/2011

Exhibit No.	Description	ID Only
1	Photo - aerial and property maps of Locust Dr both from MyNeighborhood	
2	Plat of Locust Dr Extensions from 1933	
3.	3 pages - SDAT re 16 Locust Dr.	
	18 Locust Dr	
	14 Locust Dr	
4.	Emails from 7/2020 showing interest in purchasing lot - between Kings, realtor, and Helfrich	
5.	Official Offer by Kings	
6.	Notice of Assignment -	
	Plus site plan	
	Plus deed to 16 Locust Dr.	
7	40 signature Petition in opposition	
	VERIFIED BY: _____ DATE: _____	

Board of Appeals

Exhibit List

Case No.: 20-224-A Case Name: In re Helfrich/Dominion Property

Party: By Julie King Date: 9/9/2024

Exhibit No.	Description	ID Only
8	2 pages - 4 photos - homes closest surrounding and adjoining approximately near site	
9	Scherer Ltr - admitted	
10	Neal ltr admitted	
	VERIFIED BY: _____ DATE: _____	

Exhibit 1 (Page 1 of 1)
Case No. 20-224-A
16 Locust Drive



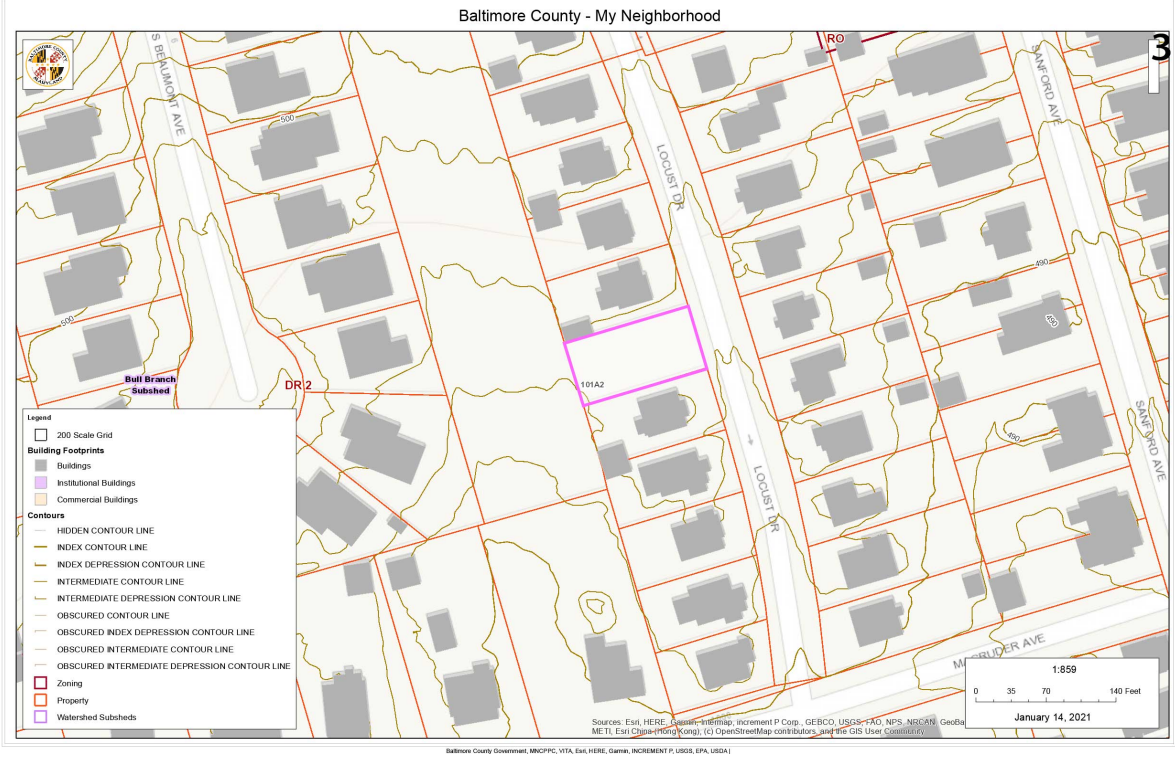
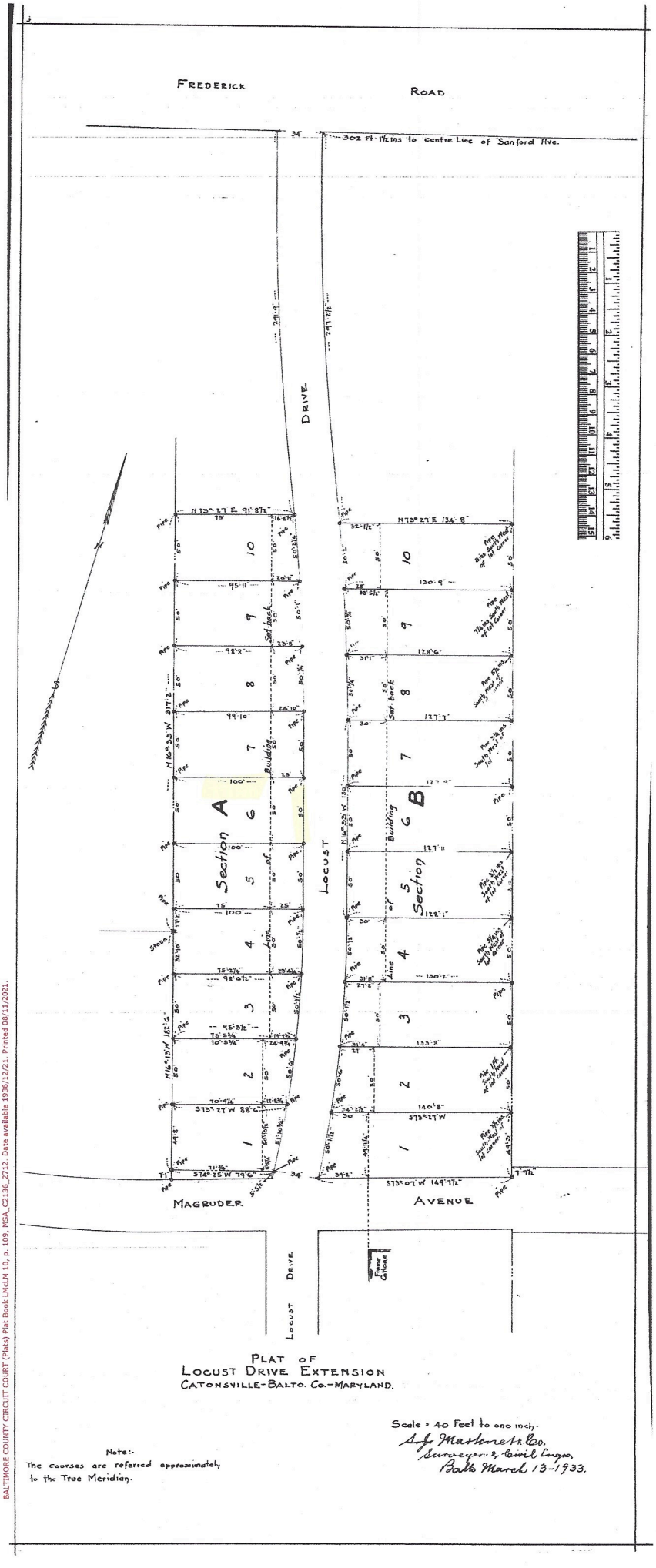


Exhibit 2 (Page 1 of 1)
Case No. 20-224-A
16 Locust Drive



BALTIMORE COUNTY CIRCUIT COURT (Plats) Plat Book LMcLM 10, p. 109, MSA_C2136_2712. Date available 1936/12/21. Printed 08/11/2021.

Exhibit 3 (Page 1 of 3)
Case No. 20-224-A
16 Locust Drive

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 01 **Account Number -** 0106201150

Owner Information

Owner Name:	HELFRICH CORNELIUS DAVID	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	31 E LEE ST BEL AIR MD 21014-8876	**Deed Reference:**	/32178/ 00253

Text

Location & Structure Information

Premises Address:	LOCUST DR 0-0000	**Legal Description:**	LOCUST DRIVE

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	
0101	0007	0258	1070130.04	0000	A		6	2019	Plat Ref:	0010/ 0109

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			5,000 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 01/01/2019	As of 07/01/2020	As of 07/01/2021
Land:	40,000	40,000		
Improvements	0	0		
Total:	40,000	40,000	40,000	40,000
Preferential Land:	0	0		

Transfer Information

Seller: FIELDS VIRGINIA T	**Date:** 06/12/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /32178/ 00253	**Deed2:**
Seller: FIELDS BERNADETTE K	**Date:** 03/07/2007	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05672/ 00465	**Deed2:**
Seller: FIELDS VIRGINIA T	**Date:** 03/07/2007	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /00000/ 00000	**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

Text

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:**

Exhibit 3 (Page 2 of 3)
Case No. 20-224-A
16 Locust Drive

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 01 **Account Number -** 0106200230

Owner Information

Owner Name:	KING RYAN KING JULIA	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	18 LOCUST DR BALTIMORE MD 21228	**Deed Reference:**	/35196/ 00455

Location & Structure Information

Premises Address:	18 LOCUST DR BALTIMORE MD 21228-	**Legal Description:**	POWERS PLAT OF LOCUST D

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	
0101	0007	0258	1070130.04	0000	A		5	2019	Plat Ref:	0010/ 0109

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1940	1,754 SF		5,000 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	YES	STANDARD UNIT	1/2 BRICK FRAME/ BRICK	5	1 full/ 1 half	1 Detached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2020	As of 07/01/2021
Land:	116,600	146,500		
Improvements	186,900	209,100		
Total:	303,500	355,600	338,233	355,600
Preferential Land:	0	0		

Transfer Information

Seller: FIELDS JOSEPH J	**Date:** 07/25/2014	**Price:** $305,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /35196/ 00455	**Deed2:**
Seller: FIELDS BERNADETTE K	**Date:** 11/26/2013	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /34470/ 00067	**Deed2:**
Seller: FIELDS EUGENE J,ET AL	**Date:** 10/06/1975	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05572/ 00747	**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: Approved 02/03/2015

Exhibit 3 (Page 3 of 3)
Case No. 20-224-A
16 Locust Drive

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 01 **Account Number -** 0123153610

Owner Information

Owner Name:	WEHLAND LAURA GRACE	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	C/O LAURA G WEHLAND-SCHERER 14 LOCUST DR BALTIMORE MD 21228-	**Deed Reference:**	/05430/ 00159

Location & Structure Information

Premises Address:	14 LOCUST DR BALTIMORE 21228-	**Legal Description:**	302 N MAGRUDER AVE LOCUST DRIVE EXT

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	
0101	0007	0258	1070130.04	0000	A		7	2019	**Plat Ref:**	0010/ 0109

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1937	1,358 SF		4,950 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1 1/2	NO	STANDARD UNIT	BRICK/	5	1 full	1 Detached	

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2019	As of 07/01/2020	As of 07/01/2021
Land:	116,600	146,500		
Improvements	147,500	140,100		
Total:	264,100	286,600	279,100	286,600
Preferential Land:	0	0		

Transfer Information

Seller: HARRISON CAROLINE M W	**Date:** 05/31/2006	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05430/ 00159	**Deed2:**
Seller: WEHLAND WILLIAM H	**Date:** 03/07/1974	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05430/ 00159	**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:**

Exhibit 4 (Page 1 of 4)
Case No. 20-224-A
16 Locust Drive

Gmail

Julie King <julieking815@gmail.com>

16 Locust Drive in Catonsville

1 message

Julie King <julieking815@gmail.com> Thu, Jul 23, 2020 at 1:36 PM
To: neil@helfrichlaw.com
Cc: Ryan King <rking316@gmail.com>

Good afternoon Mr. Helfrich,

This is Julie King, homeowner at 18 Locust Drive. My husband and I were hoping to discuss with you the sale of your lot at 16 Locust Drive. From the time we purchased our home in 2014, we have expressed interest in somehow purchasing your lot. As life would have it, our grand plans were continually put on hold with the arrival of new babies, career changes, illnesses, etc. When we discovered that you recently listed the land for sale, we became a little panicked because although we are not necessarily financially ready to take on such a purchase in these trying times, we are desperately trying to find a way to save the lot and leave it as an open space, which we will care for and maintain, but also allow our neighbors, both young and old, to continue to enjoy as a green space on our already crowded little street. We do want to purchase the land and are very much hoping you would be open to working with us on the price.

I appreciate your time and your consideration, and we look forward to hearing back from you soon.

Sincerely,
Julie and Ryan King
18 Locust Drive
Catonsville, MD 21228
443.463.7601 (Julie)
443.904.0085 (Ryan)

Exhibit 4 (Page 2 of 4)
Case No. 20-224-A
16 Locust Drive

Gmail

Julie King <julieking815@gmail.com>

RE: 16 Locust Drive.

1 message

Darren McShane <darren@realtyinbaltimore.com> Tue, Jul 28, 2020 at 4:40 PM
To: Julie King <julieking815@gmail.com>
Cc: rking316@gmail.com

Thanks for the follow up Julie. I'll let him know. Appreciate you getting back to me!

Best,
Darren

Darren T. McShane

REALTOR/Sales Associate/ABR, A-REO, SHS

Cummings & Co. Realtors (MD/PA/DE)

Bay Coast Realty (DE)

(**Preferred**) 410-746-7076

(**Baltimore Office**) 410-675-1550

Darren@RealtyinBaltimore.com

(**Philadelphia Office**) 267-207-3568

CummingsPhillyREO@gmail.com

(Delaware Office) 302-227-8146

FirstStateREO@gmail.com

From: Julie King <julieking815@gmail.com>
Sent: Tuesday, July 28, 2020 4:39 PM
To: Darren McShane <darren@realtyinbaltimore.com>
Cc: rking316@gmail.com
Subject: Re: 16 Locust Drive.

Hi Darren,

Exhibit 4 (Page 3 of 4)
Case No. 20-224-A
16 Locust Drive

Ryan and I have decided not to submit an offer at this time. I appreciate you reaching out about our interest in the lot. Please let Neil know how super disappointing this is for us, but we are just not financially prepared to take on such a purchase at this time.

Thanks again,

Julie King

18 Locust Drive

Catonsville, MD 21228

443.463.7601

Sent from my iPhone

On Jul 27, 2020, at 6:26 PM, Darren McShane <darren@realtyinbaltimore.com> wrote:

Sounds good. I can certainly draft the offer for you if you want to provide the specifics when you're ready. Wednesday am shouldn't be an issue. Best - Darren

On Jul 27, 2020, at 6:18 PM, Julie King <julieking815@gmail.com> wrote:

Hi Darren,

Thanks so much for contacting us. Yes, we are definitely still interested and are working with our bank to get the loan approval paperwork together. We will try our best to submit an official offer to you by Wednesday morning at the latest, if that works.

Thanks again,

Julie King

Sent from my iPhone

On Jul 27, 2020, at 2:19 PM, Darren McShane <darren@realtyinbaltimore.com> wrote:

Hi Julie and Ryan,

Exhibit 4 (Page 4 of 4)
Case No. 20-224-A
16 Locust Drive

Wanted to reach out again about 16 Locust Dr. I have a couple of offers on the property and will be meeting with Neil (tentatively) on Wednesday. I wanted to follow up to see if you may have continued interest before Neil and I get together. Thanks.

Best,
Darren

Darren T. McShane

REALTOR/Sales Associate/ABR, A-REO, SHS

Cummings & Co. Realtors (MD/PA/DE)

Bay Coast Realty (DE)

(**Preferred**) 410-746-7076

(**Baltimore Office**) 410-675-1550

Darren@RealtyinBaltimore.com

(**Philadelphia Office**) 267-207-3568

CummingsPhillyREO@gmail.com

(Delaware Office) 302-227-8146

FirstStateREO@gmail.com

Exhibit 5 (Page 1 of 24)
Case No. 20-224-A
16 Locust Drive

Gmail **Julie King <julieking815@gmail.com>**

Re: Offer to Purchase Lot at 16 Locust Drive

1 message

Julie King <julieking815@gmail.com> Sat, Jul 24, 2021 at 11:21 AM
To: neil@helfrichlaw.com, Darren McShane <darren@realtyinbaltimore.com>
Cc: Ryan King <rking316@gmail.com>

Dear Mr. Helfrich and Mr. McShane,

I wanted to follow up regarding my previous email and offer to purchase the property at 16 Locust Drive. We just wanted to make sure you received our email and are hopeful you have had a chance to consider our offer.

We look forward to hearing from you.

Thank you for your time,
Julie and Ryan King
18 Locust Drive
Catonsville, MD 21228
443.463.7601 (Julie)
443.904.0085 (Ryan)

Sent from my iPhone

> On Jun 8, 2021, at 10:41 AM, Julie King <julieking815@gmail.com> wrote:
>
> Mr. Helfrich and Mr. McShane,
>
> Please see the attached offer to purchase the lot at 16 Locust Drive. We very much look forward to hearing from you soon.
>
> Sincerely,
> Julie and Ryan King
> 18 Locust Drive
> Catonsville, MD 21228
> 443.463.7601 (Julie)
> 443.904.0085 (Ryan)
> <16 Locust Offer.pdf>

16 Locust Offer.pdf
1337K

June 8, 2021

Dear Mr. Helfrich,

Please consider the attached offer to purchase the lot at 16 Locust Drive in Catonsville. We understand that you are currently under contract with a home builder and have appealed the decision for variance requests in this space.

Unfortunately, we were unable to make a competitive offer last year due to other financial responsibilities. However, since moving into our home in 2014, we have discussed the possibility of purchasing the lot, not only as an extension of our yard for our growing children, but also as a green space amenity for the community.

We hope you can appreciate how much we truly value this piece of land as a green space. Please understand that while this may not be the most competitive offer you have received, it comes with zero contingencies or plans for development. The community has high hopes that you may reconsider the current contract, and give us a chance, as direct neighbors of the lot, to purchase this piece of property. We are excited to be able to make this offer and have worked very hard to be able to do so.

We take pride in our home and our street, and this neighborhood as a whole. We love the charm and character of the old houses on this street and the surrounding streets. The history is part of what makes Catonsville so unique and special to anyone that lives here. Please understand the many reasons why we are so desperately fighting against the building of a new home in that space and are so hopeful that you might take our offer into serious consideration for the good of our family and our neighborhood.

My husband is a firefighter for Baltimore City, and I currently stay at home to care for our four young children. We plan to grow old in this home, and to watch our children grow up here. It would be a dream come true to be able to purchase 16 Locust Drive and know that it will remain an open green space for many, many years to come.

We very much appreciate your time and your consideration, and we look forward to hearing back from you soon.

Sincerely,



Julie and Ryan King
18 Locust Drive
Catonsville, MD 21228

Agent Full

16 Locust Dr, Catonsville, MD 21228 | **Pending** | **Land** | **$75,000**

MLS #:	MDBC500802	Lot Acres / SQFT:	0.11a / 5000sf / Assessor
Tax ID #:	04010106201150	Price/Acre:	$681,818.18
Ownership Interest:	Fee Simple		
Type:	Land		
Waterfront:	No		

Location

County:	Baltimore, MD	School District:	Baltimore County Public Schools
In City Limits:	No	Election District:	1

Taxes and Assessment

Tax Annual Amt / Year:	$484 / 2021	Tax Assessed Value:	$40,000 / 2021
County Tax:	$484 / Annually	Section:	A
Clean Green Assess:	No	Block/Lot:	6
Agricultural Tax Due:	No		
Zoning:	RESIDENTIAL		

Land Information

Lot Acres / SQFT:	0.11a / 5,000sf / Assessor	Lot Size Dimensions:	1.00 x
Current Use:	Residential		
Additional Parcels:	No		

Ground Rent

Ground Rent Exists: No

Utilities

Utilities: Water Source: Public Hook-up Available, Sewer: Public Hook/Up Avail

Remarks

Agent: Listing agent STRONGLY ENCOURAGES all communication via EMAIL. PLEASE BE RESPECTFUL OF NEIGHBORS WHEN VISITING THE LOT! Seller will review any offers on or after 7/28/2020. Rarely available level lot in a highly desirable Catonsville location is perfect for the investor/builder/homeowner to build their dream home. Property is close to the Catonsville Main Street shopping area. Note: Lot is between 14 and 18 Locust (there is no address marker for the property). Property will require a zoning variance to be functionally buildable.

Public: Rarely available level lot in a highly desirable Catonsville location is perfect for the investor/builder/homeowner to build their dream home. Property is close to the Catonsville Main Street shopping area. Note: Lot is between 14 and 18 Locust (there is no address marker for the property). Lot perimeter is not marked. (Lot is 5000 sq ft. 50x100). Property will require a zoning variance to be functionally buildable.

Listing Office

Listing Agent:	Darren McShane (76460) (Lic# 573817) (410) 746-7076
Listing Agent Email:	sales@tristateproperties.net
Responsible Broker:	David Cummings (85415) (Lic# 579890-MD)
Listing Office:	Cummings & Co. Realtors (CCRL1) 2314 Boston St, Baltimore, MD 21224-3601
Office Manager:	Paul Stagg (3043160)
Office Phone:	(410) 823-0033

Showing

Appointment Phone:	Showingtime Onli - Schedule a showing
Showing Contact:	Service
Contact Name:	Showingtime Online
Showing Requirements:	No Boundary Mark
Showing Method:	In-Person and Live Video
Directions:	Fredrick Rd. to Locust Drive (Locust is one way).

Compensation

Buyer Agency Comp:	2.5% Of Gross	Sub Agency Comp:	2.5% Of Gross
		Dual/Var Comm:	No

Listing Details

Original Price:	$75,000	Owner Name:	Helfrich Cornelius David

Listing Agrmnt Type:	Exclusive Right	DOM / CDOM:	9 / 9
Prospects Excluded:	No	Original MLS Name:	BRIGHT
Listing Service Type:	Full Service	Off Market Date:	07/30/20
Dual Agency:	Yes	Lease Considered:	No
Sale Type:	Standard		
Listing Term Begins:	07/22/2020		
Listing Entry Date:	07/22/2020		
Possession:	Settlement		
Acceptable Financing:	Cash, Conventional		

Sale/Lease Contract

Selling Agent:	Darren McShane (76460) (Lic# 573817)	(410) 746-7076
Selling Agent Email:	sales@tristateproperties.net	
Selling Office:	Cummings & Co. Realtors (CCRL1)	
Responsible Broker:	David Cummings (85415) (Lic# 579890-MD) 2314 Boston St, Baltimore, MD 21224-3601	
Office Phone:	(410) 823-0033	

Agreement of Sale Dt:	01/01/21	Close Date:	12/30/21
		Last List Price:	$75,000.00

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Maryland REALTORS®

UNIMPROVED LAND CONTRACT OF SALE

This is a Legally Binding Contract; If Not Understood, Seek Competent Legal Advice.

THIS FORM IS DESIGNED AND INTENDED FOR THE SALE AND PURCHASE OF RESIDENTIAL UNIMPROVED REAL ESTATE LOCATED IN MARYLAND ONLY. NOT FOR USE FOR THE SALE OF IMPROVED REAL ESTATE/COMMERICAL OR INDUSTRIAL REAL ESTATE.

APPROPRIATE ADDENDA MAY BE REQUIRED.

TIME IS OF THE ESSENCE. Time is of the essence of this Contract. The failure of Seller or Buyer to perform any act as provided in this Contract by a prescribed date or within a prescribed time period shall be a default under this Contract and the non-defaulting party, upon written notice to the defaulting party, may declare this Contract null and void and of no further legal force and effect. In such event, all Deposit(s) shall be disbursed in accordance with Paragraph 20 of this Contract.

1. DATE OF OFFER: 05/28/2021

2. SELLER: Helfrich Cornelius David

3. BUYER: Ryan King

4. PROPERTY: Seller does sell to Buyer and Buyer does purchase from Seller, all of the following described Property (hereinafter "Property") known as 16 Locust Drive located in Catonsville Baltimore County City/County, Maryland, Zip Code 21228 together with all rights and appurtenances thereto belonging. Buyer and Seller agree that the Property subject to the Contract is estimated to contain zero point eleven (.11) acre(s) of land, or five thousand (5000) square feet of land, more or less. Unless an addendum pertaining to the acreage or square feet and/or the configuration of the Property is specifically included as a part of the Contract, Buyer shall purchase the Property and Seller shall sell the Property without any adjustment in the purchase price regardless as to the actual size or configuration of the Property.

5. ESTATE: The Property is being conveyed: ☑ in fee simple or ☐ subject to an annual ground rent, now existing, in the amount of _____ Dollars ($_____) payable semi-annually, as now or to be recorded among the Land Records of _____ City/County, Maryland.

6. PURCHASE PRICE: The purchase price is twenty-five thousand Dollars ($25,000.00).

7. PAYMENT TERMS: The payment of the purchase price shall be made by Buyer as follows:
(a) An initial Deposit by way of check in the amount of two hundred fifty Dollars ($250.00) at the time of this offer.
(b) An additional Deposit by way of _____ in the amount of _____ Dollars ($_____) to be paid _____.
(c) All Deposits will be held in escrow by: Lawyers Trust Title
(If not a Maryland licensed real estate broker, the parties shall execute a separate written escrow deposit agreement that complies with Section 10-802 of the Real Property Article, Annotated Code of Maryland.)
(d) The purchase price less any and all Deposits shall be paid in full by Buyer in cash, wired funds, bank check, certified check or other payment acceptable to the settlement officer at settlement.
(e) Buyer and Seller instruct broker named in paragraph (c) above to place the Deposits in: **(Check One)**

☑ A non-interest bearing account;

OR ☐ An interest bearing account, the interest on which, in absence of default by Buyer, shall accrue to the benefit of Buyer. Broker may charge a fee for establishing an interest bearing account.

8. SETTLEMENT: Date of Settlement 07/23/2021 or sooner if agreed to in writing by the parties.

9. FINANCING: Buyer's obligation to purchase the Property is contingent upon Buyer obtaining a written commitment for a loan secured by the Property as follows:

☐ Conventional Financing Addendum
☐ Assumption Addendum
☐ Gift of Funds Contingency Addendum
☐ Owner Financing Addendum
☑ OTHER: CASH
☑ No Financing Contingency

10. FINANCING APPLICATION AND COMMITMENT: Buyer agrees to make a written application for the financing as herein described within _____ (_____) days from the Date of Contract Acceptance. If such written financing

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commitment is not obtained by Buyer within _____(_____) days from the Date of Contract Acceptance: (1) Seller, at Seller's election and upon written notice to Buyer, may declare this Contract null and void and of no further legal effect; or (2) Buyer, upon written notice to Seller, which shall include written evidence from the lender of Buyer's inability to obtain financing as provided in Paragraph 9 of this Contract, may declare this Contract null and void and of no further legal effect. In either case, the deposit shall be disbursed in accordance with the Deposit paragraph of this Contract. If Buyer has complied with all of Buyer's obligations under this Contract, including those with respect to applying for financing and seeking to obtain financing, then the Release of Deposit agreement shall provide that the deposit shall be returned to Buyer.

11. ALTERNATE FINANCING: Provided Buyer timely and diligently pursues the financing described in the **Financing** paragraph, the **Financing Application and Commitment** paragraph, and the **Buyer Responsibility** paragraph, Buyer, at Buyer's election, may also apply for alternate financing. If Buyer, at Buyer's sole option, obtains a written commitment for financing in which the loan amount, term of note, amortization period, interest rate, down payment or loan program differ from the financing as described in the Financing Paragraph, or any addendum to this Contract, the Financing Application and Commitment paragraph or any addendum to this Contract shall be deemed to have been fully satisfied. Such alternate financing may not increase costs to Seller or exceed the time allowed to secure the financing commitment as provided in the Financing Application and Commitment paragraph, or any addendum to this Contract.

12. ENVIRONMENTAL INSPECTION: Buyer acknowledges, subject to Seller acceptance, that Buyer is afforded the opportunity, at Buyer's sole cost and expense, to condition Buyer's purchase of the Property upon an Environmental Inspection in order to ascertain the physical condition of the Property or the existence of environmental hazards. If Buyer desires an Environmental Inspection contingency, such contingency must be included in an addendum to this Contract. Buyer and Seller acknowledge that Brokers, agents or subagents are not responsible for the existence or discovery of property defects.

Inspection(s) Addenda Attached [ ] [ ] **Inspection(s) Declined** [RK 05/28/21 4:02 PM EDT dotloop verified] [ ]

Buyer **Buyer** **Buyer** **Buyer**

13. INCLUSIONS/EXCLUSIONS: Included in the purchase price are all permanently attached fixtures. Certain other now existing items which may be considered personal property, whether installed or stored upon the property, are included or excluded, as follows:

ADDITIONAL INCLUSIONS (SPECIFY): _____

ADDITIONAL EXCLUSIONS (SPECIFY): _____

14. AGRICULTURALLY ASSESSED PROPERTY: The *Agricultural Use Assessment* (Assessment) is a reduced property tax assessment for agricultural land. To be eligible for the Assessment, the land must be actively used for agricultural purposes. The *Agricultural Land Transfer Tax* (Tax) is a tax imposed under Section 13-301 et seq. of the Tax-Property Article, Annotated Code of Maryland**. If the Property is assessed in the agricultural use category and the Buyer does not intend to use the Property for agricultural purposes, the Tax may become due and could be substantial.** The Tax is imposed on the deed itself and must be paid before the deed can be recorded. At the time of sale, Seller shall notify Buyer in writing that the transfer may be subject to the Tax. Buyer will be responsible to pay the Tax unless the parties negotiate a different agreement. To avoid paying the Tax, Buyer must continue to use the Property for agricultural purposes and comply with the other requirements of the law. **The Property, or any portion thereof, may be subject to an Agricultural Land Transfer Tax as imposed by Section 13-301 et seq. of the Tax-Property Article, Annotated Code of Maryland, by reason of the Property's having been assessed on the basis of agricultural use. Agricultural taxes assessed as a result of this transfer shall be paid by** seller as necessary.

15. FOREST CONSERVATION AND MANAGEMENT PROGRAM: Buyer is hereby notified that this transfer may be subject to the Forest Conservation and Management Program imposed by Section 8-211 of the Tax-Property Article, Annotated Code of Maryland. Forest Conservation and Management program taxes assessed as a result of this transfer shall be paid by seller as necessary.

16. SEWAGE DISPOSAL, WATER AND SURVEY:

A. SUITABILITY FOR PRIVATE ON-SITE SEWAGE DISPOSAL SYSTEM: (Check One)

☑ This sale is not contingent upon any provision regarding a percolation test to indicate suitability for installation of a private on-site sewage disposal system.

OR ☐ This sale is contingent upon a provision regarding a percolation test to indicate suitability for installation of a private on-site sewage disposal system. **See attached addendum.**

B. PUBLIC/PRIVATE WATER: (Check One)

☑ This sale is not contingent upon any provision regarding well water quantity or quality or the ability to connect the property to a public or private source of potable water.

OR ☐ This sale is contingent upon a provision regarding well water quantity or quality or the ability to connect the property to a public or private source of potable water. **See attached addendum.**

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C. SURVEY: Buyer is advised that a survey of the Property may be required to meet the underwriting requirement of the title insurers and/or mortgage lender: **(Check One)**

☑ This sale is not contingent on a survey or lot/land boundary markers.

OR ☐ This sale is contingent on a survey or lot/land boundary markers. **See attached addendum.**

17. NOTICE REGARDING DISCLOSURE OF DEFERRED WATER AND SEWER ASSESSMENTS: Pursuant to Section 14-117(a)(5) of the Real Property Article of the Annotated Code of Maryland, a contract for the resale of residential real property that is served by public water or wastewater facilities for which deferred water and sewer charges have been established by a recorded covenant or declaration shall contain a notice disclosing information about the deferred water and sewer charges. **If a Seller subject to this law fails to comply:**

(a) Prior to settlement, Buyer is entitled to rescind in writing the sales contract without penalty or liability. On rescission, Buyer is also entitled to the full return of any deposits made on account of the sales contract. If any deposits are held in trust by a licensed real estate broker, the return of the deposits to a Buyer under this law shall comply with the procedures under § 17-505 of the Business Occupations and Professions Article of the Annotated Code of Maryland. Buyer's right of rescission shall terminate five days after Seller provides to Buyer written notice in accordance with this requirement; and

(b) After settlement, Seller shall be liable to Buyer for the full amount of any fee or assessment not disclosed, unless Seller was never charged a fee or assessment to defray the costs of public water or wastewater facilities by the developer, a successor of the developer, or a subsequent assignee.

This law does *not* apply in a county that has adopted a disclosure requirement that is substantially similar to this law. (If the Property is served by public water or wastewater facilities for which deferred water and sewer charges have been established by a recorded covenant or declaration: See Notice and Disclosure of Deferred Water and Sewer Charges.)

Buyer acknowledges by Buyer's initials below that Buyer has read and understands Paragraph 17.

RK 05/28/21 4:02 PM EDT dotloop verified _____ **(BUYER)**

18. ADDENDA: The Addenda checked below, which are hereby attached, are made a part of this Contract:

- ☐ Affiliated Business Disclosure Notice
- ☐ Back-Up Contract Addendum
- ☐ Cash Appraisal Contingency
- ☐ Disclosure of Licensee Status
- ☐ Homeowners Association Notice
- ☐ Kickout
- ☐ Local City/County Certifications/Registrations
- ☑ Local City/County Notices/Disclosures
- ☐ Conservation Easement Addendum
- ☐ Property Subject to Ground Rent
- ☐ Local Private/Public Water
- ☐ Maryland Non-Resident Seller Transfer Withholding Tax
- ☐ Mineral Rights
- ☐ Notice and Disclosure of Deferred Water and Sewer Charges
- ☐ Purchase Price Escalation
- ☐ Sale, Financing, Settlement or Lease of Other Real Estate
- ☐ Seller Contribution
- ☐ Seller Purchase of Another Property
- ☐ Third Party Approval
- ☐ Unimproved Land Contract Addendum

☑ Other Addenda/Special Conditions:

Electronic Authorization, Escrow Addendum

19. (RESERVED).

20. DEPOSIT: If the Deposit is held by a Broker as specified in Paragraph 7(c) of this Contract, Buyer hereby authorizes and directs Broker to hold the Deposit instrument without negotiation or deposit until the parties have executed and accepted this Contract. Upon acceptance, the initial Deposit and additional Deposits (the "Deposit"), if any, shall be placed in escrow as provided in Paragraph 7(e) of this Contract and in accordance with the requirements of Section 17-502(b)(1) of the Business Occupations and Professions Article, Annotated Code of Maryland. If Seller does not execute and accept this Contract, the initial Deposit instrument shall be promptly returned to Buyer. The Deposit shall be disbursed at settlement. In the event this Contract shall be terminated or settlement does not occur, Buyer and Seller agree that the Deposit shall be disbursed by Broker only in accordance with a Release of Deposit agreement executed by Buyer and Seller. In the event Buyer and/or Seller fail to complete the real estate transaction in accordance with the terms and conditions of this Contract, and either Buyer or Seller shall be unable or unwilling to execute a Release of Deposit agreement, Buyer and Seller hereby acknowledge and agree that Broker may distribute the Deposit in accordance with the provisions of Section 17-505(b) of the Business Occupations and Professions Article, Annotated Code of Maryland.

21. DEED AND TITLE: Upon payment of the purchase price, a deed for the Property containing covenants of special warranty and further assurances (except in the case of transfer by personal representative of an estate), shall be executed by Seller and shall convey the Property to Buyer. Title to the Property, including all chattels included in the purchase, shall be good and merchantable, free of liens and encumbrances except as specified herein; except for use and occupancy

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restrictions of public record which are generally applicable to properties in the immediate neighborhood or the subdivision in which the Property is located and publicly recorded easements for public utilities and any other easements which may be observed by an inspection of the Property. Buyer expressly assumes the risk that restrictive covenants, zoning laws or other recorded documents may restrict or prohibit the use of the Property for the purpose(s) intended by Buyer. In the event Seller is unable to give good and merchantable title or such as can be insured by a Maryland licensed title insurer, with Buyer paying not more than the standard rate as filed with the Maryland Insurance Commissioner, Seller, at Seller's expense, shall have the option of curing any defect so as to enable Seller to give good and merchantable title or, if Buyer is willing to accept title without said defect being cured, paying any special premium on behalf of Buyer to obtain title insurance on the Property to the benefit of Buyer. In the event Seller elects to cure any defects in title, this Contract shall continue to remain in full force and effect; and the date of settlement shall be extended for a period not to exceed fourteen (14) additional days. If Seller is unable to cure such title defect(s) and is unable to obtain a policy of title insurance on the Property to the benefit of Buyer from a Maryland licensed title insurer, Buyer shall have the option of taking such title as Seller can give, or terminating this Contract and being reimbursed by Seller for cost of searching title as may have been incurred not to exceed 1/2 of 1% of the purchase price. In the latter event, there shall be no further liability or obligation on either of the parties hereto; and this Contract shall become null and void; and all Deposit(s) shall be disbursed in accordance with the Deposit paragraph of this Contract. In no event shall Broker(s) or their agent(s) have any liability for any defect in Seller's title.

22. CONDITION OF PROPERTY AND POSSESSION: At settlement, Seller shall deliver possession of the Property and shall deliver the Property vacant, clear of trash and debris and in substantially the same condition as existed on the Date of Contract Acceptance. Buyer reserves the right to inspect the Property within five (5) days prior to settlement. **EXCEPT AS OTHERWISE SPECIFIED IN THIS CONTRACT, INCLUDING THIS PARAGRAPH, THE PROPERTY IS SOLD "AS IS."**

23. ADJUSTMENTS: Homeowner's association fees, rent and water rent shall be adjusted and apportioned as of date of settlement; and all taxes, general or special, and all other public or governmental charges or assessments against the Property which are or may be payable on a periodic basis, including Metropolitan District Sanitary Commission, Washington Suburban Sanitary Commission, or other benefit charges, assessments, liens or encumbrances for sewer, water, drainage, paving, or other public improvements completed or commenced on or prior to the date hereof, or subsequent thereto, are to be adjusted and apportioned as of the date of settlement and are to be assumed and paid thereafter by Buyer, whether assessments have been levied or not as of date of settlement if applicable by local law.

24. SETTLEMENT COSTS: Buyer agrees to pay all settlement costs and charges including, but not limited to, all Lender's fees in connection herewith, including title examination and title insurance fees, loan insurance premiums, all document preparation and recording fees, notary fees, survey fees where required, and all recording charges, except those incident to clearing existing encumbrances or title defects. If Buyer is a Veteran obtaining VA financing, Buyer's Broker may not charge a flat fee to Buyer nor to Seller per VA Reg. Part 38 CFR 36.4313(b).

25. TRANSFER CHARGES: Section 14-104 of the Real Property Article, Annotated Code of Maryland provides that, unless otherwise negotiated in the Contract or provided by State or local law, the cost of any recordation tax or any State or local Transfer Tax shall be shared equally between the Buyer and Seller. Unless otherwise provided by an addendum to this Contract, the costs of state and local transfer and recordation taxes (other than agricultural land transfer tax) shall be shared equally by Buyer and Seller.

26. BROKER LIABILITY: Brokers, their agents, subagents and employees do not assume any responsibility for the condition of the Property or for the performance of this Contract by any or all parties hereto. By signing this Contract, Buyer and Seller acknowledge that they have not relied on any representations made by Brokers, or any agents, subagents or employees of Brokers, except those representations expressly set forth in this Contract.

27. BROKER'S FEE: All parties irrevocably instruct the settlement officer to collect the fee or compensation and disburse same according to the terms and conditions provided in the listing agreement and/or agency representation agreement. Settlement shall not be a condition precedent to payment of compensation.

28. SELLER RESPONSIBILITY: Seller agrees to keep existing mortgages free of default until settlement. All violation notices or requirements noted or issued by any governmental authority, or actions in any court on account thereof, against or affecting the Property at the date of settlement of this Contract, shall be complied with by Seller and the Property conveyed free thereof. The Property is to be held at the risk of Seller until legal title has passed or possession has been given to Buyer. If, prior to the time legal title has passed or possession has been given to Buyer, whichever shall occur first, all or a substantial part of the Property is destroyed or damaged, without fault of Buyer, then this Contract, at the option of Buyer, upon written notice to Seller, shall be null and void and of no further effect, and the deposits shall be disbursed in accordance with the Deposit paragraph of this Contract.

29. BUYER RESPONSIBILITY: If Buyer has misrepresented Buyer's financial ability to consummate the purchase of the Property, or if this Contract is contingent upon Buyer securing a written commitment for financing and Buyer fails to apply for such financing within the time period herein specified, or fails to pursue financing diligently and in good faith, or if Buyer

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makes any misrepresentations in any document relating to financing, or takes (or fails to take) any action which causes Buyer's disqualification for financing, then Buyer shall be in default; and Seller may elect by written notice to Buyer, to terminate this Contract and/or pursue the remedies set forth under the Default paragraph of this Contract.

30. HOMEOWNER'S ASSOCIATION: The Property is not part of a development subject to the imposition of mandatory fees as defined by the Maryland Homeowner's Association Act, unless acknowledged by attached addendum.

31. GROUND RENT: If the Property is subject to ground rent and the ground rent is not timely paid, the ground lease holder (i.e., the person to whom the ground rent is payable) may bring an action under Section 8-402.3 of the Real Property Article, Annotated Code of Maryland. As a result of this action, a lien may be placed upon the property. If the Property is subject to ground rent, Sections 14-116 and 14-116.1 of the Real Property Article provide the purchaser, upon obtaining ownership of the Property, with certain rights and responsibilities relative to the ground rent. (If the Property is subject to ground rent: See Property Subject to Ground Rent Addendum.)

32. SALE/SETTLEMENT OR LEASE OF OTHER REAL ESTATE: Neither this Contract nor the granting of Buyer's loan referred to herein is to be conditioned or contingent in any manner upon the sale, settlement and/or lease of any other real estate unless a contingency for the sale, settlement and/or lease of other real estate is contained in an addendum to this Contract. Unless this Contract is expressly contingent upon the sale, settlement and/or lease of any other real estate, Buyer shall neither apply for nor accept a financing loan commitment which is contingent upon or requires as a pre-condition to funding that any other real estate be sold, settled and/or leased.

33. LEASES: Seller may neither negotiate new leases nor renew existing leases for the Property which extend beyond settlement or possession date without Buyer's written consent.

34. DEFAULT: Buyer and Seller are required and agree to make full settlement in accordance with the terms of this Contract and acknowledge that failure to do so constitutes a breach hereof. If Buyer fails to make full settlement or is in default due to Buyer's failure to comply with the terms, covenants and conditions of this Contract, the initial Deposit and additional Deposits (the "Deposit") may be retained by Seller as long as a Release of Deposit Agreement is signed and executed by all parties, expressing that said Deposit may be retained by Seller. In the event the parties do not agree to execute a Release of Deposit Agreement, Buyer and Seller shall have all legal and equitable remedies. If Seller fails to make full settlement or is in default due to Seller's failure to comply with the terms, covenants and conditions of this Contract, Buyer shall be entitled to pursue such rights and remedies as may be available, at law or in equity, including, without limitation, an action for specific performance of this Contract and/or monetary damages. In the event of any litigation or dispute between Buyer and Seller concerning the release of the Deposit, Broker's sole responsibility may be met, at Broker's option, by paying the Deposit into the court in which such litigation is pending, or by paying the Deposit into the court of proper jurisdiction by an action of interpleader. Buyer and Seller agree that, upon Broker's payment of the Deposit into the court, neither Buyer nor Seller shall have any further right, claim, demand or action against Broker regarding the release of the Deposit; and Buyer and Seller, jointly and severally, shall indemnify and hold Broker harmless from any and all such rights, claims, demands or actions. In the event of such dispute and election by Broker to file an action of interpleader as herein provided, Buyer and Seller further agree and hereby expressly and irrevocably authorize Broker to deduct from the Deposit all costs incurred by Broker in the filing and maintenance of such action of interpleader including but not limited to filing fees, court costs, service of process fees and attorneys' fees, provided that the amount deducted shall not exceed the lesser of $500 or the amount of the Deposit held by Broker. All such fees and costs authorized herein to be deducted may be deducted by Broker from the Deposit prior to paying the balance of the Deposit to the court. Buyer and Seller further agree and expressly declare that all such fees and costs so deducted shall be the exclusive property of Broker. If the amount deducted by Broker is less than the total of all of the costs incurred by Broker in filing and maintaining the interpleader action, then Buyer and Seller jointly, and severally, agree to reimburse Broker for all such excess costs upon the conclusion of the interpleader action.

35. MEDIATION OF DISPUTES: Mediation is a process by which the parties attempt to resolve a dispute or claim with the assistance of a neutral mediator who is authorized to facilitate the resolution of the dispute. The mediator has no authority to make an award, to impose a resolution of the dispute or claim upon the parties or to require the parties to continue mediation if the parties do not desire to do so. Buyer and Seller agree that any dispute or claim arising out of or from this Contract or the transaction which is the subject of this Contract shall be mediated through Maryland REALTORS® or its member local boards/associations in accordance with the established Mediation Rules and Guidelines of Maryland REALTORS® or through such other mediator or mediation service as mutually agreed upon by Buyer and Seller, in writing. Unless otherwise agreed in writing by the parties, mediation fees, costs and expenses shall be divided and paid equally by the parties to the mediation. If either party elects to have an attorney present that party shall pay his or her own attorney's fees.

Buyer and Seller further agree that the obligation of Buyer and Seller to mediate as herein provided shall apply to all disputes or claims arising whether prior to, during, or within one (1) year following the actual contract settlement date or when settlement should have occurred. Buyer and Seller agree that neither party shall commence any action in any court regarding a dispute or claim arising out of or from this Contract or the transaction which is the subject of this Contract, without first mediating the dispute or claim, unless the right to pursue such action or the ability to protect an interest or pursue a

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remedy as provided in this Contract, would be precluded by the delay of the mediation. In the event the right to pursue such action, or the ability to protect an interest or pursue a remedy would be precluded by the delay, Buyer or Seller may commence the action only if the initial pleading or document commencing such action is accompanied by a request to stay the proceeding pending the conclusion of the mediation. If a party initiates or commences an action in violation of this provision, the party agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by the other party to enforce the obligation as provided herein. The provisions of this paragraph shall survive closing and shall not be deemed to have been extinguished by merger with the deed.

36. ATTORNEY'S FEES: In any action or proceeding between Buyer and Seller based, in whole or in part, upon the performance or non-performance of the terms and conditions of this Contract, including, but not limited to, breach of contract, negligence, misrepresentation or fraud, the prevailing party in such action or proceeding shall be entitled to receive reasonable attorney's fees from the other party as determined by the court or arbitrator. In any action or proceeding between Buyer and Seller and/or between Buyer and Broker(s) and/or Seller and Broker(s) resulting in Broker(s) being made a party to such action or proceeding, including, but not limited to, any litigation, arbitration, or complaint and claim before the Maryland Real Estate Commission, whether as defendant, cross-defendant, third-party defendant or respondent, Buyer and Seller jointly and severally, agree to indemnify and hold Broker(s) harmless from and against any and all liability, loss, cost, damages or expenses (including filing fees, court costs, service of process fees, transcript fees and attorneys' fees) incurred by Broker(s) in such action or proceeding, providing that such action or proceeding does not result in a judgment against Broker(s).

As used in this Contract, the term "Broker(s)" shall mean: (a) the two (2) Brokers as identified on Page 9 of this Contract; (b) the two (2) named Sales Associates identified on Page 9 of the Contract; and (c) any agent, subagent, salesperson, independent contractor and/or employees of Broker(s). The term "Broker(s)" shall also mean, in the singular, any or either of the named Broker(s) and/or Sales Associate(s) as identified or, in the plural, both of the named Brokers and/or Sales Associates as identified.

This Paragraph shall apply to any and all such action(s) or proceeding(s) against Broker(s) including those action(s) or proceeding(s) based, in whole or in part, upon any alleged act(s) or omission(s) by Broker(s), including, but not limited to, any alleged act of misrepresentation, fraud, non-disclosure, negligence, violation of any statutory or common law duty, or breach of fiduciary duty by Broker(s). The provision of this Paragraph shall survive closing and shall not be deemed to have been extinguished by merger with the deed.

37. NOTICE OF BUYER'S RIGHT TO SELECT SETTLEMENT SERVICE PROVIDERS: Buyer has the right to select Buyer's own title insurance company, title lawyer, settlement company, escrow company, mortgage lender or financial institution as defined in the Financial Institutions Article, Annotated Code of Maryland. Buyer acknowledges that Seller may not be prohibited from offering owner financing as a condition of settlement.

38. FARM/CROPS/TIMBER RIGHTS: Seller or any tenant of Seller shall be allowed to harvest, sell or assign any annual crops which have been planted on the Property prior to the Date of the Contract Acceptance, even though said harvest time may occur subsequent to the date of the settlement on this Contract, unless otherwise agreed by attached addendum. If the crop consists of timber, neither Seller nor any tenant of Seller shall have any right to harvest the timber unless the right to remove same shall be established by attached addendum. Notwithstanding the provisions hereof, any tenant who shall be leasing the Property shall be allowed to complete the harvest of any annual crops which have been planted prior to the Date of Contract Acceptance, as previously agreed between Seller and Tenant.

39. AUTHORIZATION TO PROVIDE TILA-RESPA INTEGRATED DISCLOSURES: Buyer and Seller hereby authorize the lender, title company, escrow agent, and/or their representatives to disclose and provide copies of the closing disclosure(s) and/or other settlement statement to the real estate licensees involved in the transaction at the time these documents are provided to Buyer and Seller.

40. (RESERVED).

41. PROPERTY INSURANCE BROCHURE: An informational brochure published by Maryland REALTORS® titled "The New Reality of Property Insurance – What You Should Know" is available to explain current issues relative to obtaining insurance coverage for the Property to be purchased and may be obtained on Maryland REALTORS® website.

42. FLOOD DISCLOSURE NOTICE:

A. FLOOD INSURANCE PREMIUMS: The Property or part of the Property may be located in an area established by the government as a "flood plain" or otherwise in an area where flood insurance could be required by Buyer's mortgage lender as a condition of granting a mortgage. In addition, construction on the Property could be prohibited or restricted.

The National Flood Insurance Program ("NFIP") provides for the availability of flood insurance but also establishes flood insurance policy premiums based on the risk of flooding in the area where properties are located. Due to amendments to federal law governing the NFIP those premiums are increasing, and in some cases will rise by a substantial amount over the premiums previously charged for flood insurance. As a result, Buyer should not rely on the premiums paid for flood

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insurance on the Property as an indication of the premiums that will apply after Buyer completes the purchase. In considering the purchase of this Property, Buyer should consult with one or more carriers of flood insurance for better understanding of flood insurance coverage, the premiums that are likely to be required to purchase such insurance and any available information about how those premiums may increase in the future. The only requirement for purchasing flood insurance from the NFIP is that you live in a community that participates (via floodplain regulations) in the NFIP. The same requirement applies to the mandatory purchase of flood insurance. Detailed information regarding flood insurance coverage may be obtained at: https://www.fema.gov/national-flood-insurance-program.

B. FLOOD INSURANCE RATE MAPS: The State of Maryland in conjunction with the Federal Emergency Management Agency has been systematically updating flood insurance rate maps. The Property may be affected. Buyer is advised to contact the Maryland Department of the Environment and consult a flood insurance carrier to inquire about the status of the Property. Detailed information regarding updated maps may be obtained at: http://www.mdfloodmaps.net.

43. GUARANTY FUND: NOTICE TO BUYER: BUYER IS PROTECTED BY THE REAL ESTATE GUARANTY FUND OF THE MARYLAND REAL ESTATE COMMISSION, UNDER SECTION 17-404 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE OF THE ANNOTATED CODE OF MARYLAND, FOR LOSSES IN AN AMOUNT NOT EXCEEDING $50,000 FOR ANY CLAIM.

44. (RESERVED).

45. MARYLAND NON-RESIDENT SELLER: If the Property is not the Seller's principal residence and the Seller is a non-resident individual of the State of Maryland or is a non-resident entity which is not formed under the laws of the State of Maryland or qualified to do business in the State of Maryland, a withholding tax from the proceeds of sale may be withheld at the time of settlement except as otherwise provided by Maryland law. (See Maryland Non-Resident Seller Transfer Withholding Tax Addendum.)

46. INTERNAL REVENUE SERVICE FILING: Buyer and Seller each agree to cooperate with the settlement officer by providing all necessary information so that a report can be filed with the Internal Revenue Service, as required by Section 6045 of the IRS Code. To the extent permitted by law, any fees incurred as a result of such filing will be paid by the Seller.

47. NOTICE TO BUYER CONCERNING THE CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA: Buyer is advised that all or a portion of the property may be located in the "Critical Area" of the Chesapeake and Atlantic Coastal Bays, and that additional zoning, land use, and resource protection regulations apply in this area. The "Critical Area" generally consists of all land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands, the Chesapeake Bay, the Atlantic Coastal Bays, and all of their tidal tributaries. The "Critical Area" also includes the waters of and lands under the Chesapeake Bay, the Atlantic Coastal Bays and all of their tidal tributaries to the head of tide. For information as to whether the property is located within the Critical Area, Buyer may contact the local Department of Planning and Zoning, which maintains maps showing the extent of the Critical Area in the jurisdiction. Allegany, Carroll, Frederick, Garrett, Howard, Montgomery and Washington Counties do not include land located in the Critical Area.

48. WETLANDS NOTICE: Buyer is advised that if the Property being purchased contains waters of the United States, or if the Property contains land and/or waters regulated by the State, including, but not limited to, wetlands, approval from the U.S. Army Corps of Engineers (Corps) and/or the Maryland Department of the Environment (MDE) will be necessary before starting any work, including construction, if the work includes the discharge of dredged or fill material into a regulated area, or certain other activities conducted in a regulated area. The Corps has adopted a broad definition of waters of the United States, which occur throughout the Chesapeake Bay Region, as well as other portions of the State. The land and waters regulated by the State include tidal wetlands, nontidal wetlands and their buffers, and streams and their 100-year nontidal floodplain. For information as to whether the Property includes waters of the United States or land and/or waters regulated by the State, Buyer may contact the Baltimore District of the Corps and/or MDE. Buyer may also elect, at Buyer's expense, to engage the services of a qualified specialist to inspect the Property for the presence of Corps- or MDE-regulated areas, including wetlands, prior to submitting a written offer to purchase the Property; or Buyer may include in Buyer's written offer a clause making Buyer's purchase of the Property contingent upon a satisfactory wetlands inspection.

49. FOREST CONSERVATION ACT NOTICE: If the Property is a tract of land 40,000 square feet or more in size, Buyer is notified that, unless exempted by applicable law, as a prerequisite to any subdivision plan or grading or sediment control permit for the Property, Buyer will be required to comply with the provisions of the Maryland Forest Conservation Act imposed by Section 5-1601, et seq. of the Natural Resources Article, Annotated Code of Maryland, including, among other things, the submission and acceptance of a Forest Stand Delineation and a Forest Conservation Plan for the Property in accordance with applicable laws and regulations. Unless otherwise expressly set forth in an addendum to this Contract, Seller represents and warrants that the Property is not currently subject to a Forest Conservation Plan, Management Agreement or any other pending obligation binding the owner of the Property under said Act; further, Seller represents and warrants that no activities have been undertaken on the Property by Seller in violation of the Forest Conservation Act.

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50. NOTICE CONCERNING CONSERVATION EASEMENTS: If the Property is encumbered by a Conservation Easement as defined in Section 10-705 of the Real Property Article, Annotated Code of Maryland, the contract must contain a notice concerning the easement, which is contained in an attached addendum. This Paragraph does not apply to the sale of property in an action to foreclose a mortgage or deed of trust. (If the Property is encumbered by a Conservation Easement: See Conservation Easement Addendum.)

51. FOREIGN INVESTMENT TAXES-FIRPTA: Section 1445 of the United States Internal Revenue Code of 1986 provides that a Buyer of residential real property located in the United States must withhold federal income taxes from the payment of the purchase price if (a) the purchase price exceeds Three Hundred Thousand Dollars ($300,000.00) and (b) the seller is a foreign person. Unless otherwise stated in an addendum attached hereto, if the purchase price is in excess of Three Hundred Thousand Dollars ($300,000.00), Seller represents that Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined by the Internal Revenue Code and applicable regulations) and agrees to execute an affidavit to this effect at the time of settlement.

52. CRIMINAL ACTIVITY AND SEXUAL OFFENDERS. Buyer may contact the state, county or municipal police departments in which the Property is located or check the "Sex Offender Registry" at the Maryland Department of Public Safety and Correctional Services website in order to ascertain criminal activity in the vicinity of the Property or the presence of registered sexual offenders who live or work within the vicinity of the Property. Buyer acknowledges that Buyer is solely responsible to inquire of such matters before signing this Contract. Buyer shall have no right to cancel this Contract based upon criminal activity or the presence of registered sexual offenders in the vicinity of the Property. Buyer further acknowledges that no real estate licensee involved in the sale or purchase of the Property, whether acting as the agent for Seller or Buyer, has any duty nor assumes any duty or responsibility to ascertain criminal activity or the presence of registered sexual offenders in the vicinity of the Property.

53. MILITARY INSTALLATIONS: This Section does not apply in Allegany, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties. Buyer is advised that the Property may be located near a military installation that conducts flight operations, munitions testing, or military operations that may result in high noise levels.

54. NOTICE TO THE PARTIES:

(A) NO REPRESENTATIONS: Brokers, their agents, subagents and employees, make no representations with respect to:

(1) Water quantity, quality, color, or taste or operating conditions of public and/or private water systems;

(2) Location, size or operating condition of on-site sewage disposal systems;

(3) The extensions of public utilities by local municipal authorities, existence or availability of public utilities, and any assessments, fees or costs for public utilities which might be imposed by local municipal authorities or private entities, should public utilities be extended or available to the subject Property. (Buyer should consult the Department of Public Works to determine the availability of proposed future extensions of utilities.);

(4) Lot size and exact location. If the subject Property is part of a recorded subdivision, Buyer can review the plat upon request at the Record Office. If the subject Property is not part of a recorded subdivision, Buyer may verify exact size and location through a survey by a licensed engineer or land surveyor, at Buyer's expense; or

5) Existing zoning or permitted uses of the Property. Buyer should contact the Zoning Office and/or a licensed engineer to verify zoning and permitted uses.

(B) NO ADVISING: Brokers/agents are not advising the parties as to certain other issues, including without limitation: soil conditions; flood hazard areas; possible restrictions of the use of property due to restrictive covenants, subdivision, environmental laws, easements or other documents; airport or aircraft noise; planned land use, roads or highways; and construction materials and/or hazardous materials, including without limitation flame retardant treated plywood (FRT), radon, radium, mold spores, urea formaldehyde foam insulation (UFFI), synthetic stucco (EIFS), asbestos, polybutylene piping and lead-based paint. Information relating to these issues may be available from appropriate governmental authorities. This disclosure is not intended to provide an inspection contingency.

(C) COMPENSATION OF VENDORS: Buyer and Seller each assume full responsibility for selecting and compensating their respective vendors.

55. PROPERTY TAX NOTICE - 60 DAY APPEAL: If any real property is transferred after January 1 and before the beginning of the next taxable year to a new owner, the new owner may submit a written appeal as to a value or classification on or before 60 days after the date of the transfer.

56. NON-ASSIGNABILITY: This Contract may not be assigned without the written consent of Buyer and Seller. If Buyer and Seller agree in writing to an assignment of this Contract, the original parties to this Contract remain obligated hereunder until settlement.

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57. PARAGRAPH HEADINGS: The Paragraph headings of this Contract are for convenience and reference only, and in no way define or limit the intent, rights or obligations of the parties.

58. COMPUTATION OF DAYS: As used in this Contract, and in any addendum or addenda to this Contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. A day shall be measured from 12:00:00 a.m. to and including 11:59:59 p.m. in the Eastern Time Zone. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this Contract, or any addendum or addenda to this Contract, was required to be performed or made.

59. ENTIRE AGREEMENT: This Contract and any addenda thereto contain the final and entire agreement between the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained. The parties to this Contract mutually agree that it is binding upon them, their heirs, executors, administrators, personal representatives, successors and, if permitted as herein provided, assigns. Once signed, the terms of this Contract can only be changed by a document executed by all parties. This Contract shall be interpreted and construed in accordance with the laws of the State of Maryland. It is further agreed that this Contract may be executed in counterparts, each of which when considered together shall constitute the original Contract.

60. BUYER AND SELLER MAY CONDUCT THE TRANSACTION ELECTRONICALLY USING ELECTRONIC SIGNATURES: Buyer and Seller hereby acknowledge that pursuant to Section 21-101 et seq. of the Commercial Law Article, Annotated Code of Maryland, Buyer and Seller may conduct the transaction electronically using electronic signatures.

61. ELECTRONIC DELIVERY: The parties agree that this Contract offer shall be deemed validly executed and delivered by a party if a party executes this Contract and delivers a copy of the executed Contract to the other party by facsimile transmittal, or delivers a digital image of the executed document by electronic transmittal.

Ryan King dotloop verified 05/28/21 4:02 PM EDT DJ8G-GDD9-S0EN-V0O9			
Buyer's Signature	**Date**	**Seller's Signature**	**Date**
Buyer's Signature	**Date**	**Seller's Signature**	**Date**

DATE OF CONTRACT ACCEPTANCE: _____

Contact Information:

BUYER / NAMES(S): Ryan King
MAILING ADDRESS: _____

SELLER / NAMES(S): Helfrich Cornelius David
MAILING ADDRESS: _____

Information provided for reference only:

LISTING BROKERAGE COMPANY NAME: Cummings and Co
BROKER OF RECORD NAME: David Cummings LICENSE NUMBER: 579890
SALES ASSOCIATE NAME: Darren McShane LICENSE NUMBER: 573817
OFFICE ADDRESS: 2314 Boston St, Baltimore, MD 21224-3601
OFFICE PHONE: (410) 823-0033 BROKER/SALES ASSOCIATE MLS ID: 76460
SALES ASSOCIATE PHONE: (410) 746-7076 SALES ASSOCIATE E-MAIL: sales@tristateproperties.net

ACTING AS: ☑ LISTING BROKER AND SELLER AGENT; OR
☐ INTRA - COMPANY AGENT WITH BROKER AS DUAL AGENT

SELLING BROKERAGE COMPANY NAME:
BROKER OF RECORD NAME: _____ LICENSE NUMBER: _____
SALES ASSOCIATE NAME: _____ LICENSE NUMBER: _____
OFFICE ADDRESS: _____
OFFICE PHONE: _____ BROKER/SALES ASSOCIATE MLS ID: _____
SALES ASSOCIATE PHONE: _____ SALES ASSOCIATE E-MAIL: _____

ACTING AS: ☐ SELLER AGENT; OR
☐ SUBAGENT; OR
☐ BUYER AGENT; OR
☐ INTRA - COMPANY AGENT WITH BROKER AS DUAL AGENT

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Maryland REALTORS®

UNIMPROVED LAND CONTRACT ADDENDUM

ADDENDUM dated _____ to Contract of Sale

between Buyer Ryan King

and Seller Helfrich Cornelius David

for Property known as 16 Locust Drive, Catonsville, MD 21228.

The following provisions are included in and supersede any conflicting language in Maryland REALTORS® Unimproved Land Contract of Sale (the Contract).

Only those paragraphs 1 - 11 initialed by both Buyer and Seller shall apply to this Unimproved Land Contract Addendum.

1. SURVEY BY A LICENSED SURVEYOR:
☐ Boundary Survey ☐ Site Improvement Survey ☐ Property Corners located and marked

- Survey to be ordered by ☑ Buyer ☐ Seller.
- Survey to be completed, and results delivered to Buyer (if ordered by Seller) within _____(____) days from the Date of Contract Acceptance.
- Cost of survey to be paid by ☑ Buyer ☐ Seller or ☐ as follows:

_____

RK 05/28/21

2. BUYER AND SELLER TO PHYSICALLY INSPECT THE PROPERTY BOUNDARIES TOGETHER ON OR BEFORE 7/10/2021 **(Date)**

3. OTHER BOUNDARY REVIEW AS INDICATED:
_____.

Regarding paragraphs 1, 2 and 3 (if initialed), in the event the Buyer is dissatisfied with the results of the survey or boundary review, Buyer may terminate the Contract by delivery of written notice to Seller within _____(____) days from the Date of Contract Acceptance, and all Deposit(s) shall be disbursed in accordance with the Deposit(s) paragraph of the Contract.

4. PRICE ADJUSTMENT: In the event a boundary survey performed by a licensed surveyor shows the total acreage to be conveyed is more or less than the size indicated in the Contract, the Contract price shall be adjusted as follows:

- If size is in excess of _____(☐ac./☐sq. ft.), price shall be increased by $ _____ per (☐ac./☐sq. ft.) prorated over the excess amount.
- If size is less than _____(☐ac./☐sq. ft.) price shall be decreased by $ _____ per (☐ac./☐sq. ft) prorated over the difference.

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5. SIZE OF PROPERTY IS A MATERIAL CONSIDERATION IN THIS CONTRACT: In the event a survey by a licensed surveyor indicates the size of the property to be conveyed is less than _____ (☐ ac./☐ sq. ft.) Buyer may terminate the Contract by delivery of written notice to Seller within _____ (___) days from the Date of Contract Acceptance, and all Deposit(s) shall be disbursed in accordance with the Deposit(s) paragraph of the Contract.

6. SUITABILITY/FEASIBILITY FOR BUYER'S PURPOSE: Buyer will secure, at Buyer's expense and risk, satisfactory feasibility studies to determine whether the Property is acceptable for Buyer's intended use as _____ *(type of use)*. In the event Buyer, in Buyer's sole discretion, determines the contemplated use is not feasible, Buyer may terminate the Contract by delivery of written notice to Seller within _____ (____) days from the Date of Contract Acceptance, and all Deposit(s) shall be disbursed in accordance with the Deposit(s) paragraph of the Contract.

7. PERMITS: Buyer will obtain (or determine Buyer can obtain) all permits required for Buyer's intended use as _____ *(type of use)*. The cost to obtain all necessary permits shall be the expense of Buyer. If permits cannot be obtained, Buyer may terminate the Contract by delivery of written notice to Seller within _____ (____) days from the Date of Contract Acceptance, and all Deposit(s) shall be disbursed in accordance with the Deposit(s) paragraph of the Contract.

8. ENVIRONMENTAL INSPECTION: Buyer will obtain, at Buyer's expense and risk, an inspection of the property by a qualified expert selected by Buyer. Such inspection(s) may include, but are not limited to, the existence and integrity of underground oil/gasoline tanks and the presence of hazardous materials. In the event Buyer, in Buyer's sole discretion, determines the inspection report is not satisfactory, Buyer may terminate the Contract by delivery of written notice to the Seller within _____(days) from the Date of Contract Acceptance, and all Deposit(s) shall be disbursed in accordance with the Deposit(s) paragraph of the Contract.

9. PROOF OF VALID PERCOLATION TEST: Seller shall provide Buyer written evidence of a valid percolation test satisfactory to Buyer from the appropriate governmental authority within _____(____) days from the Date of Contract Acceptance. Should Buyer not receive such evidence, Buyer may terminate the Contract by delivery of written notice to Seller within _____(____) days from the Date of Contract Acceptance, and all Deposit(s) shall be disbursed in accordance with the Deposit(s) paragraph of the Contract.

10. PERCOLATION TEST: A valid percolation test, satisfactory to Buyer, shall be obtained at a location satisfactory to Buyer within _____(___) days from the Date of Contract Acceptance from the appropriate governmental authority. Should test results be unsatisfactory to Buyer, Buyer may terminate the Contract by delivery of written notice to Seller within _____(____) days from the Date of Contract Acceptance, and all Deposit(s) shall be disbursed in accordance with the Deposit(s) paragraph of the Contract.

- Percolation test to be ordered by: ☐ Buyer or ☐ Seller
- Percolation test to be paid by: ☐ Buyer or ☐ Seller

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11. WELL DRILLING: A well shall be drilled on the property at a location acceptable to Buyer within _____(____) days from the Date of Contract Acceptance. The well shall meet all requirements of appropriate governmental authorities in regard to location, depth, water yield, and water quality.

- Well Drilling to be ordered by: ☐ Buyer or ☐ Seller
- Cost of well permits, drilling, and testing to be paid by: ☐ Buyer or ☐ Seller or ☐ as follows: _____
- Total cost of well not to exceed $ _____

If well is drilled but does not meet appropriate governmental authorities' standards, or if the cost of drilling an acceptable well is estimated to exceed the total cost specified above, any incomplete well shall be capped at the expense of the party paying for well drilling, and either Buyer or Seller may terminate the Contract by delivery of written notice to the other party within _____(____) days from the Date of Contract Acceptance, and all Deposit(s) shall be disbursed in accordance with the Deposit(s) paragraph of the Contract.

12. BUYER MAY BE REIMBURSED FOR COSTS: If Seller is unable to convey title in accordance with terms of the Contract without fault of Buyer, Seller shall promptly reimburse Buyer for any costs incurred by Buyer in Paragraphs 1 through 11 above, upon being furnished by Buyer with receipts for the actual payment of such costs. Reimbursement liability on the part of the Seller shall not exceed $_____.

13. RESTORATION OF PROPERTY: In the event Buyer i) defaults under the terms and conditions of this Agreement **OR** ii) terminates this Contract as herein provided, Buyer shall, at Buyer's sole cost and expense, restore the Property to its original condition and shall remove all debris and grade and re-seed ground cover in all areas which result from or were disturbed or damaged as a result, directly or indirectly, from any test(s) or inspection(s) performed by Buyer, whether such debris, disturbance or damage was caused by Buyer or any third-person(s), including contractors(s) or subcontractor(s) performing such test(s) or inspection(s). Seller acknowledges that Broker and/or real estate licensees affiliated with Broker are not responsible i) for damage to the Property resulting from a test(s) or inspection(s) as herein provided and ii) for any restoration of the Property, including removal of debris, resulting from test(s) or inspection(s).

All other terms and conditions of the Contract of Sale remain in full force and effect.

Ryan King dotloop verified 05/28/21 4:02 PM EDT LFAO-BDXL-FE2V-HS9T			
Buyer Signature	**Date**	**Seller Signature**	**Date**
Buyer Signature	**Date**	**Seller Signature**	**Date**

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BALTIMORE COUNTY NOTICES AND DISCLOSURES ADDENDUM

(For use with Maryland Association of REALTORS® Residential Contract of Sale)

ADDENDUM NUMBER _____ **dated** _____ **to CONTRACT OF SALE (the "Contract") dated** _____

BUYER: Ryan King

SELLER: Helfrich Cornelius David

PROPERTY: 16 Locust Drive, Catonsville, MD 21228

1. **MASTER PLAN:** Buyer is hereby advised that the Property, or the area in which the Property is located, may be affected by provisions of the current Baltimore County Master Plan. You may wish to review the Master Plan. To become fully informed of current and future land use plans, facilities plans, public works plans or school plans, you should consult the appropriate Baltimore County agency for information regarding such plans. For further information, contact Baltimore County Office of Planning at 410-887-3211, 401 Bosley Avenue, Suite 406, Towson, Maryland, 21204.

Buyer acknowledges that Seller has informed Buyer that (a) the Property may be affected by provisions of the Master Plan and that Buyer may wish to review the Master Plan, and (b) in order to become fully informed of current and future land use plans, facilities plans, public works plans, school plans, or other plans affecting the Property or locality, Buyer should consult the appropriate state, Baltimore County or other authorities for information regarding such plans.

Buyer's Signature Ryan King dotloop verified 05/28/21 4:02 PM EDT T5MZ-P5PG-RSBU-ZXNX Buyer's Signature _____

2. **DEVELOPMENT PLAN:** Buyer is hereby advised that the Property, or the area in which the Property is located, may be affected by the provisions of a development plan. To become fully informed of any current development plan affecting the Property, and in order to have an opportunity to review such development plan, Buyer should contact the appropriate Baltimore agency. For further information, contact Baltimore County Department of Permits and Development Management at 410-887-3353, 111 W. Chesapeake Avenue, Towson, Maryland, 21204.

3. **PANHANDLE LOTS:** Buyer is hereby advised that if the Property is a panhandle lot (as defined in Section 32-4-101 of the Baltimore County Code), the County is not responsible for maintaining the road, removing snow, or providing trash collection along the panhandle driveway. For further information, contact Baltimore County Department of Permits and Development Management at 410-887-3353, 111 W. Chesapeake Avenue, Towson, Maryland, 21204.

4. **AGRICULTURAL OPERATIONS:** If the Property is located in, or within five hundred feet (500') of an R.C. 4 zone, Buyer is hereby advised that the Property may be subject to inconvenience or discomforts arising from agricultural operations, including, but not limited to: operation of machinery of any kind (including aircraft) during any 24-hour period; the storage and disposal of manure; and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Baltimore County shall not consider an agricultural operation to be a public or private nuisance if the operation complies with all federal, state or county health and zoning requirements and is not being conducted in a negligent manner. For further information, contact Baltimore County Department of Permits & Development Management at 410-887-3353, 111 W. Chesapeake Avenue, Towson, Maryland, 21204.

5. **BALTIMORE COUNTY TRANSFER TAX EXEMPTION FOR OWNER-OCCUPIED RESIDENTIAL PROPERTY:** Buyer and Seller are hereby advised that the Baltimore County Transfer Tax does not apply to the first Twenty-Two Thousand Dollars ($22,000.00) of consideration payable for residentially improved **owner-occupied** real property. Under Baltimore law, the Buyer will receive the full benefit of this exemption, unless the Seller pays all Baltimore County transfer taxes, in which case the Seller will receive the benefit. **(initial)** [ ] [ ] Seller agrees to pay all Baltimore County transfer taxes.

6. **NOTICE TO BUYER – PRIVATE SEWER AND/OR WATER SUPPLY SYSTEM:** Seller hereby discloses that the Property is [ ] or is not [ ] *(Seller to initial applicable provision)* served by a public sewer or water supply system and/or is [ ] or is not [ ] *(Seller to initial applicable provision)* equipped with a private sewer or water supply system.

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PROPERTY 16 Locust Drive, Catonsville, MD 21228

7. **PUBLIC WATER OR SEWER FACILITIES; NOTICE TO BUYERS OF REAL ESTATE IN BALTIMORE COUNTY:** The Property is subject to a fee or assessment charged under the authority granted to developer pursuant to Section 32-4-310 of the Baltimore County Code, which purports to cover or defray the cost of installing all or part of the public water or sewer facilities constructed by the developer of the subdivision known as _____. This fee or assessment is $_____, payable annually in the month of _____ to _____ (name and address) (hereinafter called "lienholder") until _____. There may be a right of prepayment or discount for early payment which may be ascertained by contacting the lienholder. The fee and assessment is a contractual obligation between the lienholder and each owner of the Property, that runs with the land, and is not in any way, a fee or assessment of Baltimore County.

8. **NOTICE TO BUYER: PRIVATE WATER SUPPLY/WELL:** (a) If the Property is served by, or intended to be serviced by, a private water supply, attach separate Baltimore County Well Water Notice and Addendum (GBBR form 1451).

(b) **ELEVATED LEVELS OF NATURALLY OCCURRING RADIUM:** Buyer is notified that Baltimore County Department of Environmental Protection and Resource Management has advised that, as a result of a water quality survey, elevated levels of naturally occurring radium and uranium have been found in some wells located in the Baltimore Gneiss formation. Properties serviced by public water are not impacted. Property Owners in the affected area will be required to test new and replacement wells and, if applicable, install a treatment system (water softener or reverse osmosis), prior to being granted a Certificate of Potability and putting the well into use. There are no regulations that require private owners of existing private wells to meet US EPA drinking water standards for radioactivity. Buyer of property served by private water supply will be provided with the brochure entitled "Radionuclides & Your Well Water: A Homeowner's Guide." For a copy of a general map of Baltimore County showing the potentially affected areas or for further information, Buyer should contact the Baltimore County Department of Environmental Protection and Resource Management at 410-887-2762.

Buyer to initial:

_____ _____ **If property is served by private water supply, Buyer acknowledges receipt of the brochure entitled "Radionuclides & Your Well Water: A Homeowner's Guide"**

9. **NOTICE TO BUYER – HOUSE REMOVED FROM FLOOD PLAINS:** Seller hereby discloses to Buyer that the house, building or structure which is the subject of the Contract, has_____ or has not_____ *(Seller to initial applicable provision)* been removed from a 100-year flood plain located in Baltimore County.

10. **HISTORIC OR LANDMARK PROPERTY:** Seller hereby discloses to Buyer that the Property is_____ or is not_____ *(Seller to initial applicable provision)* located within a historic district under the Baltimore County Code or does_____ or does not_____ *(Seller to initial applicable provision)* appear on the Baltimore County preliminary landmarks list or final landmarks list. **Buyer acknowledges that if the Property is located within a historic district or appears on either the Baltimore County preliminary or final landmarks list, Buyer's use of the Property shall be subject to the provision of the Baltimore County Code. For further information, contact the Baltimore County Office of Planning at (410) 887-3211, 401 Bosley Avenue, Suite 406, Towson, Maryland 21204.**

11. **RENTAL HOUSING LICENSE – BALTIMORE COUNTY:**

(A) In Baltimore County, all buildings or a portion of a building that contain one to six dwelling units intended or designated as rental units must register and be licensed with Baltimore County on or before January 1, 2009.

(B) A person who owns and rents a dwelling unit or a portion of a dwelling unit without a license may be subject to the denial, suspension, revocation or non-renewal of the license and/or civil penalties of $25 per day for each day a violation occurs and $200 per day for each day a correction notice is not complied with, and there will be a $1,000 fine for not complying with the Rental Registration Law.

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(C) In the event a rental dwelling located in Baltimore County is sold or a change of ownership of the dwelling occurs, the new property owner is required to notify the Baltimore County Department of Permits and Development Management of the change of ownership.

Ryan King dotloop verified 05/28/21 4:02 PM EDT RFWE-RVFP-8ENK-FJIH	
BUYER	**DATE**
BUYER	**DATE**
SELLER	**DATE**
SELLER	**DATE**

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REALTOR®

GCAAR
GREATER CAPITAL AREA ASSOCIATION OF REALTORS®

EQUAL HOUSING OPPORTUNITY

Authorization and Agreement to Negotiate Contract/Lease and Conduct Transaction Electronically

The Contract of Sale/Lease dated _____, Address 16 Locust Drive,
City Catonsville, State MD Zip 21228
between Seller/Landlord Helfrich Cornelius David and
Buyer/Tenant Ryan King
hereby amended by the incorporation of this Addendum, which shall supersede any provisions to the contrary in the Contract or Lease.

In accordance with the Uniform Electronic Transactions Act ("UETA") and the Electronic Signatures in Global and National Commerce Act, or "E-Sign" ("The Act"), and other applicable state or local legislation regarding Electronic Signatures and Transactions, **the undersigned do hereby expressly authorize and agree to the use of electronic signatures ("E-Sigs") as an additional method of signing and/or initialing this Contract/Lease.**

In the event a third party to the transaction contemplated by this Contract or Lease (Lender, Title Insurer, Hazard Insurance Company, etc.) requires that the Agreement be executed with handwritten signature(s), the parties mutually agree to re-execute the documents comprising the Contract or Lease with handwritten signatures in a timely manner. The Buyer and Seller are advised to confirm the acceptance of the use of E-Sigs with third parties in advance.

In order to assure the authentication of their electronic signatures, to demonstrate the parties intent, and to provide for auditable proof of the signature(s) to assure their non-repudiation, the parties hereby agree that either party may sign electronically by utilizing the following Digital Signature Service: Dot Loop, All Electronic Signing Software

		Ryan King dotloop verified 05/28/21 4:02 PM EDT Q4HG-ZZRJ-EWC5-RTAP	
Seller/Landlord	Date	Buyer/Tenant	Date
Seller/Landlord	Date	Buyer/Tenant	Date

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ESCROW AGREEMENT BETWEEN BUYER, SELLER, AND ESCROW AGENT
(THIS ESCROW AGREEMENT IS NOT PART OF THE CONTRACT OF SALE)

Contract of Sale between Buyer Ryan King
and Seller Helfrich Cornelius David
for Property known as 16 Locust Drive, Catonsville, MD 21228

1. **BUYER'S SELECTION OF ESCROW AGENT:** Buyer selects Lawyers Trust Title ("Escrow Agent") for the transaction. Escrow Agent is not a party to the Contract of Sale. Buyer and Seller agree that Escrow Agent assumes no duty or liability for the performance, non-performance or otherwise of Buyer's or Seller's obligations under the Contract of Sale.

2. **DEPOSIT DEFINED:** "Deposit" as used herein means deposit, an additional deposit, or a down payment made by a Buyer that the Buyer entrusts to an Escrow Agent to hold for: the benefit of the owner or beneficial owner of the trust money; and a purpose that relates to the purchase or sale of residential real estate in the State of Maryland.

3. **RECEIPT OF DEPOSIT:** Escrow Agent acknowledges receipt of the Deposit in the amount of two hundred fifty Dollars ($250.00) on Date of Deposit Receipt as stated below. Escrow Agent acknowledges receipt of Additional Deposit (if applicable) in the amount of _____ Dollars ($_____) on the Date of Deposit Receipt for Additional Deposit as stated below.

4. **HANDLING OF DEPOSIT:** Escrow Agent shall, within seven (7) business days of Date of Deposit Receipt, place the Deposit in Escrow Agent's Trust Account. Escrow Agent may not use the Deposit for any purpose other than that for which it is entrusted to Escrow Agent. Neither Buyer nor Seller shall receive interest on the Deposit. Escrow Agent may pool and commingle other trust funds with the Deposit as allowed by law.

5. **NOTIFICATION OF INSUFFICIENT FUNDS:** If the Deposit check is returned for insufficient funds or wire is dishonored, Escrow Agent shall notify Buyer and Seller, and their agents, in writing within five (5) business days from receipt of notice from the financial institution where the Deposit was placed.

6. **MAINTENANCE AND DISPOSITION OF DEPOSIT:** Escrow Agent agrees to maintain the Deposit in Escrow Agent's Trust Account until:
   - **A. SETTLEMENT:** The real estate transaction settles in which case the Deposit shall be applied to the Purchase Price at settlement. If Escrow Agent is not conducting settlement, Escrow Agent shall timely deliver Deposit to settlement agent;
   - **B. RELEASE OF DEPOSIT AGREEMENT:** Escrow Agent receives proper written instructions executed by both Buyer and Seller directing withdrawal or other disposition of the Deposit; **OR**
   - **C. INTERPLEADER:** Escrow Agent files an action for interpleader and delivers the Deposit to a court of competent jurisdiction in the State of Maryland.

7. **DISPUTES:**
   - **A. MEDIATION:** Buyer and Seller acknowledge that if the Contract of Sale obligates the parties to mediate deposit disputes, Buyer and Seller agree to abide by the terms of the mediation provision in the Contract of Sale. If during mediation, Buyer and Seller execute a written agreement concerning the Deposit, Escrow Agent agrees to accept and abide by its terms. If Buyer and Seller execute Maryland REALTORS® Release of Deposit Agreement, Escrow Agent agrees to accept and abide by its terms.
   - **B. HOLDING DISPUTED FUNDS:** Escrow Agent may, at its option, hold disputed funds until a Release of Deposit Agreement is executed by Buyer and Seller.
   - **C. ACTION FOR INTERPLEADER:** In the event of any litigation or dispute between Buyer and Seller concerning the release of the Deposit, Escrow Agent's sole responsibility may be met, at Escrow Agent's option, by paying the Deposit into the court in which such litigation is pending, or by paying the Deposit into a court of proper jurisdiction by an action for interpleader. Buyer and Seller agree that, upon Escrow Agent's payment of the Deposit into the court, neither Buyer nor Seller shall have any further right, claim, demand or action against Escrow Agent regarding the release of the Deposit; and Buyer and Seller, jointly and severally, shall indemnify and hold Escrow Agent harmless from any and all such rights, claims, demands or actions. In the event of such dispute and election by Escrow Agent to file an action for interpleader as herein provided, Buyer and Seller further agree and hereby expressly and irrevocably authorize Escrow Agent to deduct from the Deposit all costs incurred by Escrow Agent in the filing and maintenance of such action, including but not limited to, filing fees, court costs, service of process fees and attorneys' fees, provided that the amount deducted shall not exceed the lesser of $1,000 (one thousand

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dollars) or the amount of the Deposit held by Escrow Agent. All such fees and costs authorized herein to be deducted may be deducted by Escrow Agent from the Deposit prior to paying the balance of the Deposit to the court. Buyer and Seller further agree and expressly declare that all such fees and costs so deducted shall be the exclusive property of Escrow Agent. If the amount deducted by Escrow Agent is less than the total of all of the costs incurred by Escrow Agent in filing and maintaining the interpleader, then Buyer and Seller jointly, and severally, agree to reimburse Escrow Agent for all such excess costs upon the conclusion of the action.

D. DISTRIBUTION OF DEPOSIT PURSUANT TO THIRTY-DAY LETTER: In the event Buyer or Seller fails to complete the real estate transaction in accordance with the terms and conditions of the Contract of Sale, and either Buyer or Seller is unable or unwilling to execute a Release of Deposit Agreement, Buyer and Seller hereby acknowledge and agree that Escrow Agent may distribute the Deposit in accordance with the following procedures:

Prior to distributing the Deposit under this section, Escrow Agent shall notify both Buyer and Seller that Escrow Agent intends to distribute the Deposit to the person who, in the good faith opinion of Escrow Agent, is entitled to receive the Deposit in accordance with the terms of the Contract of Sale.

The notice required under this section shall:

(i) be in writing;
(ii) state whether the Deposit will be paid to Buyer or Seller; and
(iii) disclose to Buyer and Seller that:
1. either party may prevent distribution of the Deposit under this section by submitting a protest within 30 days from the date the notice was delivered or mailed by Escrow Agent; and
2. if neither party submits a protest within 30 days from the date the notice was delivered or mailed by Escrow Agent, the Deposit will be distributed in accordance with Escrow Agent's notice.

The notice required under this section shall be:

(i) hand delivered to both Buyer and Seller; or
(ii) sent by certified mail, return receipt requested, and regular mail to both Buyer and Seller.

Buyer or Seller may protest the distribution of the Deposit. Buyer or Seller shall submit the protest to Escrow Agent within 30 days from the date the notice required in this section was delivered or mailed by Escrow Agent.

A protest shall be in writing and either:

(i) hand delivered; or
(ii) sent by certified mail, return receipt requested, and regular mail.

If a written protest is received by Escrow Agent, Escrow Agent shall distribute the Deposit in accordance with Paragraph 7(A), 7(B), or 7(C) of this Escrow Agreement.

If no written protest is received by Escrow Agent, Escrow Agent shall distribute the Deposit in accordance with the terms of the notice as required in this section.

8. ATTORNEY'S FEES AND COSTS: In any action or proceeding between Buyer and Seller and/or between Buyer and Escrow Agent and/or Seller and Escrow Agent resulting in Escrow Agent being made a party to such action or proceeding, including, but not limited to, any litigation, arbitration, or complaint and claim before a Maryland regulatory board, whether as defendant, cross-defendant, third-party defendant or respondent, Buyer and Seller jointly and severally, agree to indemnify and hold Escrow Agent harmless from and against any and all liability, loss, cost, damages or expenses (including filing fees, court costs, service of process fees, transcript fees and attorneys' fees) incurred by Escrow Agent in such action or proceeding, provided that such action or proceeding does not result in a judgment against Escrow Agent. This Paragraph shall apply to any and all such action(s) or proceeding(s) against Escrow Agent including those action(s) or proceeding(s) based, in whole or in part, upon any alleged act(s) or omission(s) by Escrow Agent, including, but not limited to, any alleged act of misrepresentation, fraud, non-disclosure, negligence, violation of any statutory or common law duty, or breach of fiduciary duty by Escrow Agent. The provisions of this Paragraph shall survive settlement and shall not be deemed to have been extinguished by merger with the deed. The term Escrow Agent as used in this paragraph shall include any agent, subagent, salesperson, independent contractor and/or employees of Escrow Agent.

9. ENTIRE AGREEMENT: This Escrow Agreement constitutes the entire agreement among the parties, and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained. The parties to this Escrow Agreement mutually agree that it is binding upon them, their heirs, executors, administrators, personal representatives, and successors. Once signed, the terms of this Escrow Agreement can only be changed by a document executed by all parties. To the extent that the terms of this Escrow Agreement and the terms of the

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Contract of Sale are different, inconsistent or contradict each other, this Escrow Agreement shall control. This Escrow Agreement shall be interpreted and construed in accordance with the laws of the State of Maryland.

Ryan King dotloop verified 05/28/21 4:02 PM EDT 8VPU-LWXT-CSNP-JDRK			
Buyer Signature	**Date**	**Seller Signature**	**Date**
Buyer Signature	**Date**	**Seller Signature**	**Date**

Signature of Escrow Agent Representative: _____ **Date:** _____

Name of Escrow Agent: Lawyers Trust Title

Address of Escrow Agent: 1717 Edmondson Ave, Catonsville, MD 21228

Telephone Number of Escrow Agent: 410.401.5655

Email Address of Escrow Agent: CKource@lawyerstrusttitle.com

Printed Name of Escrow Agent Representative: Chris Kource

Title of Escrow Agent Representative: title processor

Date of Deposit Receipt: _____

Date of Deposit Receipt for Additional Deposit (if applicable): _____

For use by REALTOR® members of Maryland REALTORS® and Members of the Maryland Land Title Association only. Except as negotiated by the parties to this Escrow Agreement, this form may not be altered or modified in any form without the prior expressed written consent of Maryland REALTORS® and the Maryland Land Title Association.

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mecu
CREDIT UNION

June 7, 2021

RE: Ryan King
Co-
Property Address: 18 Locust Drive
Loan Number: 8200000466

To Whom It May Concern:

Please be advised the HELOC loan (#8200000466) does have $30,000.00 available for credit.

If you have any questions please contact the Mortgage Dept. 410-752-8313 ext. 1523

Thank you

Exhibit 6 (Page 1 of 7)
Case No. 20-224-A
16 Locust Drive

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 22, 2021

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Cornelius David Helfrich– Legal Owners
Dominion Properties, LLC – Contract Purchaser
20-224-A 16 Locust Drive
1st Election District; 1st Council District

Re: Petition for Variance pursuant to BCZR § 1B02.3.C.1 to:
- allow a 10 ft. side yard setback in lieu of the required 15 ft. and a combination of 20 ft. in lieu of the required 40 ft.; and
- allow a rear yard setback of 25 ft. in lieu of the required 40 ft.; and
- allow a lot width of 50 ft. in lieu of the required minimum of 100 ft.; and
- allow a lot area of 5,850 sq. ft. in lieu of the minimum required 20,000 sq. ft.

4/19/21 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was DENIED.

ASSIGNED FOR: SEPTEMBER 9, 2021, AT 10:00 A.M.

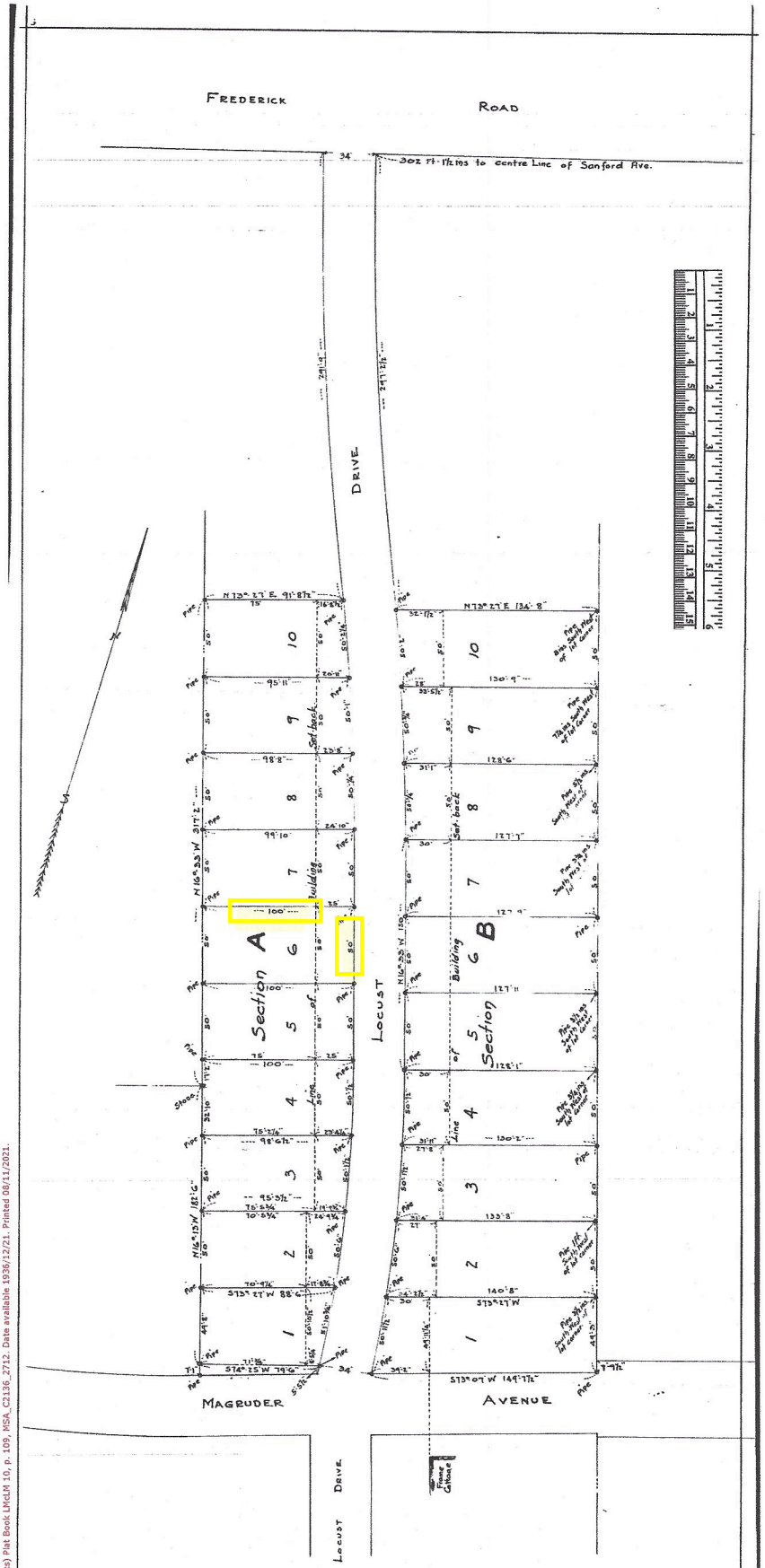
The above scheduled hearing will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the hearing will be posted on our web calendar at** www.baltimorecountymd.gov/departments/appeals **the night before.**

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.



PLAT OF
LOCUST DRIVE EXTENSION
CATONSVILLE-BALTO. Co.-MARYLAND.

Scale = 40 Feet to one inch.

S. J. Martenet & Co.
Surveyors & Civil Engrs.
Balto March 13-1933.

Note:-
The courses are referred approximately to the True Meridian.

BALTIMORE COUNTY CIRCUIT COURT (Plats) Plat Book LMcLM 10, p. 109, MSA_C2136_2712. Date available 1936/12/21. Printed 08/11/2021.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0253, MSA_CE62_32034. Date available 06/14/2012. Printed 08/11/2021.

PREPARED WITHOUT TITLE SEARCH

This Personal Representative's Deed, made this 16TH day of **May**, **2012**, by and between Cornelius David Helfrich, Personal Representative of The Estate of **VIRGINIA T. FIELDS**, GRANTOR; and, **CORNELIUS DAVID HELFRICH,** party of the second part, GRANTEE.

Whereas, Virginia T. Fields died on December 1, 1994, and on June 1, 1995, the Orphans' Court of Harford County, State of Maryland (the "Court") granted administration of the Estate of the Decedent to Cornelius David Helfrich as Personal Representative of the Estate of the Decedent in Estate No. 28268.

Whereas, Grantor in the capacity as Personal Representative in the Estate of the Decedent has complete and full power and authority by law, to grant and convey the entire fee simple interest in the hereinafter described property; and

Whereas, as part of the administration of the Estate of the Decedent, Grantor desires to convey the entire fee simple estate in the hereinafter described property to the Grantee.

- Witnesseth -

That in consideration of the sum of **Zero Dollars 00/100 ($0.00)**, which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said GRANTOR as Personal Representative on the Estate of the Decedent, does hereby grant and convey to Cornelius David Helfrich, in fee simple, all that lot of ground situate in Baltimore County, State of Maryland and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot 6, as shown on the plat entitled "Locust Drive Extended", which plat is recorded among the Plat Records of Baltimore County in Plat Book C.W.B. Jr No. 10 folio 109.

BEING THE SAME and all that property which by fee simple deed dated December 19, 1959 and recorded among the Land Records of Baltimore County in Liber No. 3649, folio 398, was granted and conveyed by David A. Fields and Bernadette Fields, his wife to Virginia T. Fields.

Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have and To Hold the said tract of ground and premises above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges,

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0254, MSA_CE62_32034. Date available 06/14/2012. Printed 08/11/2021.

appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Grantee his Personal Representative, heirs and assigns, forever, in fee simple.

And Grantor does hereby covenant to execute such further assurances of the same as may be requisite.

Witness the hand and seal of Grantor the day and year first above written.

By: Cornelius David Helfrich
Personal Representative of
The Estate of **Virginia T. Fields**.

STATE OF MARYLAND

COUNTY OF Harford, to wit:

I hereby certify that on this 16TH day of **May, 2012** before me, the undersigned officer, a Notary Public in and for the State aforesaid, personally appeared Cornelius David Helfrich, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged herself to be the Personal Representative of the Estate of Virginia T. Fields, and who, in my presence, signed and sealed the foregoing Deed and acknowledged it to be his act and deed as Personal Representative of the foregoing Estate, giving oath under penalties of perjury that the consideration recited herein is correct.

IN WITNESS WHEREOF, I have hereto set my hand and official seal.

DIANE LEONARD SEAGO NOTARY PUBLIC HARFORD CO. MD.

Notary Public
My commission expires: 10/25/2014

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Cornelius D. Helfrich, Attorney

AFTER RECORDING, PLEASE RETURN TO:
Helfrich Law Office
31 E. Lee Street
Bel Air, MD 21014

0032178 255

Exhibit 6 (Page 5 of 7)
Case No. 20-224-A
16 Locust Drive

2012
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 Section 10-912 of Maryland's Tax General Article. Section 10-912 states that certain tax payments must be withheld when a deed or other instrument that affects a change in ownership of real property is recorded. The requirements of Section 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(s) Information

Name of Transferor:
Cornelius David Helfrich, Personal Representative of the Estate of Virginia T. Fields

2. Reason for Exemption

Resident Status	☒ I/We, Transferor(s), am/are residents of the State of Maryland. ☐ Transferor(s) is a/are resident(s) entity under Section 10-912(A)(4) of the Tax General Article of the Annotated Code of Maryland, 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 section 121.

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

3a. Individual Transferor(s)

Witness

Cornelius David Helfrich, **Personal Representative of the Estate of** Virginia T. Fields

3b. Entity

_____ Title

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0255, MSA_CE62_32034. Date available 06/14/2012. Printed 08/11/2021.

0032178 256

Exhibit 6 (Page 6 of 7)
Case No. 20-224-A
16 Locust Drive

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)

INP FD SURE 40.00
RECORDING FEE 20.00
TOTAL 60.00
Rcpt # BAR2 Rcpt # 29348
JLE BC Blk # 723
Jun 12, 2012 09:37 am

1	Type(s) of Instruments	X	Deed		Mortgage		Other: DoT	
			Deed of Trust		Lease			
2	Conveyance Type Check Box		Improved Sale Arms-Length [1]		Unimproved Sale Arms-Length [2]		Mult. Accounts Arms-Length [3]	X Not an Arms-Length Sale [9]
3	Tax Exemptions (if Applicable) Cite or Explain Authority	Recordation						
		State Transfer						
		County Transfer	Estate Dist					

Space Reserved for Circuit Court Clerk Recording Violation

4 Consideration and Tax Calculations			Finance Office Use Only	
	Consideration Amount		Transfer and Recordation Tax Consideration	
	Purchase Price/Consideration	0.00	Transfer Tax Consideration	$
	Any New Mortgage - First		X ( )% =	$
	Balance of Existing Mortgage		Less Exemption Amount -	$
	Other New Mortgage - Second		Total Transfer Tax =	$
	Other		Recordation Tax Consideration	$
			X ( )% =	$
	Full Cash Value		TOTAL DUE	$

5 Fees	Amount of Fees	Doc. 1	Doc. 2	
	Recording Charge	40.00		Agent
	Surcharge	20.00		Tax Bill:
	State Recordation Tax			
	State Transfer Tax			C.B. Credit:
	County Transfer Tax (if Applicable)			
	Other			Ag. Tax/Other:
	Other			

6 Description of Property	District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
	01	0106201150	5672/465	101	258	☐

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	Sq. Ft./Acreage (4)
Locust Drive	6		A	10/109	50 x 100

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).

Location/Address of Property Being Conveyed (2)
Locust Drive

Other Property Identifiers (if applicable) | Water Meter Account No.

Residential ☑ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ Amount:

Partial Conveyance? ☐Yes ☑ No | Description/Amt. Of Sq. Ft./Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From	Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
	Cornelius David Helfrich, Personal Representative of the Estate of Virginia T. Fields	
	Doc. 1 - Owner(s) of Records, if Different from Grantor(s)	Doc. 2 - Owner(s) of Record, if Different from Grantor(s)

8 Transferred To	Doc. 1 - Grantee(s) Names	Doc. 2 - Grantee(s) Name(s)
	Cornelius David Helfrich	
	New Owner's (Grantee) Mailing Address	
	31 E. Lee Street, Bel Air, MD 21014	

9 Other Names to be Indexed	Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optioned)

10 Contact/Mail Information	Instrument Submitted By or Contact Person	
	Name: Diane Sengstacke, President	X Return to Contact Person
	Firm: Home Title Company of MD	☐ Hold for Pickup
	Address: 112 South Main Street, Suite 101, Bel Air, Maryland 21014	☐ Return Address Provided
	Phone: 410-893-3061	

Space Reserved for County Validation

11 Assessment Information — IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

☐ Yes	X No	Will the property being conveyed be the grantee's principal residence?	
☐ Yes	X No	Does transfer include personal property? If yes, identify:	
☐ Yes	X 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 Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number:		Date Received:		Deed Reference:			Assigned Property No:	
Year	19	19	Geo.		Sub		Block	
Land			Zoning		Plat		Lot	
Buildings			Use		Section		Occ. Cd.	
Total			Town Cd.		Ex. St.		Ex. Cd.	

REMARKS:

☐ COUNTY TRANSFER TAX
Per _____ ART 11 TITLE 3 SUBTITLE 2, 11-3-202

☐ RECORDATION TAX
Per _____ T.P. ART 12-108
Date 6-11-12

TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND

Distribution: Clerk's Office, SDAT, Office of Finance, Prepare

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0256, MSA_CE62_32034. Date available 06/14/2012. Printed 08/11/2021.

Zoning Hearing Case No. 2020-0224-A
16 Locust Drive
Exhibit 2 (Page 1 of 3) - Property Land Area of 16 Locust Drive and Adjoining Lots

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 01 **Account Number -** 0106201150

Owner Information

Owner Name:	HELFRICH CORNELIUS DAVID	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	31 E LEE ST BEL AIR MD 21014-8876	**Deed Reference:**	/32178/ 00253

Location & Structure Information

Premises Address:	LOCUST DR 0-0000	**Legal Description:**	LOCUST DRIVE

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0101	0007	0258	1070130.04	0000	A		6	2019	Plat Ref: 0010/ 0109

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			5,000 SF	04

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

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2020	As of 07/01/2021
Land:	40,000	40,000		
Improvements	0	0		
Total:	40,000	40,000	40,000	40,000
Preferential Land:	0	0		

Transfer Information

Seller: FIELDS VIRGINIA T	**Date:** 06/12/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /32178/ 00253	**Deed2:**
Seller: FIELDS BERNADETTE K	**Date:** 03/07/2007	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05672/ 00465	**Deed2:**
Seller: FIELDS VIRGINIA T	**Date:** 03/07/2007	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /00000/ 00000	**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

Text

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:**

Exhibit 7 (Page 1 of 4)
Case No. 20-224-A
16 Locust Drive

Petition to Object to Proposed Variance

Petition summary and background	The empty lot at 16 Locust Drive was recently listed for sale by the current owner and is now under contract, pending the approval of several zoning variances that would modify the set back requirements and overall lot size requirement to build a new, single family home. Signs were recently posted on the lot to notify residents of a virtual public hearing that will take place on January 26th at 10:00am. I hope that many of you will register to attend in order to show your support for those of us who wish to keep this area a green space and NOT allow a home to be built on a lot that is so clearly under-sized (it is approximately 5,000sf - the required lot size for a new home built in this area has a minimum of 20,000sf, per the current zoning laws). Our goal during the hearing is to share our reasons for opposing the request for variances relating to the size of the lot, which, if approved, would allow for a new home to be built in that space. If you would like to support our case against the variance request but are unable to attend the virtual hearing, please sign this petition.
Action petitioned for	We, the undersigned, are concerned residents who urge the Administrative Law Judge to deny the proposed variance for 16 Locust Drive in Catonsville, MD.

Date	Printed Name	Signature	Address	Phone Number	Length of Time as Resident	Additional Information
1/8/21	Amy Miller		8 Locust Drive Catonsville, MD 21228	443-632-5072	11 months	
1/9/21	Pamela Raimondo		25 LOCUST DR CVILLE 21228	443.845.2069	21 yrs	
1/9/21	John Shiffletto		23 Locust Drive Catonsville, MD 21228	443-204-1117	18 yrs	
1/9/21	THERESA WERNER		27 LOCUST DR CATONSVILLE, MD 21228	410-747-1192	52 yrs	
1/9/21	Rachel Waltermyer		113 Locust Dr Catonsville, MD 21228	410-456-2862	8 yrs	
1/9/21	TRACY REHMERT		104 Oak Drive Catonsville, MD 21228	410 916-1806	11 yrs	
1/9/21	Patrick Foley		123 Forest Dr. Catonsville MD 21228	410-206-6873	5 yrs	

Exhibit 7 (Page 2 of 4)
Case No. 20-224-A
16 Locust Drive

Date	Printed Name	Signature	Address	Phone Number	Length of Time as Resident	Additional Information
1/9/21	Lauren Foley	Lauren Foley	123 Forest Dr. Catonsville, MD 21228	443-794-8679	5 1/2 yrs	
1.9.21	JULIA P. KING	J.P.K.	18 LOCUST DRIVE	443.463.7601	6 1/2 YEARS	
1/9/21	Alex Stotts	Alex Stotts	17 Locust Dr.	443-799-1153	20	
1/10/21	Brian Heldmann		107 Locust Dr	410-952-7802	1 year	
1/10/21	Allison Heldmann	Alli Heldmann	107 Locust Dr	443-980-2462	1 year	
1/10/21	JOHN KRACH III		108 Locust Dr	410-455-0611	11 YR.	
1/10/21	Julie Kraeh		108 Locust Dr	410.4558611	11 yrs	
1/10/21	Kimberly Neal	Kimberly Neal	20 Locust Dr.	443-509-0402	7 yrs	
1/10/21	Margaret Decker	Margaret Decker	12 Locust Dr.	321.301 6449	1 year	
1/10/21	Paul D. Dongarra		11 Forest Dr	410-733-6077	18 yrs	
1-10-21	Rebecca Dongarra	Rebecca P. Dongarra	11 FOREST DR	4107336076	19 yr	
1-10-21	Shelley Puhak	Shelley Puhak	110 Locust Dr	410-294-7909	10 1/2 yr	
1/11/21	Temple Zito		101 Locust Dr	410-868-9793	21 yrs	
1/11/21	LINDA L. DREYGER		101 LOCUST DR	410-533-5164	21 YRS	
1/11/21	LORETTA LILLINGSWORTH		22 Locust Dr	410-747-3151	36 years	

Exhibit 7 (Page 3 of 4)
Case No. 20-224-A
16 Locust Drive

Date	Printed Name	Signature	Address	Phone Number	Length of Time as Resident	Additional Information
1/11/2021	Amy Stevens	Amy Stevens	24 Locust Dr	443-992-2648	17 yrs	
1/11/2021	Richard Stevens		24 Locust Dr	443 992 2647	17 yrs	
1/11/21	Gabe Colee		214 Newburg Ave	4108977474	6 yrs	
1/11/21	Caitlin Hook		157 Sanford Ave	4104046832	6 yrs	
1/11/21	Steve Hook				6 yrs	
1/11/21	Hailey Hook				6 yrs	
1/11/21	Evan Brown		1253 Stevens Ave	410-209-1154	14 yrs	
1/11/2021	Lauren Brown		212 Newburg Ave	(410) 303-7184	3 yrs	
1/12/21	Ryan King		18 Locust Dr	4435040085	6.5 years	
1/13/21	Aaron Ned		20 Locost Dr	443-614-4493	7 yrs	
1/13/21	JOANNE HIMES		23 SANFORD AVE	443-845-3670	20 yrs	
1/13/21	DIANE Neels		25 Sanford Ave	4107889897	44 yrs	
1/14/21	Laura Scherer		14 Locust Dr.	631-252-5214	64 yrs	
1/14/21	Gary Scherer		14 Locust Dr.	631-252-5217	1 year	
1/17/21	Dacia Gamer		6 Locust Dr.	443-878-4124	13 yrs	

Exhibit 7 (Page 4 of 4)
Case No. 20-224-A
16 Locust Drive

Date	Printed Name	Signature	Address	Phone Number	Length of Time as Resident	Additional Information
1/17/2021	MARY K. BAHR-Robertson	Mary K. Bahr Robertson	31 Locust Dr Catonsville MD 21228	410 788-5517	19½ years	
1/17/2021	Richard W. Robertson	Richard W Robertson	31 Locust Dr. Catonsville MD 21228	301.785.7308	19½ yrs.	
1/17/21	John Crutchlow	John Crutchlow	6 Locust Dr Catonsville, MD 21228	443.956.1287	13yrs	
	KATHLEEN MASKAVICH	Kathleen R MasKavich	19 Locust Dr - Catonsville Md	410-747-9628	71 years	Original owners = Beulahs Clayton & Bueno & Theo street (my dad)
1/17/21	Laura Parry	Laura Parry	29 Locust Dr. Catonsville, MD 21228	843 793 8612	6 months	

Exhibit 8 (Page 1 of 2)
Case No. 20-224-A
16 Locust Drive

Homes to the Left of Lot (18, 20, 22, 24 Locust Drive):



Homes to the Right of Lot (14, 12, 10, 8 Locust Drive):



Exhibit 8 (Page 2 of 2)
Case No. 20-224-A
16 Locust Drive

Homes Across and to the Left of Lot (21, 19, 17, 15 Locust Drive):



Homes Across and to the Right of Lot (23, 25, 27, 29 Locust Drive):



My family has lived at 14 Locust Drive, the property directly next to 16 Locust, for more than 65 years. My husband and I are in complete agreement with the objections of Julie and Ryan King to allow any variance to current codes with regard to building on 16 Locust.

Building a new house at 16 Locust will negatively impact the surrounding homes, including ours, that have sump pumps and flooding basements, as well as compromise the entire neighborhood by adding to the strain on current water and sewer services. I assume the current zoning codes implemented by Baltimore County were put into place to protect it's residents from over-development.

The requested variance is not a minor change but instead a major deviation, asking to construct a home on a lot that is one quarter of the required size. Roughly, current zoning is two houses to an acre, or 40,000 square feet which translates into 20,000 square feet for one house. The lot at 16 Locust Drive is about 5,000 square feet. This variance is not for a small front or side yard offset, but instead to place a looming structure on a grossly undersized lot.

I am aware that over the years, several inquiries to purchase the property at 16 Locust have been made, including one by my father, in an effort to keep it undeveloped and green. Therefore, there are options for the current owner to pursue other than the proposed new construction.

Sincerely,

Laura G. Wehland-Scherer

Kimberly H. Neal, Esq.
Aaron D. Neal, Esq.
20 Locust Drive
Catonsville, MD 21228

August 31, 2021

Board of Appeals
Baltimore County Government

In the Matter of: Cornelius D. Helfrich/ Dominion Properties, LLC
Case No. 20-224-A
Property located at: 16 Locust Drive

Dear Members of the Board of Appeals,

We write in reference to the above matter, as close neighbors to the property in question and as local attorneys with interest in the outcome of this question of zoning law. While we hoped to participate in the hearing on September 9, we have work conflicts and therefore wanted to express our concerns via this correspondence.

As noted by the record, this matter was first heard and decided by Managing Administrative Law Judge Paul Mayhew in the spring of this year. Although this appeal is being considered *de novo*, we believe strongly that the arguments raised during that hearing and the rationale outlined in Judge Mayhew's decision are correct. We ask that this Board carefully consider the matter and deny the requested variance.

From a purely legal standpoint, this Board can make no other finding. Our charming Catonsville street is lined with small, well-kept single-family homes that are either Cape Cod or Colonial in style. The homes are either all brick or mostly brick, sitting on rectangular, approximately 50' by 100' lots, with approximately 50' of direct road frontage. These facts are important because the appellants simply cannot show that the property located at 16 Locust Drive is unique, as required in order to receive the requested variance. What is more, the property owner will not suffer unreasonable hardship if the variance is denied. The lot has been vacant for decades, reportedly kept vacant by the current owner due to a family dispute and desire to deny siblings owning the neighboring property the ability to expand their lot. The zoning ordinance changing the setbacks that result in the requested variance was made effective *25 years ago* and 60+ years since the lot was created. Indeed, the owner has received other offers on the property that would not require variances, but was uninterested in and/or unwilling to sell. It is only this most recent offer, made during a prime market and in an amount that one might never have imagined, that there is sudden interest in selling. Still, while any of us might appreciate the owner's desire to cash out with such a generous offer, without the legal justification of a variance, losing out on a great deal is an unfortunate situation but not an unreasonable hardship and does not make the lot unique.

From our personal standpoint, as neighbors one lot over raising a child in this small and happy community, we also do not wish to see the variance issued because it would set an unnecessary precedent and encourage overdevelopment. Catonsville, and especially our Forest Springs

neighborhood, suffers from extensive water drainage issues. Our homes have been in existence since the 1940s and we, as well as prior owners, have taken appropriate measures to waterproof our homes based on current conditions over these past 8 decades. Building on the lot at 16 Locust will rob our street of green space that has existed and significantly impact drainage in the community by covering most of the lot in impervious surfaces.

Further, and to be perfectly frank, while one could build a house on the lot using the same footprint as our homes, it would be quite the construction feat without significantly disturbing the two adjacent neighbors' quiet enjoyment of their properties. Indeed, it will negatively impact our entire block, which is a one-way block due to the narrow street and requirement that cars park on the street. For example, we share a driveway with our neighbor at 18 Locust; each of us can only fit one car in the driveway. Again, this is a scenario that has existed for decades. Months of construction, and the construction vehicles that would necessarily accompany that construction, would leave the neighborhood families without places to park their cars during the day. The addition of an entirely new residence would make the parking disruption perpetual. The disruption to many families if a variance is granted and construction permitted is disproportionate to the relief offered to one property owner and his would-be buyer.

We trust you will take this extraordinary request for a variance under careful review and thank you for your diligence.

Kind regards,

/s/

Kimberly and Aaron Neal

IN THE MATTER OF:	*	BEFORE
Cornelius David Helfrich Legal Owner Dominion Properties, LLC Contract Purchaser	*	THE
	*	BOARD OF APPEALS
	*	FOR
16 Locust Drive	*	BALTIMORE COUNTY
1st Election District 1st Councilmanic District	*	
	*	Case No.: 2020-224-A
	*	

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

WITHDRAWAL OF APPEARANCE

Please withdraw the appearance of ***J. Carroll Holzer, Esquire*** on behalf of Protestants, ***Ryan*** and ***Julie King***, *et al.* in the Hearing scheduled for ***Thursday, September 9, 2021.*** I will not be participating.

Respectfully submitted,

J. CARROLL HOLZER, Esquire
J. CARROLL HOLZER, P.A.
508 Fairmount Avenue
Towson, Maryland 21286
410-285-6961
Attorney for Protestants
jcholzer38@gmail.com

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

(410) 825-6961
FAX: (410) 825-4923

CERTIFICATE OF SERVICE

I HEREBY CERTIFY *that on this* 8th *day of September, 2021 a copy of the* foregoing Withdrawal of Appearance was mailed, first-class mail and e-mailed to:

People's Counsel for
Baltimore County (Sent via E-mail)
Jefferson Building
105 West Chesapeake Avenue
Room 204
Towson, Maryland 21204

Mr. & Mrs. Ryan King (Sent via E-mail)
18 Locust Drive
Catonsville, Maryland 21228

John B. Gontrum, Esquire (Sent via E-mail)
Whiteford, Taylor & Preston, L.L.P.
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, Maryland 21204-5025
Attorney for Petitioners
jgontrum@wtplaw.com

Cornelius D. Helfrich, Esquire (Sent U.S. Mail)
Helfrich Law Office
31 East Lee Street
Bel Air, Maryland 21014-3528

J. CARROLL HOLZER, Esquire

C:\My Docs\Entry of Appearance 2021\King – Withdrawal of Appear - 9/8/21

Re: Helfrich

9/3/21
3:43pm

Ryan King
general q's
- are we able to Bring audio of ALJ into evidence?
443-904-0085

- 9am 9/7/21 - I called back - mailbox full

Krysundra Cannington

From: Martin, Tammy <TMartin@wtplaw.com>
Sent: Friday, September 3, 2021 9:03 AM
To: Appeals Board
Subject: RE: EXHIBITS - DOMINION PROPERTIES/16 LOCUST DRIVE

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Thank you. I will have a set hand-delivered today.

From: Appeals Board <appealsboard@baltimorecountymd.gov>
Sent: Friday, September 3, 2021 8:07 AM
To: Martin, Tammy <TMartin@wtplaw.com>
Subject: [EXTERNAL] RE: EXHIBITS - DOMINION PROPERTIES/16 LOCUST DRIVE

Exhibits have been received.
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: Martin, Tammy <TMartin@wtplaw.com>
Sent: Thursday, September 2, 2021 12:28 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: Gontrum, John <JGontrum@wtplaw.com>
Subject: EXHIBITS - DOMINION PROPERTIES/16 LOCUST DRIVE

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SENDING ON BEHALF OF JOHN GONTRUM:

Attached are the Exhibit List and Exhibits for the 16 Locust Drive hearing which is scheduled for September 9, 2021 at 10:00 a.m.

WHITEFORD, TAYLOR & PRESTON L.L.P.

TOWSON COMMONS, SUITE 300
ONE WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5025
MAIN TELEPHONE (410) 832-2000
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JOHN B. GONTRUM
DIRECT LINE (410) 832-2055
DIRECT FAX (410) 339-4058
JGontrum@wtplaw.com

September 2, 2021

VIA HAND DELIVERY
Ms. Krysundra "Sunny" Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, MD 21204

Re: Dominion Properties, LLC/16 Locust Drive
Case No. 20-224-A

Dear Ms. Cannington:

Enclosed are the Hearing Exhibits for the hearing set to be heard on September 9, 2021 in the above-referenced matter. I have emailed these over as well.

Thank you, and please let me know if you have any questions or concerns.

Sincerely,

John Gontrum ltdm

John B. Gontrum

JBG:tdm
Enclosures

11919096

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SEP – 3 2021
BALTIMORE COUNTY
BOARD OF APPEALS

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Krysundra Cannington

From: Rebecca Wheatley
Sent: Tuesday, August 31, 2021 1:36 PM
To: Appeals Board
Cc: jgontrum@wtplaw.com; jcholzer38@gmail.com
Subject: Cornelius Helfrich - Case No: 2020-224-A

Good Afternoon,

Our office intends to participate in the above-referenced case on September 9, 2021. Would you kindly include our office when you send out the WebEx link for counsel participation.

Thank you in advance.

Rebecca M. Wheatley, Legal Secretary
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2189 Direct Dial
(410) 887-2188 Office
(410) 823-4236 Fax

IN THE MATTER OF:	*	BEFORE
CORNELIUS DAVID HELFRICH Legal Owners	*	THE
	*	BOARD OF APPEALS
DOMINION PROPERTIES, LLC Contract Purchaser	*	FOR
16 Locust Drive	*	BALTIMORE COUNTY
1st Election District 1st Councilmanic District	*	
	*	Case No.: 20-224-A

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

ENTRY OF APPEARANCE

Please enter the appearance of ***J. Carroll Holzer, Esquire*** on behalf of Protestants **RYAN** and **JULIA KING, *et al.***, in the above-captioned matter scheduled for ***Thursday, September 9, 2021***. Notice should be sent of any hearings, motions and other proceedings in this matter, and of the passage of any preliminary or final Order to undersigned counsel's address contained herein. All parties should copy ***J. Carroll Holzer, Esquire*** on all correspondence and documents sent in the instant matter.

I intend to participate in the virtual hearing scheduled above.

Respectfully submitted,

J. CARROLL HOLZER, Esquire
J. CARROLL HOLZER, P.A.
508 Fairmount Avenue
Towson, Maryland 21286
410-285-6961
Attorney for Protestants

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

(410) 825-6961
FAX: (410) 825-4923

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of August 2021, a copy of the foregoing Entry of Appearance was mailed, first class, postage prepaid to:

John B. Gontrum, Esquire
Whiteford, Taylor & Preston, L.L.P.
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, Maryland 21204-5025

Cornelius D. Helfrich, Esquire
Helfrich Law Office
31 East Lee Street
Bel Air, Maryland 21014-3528

Mr. & Mrs. Ryan King
18 Locust Drive
Catonsville, Maryland 21228

J. CARROLL HOLZER, Esquire

C:\My Docs\Entry of Appearance 2018\Cheung - 2/8/19

Board of Appeals of Baltimore County

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105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

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TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

July 22, 2021

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Cornelius David Helfrich– Legal Owners
Dominion Properties, LLC – Contract Purchaser
20-224-A 16 Locust Drive
1st Election District; 1st Council District

Re: Petition for Variance pursuant to BCZR § 1B02.3.C.1 to:
- allow a 10 ft. side yard setback in lieu of the required 15 ft. and a combination of 20 ft. in lieu of the required 40 ft.; and
- allow a rear yard setback of 25 ft. in lieu of the required 40 ft.; and
- allow a lot width of 50 ft. in lieu of the required minimum of 100 ft.; and
- allow a lot area of 5,850 sq. ft. in lieu of the minimum required 20,000 sq. ft.

4/19/21 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was DENIED.

ASSIGNED FOR: SEPTEMBER 9, 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/departments/appeals **the night before.**

A complete set of **exhibits must be emailed** at least **48 hours before the hearing** to **appealsboard@baltimorecountymd.gov** in a format that complies with MDEC (Maryland Electronic Court) standards.

NOTICE:

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

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

Krysundra Cannington, Administrator

c. Counsel for Petitioners/Appellants : John B. Gontrum, Esquire
Legal Owner : Cornelius D. Helfrich
Contract Purchaser : Dominion Properties, LLC

Protestants, *pro se* : Ryan and Julie King, Amy Stevens, Barry and Kathleen Sanders, Gabe Cohee, Gary Scherer, Laura Scherer, Lindsay Scherer, Richard Robertson, Mary Bahr-Robertson, Rachel Waltermyer, Theresa Werner

Patrick Richardson, Jr./Richardson Engineering, LLC

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

Tammy Zahner

From: Julie King <julieking815@gmail.com>
Sent: Monday, May 17, 2021 10:13 AM
To: Tammy Zahner
Subject: Re: 16 Locus Drive

CAUTION: This message from julieking815@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.

Tammy, thank you so much! I really appreciate it. Have a great week!

Sent from my iPhone

> On May 17, 2021, at 10:05 AM, Tammy Zahner <tzahner@baltimorecountymd.gov> wrote:
>
> Dear Mrs. King.
>
> Attached are the Exhibits presented by the Petitioner at the hearing before the Administrative Law Judge.
>
> 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
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<Petitioner's Exhibit 1 - Site Plan.pdf>
<Petitioner's Exhibit 2.pdf>
<Petitioner's Exhibit 3.pdf>
<Petitioner's Exhibit 4.pdf>
<Petitioner's Exhibit 5.pdf>
<Petitioner's Exhibit 6.pdf>
<Petitioner's Exhibit List - JG.pdf>

Tammy Zahner

From: Tammy Zahner
Sent: Monday, May 17, 2021 8:21 AM
To: 'neil@helfrichlaw.com'
Subject: Locus Drive
Attachments: Notice of Appeal.pdf

Dear Mr. Helfrich:

Attached is a copy of the Notice of Appeal filed by Mr. Gontrum.
Please let us know if we can be of further assistance.

Sincerely,

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
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IN THE MATTER OF CORNELIUS DAVID HELFRICH LEGAL OWNER AND DOMINION PROPERTIES, LLC, CONTRACT PURCHASER AND PETITIONERS FOR VARIANCE ON THE PROPERTY LOCATED AT 16 LOCUST DRIVE 1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 20-224-A

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

MAJORITY OPINION

This matter comes to the Board of Appeals for Baltimore County (the "Board") as a *de novo* appeal of an April 19, 2021 Opinion and Order of the Administrative Law Judge ("ALJ") denying a Petition for Variances (the "Petition") filed by Cornelius David Helfrich, Owner, and Dominion Properties, LLC, contract purchaser (collectively, "Petitioner") of the property at 16 Locust Drive in Catonsville (the "Property"). The Petition was filed pursuant to Baltimore County Zoning Regulations ("B.C.Z.R.") §1B02.3.C.1 to allow a 10-foot side yard in lieu of the required 15 feet and a combination of 20 feet in lieu of the required 40 feet;and a lot width of 50 feet in lieu of the required minimum of 100 feet; and a lot area of 5,850 sq. ft. in lieu of the minimum 20,000 sq. ft.

The Board held a virtual public hearing on September 9, 2021 and a virtual public deliberation on November 18, 2021. Petitioner was represented by John B. Gontrum, Esquire of Whiteford Taylor & Preston, LLP; also appearing for Petitioner was Patrick Richardson, a civil engineer registered and licensed in the State of Maryland, and Brian Leibowitz, the Director of Acquisition for Dominion Properties, LLC, the contract purchaser.

Protestants Ryan and Julie King, Barry Sanders and Laura Scherer appeared *pro se*. Also attending in opposition were Aaron and Kimberly Neal.

BACKGROUND

The subject parcel is located at 16 Locust Drive in Catonsville, and it is the last unimproved lot on a Plat titled "Locust Drive Extension" dated March 13, 1933, and recorded among the Plat Records of Baltimore County in Plat Book 10, page 109. The plat predated zoning in Baltimore County. After the imposition of the Density Residential zones in 1971, the lots in the plat were classified D.R. 5.5, though many houses had been built by that time. In 1996, the D.R. 5.5 zone was replaced by the application of D.R. 2 on nearly 500 acres of land in Catonsville. Every version of the B.C.Z.R. has recognized the validity of previously approved subdivision lots, but the regulations specify that such plats must have been approved by the Planning Commission or Planning Board. (B.C.Z.R. §103.) As such, there is no express recognition of the validity of a lot created prior to 1945, though, as the subject case demonstrates, these lots exist.

Petitioner Helfrich acquired the lot from the estate of Virginia Fields by Deed dated May 16, 2012 and recorded among the Land Records of Baltimore County at Liber 32178 folio 253. The adjoining lots on either side are improved by single family dwellings, which like most of the other houses in the subdivision were built in the 1930's or 1940's. To the rear of the Property is an undeveloped swath of land approved for use as commercial parking in a residential zone under Baltimore County zoning Case no. 89-307 SPH.

Testifying at the hearing for Petitioner was Patrick Richardson, who was accepted as an expert in zoning and land use. Mr. Richardson described the Property as lying on the west side of Locust Drive and being the last unimproved lot on the block and in the subdivision. Mr.

Richardson testified the proposed structure is a two-story house of co placement, size, design and materials as other homes on Locust Drive and of those neighboring the lot, with comparable front, rear and side yards. He also stated that the original architectural plans were modified to eliminate an attached garage, to shorten the house and to add dormers. The proposed house design was approved by the Department of Planning.

Using photographs and data from Baltimore County's My Neighborhood, Mr. Richardson pointed out several prior zoning cases granting variance relief to other lots in the subdivision.

Though the Property is a flat, rectangular lot, Mr. Richardson attributed the imposition of the D.R. 2 zone to the Property as contributing to its unique character. He opined that strict adherence to the zoning regulations would render the lot unbuildable for any purpose. He stated that the Property is served by public utilities. Mr. Richardson also testified that as part of the building permit process, the County agencies will review the application to assure compliance with storm water management and sediment control regulations.

There were no negative comments from the Zoning Advisory Committee.

Upon cross-examination by Protestants, Mr. Richardson confirmed the lot as having no steep slopes, no wetlands, no irregular shape or topography. When questioned regarding storm water run-off, Mr. Richardson reiterated that prior to the issuance of a building permit, the lot would have to comply with the applicable regulations. He was also asked and confirmed that the Property could be used for accessory uses if it were owned by either adjoining property owner.

On redirect questioning, Mr. Richardson explained that before an adjoining property could use the lot, both lots would have to be reconfigured.

Brian Leibowitz of Dominion Properties then testified. Dominion constructs new homes in Baltimore County and has constructed a number of such homes in the Catonsville area over the company's 25 years in business. Mr. Leibowitz explained that after discussions with counsel for one of the neighbors, the proposed house design was modified to have a smaller footprint and to eliminate a front garage to be more like existing residences. The house exterior would be brick on front and siding on the sides and rear.

Upon cross-examination, Mr. Leibowitz said that though there is room on the lot for a rear garage, there are no plans for one.

Following Petitioner's testimony, Protestants offered statements in opposition.

Julia King lives at 18 Locust Drive, neighboring the lot, and opposes the variances. She asserted that the lot is not unique under the standards of *Cromwell v. Ward,* 102 Md. App. 691, 651 A.2d 424 (1995). Ms. King further asserted that denial of the variances would not result in practical difficulty or hardship because the lot could be used as green space. She also said she offered to purchase the Property, arguing that a sale to her is a reasonable use.

Ms. King expressed apprehension that another dwelling would increase impermeable surfaces and create drainage and water issues.

Barry Sanders of 21 Locust Drive also testified against the variances. Upon cross-examination, he acknowledged that he did not object to the variances granted for his next door neighbor in Case No. 2010-0020.

Aaron Neal of 20 Locust Drive testified in opposition. He referenced the title history of the Property, citing common ownership of 16 and 18 Locust Drive prior to 2012, and alleged the subject lot was used in connection with 18 Locust Drive. However, Mr. Neal offered no evidence to support his assertion. He posited that other lots in the subdivision that benefited

from variance relief were distinguishable because those lots were already improved by houses. He did not distinguish whether the relief granted in those cases had a greater impact than the subject petition.

Laura Scherer of 14 Locust Drive testified in opposition, asserting that the Property was accessory to the adjoining lot because in the past children played on the Property.

DISCUSSION

"As a general rule, [variances] are granted sparingly, and under exceptional circumstances. *North v. St. Mary's County,* 99 Md.App. 502, 638 A.2d 1175 (1994).

Zoning is an exercise of the police power, which takes away, for public good, some rights of individuals to use their property. ... [I]t has been established that a zoning ordinance which permanently restricts the use of property so extensively that it cannot be used for any reasonable purpose and goes beyond permissible regulation, must be regarded as a taking of property without compensation. *Lone v. Montgomery County*, 85 Md. App 477, 584 A.2d 142 (1991).

Pursuant to B.C.Z.R. §307.1, the Board has the power to grant a variance from the area regulations "only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with Zoning Regulations... would result in practical difficulty or unreasonable hardship." In addition, "any such variance shall be granted only if in strict harmony with spirit and intent of said....area... regulations, and only in such a manner as to grant relief without injury to public health, safety and general welfare."

The analytical framework for considering a variance request is well established:

The decision of whether to grant a variance is a two-step process. "The first requires a determination of whether the property, in and of itself, is "unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provisions to impact disproportionately upon that property." *Cromwell v. Ward*, supra, at 694 (1995). If that "uniqueness" does not exist, no variance may be granted. If it does, then the second hurdle is to determine whether practical difficulty and/or unreasonable hardship result from the disproportionate impact of the zoning ordinance caused by the property's unique quality. *Cromwell*, supra at 694-695.

Uniqueness is not limited to physical characteristics. "While it appears from *Cromwell* that there must be some physical uniqueness in the size and shape or environment of the property to qualify for a variance, we believe that the court did not address the imposition of new zoning regulations on old subdivisions. In such cases, *the imposition of new regulations impacts the lots in the old subdivision disproportionately as compared to lots in the area* developed after and in accordance with new regulations. We therefore find that, *under these circumstances, the property passes the first test and is unique*. This subdivision was recorded in the 1940s prior to D.R. 3.5 zoning, and denying the requested variance would result in a hardship and practical difficulty." *Mueller v. People's Counsel*, 177 Md. App. 43, 934 A.2d 974 (2007) (emphasis added)

Applying the *Cromwell* analysis, it is clear that the Property fails the showing of unique physical characteristics different from surrounding properties. However, applying the *Mueller* analysis, the Property passes the first test and the uniqueness prong is satisfied.

The courts have also addressed what constitutes a practical difficulty or hardship. In *Belvoir Farms Homeowners Association v. North,* 355 Md. 259, 734 A.2d 227 (1999), the

Court explained that "authorities throughout the country ...define the unnecessary, unreasonable, unwarranted, or similarly-worded hardship standard to be either the denial of beneficial or reasonable use or the denial of all viable economic use, the unconstitutional taking standard."

Maryland appellate courts have offered two different definitions of what constitutes an unwarranted, undue, or unnecessary hardship. In *Loyola Federal Sav. & Loan Ass'n v. Buschman,* 227 Md. 243, 248, 176 A.2d 355, 358 (1961), the Court stated "variances are customarily concerned with `hardship' cases, where *the land cannot yield a reasonable return if used only in accordance with the use restrictions* of the ordinance and that a variance must be permitted to avoid confiscatory operation of the ordinance. *Belvoir Farms Homeowners Association, Inc. V. North,* 355 Md. 259, 734 A.2d 227 (1999) (emphasis added.)

To prove practical difficulty for an area variance, Petitioner must demonstrate i) whether strict compliance with the zoning requirements would unreasonably prevent use of the property for a permitted purpose or render conformance unnecessarily burdensome; ii) 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 iii) whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured. *Anderson v. Chesapeake Beach*, 22 Md. App 28, 322 A. 2d 220 (1974). We find that Petitioner has satisfied the practical difficulty requirement as well.

Despite the suggestion by the ALJ that there are other conceivable uses for the Property, neither he nor any party offered, nor could we discover, any other principal use or structure

permitted under the D.R. regulations of the B.C.Z.R. to which this Property could be put. As such, the owner is deprived of a beneficial use of the Property for a reasonable purpose.

Protestants argue that because they are willing to purchase the Property, thus forcing a sale, the sale would amount to a reasonable use to the Petitioner. Maryland Courts and this Board disagree.

In *Belvoir*, the court emphasized that "it is important to note...that the purpose of a variance is to protect the *landowner's rights.*" (emphasis added.) We find that Petitioner has effectively argued that our failure to grant the requested variances would deprive them of the permitted and beneficial use of the Property as provided in the zone.

Conduct forcing a sale of property is a deprivation of use to the landowner who has rights in the property, not those of a third party with no cognizable interest in the property. Zoning laws are in derogation of those rights but should not amount to a deprivation of an owner's ability to use its property for a permitted purpose.

Ordinarily, such a deprivation may be treated as a taking – an inverse condemnation. An inverse condemnation can take many forms, and includes conduct that effectively forces an owner to sell. *College Bowl, Inc. v. Baltimore,* 394 Md. 482, 907 A.2d 153 (2006) This proceeding would be a necessary prerequisite to pursuing a suit for inverse condemnation as an aggrieved party is obliged to exhaust administrative remedies.

However, Maryland case law seeks to avoid such an extreme measure as requiring a property owner to sue a local government. The alternative favored by the courts is the granting of a variance to permit the use of the property for a permitted purpose.

In the case of *Maryland Reclamation Associates, Inc. v. Harford County, Md.*, 468 Md. 339, 227 A.3d 230 (2019), the Court of Appeals described a variance as an "essential tool" to

be used in such situations. The variance can correct "occasional inequities" that may be created under general zoning ordinances. The Court has similarly held that a variance is an appropriate land use tool that this Board can apply to alleviate a deprivation of use arising out of otherwise valid zoning.

The *Belvoir* Court stated that the determination of such use or loss thereof is "a question of fact best addressed by...Board of Appeals." *Belvoir,* supra at 282. Essential to that determination is an analysis of other uses that could be made of the Property. The ALJ cited no such uses. The Protestants propose open space or forcing a sale to them so the land could become accessory to their homes. The uses do not equate to a reasonable use to the aggrieved property owner.

PROTESTANTS ARGUMENTS

Protestants in their written submissions raise a number of arguments.

The Kings advance the position that the sale of the Property has an economically viable use to the landowner. They cite no authority for this proposition nor could we find any cases to support it. The use must be one of value to the aggrieved landowner, while conduct that effectively forces an owner to sell is deemed a deprivation of use. Further, though all the D.R. zones permit a variety of accessory uses, these can, by definition, only exist if there is first a principal use of the lot. See B.C.Z.R. §101. An accessory use cannot stand alone.

The Protestants also argue that children living in 18 Locust Drive played on the subject Property, suggesting that the lot at 16 Locust Drive had become merged with 18 Locust Drive. The same proposition was rejected by the Court of Special Appeals in *Mueller.* Use as open space was also deemed to offer no viable economic value by the Court in *Steel v. Cape*, 111 Md. 1, 677 A.2d 634 (1996).

Both Protestants King and Neal argue that when he acquired the lot, Mr. Helfrich knew that its use was restricted by the bulk regulations of the D.R. 2 zone, and therefore variance relief should be denied. In Maryland, the law is that, at the time of acquisition, having knowledge of existing zoning regulations limiting a property's use *is not* a self-created hardship prohibiting variance relief. *Roeser v. Anne Arundel County*, 368 Md. 294, 793 A.2d 545 (2002). The *Roeser* court surveyed the case law in Maryland and other states in reaching its decision. The decision was based, in part, on the general property-law goal to preserve free alienability of property.

Protestant King also raises concerns about increased storm water and flooding, but offered no evidence in support of those allegations and no testimony to rebut Petitioner's expert witness.

Importantly, no Protestant identified any principal use, other than the proposed residence- that is permitted on the lot. Protestants historically have not opposed prior variances granted on this street – though one such variance nearly doubled the size of one house and increased its impervious area. There was no allegation that the proposed house design, as modified, was not in keeping with the character of other homes in the subdivision.

CONCLUSION

For the reasons cited above, the Board will grant the variances as requested.

ORDER

THEREFORE, IT IS THIS 12th day of January, 2022 by the Board of Appeals of Baltimore County

ORDERED, that the Variances to allow a 10-foot side yard in lieu of the required 15 feet and a combination of 20 feet in lieu of the required 40 feet; and a lot width of 50 feet in lieu of the required minimum of 100 feet; and a lot area of 5,850 sq. ft. in lieu of the minimum 20,000 sq. ft. at 16 Locust Drive are hereby **GRANTED.**

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

BOARD OF APPEALS
OF BALTIMORE COUNTY

Deborah C. Dopkin, Chair

Sharonne R. Bonardi

IN THE MATTER OF CORNELIUS DAVID HELFRICH LEGAL OWNER AND DOMINION PROPERTIES, LLC, CONTRACT PURCHASER AND PETITIONERS FOR VARIANCE ON THE PROPERTY LOCATED AT 16 LOCUST DRIVE 1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 20-224-A

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

DISSENT

I dissent from my colleagues' conclusion that a variance is warranted.

I. A VARIANCE IS NOT JUSTIFIED UNDER *CROMWELL*

Under *Cromwell v. Ward*, 102 Md. App. 691 (1995), a property owner can receive a variance from a zoning restriction if the property is unique **and** if the property owner would otherwise suffer practical difficulty or unreasonable hardship. These dual requirements are codified in the Baltimore County Zoning Regulations (BCZR) at § 307.

The uncontroverted testimony was that the Helfrich lot is exactly like all of the other lots in the development. There is nothing unique about the property in terms of topography, shape, dimension, placement, or any other characteristic of the land that satisfies *Cromwell* uniqueness.[1] The only uniqueness asserted by Mr. Helfrich is that the present zoning prohibits the development he desires. This is, of course, no uniqueness at all. *North v. St. Mary's County*, 99 Md. App. 502, 514-15 (1994) (no uniqueness where the only evidence offered in support of uniqueness was the

[1] Because there is no building on the property, there is no feature "peculiar to the structure" that makes the property unique. *See* BCZR § 307.

testimony that the property owner could not do what he wanted to do). A variance request presupposes a zoning restriction. To say that a zoning restriction is what generates *Cromwell* uniqueness is to define away uniqueness as a requirement. Mr. Helfrich has presented us with no authority that the zoning of a property can be the source of *Cromwell* uniqueness. In the interests of brevity, I hereby adopt the reasoning and cited authorities from Judge Mayhew's decision in this matter.[2] *See* ALJ Opinion of April 19, 2021, at p. 3-6.

I also disagree that there is unwarranted hardship or practical difficulty under *Cromwell.* It is certainly true that *Cromwell* hardship is not "self-created" and thereby disqualifying simply by acquiring a property where the zoning does not allow for a purchaser's desired use. *Richard Roeser, Inc. v. Anne Arundel County*, 368 Md. 294, 297 (2002). However, the logic works in both directions: undue hardship is not automatically **created** if the purchaser's desired zoning change does not happen. In other words, where someone engages in financial speculation hinged upon a zoning change, he does not automatically achieve practical difficulty or incur unreasonable hardship under the theory that to deprive him of his zoning request would mean that he would lose his gamble. Pursuant to § 307, the hardship to be avoided must be one that is "unreasonable". It is most assuredly **not** reasonable to claim hardship where the investment return is contingent upon overturning by variance a twenty-five year old zoning classification for a lot that is indistinguishable from every other lot in the development. Moreover, the attempt to achieve a variance by arguing a constitutional taking is nothing short of a "Hail Mary" pass. Anyone in Mr.

[2] To avoid any misunderstanding, I want it to be clear that I am adopting **only** Judge Mayhew's legal reasoning and not any factual findings he may have made. The Board's factual review is *de novo*. My factual conclusion that there is nothing unique about the Helfrich lot is founded solely and completely on the testimony and evidence presented before the Board.

Helfrich's position should have understood at the outset the degree of difficulty and the unlikelihood of obtaining a variance under these circumstances.[3]

In addition, the availability of the $25,000 offer from the Kings means that he can recoup some (if not all) of his investment. Some cases speak of undue hardship in the context of the denial of a **reasonable** investment-backed return. *Cf. Casey v. Mayor and City Council of Rockville*, 400 Md. 259 312-15 (2007). This is just another way of saying that the hardship requirement cannot be founded on a business expectation that is nothing more than a crapshoot. **The record is silent as to the size of Mr. Helfrich's investment.** Therefore, while $25,000 is not $75,000, we do not know whether the $25,000 is a good, bad, or neutral return on his investment. This would be a useful, if not necessary, fact for Mr. Helfrich to have provided so that the extent of any authentic hardship could be evaluated. *William F. Chesly v. City of Annapolis*, 176 Md. App. 413, 432-36 (2007) (applicant is required to affirmatively prove unreasonable or unwarranted hardship and the record must so demonstrate). After all, if he bought out the heirs for $10,000, a $25,000 return is quite handsome. So, I am not saying that there is self-created hardship. I am saying that there is no proven hardship *ab initio* because frustrated financial speculation under these circumstances and with this incomplete record is insufficient proof of an "unreasonable" hardship.

I see no basis whatsoever to grant a *Cromwell* variance.

II. A VARIANCE CANNOT BE JUSTIFIED BECAUSE A CONSTITUTIONAL TAKING HAS NOT OCCURRED AND BECAUSE THE ASSERTION OF A CONSTITUTIONAL CLAIM IS TIME-BARRED.

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[3] The rather amusing irony is not lost on me that I am writing these words in a Dissent from a finding that is precisely what I am saying is so unlikely. In my defense, the small chance of success does not mean there is **no** chance of success, but it does inform on the reasonableness and riskiness of the initial investment. And, of course, sometimes the Hail Mary pass is caught. It doesn't make it any less of a Hail Mary.

A. The Analyses Under *Cromwell* and Constitutional Taking Are Independent

Even where the *Cromwell* uniqueness standard is not met, a variance can also be granted if the applicant can show that there was a constitutional deprivation of property by reason of the enactment of a zoning regulation that severely limits the property's value. *Maryland Reclamation Associates v. Harford County*, 468 Md. 339, 404-05 (2020) (hereinafter "*MRA*"). In order to show a taking, the applicant is required to prove that there was an improper legislative enactment that deprived the owner of all beneficial use of the property. *Id.* at 392. I differ from my colleagues because it is my view that, analytically, the finding that a taking occurred does not feed into *Cromwell*; it trumps *Cromwell*. While there is some overlap between the two analyses, they are distinct. For example, they both consider the property's diminished value though the requirement of the elimination of all beneficial use for a taking is more stringent than *Cromwell* hardship. *Belvoir Farms Homeowners Association v. North*, 355 Md. 259, 282 (1999) (". . .the necessary or unwarranted hardship standard [for a regular variance], or similar standards, **are less restrictive than the unconstitutional taking standard"**)(emphasis supplied). On the other hand, the uniqueness requirement is irrelevant to a taking. In addition, it does remain necessary for the proponent of a taking to show that the zoning action in question was an improper exercise of a jurisdiction's authority to promote the general welfare, a concern that is not relevant under *Cromwell*. In other words, *Cromwell* and constitutional taking present independent analytic routes to achieve a variance.

It is my view that the taking claim in this case is both time-barred and unavailable on the merits. I begin with the question of the timeliness of Mr. Helfrich's taking claim because it is the simplest.

B. Any Claim Of A Constitutional Taking Is Time Barred

1. The Statute of Limitations

The basis for the regulatory taking at issue here is the comprehensive rezoning in 1996 in which the zoning was changed from DR 5.5 to RC 2. Based on that change, this lot became unbuildable for a house. The rezoning occurred twenty-five years ago.

How does the legal system cope with a situation where the core allegation is so old? One way, of course, is with the statute of limitations. Mr. Helfrich acquired the property and assumed all of the rights of the predecessors, but he also assumed all of the restrictions that limited the rights of his predecessors. *See Richard Roeser, Inc. v. Anne Arundel County*, 368 Md. at 319 ("In Maryland, when title is transferred, it takes with all the encumbrances and burdens that attach to title. . ."). One such restriction is the statute of limitations that attends such claims.

An action based on a regulatory taking is known as an inverse condemnation claim. The established rule in Maryland is that an owner of a property has three years to initiate an inverse condemnation action. *Electro-Nucleonics, Inc. v. Washington Suburban Sanitary Commission*, 315 Md. 361, 373-74 (1989); *Millison v. Wilzak*, 77 Md. App. 676, 684-86 (1989). The cause of action accrues as of the time the taking is final. *Litz v. Maryland Department of the Environment, et al.*, 434 Md. 623, 654 (2013). A final taking has occurred when "the taking becomes permanent or stabilized." *Id.* Stated differently, the statute of limitations begins to run when "the affected party knew or should have known of the unlawful action and its probable effect." *Duke St. Ltd. Partnership v. Board of Commissioners of Calvert City*, 112 Md. App. 37, 49 (1996). In this matter, the taking -- if indeed one occurred -- was "permanent or stabilized" in 1996. That is when the new zoning took effect, and it was then known that the property could not accommodate a

house under the new zoning. That was the point in time when the loss of value or use occurred, and the probable effect of the rezoning was known. Therefore, any inverse condemnation case was required to be started sometime in 1999, and not twenty-two years after the expiration of the three year limitations period. Accordingly, the relief that Mr. Helfrich seeks is legally barred, and he is foreclosed from seeking a variance on this basis.

2. Laches

(a) There Was Unreasonable Delay in Bringing an Inverse Condemnation Claim Resulting in Prejudice to the Protestants and/or Baltimore County

If, for some reason, it is believed that the statute of limitations does not shut out the Helfrich claim, then the other basis to dispense with stale claims, *i.e.*, laches, should apply. Laches is the equitable principle that a claim is barred where there has been an inexcusable delay in the assertion of a claim and where the party asserting laches has suffered prejudice by reason of the delay. *Schaeffer v. Anne Arundel County*, 338 Md. 75, 83 (1995). In this matter, there is certainly no excuse for the delay in bringing the taking case except, one supposes, that the predecessor owners had no interest in doing so.

There has been prejudice incurred by the delay. To prove a taking, Mr. Helfrich must demonstrate that the 1996 comprehensive rezoning was an improper exercise of legislative authority by the Baltimore County Council. The Petitioner blithely asserts that this was (or must have been) a directed zoning modification designed to influence this property alone and that the 1996 zoning action was motivated by a legislative desire to secure open space at the direct expense of Mr. Helfrich's predecessors. While this may be a useful picture to promote, it is at its core a baseless assertion conjured up out of thin air. In point of fact, there is absolutely nothing in the

record to support such an allegation, and Mr. Helfrich made no effort before the Board to demonstrate such a finding.[4]

The Board has been presented with no information about what happened in 1996. We know based on longstanding practice that the councilperson for the district in which the lot is found supported the change. That is about **all** that we know about the 1996 change. Here is what we do not know: why the change was made, who proposed the change, whether the then owner of this lot supported or opposed the change, whether the County planning and zoning authority supported or opposed the change, the geographic scope of the change, the number of other properties that were affected by the change, the nature of the debate that was associated with the change, and any other detail that might be pertinent to a **present** consideration as to whether this zoning change was a valid regulatory action or whether it was a taking giving this successor owner the right to seek relief.

It is true that zoning legislation carries "the strong presumption of correctness." *Stratakis v. Beauchamp*, 268 Md. 643, 652-53 (1973). Even more, this presumption is ". . .heavier in the case of comprehensive rezoning. . ." than in individualized zoning. *Reese v. Mandel*, 224 Md. 121, 128 (1961). *See also Anderson House, LLC v. City of Rockville*, 402 Md. 689, 723-24 (2008) (listing Maryland cases emphasizing the "strong presumption of correctness" that attends comprehensive rezoning). Nonetheless, waiting twenty-five years to assert the taking claim hampers the opponents of the claim from martialing the kind of information itemized in the

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[4] In order to prove an inverse condemnation claim, the party seeking to establish the claim must present evidence that there was an improper exercise of legislative authority. *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 127(1978). The absolute dearth of evidence presented by Mr. Helfrich on this point is one of the bases for concluding that his case failed on its merits. *See infra* at p. 26-27.

preceding paragraph – evidence by which one could rationally evaluate the propriety of the zoning legislation at issue. The ability of the Protestants (and even Baltimore County were the taking claim to go to Circuit Court) to present evidence beyond the presumption is substantially hampered by the twenty-five year delay. Maybe the presumption of validity is enough to prevail, but just because a party has "enough" evidence as assessed before the fact, does not mean that the party is not prejudiced by the inability to gather more for use at the actual trial. In other words, the presumption notwithstanding, there is legal prejudice occasioned by the delay.[5]

(b) Does Laches Apply to An Inverse Condemnation Claim in Maryland?

Assuming the elements of laches are established, the next question is whether laches applies to a case of this sort. I have not attempted to survey the country on the applicability of laches to a regulatory taking though laches does apply to this type of case in at least two other states. *Menconi v. State of Texas*, 480 S.W.2d 417, 419 (Texas 1972) (over 20 year delay in bringing inverse condemnation triggers laches); *George Rauser, et al. v. Toston Irrigation District, et al.*, 565 P.2d 632, 638 (Montana 1977) (though doctrine of laches is available in inverse condemnation, it did not apply on the *Rauser* facts). On the other hand, laches was found to be inapplicable in at least one state because inverse condemnation is a claim at law and not at equity. *Olsen v. Township of Spooner, et al.*, 395 N.W.2d 808, 810-11 (Wisconsin 1986) (laches was not

[5] Nothing said in this argument should be interpreted as placing the burden of persuasion on the Protestants (or the County). It is clearly the obligation of the party seeking to establish a taking to prove the impropriety of the legislative enactment. *MRA*, 468 Md. at 393-94. *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 484-85 (1987). I am merely noting that in a hypothetical case in which Mr. Helfrich were to somehow present evidence of a legislative overreach, his opponents are hampered because of the passage of time in obtaining evidence and/or witnesses that may well be relevant to rebut that assertion.

available to foreclose a three year old claim because inverse condemnation is not an equitable action, but the claimant's failure to give the State notice within 120 days of the loss did).

It is not clear whether laches applies to an inverse condemnation in Maryland. Laches is an equitable defense, and it harkens back to Maryland's historical split between actions at law and at equity. While eminent domain is technically an action at law, it has such peculiar and unique characteristics that it is sometimes viewed as straddling the line between law and equity. *Utilities Inc. v. Washington Suburban Sanitary Commission*, 362 Md. 37, 46-50 (2000) ("Condemnation proceedings are peculiar civil actions and are often described as being *sui generis*. . .[and] while regarded as proceedings at law, are not ordinary suits at law. . ."). Among the unusual features of condemnation cases are the following: the special condemnation juries are not common law juries; the question of just compensation is for the jury, but the other factual issues like the right, necessity, and/or public purpose for the condemnation are reserved for the judge; the jurisdiction is *in rem*, not *in personam*; and the authority of a governmental agency to initiate condemnation proceedings may be challenged in a separate action in equity. *Utilities Inc. of Maryland v. Washington Suburban Sanitary Commission, supra*, 362 Md. at 48-50.

The starting point for the staleness argument in this matter is the clearly established three year limitations period for an inverse condemnation proceeding. This should be enough to end the debate. If, however, an alternative to a limitations argument is needed, I would find that this matter is barred by laches unless and until a Maryland court of general jurisdiction indicates otherwise.

3. Conclusion

In summary, it is my view that the passage of time bars Mr. Helfrich from asserting a taking claim to achieve a variance. I cannot believe that the law would enable a real estate speculator to

take ownership of a parcel with full knowledge of its zoning and then make a significant profit because, according to him, there had been a regulatory taking twenty-five years and several predecessors earlier. To me, this is an outlandish proposition. Whatever the legal rationale, the logic of the taking claim being time-barred is compelling. In the event that Mr. Helfrich's taking argument is rejected and if Mr. Helfrich's claim is not stale, then he can go to circuit court and seek money compensation from Baltimore County. If he prevailed, the citizens of Baltimore County would have to pay him the lost value of the property.[6] Whether this matter is barred by limitations or laches or both, the point is the same: the area residents, the County government, the taxpayers of Baltimore County, and indeed the County fisc itself have the right to expect just a bit of repose after twenty-five years.

C. On The Merits, There Was No Basis To Find That The Property Had Been Taken By Reason Of The Zoning Change

1. The Background of Regulatory Taking

Historically, regulatory taking has been a rather vexing problem. *See generally Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413-15 (1922) (recognizing the possibility of a taking by the legislative exercise of normal police powers). Garden-variety condemnation relates to the straightforward situation where a government unit needs to take a property for the public good and pays the fair market value to the involuntary "seller." The title to the property is transferred. There is typically a "physical invasion" of the property. It is a constitutionally based

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[6] As to value, some perplexing questions do present themselves. Just what is the supposed lost value? Is it the difference in 1996 dollars between the property's value the day before the zoning change compared to its value the day after? Do the offers to buy for $75,000 and $25,000 even matter twenty-five years after the taking or are they just *non sequiturs*? Even though the Majority Opinion, the Parties and this Dissent find it convenient to talk about the value in terms of the present competing offers and the other bases in 2021 for valuing a property, I see no reason to automatically assume that that is the proper metric. The passage of time skews the valuation analysis, which is another reason the passage of time is a fundamental defect in this entire matter.

process that seeks to balance public necessity with the private ownership of property. Regulatory taking, however, arises in a different context. Here, a presumptively valid legislative action taken to enhance the general welfare can have the unintended effect of diminishing the value of a piece of property. The governmental unit is not seeking to take title to the property nor is it attempting to encroach on the physical boundaries of that property. *City of Annapolis v. Waterman*, 357 Md. 484, 508-09, 523 (2000). It is simply limiting the use that can be made of the property.

As the courts have often stated, it is difficult to imagine a piece of zoning legislation that does not affect the value of someone's private property, either positively or negatively. Where the legislation was in good faith and not the result of cognizable mistake or over-reaching, this gain or loss in property value is viewed as a necessary but fortunate, or necessary but unfortunate, collateral consequence of the legislative exercise of police powers. *County Commissioners of Queen Anne's County v. Miles*, 246 Md. 355, 368 (1967); *Ark Readi-Mix Concrete Corp v. Smith*, 251 Md. 1, 5 (1968). No one has a *per se* vested property right in the continuation of a zoning classification, whether their own or others. *Norbeck Village Joint Venture v. Montgomery County Council*, 254 Md. 59, 66 (1969). Rezoning may cause some people to win and some people to lose, but the public does not have a claim on the enhanced rewards of the winners, nor does it have to pay the losers for their lost value. To do otherwise, except in one narrow situation, would be to create a massively unwieldy system of immense complexity. We just cannot enter into an adversary process every time someone's property is down-zoned with a resulting loss of optimal value. No one seriously suggests otherwise. The one exception is where the loser has lost **ALL** value. Then and only then is the public required to compensate the property owner who has retained title to their property for the lost value. There is no effort to measure the gradation of that lost value – there is no battle of experts, one who says there is a 50% loss or another who says

there is a 65% loss or yet another who says it's 80%. In the world of regulatory taking, it is all or nothing.

2. The Standard For Determining the Necessary Lost Value

In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), the Court stated the standard for measuring the loss necessary to establish a regulatory taking. *Lucas* involved two beachfront properties that Lucas had purchased with intent to build and sell houses, but the lots were made less valuable by a newly enacted local building restriction for beachfront properties. The Court expressly stated that the proper measure of a taking is whether the regulation has resulted in the loss of "**all** economically beneficial uses . . ." 505 U.S. at 1019. (emphasis in original). It is not a question of whether the use or value has been diminished – even substantially diminished. There must be a complete and total elimination of value. 505 U.S. at 1019n.8. *See e.g., Steel Hill Development Inc. v. Town of Sanbornton*, 469 F.2d 956, 963 (1st Cir. 1972) ("The estimated worth, had Steel Hill's original plans been approved, is irrelevant. Though the value . . . has been decreased considerably, it is not worthless or useless so as to constitute a taking."); *C.F. Lytle Co. v. Clark*, 491 F.2d 834, 838 (10th Cir.1974) (a taking occurs only where the property owner "has been deprived of all reasonable uses."); *Kent Island Joint Venture v. Smith*, 452 F.Supp. 455, 460 (D.Md.1978) (". . . there is no taking in the constitutional sense unless the interference is so substantial as to render the property worthless or useless."). Lest there be any doubt about the long history of this principle, one need only examine ninety-five year old *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (holding that a 75% diminution of value not a taking) and one hundred and five year old *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (reduction in value from $800,000 to $60,000 – approximately 92% -- does not constitute taking).

The Court revisited the issue in *Palazzo v. Rhode Island*, 533 U.S. 606 (2001). In that decision, the Court determined that the standard to measure a taking is satisfied if the owner is left only with "a token interest." *Id.* at 631. The difference between having no value and having only token value seems a distinction almost too fine to measure. Certainly, the residual value of the Helfrich property, particularly given the outstanding King offer, is vastly greater than a mere token.

Whatever wiggle room is generated by the reference to token value, it is difficult to find any decision – including any Maryland case -- that strays from the categorical requirement. The recent Maryland decisions on this issue have had no trouble citing the categorical rule as the operative one in Maryland. *MRA*, *supra*, 468 Md. at 416 (indicating that MRA had "the burden of demonstrating that no other beneficial uses could be made of its property. . ."); *Belvoir Farms v. North*, *supra*, 355 Md. at 282 (the constitutional standard is ". . .the denial of beneficial use or the denial of all viable economic use. . .").

MRA is from 2020, and *Belvoir Farms* is from 1999. One can go back much further. For example, in *Mayor of Rockville v. Stone*, 271 Md. 655, 662 (1974), the Court addressed a situation where rezoning had caused a two-thirds diminution of the owners' original investment.[7] The Court roundly rejected the argument that the zoning was confiscatory and therefore improper, stating "[t]he record is devoid of evidence which would demonstrate that the owners were denied **all** reasonable use. . ." (emphasis supplied). While the Court expressed sympathy for the "details of financial disaster" wrought by the zoning, the Court stated that the law simply required a complete

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[7] There is a two-thirds diminution of **sale** value in this case – the difference between the $75,000 developer price and the $25,000 King price. This is not a two-thirds diminution of investment value. What we do not know, as indicated above, is the amount of the original Helfrich investment. *See* discussion *supra* at 13-14 regarding the difficulty of evaluating *Cromwell* hardship and/or return on investment without that information.

deprivation of value before an unconstitutional taking can be found to have occurred by reason of the enactment of regulations. *Id.* at 664. *See also Hagerstown Kitchens, Inc. v. Board of County Commissioners*, 547 F.Supp. 46, 48 (D.Md.), *aff'd* 707 F.2d 506 (4th Cir.1983); *State v. Good Samaritan Hospital*, 299 Md. 310, 324-25 (1984); *Pilsenberger v. Pilsenberger*, 287 Md 20, 34 (1980); *Pallace v. Inter City Land Co.*, 239 Md. 549, 558 (1965), *City of Baltimore v. Borinsky*, 239 Md. 611, 618-22 (1965) (discussed at length and with approval in *MRA*), all applying the categorical rule in assessing whether the diminution of value led to a taking.

3. The Helfrich Property Has More Than Token Value

As has been said throughout, the $25,000 King offer is an indicator of real and actual value. For example, in *Quinn v. Board of County Commissioners of Queen Annes's County*, 124 F.Supp.3d 586 (D.Md.2015), the Court noted that merging small lots into larger ones creating more open space meant that the smaller lot still retained demonstrable value.[8] *Id.* at 595-96. Moreover, the Helfrich property has cognizable value apart from the $25,000 King offer. If Mr. Helfrich does not want to sell for $25,000, he can put a fence around the property and use it for himself. He could dig a fire pit for picnics or set up a volleyball net, or both. He could pave part of it and put up a basketball net. He can use it for storage of various items. Those uses do not necessarily maximize his financial return, but they do have measurable value. It has long been recognized that an undeveloped lot can have recreational and aesthetic value. *See e.g., Turner v. County of Del Norte*, 24 Cal.App. 3d 311, 315, 101 Cal. Rptr. 93,96 (1972); *Turnpike Realty Co. v. Town of*

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[8] Mr. Justice Blackmun in his *Lucas* dissent described various attributes of value that the Lucas' property retained. Among those attributes was "**. . .the right to alienate the land, which would have value for neighbors and for those prepared to enjoy proximity to the ocean without a house.** (emphasis supplied). *Lucas, supra*, 505 U.S. at 1043-44 (Blackmun, J., dissenting). In other words, selling a property to a neighbor who wants the lot to be vacant is a type of recognized value.

Dedham, 284 NE2d 891, 899-900 (Me.1972); *Hall v. Board of Environmental Protection*, 528 A.2d 453, 455-56 (Me. 1987), all finding recreational and aesthetic value in building-less lots. *See also City of Annapolis v. Waterman, supra*, 357 Md. at 484 (indicating in general that there is nothing improper in imposing conditions in subdivisions for open space and recreation).

There is nothing in this Dissent that supports a finding that Mr. Helfrich is the victim of a "forced sale." It is true enough that the under Maryland caselaw, a requirement that **forces** someone to sell their property is improper. No one is forcing Mr. Helfrich to sell. In fact, he wants to sell. He just wants to sell to a builder for $75,000 and not to an abutting property owner for $25,000. But if he chooses not to sell to the Kings, he can retain the property for his own use as discussed above. The retention of the property may have a monetized value less than the $25,000, but it still has more than token value.[9] The question here is not whether Mr. Helfrich is able to obtain top dollar for his lot; the question here is whether the lot nonetheless retained more than token value after the restrictive zoning. The answer to that question is most assuredly yes.[10]

4. There Is No Evidence That the Comprehensive Rezoning in 1996 Was Not Legitimate

There is a requirement that the party seeking to establish inverse condemnation must affirmatively demonstrate that the zoning in question was inappropriate or lacked a legitimate public purpose. *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 484-85 (1987). I have already indicated in the laches argument above that Mr. Helfrich presented **no** evidence to prove that point. *Supra* at p. 17-19. Additionally, there is the very strong presumption of

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9 The record is silent regarding the payment of property taxes over the last twenty-five years for this property. One can infer that if no taxes were paid, or no taxes levied because of the valueless nature of the property, such evidence would have been presented.

10 At the risk of being repetitive, the missing evidence as to the size of Mr. Helfrich's original investment impacts on an assessment of value as well. *Supra* at p. 13-14.

correctness that attends comprehensive rezoning. Just as Mr. Helfrich made no affirmative showing that the rezoning was not proper, he made no effort to rebut the presumption of validity. Those cases are also cited above. *Supra* at p. 18-19. Accordingly, there is a massive failure of proof on this required element of inverse condemnation.

5. Conclusion On the Substantive Taking Claim

Because Mr. Helfrich has failed to demonstrate the required diminution of value for an inverse condemnation and/or because he has not presented any evidence to undermine the legitimate government interest in the 1996 comprehensive rezoning, his inverse condemnation claim fails on the merits.

III. THE CONDUCT OF THE AREA RESIDENTS DOES NOT WARRANT CRITICISM

During the deliberations, there was some pique expressed towards a Protestant who had not opposed a variance for a small addition to a nearby preexisting home yet did oppose the construction of a new home on the vacant Helfrich lot. This was coupled with a suggestion that the pending $25,000 offer to buy the Helfrich property takes unfair advantage of the present zoning. Normally, I would let those remarks pass because at the end of the day, they are largely irrelevant. Nonetheless, I feel obliged to let the Protestants know that the sentiment is not shared by the Board as a whole.

First, there is a vast difference between a small addition and the construction of a whole house. Maybe the past situation involved an alteration to the house that was so minor that a challenge just was not worth the time nor the effort. Second, we do not know what other facts, considerations, and backstory may have attended that other situation that could make it

distinguishable from this matter. Third, and most importantly, there is no requirement that someone who seeks to rely on and enforce the law today did not do so at some time in the past. The law does not demand purity from a citizen seeking to rely on established principle. To justify the demand for consistency by saying that it bears on credibility may in some situations be valid. Here, however, none of the operative legal issues turns on credibility. The lot is either unique or not under *Cromwell*; there was either a regulatory deprivation of value significant enough to constitute a taking, or there was not; there was a either a showing of improper legislative action, or not; the claim of a constitutional taking is time-barred or not. None of these issues requires a credibility finding. Indeed, if credibility were a factor, I would find that Mr. Helfrich's *failure* to testify raises significant questions about his thought process in electing to buy out the other heirs and speculate on the resale of this property.

Further, there is nothing extortionate or even slightly untoward in people negotiating a sale or purchase of real estate with an understanding for what the present – not to mention longstanding -- zoning will permit. Having a sound appreciation for the existing legal landscape (no pun intended) is not an unfair business advantage nor the exercise of predatory leverage. It is the normal and commonplace recognition and assessment of the possible upsides and downsides of any business transaction.

People make offers based on their understanding of the current legal posture. Sometimes they win, and sometimes they lose. Before all of this litigation began, Mr. Helfrich could have sold the parcel to the Kings for $25,000. Presumably, he still can.[11] He has chosen, however, to

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[11] I must say that I actually view the $25,000 offer as quite generous. The Kings want the Helfrich parcel to be open space for use in conjunction with their home on the adjoining lot. They could have, I suppose, simply fought the Helfrich development and if successful, achieved the same practical effect without paying anything. That they have kept the offer open speaks well for them. Of course, had they taken the approach of not seeking to

contract to sell that parcel for $75,000 to a builder contingent on a zoning change. Once he has paid for representation for two administrative hearings and appeals in the Circuit Court and the Court of Special Appeals (and given the central legal issue, possibly the Court of Appeals), his net gain on the $75,000 even if he wins at every subsequent level (which I doubt) will be paltry -- not to mention the value lost because of the time delay on his receipt of the sale proceeds.

Personally, I have no sympathy for someone who purchases property knowing that the present zoning inhibits development and then loses his bet that the zoning will change. There is nothing remotely reasonable about an investment founded on obtaining a variance on a cookie cutter lot or on establishing that a twenty-five year old zoning reclassification was a constitutional taking. But this viewpoint from me has no more worth in deciding this matter than does concern with the neighbors' reliance on the existing zoning to fashion an offer to buy or their past failure to object to some modification to a preexisting structure or two. As I indicated above, the issues in this case turn on stark legal determinations alone.

CONCLUSION

Because it is my view that standard variance principles do not warrant the grant of a variance, that no taking occurred, and that even if a taking had occurred, it is time barred, I respectfully dissent from the grant of a variance in this case.

Date January 18, 2022

Joseph L. Evans

purchase the property, they would run the risk that Mr. Helfrich would fence off the property and exclude them from it. The ability to restrict access is recognized as a property right of significant value. *City of Annapolis v. Waterman*, 357 Md. 484, 522 (2000) (recognizing the "right to exclude" as an essential property right).

Board of Appeals of Baltimore County

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

January 12, 2022

John B. Gontrum, Esquire
Whiteford, Taylor & Preston L.L.P.
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, Maryland 21204-5025

RE: In the Matter of: *Cornelius David Helfrich – Legal Owner*
Dominion Properties, LLC – Contract Purchaser and Petitioners
Case No.: 20-224-A

Dear Mr. Gontrum:

Enclosed please find a copy of the final Majority Opinion and Order, and Dissent, 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

c: See Distribution List following

In the matter of: Cornelius Helfrich, Legal Owner
Dominion Properties, LLC, Contract Purchaser
Case No.: 20-224-A
January 12, 2022
Distribution List

Cornelius D. Helfrich
Dominion Properties, LLC
Ryan and Julie King
Amy Stevens
Barry and Kathleen Sanders
Gabe Cohee
Gary Scherer
Laura Scherer
Lindsay Scherer
Richard Robertson
Mary Bahr-Robertson
Rachel Waltermyer
Theresa Warner
Aaron D. Neal, Esquire
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

IN THE MATTER OF CORNELIUS DAVID HELFRICH LEGAL OWNER AND DOMINION PROPERTIES, LLC, CONTRACT PURCHASER AND PETITIONERS FOR VARIANCE ON THE PROPERTY LOCATED AT 16 LOCUST DRIVE 1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 20-224-A

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

MAJORITY OPINION

This matter comes to the Board of Appeals for Baltimore County (the "Board") as a *de novo* appeal of an April 19, 2021 Opinion and Order of the Administrative Law Judge ("ALJ") denying a Petition for Variances (the "Petition") filed by Cornelius David Helfrich, Owner, and Dominion Properties, LLC, contract purchaser (collectively, "Petitioner") of the property at 16 Locust Drive in Catonsville (the "Property"). The Petition was filed pursuant to Baltimore County Zoning Regulations ("B.C.Z.R.") §1B02.3.C.1 to allow a 10-foot side yard in lieu of the required 15 feet and a combination of 20 feet in lieu of the required 40 feet;and a lot width of 50 feet in lieu of the required minimum of 100 feet; and a lot area of 5,850 sq. ft. in lieu of the minimum 20,000 sq. ft.

The Board held a virtual public hearing on September 9, 2021 and a virtual public deliberation on November 18, 2021. Petitioner was represented by John B. Gontrum, Esquire of Whiteford Taylor & Preston, LLP; also appearing for Petitioner was Patrick Richardson, a civil engineer registered and licensed in the State of Maryland, and Brian Leibowitz, the Director of Acquisition for Dominion Properties, LLC, the contract purchaser.

Protestants Ryan and Julie King, Barry Sanders and Laura Scherer appeared *pro se*. Also attending in opposition were Aaron and Kimberly Neal.

BACKGROUND

The subject parcel is located at 16 Locust Drive in Catonsville, and it is the last unimproved lot on a Plat titled "Locust Drive Extension" dated March 13, 1933, and recorded among the Plat Records of Baltimore County in Plat Book 10, page 109. The plat predated zoning in Baltimore County. After the imposition of the Density Residential zones in 1971, the lots in the plat were classified D.R. 5.5, though many houses had been built by that time. In 1996, the D.R. 5.5 zone was replaced by the application of D.R. 2 on nearly 500 acres of land in Catonsville. Every version of the B.C.Z.R. has recognized the validity of previously approved subdivision lots, but the regulations specify that such plats must have been approved by the Planning Commission or Planning Board. (B.C.Z.R. §103.) As such, there is no express recognition of the validity of a lot created prior to 1945, though, as the subject case demonstrates, these lots exist.

Petitioner Helfrich acquired the lot from the estate of Virginia Fields by Deed dated May 16, 2012 and recorded among the Land Records of Baltimore County at Liber 32178 folio 253. The adjoining lots on either side are improved by single family dwellings, which like most of the other houses in the subdivision were built in the 1930's or 1940's. To the rear of the Property is an undeveloped swath of land approved for use as commercial parking in a residential zone under Baltimore County zoning Case no. 89-307 SPH.

Testifying at the hearing for Petitioner was Patrick Richardson, who was accepted as an expert in zoning and land use. Mr. Richardson described the Property as lying on the west side of Locust Drive and being the last unimproved lot on the block and in the subdivision. Mr.

Richardson testified the proposed structure is a two-story house of co placement, size, design and materials as other homes on Locust Drive and of those neighboring the lot, with comparable front, rear and side yards. He also stated that the original architectural plans were modified to eliminate an attached garage, to shorten the house and to add dormers. The proposed house design was approved by the Department of Planning.

Using photographs and data from Baltimore County's My Neighborhood, Mr. Richardson pointed out several prior zoning cases granting variance relief to other lots in the subdivision.

Though the Property is a flat, rectangular lot, Mr. Richardson attributed the imposition of the D.R. 2 zone to the Property as contributing to its unique character. He opined that strict adherence to the zoning regulations would render the lot unbuildable for any purpose. He stated that the Property is served by public utilities. Mr. Richardson also testified that as part of the building permit process, the County agencies will review the application to assure compliance with storm water management and sediment control regulations.

There were no negative comments from the Zoning Advisory Committee.

Upon cross-examination by Protestants, Mr. Richardson confirmed the lot as having no steep slopes, no wetlands, no irregular shape or topography. When questioned regarding storm water run-off, Mr. Richardson reiterated that prior to the issuance of a building permit, the lot would have to comply with the applicable regulations. He was also asked and confirmed that the Property could be used for accessory uses if it were owned by either adjoining property owner.

On redirect questioning, Mr. Richardson explained that before an adjoining property could use the lot, both lots would have to be reconfigured.

Brian Leibowitz of Dominion Properties then testified. Dominion constructs new homes in Baltimore County and has constructed a number of such homes in the Catonsville area over the company's 25 years in business. Mr. Leibowitz explained that after discussions with counsel for one of the neighbors, the proposed house design was modified to have a smaller footprint and to eliminate a front garage to be more like existing residences. The house exterior would be brick on front and siding on the sides and rear.

Upon cross-examination, Mr. Leibowitz said that though there is room on the lot for a rear garage, there are no plans for one.

Following Petitioner's testimony, Protestants offered statements in opposition.

Julia King lives at 18 Locust Drive, neighboring the lot, and opposes the variances. She asserted that the lot is not unique under the standards of *Cromwell v. Ward,* 102 Md. App. 691, 651 A.2d 424 (1995). Ms. King further asserted that denial of the variances would not result in practical difficulty or hardship because the lot could be used as green space. She also said she offered to purchase the Property, arguing that a sale to her is a reasonable use.

Ms. King expressed apprehension that another dwelling would increase impermeable surfaces and create drainage and water issues.

Barry Sanders of 21 Locust Drive also testified against the variances. Upon cross-examination, he acknowledged that he did not object to the variances granted for his next door neighbor in Case No. 2010-0020.

Aaron Neal of 20 Locust Drive testified in opposition. He referenced the title history of the Property, citing common ownership of 16 and 18 Locust Drive prior to 2012, and alleged the subject lot was used in connection with 18 Locust Drive. However, Mr. Neal offered no evidence to support his assertion. He posited that other lots in the subdivision that benefited

from variance relief were distinguishable because those lots were already improved by houses. He did not distinguish whether the relief granted in those cases had a greater impact than the subject petition.

Laura Scherer of 14 Locust Drive testified in opposition, asserting that the Property was accessory to the adjoining lot because in the past children played on the Property.

DISCUSSION

"As a general rule, [variances] are granted sparingly, and under exceptional circumstances. *North v. St. Mary's County,* 99 Md.App. 502, 638 A.2d 1175 (1994).

Zoning is an exercise of the police power, which takes away, for public good, some rights of individuals to use their property. ... [I]t has been established that a zoning ordinance which permanently restricts the use of property so extensively that it cannot be used for any reasonable purpose and goes beyond permissible regulation, must be regarded as a taking of property without compensation. *Lone v. Montgomery County*, 85 Md. App 477, 584 A.2d 142 (1991).

Pursuant to B.C.Z.R. §307.1, the Board has the power to grant a variance from the area regulations "only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with Zoning Regulations... would result in practical difficulty or unreasonable hardship." In addition, "any such variance shall be granted only if in strict harmony with spirit and intent of said....area... regulations, and only in such a manner as to grant relief without injury to public health, safety and general welfare."

The analytical framework for considering a variance request is well established:

The decision of whether to grant a variance is a two-step process. "The first requires a determination of whether the property, in and of itself, is "unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provisions to impact disproportionately upon that property." *Cromwell v. Ward*, supra, at 694 (1995). If that "uniqueness" does not exist, no variance may be granted. If it does, then the second hurdle is to determine whether practical difficulty and/or unreasonable hardship result from the disproportionate impact of the zoning ordinance caused by the property's unique quality. *Cromwell*, supra at 694-695.

Uniqueness is not limited to physical characteristics. "While it appears from *Cromwell* that there must be some physical uniqueness in the size and shape or environment of the property to qualify for a variance, we believe that the court did not address the imposition of new zoning regulations on old subdivisions. In such cases, *the imposition of new regulations impacts the lots in the old subdivision disproportionately as compared to lots in the area* developed after and in accordance with new regulations. We therefore find that, *under these circumstances, the property passes the first test and is unique*. This subdivision was recorded in the 1940s prior to D.R. 3.5 zoning, and denying the requested variance would result in a hardship and practical difficulty." *Mueller v. People's Counsel*, 177 Md. App. 43, 934 A.2d 974 (2007) (emphasis added)

Applying the *Cromwell* analysis, it is clear that the Property fails the showing of unique physical characteristics different from surrounding properties. However, applying the *Mueller* analysis, the Property passes the first test and the uniqueness prong is satisfied.

The courts have also addressed what constitutes a practical difficulty or hardship. In *Belvoir Farms Homeowners Association v. North,* 355 Md. 259, 734 A.2d 227 (1999), the

Court explained that "authorities throughout the country ...define the unnecessary, unreasonable, unwarranted, or similarly-worded hardship standard to be either the denial of beneficial or reasonable use or the denial of all viable economic use, the unconstitutional taking standard."

Maryland appellate courts have offered two different definitions of what constitutes an unwarranted, undue, or unnecessary hardship. In *Loyola Federal Sav. & Loan Ass'n v. Buschman,* 227 Md. 243, 248, 176 A.2d 355, 358 (1961), the Court stated "variances are customarily concerned with `hardship' cases, where *the land cannot yield a reasonable return if used only in accordance with the use restrictions* of the ordinance and that a variance must be permitted to avoid confiscatory operation of the ordinance. *Belvoir Farms Homeowners Association, Inc. V. North,* 355 Md. 259, 734 A.2d 227 (1999) (emphasis added.)

To prove practical difficulty for an area variance, Petitioner must demonstrate i) whether strict compliance with the zoning requirements would unreasonably prevent use of the property for a permitted purpose or render conformance unnecessarily burdensome; ii) 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 iii) whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured. *Anderson v. Chesapeake Beach*, 22 Md. App 28, 322 A. 2d 220 (1974). We find that Petitioner has satisfied the practical difficulty requirement as well.

Despite the suggestion by the ALJ that there are other conceivable uses for the Property, neither he nor any party offered, nor could we discover, any other principal use or structure

permitted under the D.R. regulations of the B.C.Z.R. to which this Property could be put. As such, the owner is deprived of a beneficial use of the Property for a reasonable purpose.

Protestants argue that because they are willing to purchase the Property, thus forcing a sale, the sale would amount to a reasonable use to the Petitioner. Maryland Courts and this Board disagree.

In *Belvoir*, the court emphasized that "it is important to note...that the purpose of a variance is to protect the *landowner's rights.*" (emphasis added.) We find that Petitioner has effectively argued that our failure to grant the requested variances would deprive them of the permitted and beneficial use of the Property as provided in the zone.

Conduct forcing a sale of property is a deprivation of use to the landowner who has rights in the property, not those of a third party with no cognizable interest in the property. Zoning laws are in derogation of those rights but should not amount to a deprivation of an owner's ability to use its property for a permitted purpose.

Ordinarily, such a deprivation may be treated as a taking – an inverse condemnation. An inverse condemnation can take many forms, and includes conduct that effectively forces an owner to sell. *College Bowl, Inc. v. Baltimore,* 394 Md. 482, 907 A.2d 153 (2006) This proceeding would be a necessary prerequisite to pursuing a suit for inverse condemnation as an aggrieved party is obliged to exhaust administrative remedies.

However, Maryland case law seeks to avoid such an extreme measure as requiring a property owner to sue a local government. The alternative favored by the courts is the granting of a variance to permit the use of the property for a permitted purpose.

In the case of *Maryland Reclamation Associates, Inc. v. Harford County, Md.*, 468 Md. 339, 227 A.3d 230 (2019), the Court of Appeals described a variance as an "essential tool" to

be used in such situations. The variance can correct "occasional inequities" that may be created under general zoning ordinances. The Court has similarly held that a variance is an appropriate land use tool that this Board can apply to alleviate a deprivation of use arising out of otherwise valid zoning.

The *Belvoir* Court stated that the determination of such use or loss thereof is "a question of fact best addressed by...Board of Appeals." *Belvoir,* supra at 282. Essential to that determination is an analysis of other uses that could be made of the Property. The ALJ cited no such uses. The Protestants propose open space or forcing a sale to them so the land could become accessory to their homes. The uses do not equate to a reasonable use to the aggrieved property owner.

PROTESTANTS ARGUMENTS

Protestants in their written submissions raise a number of arguments.

The Kings advance the position that the sale of the Property has an economically viable use to the landowner. They cite no authority for this proposition nor could we find any cases to support it. The use must be one of value to the aggrieved landowner, while conduct that effectively forces an owner to sell is deemed a deprivation of use. Further, though all the D.R. zones permit a variety of accessory uses, these can, by definition, only exist if there is first a principal use of the lot. See B.C.Z.R. §101. An accessory use cannot stand alone.

The Protestants also argue that children living in 18 Locust Drive played on the subject Property, suggesting that the lot at 16 Locust Drive had become merged with 18 Locust Drive. The same proposition was rejected by the Court of Special Appeals in *Mueller.* Use as open space was also deemed to offer no viable economic value by the Court in *Steel v. Cape*, 111 Md. 1, 677 A.2d 634 (1996).

Both Protestants King and Neal argue that when he acquired the lot, Mr. Helfrich knew that its use was restricted by the bulk regulations of the D.R. 2 zone, and therefore variance relief should be denied. In Maryland, the law is that, at the time of acquisition, having knowledge of existing zoning regulations limiting a property's use *is not* a self-created hardship prohibiting variance relief. *Roeser v. Anne Arundel County*, 368 Md. 294, 793 A.2d 545 (2002). The *Roeser* court surveyed the case law in Maryland and other states in reaching its decision. The decision was based, in part, on the general property-law goal to preserve free alienability of property.

Protestant King also raises concerns about increased storm water and flooding, but offered no evidence in support of those allegations and no testimony to rebut Petitioner's expert witness.

Importantly, no Protestant identified any principal use, other than the proposed residence- that is permitted on the lot. Protestants historically have not opposed prior variances granted on this street – though one such variance nearly doubled the size of one house and increased its impervious area. There was no allegation that the proposed house design, as modified, was not in keeping with the character of other homes in the subdivision.

CONCLUSION

For the reasons cited above, the Board will grant the variances as requested.

ORDER

THEREFORE, IT IS THIS 12th day of January, 2022 by the Board of Appeals of Baltimore County

ORDERED, that the Variances to allow a 10-foot side yard in lieu of the required 15 feet and a combination of 20 feet in lieu of the required 40 feet; and a lot width of 50 feet in lieu of the required minimum of 100 feet; and a lot area of 5,850 sq. ft. in lieu of the minimum 20,000 sq. ft. at 16 Locust Drive are hereby **GRANTED.**

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

BOARD OF APPEALS
OF BALTIMORE COUNTY

Deborah C. Dopkin, Chair

Sharonne R. Bonardi

IN THE MATTER OF CORNELIUS DAVID HELFRICH LEGAL OWNER AND DOMINION PROPERTIES, LLC, CONTRACT PURCHASER AND PETITIONERS FOR VARIANCE ON THE PROPERTY LOCATED AT 16 LOCUST DRIVE 1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 20-224-A

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

DISSENT

I dissent from my colleagues' conclusion that a variance is warranted.

I. A VARIANCE IS NOT JUSTIFIED UNDER *CROMWELL*

Under *Cromwell v. Ward*, 102 Md. App. 691 (1995), a property owner can receive a variance from a zoning restriction if the property is unique **and** if the property owner would otherwise suffer practical difficulty or unreasonable hardship. These dual requirements are codified in the Baltimore County Zoning Regulations (BCZR) at § 307.

The uncontroverted testimony was that the Helfrich lot is exactly like all of the other lots in the development. There is nothing unique about the property in terms of topography, shape, dimension, placement, or any other characteristic of the land that satisfies *Cromwell* uniqueness.[1] The only uniqueness asserted by Mr. Helfrich is that the present zoning prohibits the development he desires. This is, of course, no uniqueness at all. *North v. St. Mary's County*, 99 Md. App. 502, 514-15 (1994) (no uniqueness where the only evidence offered in support of uniqueness was the

[1] Because there is no building on the property, there is no feature "peculiar to the structure" that makes the property unique. *See* BCZR § 307.

testimony that the property owner could not do what he wanted to do). A variance request presupposes a zoning restriction. To say that a zoning restriction is what generates *Cromwell* uniqueness is to define away uniqueness as a requirement. Mr. Helfrich has presented us with no authority that the zoning of a property can be the source of *Cromwell* uniqueness. In the interests of brevity, I hereby adopt the reasoning and cited authorities from Judge Mayhew's decision in this matter.[2] *See* ALJ Opinion of April 19, 2021, at p. 3-6.

I also disagree that there is unwarranted hardship or practical difficulty under *Cromwell.* It is certainly true that *Cromwell* hardship is not "self-created" and thereby disqualifying simply by acquiring a property where the zoning does not allow for a purchaser's desired use. *Richard Roeser, Inc. v. Anne Arundel County*, 368 Md. 294, 297 (2002). However, the logic works in both directions: undue hardship is not automatically **created** if the purchaser's desired zoning change does not happen. In other words, where someone engages in financial speculation hinged upon a zoning change, he does not automatically achieve practical difficulty or incur unreasonable hardship under the theory that to deprive him of his zoning request would mean that he would lose his gamble. Pursuant to § 307, the hardship to be avoided must be one that is "unreasonable". It is most assuredly **not** reasonable to claim hardship where the investment return is contingent upon overturning by variance a twenty-five year old zoning classification for a lot that is indistinguishable from every other lot in the development. Moreover, the attempt to achieve a variance by arguing a constitutional taking is nothing short of a "Hail Mary" pass. Anyone in Mr.

[2] To avoid any misunderstanding, I want it to be clear that I am adopting **only** Judge Mayhew's legal reasoning and not any factual findings he may have made. The Board's factual review is *de novo*. My factual conclusion that there is nothing unique about the Helfrich lot is founded solely and completely on the testimony and evidence presented before the Board.

Helfrich's position should have understood at the outset the degree of difficulty and the unlikelihood of obtaining a variance under these circumstances.[3]

In addition, the availability of the $25,000 offer from the Kings means that he can recoup some (if not all) of his investment. Some cases speak of undue hardship in the context of the denial of a **reasonable** investment-backed return. *Cf. Casey v. Mayor and City Council of Rockville*, 400 Md. 259 312-15 (2007). This is just another way of saying that the hardship requirement cannot be founded on a business expectation that is nothing more than a crapshoot. **The record is silent as to the size of Mr. Helfrich's investment.** Therefore, while $25,000 is not $75,000, we do not know whether the $25,000 is a good, bad, or neutral return on his investment. This would be a useful, if not necessary, fact for Mr. Helfrich to have provided so that the extent of any authentic hardship could be evaluated. *William F. Chesly v. City of Annapolis*, 176 Md. App. 413, 432-36 (2007) (applicant is required to affirmatively prove unreasonable or unwarranted hardship and the record must so demonstrate). After all, if he bought out the heirs for $10,000, a $25,000 return is quite handsome. So, I am not saying that there is self-created hardship. I am saying that there is no proven hardship *ab initio* because frustrated financial speculation under these circumstances and with this incomplete record is insufficient proof of an "unreasonable" hardship.

I see no basis whatsoever to grant a *Cromwell* variance.

II. A VARIANCE CANNOT BE JUSTIFIED BECAUSE A CONSTITUTIONAL TAKING HAS NOT OCCURRED AND BECAUSE THE ASSERTION OF A CONSTITUTIONAL CLAIM IS TIME-BARRED.

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[3] The rather amusing irony is not lost on me that I am writing these words in a Dissent from a finding that is precisely what I am saying is so unlikely. In my defense, the small chance of success does not mean there is **no** chance of success, but it does inform on the reasonableness and riskiness of the initial investment. And, of course, sometimes the Hail Mary pass is caught. It doesn't make it any less of a Hail Mary.

A. The Analyses Under *Cromwell* and Constitutional Taking Are Independent

Even where the *Cromwell* uniqueness standard is not met, a variance can also be granted if the applicant can show that there was a constitutional deprivation of property by reason of the enactment of a zoning regulation that severely limits the property's value. *Maryland Reclamation Associates v. Harford County*, 468 Md. 339, 404-05 (2020) (hereinafter "*MRA*"). In order to show a taking, the applicant is required to prove that there was an improper legislative enactment that deprived the owner of all beneficial use of the property. *Id.* at 392. I differ from my colleagues because it is my view that, analytically, the finding that a taking occurred does not feed into *Cromwell*; it trumps *Cromwell*. While there is some overlap between the two analyses, they are distinct. For example, they both consider the property's diminished value though the requirement of the elimination of all beneficial use for a taking is more stringent than *Cromwell* hardship. *Belvoir Farms Homeowners Association v. North*, 355 Md. 259, 282 (1999) (". . .the necessary or unwarranted hardship standard [for a regular variance], or similar standards, **are less restrictive than the unconstitutional taking standard"**)(emphasis supplied). On the other hand, the uniqueness requirement is irrelevant to a taking. In addition, it does remain necessary for the proponent of a taking to show that the zoning action in question was an improper exercise of a jurisdiction's authority to promote the general welfare, a concern that is not relevant under *Cromwell*. In other words, *Cromwell* and constitutional taking present independent analytic routes to achieve a variance.

It is my view that the taking claim in this case is both time-barred and unavailable on the merits. I begin with the question of the timeliness of Mr. Helfrich's taking claim because it is the simplest.

B. Any Claim Of A Constitutional Taking Is Time Barred

1. The Statute of Limitations

The basis for the regulatory taking at issue here is the comprehensive rezoning in 1996 in which the zoning was changed from DR 5.5 to RC 2. Based on that change, this lot became unbuildable for a house. The rezoning occurred twenty-five years ago.

How does the legal system cope with a situation where the core allegation is so old? One way, of course, is with the statute of limitations. Mr. Helfrich acquired the property and assumed all of the rights of the predecessors, but he also assumed all of the restrictions that limited the rights of his predecessors. *See Richard Roeser, Inc. v. Anne Arundel County*, 368 Md. at 319 ("In Maryland, when title is transferred, it takes with all the encumbrances and burdens that attach to title. . ."). One such restriction is the statute of limitations that attends such claims.

An action based on a regulatory taking is known as an inverse condemnation claim. The established rule in Maryland is that an owner of a property has three years to initiate an inverse condemnation action. *Electro-Nucleonics, Inc. v. Washington Suburban Sanitary Commission*, 315 Md. 361, 373-74 (1989); *Millison v. Wilzak*, 77 Md. App. 676, 684-86 (1989). The cause of action accrues as of the time the taking is final. *Litz v. Maryland Department of the Environment, et al.*, 434 Md. 623, 654 (2013). A final taking has occurred when "the taking becomes permanent or stabilized." *Id.* Stated differently, the statute of limitations begins to run when "the affected party knew or should have known of the unlawful action and its probable effect." *Duke St. Ltd. Partnership v. Board of Commissioners of Calvert City*, 112 Md. App. 37, 49 (1996). In this matter, the taking -- if indeed one occurred -- was "permanent or stabilized" in 1996. That is when the new zoning took effect, and it was then known that the property could not accommodate a

house under the new zoning. That was the point in time when the loss of value or use occurred, and the probable effect of the rezoning was known. Therefore, any inverse condemnation case was required to be started sometime in 1999, and not twenty-two years after the expiration of the three year limitations period. Accordingly, the relief that Mr. Helfrich seeks is legally barred, and he is foreclosed from seeking a variance on this basis.

2. Laches

(a) There Was Unreasonable Delay in Bringing an Inverse Condemnation Claim Resulting in Prejudice to the Protestants and/or Baltimore County

If, for some reason, it is believed that the statute of limitations does not shut out the Helfrich claim, then the other basis to dispense with stale claims, *i.e.*, laches, should apply. Laches is the equitable principle that a claim is barred where there has been an inexcusable delay in the assertion of a claim and where the party asserting laches has suffered prejudice by reason of the delay. *Schaeffer v. Anne Arundel County*, 338 Md. 75, 83 (1995). In this matter, there is certainly no excuse for the delay in bringing the taking case except, one supposes, that the predecessor owners had no interest in doing so.

There has been prejudice incurred by the delay. To prove a taking, Mr. Helfrich must demonstrate that the 1996 comprehensive rezoning was an improper exercise of legislative authority by the Baltimore County Council. The Petitioner blithely asserts that this was (or must have been) a directed zoning modification designed to influence this property alone and that the 1996 zoning action was motivated by a legislative desire to secure open space at the direct expense of Mr. Helfrich's predecessors. While this may be a useful picture to promote, it is at its core a baseless assertion conjured up out of thin air. In point of fact, there is absolutely nothing in the

record to support such an allegation, and Mr. Helfrich made no effort before the Board to demonstrate such a finding.[4]

The Board has been presented with no information about what happened in 1996. We know based on longstanding practice that the councilperson for the district in which the lot is found supported the change. That is about **all** that we know about the 1996 change. Here is what we do not know: why the change was made, who proposed the change, whether the then owner of this lot supported or opposed the change, whether the County planning and zoning authority supported or opposed the change, the geographic scope of the change, the number of other properties that were affected by the change, the nature of the debate that was associated with the change, and any other detail that might be pertinent to a **present** consideration as to whether this zoning change was a valid regulatory action or whether it was a taking giving this successor owner the right to seek relief.

It is true that zoning legislation carries "the strong presumption of correctness." *Stratakis v. Beauchamp*, 268 Md. 643, 652-53 (1973). Even more, this presumption is ". . .heavier in the case of comprehensive rezoning. . ." than in individualized zoning. *Reese v. Mandel*, 224 Md. 121, 128 (1961). *See also Anderson House, LLC v. City of Rockville*, 402 Md. 689, 723-24 (2008) (listing Maryland cases emphasizing the "strong presumption of correctness" that attends comprehensive rezoning). Nonetheless, waiting twenty-five years to assert the taking claim hampers the opponents of the claim from martialing the kind of information itemized in the

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[4] In order to prove an inverse condemnation claim, the party seeking to establish the claim must present evidence that there was an improper exercise of legislative authority. *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 127(1978). The absolute dearth of evidence presented by Mr. Helfrich on this point is one of the bases for concluding that his case failed on its merits. *See infra* at p. 26-27.

preceding paragraph – evidence by which one could rationally evaluate the propriety of the zoning legislation at issue. The ability of the Protestants (and even Baltimore County were the taking claim to go to Circuit Court) to present evidence beyond the presumption is substantially hampered by the twenty-five year delay. Maybe the presumption of validity is enough to prevail, but just because a party has "enough" evidence as assessed before the fact, does not mean that the party is not prejudiced by the inability to gather more for use at the actual trial. In other words, the presumption notwithstanding, there is legal prejudice occasioned by the delay.[5]

(b) Does Laches Apply to An Inverse Condemnation Claim in Maryland?

Assuming the elements of laches are established, the next question is whether laches applies to a case of this sort. I have not attempted to survey the country on the applicability of laches to a regulatory taking though laches does apply to this type of case in at least two other states. *Menconi v. State of Texas*, 480 S.W.2d 417, 419 (Texas 1972) (over 20 year delay in bringing inverse condemnation triggers laches); *George Rauser, et al. v. Toston Irrigation District, et al.*, 565 P.2d 632, 638 (Montana 1977) (though doctrine of laches is available in inverse condemnation, it did not apply on the *Rauser* facts). On the other hand, laches was found to be inapplicable in at least one state because inverse condemnation is a claim at law and not at equity. *Olsen v. Township of Spooner, et al.*, 395 N.W.2d 808, 810-11 (Wisconsin 1986) (laches was not

[5] Nothing said in this argument should be interpreted as placing the burden of persuasion on the Protestants (or the County). It is clearly the obligation of the party seeking to establish a taking to prove the impropriety of the legislative enactment. *MRA*, 468 Md. at 393-94. *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 484-85 (1987). I am merely noting that in a hypothetical case in which Mr. Helfrich were to somehow present evidence of a legislative overreach, his opponents are hampered because of the passage of time in obtaining evidence and/or witnesses that may well be relevant to rebut that assertion.

available to foreclose a three year old claim because inverse condemnation is not an equitable action, but the claimant's failure to give the State notice within 120 days of the loss did).

It is not clear whether laches applies to an inverse condemnation in Maryland. Laches is an equitable defense, and it harkens back to Maryland's historical split between actions at law and at equity. While eminent domain is technically an action at law, it has such peculiar and unique characteristics that it is sometimes viewed as straddling the line between law and equity. *Utilities Inc. v. Washington Suburban Sanitary Commission*, 362 Md. 37, 46-50 (2000) ("Condemnation proceedings are peculiar civil actions and are often described as being *sui generis*. . .[and] while regarded as proceedings at law, are not ordinary suits at law. . ."). Among the unusual features of condemnation cases are the following: the special condemnation juries are not common law juries; the question of just compensation is for the jury, but the other factual issues like the right, necessity, and/or public purpose for the condemnation are reserved for the judge; the jurisdiction is *in rem*, not *in personam*; and the authority of a governmental agency to initiate condemnation proceedings may be challenged in a separate action in equity. *Utilities Inc. of Maryland v. Washington Suburban Sanitary Commission, supra*, 362 Md. at 48-50.

The starting point for the staleness argument in this matter is the clearly established three year limitations period for an inverse condemnation proceeding. This should be enough to end the debate. If, however, an alternative to a limitations argument is needed, I would find that this matter is barred by laches unless and until a Maryland court of general jurisdiction indicates otherwise.

3. Conclusion

In summary, it is my view that the passage of time bars Mr. Helfrich from asserting a taking claim to achieve a variance. I cannot believe that the law would enable a real estate speculator to

take ownership of a parcel with full knowledge of its zoning and then make a significant profit because, according to him, there had been a regulatory taking twenty-five years and several predecessors earlier. To me, this is an outlandish proposition. Whatever the legal rationale, the logic of the taking claim being time-barred is compelling. In the event that Mr. Helfrich's taking argument is rejected and if Mr. Helfrich's claim is not stale, then he can go to circuit court and seek money compensation from Baltimore County. If he prevailed, the citizens of Baltimore County would have to pay him the lost value of the property.[6] Whether this matter is barred by limitations or laches or both, the point is the same: the area residents, the County government, the taxpayers of Baltimore County, and indeed the County fisc itself have the right to expect just a bit of repose after twenty-five years.

C. On The Merits, There Was No Basis To Find That The Property Had Been Taken By Reason Of The Zoning Change

1. The Background of Regulatory Taking

Historically, regulatory taking has been a rather vexing problem. *See generally Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413-15 (1922) (recognizing the possibility of a taking by the legislative exercise of normal police powers). Garden-variety condemnation relates to the straightforward situation where a government unit needs to take a property for the public good and pays the fair market value to the involuntary "seller." The title to the property is transferred. There is typically a "physical invasion" of the property. It is a constitutionally based

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[6] As to value, some perplexing questions do present themselves. Just what is the supposed lost value? Is it the difference in 1996 dollars between the property's value the day before the zoning change compared to its value the day after? Do the offers to buy for $75,000 and $25,000 even matter twenty-five years after the taking or are they just *non sequiturs*? Even though the Majority Opinion, the Parties and this Dissent find it convenient to talk about the value in terms of the present competing offers and the other bases in 2021 for valuing a property, I see no reason to automatically assume that that is the proper metric. The passage of time skews the valuation analysis, which is another reason the passage of time is a fundamental defect in this entire matter.

process that seeks to balance public necessity with the private ownership of property. Regulatory taking, however, arises in a different context. Here, a presumptively valid legislative action taken to enhance the general welfare can have the unintended effect of diminishing the value of a piece of property. The governmental unit is not seeking to take title to the property nor is it attempting to encroach on the physical boundaries of that property. *City of Annapolis v. Waterman*, 357 Md. 484, 508-09, 523 (2000). It is simply limiting the use that can be made of the property.

As the courts have often stated, it is difficult to imagine a piece of zoning legislation that does not affect the value of someone's private property, either positively or negatively. Where the legislation was in good faith and not the result of cognizable mistake or over-reaching, this gain or loss in property value is viewed as a necessary but fortunate, or necessary but unfortunate, collateral consequence of the legislative exercise of police powers. *County Commissioners of Queen Anne's County v. Miles*, 246 Md. 355, 368 (1967); *Ark Readi-Mix Concrete Corp v. Smith*, 251 Md. 1, 5 (1968). No one has a *per se* vested property right in the continuation of a zoning classification, whether their own or others. *Norbeck Village Joint Venture v. Montgomery County Council*, 254 Md. 59, 66 (1969). Rezoning may cause some people to win and some people to lose, but the public does not have a claim on the enhanced rewards of the winners, nor does it have to pay the losers for their lost value. To do otherwise, except in one narrow situation, would be to create a massively unwieldy system of immense complexity. We just cannot enter into an adversary process every time someone's property is down-zoned with a resulting loss of optimal value. No one seriously suggests otherwise. The one exception is where the loser has lost **ALL** value. Then and only then is the public required to compensate the property owner who has retained title to their property for the lost value. There is no effort to measure the gradation of that lost value – there is no battle of experts, one who says there is a 50% loss or another who says

there is a 65% loss or yet another who says it's 80%. In the world of regulatory taking, it is all or nothing.

2. The Standard For Determining the Necessary Lost Value

In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), the Court stated the standard for measuring the loss necessary to establish a regulatory taking. *Lucas* involved two beachfront properties that Lucas had purchased with intent to build and sell houses, but the lots were made less valuable by a newly enacted local building restriction for beachfront properties. The Court expressly stated that the proper measure of a taking is whether the regulation has resulted in the loss of "**all** economically beneficial uses . . ." 505 U.S. at 1019. (emphasis in original). It is not a question of whether the use or value has been diminished – even substantially diminished. There must be a complete and total elimination of value. 505 U.S. at 1019n.8. *See e.g., Steel Hill Development Inc. v. Town of Sanbornton*, 469 F.2d 956, 963 (1st Cir. 1972) ("The estimated worth, had Steel Hill's original plans been approved, is irrelevant. Though the value . . . has been decreased considerably, it is not worthless or useless so as to constitute a taking."); *C.F. Lytle Co. v. Clark*, 491 F.2d 834, 838 (10th Cir.1974) (a taking occurs only where the property owner "has been deprived of all reasonable uses."); *Kent Island Joint Venture v. Smith*, 452 F.Supp. 455, 460 (D.Md.1978) (". . . there is no taking in the constitutional sense unless the interference is so substantial as to render the property worthless or useless."). Lest there be any doubt about the long history of this principle, one need only examine ninety-five year old *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (holding that a 75% diminution of value not a taking) and one hundred and five year old *Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (reduction in value from $800,000 to $60,000 – approximately 92% -- does not constitute taking).

The Court revisited the issue in *Palazzo v. Rhode Island*, 533 U.S. 606 (2001). In that decision, the Court determined that the standard to measure a taking is satisfied if the owner is left only with "a token interest." *Id.* at 631. The difference between having no value and having only token value seems a distinction almost too fine to measure. Certainly, the residual value of the Helfrich property, particularly given the outstanding King offer, is vastly greater than a mere token.

Whatever wiggle room is generated by the reference to token value, it is difficult to find any decision – including any Maryland case -- that strays from the categorical requirement. The recent Maryland decisions on this issue have had no trouble citing the categorical rule as the operative one in Maryland. *MRA*, *supra*, 468 Md. at 416 (indicating that MRA had "the burden of demonstrating that no other beneficial uses could be made of its property. . ."); *Belvoir Farms v. North*, *supra*, 355 Md. at 282 (the constitutional standard is ". . .the denial of beneficial use or the denial of all viable economic use. . .").

MRA is from 2020, and *Belvoir Farms* is from 1999. One can go back much further. For example, in *Mayor of Rockville v. Stone*, 271 Md. 655, 662 (1974), the Court addressed a situation where rezoning had caused a two-thirds diminution of the owners' original investment.[7] The Court roundly rejected the argument that the zoning was confiscatory and therefore improper, stating "[t]he record is devoid of evidence which would demonstrate that the owners were denied **all** reasonable use. . ." (emphasis supplied). While the Court expressed sympathy for the "details of financial disaster" wrought by the zoning, the Court stated that the law simply required a complete

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[7] There is a two-thirds diminution of **sale** value in this case – the difference between the $75,000 developer price and the $25,000 King price. This is not a two-thirds diminution of investment value. What we do not know, as indicated above, is the amount of the original Helfrich investment. *See* discussion *supra* at 13-14 regarding the difficulty of evaluating *Cromwell* hardship and/or return on investment without that information.

deprivation of value before an unconstitutional taking can be found to have occurred by reason of the enactment of regulations. *Id.* at 664. *See also Hagerstown Kitchens, Inc. v. Board of County Commissioners*, 547 F.Supp. 46, 48 (D.Md.), *aff'd* 707 F.2d 506 (4th Cir.1983); *State v. Good Samaritan Hospital*, 299 Md. 310, 324-25 (1984); *Pilsenberger v. Pilsenberger*, 287 Md 20, 34 (1980); *Pallace v. Inter City Land Co.*, 239 Md. 549, 558 (1965), *City of Baltimore v. Borinsky*, 239 Md. 611, 618-22 (1965) (discussed at length and with approval in *MRA*), all applying the categorical rule in assessing whether the diminution of value led to a taking.

3. The Helfrich Property Has More Than Token Value

As has been said throughout, the $25,000 King offer is an indicator of real and actual value. For example, in *Quinn v. Board of County Commissioners of Queen Annes's County*, 124 F.Supp.3d 586 (D.Md.2015), the Court noted that merging small lots into larger ones creating more open space meant that the smaller lot still retained demonstrable value.[8] *Id.* at 595-96. Moreover, the Helfrich property has cognizable value apart from the $25,000 King offer. If Mr. Helfrich does not want to sell for $25,000, he can put a fence around the property and use it for himself. He could dig a fire pit for picnics or set up a volleyball net, or both. He could pave part of it and put up a basketball net. He can use it for storage of various items. Those uses do not necessarily maximize his financial return, but they do have measurable value. It has long been recognized that an undeveloped lot can have recreational and aesthetic value. *See e.g., Turner v. County of Del Norte*, 24 Cal.App. 3d 311, 315, 101 Cal. Rptr. 93,96 (1972); *Turnpike Realty Co. v. Town of*

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[8] Mr. Justice Blackmun in his *Lucas* dissent described various attributes of value that the Lucas' property retained. Among those attributes was "**. . .the right to alienate the land, which would have value for neighbors and for those prepared to enjoy proximity to the ocean without a house.** (emphasis supplied). *Lucas, supra*, 505 U.S. at 1043-44 (Blackmun, J., dissenting). In other words, selling a property to a neighbor who wants the lot to be vacant is a type of recognized value.

Dedham, 284 NE2d 891, 899-900 (Me.1972); *Hall v. Board of Environmental Protection*, 528 A.2d 453, 455-56 (Me. 1987), all finding recreational and aesthetic value in building-less lots. *See also City of Annapolis v. Waterman, supra*, 357 Md. at 484 (indicating in general that there is nothing improper in imposing conditions in subdivisions for open space and recreation).

There is nothing in this Dissent that supports a finding that Mr. Helfrich is the victim of a "forced sale." It is true enough that the under Maryland caselaw, a requirement that **forces** someone to sell their property is improper. No one is forcing Mr. Helfrich to sell. In fact, he wants to sell. He just wants to sell to a builder for $75,000 and not to an abutting property owner for $25,000. But if he chooses not to sell to the Kings, he can retain the property for his own use as discussed above. The retention of the property may have a monetized value less than the $25,000, but it still has more than token value.[9] The question here is not whether Mr. Helfrich is able to obtain top dollar for his lot; the question here is whether the lot nonetheless retained more than token value after the restrictive zoning. The answer to that question is most assuredly yes.[10]

4. There Is No Evidence That the Comprehensive Rezoning in 1996 Was Not Legitimate

There is a requirement that the party seeking to establish inverse condemnation must affirmatively demonstrate that the zoning in question was inappropriate or lacked a legitimate public purpose. *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470, 484-85 (1987). I have already indicated in the laches argument above that Mr. Helfrich presented **no** evidence to prove that point. *Supra* at p. 17-19. Additionally, there is the very strong presumption of

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9 The record is silent regarding the payment of property taxes over the last twenty-five years for this property. One can infer that if no taxes were paid, or no taxes levied because of the valueless nature of the property, such evidence would have been presented.

10 At the risk of being repetitive, the missing evidence as to the size of Mr. Helfrich's original investment impacts on an assessment of value as well. *Supra* at p. 13-14.

correctness that attends comprehensive rezoning. Just as Mr. Helfrich made no affirmative showing that the rezoning was not proper, he made no effort to rebut the presumption of validity. Those cases are also cited above. *Supra* at p. 18-19. Accordingly, there is a massive failure of proof on this required element of inverse condemnation.

5. Conclusion On the Substantive Taking Claim

Because Mr. Helfrich has failed to demonstrate the required diminution of value for an inverse condemnation and/or because he has not presented any evidence to undermine the legitimate government interest in the 1996 comprehensive rezoning, his inverse condemnation claim fails on the merits.

III. THE CONDUCT OF THE AREA RESIDENTS DOES NOT WARRANT CRITICISM

During the deliberations, there was some pique expressed towards a Protestant who had not opposed a variance for a small addition to a nearby preexisting home yet did oppose the construction of a new home on the vacant Helfrich lot. This was coupled with a suggestion that the pending $25,000 offer to buy the Helfrich property takes unfair advantage of the present zoning. Normally, I would let those remarks pass because at the end of the day, they are largely irrelevant. Nonetheless, I feel obliged to let the Protestants know that the sentiment is not shared by the Board as a whole.

First, there is a vast difference between a small addition and the construction of a whole house. Maybe the past situation involved an alteration to the house that was so minor that a challenge just was not worth the time nor the effort. Second, we do not know what other facts, considerations, and backstory may have attended that other situation that could make it

distinguishable from this matter. Third, and most importantly, there is no requirement that someone who seeks to rely on and enforce the law today did not do so at some time in the past. The law does not demand purity from a citizen seeking to rely on established principle. To justify the demand for consistency by saying that it bears on credibility may in some situations be valid. Here, however, none of the operative legal issues turns on credibility. The lot is either unique or not under *Cromwell*; there was either a regulatory deprivation of value significant enough to constitute a taking, or there was not; there was a either a showing of improper legislative action, or not; the claim of a constitutional taking is time-barred or not. None of these issues requires a credibility finding. Indeed, if credibility were a factor, I would find that Mr. Helfrich's *failure* to testify raises significant questions about his thought process in electing to buy out the other heirs and speculate on the resale of this property.

Further, there is nothing extortionate or even slightly untoward in people negotiating a sale or purchase of real estate with an understanding for what the present – not to mention longstanding -- zoning will permit. Having a sound appreciation for the existing legal landscape (no pun intended) is not an unfair business advantage nor the exercise of predatory leverage. It is the normal and commonplace recognition and assessment of the possible upsides and downsides of any business transaction.

People make offers based on their understanding of the current legal posture. Sometimes they win, and sometimes they lose. Before all of this litigation began, Mr. Helfrich could have sold the parcel to the Kings for $25,000. Presumably, he still can.[11] He has chosen, however, to

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[11] I must say that I actually view the $25,000 offer as quite generous. The Kings want the Helfrich parcel to be open space for use in conjunction with their home on the adjoining lot. They could have, I suppose, simply fought the Helfrich development and if successful, achieved the same practical effect without paying anything. That they have kept the offer open speaks well for them. Of course, had they taken the approach of not seeking to

contract to sell that parcel for $75,000 to a builder contingent on a zoning change. Once he has paid for representation for two administrative hearings and appeals in the Circuit Court and the Court of Special Appeals (and given the central legal issue, possibly the Court of Appeals), his net gain on the $75,000 even if he wins at every subsequent level (which I doubt) will be paltry -- not to mention the value lost because of the time delay on his receipt of the sale proceeds.

Personally, I have no sympathy for someone who purchases property knowing that the present zoning inhibits development and then loses his bet that the zoning will change. There is nothing remotely reasonable about an investment founded on obtaining a variance on a cookie cutter lot or on establishing that a twenty-five year old zoning reclassification was a constitutional taking. But this viewpoint from me has no more worth in deciding this matter than does concern with the neighbors' reliance on the existing zoning to fashion an offer to buy or their past failure to object to some modification to a preexisting structure or two. As I indicated above, the issues in this case turn on stark legal determinations alone.

CONCLUSION

Because it is my view that standard variance principles do not warrant the grant of a variance, that no taking occurred, and that even if a taking had occurred, it is time barred, I respectfully dissent from the grant of a variance in this case.

Date January 18, 2022

Joseph L. Evans

purchase the property, they would run the risk that Mr. Helfrich would fence off the property and exclude them from it. The ability to restrict access is recognized as a property right of significant value. *City of Annapolis v. Waterman*, 357 Md. 484, 522 (2000) (recognizing the "right to exclude" as an essential property right).

Board of Appeals of Baltimore County

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

January 12, 2022

John B. Gontrum, Esquire
Whiteford, Taylor & Preston L.L.P.
Towson Commons, Suite 300
One West Pennsylvania Avenue
Towson, Maryland 21204-5025

RE: In the Matter of: *Cornelius David Helfrich – Legal Owner*
Dominion Properties, LLC – Contract Purchaser and Petitioners
Case No.: 20-224-A

Dear Mr. Gontrum:

Enclosed please find a copy of the final Majority Opinion and Order, and Dissent, 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

c: See Distribution List following

In the matter of: Cornelius Helfrich, Legal Owner
Dominion Properties, LLC, Contract Purchaser
Case No.: 20-224-A
January 12, 2022
Distribution List

Cornelius D. Helfrich
Dominion Properties, LLC
Ryan and Julie King
Amy Stevens
Barry and Kathleen Sanders
Gabe Cohee
Gary Scherer
Laura Scherer
Lindsay Scherer
Richard Robertson
Mary Bahr-Robertson
Rachel Waltermyer
Theresa Warner
Aaron D. Neal, Esquire
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

APPEAL

Petition for Variance
Case No.: 2020-0224-A
Cornelius David Helfrich, Petitioner
16 Locust Drive
1st Election District, 1st Council District

Petition for Variance – Revised 10/9/20 & Original 9/4/2020

Zoning Description of Property (1 pg.)

Notice of Zoning Hearing – 12/22/20 for 1/26/21 (then rescheduled to 4/6/2021)

Certification of Publication – (Daily Record) 1/6/21 for 1/26/21 & 3/17/21 for 4/6/21 (3 pgs.)

Certification of Posting by Sgt. Black – 1/24/21 & 3/16/21 (6 pgs.)

Entry of Appearance by People's Counsel – None

Attendance Reports

Zoning Advisory Committee Comments: 4 pgs.

Petitioner's Exhibits:
1. Zoning Site Plan
2. Record Plat
3. Dwelling Elevations
4. My Neighborhood Aerial Showing Location
5. 2012 Deed to Property
6. 1971 Zoning Map Showing Location of Site (DR 5.5)
   1996 Zoning Map Issue 1-045
   1996 My Neighborhood Aerial Zoning

Protestant's Exhibits:
1. Zoning & Property Lines of Locust Drive
2. Property Land Area of 16 Locust Drive and Adjoining Lots
3. Existing Homes Surrounding 16 Locust Drive
4. Petition to Object to Proposed Variance
5. Letter to Zoning Commissioner

Miscellaneous:

Cover Letter and Administrative Law Judge's Order Decision – 4/19/21 – DENIED – 10 pgs.

Notice of Appeal & Check #158292 for $300 – Received on 5/11/21 – John Gontrum, Esq.

Cashier's Receipt #174878

Gabe Cohee – gabecohee@gmail.com
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Laura Scherer – sgarylaura@gmail.com

JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

May 13, 2021

John Gontrum, Esquire
jgontrum@wtplaw.com

RECEIVED
MAY 13 2021
BALTIMORE COUNTY
BOARD OF APPEALS

RE: **APPEAL TO BOARD OF APPEALS**
Petition for Variance
Case No. 2020-0224-A
Property: 16 Locust Drive

Dear Mr. Gontrum:

Please be advised that an appeal of the above-referenced case was filed in this Office on May 11, 2021. 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
Attachment

c: Baltimore County Board of Appeals
People's Counsel
Amy Stevens – astevens314@yahoo.com
Barry and Kathleen Sanders – msandbox321@aol.com
Cornelius D. Helfrich – neil@helfrichlaw.com
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APPEAL

Petition for Variance
Case No.: 2020-0224-A
Cornelius David Helfrich, Petitioner
16 Locust Drive
1st Election District, 1st Council District

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Notice of Appeal & Check #158292 for $300 – Received on 5/11/21 – John Gontrum, Esq.

Cashier's Receipt #174878

Tammy Zahner

From: Debra Wiley
Sent: Thursday, May 13, 2021 2:19 PM
To: Tammy Zahner
Subject: FW: APPEAL - Case No. 2020-0224-A - 16 Locust Drive - Helfrich

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Tammy,

Can you please make a note of this email correction for future reference.

Thanks.

From: Mary Bahr <MBahr@som.umaryland.edu>
Sent: Thursday, May 13, 2021 2:17 PM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: RE: APPEAL - Case No. 2020-0224-A - 16 Locust Drive - Helfrich

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

Hello Ms. Wiley,

My neighbor sent me the recent communication for APPEAL - Case No. 2020-0224-A - 16 Locust Drive – Helfrich as it did not make it to my inbox. I see that my email is incorrect below. It just needs a period between Maryland and edu. It would be great if you can make the correction for future messages. (mbahr@som.umaryland.edu) Thank you!

Take care,

Mary

Mary K. Bahr-Robertson
Clinical Research Specialist
University of Maryland
School of Medicine
Department of Surgery
Division of Transplantation
10 S. Pine Street, MSTF 300
Baltimore, MD 21201
Phone: 410-706-1377
Fax: 410-706-0311

From: astevens314@yahoo.com <astevens314@yahoo.com>
Sent: Thursday, May 13, 2021 12:58 PM
To: Mary Bahr <MBahr@som.umaryland.edu>
Subject: Fwd: APPEAL - Case No. 2020-0224-A - 16 Locust Drive - Helfrich

Debra Wiley

From: Debra Wiley
Sent: Wednesday, May 12, 2021 8:12 AM
To: jgontrum@wtplaw.com
Cc: Donna Mignon
Subject: Appeal - Case No. 2020-0224-A - 16 Locust Drive
Attachments: 20210512080732715.pdf

Good Morning,

This is to acknowledge receipt of your appeal in reference to the above matter.

For your records, attached please find a copy of the cashier's receipt.

Thank you and have a nice day.

-----Original Message-----
From: adminhearingscpr@baltimorecountymd.gov <adminhearingscpr@baltimorecountymd.gov>
Sent: Wednesday, May 12, 2021 8:08 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Message from "RNP002673F6C9D3"

This E-mail was sent from "RNP002673F6C9D3" (MP 3055).

Scan Date: 05.12.2021 08:07:32 (-0400)
Queries to: adminhearingscpr@baltimorecountymd.gov

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

No. 174878

Date: 5-11-2021

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
901	806	0000		6150				300.00

Total: 300.00

Rec From: John B. Gontrum Esq

For: Office of Admin. Hear. - Appeal
Case No. 2020-0224-A
16 Locust Drive
Hearing Date: 4-6-21
CK. # 158292

DISTRIBUTION
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PLEASE PRESS HARD!!!!

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5/14/2021 5/12/2021 11:11:15 1
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RECEIPT # 112446 5/12/2021 OFLN
Dept 5 529 ZONING VERIFICATION
NO. 174878
Recpt Tot $ 300.00
300.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

WHITEFORD, TAYLOR & PRESTON L.L.P.

TOWSON COMMONS, SUITE 300
ONE WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5025
MAIN TELEPHONE (410) 832-2000
FACSIMILE (410) 832-2015

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(800) 987-8705

JOHN B. GONTRUM
DIRECT LINE (410) 832-2055
DIRECT FAX (410) 339-4058
JGontrum@wtplaw.com

May 11, 2021

VIA HAND DELIVERY
Honorable Paul M. Mayhew, Administrative Law Judge
Office of Administrative Hearings
Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
MAY 11 2021
OFFICE OF
ADMINISTRATIVE HEARINGS

Re: 16 Locust Drive
Case No. 2020-0224-A

Dear Judge Mayhew:

Enclosed is a Notice of Appeal in the above-referenced case, as well as a check in the amount of $300.00 to cover the costs of filing.

Thank you, and please let me know if you have any questions or concerns.

Very truly yours,

John B. Gontrum

JBG:tdm
Enclosures
11756271

Whiteford, Taylor & Preston L.L.P. is a limited liability partnership. Our Delaware offices are operated under a separate Delaware limited liability company, Whiteford, Taylor & Preston L.L.C.

IN RE: PETITION FOR VARIANCE (16 Locust Drive) 1st Election District 1st Council District Cornelius David Helfrich, Legal Owner Dominion Properties, LLC Contract Purchaser Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY CASE NO. 2020-0224-A

* * * * * * * * * *

NOTICE OF APPEAL

Cornelius Helfrich, the Owner of 16 Locust Drive, with an address of 31 E. Lee Street, Belair, Maryland 21014, and Dominion Properties, LLC, the Contract Purchaser of 16 Locust Drive, with an address of 1029 N. Calvert Street, Baltimore, Maryland 21202, (collectively "Petitioners") by and through their attorneys, John B. Gontrum and Whiteford, Taylor and Preston, L.L.P., feeling aggrieved by the Opinion and Order of the Administrative Law Judge in the above-referenced matter dated April 19, 2021, hereby file this Appeal to the County Board of Appeals from the Opinion and Order. Petitioners were parties in the case before the Administrative Law Judge and fully participated in the proceedings.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover costs.

Respectfully submitted,

John B. Gontrum
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue, Suite 300
Towson, Maryland 21204
Phone: (410) 832-2055
Facsimile (410) 339-4058
jgontrum@wtplaw.com
Attorneys for Petitioners,

Cornelius Helfrich
Dominion Properties, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May, 2021, a copy of the foregoing Notice of Appeal was mailed first class, postage prepaid, to:

Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 204
Towson, Maryland 21204



John B. Gontrum

WHITEFORD, TAYLOR & PRESTON LL.P.

CHECK NO. 158292 VENDOR ID 662-17 REQUESTOR T.MARTIN CHECK DATE 05/10/21

INVOICE NO.	INV.DATE	INV.AMOUNT	REFERENCE NO.	DESCRIPTION
051021BCM	05/10/21	300.00	101174.00001 01-02001-00-00000-000 311412	BALTIMORE COUNTY, MARYLAND - FILING FEE - PETITION - DOMINION / LOCUST

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

No. 174878

Date: 5-11-2021

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

Rec From: John B. Gontrum, Esq.

For: Office of Admin. Hear. - Appeal
Case No. 2020-0224-A
16 Locust Drive
Hearing Date: 4-6-21
CK. # 158292

CASHIER'S VALIDATION

DISTRIBUTION
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$300.00 DISCNT $0.00 NET $300.00

HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT VOID AFTER 90 DAYS

Wells Fargo
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CHECK NO. 158292 DATE 05/10/2021

CHECK AMOUNT $300.00

PAY THREE HUNDRED AND 00/100 DOLLAR(S)

TO THE ORDER OF BALTIMORE COUNTY, MD

VOID VOID VOID

[redacted]

JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

April 19, 2021

John Gontrum, Esquire
jgontrum@wtplaw.com

RE: Petition for Variance
Case No. 2020-0224-A
Property: 16 Locust Drive

Dear Mr. Gontrum:

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: Amy Stevens – astevens314@yahoo.com
Barry and Kathleen Sanders – msandbox321@aol.com
Cornelius D. Helfrich – neil@helfrichlaw.com
Dominion Properties – johnw@thedominiongroup.com
Gabe Cohee – gabecohee@gmail.com
Gary Scherer – glals@optonline.net
Lindsay Scherer – lindsayscherer@gmail.com
Mary Bahr-Robertson – mbahr@som.umarylandedu.
Patrick Richardson – rick@richardsonengineering.net
Rachel Waltermyer – rkwaltermyer@gmail.com
Richard Robertson – rrobertson@mimaki.com
Ryan King- rking316@gmail.com
Theresa Werner – werner.27@comcast.net
Laura Scherer – sgarylaura@gmail.com

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Date 4/19/21
By DMignon

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(16 Locust Drive)		
1st Election District	*	OFFICE OF ADMINISTRATIVE
1st Council District		
Cornelius David Helfrich	*	HEARINGS FOR
Legal Owner		
	*	BALTIMORE COUNTY
Petitioner		
	*	**CASE NO. 2020-0224-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by the property owner, Cornelius David Helfrich, for property located at 16 Locust Drive in Catonsville. The Petitioner has a contingent contract with Dominion Properties, a home builder who proposes to construct a residence on the parcel. The petition requests variance relief from Baltimore County Zoning Regulations ("BCZR") § 1B02.3.C.1 to allow a 10 ft. side yard setback in lieu of the required 15 ft. and a combination of 20 ft. in lieu of the required 40 ft., to allow a rear yard setback of 25 ft. in lieu of the required 40 ft., to allow a lot width of 50 ft. in lieu of the required minimum of 100 ft., and to allow a lot area of 5,850 sq. ft. in lieu of the minimum required 20,000 sq. 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. Mr. Helfrich appeared in support of the petition but did not testify. John Gontrum, Esquire from Whiteford Taylor and Preston represented the Petitioners. Patrick ("Rick") Anderson, Jr. of Richardson Engineering, LLC also appeared. The site plan he prepared was admitted as Petitioner's Exhibit 1. There were numerous community members also in attendance that voiced their opposition to the requested relief. There were no adverse ZAC comments submitted by any of the County reviewing agencies.

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Date 4/19/21
By DMugnon

RECORD EVIDENCE

The subject property is approximately 5000 net square feet and is zoned DR 2. Mr. Richardson explained the site plan in some detail. He explained that this is the last undeveloped lot from a plat that was recorded in 1933, prior to the adoption of the BCZR. The plat was admitted as Petitioner's Exhibit 2. The property was zoned DR 5.5 until it was re-zoned DR 2 in the 1996 CZMP. Mr. Helfrich, as the personal representative of the estate of Virginia Fields, conveyed the property to himself in fee simple on May 16, 2012. The Personal Representative's Deed was admitted as Petitioner's Exhibit 5.

Mr. Richardson also submitted architectural renderings of the proposed residence, which were admitted as Petitioner's Exhibit 3. The site plan and architectural renderings show that the proposed dwelling would be 30 feet wide by 50 feet long and two and a half stories tall (29'). Mr. Richardson acknowledged that the subject lot is virtually identical to all the others on the block. However, he testified that it is unique in a zoning sense because it is the only remaining undeveloped lot. He further testified that without the requested variances a commercially viable residence could not be built. Mr. Gontrum argued that this notion of uniqueness was espoused by the court in *Mueller v. Baltimore County,* 177 Md. App. 43 (2007).

Ms. Julie King, the next door neighbor at 18 Locust Drive, as well as several other neighbors, testified in opposition. Ms. King submitted several exhibits, including photos of the street, and a letter and petition opposing the requested variances. These were admitted as Protestants' Exhibits 1 through 5. These witnesses testified that they have enjoyed the open space of this vacant lot and have offered to purchase the lot from Mr. Helfrich in order to maintain the open space, but he rebuffed their offers. They also testified that the area is already subject to flooding and that they are concerned about the additional impervious surface area of the proposed

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By DMugnon

residence. They also urged that the architectural renderings submitted by the Petitioner show that the proposed home is incompatible with the existing homes on the street because of its style, front facing built-in garage, and vinyl siding. Further, it is their position that the subject lot is not unique and that the DR 2 setback and area regulations should be strictly enforced.

DECISION

In order to be entitled to the variances requested in this case the Petitioner must satisfy BCZR § 307, which states as follows:

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

This regulation essentially codifies Maryland common law, which holds that "the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." *Mueller, supra,* 177 Md. App. at 71. 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

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specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant." *Mueller,* 177 Md. App. at 70.

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

As noted above, counsel for Petitioner urges that the subject property can be deemed unique under the holding in *Mueller v. Baltimore County, supra,* because of the "unique" impact that the DR 2 downzoning has on this one remaining undeveloped lot. Respectfully, I do not agree. The court in *Mueller* actually stated that "we are convinced that BCZR § 304.1 controls here, rather than BCZR § 307." *Mueller,* 177 Md. App. at 84. And this was a critical distinction because, as the court recognized, "BCZR § 304 *does not contain elements of practical difficulty or uniqueness, which are embodied in § 307.*" *Id.* at 87 (emphasis added). In sum, the *Mueller* court did not hold that a change in zoning could render a property "unique" in a zoning sense. Rather, they held that the petitioner did not need to prove that the lot was unique because they could proceed under BCZR § 304, a grandfathering provision that does not require such a showing. However, in the instant case Mr. Gontrum acknowledged that BCZR § 304 is not applicable. Therefore, petitioner has the burden of establishing that the subject lot is unique. And on that point the *Mueller* court explained that "[a]s is clear from the language of the Baltimore County ordinance, the initial factor

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Date 4/19/21
By D Megnon

that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of *that* piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist." *Id.* 177 Md. App. at 74, *quoting, Cromwell v. Ward,* 102 Md. App. at 698-99 (emphasis in original).

Therefore, under this controlling precedent, the Petitioner in this case was required to prove that the parcel itself is unique. This he was unable to do, because it is not. To the contrary, the lot in question is essentially identical to all the others on the 1933 plat. It bears mentioning that there are "safe harbors" in the BCZR for lots in recorded subdivisions that were approved by the Baltimore County Planning Board or Planning Commission. In those cases the area and setback regulations in effect at the time the Planning Board or Commission approved the subdivision plan remain in effect, and enjoy "grandfathering" protections from subsequent zoning changes. *See,* BCZR § 1B02.3A.1 and 2, and § 1B02.3.B. But the plat in this case was not so approved. It is therefore subject to the area and setback regulations of BCZR § 1B02.C; i.e., those shown on the site plan.

Nor does the Petitioner have any vested right to have the previous DR 5.5 zoning applied. In *Powell v. Calvert County*, 368 Md. 400 (2002) the court of appeals explained the narrow circumstances where such vested rights exist:

> In Maryland it is established that in order to obtain a "vested right" in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use...In *Rockville Fuel & Feed Co. v. Gaithersburg,* 266 Md. 117, 291 A.2d 672 (1972), we said that 'such a "vested right" could only result when a lawful permit was obtained and the owner, in good faith, has proceeded with such construction under it as will advise the public that the owner has made a substantial beginning

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Date 4/19/21
By DMugnan

> to construct the building and commit the use of the land to the permission granted.' *Id.* at 127, 291 A.2d at 677; *see also County Council for Montgomery County v. District Land Corp.*, 274 Md. 691, 337 A.2d 712 (1975)."
>
> *Marzullo* at 192–93, 783 A.2d at 188–89 (alterations in original). Furthermore, in *O'Donnell v. Bassler,* 289 Md. 501, 508, 425 A.2d 1003, 1007 (1981), we stated: "Generally, in order to obtain a vested right in an existing zoning use that will be protected against a subsequent change in a zoning ordinance prohibiting that use, the owner must initially obtain a valid permit. Additionally, in reliance upon the valid permit, the owner must make a substantial beginning in construction and in committing the land to the permitted use before the change in the zoning ordinance has occurred."

Powell, 368 Md. at 411–12.

The Petitioner in the instant case has not been granted a building permit. Indeed, he would not be entitled to the issuance of a building permit until the variances he has requested were approved.

Finally, in my view, the "downzoning" that occurred as part of the 1996 CZMP did not amount to a constitutional "taking" that would require compensation by the county because it did not deprive the Petitioner of all reasonable uses of the property. Again, the law is clear:

> Zoning is an exercise of the police power and, to be valid, must be in the general public interest for promotion of health, safety or general welfare of the community. *County Comm'rs of Queen Anne's County v. Miles,* 246 Md. 355, 228 A.2d 450 (1967). It is an exercise of the police power which takes away, for public good, some rights of individuals to use their property as they please while giving them rights to restrict injurious uses of others' property. *Mayor and City Council of Baltimore v. Byrd,* 191 Md. 632, 62 A.2d 588 (1949). As valid as it may be under the police power, however, it has long been established that a zoning ordinance, which permanently restricts the use of property so extensively that it cannot be used for any reasonable purpose and goes beyond permissible regulation, must be regarded as a taking of property without compensation. *Congressional School of Aeronautics, Inc. v. State Roads Commission,* 218 Md. 236, 146 A.2d 558 (1958); *Marino v. City of Baltimore,* 215 Md. 206, 137 A.2d 198 (1955); *Walker v. Board of County Comm'rs of Talbot County,* 208 Md. 72, 116 A.2d 393 *cert. denied,* 350 U.S. 902, 76 S.Ct. 180, 100 L.Ed. 792 (1955); *City of Baltimore v. Cohn,* 204 Md. 523, 105 A.2d 482 (1954). As such, zoning cannot be used as a substitute for eminent domain proceedings so as to defeat or circumvent the constitutional requirement for the payment of just compensation. *Congressional School of Aeronautics, Inc. v. State Roads Commission,* 218 Md. 236, 146 A.2d 558

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(1958).

> Accordingly, the Court of Appeals, in *City of Salisbury,* 240 Md. at 567 said: "It is an accurate statement to say that every restriction upon the use and enjoyment of property is a 'taking' to the extent of such restriction; but every 'taking' is not a 'taking' in a constitutional sense for which compensation need be paid." (Citation omitted.) *See also Village of Euclid v. Ambler Realty Co.,* 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926); *Allied American Mutual Fire Insurance Co. v. Comm'r of Motor Vehicles,* 219 Md. 607, 150 A.2d 421 (1959).

Lone v. Montgomery County, 85 Md. App. 477, 495–96 (1991).

These principles were recently reaffirmed in *Maryland Reclamation Associates, Inc. v. Harford County*, 468 Md. 339 (2020). There the court of appeals described the "precipitous hurdle which the property owner must overcome" in order to state a takings claim. *Id.* 468 Md. at 393. Namely, proof that the zoning change "deprives him of *all beneficial use of the property and that the property cannot be used for any other reasonable purpose under its existing zoning.*" *Id.* (emphasis in original). "It is not enough to show that the zoning action results in substantial loss or hardship." *Id.* at 392.

This is a difficult case, but in my view the facts do not clear the "precipitous hurdle" of a takings claim. Although the downzoning has caused the Petitioner "substantial loss" of property value I do not believe it can be said that he has lost "all beneficial use" of the property. Indeed, several of the neighbors testified that they have offered to purchase the lot in order to maintain it as green space. Other uses of the property could also be conceived of. And again, the neighbors on Locust Drive "are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds, supra,* 240 Md. at 555-56.

THEREFORE, IT IS ORDERED, this **19th** day of **April 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations ("BCZR") § 1B02.3.C.1 to allow a 10 ft. side yard setback in lieu of the

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Date 4/19/21
By DMignon

required 15 ft. and a combination of 20 ft. in lieu of the required 40 ft., to allow a rear yard setback of 25 ft. in lieu of the required 40 ft., to allow a lot width of 50 ft. in lieu of the required minimum of 100 ft., and to allow a lot area of 5,850 sq. ft. in lieu of the minimum required 20,000 sq. ft. 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/dlm

ORDER RECEIVED FOR FILING
Date 4/19/21
By DMignon

Donna Mignon

From: Donna Mignon
Sent: Monday, April 19, 2021 11:23 AM
To: 'Gontrum, John'
Cc: 'astevens314@yahoo.com'; 'msandbox321@aol.com'; 'neil@helfrichlaw.com'; 'johnw@thedominiongroup.com'; 'gabecohee@gmail.com'; 'glals@optonline.net'; 'lindsayscherer@gmail.com'; 'mbahr@som.umaryland.edu'; 'Richardson, Patrick'; 'rkwaltermyer@gmail.com'; 'rrobertson@mimaki.com'; 'rking316@gmail.com'; 'werner.27@comcast.net'; 'Gary-Laura Scherer'; Debra Wiley; County Council (countycouncil@baltimorecountymd.gov); Henry Ayakwah; Jeffery Livingston (jlivingston@baltimorecountymd.gov); Jenifer G. Nugent; Peter Max Zimmerman (pzimmerman@baltimorecountymd.gov); Rebecca Wheatley (rwheatley@baltimorecountymd.gov); Vishnubhai K Desai (vdesai@baltimorecountymd.gov)
Subject: Case No: 2020-0224-A 16 Locust Drive
Attachments: 2020-0224-A.pdf

Good Afternoon,

Please find attached ALJ Mayhew's Opinion and Order in reference to the above matter.

Have a great and safe day.

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

Donna Mignon

From: msandbox321@aol.com
Sent: Thursday, April 1, 2021 2:33 PM
To: Donna Mignon
Subject: Re: 2020-0224-A

CAUTION: This message from msandbox321@aol.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Thanks!

On Thursday, April 1, 2021, 02:32:16 PM EDT, Donna Mignon <dmignon@baltimorecountymd.gov> wrote:

Good Afternoon,

Please find attached the Site Plan in regard to the above-referenced case.

You can reach out to Mr. Gontrum and see if he will send you the exhibits ahead of time.

If you have any other questions, please feel free to contact our office.

Thank you. 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

Register for your COVID-19 vaccine today.

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Donna Mignon

From: Donna Mignon
Sent: Thursday, April 1, 2021 2:32 PM
To: 'msandbox321@aol.com'
Subject: 2020-0224-A
Attachments: Petitioner's Exhibit 1 - Site Plan.pdf

Good Afternoon,
Please find attached the Site Plan in regard to the above-referenced case.
You can reach out to Mr. Gontrum and see if he will send you the exhibits ahead of time.

If you have any other questions, please feel free to contact our office.

Thank you. 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

Donna Mignon

From: Julie King <julieking815@gmail.com>
Sent: Tuesday, March 30, 2021 4:39 PM
To: Donna Mignon
Subject: Re: Case No: 2020-0224-A

CAUTION: This message from julieking815@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.

Hi Donna,

I really appreciate that you got in touch about my request to see the exhibits from the contractor, and also thank you for sending the site plan. It's unfortunate not to be able to see the builders plans for the proposed home prior to the hearing, but I understand you have rules to abide by. I am just thankful to have received your response in advance of the hearing, so thank you again.

Enjoy your week/weekend - thank you again,
Julie King
18 Locust Drive
443.463.7601

On Tue, Mar 30, 2021 at 9:14 AM Donna Mignon <dmignon@baltimorecountymd.gov> wrote:

Hi Julie,

I know you wanted to see the exhibits from the owner/builder/potential buyer. I unable to share them. They will be shared at the hearing.

Although, I can send the plan. Please find attached the site plan. Thank you.

We do have your exhibits from when the hearing was set in last time. Thank you. If you have any other questions, please feel free to contact me.

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



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Donna Mignon

From: Donna Mignon
Sent: Tuesday, March 30, 2021 9:14 AM
To: 'Julie King'
Subject: Case No: 2020-0224-A
Attachments: Petitioner's Exhibit 1 - Site Plan.pdf

Hi Julie,
I know you wanted to see the exhibits from the owner/builder/potential buyer. I unable to share them. They will be shared at the hearing.
Although, I can send the plan. Please find attached the site plan. Thank you.
We do have your exhibits from when the hearing was set in last time. Thank you. If you have any other questions, please feel free to contact me.

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

WHITEFORD, TAYLOR & PRESTON L.L.P.

TOWSON COMMONS, SUITE 300
ONE WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5025
MAIN TELEPHONE (410) 832-2000
FACSIMILE (410) 832-2015

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DISTRICT OF COLUMBIA
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MICHIGAN
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WWW.WTPLAW.COM
(800) 987-8705

JOHN B. GONTRUM
DIRECT LINE (410) 832-2055
DIRECT FAX (410) 339-4058
JGontrum@wtplaw.com

March 26, 2021

VIA HAND DELIVERY
Honorable Paul M. Mayhew, Administrative Law Judge
Office of Administrative Hearings
Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
MAR 26 2021
OFFICE OF
ADMINISTRATIVE HEARINGS

Re: 16 Locust Drive
Case No. 2020-0224-A

Dear Judge Mayhew:

Enclosed are the Exhibits, along with an Exhibit list, for the hearing set to be heard on April 6, 2021. I have emailed these over as well.

Thank you, and please let me know if you have any questions or concerns.

Very truly yours,

John B. Gontrum

JBG:tdm
Enclosures
11708905

Whiteford, Taylor & Preston L.L.P. is a limited liability partnership. Our Delaware offices are operated under a separate Delaware limited liability company, Whiteford, Taylor & Preston L.L.C.

Donna Mignon

From: Gary-Laura Scherer <sgarylaura@gmail.com>
Sent: Wednesday, March 24, 2021 5:04 PM
To: Donna Mignon
Subject: Zoning Hearing - Case No: 2020-0224-A - 16 Locust Avenue - Cornelius Rich

CAUTION: This message from sgarylaura@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.

Re:
Host: Donna Mignon (dmignon@baltimorecountymd.gov)
Event number (access code): 160 872 7943
Event password: 1234
Panelist password: The Event has no Panelist Password

Tuesday, April 6, 2021 1:30 pm, Eastern Daylight Time (New York, GMT-04:00)

Good afternoon,
I am enrolled as a panelist on the above Zone Hearing. I wanted to provide my remarks in writing before the meeting to have them on record. I hope this is acceptable. Please see the following:

"Hello, my name is Laura Wehland-Scherer, my family has lived at 14 Locust Drive, the property directly next to 16 Locust, for more than 65 years. My husband and I are in complete agreement with the statement of Julie King today, to deny any variance to current codes.

Building a new house at 16 Locust, on an undersized lot, will negatively impact the surrounding homes, including ours, that have sump pumps and flooding basements, as well as compromise the entire neighborhood by adding to the strain on current water and sewer services.

I am aware that over the years, several inquiries to purchase the property at 16 Locust have been made, including one by my father, in an effort to keep it undeveloped and green. Therefore there are options for the current owner to pursue other than new construction.

Thank you for your time."

Protestant 1

Sincerely,
Laura Scherer
14 Locust Dr.,
Catonsville, Md 21228
sgarylaura@gmail.com

Donna Mignon

4/6 1:30 p.m.

From: Julie King <julieking815@gmail.com>
Sent: Wednesday, March 24, 2021 11:14 AM
To: Administrative Hearings
Subject: Re: Zoning Hearing Case No. 2020-0224-A, 16 Locust Drive

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This message from julieking815@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.

Thank you so much for your quick reply today - I will check back around the 31st!

Sent from my iPhone

On Mar 24, 2021, at 11:02 AM, Administrative Hearings <administrativehearings@baltimorecountymd.gov> wrote:

Good Morning Ms. King,
Unfortunately, we do not receive the files until about a week before the hearing. If you would like to check back around March 31, 2021 to see if we have the file.

Thank you. Have a great day.

From: Julie King <julieking815@gmail.com>
Sent: Wednesday, March 24, 2021 10:42 AM
To: Administrative Hearings <administrativehearings@baltimorecountymd.gov>
Subject: Zoning Hearing Case No. 2020-0224-A, 16 Locust Drive

CAUTION: This message from julieking815@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Good morning,

I was wondering if it would be possible to view the exhibits that the owner/builder/potential buyer has submitted to the above referenced zoning hearing case number. I am one of the homeowners adjacent to the lot requiring the zoning variances and have previously submitted my own exhibits for the original hearing that was postponed - I just want to make sure that my original exhibits are still relevant based on the builders plans for the lot.

I appreciate any help you can provide. I can be reached at 443.463.7601 if you have any questions.

Thank you so much!
Julie King

18 Locust Drive



Register for your COVID-19 vaccine today.

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

PM 4-6-21
1:30 pm

Debra Wiley

From: SGT ROBERT BLACK <1opie@comcast.net>
Sent: Sunday, April 4, 2021 4:46 PM
To: Rick Richardson; Administrative Hearings
Subject: Recertification's For 2020-0224-A AND 2021-0019-A
Attachments: Re-Cert 1 2020-0224-A.doc; Re-Cert 2 2020-0224-A.doc; Re-Cert 1 2021-0019-A.doc; Re-Cert 2 2021-0019-A.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.

Re certificate's for 16 Locust Drive AND 8520 Castlemill Circle. Thanks.

RECEIVED
APR 05 2021
OFFICE OF
ADMINISTRATIVE HEARINGS

CERTIFICATE OF POSTING

2020-0224-A

RE: Case No.: _____

Petitioner/Developer: _____

Cornelius Helfrich

April 6, 2021

Date of Hearing/Closing: _____

Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
APR 05 2021
OFFICE OF
ADMINISTRATIVE HEARINGS

Attn: Kristen Lewis:

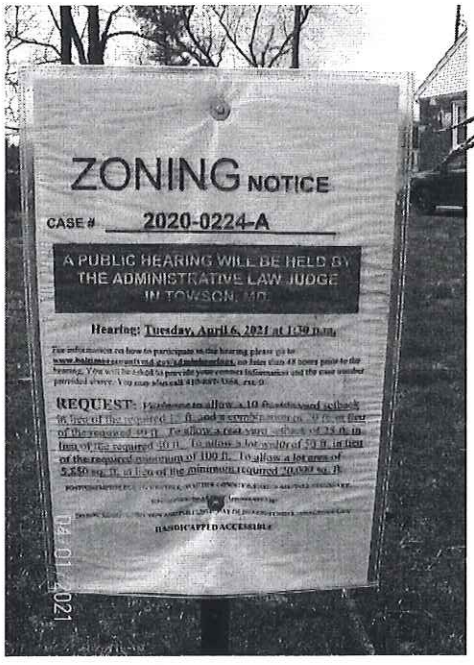
Ladies and Gentlemen:

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: _____

16 Locust Drive ***SIGN 1 Recertification***

March 16, 2021

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



Sincerely,

April 1, 2021

(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

2020-0224-A

RE: Case No.: _____

Petitioner/Developer: _____

Cornelius Helfrich

_____

April 6, 2021

Date of Hearing/Closing: _____

Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
APR 05 2021
OFFICE OF
ADMINISTRATIVE HEARINGS

Attn: Kristen Lewis:

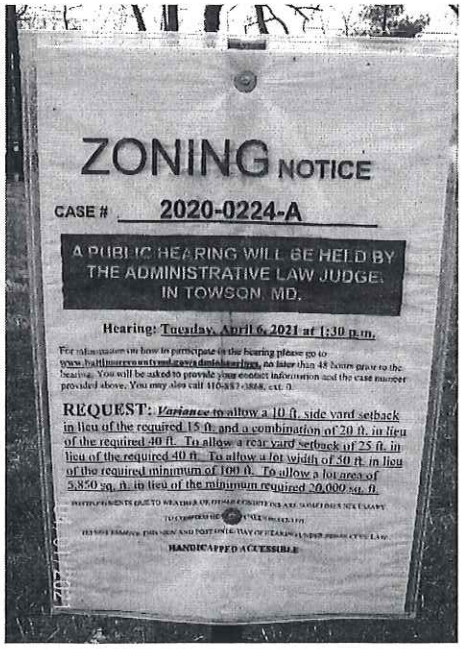
Ladies and Gentlemen:

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: _____

16 Locust Drive ***SIGN 2 Recertification***

_____

The sign(s) were posted on **March 16, 2021**
(Month, Day, Year)



Sincerely,

_____ **April 1, 2021**
(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 #: 11978659
Case #: 2020-0224-A
Description:

NOTICE OF ZONING HEARING - CASE NUMBER: 2020-0224-A

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:

3/17/2021

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 on the property identified herein as follows

CASE NUMBER: 2020-0224-A

16 Locust Drive

West side of Locust Drive, south to the centerline of Magruder Avenue

1st Election District - 1st Councilmanic District

Legal Owners: Cornelius Helfrich

Variance to allow a 10 ft. side yard setback in lieu of the required 15 ft. and a combination of 20 ft. in lieu of the required 40 ft. To allow a rear yard setback of 25 ft. in lieu of the required 40 ft. To allow a lot width of 50 ft. in lieu of the required minimum of 100 ft. To allow a lot area of 6,850 sq. ft. in lieu of the minimum required 20,000 sq. ft.

Hearing: Tuesday, April 6, 2021 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

mh17

The Daily Record
200 St. Paul Place Suite 2480
Baltimore, Maryland 21202
1 (443) 524-8100
www.thedailyrecord.com

PUBLISHER'S AFFIDAVIT

Order #: 11946867
Case #: 2020-0224-A
Description:

NOTICE OF ZONING HEARING - CASE NUMBER: 2020-0224-A

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:

1/6/2021

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: 2020-0224-A
16 Locust Drive
West side of Locust Drive, south to the centerline of Magruder Avenue
1st Election District - 1st Councilmanic District
Legal Owners: Cornelius Helfrich

Variance to allow a 10 ft. side yard setback in lieu of the required 15 ft. and a combination of 20 ft. in lieu of the required 40 ft. To allow a rear yard setback of 25 ft. in lieu of the required 40 ft. To allow a lot width of 50 ft. in lieu of the required minimum of 100 ft. To allow a lot area of 5,850 sq. ft. in lieu of the minimum required 20,000 sq. ft.

Hearing: Tuesday, January 26, 2021 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.

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

ja6

TO: THE DAILY RECORD
Wednesday, January 6, 2021 - Issue

Please forward billing to:
Dominion Properties
1029 N. Calvert Street
Baltimore, MD 21202
Attn: John Watson

410-727-4305

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: 2020-0224-A
16 Locust Drive
West side of Locust Drive, south to the centerline of Magruder Avenue
1st Election District – 1st Councilmanic District
Legal Owners: Cornelius Helfrich

Variance to allow a 10 ft. side yard setback in lieu of the required 15 ft. and a combination of 20 ft. in lieu of the required 40 ft. To allow a rear yard setback of 25 ft. in lieu of the required 40 ft. To allow a lot width of 50 ft. in lieu of the required minimum of 100 ft. To allow a lot area of 5,850 sq. ft. in lieu of the minimum required 20,000 sq. ft.

Hearing: Tuesday, January 26, 2021 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.

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

1-26-21
10Am

Debra Wiley

From: SGT ROBERT BLACK <1opie@comcast.net>
Sent: Monday, January 25, 2021 4:56 PM
To: Rick Richardson; Administrative Hearings
Subject: Recertification's For 2020-0224-A
Attachments: Re-Cert 1 2020-0224-A.doc; Re-Cert 2 2020-0224-A.doc

Follow Up Flag: Follow up
Flag Status: Flagged

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 16 Locust Drive. Thanks.

CERTIFICATE OF POSTING

2020-0224-A

RE: Case No.: _____

Petitioner/Developer: _____

Cornelius Helfrich

January 26, 2021

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:

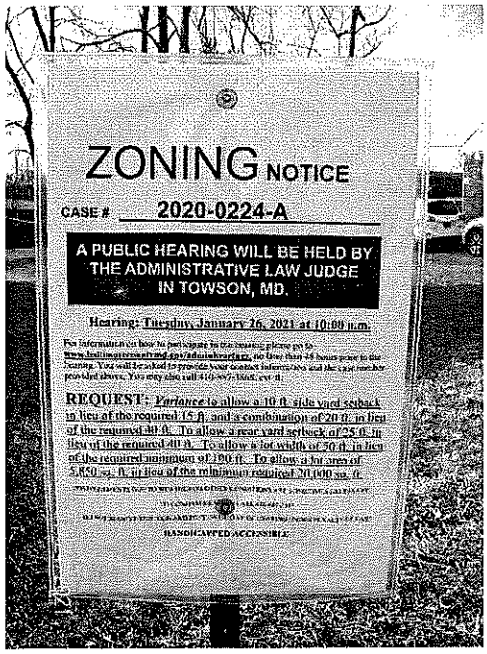
Ladies and Gentlemen:

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: _____

16 Locust Drive **SIGN 1 Recertification**

January 4, 2021

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



Sincerely,

January 24, 2021

(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

2020-0224-A

RE: Case No.: _____

Petitioner/Developer: _____

Cornelius Helfrich

January 26, 2021

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:

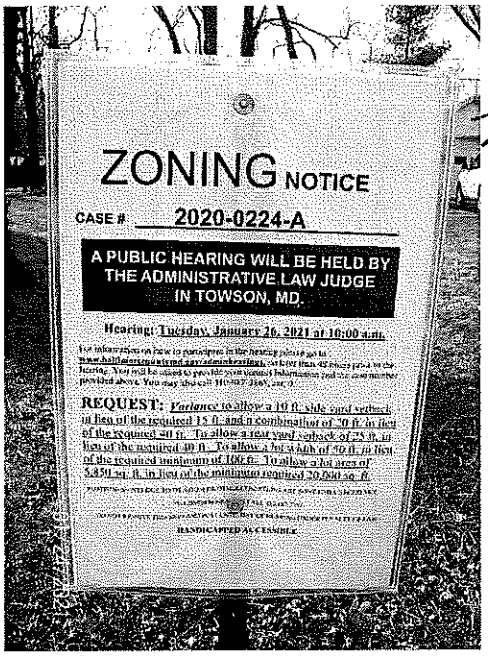
Ladies and Gentlemen:

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: _____

16 Locust Drive **SIGN 2 Recertification**

January 4, 2021

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



Sincerely,

January 24, 2021

(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)

Debra Wiley

From: Darren McShane <darren@realtyinbaltimore.com>
Sent: Tuesday, January 26, 2021 10:31 AM
To: Neil Helfirch; Debra Wiley
Cc: Brian Leibowitz
Subject: RE: Zoning . - Cae No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich

CAUTION: This message from darren@realtyinbaltimore.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 Neil/All,

The judge granted a continuance due to the engineering firm not engaging a lawyer for the hearing. So we are in a holding pattern pending a new hearing.
Not the news we were looking for, but I'll follow up to make sure that base is covered for the next go round.

Darren

Darren T. McShane
Associate Broker /ABR, A-REO, SHS
Cummings & Co. Realtors (MD/PA/DE)
Bay Coast Realty (DE)
(Preferred) 410-746-7076
(Baltimore Office) 410-675-1550
Darren@RealtyinBaltimore.com
(Philadelphia Office) 267-207-3568
CummingsPhillyREO@gmail.com
(Delaware Office) 302-227-8146
FirstStateREO@gmail.com

-----Original Message-----
From: Neil Helfirch <neil@helfrichlaw.com>
Sent: Tuesday, January 26, 2021 10:25 AM
To: dwiley@baltimorecountymd.gov; Darren McShane <darren@realtyinbaltimore.com>
Subject: RE: Zoning . - Cae No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich

Dear All,

My laptop and I were not simpatico this morning, Sorry I missed the meeting.
If there were any questions for me, I'll have to answer by E-mail.
Thank you all for your patience.

NEIL HELFRICH
NEIL@HELFRICHLAW.COM

-----Original Appointment-----
From: dwiley@baltimorecountymd.gov <dwiley@baltimorecountymd.gov>
Sent: None
Subject: Fwd: Zoning Hearing - Case No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich
When: Tuesday, January 26, 2021 10:00 AM-11:00 AM Eastern Time.
Where:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=ee57a855e76368c132f8343faaf1271be

--

Brian Leibowitz

The Dominion Group

o. 410.727.4305 x147

brian@thedominiongroup.com

From: Jake Watson <jake@thedominiongroup.com> on behalf of Debra Wiley <dwiley@baltimorecountymd.gov>
Sent: Wednesday, December 30, 2020 5:04:26 PM
To: Brian Leibowitz <brian@thedominiongroup.com>
Subject: Zoning Hearing - Case No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich
When: Tuesday, January 26, 2021 10:00 AM-11:00 AM.
Where:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=ee57a855e76368c132f8343faaf1271be

From: dwiley@baltimorecountymd.gov
When: 10:00 AM - 11:00 AM January 26, 2021
Subject: Zoning Hearing - Case No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich
Location:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=ee57a855e76368c132f8343faaf1271be

You're a panelist for this Webex event. When it's time, join the Webex event here.

Host: Debra Wiley
(dwiley@baltimorecountymd.gov<mailto:dwiley@baltimorecountymd.gov>)
Event number (access code): 180 780 0379 Event password: 1234 Panelist password: The Event has no Panelist Password

Tuesday, January 26, 2021 10:00 am, Eastern Standard Time (New York, GMT-05:00)

Join event
<https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e29f2ddac9c62d46bf0c4d09e4422b427>

If you experience a problem joining the event as a panelist, you can join as an attendee.

Join as an attendee:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e7a7babddcc0f3dd112c6a0823c9a532d

Join the audio conference only
+1-415-655-0001 US Toll
Global call-in
numbers<https://baltimorecountymd.webex.com/baltimorecountymd/globalcallin.php?MTID=ed90250d90f983cd4b701cb787917db95>

Join from a video system or application
Dial
1807800379@baltimorecountymd.webex.com<sip:1807800379@baltimorecountymd.webex.com>
You can also dial 173.243.2.68 and enter your meeting number.
Panelist numeric password: 198847

Need help? Go to https://help.webex.com

Please be aware that this message was received from outside the Dominion Group Organization

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Please be aware that this message was received from outside the Dominion Group Organization

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Please be aware that this message was received from outside the Dominion Group Organization

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Debra Wiley

From: Neil Helfirch <neil@helfrichlaw.com>
Sent: Tuesday, January 26, 2021 10:25 AM
To: Debra Wiley; Darren McShane
Subject: RE: Zoning . - Cae No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich

Dear All,

My laptop and I were not simpatico this morning, Sorry I missed the meeting.
If there were any questions for me, I'll have to answer by E-mail.
Thank you all for your patience.

NEIL HELFRICH
NEIL@HELFRICHLAW.COM

-----Original Appointment-----
From: dwiley@baltimorecountymd.gov <dwiley@baltimorecountymd.gov>
Sent: None
Subject: Fwd: Zoning Hearing - Case No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich
When: Tuesday, January 26, 2021 10:00 AM-11:00 AM Eastern Time.
Where:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=ee57a855e76368c132f8343faaf1271be

--

Brian Leibowitz

The Dominion Group

o. 410.727.4305 x147

brian@thedominiongroup.com

From: Jake Watson <jake@thedominiongroup.com> on behalf of Debra Wiley <dwiley@baltimorecountymd.gov>
Sent: Wednesday, December 30, 2020 5:04:26 PM
To: Brian Leibowitz <brian@thedominiongroup.com>
Subject: Zoning Hearing - Case No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich
When: Tuesday, January 26, 2021 10:00 AM-11:00 AM.
Where:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=ee57a855e76368c132f8343faaf1271be

From: dwiley@baltimorecountymd.gov
When: 10:00 AM - 11:00 AM January 26, 2021
Subject: Zoning Hearing - Case No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich
Location:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=ee57a855e76368c132f8343faaf1271be

You're a panelist for this Webex event. When it's time, join the Webex event here.

Host: Debra Wiley (dwiley@baltimorecountymd.gov<mailto:dwiley@baltimorecountymd.gov>)
Event number (access code): 180 780 0379 Event password: 1234 Panelist password: The Event has no Panelist Password

Tuesday, January 26, 2021 10:00 am, Eastern Standard Time (New York, GMT-05:00)

Join event
<https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e29f2ddac9c62d46bf0c4d09e4422b427>

If you experience a problem joining the event as a panelist, you can join as an attendee.

Join as an attendee:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e7a7babddcc0f3dd112c6a0823c9a532d

Join the audio conference only
+1-415-655-0001 US Toll
Global call-in
numbers<https://baltimorecountymd.webex.com/baltimorecountymd/globalcallin.php?MTID=ed90250d90f983cd4b701cb787917db95>

Join from a video system or application
Dial 1807800379@baltimorecountymd.webex.com<sip:1807800379@baltimorecountymd.webex.com>
You can also dial 173.243.2.68 and enter your meeting number.
Panelist numeric password: 198847

Need help? Go to https://help.webex.com

Please be aware that this message was received from outside the Dominion Group Organization

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Please be aware that this message was received from outside the Dominion Group Organization

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Please be aware that this message was received from outside the Dominion Group Organization

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BALTIMORE COUNTY, MARYLAND

Inter-Office Memorandum

TO: Kristen Lewis, Office of Zoning Review
Department of Permits, Approvals & Inspections (PAI)

DATE: January 26, 2021

FROM: Paul M. Mayhew, Managing Administrative Law Judge
Office of Administrative Hearings

RE: **Case No. 2020-0224-A – 16 Locust Drive**
(Hearing Date: 1/26/21 @ 10 AM)

The above-referenced case was opened today and a Motion to Postpone from Patrick Richardson was granted in order to obtain counsel. Once counsel is obtained, this matter will need to be rescheduled.

Please be advised that the sign will need to be reposted for the new hearing date, re-advertised, and our office will re-invite all parties originally part of today's hearing.

Our office is returning the file to you for further processing.

Thank you.

PMM:dlw

Donna Mignon

From: Donna Mignon
Sent: Tuesday, January 19, 2021 1:46 PM
To: 'Richardson, Patrick'
Subject: Case No: 2020-0224-A 16 Locust Drive

Good Afternoon,

As you are aware, a virtual webex hearing has been scheduled for January 26, 2021 at 10:00 a.m. You should have received an invitation in an email that invited you to this hearing.

Please note that all hearing exhibits—documents, site plans, photographs or evidence of any kind—must be submitted in PDF format at **least two business days** in advance of the hearing to the Office of Administrative Hearings at administrativehearings@baltimorecountymd.gov Exhibits must be separately numbered and submitted, an exhibit list with the Case Number, an exhibit number and a brief description for each exhibit.

If you have any questions or concerns, please feel free to contact our office.

Thank you so much.

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

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

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

DATE: 1/11/2021

FROM: C. Pete Gutwald
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 20-0224

RECEIVED
APR 19 2
OFFICE OF
ADMINISTRATIVE

INFORMATION:
Property Address: 16 Locust Drive
Petitioner: Cornelius Helfrich
Zoning: DR-2
Requested Action: Variance

The Department of Planning has reviewed the petition for Variance from BCZR Sections 1B02.3.C.1 to allow:

1) A 10' side yard setback in lieu of the required 15' and a combination of 20' in lieu of the required 40'
2) A lot width of 50' in lieu of the required minimum of 100'
3) A lot area of 5,850 square feet in lieu of the minimum required 20,000 square feet

The site is located in Catonsville, South of Frederick road and adjacent to the Catonsville Commercial Revitalization District. The subject property is within the Catonsville/ Patapsco Sustainable Community boundary as well as the Patapsco Heritage Area Management Plan, Southwest Baltimore County Revitalization Strategy and Western Baltimore County Pedestrian and Bicycle Access Plan areas. The site is currently vacant and the applicant is proposing a two story residential building. A site visit was conducted on January 8, 2021.

The Department has no objections to granting the petitioned zoning relief.

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

Prepared by:

Krystle Patchak

Division Chief:

Jenifer G. Nugent

CPG/JGN/KP/

c: Josephine Selvakumar, Western Sector Planner
Richardson Engineering LLC.
Office of the Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED
JAN 19 2021
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: September 18, 2020

SUBJECT: DEPS Comment for Zoning Item # 2020-0224-A
Address 16 Locust Drive
(Helfrich Property)

Zoning Advisory Committee Meeting of **September 14, 2020**.

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

Reviewer: Steve Ford

4-5-21
1:30 pm

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED
MAR 15 2021
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: March 15, 2021

SUBJECT: DEPS Comment for Zoning Item # 2021-0024-SPHA
Address Lot 22-A
(Elliott Property)

Zoning Advisory Committee Meeting of **February 15, 2021.**

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:

1. A fence or wall that is less than 1 foot in width that has not been constructed with a footer;
2. A walkway in the buffer or expanded buffer, including a stairway, that provides direct access to a community or private pier;

3. A wood mulch pathway; or
4. A deck with gaps to allow the water to pass freely.

The subject site, if it is confirmed as a separate lot, comprises 6,173 square feet (sf), and is located within a Limited Development Area (LDA) of the Chesapeake Bay Critical Area. The LDA regulations impose lot coverage limits of 2,043 sf for a lot this size (6,173 sf), with mitigation required for lot coverage between 25% (1,543) and 2,043. Lot coverage limits are adjusted on lots of different sizes. The petitioner is requesting to allow a lot width of 50 feet in lieu of the required 55 feet, and to determine whether or not the Zoning Commissioner should approve a special hearing to confirm that a lot merger has not occurred with the adjacent parcel at 3903 Glenhurst Road (Lot 21A). In order to minimize impacts on water quality, any building permit and/or development plan will be reviewed for compliance with the LDA lot coverage limits. In addition, the LDA regulations require minimum afforestation of 15%, equating to approximately 2 trees for a property this size. By allowing the items requested by the petitioner, impacts on water quality will be avoided.

2. Conserve fish, wildlife, and plant habitat; and

Any development proposal for the property will be reviewed for the application of the Critical Area LDA requirements, which, if approved, will improve buffer functions, and conserve fish, wildlife and plant habitat in nearby Back River.

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.

The items requested by the petitioner will be consistent with established land use policies, provided that the applicants meet any LDA requirements applicable to the proposal, should a development plan or permit application be submitted. The request, if granted, will avoid environmental impacts.

Reviewer: Thomas Panzarella; 410-887-3980 Date: March 12, 2021
Environmental Impact Review

JOHN A. OLSZEWSKI, JR.
County Executive

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

December 22, 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: 2020-0224-A
16 Locust Drive
West side of Locust Drive, south to the centerline of Magruder Avenue
1st Election District – 1st Councilmanic District
Legal Owners: Cornelius Helfrich

Variance to allow a 10 ft. side yard setback in lieu of the required 15 ft. and a combination of 20 ft. in lieu of the required 40 ft. To allow a rear yard setback of 25 ft. in lieu of the required 40 ft. To allow a lot width of 50 ft. in lieu of the required minimum of 100 ft. To allow a lot area of 5,850 sq. ft. in lieu of the minimum required 20,000 sq. ft.

Hearing: Tuesday, January 26, 2021 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.

Michael Mallinoff
Director

MM:kl

C: Richardson Engineering, 30 E. Padonia Road, Ste. 500, Timonium 21093
Dominion Properties, 1029 N. Calvert Street, Baltimore 21202
Cornelius Helfrich, 31 E. Lee Street, Belair 21014

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WED., JANUARY 6, 2021.**

ZAC AGENDA

Case Number: 2020-0224-A **Reviewer:** Gary Hucik
Existng Use: RESIDENTIAL **Proposed Use:** RESIDENTIAL
Type: VARIANCE
Legal Owner: Cornelius David Helfrich
Contract Purchaser: Dominion Properties

Critical Area: No **Flood Plain:** No **Historic:** No **Election Dist:** 1 **Council Dist:** 1

Property Address: 16 LOCUST DR
Location: West side of Locust Drive South 324 to the center line of Magruder Ave.

Existing Zoning: DR 2 **Area:** 5,000 SQ FT
Proposed Zoning:
VARIANCE:
Per Section 1B02.3.C.1 to allow a 10' side yard setback in lieu of the required 15' and a combination of 20' in lieu of the required 40'.
Per section 1B02.3.C.1 to allow a rear yard setback of 25' in lieu of the required 40'.
Per section 1B02.3.C.1 to allow a lot width of 50' in lieu of the required minimum of 100'.
Per section 1B02.3.C.1 to allow a lot area of 5,850 square feet in lieu of the minimum required 20,000 square feet.
Attorney: Not Available
Prior Zoning Cases: None
Concurrent Cases: None
Violation Cases: None
Closing Date:

RECEIVED
OCT 15 2020
OFFICE OF
ADMINISTRATIVE HEARINGS

Miscellaneous Notes:
Petition revised and recirculated to the agencies.

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 16 Locust Drive **which is presently zoned** DR-2

Deed References: 32178/253 10 Digit Tax Account # 01062011501

Property Owner(s) Printed Name(s) Cornelius David Helfrich

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

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

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

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

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

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

TO BE PRESENTED AT 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:

Dominion Properties
Name- Type or Print

Signature

1029 N Calvert St | Baltimore | MD
Mailing Address | City | State

21202 / 410-727-4305 / johnw@thedominiongroup.com
Zip Code | Telephone # | Email Address

Legal Owners (Petitioners):

Cornelius D. Helfrich /
Name #1 - Type or Print | Name #2 - Type or Print

Signature #1 | Signature # 2

31 E. Lee Street | Belair | MD
Mailing Address | City | State

21014 / 4104592536 Neil@helfrichlaw.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 10/9/20
By

Representative to be contacted:

Richardson Engineering, LLC
Name - Type or Print

Signature

30 E. Padonia Road, Suite 500 | Timonium | MD
Mailing Address | City | State

21093 / 410-560-1502 / Rick@RichardsonEngineering.net
Zip Code | Telephone # | Email Address

CASE NUMBER 2020-0224-A Filing Date 10/9/20 Do Not Schedule Dates: _____ Reviewer GG

REV. 10/4/11

Revised

Zoning Relief for 16 Locust Road

Variance

Per Section 1B02.3.C.1 to allow a 10' side yard setback in lieu of the required 15' and a combination of 20' in lieu of the required 40'.

Per Section 1B02.3.C.1 to allow a rear yard setback of 25' in lieu of the required 40'

Per Section 1B02.3.C.1 to allow a lot width of 50' in lieu of the required minimum of 100'

Per Section 1B02.3.C.1 to allow a lot area of 5,850 square feet in lieu of the minimum required 20,000 square feet

2020-0224-A

Revised

Richardson Engineering, LLC

30 E. Padonia Road, Suite 500
Timonium, Maryland 21093

Tel: (410) 560-1502
Fax: (443) 901-1208

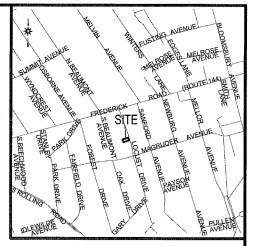
ZONING PROPERTY DESCRIPTION FOR
16 LOCUST DRIVE
1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Located on the west side of Locust Drive approximately 273 feet north of the intersection with Magruder Avenue, being known as Lot #6 in the Plat of "Locust Drive Extended" as recorded in Plat Book C.W.B. No 10, Folio 109.

Containing a net area of 5,000 square feet or 0.11 acres +/-.

2020-0224-A





LOCATION MAP

SCALE: 1" = 1000'

GENERAL NOTES:

1. OWNER: CORNELIUS DAVID HELFRICH
   31 E LEE ST
   BEL AIR MD 21014-8876
   CONTRACT PURCHASER:
   THE DOMINION GROUP
   1029 N CALVERT ST
   BALTIMORE, MD 21202
2. SITE AREA:
   NET: 5,000 SF OR 0.11 Ac.±
   GROSS: 5,650 SF OR 0.13 AC.±
3. USE:
   EXISTING: VACANT
   PROPOSED: 1 RESIDENTIAL DWELLING
4. UTILITIES: PUBLIC WATER AND SEWER
5. DEED REF: 32178/253
6. TAX ACCOUNT: 0106201150
7. ZONING: DR 2
   (PER 1"=200' ZONING MAP 081C3)
8. TAX MAP: 101
   GRID: 7
   PARCEL: 258
   LOT: 6 "LOCUST DRIVE EXTENDED" PLAT 10/109
9. LOCATED IN ZONE X PER FLOOD INSURANCE RATE MAP (FIRM) PANEL 2400100388F DATED SEPTEMBER 26, 2008.
10. PREVIOUS ZONING CASES: NONE ON FILE.
11. PREVIOUS PERMITS: NONE ON FILE.
12. SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
13. THERE ARE NO HISTORIC FEATURES ON SITE NOR IS THE SITE ITSELF HISTORIC.
14. SETBACKS FOR DR 2

	REQUIRED	PROVIDED
FRONT	25'*	25'±
SIDE	20'	10'±
REAR	40'	25'±

* AVG SETBACK OF 25+24/2 = 25'

Richardson Engineering, LLC

30 East Padonia Road, Suite 500
Timonium, Maryland 21093
Phone: 410-560-1502 Fax: 443-901-1208

PLAN TO ACCOMPANY ZONING PETITION
FOR

PROPOSED RESIDENCE
DOMINION PROPERTIES
16 LOCUST DRIVE

BALTIMORE COUNTY MARYLAND
1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT

REVISIONS	DRAWN BY:	CHECKED BY:	SCALE:
	LNR	PCR	1" = 20'
	DATE:	JOB NO.:	SHEET NO.:
	08-14-20	20110	1 OF 1

Revision 2020-0224-A

ZAC AGENDA

Case Number: 2020-0224-A **Reviewer:** Gary Hucik
Existng Use: RESIDENTIAL **Proposed Use:** RESIDENTIAL
Type: VARIANCE
Legal Owner: Cornelius David Helfrich
Contract Purchaser: Dominion Properties

Critical Area: No **Flood Plain:** No **Historic:** No **Election Dist:** 1 **Council Dist:** 1

Property Address: 16 LOCUST DR
Location: West side of Locust Drive South 324 to the center line of Magruder Ave.

Existing Zoning: DR 2 **Area:** 5,000 SQ FT
Proposed Zoning:
VARIANCE:
Per Section 1A04.3.B.2 to allow a 10' side yard setback in lieu of the required 15' and a combination of 20' in lieu of the required 40'.
Per section 1A04.3.B.2 to allow a rear yard setback of 25' in lieu of the required 40'.
Per section 1A04.3.B.2 to allow a lot width of 50' in lieu of the required minimum of 100'.
Attorney: Not Available
Prior Zoning Cases: None
Concurrent Cases: None
Violation Cases: None
Closing Date:

Miscellaneous Notes:



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 16 Locust Drive **which is presently zoned** DR-2

Deed References: 32178/253 10 Digit Tax Account # 01062011501

Property Owner(s) Printed Name(s) Cornelius David Helfrich

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

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

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

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

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

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

TO BE PRESENTED AT 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:

Dominion Properties
Name- Type or Print

Signature /

1029 N Calvert St Baltimore MD
Mailing Address City State

21202 / 410-727-4305 / johnw@thedominiongroup.com
Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Cornelius D. Helfrich /
Name #1 - Type or Print Name #2 - Type or Print

Signature #1 / Signature # 2

31 E. Lee Street Belair MD
Mailing Address City State

21014 / 4104592536 Mei k@belfrichlaw.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code / Telephone # / Email Address

Representative to be contacted:

Richardson Engineering, LLC
Name - Type or Print

Signature

30 E. Padonia Road, Suite 500 Timonium MD
Mailing Address City State

21093 / 410-560-1502 / Rick@RichardsonEngineering.net
Zip Code Telephone # Email Address

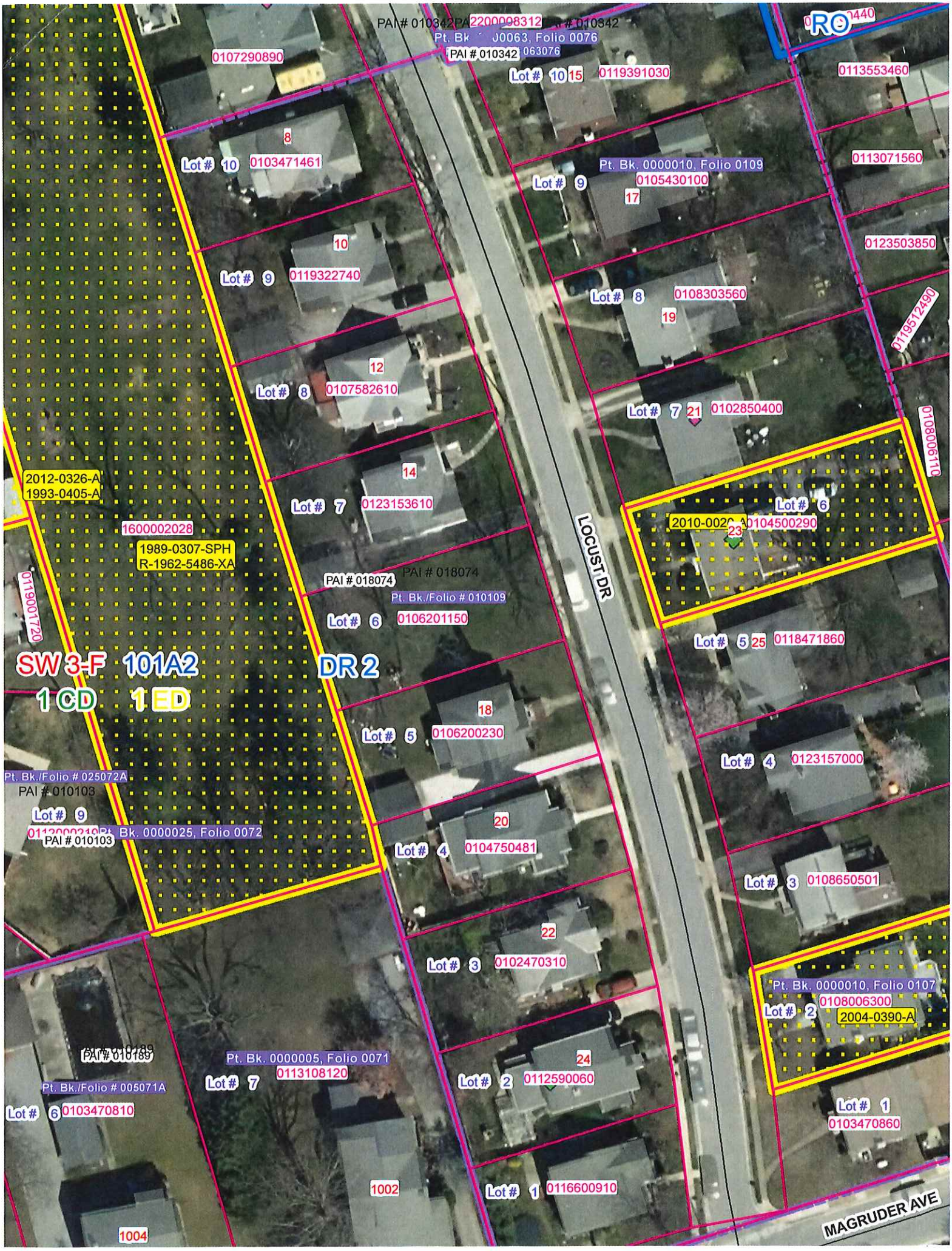
CASE NUMBER 2020 0227-A **Filing Date** 9/4/2020 **Do Not Schedule Dates:** _____ **Reviewer** gh

REV. 10/4/11

Zoning Relief for 16 Locust Road

Variance

Per Section 1A04.3.B.2 to allow a 10' side yard setback in lieu of the required 15' and a combination of 20' in lieu of the required 40'.
Per Section 1A04.3.B.2 to allow a rear yard setback of 25' in lieu of the required 40'
Per Section 1A04.3.B.2 to allow a lot width of 50' in lieu of the required minimum of 100'


PAI # 010342
2200008312
Pt. Bk. 0063, Folio 0076
PAI # 010342
RO
0107290890
Lot # 10 0103471461
8
Lot # 10 15 0119391030
0113553460
Pt. Bk. 0000010, Folio 0109
Lot # 9 0105430100
17
0113071560
10
Lot # 9 0119322740
0123503850
Lot # 8 0108303560
19
0119512490
12
Lot # 8 0107582610
Lot # 7 21 0102850400
0108006110
2012-0326-A
1993-0405-A
14
Lot # 7 0123153610
Lot # 6
2010-0020
23
0104500290
1600002028
1989-0307-SPH
R-1962-5486-XA
LOCUST DR
PAI # 018074
PAI # 018074
Pt. Bk./Folio # 010109
0119001720
Lot # 6 0106201150
Lot # 5 25 0118471860
SW 3-F 101A2
1 CD 1 ED
DR 2
18
Lot # 5 0106200230
Lot # 4 0123157000
Pt. Bk./Folio # 025072A
PAI # 010103
Lot # 9
20
Pt. Bk. 0000025, Folio 0072
PAI # 010103
Lot # 4 0104750481
Lot # 3 0108650501
22
Lot # 3 0102470310
Pt. Bk. 0000010, Folio 0107
0108006300
Lot # 2
2004-0390-A
PAI # 010189
PAI # 010189
Pt. Bk. 0000005, Folio 0071
0113108120
24
Lot # 7
Lot # 2 0112590060
Pt. Bk./Folio # 005071A
Lot # 6 0103470810
Lot # 1
0103470860
1002
Lot # 1 0116600910
1004
MAGRUDER AVE

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: 2020-0224-A

Petitioner: DOMINION PROPERTIES

Address or Location: 16 LOCUST DRIVE

PLEASE FORWARD ADVERTISING BILL TO:

Name: DOMINION PROPERTIES

Address: 1029 N. CALVERT ST
BALT. MD 21202
ATTN. JOHN WATSON

Telephone Number: 410-727-4305

Revised 2/20/98 - SCJ

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 01 **Account Number -** 0106201150

Owner Information

Owner Name:	HELFRICH CORNELIUS DAVID	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	31 E LEE ST BEL AIR MD 21014-8876	**Deed Reference:**	/32178/ 00253

Location & Structure Information

Premises Address:	LOCUST DR 0-0000	**Legal Description:**	LOCUST DRIVE

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	
0101	0007	0258	1070130.04	0000	A		6	2019	**Plat Ref:**	0010/ 0109

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			5,000 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 01/01/2019	As of 07/01/2020	As of 07/01/2021
Land:	40,000	40,000		
Improvements	0	0		
Total:	40,000	40,000	40,000	40,000
Preferential Land:	0	0		

Transfer Information

Seller: FIELDS VIRGINIA T	**Date:** 06/12/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /32178/ 00253	**Deed2:**
Seller: FIELDS BERNADETTE K	**Date:** 03/07/2007	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05672/ 00465	**Deed2:**
Seller: FIELDS VIRGINIA T	**Date:** 03/07/2007	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /00000/ 00000	**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:**

Reply all | Delete Junk | •••

Internet Inquiry - Zoning Review

Sanders, Barry <bsanders@howardcountymd.gov>
Today, 5:42 PM
PAI Zoning

Reply all |

Inbox

Label: 18 Month Delete (1 year, 6 months, and 3 days) Expires: 7/7/2022 5:42 PM

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

To whom it may concern, if possible can you please forward me the Petition for Variances filed in case 2020-0224-A (Property 16 Locust Drive Catonsville, Maryland 21228) scheduled for 1/26/21 before Administrative Law Judge or direct me as to where one can review the actual petition filed. Thank you, Barry Sanders

1/7/2020 @ 8:20
Emailed Document Attachments Sent to Mr. Sanders.
Site Plan was too large to scan and email

Pet.

List of Exhibits

16 Locust Drive

Case 2020-0224-A
WTP File: 101174/1

Hearing Date: 4/6/21
Time: 1:30 p.m.

1. Zoning Site Plan
2. Record Plat
3. Dwelling Elevations
4. My Neighborhood Aerial Showing Location
5. 2012 Deed to Property
6. 1971 Zoning Map Showing Location of Site (DR5.5)
   1996 Zoning Map Issue 1-045
   1996 My Neighborhood Aerial Zoning

11708896

4/9/21
DM


LOCUST DRIVE
CL of R/W
PROP. 1 STORY DWELLING
PROP. 2 STORY DWELLING
CL of R/W
CL of R/W
CL SWALE
CL SWALE
CL SWALE

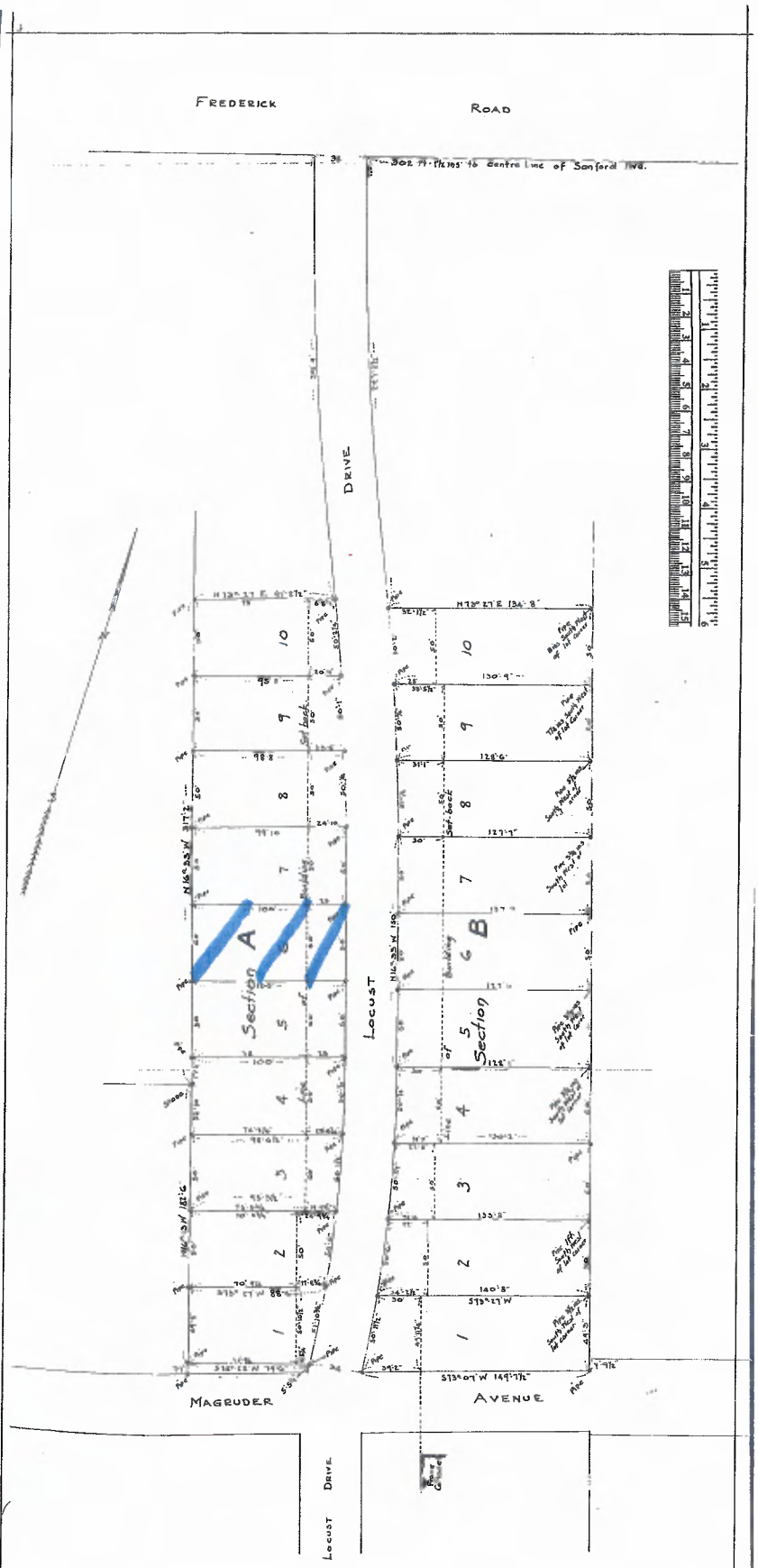


EXHIBIT 2

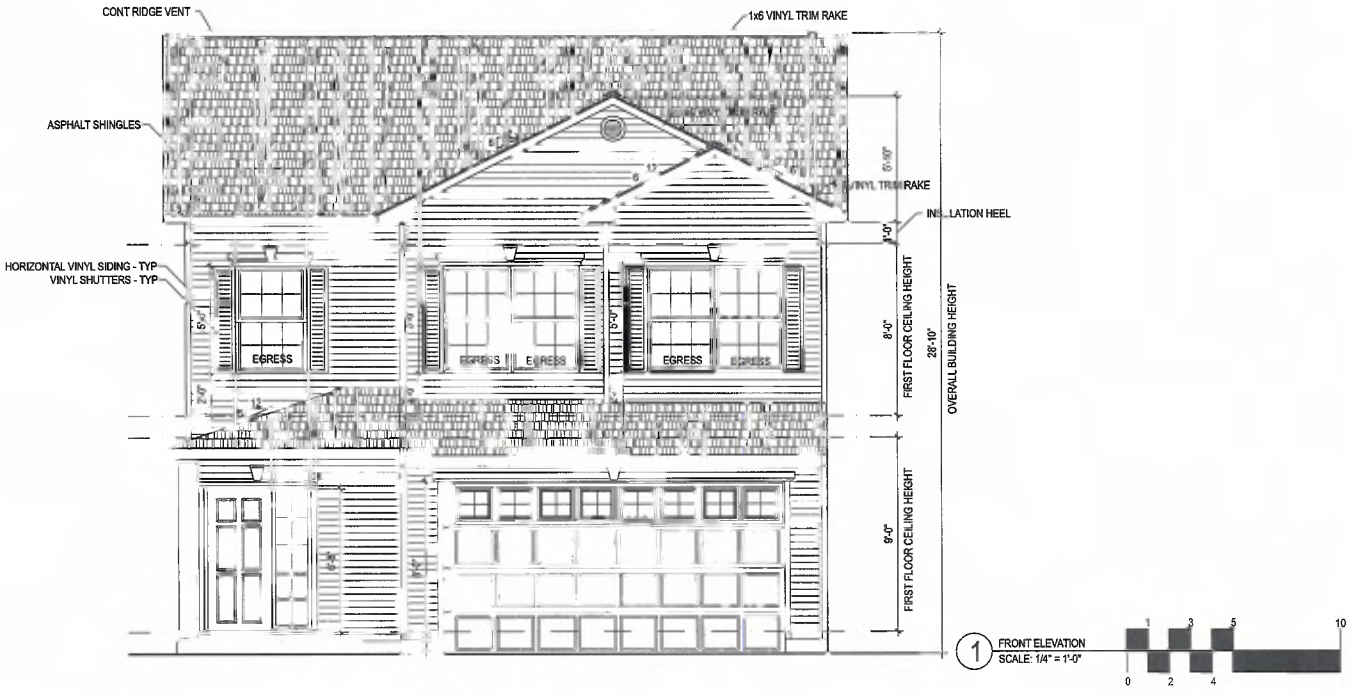
PLAT OF
LOCUST DRIVE EXTENSION
CATONSVILLE-BALTO. CO.-MARYLAND.

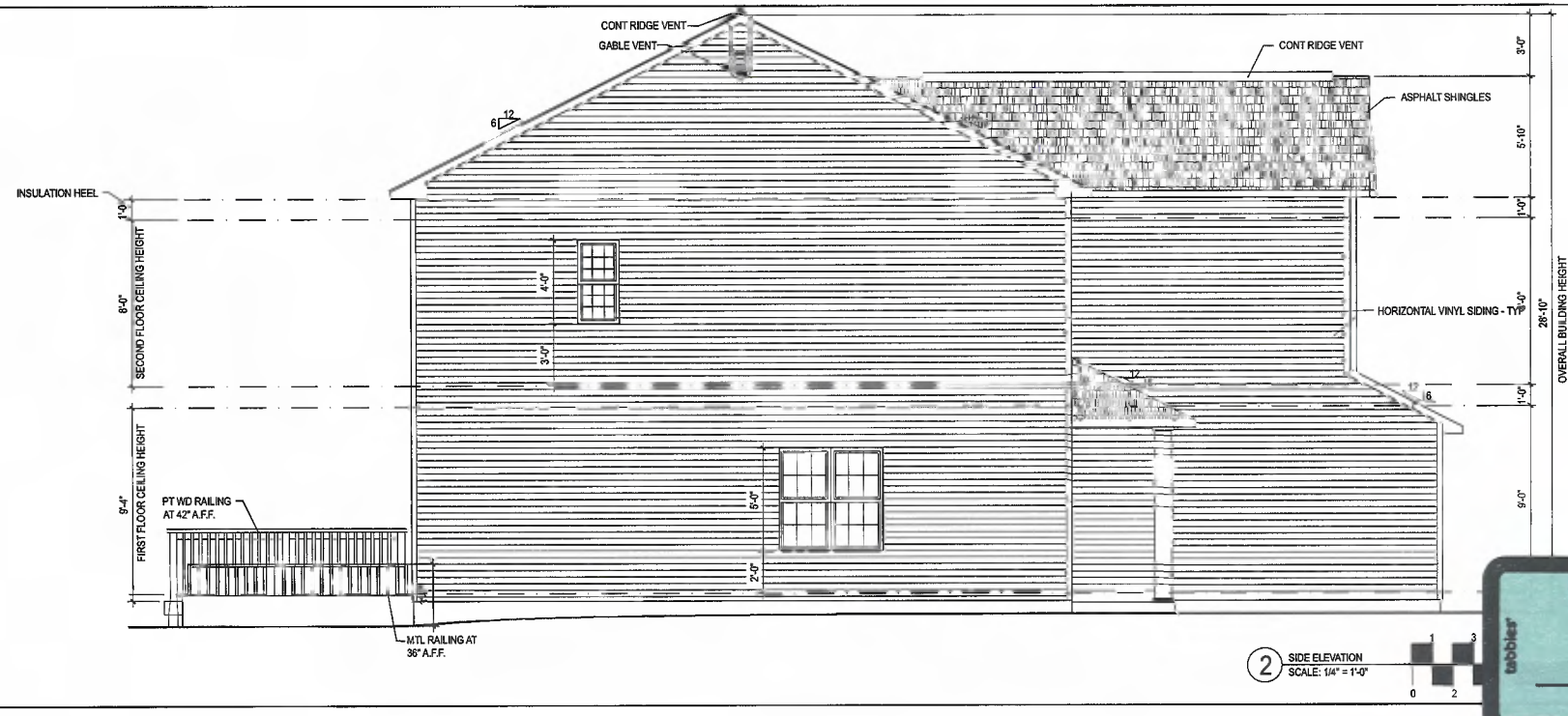
Scale = 40 Feet to one inch.

J. J. Martenet & Co.
Surveyors & Civil Engrs.
Balto March 13-1933.

Note:-
The courses are referred approximately to the True Meridian.

BALTIMORE COUNTY CIRCUIT COURT (Plats) Plat Book LMC_M 10, p. 109, PSN: C2136_2712. Date available 1936/12/21. Printed 08/14/2020.





PROFESSIONAL CERTIFICATION:
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME AND THAT I AM A DULY LICENSED ARCHITECT UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NUMBER 15709, EXPIRATION DATE 3 / 27 / 2021.

CONTRACT DOCUMENTS HAVE BEEN PREPARED BY A LICENSED ARCHITECT FOR BOTH ARCHITECTURE & STRUCTURAL DESIGN, MD Lic # 15709.

CLIENT
DOMINION PROPERTIES

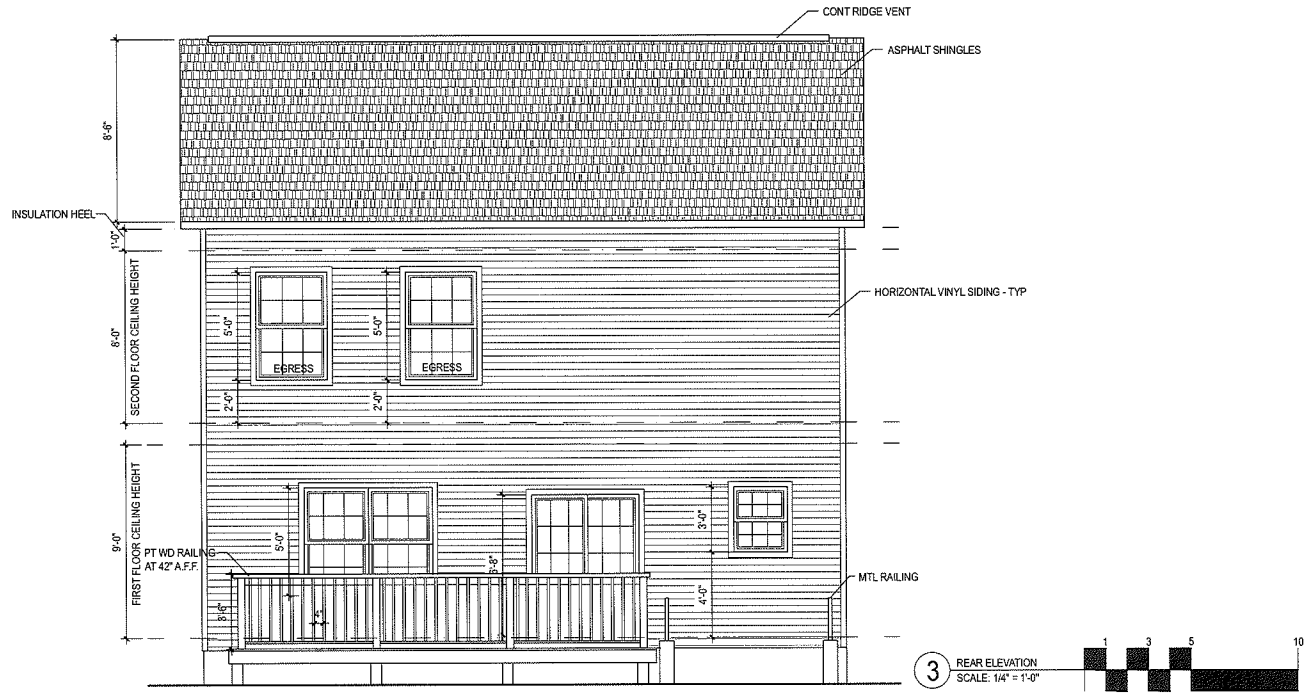
ADAM CARBALLO, ARCHITECT
MD LIC# 15709
443-745-1100

EXHIBIT
13

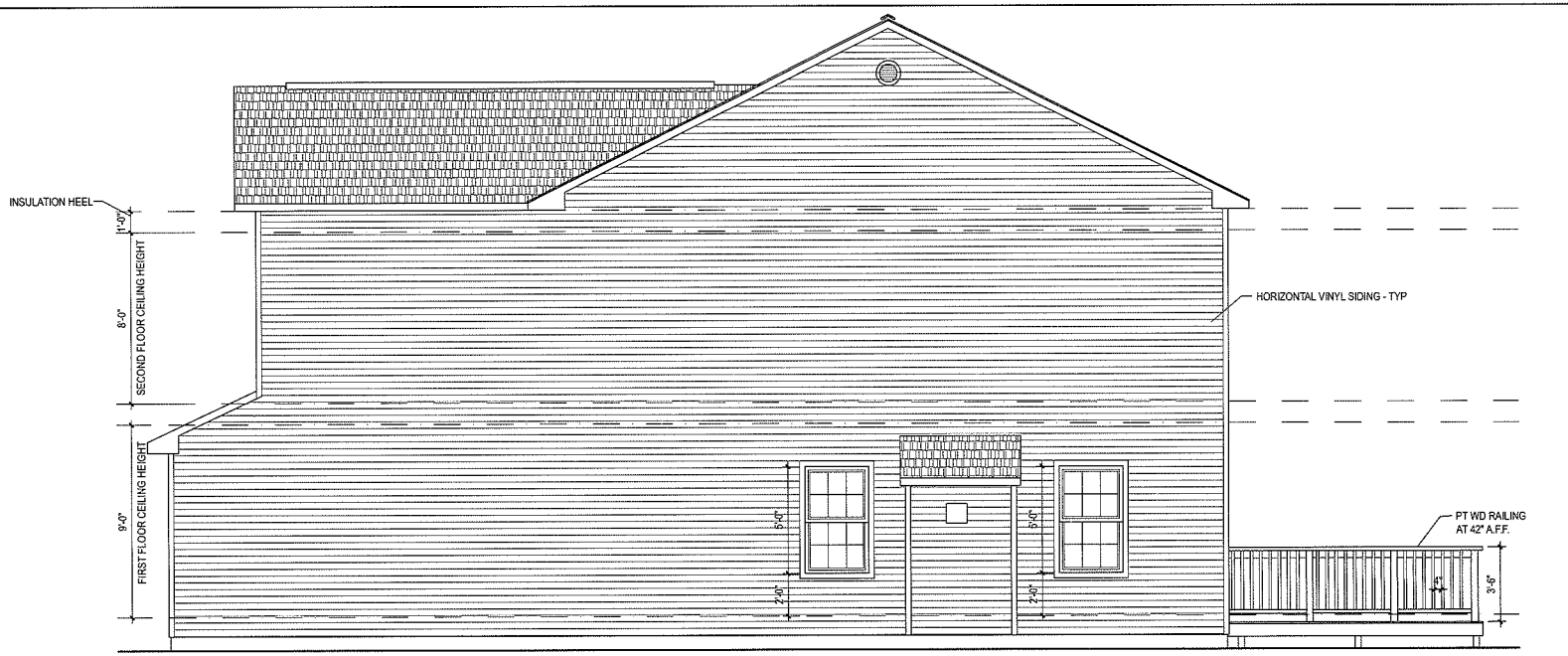
tabbies

JOB # 19-407
SEPTEMBER 2019

A5



3 REAR ELEVATION
SCALE: 1/4" = 1'-0"



4 SIDE ELEVATION
SCALE: 1/4" = 1'-0"

PROFESSIONAL CERTIFICATION.
I CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED ARCHITECT UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NUMBER 15709, EXPIRATION DATE 3 / 27 / 2021.

CONTRACT DOCUMENTS HAVE BEEN PREPARED BY A LICENSED ARCHITECT FOR BOTH ARCHITECTURE & STRUCTURAL DESIGN. MD Lic # 15709

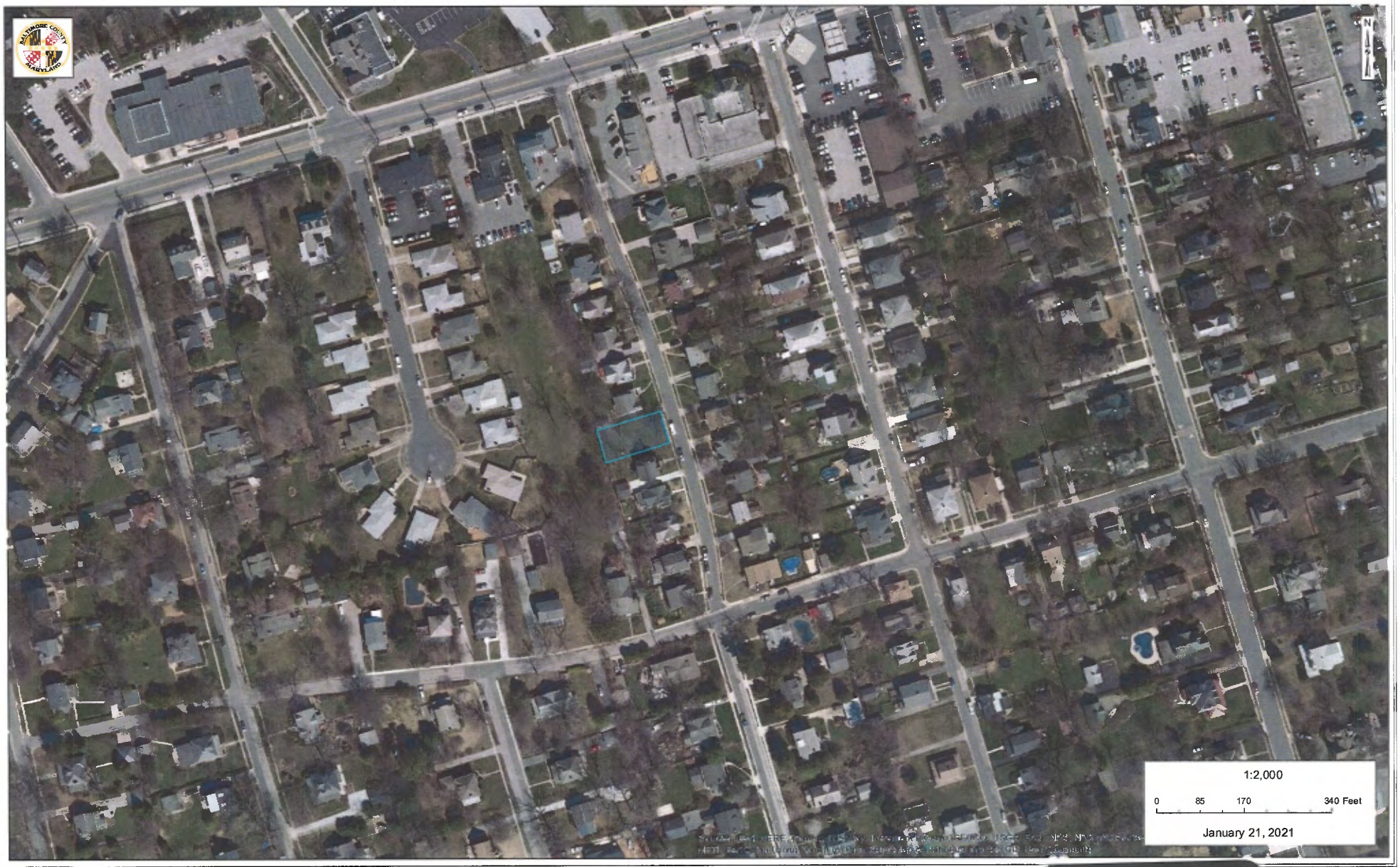
CLIENT
DOMINION PROPERTIES

ADAM CARBALLO, ARCHITECT
MD LIC# 15709
443-745-1100

0011-A=A6
ELEVATIONS

4 FAIRVIEW RD
JOB # 19-407
SEPTEMBER 2019

Baltimore County - My Neighborhood



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

EXHIBIT

4

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0253, MSA_CE62_32034. Date available 06/14/2012. Printed 01/19/2021.

PREPARED WITHOUT TITLE SEARCH

This Personal Representative's Deed, made this 16th day of **May, 2012,** by and between Cornelius David Helfrich, Personal Representative of The Estate of **VIRGINIA T. FIELDS**, GRANTOR; and, **CORNELIUS DAVID HELFRICH,** party of the second part, GRANTEE.

Whereas, Virginia T. Fields died on December 1, 1994, and on June 1, 1995, the Orphans' Court of Harford County, State of Maryland (the "Court") granted administration of the Estate of the Decedent to Cornelius David Helfrich as Personal Representative of the Estate of the Decedent in Estate No. 28268.

Whereas, Grantor in the capacity as Personal Representative in the Estate of the Decedent has complete and full power and authority by law, to grant and convey the entire fee simple interest in the hereinafter described property; and

Whereas, as part of the administration of the Estate of the Decedent, Grantor desires to convey the entire fee simple estate in the hereinafter described property to the Grantee.

- Witnesseth -

That in consideration of the sum of **Zero Dollars 00/100 ($0.00)**, which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said GRANTOR as Personal Representative on the Estate of the Decedent, does hereby grant and convey to Cornelius David Helfrich, in fee simple, all that lot of ground situate in Baltimore County, State of Maryland and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot 6, as shown on the plat entitled "Locust Drive Extended", which plat is recorded among the Plat Records of Baltimore County in Plat Book C.W.B. Jr No. 10 folio 109.

BEING THE SAME and all that property which by fee simple deed dated December 19, 1959 and recorded among the Land Records of Baltimore County in Liber No. 3649, folio 398, was granted and conveyed by David A. Fields and Bernadette Fields, his wife to Virginia T. Fields.

Together with the buildings and improvements thereon erected, m and every, the rights, alleys, ways, waters, privileges, appurtenances an belonging, or in anywise appertaining.

EXHIBIT 5

To Have and To Hold the said tract 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 Grantee his Personal Representative, heirs and assigns, forever, in fee simple.

And Grantor does hereby covenant to execute such further assurances of the same as may be requisite.

Witness the hand and seal of Grantor the day and year first above written.

By: Cornelius David Helfrich
Personal Representative of
The Estate of **Virginia T. Fields**.

STATE OF MARYLAND

COUNTY OF Harford, to wit:

I hereby certify that on this 16th day of **May, 2012** before me, the undersigned officer, a Notary Public in and for the State aforesaid, personally appeared Cornelius David Helfrich, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged herself to be the Personal Representative of the Estate of Virginia T. Fields, and who, in my presence, signed and sealed the foregoing Deed and acknowledged it to be his act and deed as Personal Representative of the foregoing Estate, giving oath under penalties of perjury that the consideration recited herein is correct.

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

DIANE LEONARD SEAGS NOTARY PUBLIC HARFORD CO., MD.

Notary Public
My commission expires: 10/25/2014

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Cornelius D. Helfrich, Attorney

AFTER RECORDING, PLEASE RETURN TO:
Helfrich Law Office
31 E. Lee Street
Bel Air, MD 21014

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0254, MSA_CE62_32034. Date available 06/14/2012. Printed 01/19/2021.

0032178 255

2012
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 Section 10-912 of Maryland's Tax General Article. Section 10-912 states that certain tax payments must be withheld when a deed or other instrument that affects a change in ownership of real property is recorded. The requirements of Section 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(s) Information

Name of Transferor:
Cornelius David Helfrich, Personal Representative of the Estate of Virginia T. Fields

2. Reason for Exemption

Resident Status	☒ I/We, Transferor(s), am/are residents of the State of Maryland. ☐ Transferor(s) is a/are resident(s) entity under Section 10-912(A)(4) of the Tax General Article of the Annotated Code of Maryland, 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 section 121.

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

3a. Individual Transferor(s)

Witness

Cornelius David Helfrich, **Personal Representative of the Estate of** Virginia T. Fields

3b. Entity

Title

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0255, MSA_CE62_32034. Date available 06/14/2012. Printed 01/19/2021.

0032178 256

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
TOTAL 60.00
Rec# BAR2 Rcpt # 29348
JLE BC Blk # 723
Jun 12, 2012 09:37 am

Space Reserved for Circuit Court Clerk Recording Violation

1	Type(s) of Instruments	X	Deed		Mortgage		Other: DoT	
			Deed of Trust		Lease			
2	Conveyance Type Check Box		Improved Sale Arms-Length [1]		Unimproved Sale Arms-Length [2]		Mult. Accounts Arms-Length [3]	X Not an Arms-Length Sale [9]
3	Tax Exemptions (if Applicable) Cite or Explain Authority	Recordation						
		State Transfer						
		County Transfer	Estate Dist					

4	Consideration and Tax Calculations			Finance Office Use Only	
		Consideration Amount		Transfer and Recordation Tax Consideration	
		Purchase Price/Consideration	0.00	Transfer Tax Consideration	$
		Any New Mortgage - First		X ( )% =	$
		Balance of Existing Mortgage		Less Exemption Amount -	$
		Other New Mortgage - Second		Total Transfer Tax =	$
		Other		Recordation Tax Consideration	$
				X ( )% =	$
		Full Cash Value		TOTAL DUE	$

5	Fees	Amount of Fees	Doc. 1	Doc. 2	
		Recording Charge	40.00		Agent
		Surcharge	20.00		Tax Bill:
		State Recordation Tax			
		State Transfer Tax			C.B. Credit:
		County Transfer Tax (if Applicable)			
		Other			Ag. Tax/Other:
		Other			

6	Description of Property	District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
	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).	01	0106201150	5672/465	101	258	☐

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	Sq. Ft./Acreage (4)
Locust Drive	6		A	10/109	50 x 100

Location/Address of Property Being Conveyed (2): Locust Drive

Other Property Identifiers (if applicable) | Water Meter Account No.:

Residential ☑ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ Amount:

Partial Conveyance? ☐Yes ☑No | Description/Amt. Of Sq. Ft./Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7	Transferred From	Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
		Cornelius David Helfrich, Personal Representative of the Estate of Virginia T. Fields	
		Doc. 1 - Owner(s) of Records, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**

8	Transferred To	Doc. 1 - Grantee(s) Names	Doc. 2 - Grantee(s) Name(s)
		Cornelius David Helfrich	
		New Owner's (Grantee) Mailing Address	
		31 E. Lee Street, Bel Air, MD 21014	

9	Other Names to be Indexed	Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optioned)

10	Contact/Mail Information	Instrument Submitted By or Contact Person		
		Name:	Diane Sengstacke, President	X Return to Contact Person
		Firm:	Home Title Company of MD	☐ Hold for Pickup
		Address:	112 South Main Street, Suite 101, Bel Air, Maryland 21014	☐ Return Address Provided
		Phone:	410-893-3061	

Space Reserved for County Validation

11	Assessment Information	IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER	
		☐ Yes	X No Will the property being conveyed be the grantee's principal residence?
		☐ Yes	X No Does transfer include personal property? If yes, identify:
		☐ Yes	X 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 Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number:		Date Received:		Deed Reference:		Assigned Property No:	
Year	19	19	Geo.		Sub		Block
Land			Zoning		Plat		Lot
Buildings			Use		Section		Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.		

REMARKS:

☐ COUNTY TRANSFER TAX NOT REQUIRED
Per Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND
ART 11 TITLE 3 SUBTITLE 2, 11-3-202

☐ RECORDATION TAX
Per T.P. ART 12-108
Date 6-11-12

Distribution: Clerk's Office, SDAT, Office of Finance, Prepare

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 32178, p. 0256, MSA_CE62_32034. Date available 06/14/2012. Printed 01/19/2021.



PLAN HOLD

DRAWING NUMBER
SW-3-F

EXHIBIT
6

Baltimore County 1996 Comprehensive Zoning Map Issues

6/25/96

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	Comment
1-042	Leroy M. Merritt	East side of I-695, 400' north of Washington Blvd. (3700 Commerce Drive).	MLR IM 25.570 Total 25.570	ML IM 25.570 Total 25.570	ML IM 25.570 Total 25.570	
1-043	Chew Limited Partnership	South side Of Old Court Road, 4800' east of Dogwood Road.	RC 2 250.910 Total 250.910	RC 5 250.910 Total 250.910	RC 2 250.910 Total 250.910	RC 3 250.910
1-044	Gun Road Historical & Protective Assoc.	North side of I-95, 400' south of Gun Road (1450 S. Rolling Road).	OR 2 30.130 Total 30.130	DR 1 30.130 Total 30.130	OR 2 30.130 Total 30.130	
1-045	South Rolling Road Community Association	East and West side of Rolling Road, south of Frederick Road.	DR 3.5 277.000 DR 5.5 211.000 Total 488.000	DR 2 488.000 Total 488.000	DR 3.5 277.000 DR 5.5 211.000 Total 488.000	D.R. 2 - 445.01 3.5 - 42.99 See Issue 1-037 and 1-057.
1-046	Coalition for Preserv. of S. W. Balt. County	Northwest side of Shelbourne Road, 2000' northeast of Sulphur Spring Road.	OT 80.000 Total 80.000	DR 2 80.000 Total 80.000	OT 80.000 Total 80.000	See Issue 1-027.

1996 CZMP 1-045

Baltimore County - My Neighborhood



Protestant's Exhibits

Exhibit List for Zoning Hearing Case No. 2020-0224-A, 16 Locust Drive

Exhibit 1 - Zoning and Property Lines of Locust Drive

Description: aerial photo of Locust Drive, (highlighting 16 Locust Drive) showing property lines, and property map of Locust Drive (highlighting 16 Locust Drive) showing property lines and contours

Exhibit 2 - Property Land Area of 16 Locust Drive and Adjoining Lots

Description: (Page 1 of 3) Real Property Data for 16 Locust Drive (highlighting Property Land Area of 5,000sf)
(Page 2 of 3) Real Property Data for 18 Locust Drive (highlighting Property Land Area of 5,000sf)
(Page 3 of 3) Real Property Data for 14 Locust Drive (highlighting Property Land Area of 4,950sf)

Exhibit 3 - Existing Homes Surrounding 16 Locust Drive

Description: (Page 1 of 2) Photos of existing homes to the left and right of 16 Locust Drive (house numbers 18, 20, 14, 12, and 10 Locust Drive)
(Page 2 of 2): Photos of existing homes across and to the left and right of 16 Locust Drive (house numbers 21, 19, 17, 15, 23, 25, 27, 29 Locust Drive)

Exhibit 4 - Petition to Object to Proposed Variance

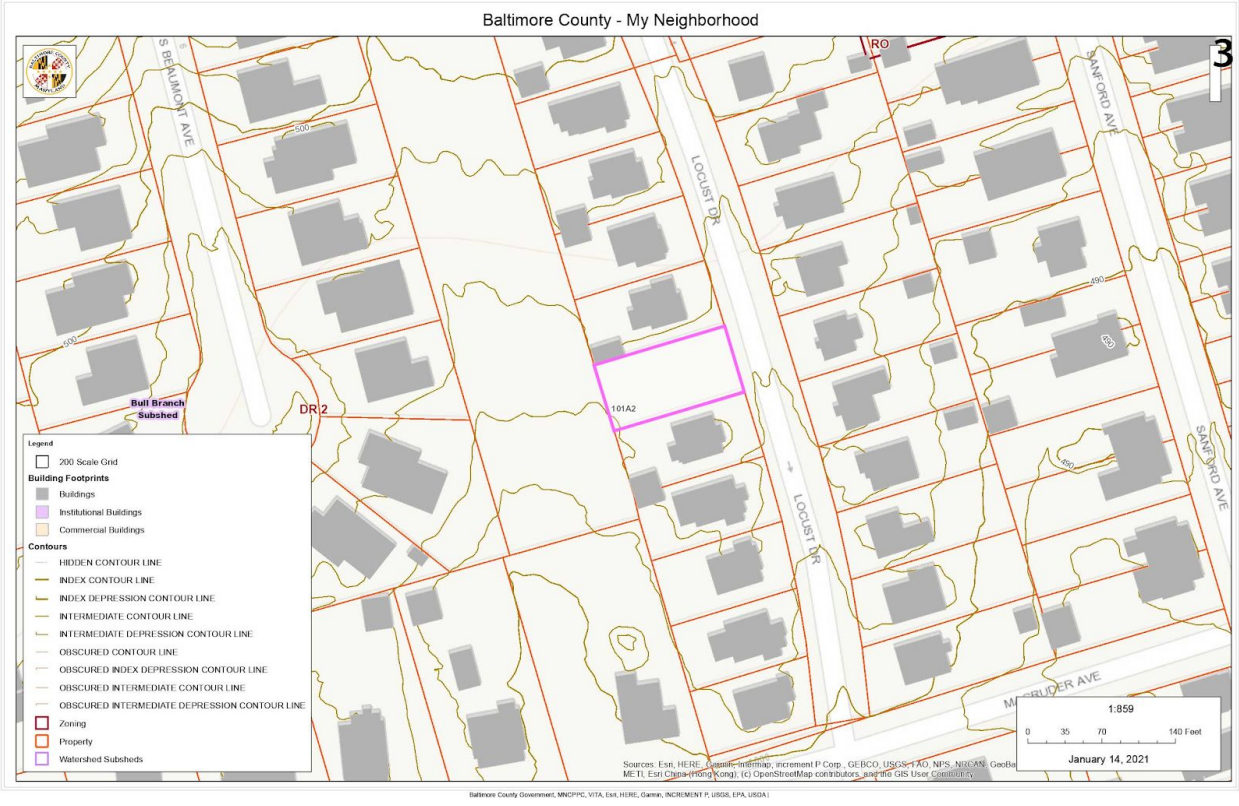
Description:(Pages 1 - 4) Signatures of 43 residents opposed to the variances requested at 16 Locust Drive

Exhibit 5 - Letter to Zoning Commissioner

Description: Letter from homeowners of 18 Locust Drive detailing objections to proposed variances at 16 Locust Drive

Zoning Hearing Case No. 2020-0224-A
16 Locust Drive
Exhibit 1 (Page 1 of 1) - Zoning and Property Lines of Locust Drive





Zoning Hearing Case No. 2020-0224-A
16 Locust Drive
Exhibit 2 (Page 1 of 3) - Property Land Area of 16 Locust Drive and Adjoining Lots

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 01 **Account Number -** 0106201150

Owner Information

Owner Name:	HELFRICH CORNELIUS DAVID	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	31 E LEE ST BEL AIR MD 21014-8876	**Deed Reference:**	/32178/ 00253

Location & Structure Information

Premises Address:	LOCUST DR 0-0000	**Legal Description:**	LOCUST DRIVE

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0101	0007	0258	1070130.04	0000	A		6	2019	Plat Ref: 0010/ 0109

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
			5,000 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 01/01/2019	As of 07/01/2020	As of 07/01/2021
Land:	40,000	40,000		
Improvements	0	0		
Total:	40,000	40,000	40,000	40,000
Preferential Land:	0	0		

Transfer Information

Seller: FIELDS VIRGINIA T	**Date:** 06/12/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /32178/ 00253	**Deed2:**
Seller: FIELDS BERNADETTE K	**Date:** 03/07/2007	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05672/ 00465	**Deed2:**
Seller: FIELDS VIRGINIA T	**Date:** 03/07/2007	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /00000/ 00000	**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

Text

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:**

Zoning Hearing Case No. 2020-0224-A
16 Locust Drive
Exhibit 2 (Page 2 of 3) - Property Land Area of 16 Locust Drive and Adjoining Lots

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 01 **Account Number -** 0106200230

Owner Information

Owner Name:	KING RYAN KING JULIA	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	18 LOCUST DR BALTIMORE MD 21228	**Deed Reference:**	/35196/ 00455

Location & Structure Information

Premises Address:	18 LOCUST DR BALTIMORE MD 21228-	**Legal Description:**	POWERS PLAT OF LOCUST D

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	
0101	0007	0258	1070130.04	0000	A		5	2019	Plat Ref:	0010/ 0109

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1940	1,754 SF		5,000 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	YES	STANDARD UNIT	1/2 BRICK FRAME/ BRICK	5	1 full/ 1 half	1 Detached	

Value Information

	Base Value	Value As of 01/01/2019	Phase-in Assessments As of 07/01/2020	As of 07/01/2021
Land:	116,600	146,500		
Improvements	186,900	209,100		
Total:	303,500	355,600	338,233	355,600
Preferential Land:	0	0		

Transfer Information

Seller: FIELDS JOSEPH J	**Date:** 07/25/2014	**Price:** $305,000
Type: NON-ARMS LENGTH OTHER	**Deed1:** /35196/ 00455	**Deed2:**
Seller: FIELDS BERNADETTE K	**Date:** 11/26/2013	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /34470/ 00067	**Deed2:**
Seller: FIELDS EUGENE J,ET AL	**Date:** 10/06/1975	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05572/ 00747	**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: Approved 02/03/2015

Zoning Hearing Case No. 2020-0224-A
16 Locust Drive
Exhibit 2 (Page 3 of 3) - Property Land Area of 16 Locust Drive and Adjoining Lots

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 01 **Account Number -** 0123153610

Owner Information

Owner Name:	WEHLAND LAURA GRACE	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	C/O LAURA G WEHLAND-SCHERER 14 LOCUST DR BALTIMORE MD 21228-	**Deed Reference:**	/05430/ 00159

Location & Structure Information

Premises Address:	14 LOCUST DR BALTIMORE 21228-	**Legal Description:**	302 N MAGRUDER AVE LOCUST DRIVE EXT

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0101	0007	0258	1070130.04	0000	A		7	2019	**Plat Ref:** 0010/ 0109

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1937	1,358 SF		4,950 SF	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1 1/2	NO	STANDARD UNIT	BRICK/	5	1 full	1 Detached	

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2019	As of 07/01/2020	As of 07/01/2021
Land:	116,600	146,500		
Improvements	147,500	140,100		
Total:	264,100	286,600	279,100	286,600
Preferential Land:	0	0		

Transfer Information

Seller: HARRISON CAROLINE M W	**Date:** 05/31/2006	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05430/ 00159	**Deed2:**
Seller: WEHLAND WILLIAM H	**Date:** 03/07/1974	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /05430/ 00159	**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:**

Zoning Hearing Case No. 2020-0224-A
16 Locust Drive
Exhibit 3 (Page 1 of 2) - Existing Homes Surrounding 16 Locust Drive



Homes to the Left of Lot (18 and 20 Locust Drive)



Homes to the Right of Lot (14, 12, 10 Locust Drive)

Zoning Hearing Case No. 2020-0224-A
16 Locust Drive
Exhibit 3 (Page 2 of 2) - Existing Homes Surrounding 16 Locust Drive



Homes Across and to the Left of Lot (21, 19, 17, 15 Locust Drive)



Homes Across and to the Right of Lot (23, 25, 27, 29 Locust Drive)

Zoning Hearing Case No. 2020-0224-A
16 Locust Drive
Exhibit 4 (Page 1 of 4) - Petition to Object to Proposed Variance

Petition to Object to Proposed Variance

Petition summary and background	The empty lot at 16 Locust Drive was recently listed for sale by the current owner and is now under contract, pending the approval of several zoning variances that would modify the set back requirements and overall lot size requirement to build a new, single family home. Signs were recently posted on the lot to notify residents of a virtual public hearing that will take place on January 26th at 10:00am. I hope that many of you will register to attend in order to show your support for those of us who wish to keep this area a green space and NOT allow a home to be built on a lot that is so clearly under-sized (it is approximately 5,000sf - the required lot size for a new home built in this area has a minimum of 20,000sf, per the current zoning laws). Our goal during the hearing is to share our reasons for opposing the request for variances relating to the size of the lot, which, if approved, would allow for a new home to be built in that space. If you would like to support our case against the variance request but are unable to attend the virtual hearing, please sign this petition.
Action petitioned for	We, the undersigned, are concerned residents who urge the Administrative Law Judge to deny the proposed variance for 16 Locust Drive in Catonsville, MD.

Date	Printed Name	Signature	Address	Phone Number	Length of Time as Resident	Additional Information
1/8/21	Amy Miller		8 Locust Drive Catonsville, MD 21228	443-632-5072	11 months	
1/9/21	Paula Raimondo		25 LOCUST DR C'VILLE 21228	443 845-2049	21 yrs	
1/9/21	John Shiffletto		23 Locust Drive Catonsville, MD 21228	443-204-1117	18 yrs	
1/9/21	THERESA WERNER		27 LOCUST DR CATONSVILLE, MD 21228	410-747-1192	52 yrs	
1/9/21	Rachel Waltermyer		113 Locust Dr Catonsville, MD 21228	410-456-2862	8 yrs	
1/9/21	TRACY REHMERT		104 Oak Drive Catonsville, MD 21228	410 916-1806	11 YRS	
1/9/21	Patrick Foley		123 Forest Dr. Catonsville MD 21228	410-206-6873	5 YRS	

Zoning Hearing Case No. 2020-0224-A
16 Locust Drive
Exhibit 4 (Page 2 of 4) - Petition to Object to Proposed Variance

Date	Printed Name	Signature	Address	Phone Number	Length of Time as Resident	Additional Information
1/9/21	Lauren Foley	Lauren Foley	123 Forest Dr. Catonsville, MD 21228	443-794-8679	5 1/2 yrs	
1.9.21	JULIA P. KING	J P. K	18 LOCUST DRIVE	443.463.7601	6 1/2 YEARS	
1/9/21	Alex Scoffi	Alex Scoffi	17 Locust Dr.	443-799[illegible]3 20		
1/10/21	Brian Heldmann	[signature]	107 Locust Dr	410-952-7802	1 year	
1/10/21	Allison Heldmann	Alli Heldm	107 Locust Dr	443-980-2462	1 year	
1/10/21	JOHN KRACH III	[signature]	108 Locust Dr	410-455-0611	11 YR.	
1/10/21	Julie Krach	[signature]	108 Locust Dr	410.4550611	11 yrs	
1/10/21	Kimberly Neal	Kimberly Neal	20 Locust Dr.	443-509-0102	7 yrs	
1/10/21	Margaret Decker	Margaret Decker	12 Locust Dr.	321.301.6449	1 year	
1/10/21	Paul D. Dongarra	[signature]	11 Forest D	410-733-6077	18 yrs	
1-10-21	Rebecca Dongarra	Rebecca P. Dongarra	11 FOREST DR	4107336076	19 yr	
1-10-21	Shelley Puhak	Shelley Puhak	110 Locust Dr	410-294-7909	10 1/2 yr	
1/11/21	Temple Zito	Temple Zito	101 Locust DR	410-868-9793	21 YRS	
1/11/21	LINDA L. DRENGER	[signature]	101 LOCUST DR	410-533-5164	21 YRS	
1/11/21	LORETTA LILLINGSWORTH	[signature]	22 Locust DR	410-747-3151	36 years	

Zoning Hearing Case No. 2020-0224-A
16 Locust Drive
Exhibit 4 (Page 3 of 4) - Petition to Object to Proposed Variance

Date	Printed Name	Signature	Address	Phone Number	Length of Time as Resident	Additional Information
1/11/2021	Amy Stevens	Amy Stevens	24 Locust Dr	443-992-2648	17 yrs	
1/11/2021	Richard Stevens		24 Locust Dr	443 992 2647	17 yrs	
1/11/21	Gabe Cohee		214 Newbury Ave	4108977474	6 yrs	
1/11/21	Caitlin Hook		157 Sanford Ave	4104046832	6 yrs	
1/11/21	Steve Hook				6 yrs	
1/11/21	Hailey Hook	Hailey Hook			6 yrs	
1/11/21	Evan Brown		1253 Stevens Ave	410-299-1154	14 yrs	
1/11/2021	Lauren Brown		212 Newbury Ave	(410) 303-7184	3 yrs	
1/12/21	Ryan King		18 Locust Dr	4435040085	6.5 years	
1/13/21	Aaron Ned		20 Locost Dr	443-614-4483	7 yrs	
1/13/21	JOANNE HIMES	Joanne Himes	23 SANford AVE	443-8453670	20 yrs	
1/13/21	Diane Neels	Diane Neels	25 Sanford Ave	4102898927	44 yrs	
1/14/21	Laura Scherer	Laura Scherer	14 Locust Dr.	631-252-5214	64 yrs	
1/14/21	Gary Scherer	Gary Scherer	14 Locust Dr.	631-252-5217	1 year	
1/17/21	Dacia Gaver		6 Locust Dr.	443-878-4124	13 yrs	

Zoning Hearing Case No. 2020-0224-A
16 Locust Drive
Exhibit 4 (Page 4 of 4) - Petition to Object to Proposed Variance

Date	Printed Name	Signature	Address	Phone Number	Length of Time as Resident	Additional Information
1/17/2021	MARY K. BAHR-Robertson	Mary K. Bahr Robertson	31 Locust Dr Catonsville MD 21228	410 788-5517	19½ years	
1/17/2021	Richard W. Robertson	Richard W Robertson	31 Locust Dr. Catonsville MD 21228	301.785.7308	19½ yrs.	
1/17/21	John Crutchlow	John Crutchlow	6 Locust Dr Catonsville, MD 21229	443.956.1287	13yrs	
	KATHLEEN MASKAVICH	Kathleen R MaskAvich	19 Locust Dr - Catonsville Md	410-747-9628	71 years	Original owners = Builders Clayton & Buena of this street (my dad)
1/17/21	Laura Parry	Laura Parry	29 Locust Dr. Catonsville MD 21228	843 793 862	6 months	
1/21/21	GERRY HEMMING	Jerry Hemming	109 LOCUST DR CATONSVILLE MD	301. 807 4783	17 YR.	

Zoning Hearing Case No. 2020-0224-A
16 Locust Drive
Exhibit 5 (Page 1 of 1) - Letter to Zoning Commissioner

Ryan & Julie King
18 Locust Drive
Catonsville, MD 21228
rking316@gmail.com
julieking815@gmail.com

January 21, 2021

RE: Zoning Hearing Case No. 2020-0224-A, 16 Locust Drive

Dear Zoning Commissioner,

Please accept the attached submission of documents pertaining to the above referenced zoning hearing case concerning 16 Locust Drive in Catonsville. My name is Julie King, and my husband, Ryan, and I, have owned our home at 18 Locust Drive for 6 ½ years, and are direct neighbors to the lot at 16 Locust Drive. We plan to attend the public hearing for this case in order to object to the proposed zoning variance requests at 16 Locust Drive. We will argue that the lot is not unique, based on the attached Exhibits 1 and 2, which are being submitted to show the similarity in size, shape, and topography of this property and the adjoining lots. Each lot is rectangular in shape, roughly 5,000sf, and with similar land features. We ask that you take into consideration the grossly undersized lot area of 5,000sf, which is significantly less than the required 20,000sf minimum lot area for any new home construction in a DR2 zone. In addition to the reduction of the required lot size, we are also concerned about the variance requests to reduce both side yard setbacks, as well as the rear yard setback. We respectfully request that you not make an exception to the law in this case, in order to maintain the integrity of the current zoning regulations, and ensure that a precedent is not set for future new construction projects that do not fall within the limitations of the zoning laws in this area.

Additionally, based on the homebuilder's plans on record with the Baltimore County Department of Planning, we feel that the home design and facade appearance will alter the character and aesthetics of the neighborhood, causing a negative effect on the property value of the surrounding homes. The attached Exhibit 3 is being submitted in order to show a representation of the architectural style and character of the homes surrounding the property at 16 Locust Drive. As you can see, the plans currently in place for new home construction at 16 Locust Drive would not be appropriate in the context of the neighborhood, which is within the boundaries of the Central Catonsville and Summit Park Historic District.

We are also concerned that the construction of a new home on this property - which will eliminate much of the current open landscape - will bring impermeable surfaces to an area that is already so easily saturated, even after the slightest rainfall. This will directly affect the surrounding neighbors, all of whom have experienced basement water issues due to the moisture in the area.

Lastly, many residents in the neighborhood are opposed to the change in use of this space. We have collected over 40 signatures petitioning the proposed variances, which we have submitted in Exhibit 4, also attached. Both direct neighbors and residents from surrounding streets have expressed concern over new home construction in this space, as well the precedent that would be set if zoning variances were approved in this case.

Thank you for your time and consideration in closely reviewing our arguments against the requested zoning variances.

Sincerely,

Ryan King, 443.904.0085
Julie King, 443.463.7601

1/26/21
10 AM
2020-0224-A

Debra Wiley

From: Kristen L Lewis
Sent: Tuesday, December 29, 2020 12:27 PM
To: Debra Wiley
Cc: Donna Mignon
Subject: 2020-0224-A
Attachments: 20201229122434716.pdf

Hi Debbie,

I don't see that I sent this one over last week for a webex link. Thank you!

Kristen Lewis-Coles
PAI – Zoning Review
410-887-3391

JOHN A. OLSZEWSKI, JR.
County Executive

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

December 22, 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: 2020-0224-A
16 Locust Drive
West side of Locust Drive, south to the centerline of Magruder Avenue
1st Election District – 1st Councilmanic District
Legal Owners: Cornelius Helfrich

Variance to allow a 10 ft. side yard setback in lieu of the required 15 ft. and a combination of 20 ft. in lieu of the required 40 ft. To allow a rear yard setback of 25 ft. in lieu of the required 40 ft. To allow a lot width of 50 ft. in lieu of the required minimum of 100 ft. To allow a lot area of 5,850 sq. ft. in lieu of the minimum required 20,000 sq. ft.

Hearing: Tuesday, January 26, 2021 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.

Michael Mallinoff
Director

MM:kl

C: Richardson Engineering, 30 E. Padonia Road, Ste. 500, Timonium 21093
Dominion Properties, 1029 N. Calvert Street, Baltimore 21202
Cornelius Helfrich, 31 E. Lee Street, Belair 21014

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WED., JANUARY 6, 2021.**

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 16 Locust Drive **which is presently zoned** DR-2

Deed References: 32178/253 10 Digit Tax Account # 01062011501

Property Owner(s) Printed Name(s) Cornelius David Helfrich

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

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

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

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

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

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

TO BE PRESENTED AT 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:

Dominion Properties
Name- Type or Print

Signature

1029 N Calvert St Baltimore MD
Mailing Address City State

21202 / 410-727-4305 / johnw@thedominiongroup.com
Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Cornelius D. Helfrich /
Name #1 - Type or Print Name #2 - Type or Print

Signature #1 Signature # 2

31 E. Lee Street Belair MD
Mailing Address City State

21014 / 4104912538 / Neil@helfrichlaw.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Representative to be contacted:

Richardson Engineering, LLC
Name - Type or Print

Signature

30 E. Padonia Road, Suite 500 Timonium MD
Mailing Address City State

21093 / 410-560-1502 / Rick@RichardsonEngineering.net
Zip Code Telephone # Email Address

CASE NUMBER 2020-0274-A Filing Date 10/9/20 Do Not Schedule Dates: _____ Reviewer GR

REV. 10/4/11

Revised

Create 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.
☐	Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Henry Ayakwah (Alternate Host)	hayakwah@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Patrick Richardson	rick@richardsonengineering.net	1-	English	New York Time	U.S.
☐	Dominion Properties	johnw@thedominiongroup.com	1-	English	New York Time	U.S.
☐	Cornelius D Helfrich	neil@helfrichlaw.com	1-	English	New York Time	U.S.

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 Standard Time, GMT-05:00)

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, December 29, 2020 12:56 PM
To: Kristen L Lewis
Cc: Donna Mignon
Subject: Link - Case No. 2020-0224-A - Cornelius Helfrich

Event Information

Event:	Zoning Hearing - Case No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich
Type:	Listed Event
Event address for attendees:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e9
Event address for panelists:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e2
Date and time:	Tuesday, January 26, 2021 10:00 am Eastern Standard Time (New York, GMT-05:00)
Duration:	1 hour
Description:	Zoning Hearing Case No. 2020-0224-A 16 Locust Drive Cornelius Helfrich
Event number:	180 780 0379
Event password:	1234
Host key:	157142
Alternate Host:	Donna Mignon,Henry Ayakwah,Maureen Murphy
Panelist Info:	
Panelist password:	
Panelist numeric password:	198847
Video Address:	1807800379@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: 180 780 0379
Maximum number of registrants:	10000

Event Information

Event:	Zoning Hearing - Case No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich
Type:	Listed Event
Event address for attendees:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e945ff4c4fbdaefa1cdd95ff73415062f
Event address for panelists:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e2f156bcbabba01d43c09ecf22d02b5bc
Date and time:	Tuesday, January 26, 2021 10:00 am Eastern Standard Time (New York, GMT-05:00)
Duration:	1 hour
Description:	Zoning Hearing Case No. 2020-0224-A 16 Locust Drive Cornelius Helfrich
Event number:	180 780 0379
Event password:	1234
Host key:	157142
Alternate Host:	Donna Mignon,Henry Ayakwah,Maureen Murphy
Panelist Info:	
Panelist password:	
Panelist numeric password:	198847
Video Address:	1807800379@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: 180 780 0379
Maximum number of registrants:	10000
Destination address after event:	
Host image:	
Attendee list available for viewing by:	Host, presenter and panelists only
Event material:	None
Post-event survey:	No
Email configured:	Pending, Approved, Rejected

Start Event Now

You can start the event by clicking Start Now.

Start Now

Send Event Emails

You can send event emails by clicking Send Emails.

Send Emails

Registration Information

Registration ID required:	No
Password required:	No
Password:	
Approval required:	No
Custom registration form:	No
After registration, go to URL:	

Manage Registrations | Delete Event | Edit Event

Debra Wiley

Subject:	Web seminar scheduled: Zoning Hearing - Case No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich
Location:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=ee57a855e76368c132f8343faaf1271be
Start:	Tue 1/26/2021 10:00 AM
End:	Tue 1/26/2021 11:00 AM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	webex

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

When it's time, start the Webex event here.

Host: Debra Wiley (dwiley@baltimorecountymd.gov)
Event number (access code): 180 780 0379

Tuesday, January 26, 2021 10:00 am, Eastern Standard Time (New York, GMT-05:00)

Event address for attendees:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=ee57a855e76368c132f8343faaf12
Event address for panelists:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=eb91fc021d42bb85c7c0d57b9207

Start event

Audio conference information
+1-415-655-0001 US Toll
Global call-in numbers

Join from a video system or application

Dial 1807800379@baltimorecountymd.webex.com
You can also dial 173.243.2.68 and enter your meeting number.
Panelist numeric password: 198847

If you are a host, click here to view host information:
https://baltimorecountymd.webex.com/baltimorecountymd/j.php?MTID=e8ff7007e3694984cb7666ef2ad36be2d

Need help? Go to https://help.webex.com

Debra Wiley

From: messenger@webex.com
Sent: Tuesday, December 29, 2020 12:55 PM
To: Debra Wiley
Subject: Email delivery status for Web seminar: Zoning Hearing - Case No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich

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cisco Webex

Webex sent the email message "Panelist Invitation" for your event.

Number of email addresses the message was sent to successfully: 4

Number of email addresses the message could not be sent to: 0

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Debra Wiley

From: messenger@webex.com
Sent: Tuesday, December 29, 2020 12:55 PM
To: Debra Wiley
Subject: Email delivery status for Web seminar: Zoning Hearing - Case No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich

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

cisco Webex

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Number of email addresses the message could not be sent to: 0

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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.
☐	Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Cornelius D Helfrich	neil@helfrichlaw.com	1-	English	New York Time	U.S.
☐	Dominion Properties	johnw@thedominiongroup.com	1-	English	New York Time	U.S.
☐	Patrick Richardson	rick@richardsonengineering.net	1-	English	New York Time	U.S.
☐	Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Ryan King	rking316@gmail.com	1-	English	New York Time	U.S.
☐	Julie King	julieking815@gmail.com	1-	English	New York Time	U.S.

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 Standard Time, GMT-05:00)

Language: English

Locale: U.S.

☐ Add new panelist in my address book

☐ Invite as alternate host

Donna Mignon

From: webmaster@baltimorecountymd.gov
Sent: Monday, January 4, 2021 1:34 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Julie
Last Name	King
Email	julieking815@gmail.com
Phone	4434637601
Address	18 Locust Drive
City	Catonsville
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	01-26-2021

Donna Mignon

From: webmaster@baltimorecountymd.gov
Sent: Monday, January 4, 2021 1:27 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Ryan
Last Name	King
Email	rking316@gmail.com
Phone	4439040085
Address	18 Locust Drive
City	Catonsville
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	01-26-2021

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.
☐	Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Cornelius D Helfrich	neil@helfrichlaw.com	1-	English	New York Time	U.S.
☐	Dominion Properties	johnw@thedominiongroup.com	1-	English	New York Time	U.S.
☐	Julie King	julieking815@gmail.com	1-	English	New York Time	U.S.
☐	Patrick Richardson	rick@richardsonengineering.net	1-	English	New York Time	U.S.
☐	Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Ryan King	rking316@gmail.com	1-	English	New York Time	U.S.
☑	Richard Robertson	rrobertson@mimaki.com	1-	English	New York Time	U.S.
☑	Mary Bahr-Robertson	mbahr@som.umaryland.edu	1-	English	New York Time	U.S.

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 Standard Time, GMT-05:00)

Language: English

Locale: U.S.

☐ Add new panelist in my address book

☐ Invite as alternate host

Sent invite 1-5-21

1-22-21 10 AM

Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Monday, January 4, 2021 10:04 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Richard
Last Name	Robertson
Email	rrobertson@mimaki.com
Phone	4107885517
Address	31 Locust Dr
City	Catonsville
State	Maryland
ZIP Code	21228-5002
Case Number	2020-0224-A
Scheduled Hearing Date	01/26/2021

Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Monday, January 4, 2021 10:01 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Mary
Last Name	Bahr-Robertson
Email	mbahr@som.umaryland.edu
Phone	4104402620
Address	31 LOCUST DR
City	CATONSVILLE
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	01/26/2021

Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Monday, January 4, 2021 10:00 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Mary
Last Name	Bahr-Robertson
Email	mbahr@som.umaryland.edu
Phone	4104402620
Address	31 LOCUST DR
City	CATONSVILLE
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	01/26/2021

1-26-21
10 Am

Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Tuesday, January 5, 2021 5:37 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Laura
Last Name	Scherer
Email	glals@optonline.net
Phone	631-252-5214
Address	14 Locust Drive
City	Catonsville
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	01/26/2021

Invited 1-6-21

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.
☐	Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Cornelius D Helfrich	neil@helfrichlaw.com	1-	English	New York Time	U.S.
☐	Dominion Properties	johnw@thedominiongroup.com	1-	English	New York Time	U.S.
☐	Julie King	julieking815@gmail.com	1-	English	New York Time	U.S.
☐	Laura Scherer	glals@optonline.net	1-	English	New York Time	U.S.
☐	Mary Bahr-Robertson	mbahr@som.umaryland.edu	1-	English	New York Time	U.S.
☐	Patrick Richardson	rick@richardsonengineering.net	1-	English	New York Time	U.S.
☐	Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Richard Robertson	rrobertson@mimaki.com	1-	English	New York Time	U.S.
☐	Ryan King	rking316@gmail.com	1-	English	New York Time	U.S.

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 Standard Time, GMT-05:00)

Language: English

Locale: U.S.

☐ Add new panelist in my address book

Debra Wiley

From: messenger@webex.com
Sent: Wednesday, January 6, 2021 8:11 AM
To: Debra Wiley
Subject: Email delivery status for Web seminar: Zoning Hearing - Case No. 2020-0224-A - 16 Locust Dr - Cornelius Helfrich

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

cisco Webex

Webex sent the email message "Panelist Invitation" for your event.

Number of email addresses the message was sent to successfully: 1

Number of email addresses the message could not be sent to: 0

Need help? Go to https://help.webex.com

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1-26-21
10 AM

Donna Mignon

From: webmaster@baltimorecountymd.gov
Sent: Thursday, January 7, 2021 11:05 AM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Lindsay
Last Name	Scherer
Email	lindsayscherer@gmail.com
Phone	631-921-7619
Address	14 Locust Drive
City	Catonsvile
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	01/26/2020

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.
Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	New York Time	English	U.S.
Cornelius D Helfrich	neil@helfrichlaw.com	1-	New York Time	English	U.S.
Dominion Properties	johnw@thedominiongroup.com	1-	New York Time	English	U.S.
Julie King	julieking815@gmail.com	1-	New York Time	English	U.S.
Laura Scherer	glals@optonline.net	1-	New York Time	English	U.S.
Lindsay Scherer	lindsayscherer@gmail.com	1-	New York Time	English	U.S.
Mary Bahr-Robertson	mbahr@som.umaryland.edu	1-	New York Time	English	U.S.
Patrick Richardson	rick@richardsonengineering.net	1-	New York Time	English	U.S.
Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	New York Time	English	U.S.
Richard Robertson	rrobertson@mimaki.com	1-	New York Time	English	U.S.
Ryan King	rking316@gmail.com	1-	New York Time	English	U.S.

OK

1-26-21
10 Am

Donna Mignon

From: webmaster@baltimorecountymd.gov
Sent: Thursday, January 7, 2021 12:55 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Rachel
Last Name	Waltermyer
Email	Rkwaltermyer@gmail.com
Phone	4104562862
Address	113 Locust Dr
City	Catonsville
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	1/26/2021

✓ 1-7-21

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.
Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	New York Time	English	U.S.
Cornelius D Helfrich	neil@helfrichlaw.com	1-	New York Time	English	U.S.
Dominion Properties	johnw@thedominiongroup.com	1-	New York Time	English	U.S.
Julie King	julieking815@gmail.com	1-	New York Time	English	U.S.
Laura Scherer	glals@optonline.net	1-	New York Time	English	U.S.
Lindsay Scherer	lindsayscherer@gmail.com	1-	New York Time	English	U.S.
Mary Bahr-Robertson	mbahr@som.umaryland.edu	1-	New York Time	English	U.S.
Patrick Richardson	rick@richardsonengineering.net	1-	New York Time	English	U.S.
Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	New York Time	English	U.S.
Rachel Waltermyer	rkwaltermyer@gmail.com	1-	New York Time	English	U.S.
Richard Robertson	rrobertson@mimaki.com	1-	New York Time	English	U.S.
Ryan King	rking316@gmail.com	1-	New York Time	English	U.S.

OK

Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Thursday, January 7, 2021 5:57 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Gary
Last Name	Scherer
Email	glals@optonline.net
Phone	6312525217
Address	14 Locust Drive
City	Catonsville
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	01/26/2021

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.
☐	Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Cornelius D Helfrich	neil@helfrichlaw.com	1-	English	New York Time	U.S.
☐	Dominion Properties	johnw@thedominiongroup.com	1-	English	New York Time	U.S.
☐	Julie King	julieking815@gmail.com	1-	English	New York Time	U.S.
☐	Lindsay Scherer	lindsayscherer@gmail.com	1-	English	New York Time	U.S.
☐	Mary Bahr-Robertson	mbahr@som.umaryland.edu	1-	English	New York Time	U.S.
☐	Patrick Richardson	rick@richardsonengineering.net	1-	English	New York Time	U.S.
☐	Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Rachel Waltermyer	rkwaltermyer@gmail.com	1-	English	New York Time	U.S.
☐	Richard Robertson	rrobertson@mimaki.com	1-	English	New York Time	U.S.
☐	Ryan King	rking316@gmail.com	1-	English	New York Time	U.S.
☑	Gary Scherer	glals@optonline.net	1-	English	New York Time	U.S.

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 Standard Time, GMT-05:00)

Language: English

Locale: U.S.

☐ Add new panelist in my address book

☐ Invite as alternate host

Add to Invitation List

1-26-21

Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Friday, January 8, 2021 12:21 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Gabe
Last Name	Cohee
Email	gabecohee@gmail.com
Phone	4108977474
Address	214 Newburg Ave
City	Catonsville
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	1/26/2021

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.
☐	Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Cornelius D Helfrich	neil@helfrichlaw.com	1-	English	New York Time	U.S.
☐	Dominion Properties	johnw@thedominiongroup.com	1-	English	New York Time	U.S.
☐	Gary Scherer	glals@optonline.net	1-	English	New York Time	U.S.
☐	Julie King	julieking815@gmail.com	1-	English	New York Time	U.S.
☐	Lindsay Scherer	lindsayscherer@gmail.com	1-	English	New York Time	U.S.
☐	Mary Bahr-Robertson	mbahr@som.umaryland.edu	1-	English	New York Time	U.S.
☐	Patrick Richardson	rick@richardsonengineering.net	1-	English	New York Time	U.S.
☐	Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐	Rachel Waltermyer	rkwaltermyer@gmail.com	1-	English	New York Time	U.S.
☐	Richard Robertson	rrobertson@mimaki.com	1-	English	New York Time	U.S.
☐	Ryan King	rking316@gmail.com	1-	English	New York Time	U.S.
☑	Gabe Cohee	gabecohee@gmail.com	1-	English	New York Time	U.S.

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 Standard Time, GMT-05:00)

Language: English

Locale: U.S.

☐ Add new panelist in my address book

☐ Invite as alternate host

Add to Invitation List

PM 1-26-21
10 AM

Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Friday, January 22, 2021 4:11 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Theresa
Last Name	Werner
Email	werner.27@comcast.net
Phone	4107471192
Address	27 Locust Drive
City	Catonsville
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	January 26, 2021

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.
☐ Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐ Cornelius D Helfrich	neil@helfrichlaw.com	1-	English	New York Time	U.S.
☐ Dominion Properties	johnw@thedominiongroup.com	1-	English	New York Time	U.S.
☐ Gabe Cohee	gabecohee@gmail.com	1-	English	New York Time	U.S.
☐ Gary Scherer	glals@optonline.net	1-	English	New York Time	U.S.
☐ Julie King	julieking815@gmail.com	1-	English	New York Time	U.S.
☐ Lindsay Scherer	lindsayscherer@gmail.com	1-	English	New York Time	U.S.
☐ Mary Bahr-Robertson	mbahr@som.umaryland.edu	1-	English	New York Time	U.S.
☐ Patrick Richardson	rick@richardsonengineering.net	1-	English	New York Time	U.S.
☐ Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	English	New York Time	U.S.
☐ Rachel Waltermyer	rkwaltermyer@gmail.com	1-	English	New York Time	U.S.
☐ Richard Robertson	rrobertson@mimaki.com	1-	English	New York Time	U.S.
☐ Ryan King	rking316@gmail.com	1-	English	New York Time	U.S.
☑ Theresa Werner	werner.27@comcast.net	1-	English	New York Time	U.S.

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 Standard Time, GMT-05:00)

Language: English

Locale: U.S.

☐ Add new panelist in my address book

☐ Invite as alternate host

Add to Invitation List

PM 1-26-21 10AM

Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Saturday, January 23, 2021 11:33 PM
To: Administrative Hearings
Subject: Request to Testify

Follow Up Flag: Follow up
Flag Status: Flagged

Results of Form Submission

Request to Testify

Label	Value
First Name	Kathleen
Last Name	Sanders
Email	msandbox321@aol.com
Phone	4107888682
Address	21 Locust Drive
City	Catonsville
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	1/26/2021

Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Saturday, January 23, 2021 11:34 PM
To: Administrative Hearings
Subject: Request to Testify

Follow Up Flag: Follow up
Flag Status: Flagged

Results of Form Submission

Request to Testify

Label	Value
First Name	Barry
Last Name	Sanders
Email	msandbox321@aol.com
Phone	4107888682
Address	21 Locust Drive
City	Catonsville
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	1/26/2021

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.
Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	New York Time	English	U.S.
Barry and Kathleen Sanders	msandbox321@aol.com	1-	New York Time	English	U.S.
Cornelius D Helfrich	neil@helfrichlaw.com	1-	New York Time	English	U.S.
Dominion Properties	johnw@thedominiongroup.com	1-	New York Time	English	U.S.
Gabe Cohee	gabecohee@gmail.com	1-	New York Time	English	U.S.
Gary Scherer	glals@optonline.net	1-	New York Time	English	U.S.
Julie King	julieking815@gmail.com	1-	New York Time	English	U.S.
Lindsay Scherer	lindsayscherer@gmail.com	1-	New York Time	English	U.S.
Mary Bahr-Robertson	mbahr@som.umaryland.edu	1-	New York Time	English	U.S.
Patrick Richardson	rick@richardsonengineering.net	1-	New York Time	English	U.S.
Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	New York Time	English	U.S.
Rachel Waltermyer	rkwaltermyer@gmail.com	1-	New York Time	English	U.S.
Richard Robertson	rrobertson@mimaki.com	1-	New York Time	English	U.S.
Ryan King	rking316@gmail.com	1-	New York Time	English	U.S.
Theresa Werner	werner.27@comcast.net	1-	New York Time	English	U.S.

OK

PM 1-26-21 10AM

Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Sunday, January 24, 2021 9:09 PM
To: Administrative Hearings
Subject: Request to Testify

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Results of Form Submission

Request to Testify

Label	Value
First Name	Amy
Last Name	Stevens
Email	Astevens314@yahoo.com
Phone	4439922648
Address	24 Locust Dr
City	Catonsville
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	1/26/21

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.
Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	English	New York Time	U.S.
Barry and Kathleen Sanders	msandbox321@aol.com	1-	English	New York Time	U.S.
Cornelius D Helfrich	neil@helfrichlaw.com	1-	English	New York Time	U.S.
Dominion Properties	johnw@thedominiongroup.com	1-	English	New York Time	U.S.
Gabe Cohee	gabecohee@gmail.com	1-	English	New York Time	U.S.
Gary Scherer	glals@optonline.net	1-	English	New York Time	U.S.
Julie King	julieking815@gmail.com	1-	English	New York Time	U.S.
Lindsay Scherer	lindsayscherer@gmail.com	1-	English	New York Time	U.S.
Mary Bahr-Robertson	mbahr@som.umaryland.edu	1-	English	New York Time	U.S.
Patrick Richardson	rick@richardsonengineering.net	1-	English	New York Time	U.S.
Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	English	New York Time	U.S.
Rachel Waltermyer	rkwaltermyer@gmail.com	1-	English	New York Time	U.S.
Richard Robertson	rrobertson@mimaki.com	1-	English	New York Time	U.S.
Ryan King	rking316@gmail.com	1-	English	New York Time	U.S.
Theresa Werner	werner.27@comcast.net	1-	English	New York Time	U.S.
Amy Stevens	astevens314@yahoo.com	1-	English	New York Time	U.S.

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 Standard Time, GMT-05:00)

Language: English

Locale: U.S.

Add new panelist in my address book

Invite as alternate host

Add to Invitation List

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.
Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	New York Time	English	U.S.
Amy Stevens	astevens314@yahoo.com	1-	New York Time	English	U.S.
Barry and Kathleen Sanders	msandbox321@aol.com	1-	New York Time	English	U.S.
Cornelius D Helfrich	neil@helfrichlaw.com	1-	New York Time	English	U.S.
Dominion Properties	johnw@thedominiongroup.com	1-	New York Time	English	U.S.
Gabe Cohee	gabecohee@gmail.com	1-	New York Time	English	U.S.
Gary Scherer	glals@optonline.net	1-	New York Time	English	U.S.
Julie King	julieking815@gmail.com	1-	New York Time	English	U.S.
Lindsay Scherer	lindsayscherer@gmail.com	1-	New York Time	English	U.S.
Mary Bahr-Robertson	mbahr@som.umaryland.edu	1-	New York Time	English	U.S.
Patrick Richardson	rick@richardsonengineering.net	1-	New York Time	English	U.S.
Paul Mayhew	pmayhew@baltimorecountymd.gov	1-	New York Time	English	U.S.
Rachel Waltermyer	rkwaltermyer@gmail.com	1-	New York Time	English	U.S.
Richard Robertson	rrobertson@mimaki.com	1-	New York Time	English	U.S.
Ryan King	rking316@gmail.com	1-	New York Time	English	U.S.
Theresa Werner	werner.27@comcast.net	1-	New York Time	English	U.S.

OK

Mary Rego to Test, Ky

Deb Curtis event

Donna Mignon

From: Kristen L Lewis
Sent: Monday, March 8, 2021 2:57 PM
To: Donna Mignon; Debra Wiley
Subject: Webex 2020-0224-A

Good afternoon,

The case below was to be rescheduled due to the Judge Mayhew's direction of Mr. Richardson obtaining legal representation back on 1/26/21. Thank you,

Case 2020-0224-A
16 Locust Avenue
Owners: Cornelius Rich – neil@helfrichlaw.com
Contract Purchaser/Lessee: Dominion Properties - johnw@thedominiongroup.com
Rep – Patrick Richardson – rick@richardsonengineering.net
Lawyer – John Gontrum – jgontrum@wtplaw.com
4/6/21 at 1:30 p.m.

Kristen Lewis-Coles
PAI – Zoning Review
410-887-3391

Donna Mignon

Subject:	Web seminar scheduled: Zoning Hearing - Case No: 2020-0224-A - 16 Locust Avenue - Cornelius Rich
Location:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=ef231585b2a339c9334b0f17c3e8695bd
Start:	Tue 4/6/2021 1:30 PM
End:	Tue 4/6/2021 2:30 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	webex

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

When it's time, start the Webex event here.

Host: Donna Mignon (dmignon@baltimorecountymd.gov)
Event number (access code): 160 872 7943

Tuesday, April 6, 2021 1:30 pm, Eastern Daylight Time (New York, GMT-04:00)

Event address for attendees:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=ef231585b2a339c9334b0f17c3e8
Event address for panelists:
https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTID=e798a7842e59648dd1ec9382ddf

Start event

Audio conference information
+1-415-655-0001 US Toll
Global call-in numbers

Join from a video system or application

Dial 1608727943@baltimorecountymd.webex.com
You can also dial 173.243.2.68 and enter your meeting number.
Panelist numeric password: 808652

If you are a host, click here to view host information:
https://baltimorecountymd.webex.com/baltimorecountymd/j.php?MTID=efdb00453f972937a6f7ca98979ac700b

Need help? Go to https://help.webex.com

Donna Mignon

From: Donna Mignon
Sent: Monday, March 8, 2021 3:10 PM
To: Kristen L Lewis
Subject: Link - RE: Webex 2020-0224-A

Event Information

Event:	Zoning Hearing - Case No: 2020-0224-A - 16 Locust Avenue - Cornelius Rich
Type:	Listed Event
Event address for attendees:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTI
Event address for panelists:	https://baltimorecountymd.webex.com/baltimorecountymd/onstage/g.php?MTI
Date and time:	Tuesday, April 6, 2021 1:30 pm Eastern Daylight Time (New York, GMT-04:00)
Duration:	1 hour
Description:	Zoning Hearing - Case No: 2020-0224-A Address: 16 Locust Avenue Owners: Cornelius Rich Contract Purchaser/Lessee - Dominion Properties
Event number:	160 872 7943
Event password:	1234
Host key:	287478
Alternate Host:	Maureen Murphy,Paul Mayhew
Panelist Info:	
Panelist password:	
Panelist numeric password:	808652
Video Address:	1608727943@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: 160 872 7943
Maximum number of registrants:	10000
Destination address after event:	
Host image:	
Attendee list available for viewing by:	Host, presenter and panelists only
Event material:	None
Post-event survey:	No
Email configured:	Pending, Approved, Rejected

Registration Information

Registration ID required:	No

Password required:	No
Password:	
Approval required:	No
Custom registration form:	No
After registration, go to URL:	

From: Kristen L Lewis <klewis@baltimorecountymd.gov>
Sent: Monday, March 8, 2021 2:57 PM
To: Donna Mignon <dmignon@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Webex 2020-0224-A

Good afternoon,

The case below was to be rescheduled due to the Judge Mayhew's direction of Mr. Richardson obtaining legal representation back on 1/26/21. Thank you,

Case 2020-0224-A
16 Locust Avenue
Owners: Cornelius Rich – neil@helfrichlaw.com
Contract Purchaser/Lessee: Dominion Properties - johnw@thedominiongroup.com
Rep – Patrick Richardson – rick@richardsonengineering.net
Lawyer – John Gontrum – jgontrum@wtplaw.com
4/6/21 at 1:30 p.m.

Kristen Lewis-Coles
PAI – Zoning Review
410-887-3391

Panelist List

Name	Email address	Phone number	Time Zone	Language	Locale
Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	New York Time	English	U.S.
Paul Mayhew (Alternate Host)	pmayhew@baltimorecountymd.gov	1-	New York Time	English	U.S.
Amy Stevens	astevens314@yahoo.com	1-	New York Time	English	U.S.
Barry and Kathleen Sanders	msandbox321@aol.com	1-	New York Time	English	U.S.
Cornelius D. Helfrich	neil@helfrichlaw.com	1-	New York Time	English	U.S.
Deb Wiley	dwiley@baltimorecountymd.gov	1-	New York Time	English	U.S.
Dominion Properties	johnw@thedominiongroup.com	1-	New York Time	English	U.S.
Gabe Cohee	gabecohee@gmail.com	1-	New York Time	English	U.S.
Gary Scherer	glals@optonline.net	1-	New York Time	English	U.S.
John Gontrum	jgontrum@wtplaw.com	1-	New York Time	English	U.S.
Julie King	julieking815@gmail.com	1-	New York Time	English	U.S.
Lindsay Scherer	lindsayscherer@gmail.com	1-	New York Time	English	U.S.
Mary Bahr-Robertson	mbahr@som.umaryland.edu	1-	New York Time	English	U.S.
Patrick Richardson, Jr.	rick@richardsonengineering.net	1-	New York Time	English	U.S.
Rachel Waltermyer	rkwaltermyer@gmail.com	1-	New York Time	English	U.S.
Richard Robertson	rrobertson@mimaki.com	1-	New York Time	English	U.S.
Rosemary Taylor	valutaylor@yahoo.com	1-	New York Time	English	U.S.
Ryan King	rking316@gmail.com	1-	New York Time	English	U.S.
Theresa Werner	werner.27@comcast.net	1-	New York Time	English	U.S.

OK

Donna Mignon

From: webmaster@baltimorecountymd.gov
Sent: Monday, March 22, 2021 9:57 AM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Rosemary
Last Name	Taylor
Email	valutaylor@yahoo.com
Phone	4434742784
Address	15 S Beaumont Ave
City	Catonsville
State	Maryland
ZIP Code	21228
Case Number	2020-0224-A
Scheduled Hearing Date	April 6 2021

Panelist List

Name	Email address	Phone number	Time Zone	Language	Locale
Deb Wiley (Alternate Host)	dwiley@baltimorecountymd.gov	1-	New York Time	English	U.S.
Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	New York Time	English	U.S.
Paul Mayhew (Alternate Host)	pmayhew@baltimorecountymd.gov	1-	New York Time	English	U.S.
Charles Elliott	elliott@notredameprep.com	1-	New York Time	English	U.S.
John Mellema	jcmls@verizon.net	1-	New York Time	English	U.S.
Kim Carroll	masonprops@gmail.com	1-	New York Time	English	U.S.
Rosemary Taylor	valutaylor@yahoo.com	1-	New York Time	English	U.S.

OK

Panelist List

Name	Email address	Phone number	Time Zone	Language	Locale
Maureen Murphy (Alternate Host)	mmurphy@baltimorecountymd.gov	1-	New York Time	English	U.S.
Paul Mayhew (Alternate Host)	pmayhew@baltimorecountymd.gov	1-	New York Time	English	U.S.
Amy Stevens	astevens314@yahoo.com	1-	New York Time	English	U.S.
Barry and Kathleen Sanders	msandbox321@aol.com	1-	New York Time	English	U.S.
Cornelius D. Helfrich	neil@helfrichlaw.com	1-	New York Time	English	U.S.
Deb Wiley	dwiley@baltimorecountymd.gov	1-	New York Time	English	U.S.
Dominion Properties	johnw@thedominiongroup.com	1-	New York Time	English	U.S.
Gabe Cohee	gabecohee@gmail.com	1-	New York Time	English	U.S.
Gary Scherer	glals@optonline.net	1-	New York Time	English	U.S.
John Gontrum	jgontrum@wtplaw.com	1-	New York Time	English	U.S.
Julie King	julieking815@gmail.com	1-	New York Time	English	U.S.
Lawrence King	lfxking@comcast.net	1-	New York Time	English	U.S.
Lindsay Scherer	lindsayscherer@gmail.com	1-	New York Time	English	U.S.
Mary Bahr-Robertson	mbahr@som.umaryland.edu	1-	New York Time	English	U.S.
Patrick Richardson, Jr.	rick@richardsonengineering.net	1-	New York Time	English	U.S.
Rachel Waltermyer	rkwaltermyer@gmail.com	1-	New York Time	English	U.S.
Richard Robertson	rrobertson@mimaki.com	1-	New York Time	English	U.S.
Rosemary Taylor	valutaylor@yahoo.com	1-	New York Time	English	U.S.
Ryan King	rking316@gmail.com	1-	New York Time	English	U.S.
Theresa Werner	werner.27@comcast.net	1-	New York Time	English	U.S.

OK

You postponed this case back in Jan., told Rick Richardson to obtain counsel.

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 16 Locust Drive **which is presently zoned** DR-2

Deed References: 32178/253 10 Digit Tax Account # 01062011501

Property Owner(s) Printed Name(s) Cornelius David Helfrich

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

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

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

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

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

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

TO BE PRESENTED AT 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:

Dominion Properties
Name- Type or Print

Signature

1029 N Calvert St | Baltimore | MD
Mailing Address | City | State

21202 / 410-727-4305 / johnw@thedominiongroup.com
Zip Code | Telephone # | Email Address

Legal Owners (Petitioners):

Cornelius D. Helfrich / _____
Name #1 - Type or Print | Name #2 - Type or Print

Signature #1 | Signature # 2

31 E. Lee Street | Belair | MD
Mailing Address | City | State

21014 / 4104592536 Neil@helfrichlaw.com
Zip Code | Telephone # | Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address | City | State

Zip Code | Telephone # | Email Address

Representative to be contacted:

Richardson Engineering, LLC
Name - Type or Print

Signature

30 E. Padonia Road, Suite 500 | Timonium | MD
Mailing Address | City | State

21093 / 410-560-1502 / Rick@RichardsonEngineering.net
Zip Code | Telephone # | Email Address

ORDER RECEIVED FOR FILING
Date 10/9/20
By DMugnon

CASE NUMBER 2020-0274-A Filing Date 10/9/20 **Do Not Schedule Dates:** _____ **Reviewer** GR

REV. 10/4/11

Revised

Zoning Relief for 16 Locust Road

Variance

Per Section 1B02.3.C.1 to allow a 10' side yard setback in lieu of the required 15' and a combination of 20' in lieu of the required 40'.

Per Section 1B02.3.C.1 to allow a rear yard setback of 25' in lieu of the required 40'

Per Section 1B02.3.C.1 to allow a lot width of 50' in lieu of the required minimum of 100'

Per Section 1B02.3.C.1 to allow a lot area of 5,850 square feet in lieu of the minimum required 20,000 square feet

2020- 0224-A

Revised

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 16 Locust Drive **which is presently zoned** DR-2

Deed References: 32178/253 10 Digit Tax Account # 01062011501

Property Owner(s) Printed Name(s) Cornelius David Helfrich

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

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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)
See Attached

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

TO BE PRESENTED AT 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:

Dominion Properties
Name- Type or Print

Signature

1029 N Calvert St Baltimore MD
Mailing Address City State

21202 / 410-727-4305 / johnw@thedominiongroup.com
Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Cornelius D. Helfrich
Name #1 - Type or Print

Signature #1

Name #2 - Type or Print

Signature # 2

31 E. Lee Street Belair MD
Mailing Address City State

21014 / 4104592538 / Neil@helfrichlaw.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Representative to be contacted:

Richardson Engineering, LLC
Name - Type or Print

Signature

30 E. Padonia Road, Suite 500 Timonium MD
Mailing Address City State

21093 / 410-560-1502 / Rick@RichardsonEngineering.net
Zip Code Telephone # Email Address

CASE NUMBER 2020-0274-A Filing Date 10/9/20 Do Not Schedule Dates: _____ Reviewer GL

REV. 10/4/11

Revised

Zoning Relief for 16 Locust Road

Variance

Per Section 1B02.3.C.1 to allow a 10' side yard setback in lieu of the required 15' and a combination of 20' in lieu of the required 40'.

Per Section 1B02.3.C.1 to allow a rear yard setback of 25' in lieu of the required 40'

Per Section 1B02.3.C.1 to allow a lot width of 50' in lieu of the required minimum of 100'

Per Section 1B02.3.C.1 to allow a lot area of 5,850 square feet in lieu of the minimum required 20,000 square feet

2020- 0224-A

Revised

Richardson Engineering, LLC

30 E. Padonia Road, Suite 500
Timonium, Maryland 21093

Tel: (410) 560-1502
Fax: (443) 901-1208

ZONING PROPERTY DESCRIPTION FOR
16 LOCUST DRIVE
1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Located on the west side of Locust Drive approximately 273 feet north of the intersection with Magruder Avenue, being known as Lot #6 in the Plat of "Locust Drive Extended" as recorded in Plat Book C.W.B. No 10, Folio 109.

Containing a net area of 5,000 square feet or 0.11 acres +/-.

2020-0224-A

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH HEAT SENSITIVE INK HAND ICON AND MICROPRINTED BORDER.

Dominion Properties, L
1029 N Calvert Street
Baltimore, MD 21202
(410) 727-4305

WESBANC
ROCKVILLE, M 0

65-240/550

4445

8/31/2020

DETAILS ON BACK.

PAY TO THE ORDER OF Baltimore County, MD

$ **75.00

Seventy-Five and 00/100********** DOLLARS

SECURITY FEATURES INCLUDED

Office of Budget & Finance
400 Washington Avenue, Rm.# 150
Towson, MD 21204

MEMO 0016 Locust Dr, Catonsville 21228 - Zoning Petition

Erin Elliott

⑈004445⑈ ⑆055002406⑆ 50247023777⑈

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

No. 199680

Date: 9/4/2020

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	00000		6150				75

Total: 75

Rec From: Dominion Properties, LLC

For: 2020-0224-A

16 Locust Dr

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

CASHIER'S VALIDATION

CASH ONLY IF ALL C[illegible] SECURITY FEATURES LISTED ON BACK INDICATE NO T[illegible]G OR COPYING

Richardson Engineering, LLC 12/14
30 E Padonia Road, Suite 500
Timonium, MD 21093
(410) 560-1502

MANUFACTURERS & [illegible]ERS TR CO
7-11/520

11106

Oct 7, 2020

PAY TO THE ORDER OF Baltimore County, MD $ 100.00

One hundred and 00/100 DOLLARS

MEMO

Patrick C Richardson Jr MP

⑈011106⑈ ⑆052000113⑆ 9860645721⑈

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

No. 201261

Date: 10/9/20

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				100.00

Total: 100.00

Rec From: Rick Richardson

For: 16 Lowest Or

~~16 Lowest~~ D 2020-0224-A

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

CASHIER'S VALIDATION

4/6/21 @ 1:30

CASE NO. 2020-224A

CHECKLIST

✓ ltr
✓ Order
have exhibits

Comment Received	Department	Support/Oppose/ Conditions/ Comments/ No Comment
_____	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	_____
9/18	DEPS (if not received, date e-mail sent _____)	N/C
_____	FIRE DEPARTMENT	_____
_____	PLANNING (if not received, date e-mail sent _____)	_____
_____	STATE HIGHWAY ADMINISTRATION	_____
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 3/17/21

SIGN POSTING (1st) Date: 3/16/21 by Sgt. Black

SIGN POSTING (2nd) Date: 4/1/21 by "

PEOPLE'S COUNSEL APPEARANCE Yes ☐ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: Protestant ltr.
Many to Req. to Testify

1/26/21 @ 10:00

CASE NO. 2020-0224-A

CHECKLIST

✓ ltr Order

Comment Received	Department	Support/Oppose/ Conditions/ Comments/ No Comment
_____	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	_____
9/18	DEPS (if not received, date e-mail sent _____)	N/C
_____	FIRE DEPARTMENT	_____
_____	PLANNING (if not received, date e-mail sent _____)	_____
_____	STATE HIGHWAY ADMINISTRATION	_____
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 1/6/21

SIGN POSTING (1st) Date: Sat to Black by 1/4/21

SIGN POSTING (2nd) Date: " by 1/24/21

PEOPLE'S COUNSEL APPEARANCE Yes ☐ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: Many Req. to Testify in File

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: 2020-0224-A

Petitioner: DOMINION PROPERTIES

Address or Location: 46 LOCUST DRIVE

PLEASE FORWARD ADVERTISING BILL TO:

Name: DOMINION PROPERTIES

Address: 1029 N. CALVERT ST

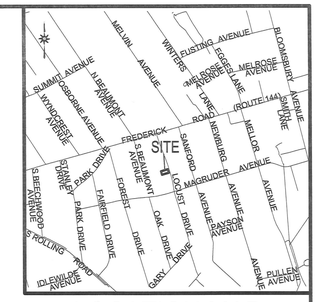
BALT. MD 21202

ATTN. JOHN WATSON

Telephone Number: 410-727-4305

Revised 2/20/98 - SCJ





LOCATION MAP

SCALE: 1" = 1000'

GENERAL NOTES:

1. OWNER: CORNELIUS DAVID HELFRICH
   31 E LEE ST
   BEL AIR MD 21014-8876
   CONTRACT PURCHASER:
   THE DOMINION GROUP
   1029 N CALVERT ST
   BALTIMORE, MD 21202
2. SITE AREA:
   NET: 5,000 SF OR 0.11 Ac.±
   GROSS: 5,850 SF OR 0.13 AC.±
3. USE:
   EXISTING: VACANT
   PROPOSED: 1 RESIDENTIAL DWELLING
4. UTILITIES: PUBLIC WATER AND SEWER
5. DEED REF: 32178/253
6. TAX ACCOUNT: 0106201150
7. ZONING: DR 2
   (PER 1"=200' ZONING MAP 081C3)
8. TAX MAP: 101
   GRID: 7
   PARCEL: 258
   LOT: 8 "LOCUST DRIVE EXTENDED" PLAT 10/109
9. LOCATED IN ZONE X PER FLOOD INSURANCE RATE MAP (FIRM) PANEL 2400100388F DATED SEPTEMBER 26, 2008.
10. PREVIOUS ZONING CASES: NONE ON FILE.
11. PREVIOUS PERMITS: NONE ON FILE.
12. SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
13. THERE ARE NO HISTORIC FEATURES ON SITE NOR IS THE SITE ITSELF HISTORIC.
14. SETBACKS FOR DR 2

	REQUIRED	PROVIDED
FRONT	25'*	25'±
SIDE	20'	10'±
REAR	40'	25'±

* AVG SETBACK OF 25+24/2 = 25'

Richardson Engineering, LLC
30 East Padonia Road, Suite 500
Timonium, Maryland 21093
Phone: 410-560-1502 Fax: 443-901-1208

PLAN TO ACCOMPANY ZONING PETITION
FOR

PROPOSED RESIDENCE
DOMINION PROPERTIES

16 LOCUST DRIVE

BALTIMORE COUNTY — MARYLAND
1ST ELECTION DISTRICT — 1ST COUNCILMANIC DISTRICT

REVISIONS	DRAWN BY:	CHECKED BY:	SCALE:
	LNR	PCR	1" = 20'
	DATE: 08-14-20	JOB NO.: 20110	SHEET NO.: 1 OF 1

Revised 2020-0224-A

IN THE MATTER OF:

CORNELIUS DAVID HELFRICH, LEGAL OWNER
DOMINION PROPERTIES, CONTRACT PURCHASER
CASE NUMBER: 20-224-A

Hearing Date: November 18, 2021

Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore County by remote access.

PANEL PRESIDING:

DEBORAH DOPKIN, CHAIR

JOSEPH EVANS, BOARD

SHARONNE BONARDI, BOARD

Christine R. Leary
crleary1@comcast.net

(ON RECORD)

CHAIR: All right. We are recording. Good morning, everyone. It is, believe it or not, Thursday, November 18, 2021. And this is a public deliberation of the Baltimore County Board of Appeals in case number 20-224-A, in the matter of Cornelius David Helfrich, the legal owner, and Dominion Properties, the contract purchaser for 16 Locust Drive in the 1st Councilmanic District.

And it was an appeal of an April 19th, '21 Opinion and Order of the ALJ denying a Petition for Variances of side yard, rear yard and lot width and area for a property in the Catonsville area. There were, Mr. Helfrich was represented by counsel and there were a number of neighbors who appeared in opposition.

Everyone filed memoranda on the schedule we had agreed on and I have some thoughts. But I'm going to ask you for yours first, Mr. Evans.

MR. EVANS: Okay. Well, thank you for that. Well, as, I, I found the memoranda of counsel and the Protestants to be useful and engaging and well written, informative. So, as I see the, the situation, there are two broad areas to cover.

The first is, are the easiest actually. Is whether a variance is warranted under our traditional *Cromwell v. Ward* standards. And the first requirement of a *Cromwell v. Ward* variance is that the property be unique and that's typically

understood to be in terms of size, shape, topography, some other natural feature of the land.

And in this instance, there, I think it's conceded by everyone that there's nothing that's unique in that regard as the word unique is understood under, under *Cromwell*. So, Mr. Helfrich has argued that the uniqueness derives from the fact that there is this, what amounts to prohibitive zoning and that leaves this to be the only undeveloped lot in the entire development and the only lot, and, and the lot can't be developed, I think it's pretty clear, can't be developed with a structure at this point.

And so, the, the argument is that that is, is unique. I think that's, frankly, it's creative but wrong. Every single variance arises in a situation where there's limiting zoning. So, if, if the fact that there was limiting zoning meant that the property was unique, then of course, the exception would swallow the rule and there would be no real requirement of uniqueness since, well, as I said, every conceivable variance case has to do with zoning that is perceived to be too restrictive.

So, so on the question of *Cromwell*, for me anyway, it's a fairly easy determination that a variance is not warranted here. Is not, would not be lawful.

There's a question, I mean, if we were to get beyond uniqueness, there's a question about hardship and for these,

for *Cromwell* purposes, the question of hardship is, is, in this particular case, for me, rather thorny. And so, I don't really, I'm, I'm not, I'm, I'm not really in a position to make a strong contingent ruling in the event that uniqueness was determined with, that it was determined to be unique.

But I think the uniqueness question is so strong and so overpowering, so overwhelming that I, I can't imagine why, how, how it could ever be upset, frankly. So, that's my position on issue number one, which is, under *Cromwell v. Ward*, the variance should be denied.

So, the, the second question and, and to some extent, it, it got sort of blended in and, with, with the *Cromwell* variance, is the variance that someone is entitled to if there's an administrative taking or a regulatory, not an administrative, a regulatory taking --

CHAIR: I'm going to interrupt you, I'm sorry. Before we go to that issue, I, let's finish with the variance discussion.

MR. EVANS: Okay.

CHAIR: Ms. Bonardi, what is your, are you with us?

MS. BONARDI: I am, I hope you're able to see me because of my bandwidth, they recommend that I turn off my video. Are you able to hear me?

CHAIR: We can hear you perfectly.

MS. BONARDI: Okay, great. So, I, I would concur

with Mr. Evans regarding the, the variance, the uniqueness issue and the hardship issue. And that it doesn't meet the standards of *Cromwell*, yes.

CHAIR: Okay, let's move on.

MR. EVANS: All right. Well, the second, the, the related issue is the question of whether there's a, a regulatory taking. And a regulatory taking, as I understand it, and of course, this is not my strong suit here. But as I understand it, if, if there is a zoning regulation that's enacted that deprives an owner of all beneficial use, all beneficial use, of the property, then there can be, there can be an administrative taking.

It is also my understanding that in order to perfect a claim for an administrative, well, I'm saying administrative taking, I mean regulatory taking, in order to perfect a claim for a regulatory taking, we are required to make a ruling on that issue.

Not exactly sure we're being asked to make such a ruling, but I'm, it, it seems to me that the issue is so completely enmeshed with the overall presentation, that it's certainly fair for us to reach that issue and to make, to make a finding there.

And, you know, what, what it would mean is that Mr. Helfrich, what, what, assuming we make a finding on whether there was a taking, and assuming that, and I, I think we are

entitled to find a variance in order to avoid a taking problem.

CHAIR: I agree.

MR. EVANS: But, I, I personally am not prepared to do that. And one of the, the reason, and, and it's, this, this is a very, the, the record is, is muddled here to some extent. And in order for there to be taking, there, there needs to be a finding that there is no beneficial use at all.

It's not simply a hardship, as it would be under *Cromwell*. It has to be an absolute absence of beneficial value. And the, the Kings have this pending offer for $25,000 to purchase the property and that's, obviously it's a third of the value that Dominion was willing to offer.

But it represents some value, and it represents a value that's not negligible, in my estimation. Now, one of the reasons that the record is muddled here is that we don't have any real solid testimony about the valuation of the property. And that's problematic.

It, it is also problem, I, I, I'm going to, I, I have taken the King offer as an offer in good faith and an offer that continues to be operative. It, it, if, if we were to deny a variance and the Kings were then to withdraw their offer, then, over which we would have no control, then there would be no beneficial use to the property and then there would be a taking.

So, or arguably a taking. So, so, we're, we're kind

of in a pickle here.

CHAIR: Indeed, we are, yeah.

MR. EVANS: And I mean, you know, Mrs. King did testify, and she seemed to be a, an individual of honesty and integrity and I, I, I, we have no reason to suspect that's not the case. And it would, it would be a very, it, it would be quite distressing, I must say, for us to find that there's no taking because there's this offer and then to see the offer withdrawn because there's no leverage on the Kings to make the Kings actually follow through with their offer.

CHAIR: I'm not sure I agree with you, Mr. Evans.

MR. EVANS: I'm sorry?

CHAIR: I'm going to let you finish but --

MR. EVANS: Okay. I, I, I'm, I'm pretty much done. I guess I would ultimately propose a ruling that is, I'm not sure we're, we've ever done such a thing. I'm not sure it's within our authority, but it would seem, I mean, I would want to make a ruling, I guess I would want to say that there is not, I guess I would want to make a ruling in the alternative. Namely that, assuming the $25,000 offer is, remains operative, then I would rule there is no taking.

If, if the $25,000 offer is withdrawn because of a perception there is increased leverage, then I would, then I would rule there was a, you know, there was a taking. So, that's, that's sort of where I come out. I, I don't know if

that's a, you know, I don't know how, you know, we, we, I, I, you know, I'm shrugging here because I, I just don't know how else to approach this, so that's my, that's my view.

CHAIR: I approach it a little differently. I agree with both of you, there's nothing unique about this property. I'm, and I'll save my rant for a little later. But I think that the regulatory, I'm looking at *Maryland Reclamation Associates*, a case, a recent case on inverse condemnation.

And it cites a much older case that says regulatory actions that have effectively denied the owner the physical or economically viable use of the property. Or conduct that effectively forces an owner to sell can be a regulatory taking. That's exactly what we're looking at.

First of all, it can be physical or economically viable use that's denied. It doesn't have to be both. There is no question that the application of the current zoning regulations deny this owner the physical use of this property or a permitted purpose.

And I think that looking at the offer from someone outside the property turns the analysis on its head. The analysis is whether the owner can use the property, not whether an adjoiner can use the property. And whether that owner can use it within the four corners of the applicable zoning.

And I went through the DR-2 regs looking for some use other than a single-family house that could be made of this

property and there is absolutely no other principal use that can be made. So, if you accept that argument, and you have to look at it not from the neighbors' perspective, but from the property owner's perspective, he is denied physical use of his property or is being forced to sell.

And that's the *Maryland Reclamation* case citing *College Bowl, Inc.* citing *Amen v. City of Dearborn*. I mean, the Maryland case cites a 6th Circuit case.

But those are the elements we're looking at and I think they're relevant. A variance is a way the Courts, the Courts define a variance as a way to avoid a takings claim. It's a steep burden.

Now, that leaves us in the position, as I see it, to deny the variance, despite finding there's no use of the property for the owner. And forcing this Petitioner to sue the County for a taking. I don't think that's a good result. But I think those are our choices. Now, to go on to my rant. And then I'm going to let Ms. Bonardi, I'll shut up.

The rant is this was a legally created subdivision before Baltimore County had zoning. Every other lot has been improved with a single-family residence. Many of the residences have been the subject of zoning variances to modify them, whatever zone was then applied to the property.

And none of these Protestants, if they could remember, which affects, in my mind, their credibility as

witnesses, really objected to whatever improvements were being made on those lots, not raising any of the so-called environmental arguments that were raised here.

I find it audacious on their part to say they should get the benefit of a properly created subdivision and this property owner shouldn't. And if you go back, and I have gone back to every prior iteration of our zoning regulations, it is clearly intended that properly created subdivisions fall under the small lot table to permit a use of the property.

That the County Council, in its wisdom, did not reach further back, which is either a glaring omission, or an assumption that all these uses were grandfathered under these old subdivisions. I can't read their minds, I'm not going there.

I think where I come from, the position of the neighbors involves a little hutzpah. And I don't think that arguing that because they're willing to buy it, there's an economic use. To me, that is an impermissible result based on these cases that I've cited.

And nothing, well, barely short of extortion by zoning, which is not something I would ever support, whether it be by government or by private parties. So, that's my rant. Now I will, having said that, I would grant the variance, variances, to avoid a takings claim.

And to, I don't think that we can draft an Order in

the alternative, based on some third-party external situation over which no one has control and then we would have to supervise it to make sure. I think that's way beyond, we have no equity, equitable jurisdiction. And I think that's what that involves. So, that's where I come out. So, Ms. Bonardi, I'll, I'll mute myself if you will un --

MR. EVANS: Well, just so, just so we're clear, I, I would probably rule in that way.

CHAIR: Okay.

MR. EVANS: Just so Ms. Bonardi knows.

CHAIR: You would rule in what way?

MR. EVANS: I would, I would rule that, I would rule that there is no taking because of the pending offer and so, --

CHAIR: And I would rule (inaudible) --

MR. EVANS: And you would rule that there is.

CHAIR: -- (inaudible) not a reasonable economic use by the owner of the property.

MR. EVANS: Right, for all the reasons you said --

CHAIR: -- who is denied all physical use, which in and of itself, under the cases, is enough to reach a decision to grant the variance.

MR. EVANS: Right. No, I, I, I understand.

CHAIR: We disagree so poor Ms. Bonardi is the swing vote.

MR. EVANS: Yes, we, we disagree. Right. That's all

I wanted to make clear here was that the, the, the, the, the ball is in her Court, yeah. Quite literally.

MS. BONARDI: My concern was around the taking piece. And the fact that there is an offer. I, I don't feel comfortable making a decision based on a contingent offer. The offer could be reduced. At what point would it not be a good faith offer for the property.

My, my other concern is that I feel the property owner is being penalized because of the timing in which they are choosing to develop their property. If it had been done earlier, then maybe they would not have been, been challenged because others have had that benefit in this subdivision.

And I believe that one of the briefs referenced that if the council had intended for this lot to remain vacant for the benefit of the community, it could have imposed a district overlay in the last couple of zoning maps. And it did not do that to provide for community spaces.

And so, I, I feel that there is a constructive taking because the property owner isn't able to use the property for his benefit. And should he have to suffer some type of economic damage or, or penalty because the property can be made available for the community.

If it's for the purpose of the community and not him, then I do see that as a form of taking. So, I would like for us to try to find a way to write the opinion so that the

variance would be granted because it is a form of taking.

MR. EVANS: So, let, let me just make a couple points clear here. And I, I, I understand reasonable minds can differ, this is not meant in any way to be, I, I just want my own views to be clear here.

This zoning was done twenty-five years ago. Mr. Helfrich was not the owner of the property twenty-five years ago. And this zoning, I think it is, it is im, impossible to say today what the thought process was of the County Council in 1996 or 1995 or whenever it was in the mid-nineties that this, the zoning classification was, was changed there.

So, I think that it's not, I, I don't think we're in a position to sort of second guess presumptively valid legislation that is two and a half decades old. And I think that Mr. Helfrich has to be understood as having assumed, you know, the, I mean, the ownership of this parcel has gone through a number of iterations through testamentary, the testamentary process.

Mr. Helfrich has assumed final ownership of this, and I think he has, it has to be understood, it has to be recognized that he took final ownership understanding what the zoning was. So, I don't, I don't feel, I mean, I, you know, while it can be said that the neighbors are taking advantage of the zoning, I, I don't think that, frankly, I don't have any sympathy with Mr. Helfrich.

He, he, he undertook ownership of the property with the thought, notion in mind that he had a very, very, very steep cliff to climb in order to, in order to obtain any, any benefit from this property. So, I, I'm not, I'm not sympathetic to his position for that reason.

And, and ultimately, I mean, it is asserted in the record, and I forget whether there's testimony on this, it's asserted in the, in the brief, that the Kings offered to buy this lot at the time they purchased their own lot. And at the time, the property, the parcel was held by a bunch of heirs and apparently, they, they couldn't reach any sort of agreement and so, you know, that offer was rejected.

But I, I don't view this as, I, I, I, I don't view this as extortionate, I don't view this as, I don't view this as some sort of unfair, taking unfair advantage of zoning. This is, you know, this is, this is the situation that we find ourselves in.

Mr. Helfrich made a, a business decision to pursue this the way he has. He made a business decision not to sell it for $25,000, with the hope and expectation that he could get $75,000. Well, okay. That's, that's a decision he has to live with in my estimation.

So, that's, that's sort of how I view the, sort of the overall gestalt, I guess you could say, of, of, of this controversy. Very unfortunate and it is thorny and difficult

and problematic. I would rule, I would accept the King offer as, as I said before, as an offer made in good faith that is still standing, still operative and, and therefore, that means there is a, there is a beneficial value, I guess.

So, anyway, I just want to make that clear, so that, just for the, the, sort of the sentiment overlay here of, of the, of the controversy.

CHAIR: That, I understand where you're coming from. It personally doesn't change where I am.

MR. EVANS: Right. And I, I wasn't trying to, I wasn't trying to change. I was just, I just wanted the, I just wanted that stated out loud so that everyone could hear it, that's all.

CHAIR: Ms. Bonardi, are we still in agreement?

MS. BONARDI: I'm still in agreement. I, I think it's fair to include those comments in the decision so that it's, you know, documented that we did consider that and still reached the conclusion.

CHAIR: All right. Then, in summary, we are finding that the application of the zoning regs, without a variance, would be a regulatory taking that would deny all physical use of the property to the owner. And accordingly, to avoid a takings claim, we will grant the variances as requested, over the objections of Mr. Evans, who believes that the offer by the adjoiner represents a reasonable economic use to the owner of

the property.

MR. EVANS: Right. And, but we also agree that, so I'll, I'll write a dissent on that point. But the three of us do agree that no variance is justified under *Cromwell*.

CHAIR: Yes.

MS. BONARDI: Correct.

CHAIR: Okay. That would conclude the deliberation in this case. Thank you both and have a happy Thanksgiving.

MS. BONARDI: Yes, you too.

MR. EVANS: Yes, same, same to you, right. Thank you.

MS. BONARDI: Thank you. Bye-bye.

CHAIR: Bye-bye.

MR. EVANS: Bye.

(OFF THE RECORD)

CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing in the matter of Cornelius David Helfrich, Legal Owner and Dominion Properties, Contract Purchaser, 20-224-A, heard before the Board of Appeals of Baltimore County, November 18, 2021, were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 16 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 19th day of March 2022.

Christine R. Leary

Christine R. Leary

Transcriber

IN THE MATTER OF:

CORNELIUS DAVID HELFRICH
DOMINION PROPERTIES, LLC

CASE NUMBER: 20-224-A

Hearing Date: September 9, 2021

Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore County via WebEx.

PANEL PRESIDING:

DEBORAH DOPKIN, CHAIR

JOSEPH EVANS, BOARD

SHARONNE BONARDI, BOARD

PRESENT ON BEHALF OF THE PARTIES:

JOHN GONTRUM, ESQUIRE

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(ON RECORD)

CHAIR: Thank you. Good, good morning. Today is Thursday, September 9th, 2021, and this is a de novo appeal hearing, a public hearing before the Baltimore County Board of Appeals in case number 20-224-A.

In the matter of Cornelia Davis Helfrich and Dominion Properties, LLC for the property at 16 Locust Drive in the Catonsville area of Baltimore County regarding an Opinion and Order of the Administrative Law Judge dated April 19th, 2021 denying a Petition for Variance pursuant to the Baltimore County Zoning Regulations, Section 1-B-0-2-3-C-1 to allow a ten yard, ten foot side yard setback in lieu of the required fifteen feet and a combination of twenty feet in lieu of the required forty feet, to allow a rear yard setback of twenty-five feet in lieu of the required forty feet, to allow a lot width of fifty feet in lieu of the required minimum of one hundred feet and to allow a lot area of five thousand eight hundred fifty square feet in lieu of the minimum required twenty thousand square feet.

Today's hearing is being remotely and virtually because of the Corona virus shutdown on in person hearings. The hearing is being recorded. My name is Deborah Dopkin and with me are Board members Bonardi and Evans. If you are not speaking to the Board, we would ask that you mute yourself.

If you're attending by telephone only and wish to

speak, please when you contact the Board, make sure that you identify yourself by the first, your area code and the first three digits of your phone number. Counsel, would you identify yourself for the record, please?

MR. GONTRUM: Yes, my name is John Gontrum. I'm an attorney at Whiteford, Taylor & Preston, on behalf of the Appellants. Thank you. And Ms. King, would you identify yourself?

MS. KING: Yeah, hi. My name is Julie King. I am a resident of 18 Locust Drive in Catonsville, the lot that is directly next to 16 Locust Drive and I have kind of been put in charge of speaking on behalf of the community.

CHAIR: Okay. Thank you. Since it appears that counsel for Protestants has withdrawn his appearance, and People's Counsel has, is not participating, the way these hearings work is that the Petitioner will put on his case. It is de novo, meaning it is new, as if the hearing below did not occur.

The Petitioner will have to present his case to us. I'm trying to do something, I apologize. To prove his case. You, he will put on testimony from witnesses and evidence in support of his case. You will be given the opportunity to cross examine those witnesses after each has testified.

At the conclusion of the Petitioner's case, the Protestants will be given a similar opportunity to present

their case, put on witnesses and evidence and Mr. Gontrum will have a, a responding opportunity to cross examine and at the conclusion of the Protestant's case, put on any rebuttal evidence he may have.

We would ask that there not be, that everyone will be given an opportunity to speak who has asked to speak. You will be given, we ask that there not be repetitive testimony and that you conduct yourself appropriately for a judicial type hearing. Are there any questions? Ms. Zahner?

MS. KING: No, no questions, sorry.

CHAIR: Ms. Zahner, currently Mr. Sanders has asked to be unmuted.

MS. ZAHNER: Are we going to unmute for the whole hearing or only when it's time for him to, to testify?

CHAIR: Well, Ms. Cannington just asked me to unmute him, so let's see what he has to say before we get started.

MS. ZAHNER: Okay. Do you want me to make him a panelist as well?

CHAIR: Let's just unmute him for the time being.

MS. ZAHNER: Okay.

MR. SANDERS: Good morning. This is Barry Sanders.

CHAIR: And you asked to be unmuted. Do you have a question before we get started?

MR. SANDERS: I have no question. I want to be able, I want to be able to fully participate in the hearing

individually.

CHAIR: So, are you suggesting that Ms. King cannot be your spokesperson?

MR. SANDERS: She's, she's not my, she's not my spokesperson.

CHAIR: Okay. You will be given the opportunity to speak on your own behalf so, yes, Ms. Zahner, please make Mr. Sanders a panelist. Okay and you understand the procedures we are going to follow?

MR. SANDERS: I do.

CHAIR: All right. I would also say if you have an objection, everyone should stop talking and the Board members will then rule on the objections. So, I think that's all my preliminaries. Mr. Gontrum, do you have any preliminary matters?

MR. GONTRUM: I don't believe so, Madam Chair. I, I think that we'll just sort of proceed in the ordinary course. We are going to be modifying our Petition for Relief in the course of the hearing to drop one of the variance requests. But I think that can be presented during the course of the hearing.

CHAIR: Okay. Having said that, we will proceed. Mr. Gontrum, it is your case.

MR. SANDERS: Chair, Chair Dopkin, may I address the Board?

CHAIR: Yes?

MR. SANDERS: If there's going to be any amendment to the Petition at this point, this hearing needs to be remanded. Under Board, --

CHAIR: Why?

MR. SANDERS: -- the Board's Rules of Procedure 9-D-2, Petitions, Petitions may be amended prior to the hearing only if said amendment takes place prior to the first public advertisement of the Petition. That's not been done in this case.

CHAIR: We will take your objection under consideration, but we're going to proceed with Mr. Gontrum's case in the meantime.

MR. SANDERS: Well, that's, that doesn't comply with your own rules of procedure.

CHAIR: We haven't heard his amendment.

MR. SANDERS: Well, it, it doesn't matter what the amendment is if it's amended, any amendment. The Board is bound by its own rules.

CHAIR: (inaudible) Mr. Sanders, you can preserve that issue for appeal, we're going to proceed now.

MR. SANDERS: Well, I object.

CHAIR: Thank you. I understand that.

MR. SANDERS: And I would ask the Board to review their rules.

CHAIR: Thank you, Mr. Sanders. I don't want to mute you but we're going to proceed. So, please, we've noted your objection. Mr. Gontrum?

MR. GONTRUM: Yes, I'd like to call Mr. Richardson as my first witness. I believe he's an attendee.

CHAIR: Ms. Zahner, would you please unmute, make Mr. Richardson a panelist? He is now a panelist.

MR. GONTRUM: All right. And I have a number of exhibits that I will be presenting through Mr. Richardson. So, I don't know how you wish for me to do that or whether you wish for Ms. Zahner to do it.

CHAIR: Have you filed your exhibits?

MR. GONTRUM: Yes.

CHAIR: Then I would ask that if Ms. Zahner would make me host, we will let you share your screen to present them. Or she can remain host and do that for us. Okay. You will, --

MS. BONARDI: At this time, would you like me to swear in the witness?

CHAIR: Yes, please.

MS. BONARDI: Thank you. Mr. Richardson?

MR. RICHARDSON: Yes.

MS. BONARDI: Would you please raise your right hand? Good morning, sir.

MR. RICHARDSON: Good morning.

MS. BONARDI: Do you swear or affirm under the penalties of perjury, that the testimony you're about to give is true and correct to the best of your knowledge and belief?

MR. RICHARDSON: I do.

MS. BONARDI: Thank you. Would you state your --

CHAIR: Would you state your name --?

MS. BONARDI: I'm sorry.

CHAIR: Go ahead.

MS. BONARDI: I was just going to ask him to please state his full name for the record.

MR. RICHARDSON: It's Patrick C. Richardson, Jr. with the Offices of Richardson Engineering. Our offices are at 7 Dennison Street, Timonium, Maryland 21093.

MS. BONARDI: Thank you.

CHAIR: Please proceed.

MR. GONTRUM: All right. No, I'm not, I want to make sure I'm sharing my screen and that you can see it. Is it, I, I would ask is it, I don't know whether it's showing on your screens or not?

CHAIR: It is not.

MR. RICHARDSON: (inaudible).

MR. GONTRUM: Okay.

CHAIR: Though you should have the ability to share. There you go.

MR. GONTRUM: All right. So, now it should be

showing the exhibits, seven exhibits, is that correct, Madam Chair?

MR. RICHARDSON: Yes.

CHAIR: It is.

MR. GONTRUM: Okay, all right. Good, all right. Mr. Richardson, would you describe your background for the Board, please?

MR. RICHARDSON: I'm an engineer. I graduated from the University of Delaware in 1982. I became registered in the State of Maryland in 1988 and practiced civil engineering since that time. I started my own firm in 1999 to the present.

MR. GONTRUM: All right and in the last twenty-two years, how many zoning applications have you filed in Baltimore County?

MR. RICHARDSON: Probably about two hundred or so.

MR. GONTRUM: Have you had the occasion to be accepted or to testify as an expert in zoning and land use before either the Administrative Law Judges or the Board of Appeals?

MR. RICHARDSON: I have.

MR. GONTRUM: And on the screen, I'm showing a copy of what purports to be your c.v. or resume as Petitioner's Exhibit 1. Is this correct and accurate?

MR. RICHARDSON: Yes, yes.

MR. GONTRUM: I would ask that Mr. Richardson's c.v.

be entered as Petitioner's Exhibit 1.

CHAIR: Ms. King, do you have any objection?

MS. KING: No.

CHAIR: Mr. Sanders, do you have any objection?

MR. SANDERS: I have no objection. I just, does the Board qual, qualify witnesses, recognize witnesses formally?

CHAIR: We --

MR. SANDERS: Or do you just give in?

CHAIR: -- if, if Mr. Richardson is offered as an expert, we would then determine whether or not to accept him as such. Mr. Richardson has appeared before us numerous times and in the past, has always been accepted as an expert in certain areas of practice.

MR. SANDERS: I, I just, my question was, do you recognize him as an expert, or do you just give his testimony the weight it deserves based upon his testimony?

CHAIR: If he is offered as an expert and accepted as an expert, we give his testimony the weight of an expert.

MR. SANDERS: Okay. So, then you do recognize as experts?

CHAIR: Yes.

MR. SANDERS: Okay.

CHAIR: Since there's no objection, we will accept Mr. Richardson's c.v. as Petitioner's Exhibit 1.

MR. GONTRUM: And I would ask, Madam Chair, that Mr.

Richardson be accepted as an expert in zoning and land use, as well as a professional engineer.

CHAIR: I'm looking at the c.v. I believe Mr. Richardson is registered with the State of Maryland?

MR. RICHARDSON: Yes, Your Honor.

MR. GONTRUM: That is correct.

CHAIR: And has been for how long?

MR. RICHARDSON: Since 1988.

CHAIR: We will accept Mr. Richardson as an expert in zoning and land use and as a professional civil engineer.

MR. GONTRUM: Thank you, Your Honor. Now, Mr. Richardson, are you familiar with the property known as 16 Locust Drive?

MR. RICHARDSON: Yes.

MR. GONTRUM: And how did you come to be familiar with it?

MR. RICHARDSON: My client, Dominion Properties, entered into a contract to purchase the property and asked me to prepare a site plan for permits, at which time then I informed them that it needed to have some variances in order to, to obtain the permit. So, we filed the variances for, a zoning petition to, to obtain those variances, to later on obtain a building permit.

MR. GONTRUM: So, I'm showing on the screen Petitioner's Ex, what I would identify as Petitioner's Exhibit

2 and I would ask if this is the site plan that you prepared, or under your auspices?

MR. RICHARDSON: Yes, this is the original site plan we prepared and filed with the Petition.

MR. GONTRUM: Now, does this zoning plan or site plan depict and contain the information required by Baltimore County for residential site plans?

MR. RICHARDSON: It does.

MR. GONTRUM: And based on your experience and background, is the information contained on the site plan, accurate and does it fairly depict the proposed dwelling as you originally filed the Petition?

MR. RICHARDSON: Yes.

MR. GONTRUM: Okay and it shows the various setbacks on it that were sought in the zoning petition, is that correct?

MR. RICHARDSON: That's correct.

MR. GONTRUM: Now, I would ask that this be, site plan be entered as Petitioner's Exhibit 2.

CHAIR: Ms. King, do you have any objection?

MS. KING: I don't think so. This is the original plan, correct?

CHAIR: Correct.

MS. KING: Okay, that's fine. Thank you.

CHAIR: Mr. Sanders?

MR. SANDERS: I have no objection. This is what is

before the Board.

CHAIR: Then the site plan be, will be admitted as Petitioner's Exhibit 2.

MR. GONTRUM: Now, Mr. Richardson, did there come a time when you prepared a redline version of this site plan based upon discussions that were held with People's Counsel and Mr. Holzer?

MR. RICHARDSON: Yes. So, the plan that you have up on the screen right now is that redline where basically we shortened the house to create a larger rear backyard that would be in compliance with the forty-foot rear setback line.

MR. GONTRUM: And did you also change the configuration of the house by adding in an area in the front?

MR. RICHARDSON: Yes, we basically squared off the house so it would be meeting the, the rear setback and lining up with the originally proposed front and side setbacks.

MR. GONTRUM: So, based on this site plan is there any need for a rear yard variance?

MR. RICHARDSON: No, the, we comply with the forty foot that would be required on the DR-2 zoning.

MR. GONTRUM: And I would ask that this be admitted as Petitioner's Exhibit 2-A.

CHAIR: 2-A?

MR. GONTRUM: Correct.

CHAIR: Ms. King, do you have any objection?

MS. KING: No.

CHAIR: Mr. Sanders?

MR. SANDERS: I object, under the Board's Rules of Procedures 9-D-2. You can't amend the Petition at this time before the Board of Appeals. This is exactly my point I raised as a preliminary matter. And, and it has to do with, the Board of Appeals here is, is, is hearing this appeal from that Administrative Law Judge.

But the Board of Appeals is hearing it de novo. And the Board is acting under their original jurisdiction. That's why this rule is in effect. There's been no notice, public notice, of this new plan.

CHAIR: Mr. Gontrum?

MR. GONTRUM: Yes, on a couple of matters. First off, we are basically dropping a variance request. All of the variance requests were denied by the Administrative Law Judge, not just any one in particular, but all of them. This is a particular request that he denied.

We're basically saying, we don't need to proceed with this particular variance request. We are willing to downsize the building in order to meet the required zoning setbacks. We do not believe that that sort of modification of a request, if you will, in any way prejudices anyone who doesn't want to see the building built.

It's just simply saying that we're willing to amend

the relief that we're seeking to ask for less relief. And so far as notice was concerned, this was actually an issue that was discussed both with People's Counsel and with then Protestant's counsel, Mr. Carroll Holzer.

And there was basically an agreement that we would modify our request along these lines. So, I would suggest that both the Protestants in this case have had notice that we were so doing this and, indeed, by relinquishing our request for a variance, we are in no way modifying, if you will, the request in a way that would have been contemplated for a notice restriction in the sense that we're not enlarging the building, we're not asking that instead of a setback of twenty-five feet, that we'll now only have a setback of twenty feet in the rear yard.

Instead, we're simply saying we will not seek or go ahead with that particular variance.

MS. KING: Excuse me, can I just make a note that there was never any kind of agreement from the Protestants about this, the plans for this house.

CHAIR: I don't think, I don't think Mr. Gontrum suggested there was. I think he's suggesting that based on discussions with Protestant's counsel at some time prior to the hearing, there was actual notice of these changes that Protestants were aware of. Is that correct, Mr. Gontrum?

MR. GONTRUM: That is correct.

MS. KING: He just said --

MR. SANDERS: Madam, Madam Chair, Office of People's Counsel was not my counsel. Carroll Holzer was not my attorney. I had no notice of this. And that's, that's why the rule is in place.

CHAIR: Actually, there's case law that says that these kinds of modifications can be permitted. So, at this point, I'm going to overrule your objection and let the case proceed and admit Exhibit 2-A.

MR. SANDERS: Madam Chair, I respectfully object again. I mean, --

CHAIR: Your objection is noted, and it is on the record.

MR. SANDERS: And the issue --

CHAIR: We are trying to do our job, please let us. Mr. Gontrum, please proceed.

MR. GONTRUM: Thank you, Your Honor. Now, Mr. Richardson, would you describe generally the location of the site?

MR. RICHARDSON: So, this site is in the Catonsville area of Baltimore County. It's on the west side of Locust Avenue, just a little bit south of, of Frederick Avenue and just slightly north of Magruder Avenue on, it, it runs parallel with Frederick on the north.

MR. GONTRUM: Is the site part of any subdivision?

MR. RICHARDSON: Yes, it, it was part of a subdivision.

MR. GONTRUM: And I'm showing on the screen what is identified as Petitioner's Exhibit 3. And I would ask if you recognize this.

MR. RICHARDSON: Yes.

MR. GONTRUM: And what is it that this is depicting?

MR. RICHARDSON: This is the subdivision that was done back in 1933 that created the, the lots on both sides of Locust between Magruder and, and Frederick, not quite up to Frederick Road.

MR. GONTRUM: Now, in, in sort of diagonal blue cross lines, there's a particular lot that's marked. Is that the subject lot?

MR. RICHARDSON: Yes, that's, that's our lot which is designated as Section A, Lot 6.

MR. GONTRUM: All right. That's of the twenty-lot subdivision, is that correct?

MR. RICHARDSON: Correct.

MR. GONTRUM: Okay. Now, this lot, does this lot pre-date zoning in Baltimore County?

MR. RICHARDSON: Yes, because this, this plat was created in, in, like I said, 1933 and the first zoning in Baltimore County started in 1945.

MR. GONTRUM: Now, are all the lots in the

subdivision, but for this Lot 6, improved with dwellings?

MR. RICHARDSON: Yes, each of them has a dwelling on it currently.

MR. GONTRUM: But for Lot 6?

MR. RICHARDSON: Correct. Lot 6 is still vacant. The only --

MR. GONTRUM: Do you have any idea when these houses were, or dwellings were placed on these lots?

MR. RICHARDSON: There was a couple in the, in the late thirties but most of them were in the forties and fifties.

MR. GONTRUM: Have any of the lots been updated, or the houses been updated?

MR. RICHARDSON: Yes.

MR. GONTRUM: Okay.

CHAIR: Excuse me, Mr. Gontrum. Do you have a plat reference for the subdivision plat, your Petitioner's Exhibit 3?

MR. GONTRUM: Yes, it's Plat Book 10, Page 109.

CHAIR: And are you moving that into evidence?

MR. GONTRUM: Yes, I am, Your Honor.

CHAIR: Is there any objection, Ms. King?

MS. KING: No.

CHAIR: Mr. Sanders?

MR. SANDERS: No.

CHAIR: Then the subdivision plat recorded among the

Plat Records of Baltimore County in Book 10, Folio 109 is admitted as Petitioner's Exhibit 3. Is there a name for the subdivision while we're identifying it?

MR. GONTRUM: Yes, Your Honor. It's called Plat of Locust Drive Extension.

MR. EVANS: Is that plan, did you say?

MR. GONTRUM: Plat.

CHAIR: Plat.

MR. EVANS: Oh, Plat of Locust Drive Extension?

MR. GONTRUM: Correct.

MR. EVANS: Okay, thank you.

CHAIR: Thank you. I'm sorry to have interrupted. Please continue. You were asking about updated houses.

MR. GONTRUM: I believe I did, and I believe that style, Mr. Richardson, would you agree that the style of the homes is generally that consistent with houses that were built prior to 1960?

MR. RICHARDSON: Yes.

MR. GONTRUM: Okay. Now, if the variances are denied, would this be the only lot in the entire subdivision without a dwelling?

MR. RICHARDSON: Yes, it would be.

MR. GONTRUM: Okay. Now, what is proposed for this lot?

MR. RICHARDSON: So, currently it's a house that's

going to be thirty foot by thirty-five feet deep and would be a two-story dwelling.

MR. GONTRUM: How does the placement of this dwelling compare to the dwellings on either side of the subdivision?

MR. RICHARDSON: It, it's basically placed with the front of it being in line, all the houses are pretty much in line out there with a twenty-five-foot setback from the right of way.

MR. GONTRUM: And I'm showing you Petitioner's Exhibit 2-A, and I would ask if the dashed in lines that you, that are shown on here, are representations of the other dwellings in the subdivision?

MR. RICHARDSON: Yes, they are.

MR. GONTRUM: So, how does this proposed dwelling compare with respect to rear yard setbacks?

MR. RICHARDSON: It's, it's pretty compatible with those. Maybe, maybe a little greater than, than some of them are. A lot of these houses, like I said, were done prior to the, the zoning being in place and so the restrictions may have been different at that time.

MR. GONTRUM: And what about the side yard setbacks? How did the side yard setbacks of ten feet on either side compare to the setbacks of the existing dwellings?

MR. RICHARDSON: Most of the dwellings are, are about ten feet with the side yards. There's been a couple that maybe

are a little less, but most of them are around ten feet.

MR. GONTRUM: How does the lot itself compare to the other lots?

MR. RICHARDSON: So, if you look at the, the subdivision plat, you'll notice that Lots 5 and 6 are actually the two largest lots on the west side of Locust Avenue, because Locust curves as it comes from Magruder into the center and then curves back again to the west as it gets closer to Frederick Road.

So, those two lots are a hundred-foot depth. The, the lots that are below and above it are all slightly less than that, that depth. So, they're all smaller lots than the, the two in the middle there.

MR. GONTRUM: Now, with the revised footprint of the building were there proposed revisions to the elevation of the building?

MR. RICHARDSON: Yes, we modified the entire look of, of the house to bring it more into compliance with what else is there and to eliminate the garage that some of the Protestants objected to having facing towards the street there.

MR. GONTRUM: I'm showing you what is identified as Petitioner's Exhibit 4 and 4-A and I'd ask if you can identify these particular elevations.

MR. RICHARDSON: Yeah, these were the original elevations that were submitted in the previous case, which show

the, basically, thirty-five by fifty-foot house as the front facing garage that you can see on the, the first elevation there on the top. That's the side elevation below it and then the next page is the rear and the other side.

MR. EVANS: Mr. Richardson, you have to actually identify these by their exhibit number, otherwise --

MR. RICHARDSON: Okay.

MR. EVANS: -- otherwise the record on review, the, anyone reviewing the record can't tell what you're talking about.

MR. RICHARDSON: Sorry, Your Honor.

MR. EVANS: So, Exhibit 4, specifically Exhibit 4, --

MR. RICHARDSON: Exhibit 4 shows the front elevation and the side elevation, left side elevation actually. And Exhibit 4-A would show the rear elevation and the right-side elevation.

MR. GONTRUM: Now, I want to show you what purports to be Petitioner's Exhibit 4-B, identified as 4-B. And I would ask if you could identify that.

MR. RICHARDSON: So, 4-B is the elevations that we've developed with the owner/developer to try to bring the, the house more into conformance in both look and style with the other houses on the property. We've eliminated the garage and created the kind of the dormer look on the second floor to try and bring down the scale of that house.

MR. EVANS: So, just to be clear, because I'm keeping track of the exhibits, Mr. Richardson, Exhibits 4 and 4-A are the elevations that were presented to the Administrative Law Judge?

MR. RICHARDSON: Yes, Your Honor, and 4-B is --

MR. EVANS: And 4-B is now the modified, modified elevation --

MR. RICHARDSON: Yeah, this would be a modified elevation based on the current redline configuration of the drawing that was shown on Exhibit 2-B.

MR. EVANS: And the modification specifically is to eliminate the garage and what was the second part of this?

MR. RICHARDSON: So, we, we, we created a, a dwelling that is more in style with the other --

MR. EVANS: Okay.

MR. RICHARDSON: -- existing dwellings there.

MR. EVANS: Okay.

MR. RICHARDSON: With a dormer look, kind of bringing the, the roofline down a little bit and creating some dormers there.

MR. EVANS: Okay. Great, thank you.

CHAIR: Are you, go on, Mr. Gontrum.

MR. GONTRUM: Yes, Mr. Richardson, and also as part of the modification, you basically shortened up the house so that the extension that is shown on Petitioner's 4-A and 4

really is, is no longer present, is that correct?

MR. RICHARDSON: That is correct. We've, we've shortened it up to being a, a thirty foot, or thirty-five-foot-deep house as opposed to fifty feet originally proposed.

MR. GONTRUM: Okay. I would ask that Petitioner's 4, 4-A and 4-B be accepted into evidence.

CHAIR: Ms. King, do you have any objection?

MS. KING: Just a clarification if you don't mind my asking. Mr. Richardson, if I'm understanding correctly, that you said the owner is the developer because --

MR. RICHARDSON: No, no.

MS. KING: Did I, okay, I must have just misunderstood your --

MR. RICHARDSON: I, I probably said owner, but I'm considering my client being the owner at this point and, and that's not true. The owner is Mr. Helfrich.

MS. KING: Okay, correct.

MR. RICHARDSON: At this, at this time. You are correct.

MS. KING: Okay. That was my only comment, thank you.

CHAIR: So, you have no objection, Mr. Sanders?

MR. SANDERS: My, my objection is that the Administrative Law Judge, which Judge Evans pointed out, didn't see this. So, I have a continuing objection as to the revised

plan.

CHAIR: So, noted. We will admit Petitioner's Exhibit 4, 4-A and 4-B into evidence, noting a continuing objection by Mr. Sanders. Mr. Gontrum, please continue.

MR. EVANS: Can, can I just say something to Mr. Sanders? What, what a continuing objection means is you, you now are automatically objecting to anything that's different from in front of, that, that occurred in front of the Administrative Law Judge. So, you don't have to keep objecting to it, it's all automatic from now on, okay?

MR. SANDERS: Yes, sir.

MR. EVANS: Okay.

CHAIR: Mr. Sanders, I believe you're an attorney, are you not?

MR. SANDERS: I am.

CHAIR: Okay, just want to make sure.

MR. EVANS: All right, okay. I didn't realize that.

CHAIR: Thank you.

MR. EVANS: I didn't realize that, I'm sorry.

CHAIR: Mr. Gontrum?

MR. GONTRUM: Thank you, Your Honor. Mr. Richardson, I want to show you an aerial photo from the My Neighborhood Baltimore County website, and I would ask if you can identify what is marked as Petitioner's 5-A?

MR. RICHARDSON: This is a picture of, of the area

of, of the proposed (inaudible). Locust Avenue is running approximately in the center of the picture, Frederick Avenue is running basically east to west of the top there where the cursor is going and then Magruder is the one that's running parallel to it, down south there.

MR. GONTRUM: All right.

MR. RICHARDSON: Locust is the one right where the cursor is now, has the, the small blue area there, that would be where our site is in regards to this property or this picture.

MR. GONTRUM: Now, I want to show you Petitioner's 4-B, excuse me, 5-B, and I would ask if you can identify this?

MR. RICHARDSON: Yes, it's the, it's the same area, just a closer in view. Once again, the blue box on the left there, the vacant property, that is the site that we are discussing today.

MR. GONTRUM: All right and I would ask if the cross, if you can identify what does the cross hatched areas mean on this particular aerial indicate?

MR. RICHARDSON: So, the, the cross hatched areas are noted in the legend, in the lower left. Those are cases, zoning cases, that have been previously done on properties. So, those two houses there have each had a, some kind of a zoning hearing.

MR. GONTRUM: Okay and that would include, I believe

Mr. Sanders lives at 23 Locust?

MR. RICHARDSON: Yes.

MR. SANDERS: I do not, objection.

MR. GONTRUM: Oh, I, I'm sorry --

MR. SANDERS: You have no personal knowledge of where I live, Mr. Richardson.

MR. RICHARDSON: If you live at 23, --

MR. SANDERS: I do not live at 23.

MR. RICHARDSON: I made, I made the assumption and I apologize --

MR. GONTRUM: I apologize. All right. Now, Mr. Richardson, I would also draw your attention to the rear of the property and this open area to the rear. And I would ask if, if you're familiar with this area?

MR. RICHARDSON: Yeah, that's part of a property that had actually, facing onto Frederick Road and, yes, that, that large property there.

MR. GONTRUM: It's shown on 5-A.

MR. RICHARDSON: Yes, so that, that property extends all the way down to the, to the houses that front onto Magruder. It's all zoned residential but the property is used by the commercial property up there that faces onto Frederick. And so, as part of his, his getting additional parking for his business there, he created a zoning hearing to get parking on the res, commercial parking on the residential zoned property.

MR. GONTRUM: Now, Petitioner's Exhibit 5-C, I think is a blow-up of the prior aerials?

MR. RICHARDSON: Yes, it's a closer view.

MR. GONTRUM: And again, the subject lot is shown in the outline in blue?

MR. RICHARDSON: Correct.

MR. GONTRUM: Now, I want to show you a series of street photos and I would ask if you're familiar with what these photos depict.

MR. RICHARDSON: Yes, these are some pictures that are up and down Locust Avenue.

MR. GONTRUM: So, --

MR. RICHARDSON: This particular one is starting down at Magruder looking towards the north.

MR. EVANS: And once again --

MR. GONTRUM: And that would be Petitioner's 5-D. I'm sorry, Mr. Evans. I will try to do a better job of identifying as we go through them.

MR. EVANS: So, we're missing D, E, F, D, E and F? So, we're --

MR. GONTRUM: No, we're on Petitioner's 5-D, I haven't gotten to E yet.

MR. EVANS: Oh, D, D, I'm sorry, okay. 5-D.

MR. GONTRUM: As in David. I, I'll try to enunciate better.

MR. EVANS: Okay, all right. So, 5-D is a photo, right?

MR. GONTRUM: Right.

MR. RICHARDSON: 5-D is --

MR. GONTRUM: Taken from Magruder looking north on Locust. Petitioner's 5-E, Mr. Richardson.

MR. RICHARDSON: 5-E is, is showing some of the, the houses there on the west side of, of Locust, north of Magruder.

MR. GONTRUM: And opposite 27 Locust. This isn't really 27 because these are on the west side, is that correct?

MR. RICHARDSON: Correct, 27 is on the east side.

MR. GONTRUM: Petitioner's exhibit number 5-F, if you could identify that and describe to the Court what this depicts.

MR. RICHARDSON: So, that, that house that the, is in the middle there, or to the right, that is number 18. That is the house that is immediately to the south of our lot. And you can see the open space on the right of that, which would be our lot.

MR. GONTRUM: I would just note that, and 18 Locust appears to have the dormers and the, a, a brick façade with, on the bottom, is that correct?

MR. RICHARDSON: Yes, it does. And then some siding up at the top.

MR. GONTRUM: Okay and, indeed, the front of the

proposed dwelling on 16 Locust would also have brick incorporated in the bottom half of the front, is that correct?

MR. RICHARDSON: Yes, that's, that's the intention of the developer to put some brick at the bottom and then some siding as it goes up. And the, this house will look very much like what is proposed except for that center peak over top the door. We would not have that.

MR. EVANS: How, how would, how would it compare in terms of elevation? Would it be about the same elevation?

MR. RICHARDSON: It, it would be pretty much the, pretty much if you drew that line straight across and got rid of that peak in the middle, that's almost exactly what we're going to wind up with at the end of the day.

MR. EVANS: So, it would be sort of in line with the, the bottom of the roof, is that what you're saying?

MR. RICHARDSON: Well, the, the overall look of the house and the, and the actual elevation of the house is probably going to be very similar because --

MR. EVANS: Okay, all right.

MR. RICHARDSON: -- those lots are level with one another.

MR. EVANS: Okay.

MR. GONTRUM: I show you Petitioner's 5-G and ask if you can identify this.

MR. RICHARDSON: 5-G is continuing to look north on

Locust. You can see our lot is to the left here and then on the, where the tree is, and then the next house would be number 14, which is the one that's immediately to, to our north. And then on the, you can see on the east side, all the houses lined up there as well.

MR. GONTRUM: And many of these houses, you would say, are comprised of brick and siding elements?

MR. RICHARDSON: Yes, they all pretty much are, are brick and, and siding. There's I think a little bit of stone in some of these, but most of them have a combination of the two or predominantly, some of them are predominantly, like number 14 is predominantly brick and then some of the other ones are predominantly siding.

MR. GONTRUM: Now, Mr. Richardson, the, whatever elevations we submit prior, would, would also have to be approved by the Department of Planning, would they not?

MR. RICHARDSON: Yes, when you file a building permit, you are required to get approval from the Department of Planning of your building elevations before they will sign off on the permit.

MR. GONTRUM: And they'd be looking for consistency with respect to the materials used and in the look of the dwelling with respect to the dwellings in the immediate vicinity, would they not?

MR. RICHARDSON: That's, that's what they do. That's

my understanding of how they would review these proposals.

MR. GONTRUM: And I would show you Petitioner's Exhibit 5-H and ask if you can identify that.

MR. RICHARDSON: 5-H, once again, is pretty much showing our lot right in the middle, the tree there. And then on the left-hand side, once again, is number 18, and off a little bit to the right there, more or less just on the other side of the three, that's number 14 Locust.

MR. GONTRUM: Petitioner's Exhibit 5-I?

MR. RICHARDSON: So, 5-I, once again, is pretty much looking just due north from right in front of the middle of our site. On the left-hand side, you can see number 14 and the garage behind it. And then on the right-hand side, are the, the houses lined up on the east side of, of Locust.

MR. GONTRUM: And 5-J?

MR. RICHARDSON: 5-J, I believe, is looking north past our site, looking at the, the houses as they go closer to Frederick Road.

MR. GONTRUM: And there are different housing styles in this subdivision, are there not?

MR. RICHARDSON: Yeah, there are, they're pretty varied. But most of them are one and a half or two-story houses.

MR. GONTRUM: I show you Petitioner's Exhibit 5-K and ask if you can identify this.

MR. RICHARDSON: So, that is, once again, just north of our site, showing the houses on the east side of, of the street.

MR. GONTRUM: And 5-L?

MR. RICHARDSON: So, 5-L is, once again, looking back at the west side and the houses that are to the north. I believe the one that is on the left-hand side, I'm pretty sure that's number 14, and going up from there toward, toward the north.

MR. GONTRUM: Petitioner's Ex, looking at the house in the middle with the dormer and the, I guess it would be 12 Locust?

MR. RICHARDSON: I believe so.

MR. GONTRUM: That would be very similar to what we are proposing, would it not?

MR. RICHARDSON: Yeah, similar style.

MR. GONTRUM: Okay. With the brick below and then the siding above on the dormer?

MR. RICHARDSON: Right. It's a little different dormer than what we're proposing but, yes, it's, it'd be somewhat in the same vein.

MR. GONTRUM: Okay. Now, Petitioner's 5-M as in Michael, is looking south on Locust?

MR. RICHARDSON: Yes.

MR. GONTRUM: From north of the subject property, so

we're --

MR. RICHARDSON: Right.

MR. GONTRUM: -- going up towards Frederick Road and looking back down, is that not correct?

MR. RICHARDSON: Correct. The, the tree that's right smack in the middle sticking up I believe is where our site is on the west side. And then, so those, the houses to the right are on the west, houses to the east are on the, I mean, on the left are the east.

MR. GONTRUM: Okay and then finally I'd show you Petitioner's 5-N as in Nancy.

MR. RICHARDSON: So, 5-N, 5-N is basically all the way up at the end, the northern end of the subdivision, looking back south down Locust towards, towards our site on the right and the east side on the left.

MR. GONTRUM: All right. I would ask that Petitioner's 5-A through N be accepted into evidence, please.

CHAIR: Ms. King, do you have any objection?

MS. KING: Just a question for Mr. Richardson. Can you clarify if, I know you said there would be with the new plans for the home, there would be brick on the bottom front of the house. Would that brick continue around the sides, like the --?

CHAIR: Ms. King, (inaudible) cross examine Mr. Richardson after Mr. Gontrum finishes. I just want to know if

you object to the photographs being accepted as exhibits.

MS. KING: Oh, I'm sorry, I misunderstood. No, I do not object. Thank you.

CHAIR: Mr. Sanders?

MR. SANDERS: Nope.

CHAIR: Then Petitioner's Exhibits 5-A through N will be admitted into evidence. Mr. Evans, are you good with all of them?

MR. EVANS: I'm, I'm, yes, I am good with all that, thank you.

CHAIR: All right, thank you. Mr. Gontrum?

MR. GONTRUM: Yes, I, I would just point out, I believe, Madam Chair, that we also filed hard copies of these exhibits with the Board. So, the Board file should contain not only the online presentation, if you will, but should have hard copies of these exhibits.

CHAIR: I believe that is correct.

MR. GONTRUM: All right. Mr. Richardson, what is the zoning of the lot?

MR. RICHARDSON: The current zoning is DR-2.

MR. GONTRUM: And in looking at the variances that are being sought, it appears that we're using the small lot table contained in Baltimore County Zoning Regulations, Section 1-B-0-2.3.C.1. Why does that table apply?

MR. RICHARDSON: Because it's a lot in an old

subdivision and meets some of the criteria in those sections of the zoning code. It tells you when you're supposed to use it and we meet those criteria, that's why we're using it.

MR. GONTRUM: What are the requirements for DR-2 zoned lots under the small lot table?

MR. RICHARDSON: So, DR-2 lots are supposed to be twenty thousand square feet minimum size, a hundred foot of lot width. They have a forty-foot front yard setback, a fifteen foot minimum side and a forty-foot total for the side yards. And then the, the rear yard is supposed to be forty feet as well.

MR. GONTRUM: Okay. I would ask you then, you've seen Exhibit 2-A. Would you show the Board the variances you are seeking and explain to the Board why you're seeking each individual variance?

MR. RICHARDSON: So, the, the lot area is pretty obvious. We only have five thousand eight hundred and fifty square feet based on --

MR. GONTRUM: And that's the gross, that, that's the gross area into the middle of Locust?

MR. RICHARDSON: Correct.

MR. GONTRUM: The net area would be five thousand square feet?

MR. RICHARDSON: Five thousand, it's fifty by one hundred is the actual lot.

MR. GONTRUM: But you, but the gross area is the five thousand plus?

MR. RICHARDSON: It's half, yeah, that's half the right of way (inaudible).

MR. GONTRUM: Okay.

MS. BONARDI: Could you state that exact number again, please? For the gross?

MR. RICHARDSON: The gross, I believe, was five thousand eight hundred and seventy, or eight hundred and fifty.

MS. BONARDI: Thank you.

MR. RICHARDSON: So, anyway, we're supposed to have twenty thousand square feet. We don't have that much area. The side yards being ten foot on either side for a total of twenty. We, if we did something that was fifteen and a total of forty, that would be, only leave ten feet on the property, in the center, which isn't a viable construction for the house.

MR. GONTRUM: Why is that not viable?

MR. RICHARDSON: The County won't even let you build a house that's that narrow. It's, they, they won't permit it.

MR. GONTRUM: In other words, if, if this were to be a townhouse, what is the minimum width of a townhouse?

MR. RICHARDSON: Sixteen feet. So, we'd have to build something sixteen feet wide minimum to, to meet that criteria, which wouldn't, wouldn't, wouldn't be permitted if we met the setbacks --

MR. GONTRUM: How does, how does the dwelling width compare to the other dwellings in the subdivision?

MR. RICHARDSON: So, our, our width, basically, would be in compliance with most all the other ones because most of these were done either, they're prior to zoning or possibly when the zoning was less restrictive than it is now because of the change at one point in time to DR-2.

MR. GONTRUM: All right. We'll get to that in a little bit. But I, I just wanted to ask you, what, why are we only seeking, why are we not seeking, if the minimum front yard is forty feet, why are we seeking a variance from that forty foot?

MR. RICHARDSON: In, in, in another section of the Code, there is a front yard averaging provision that we would be meeting and that means we only need to be twenty-five feet, which is in compliance with the, the houses that are on either side of us.

MR. GONTRUM: That would be Section 303.1 of the Code?

MR. RICHARDSON: Yes. That, that section says that you need to average the, the properties on either side of you to compute your, your front yard setback. They're, they're attempting to line up the houses, so there's not big disparities between the fronts of houses and, as you can see from the pictures in, in Petitioner's Exhibit 5, all the houses

seem to line up with one another, as you look down the street. And that's what the, that's what the intent of that 303 regulation is.

MR. GONTRUM: Do you have an opinion, based on your years of handling zoning matters, on whether Lot 6 has unique features, such that the imposition of the zoning regulations creates a need for the variance?

MR. RICHARDSON: Yes, so this, this lot was created prior to any zoning and then as, as you stated and I started to state a little bit, that it had a different zoning when it first became zoned. And then the reimposition of the DR-2 zone literally made all of the houses around here totally non, non-conforming with any kind of ability to meet the, the setbacks for a DR-2 zoning.

MR. GONTRUM: Well, what is that unique feature then of this particular lot?

MR. RICHARDSON: Well, it's, it's, it's the only house that's left here in, in the whole area that doesn't have a --

MR. GONTRUM: The only house?

MR. RICHARDSON: -- a lot on it, a house on it.

MR. GONTRUM: In other words, it's the only lot that doesn't have a house on it?

MR. RICHARDSON: Yes. It's the only lot here that doesn't have a house on it already. So, the other ones would

be grandfathered in and this one trying to meet the new regulations that have been imposed on it just can't, it can't meet that.

MR. GONTRUM: So, strict adherence to zoning would permit all residential development?

MR. RICHARDSON: Strict adherence to zoning for this lot would basically render it unbuildable.

MR. GONTRUM: And zoning doesn't permit accessory structures like garages or even pavilions without a primary dwelling, is that not correct?

MR. RICHARDSON: That is correct. You have to have a principal structure before you can have accessory use.

MR. GONTRUM: So, compared to the other lots in the subdivision, this is unique, you're saying, by not having a dwelling?

MR. RICHARDSON: Correct.

MR. GONTRUM: All the rest of them had dwellings placed on them when they were able to get something, a permit issued, that met the, the regulations in effect at the time.

MR. GONTRUM: Now, if the property, Mr. Richardson, were zoned DR-5.5, would the property qualify under the Baltimore County Zoning Regulations, Section 304 as an undersized lot?

MR. RICHARDSON: Yes, it would.

MR. GONTRUM: And would all the setbacks be met?

MR. SANDERS: Objection, objection.

CHAIR: What is the basis for your objection? Is that Mr. Sanders?

MR. SANDERS: The Petition has not been filed under any, under three, Section 304. That's not before the Board. You've got to look at the actual Petition filed before the Board and what is relief requested, that is before the Board.

CHAIR: I understand that, but Mr. Gontrum was asking a question on a hypothetical basis.

MR. SANDERS: I object to a hypothetical basis. It calls for speculation and conjecture.

CHAIR: His question was if the property were zoned DR-5.5, we are aware it is not, but let's see where he's going with this. So, I'm going to overrule the objection to see where this line of questioning is going and then if it's not probative, we will move on. Mr. Gontrum, where are you going with this?

MR. GONTRUM: Thank you, Your Honor. So, Mr. Richardson, if this property were zoned DR-5.5, would it need any zoning variance relief from setbacks?

MR. RICHARDSON: No, the, the setbacks for DR-5.5 would once again be the front average, ten foot on the sides and thirty foot on the rear instead of forty.

MR. GONTRUM: Okay. Now, does the owner own any adjacent property?

MR. RICHARDSON: No.

MR. GONTRUM: And I want to show you Petitioner's, what I've identified as Petitioner's Exhibit 6, and ask if you recognize this Deed.

MR. RICHARDSON: Yeah, that's, that's the Deed of the, the property for, for, that we're trying to develop.

MR. GONTRUM: And I would draw your attention to the description paragraph, where it indicates that it's been in the same ownership since 1959.

MR. RICHARDSON: Yes.

MR. SANDERS: I would object. The Deed, the Deed speaks for itself.

CHAIR: It's a public record. We're going to admit it, just because it is among the public record.

MR. GONTRUM: I, I would ask that it be admitted, thank you, as Petitioner's Exhibit 6.

CHAIR: And it does speak for itself.

MR. GONTRUM: And it indicates Mr. Helfrich is the current owner, is that not correct?

MR. RICHARDSON: Yes.

MR. GONTRUM: Okay. Now, I want to ask you if you're familiar with the zoning history of the property.

MR. RICHARDSON: Yes.

MR. GONTRUM: What do the zoning records, if you've examined them, indicate?

MR. RICHARDSON: So, in 1971, they, the site became zoned DR-5.5, which is more in conformance with the general lot configurations in, in this whole area. And, and then in 1996, I believe it was, yeah, '96, a community down there asked to rezone all this property to DR-2. It was approximately four hundred and eighty-eight acres, I believe. And so, they, they rezoned a large portion of that to DR-2. Basically, making all of these lots non-conforming uses.

MR. GONTRUM: I would show you Petitioner's Exhibits 7, which are three sheets from Baltimore County's --

CHAIR: Excuse me, Mr. Gontrum. Before you go to Exhibit 7, would you give me the recording reference for Exhibit 6?

MR. GONTRUM: Oh, I'm sorry, Your Honor. I thought it was on there.

CHAIR: It may be, but it's not on my screen any longer.

MR. GONTRUM: I'm sorry. It's, it would be Liber 32178, Folio 253.

CHAIR: Thank you. (inaudible) moving on.

MR. GONTRUM: Looking at Exhibit 7, Mr. Richardson, do you recognize these as part of Baltimore County's zoning records and zoning maps?

MR. RICHARDSON: Yes.

MR. GONTRUM: So, that the first sheet of Exhibit 7

seems to be a photogrammetric map of Baltimore County's metropolitan area, the, the official zoning map?

MR. RICHARDSON: Yes, it was the official zoning map at that time.

MR. GONTRUM: And it appears to be dated March 1971?

MR. RICHARDSON: Yes.

MR. GONTRUM: And it indicates that the subject property, which seems to be here on Locust Avenue, is a vacant lot among all the other developed lots that's zoned DR-5.5, is that correct?

MR. RICHARDSON: That's correct.

MR. GONTRUM: And it looks like the houses pretty much in that subdivision that are there today were there in 1971, is that not correct?

MR. RICHARDSON: Yes.

MR. GONTRUM: I presume some of them have been maybe changed a little bit in their outlines, from additions or what have you, but they're pretty much there --

MR. RICHARDSON: That's, that's possible.

MR. GONTRUM: And I show you the second page of Petitioner's Exhibit 2 is known as page nine from the 1996 comprehensive zoning map issues and draw your attention to issue 1-45 dealing with east and west side of Rolling Road, south of Frederick Road. And as you indicated, it's a four hundred eighty-eight-acre issue to, with the proposal going to

DR-2, is that correct?

MR. RICHARDSON: Correct.

MR. GONTRUM: And ultimately, a sizable portion of it did, indeed, go to DR-2?

MR. RICHARDSON: Yes, it did.

MR. GONTRUM: And finally, sheet number three of page, of Exhibit 7 is the 1996 C, CMP issue, 1-045 from the Baltimore County's My Neighborhood. Again, showing outlines of this area that was part of this zoning map issue, is that not correct?

MR. RICHARDSON: Correct.

MR. GONTRUM: I would ask that Petitioner's Exhibit 7 be put into evidence.

CHAIR: Any objection, Ms. King?

MS. KING: No.

CHAIR: Mr. Sanders?

MR. SANDERS: No.

CHAIR: Petitioner's Exhibit 7 will be admitted. Please continue.

MR. GONTRUM: So, --

CHAIR: Three sheets in Exhibit 7, just for Mr. Evans.

MR. EVANS: Yes, I've got it.

CHAIR: Great, okay.

MR. GONTRUM: Now, --

MR. EVANS: Actually, just one point. The, the CZMP issue number is 1-045? Do I have that correct? Is that correct?

MR. GONTRUM: That is correct.

MR. EVANS: Okay, all right. Great, thanks. Okay. It's all good here.

MR. GONTRUM: Now, Mr. Richardson, if the dwellings on the other lots in the subdivision, they have houses on them, are non-conforming, would they necessarily need variances in order to expand?

MR. RICHARDSON: Not necessarily. There is a, a way to do it without it.

MR. GONTRUM: How is that?

MR. RICHARDSON: So, the, the County, basically, allows non-conforming uses to expand by up to twenty-five percent. So, in this, in that case, on, on like a house like this, if you are ten feet off the line and you're a, you know, twenty foot deep house, you would, you would be allowed to expand one-quarter of that twenty feet or another five feet towards, towards the rear of the property, so long as you didn't violate that forty foot in the rear setback.

And you didn't get any closer than the ten feet that you already are to the side yard. So, that, that would allow you to, to expand that non-conforming use by twenty-five percent of what you had existing.

MR. GONTRUM: Now, other lots though have been granted variances, have they not?

MR. RICHARDSON: Yes, a couple of them have been granted variances.

MR. GONTRUM: And those were administrative variances?

MR. RICHARDSON: I believe so.

MR. GONTRUM: Do you have an opinion as to whether the imposition of the DR-2 zoning on this property creates a practical difficulty in meeting the setbacks?

MR. RICHARDSON: It definitely does.

MR. GONTRUM: And in what way?

MR. RICHARDSON: Well, as I stated before, if you apply the setbacks strictly, you, you can't build a house that meets the, the size that Baltimore County mandates you, you build as a very minimum.

MR. GONTRUM: Now, is the relief that the Petitioner is seeking the minimum amount necessary to do justice to the owner as well as to the neighbors?

MR. RICHARDSON: I believe so.

MR. GONTRUM: Why?

MR. RICHARDSON: It's, it's creating a, a new house on an existing lot that is very much in the size and scale of the other houses that are already there on the properties, adjacent to it.

MR. GONTRUM: And does the adherence to the DR-5.5 setbacks have any relevance?

MR. RICHARDSON: I believe that all these houses were really intended to be in conformance with the DR-5.5. That was the original zoning that was put onto them in the 1971 comprehensive maps when they, they really made the, a lot of major changes to the zoning regulations in that 1970 bill that was done.

MR. GONTRUM: Mr. Richardson, do you have an opinion on whether if the variance is granted, it would be injurious to the health, safety or general welfare of the locale?

MR. RICHARDSON: I don't believe it will.

MR. GONTRUM: Why?

MR. RICHARDSON: Once again, it'll be pretty much in, in harmony and similar size and scope of what all the rest of the houses are here, on, on this street.

MR. GONTRUM: Okay. Now, if the new house is constructed, would there be any adverse impact to the adjoining properties due to stormwater runoff?

MR. RICHARDSON: No.

MR. GONTRUM: Why?

MR. RICHARDSON: As part of the construction and design process, we make sure that we do not impact the adjacent neighbors with, with water.

MR. GONTRUM: Is that something that the County or

Sediment and Erosion Control would be involved with reviewing?

MR. RICHARDSON: Yeah, the, the sediment control inspectors are very diligent about making sure that the builders don't create nuisance problems for the neighbors.

MR. GONTRUM: So, would this be part of the building permit process?

MR. RICHARDSON: Yes.

MR. GONTRUM: Now, Mr. Richardson, I believe you described the, the property to the rear was part of a zoning matter for a building on 1009 Frederick Road. And I would ask you if that was in zoning case number 89-307-SPH?

MR. RICHARDSON: Right, yes.

MR. GONTRUM: Okay. I just wanted to identify what you were talking about, that it is a zoning, that it is a case in the zoning records. Now, --

MR. RICHARDSON: Yes.

MR. GONTRUM: -- and you identified that property as fully developed.

MR. RICHARDSON: Yeah, without, without additional zoning relief, they would not be able to expand the, the use on that property.

MR. GONTRUM: Now, are you familiar with the advisory comments --

MR. EVANS: (inaudible).

MR. GONTRUM: -- filed in this case?

MR. RICHARDSON: Yes, yes.

MR. GONTRUM: And is there anything in the comments from the Department of Planning or any of the other County departments, that would give you concern?

MR. RICHARDSON: No, I didn't see any negative comments from the, the departments.

MR. GONTRUM: All right. I would have no further questions of Mr. Richardson.

CHAIR: Before we go to cross, Mr. Richardson, I have one question. You indicated that if the, there was strict adherence to these regulations, the holding, the permitted building would be ten feet wide?

MR. RICHARDSON: Yes, Your Honor.

CHAIR: And what would the other dimension be if you, again, strictly adhered to the setbacks?

MR. RICHARDSON: So, if you assume the, the averaging provision in the front, which I think you would, and the rear of forty, then you would be able to build a ten foot by thirty-five-foot house on the property that would meet the DR-2 setbacks.

CHAIR: You're saying the building envelope would be ten by thirty-five?

MR. RICHARDSON: Correct.

CHAIR: And if the County would not permit a ten by thirty-five-foot house, what other uses are permitted in the

zone that could be made of this lot?

MR. RICHARDSON: I don't know of any other principal use that could be used on this lot, other than, than that. I mean, it's a residential zone, I mean, I guess you could try to put a garden on it or something, but you couldn't develop anything, because you can't get a principal use that, that would be permitted. So, you can't do any accessory uses, unless you were to combine it with one of the adjacent properties.

CHAIR: All right. Ms., do any of the other Board members have questions before I ask Ms. King for her to, if she has any?

MR. EVANS: Not from me, no.

MS. BONARDI: I do not. Thank you.

CHAIR: All right. Ms. King, would you like to cross examine Mr. Richardson?

MS. KING: Yes, please. I just want to, I have one, I misspoke at the beginning. I misunderstood me being the spokesperson for people and there's, Aaron Neal, he has questions. He's also an attorney who lives on our street. He would like to be listed as a panelist, listed as a panelist and we've called, but he's not showing up as being able to --

CHAIR: I'm aware that Mr. Neal has called. He came to the hearing, or made his request after we were commencing. And does that mean you do not wish to be the speak,

spokesperson and he should be?

MS. KING: I, I guess I'm kind of, I'm caught off guard and I apologize, with the, how this is all supposed to work, because obviously I am not an attorney and I have not done this before. But I'm, I'm speaking for myself and my husband as the homeowners of 18 Locust, as well as other community members who couldn't be here today.

The people who are here today are here and if I, I thought that they would be able to speak if they wanted to speak. I thought that that's what we addressed at the beginning.

CHAIR: They will be given an opportunity to make statements at the close of Petitioner's case when the Protestants put on their case. Since there are no attorneys representing the Protestants and you had previously had an attorney representing you, and there are a number of Protestants, I specifically asked if there would be a spokesperson.

This proceeding has a certain protocol and order, and we like to maintain that. We cannot have everyone be a spokesperson, though everyone who wishes to have a say will be given a say. But as a spokesperson, as Mr. Sanders has ably shown, you are able to raise objections and cross examine witnesses.

I think I also indicated that at the outset of the

hearing. If you're saying that Mr. Neal wishes to be a spokesperson for the Protestants, I do not see where he was a pro se Protestant listed in the notice. He did not make that, his desires known at the outset of the hearing.

And if you're saying that you wish that he take your place on behalf of the Protestants, which I believe you indicated you were speaking for, is that what you're saying? He's going to have an opportunity to speak and let his position be known.

MS. KING: I, I understand. I think what he would like to do, just as Mr. Sanders is doing, is he would like to be given the opportunity to ask questions or object, just the same as Mr. Sanders has been able to do. So, if that means that I have to not be the spokesperson, --

CHAIR: It doesn't mean you don't have to be, I'm just trying to reconcile his position since he didn't make it known at the outset. I'm going to ask Mr. Evans and Ms. Bonardi how they feel about this so that we can proceed.

MR. EVANS: Well, I, I think we should just let him be a panelist and move on, because I don't think we really need to worry about it. Unless it begins to get too disruptive. But I don't see any prob, I don't see any problem at this stage with just saying okay, let's move on. Mr. Sanders can be a panelist, he can ask his, I mean, Mr. Neal can be a panelist, he can ask his questions. Mr. Sanders is a panelist, he can

ask his questions. Ms. King is a panelist, she can ask her questions. And then, you know, that, that would just be my view. And so, let's just --

CHAIR: Ms. Bonardi?

MR. EVANS: -- move on, that's, that's my --

MS. BONARDI: And at this point, I don't have any objection. I agree with you. We have to see how this process works and I just want to be clear about who's representing whom and are we certain that there aren't any other people who are requesting to be panelists.

CHAIR: Well, I believe that Mr. Neal is the only person who has contacted the Board since the hearing commenced and I just don't want to turn this into a, into chaos. But I will move Mr. Neal in as a panelist, which he now is. And ask that he identify himself for the record.

MR. NEAL: Thank you, ma'am. Aaron Neal. I live at 20 Locust Drive, and I promise to be judicious in any objections and questions so as not to extend the length of this hearing.

CHAIR: And you are an attorney. Who are you speaking for?

MR. NEAL: I'm speaking for myself.

CHAIR: And Mr. Sanders, you're speaking for yourself, is that correct?

MR. SANDERS: Correct.

CHAIR: And Ms. King, are you speaking for anyone other than yourself?

MS. KING: No, I will speak for myself.

CHAIR: So, the other Protestants will be given an opportunity to make their statements at the close of your respective cases. All right. Let us proceed. This is how we're going to go forward. Ms. King, you will be given the opportunity to cross examine Mr. Richardson, then Mr. Sanders and then Mr. Neal. I would ask that you stay focused on the testimony that Mr. Richardson has given in the questions you ask him on cross examination. Ms. King, please proceed.

MS. KING: Thank you. Thank you very much. I just wanted to clarify a few things with Mr. Richardson. The elevation that they showed with the new plans for the home, it showed brick on the front of the home, and I just, and I can't tell from the elevations the side elevations. It looks like the brick continues around the side, both sides of the house. I just wanted to see if he could clarify what would be going on around the rest of the house.

CHAIR: Would you ask him the question? Mr. Richardson, do you know what the materials on the sides and rear of the house are?

MS. KING: Yes, Mr. Richardson, would you please clarify what is going to be on the front and sides of the house?

MR. RICHARDSON: I'm sorry, I muted myself to try and keep quiet. Anyways, so I am not a hundred percent sure and I, as I started to say, the developer will be the next person and you can probably ask him and not me because I'm not responsible for the house itself.

MS. KING: Okay, thank you. You also, when Mr. Gontrum asked what the practical difficulty would be if the variances weren't granted, you gave practical difficulty for the builder, but the builder is not the owner. Are you able to give an example of practical difficulty for the owner of this lot if the variances are not granted?

MR. RICHARDSON: So, whether it's the builder or the owner that's developing the lot, they, the, it's the same.

MS. KING: Well, I don't think the owner is trying to build the house there. I think he's trying to sell the lot.

MR. RICHARDSON: But the --

CHAIR: Do you have a question for Mr. Richardson?

MR. EVANS: Well, I think he answered the question. His answer is is that the practical difficulty for the owner is the same as the practical difficulty for the builder. It can't be developed, is that, is that what you're saying, Mr. Richardson?

MR. RICHARDSON: Yes, it is, Your Honor.

CHAIR: And I think, Ms. King, what Mr. Richardson probably, well, he'll have to say what he meant, but I believe

the practical difficulty applies to the property, not the individual --

MR. RICHARDSON: Correct.

CHAIR: -- in these types of cases.

MS. KING: Okay.

MR. RICHARDSON: Correct, it, it's the property, it's not, and once again, it's whether it's this developer, another developer, a homeowner that wants to buy it or Mr. Helfrich who wants to build for himself, they all have the same problem.

MS. KING: Okay. I think that was all I have to ask. Thank you.

CHAIR: Thank you, Ms. King. Mr. Sanders?

MR. SANDERS: Yes. Mr. Richardson, I'm going to direct you to your exhibit number six, which was the Deed.

MR. RICHARDSON: Okay.

MR. SANDERS: And if you could tell us the date of that Deed?

MR. RICHARDSON: May 16th of 2012.

MR. SANDERS: Two thousand twelve. What was the property zoned in 2012?

MR. RICHARDSON: DR-2.

MR. SANDERS: So, when Cornelius David Helfrich acquired the property in 2012, this was a substandard lot?

MR. RICHARDSON: Yes.

MR. SANDERS: And it was not buildable?

MR. RICHARDSON: It's not buildable without obtaining some relief from the zoning regulations.

MR. SANDERS: I'm saying the lot as it exists, was it buildable, yes or no?

MR. GONTRUM: Objection. Asked and answered.

CHAIR: Excuse me, who's objecting?

MR. SANDERS: It has not been asked and answered.

MR. GONTRUM: Yes, Your Honor, I was objecting because Mr. Richardson, he asked the question was it not buildable and Mr. Richardson said it's not buildable without zoning relief. It was asked and answered.

CHAIR: Please proceed, Mr. Sanders. I'm going to sustain that. And we understand the answer, I promise.

MR. SANDERS: When did Mr. Helfrich contact Dominion Properties, the contract purchaser, which you alluded to as being hired, you were hired by Dominion Properties?

MR. RICHARDSON: I have no idea.

MR. SANDERS: Are there any permits on this property for building at this time?

MR. RICHARDSON: No.

MR. SANDERS: Is, was this the first hearing the redline Exhibit 2-A was presented?

MR. RICHARDSON: Yes.

MR. SANDERS: In a public hearing?

MR. RICHARDSON: Yes.

MR. SANDERS: Was there ever notice published of this Exhibit 2-A redline revision?

MR. RICHARDSON: I'm not responsible for publishing notice.

MR. SANDERS: If you know.

MR. RICHARDSON: I don't know, because I'm not responsible for publishing notice for this hearing.

MR. SANDERS: When the other departments that you referred to reviewed and rendered comments, those are advisory comments, correct?

MR. RICHARDSON: Yes.

MR. SANDERS: And were those advisory comments as to the redline revision, Exhibit 2-A, that's before the Board today?

MR. RICHARDSON: No.

MR. SANDERS: Is compat, compatibility, which you're presenting a lot of photographic exhibits saying that your proposal will be compatible with the other homes on the street, is compatibility a factor under Baltimore County Zoning Regulations 307 variance?

MR. RICHARDSON: Not in this particular instance, no.

MR. SANDERS: Thank you. I want to address you to the actual lot itself. You said it's fifty by one hundred?

MR. RICHARDSON: Yes.

MR. SANDERS: Have you ever gotten variances to this

extent for a substandard lot in your experience?

MR. RICHARDSON: Yes.

MR. SANDERS: Would you give me an example?

MR. RICHARDSON: I've obtained variances for properties all over the County. As I said, I've done two hundred cases or so.

MR. SANDERS: But you've, you've obtained, have you obtained variance from a minimum required twenty thousand square feet all the way to, down to five thousand (inaudible)--

MR. RICHARDSON: I can't say I particularly have done that, no.

MR. SANDERS: Okay, I didn't think so. Directing your attention to this property, okay? I want to get to what's, what's been missed here is the actual variance criteria, which is before the Board. You define uniqueness as this is the only house without a house on it, okay? I want to ask you, direct you to the physical conditions of the actual property, okay? Are there any steep slopes on this property?

MR. RICHARDSON: No.

MR. SANDERS: Are there any wetlands?

MR. RICHARDSON: No.

MR. SANDERS: How about the parcel shape? Is it irregular in shape?

MR. RICHARDSON: No.

MR. SANDERS: Are there any other environmental

conditions on this property?

MR. RICHARDSON: No.

MR. SANDERS: Have you walked this property?

MR. RICHARDSON: I've been to the site. I have not trespassed on the property.

MR. SANDERS: Would you, any, is there any unusual topography?

MR. RICHARDSON: No.

MR. SANDERS: And the Petition before the Board is not under a grandfathering position under Section 304 of the Baltimore County Code, is it?

MR. RICHARDSON: It's not.

MR. SANDERS: Now, you entered an exhibit, a plat. This plat is not a recorded subdivision, is it?

MR. RICHARDSON: Which plat?

MR. SANDERS: Your exhibit.

MR. RICHARDSON: Which exhibit?

MR. SANDERS: It was Exhibit --

MR. NEAL: Exhibit 3.

MR. SANDERS: Three. No, it wasn't that exhibit. It was, bear with me.

MR. NEAL: If you're referring to the site plan, it's two.

MR. SANDERS: Oh, I, I'm losing my train of thought here. Your counsel directed you to their discussions with the

Office of People's Counsel, as well as Carroll Holzer, who was the, Ms. King's counsel as, until, I guess, yesterday. And were you part of these discussions?

MR. RICHARDSON: Personally, I was not part of the discussions.

MR. SANDERS: Okay. Was, do you know, was I part of the discussions?

MR. RICHARDSON: I have no idea if you were doing anything.

MR. SANDERS: And in this case, you're saying that, let me clarify what I have you written, written, as having you stating that practical difficulty here is, is the actual DR-2 zone. That, you're, you're saying that's the practical difficulty, is that this property is zoned DR-2?

MR. RICHARDSON: Practical difficulty is that this, the zoning, this zoning being imposed on this property. The DR-2 being imposed on a substandard property.

MR. SANDERS: Okay and, and when did the DR-2 zone go in effect?

MR. RICHARDSON: Nineteen ninety-six.

MR. SANDERS: And when did Mr. Helfrich acquire the property?

MR. RICHARDSON: Mr. Helfrich's Deed is dated 2012.

MR. SANDERS: Okay. Your, your attorney referenced the Deed being in the same family since the fifties or

whatever. Is, is, is he aware that these are the same families?

MR. GONTRUM: Objection. I don't know how Mr. Richardson would be aware of what I'm aware.

MR. SANDERS: Well, you were the one that asked the question that said (inaudible) same family --

MR. GONTRUM: Same ownership. It's been in basically the same ownership, I believe, Mr. Sanders, is the question, not in the same family.

MR. SANDERS: That, that's my point. It's not been in the same ownership.

MR. GONTRUM: From 1959 to 2012 it's been in the same ownership.

MR. SANDERS: That, that is wrong.

CHAIR: All right. Mr. Sanders, you'll get a chance to present your case. Do you have, I think, Mr. Richardson, you had a question before Mr. Richardson, Mr. Gontrum objected.

MR. SANDERS: Okay.

CHAIR: Let's move forward. If Mr. Richardson does not know the answer, Mr. Richardson, would you answer Mr. Sanders' question?

MR. SANDERS: I have, I have no further questions.

CHAIR: Okay, thank you. Mr. Neal?

MR. NEAL: Thank you and, and I promise, again, to be brief. Mr. Richardson, please turn to your Exhibit 3, that is,

oh, it's already up, the plat of Locust Drive extension.

MR. RICHARDSON: Um hm.

MR. NEAL: So, there's ten lots on either side of the street, correct?

MR. RICHARDSON: Correct.

MR. NEAL: A total of twenty lots in this subdivision plat?

MR. RICHARDSON: Yes.

MR. NEAL: Okay and I think you testified earlier that Lots 5 and 6, of which 16 Locust Drive is one, are the largest on the west side of the street, correct?

MR. RICHARDSON: Yes.

MR. NEAL: And, and they are both smaller than all the lots on the east side of the street?

MR. RICHARDSON: They are.

MR. NEAL: So, it would be fair to say that these, that this lot, 16 Locust, is functionally the median of all the lots on the street as far as size goes.

MR. RICHARDSON: You could say that, yes.

MR. NEAL: It's average as far as these lots go.

MR. RICHARDSON: Yes.

MR. NEAL: And the only distinguishing physical characteristic between this lot and the others is that there is no house built on this lot.

MR. RICHARDSON: That's correct.

MR. NEAL: Let me just flip through my notes for a moment. Mr. Sanders hit most of my questions. All right. Counsel asked you about storm water runoff. And you indicated it wasn't going to be an issue. My question is, how are you going to be sure that there's not additional runoff when the impervious surface on the lot is being increased?

MR. RICHARDSON: We'll meet the State of Maryland requirements for storm water management.

MR. NEAL: Will that increase the amount of storm water that is not absorbed into that lot?

MR. RICHARDSON: Anytime you put some impervious surface down, it generally increases the amount of water that will run off quickly.

MR. NEAL: So, the amount of storm water that will run off from this lot will be increased by the placing of impervious surfaces on the lot?

MR. RICHARDSON: I would say yes.

MR. NEAL: If 16 Locust was owned by the owner of either 14 or 18 Locust, could it be used as an accessory lot in the DR-2 zone?

MR. RICHARDSON: I believe, yes.

MR. NEAL: And you testified previously that the only practical difficulty here is with the property, not with the owner. So, the property itself could be used for beneficial use in the DR-2 zone, correct?

MR. GONTRUM: Objection.

CHAIR: What is your objection, Mr. Gontrum?

MR. GONTRUM: I, the question that he's basically asking is a summary question. So, it could be used for a beneficial use. I don't know what he means by beneficial use.

CHAIR: Well, and, and Mr. Neal, are you asking if the property were either retitled or subdivided in some way to allow use by the adjoiners?

MR. NEAL: More or less.

CHAIR: So, we're not taking it as it is, but if it were reconfigured to become part of adjoining lots?

MR. NEAL: If, if, if, because the issue is with the property, not with the owner, if the property changed hands, the practical difficulty would go away, correct, Mr. Richardson?

MR. RICHARDSON: No.

MR. NEAL: So, you could, it couldn't be used as an accessory lot by a neighboring owner, if it was owned by the neighbor?

MR. RICHARDSON: If an, if an, if an adjacent owner actually acquired the property, then they could use it for whatever purposes they wanted to, as long as they were still complying with the DR-2 regulations. But the question that you, you're asking me is can it be used by itself? And that's, the answer is no.

MR. NEAL: I think we miscommunicated then, because I was not asking whether it could be used by itself, but whether it could be used in conjunction with another property in this (inaudible).

MR. RICHARDSON: I think I answered your question then.

MR. NEAL: I have nothing further. Thank you.

CHAIR: Mr. Gontrum, do you have any --

MR. EVANS: Let me, could I just clarify that for a second? Mr. Richardson, if I understood your answer, what you're saying is that if an adjoining neighbor purchased the property, the property could be put to a use in conjunction with the existing dwelling on that property, is that your answer?

MR. RICHARDSON: That is a possibility.

MR. EVANS: Okay.

MR. RICHARDSON: If, if the adjacent property owner was able to acquire it.

MR. EVANS: Right, but, but the adjacent property owner wouldn't be able to build a house --

MR. RICHARDSON: No.

MR. EVANS: -- in line, under any circumstances. It would have to be an accessory use to the existing house, is that what you're saying?

MR. RICHARDSON: They, they might be allowed to

enlarge --

MR. EVANS: Enlarge, okay.

MR. RICHARDSON: -- their existing structure.

MR. EVANS: Um hm.

MR. RICHARDSON: Or another accessory use on it.

MR. EVANS: Um hm.

MR. RICHARDSON: But not another new dwelling, no.

MR. EVANS: Okay, great. I just wanted to understand that, thank you.

MR. RICHARDSON: Yes.

MR. EVANS: I'm sorry, go ahead, Mr. Gontrum. I didn't mean to interrupt. I apologize.

MR. GONTRUM: Mr. Richardson, just to, just to follow-up on Mr. Evans' question, if the, an adjoining property owner wanted to use this lot as, for an accessory use to their principal use, they'd still have to merge this lot into the principal, the lot with the principal dwelling, is that not correct?

MR. RICHARDSON: That's correct.

MR. GONTRUM: So, in a sense, you are changing the configuration of the lot.

MR. RICHARDSON: Yeah, you're making, you're making the, because either lot on either side is not conforming, even with the acquisition of this entire lot, if they got it all.

MR. GONTRUM: So, they're still, if they acquired it,

all they'd be acquiring is another five thousand plus square feet?

MR. RICHARDSON: Correct. They still would not meet the, any of the zoning requirements necessarily.

MR. GONTRUM: Right, and Mr. Richardson, in, going back to the storm water management issue, you testified that if a dwelling were placed on this, to the extent of the impervious area, there would be an increased runoff, is that correct?

MR. RICHARDSON: Yes.

MR. GONTRUM: Now, sediment and erosion control in Baltimore County would require that increased runoff be dealt with in some fashion, is that not correct?

MR. RICHARDSON: Yeah, we have to direct it to a suitable outfall and usually that --

MR. GONTRUM: Well, would the adjoining property owners' properties be suitable outfalls?

MR. RICHARDSON: No.

MR. GONTRUM: So, we would have to manage that storm water runoff by placing it in a suitable outfall and that would not include allowing it to, basically, run over onto Lots 5 or 7 as shown on the site plan, or shown on the record plat?

MR. RICHARDSON: No, that would not be acceptable in their eyes.

MR. GONTRUM: So, we would have to either put in a swale or do some kind of, of measure to direct that outfall?

Maybe rain, you know, downspouts, through downspouts and things like that, is that correct?

MR. RICHARDSON: Yeah, we would, we would grade the site so that it would not go onto the neighbors', it would go out into the, the street.

MR. GONTRUM: Okay. Now, Mr. Richardson, your, your work as an engineer and in preparing site plans has basically taken you throughout the County, is that not correct?

MR. RICHARDSON: Yes.

MR. GONTRUM: Are you aware of the imposition of DR-2 elsewhere in the County on lots of this size?

MR. RICHARDSON: No, it's pretty unusual.

MR. GONTRUM: In fact, you'd almost say that the imposition of DR-2 on lots of this size is pretty much unique, is it not?

MR. RICHARDSON: Yeah, because these lots were never contemplated to be zoned DR-2. That's why in 1971 they rated them all as DR-5.5 because most of the lots and, and they were, there's thousands and thousands of lots throughout Baltimore County that are all fifty-foot-wide lots and they all got zoned into DR-5.5, which was the closest thing that the County had to being a fifty-foot-wide lot. These lots should be zoned DR-5.5, but the community out here chose to downzone them to make them all non-conforming uses.

MR. GONTRUM: I have no further questions.

CHAIR: I have one question. Mr. Evans, did I just cut you off?

MR. EVANS: No, you go ahead. Go ahead, go ahead, go ahead.

CHAIR: Mr. Richardson, do you know if there was any, what the method for approving subdivisions was at the time that this plat was put on record? Was there a review process? Was it, if so, who reviewed it, what was the criteria?

MR. RICHARDSON: I'm not aware of any review process that took place on properties like this. The record plats, I think, prior to the Planning Commission, which started in the, I believe in the fifties. So, prior to that, I think it was just surveyors/engineers, you know, developed the properties for, for the, for owners as, as they were wishing them to be developed. I don't think there was a, a process or a criteria, not that I'm aware of anyways.

CHAIR: In preparing this plan, do you know if there was, were public utilities serving these lots when they were first recorded?

MR. RICHARDSON: I don't know the answer to that question. I'd have to look and see what the, the, the utility company, utilities that they're noted as to what they're, the year that they were approved. And I'd have to look at that and I don't have that information handy.

CHAIR: Just curious. I can think of many

communities with similarly old, recorded subdivisions so it's just curiosity for no, nothing.

MR. GONTRUM: Your Honor, I would suggest that, even if we didn't know in 1933 what was there when these houses were constructed on these five thousand and, and if you're on the east side of the road, maybe up to six thousand square foot lots, they would never have been suitable for well and septic and the building permits would never have been approved had not public utilities been in place to allow these houses to be built in this fashion.

So, I would simply, and I also note that Locust here on this plat, is thirty foot wide. Baltimore County generally didn't approve roads less than that. In fact, forty feet was sort of a standard. But thirty feet is something that they would approve on, I mean, that's, that's a matter of public record and the laws.

So, I would simply suggest that at some point, prior to these houses being constructed, there had to be public utilities in place for this to occur.

CHAIR: Yeah. Mr. Evans, I'm sorry I cut you off.

MR. EVANS: No, I, actually, I don't have any questions.

CHAIR: Ms. Bonardi?

MS. BONARDI: I don't have any either.

CHAIR: Okay. Then we will, it's 11:52. Mr.

Gontrum, you have another witness?

MR. GONTRUM: Yes, I do, Your Honor.

CHAIR: Do you, how long do you think your direct examination would take?

MR. GONTRUM: I think it would be very quick, Your Honor.

CHAIR: Well, I'm going to suggest we take a five-minute break before you call your next witness. If that's agreeable. Does anyone object?

VOICES: No.

CHAIR: All right. Then we are taking a five-minute break. We will reconvene say at noon.

MR. GONTRUM: Thank you, Your Honor.

CHAIR: Thank you.

(BREAK)

MR. EVANS: Okay, I'm back.

CHAIR: We're going to give people another minute or two. I want Ms. Bonardi to be back.

MR. EVANS: Okay.

CHAIR: And then we'll resume.

MR. NEAL: Can I ask a preliminary procedure before we get started?

CHAIR: Who's speaking?

MR. NEAL: This is Aaron Neal.

CHAIR: Okay.

MR. NEAL: And I, I will admit to being a, a neophyte as far as zoning goes. I generally practice in the Circuit Courts and Federal Courts. Will there be an opportunity for closing arguments? Because my statement is primarily going to be a legal argument.

CHAIR: Typically, what this Board does is we will ask for written memoranda in lieu of closing arguments.

MR. NEAL: Okay.

CHAIR: And we will provide time in which to submit those memoranda.

MR. NEAL: Okay.

CHAIR: So, the answer to your question is, there will not be oral closing arguments, but there will be an opportunity to present your legal theory in writing and with whatever support you have.

MR. NEAL: Very well, thank you. I'll simply present factual information and, and then reserve for the written memoranda.

CHAIR: Thank you, Mr. Neal. Ms. Bonardi, are you back?

MS. BONARDI: I am.

CHAIR: Okay. Then we're going to resume. We are on the record. Mr. Gontrum, would you call your next witness?

MR. GONTRUM: Yes, I'd like to call Mr. Leibowitz, Brian Leibowitz.

CHAIR: Swear the wit, I have to change his status. Give me one second. Mr. Leibowitz, I have made you a panelist. Can you unmute yourself to be sworn in?

MR. LEIBOWITZ: Yes, I'm ready.

MS. BONARDI: Thank you, Mr. Leibowitz. Please raise your right hand. Do you swear or affirm under the penalties of perjury, that the testimony you're about to give is true and correct to the best of your knowledge and belief?

MR. LEIBOWITZ: I do.

MS. BONARDI: And would you please state your name and spell your name for the record, please?

MR. LEIBOWITZ: Sure. My name is Brian Leibowitz and it's spelled B-R-I-A-N. Leibowitz is L-E-I-B as in boy-O-W-I-T-Z.

MS. BONARDI: Thank you.

CHAIR: Mr. Leibowitz, would you give us your address and your capacity, employment or your interest in this hearing, please?

MR. LEIBOWITZ: I work for the potential developer, Dominion Properties. Our address is 1029 North Calvert Street, Baltimore, Maryland 21202.

CHAIR: Thank you. Mr. Gontrum?

MR. GONTRUM: Yes. Mr. Leibowitz, what is your position with Dominion Properties?

MR. LEIBOWITZ: I'm the Director of Acquisitions.

MR. GONTRUM: All right and you basically retained Mr. Richardson to file the zoning petition and to prepare the site plans in this case, did you not?

MR. LEIBOWITZ: That is correct.

MR. GONTRUM: All right. Now, have you had the occasion to discuss with Mr. Richardson the change in the footprint of the building?

MR. LEIBOWITZ: Yes.

MR. GONTRUM: Okay and why did you change the footprint?

MR. LEIBOWITZ: We were speaking with counsel for one of the neighbors who asked us to consider a smaller footprint, to be more conforming with the, you know, with the area, which we obliged.

MR. GONTRUM: Okay and initially, did your concern for the rear yard, did your request for the rear yard variance have anything to do with the use of the property to the rear of 16 Locust?

MR. LEIBOWITZ: I'm sorry, John, could you speak up? I couldn't quite hear you.

MR. GONTRUM: I'm sorry. Did, initially, when you were seeking the variance for the rear yard of twenty-five feet in lieu of forty feet, was there any consideration given to the use of the property to the rear of the subject lot?

MR. LEIBOWITZ: I mean, the, the larger plan that,

you know, we were originally using there, really made a very small, you know, rear, rear lot, rear yard, which was I think part of the concern for some of the neighbors. So, that's why we downsized to two, to one of the smaller plans so that we were more conforming with everything over there. And we also don't need to do a rear variance.

MR. GONTRUM: Okay. Well, in looking at the site plan, at the, excuse me, at the elevations, were you also willing to eliminate the front garage?

MR. LEIBOWITZ: Yes, correct. That was also a big sticking point with many of the neighbors' comments.

MR. GONTRUM: Okay and so the elevations that are depicted on 4-B are basically what you're now proposing, is that correct?

MR. LEIBOWITZ: That is correct.

MR. GONTRUM: Why did you originally wish to have a garage in the front?

MR. LEIBOWITZ: I mean, modern construction, modern usage of homes, that's what most, you know, owners are looking for now. So, that was, that was the idea.

MR. GONTRUM: Okay and you did note that most of the homes in this area just didn't have that, is that correct?

MR. LEIBOWITZ: That is correct.

MR. GONTRUM: What materials will the proposed dwelling be constructed?

MR. LEIBOWITZ: It will be siding and brick.

MR. GONTRUM: All right. Now, you heard Ms. King ask Mr. Richardson the question about how the siding and brick will be arranged on the building. Could you, if you know at this point, do you know how that would be arranged?

MR. LEIBOWITZ: Right now, the plan is that it is brick on the front lower half and then siding on the rest of the home.

MR. GONTRUM: Okay. So, the sides and the rear would be siding?

MR. LEIBOWITZ: That is correct.

MR. GONTRUM: All right. Are you aware that the proposed elevations have to be reviewed by the Department of Planning?

MR. LEIBOWITZ: Yes.

MR. GONTRUM: And they would look at the conformance of the look of the building to other dwellings on the, in the area?

MR. LEIBOWITZ: That's common practice, yes.

MR. GONTRUM: And you're aware, and you're willing to abide by their determinations with respect to that?

MR. LEIBOWITZ: Yes, sir.

MR. GONTRUM: Okay. I have no other questions of Mr. Leibowitz.

MR. EVANS: Ms. Dopkin, you're muted.

CHAIR: Ms. King, do you have any questions for Mr. Leibowitz?

MS. KING: Yeah, I have one question. You, you, the new plans have, you have removed the front garage from the house. Do you have a plan in place for parking or a, a rear garage at this time or any, since you removed the parking situation from the home?

MR. LEIBOWITZ: Yes, right now there is a plan for a, a driveway to be on one or the other side. We, we, we don't know what the, what the, the Planning Department is going to require yet. But we have not discussed a, a rear garage at this time.

MS. KING: Okay and then, would a driveway require any additional variance requests?

MR. LEIBOWITZ: Not that I'm aware of. But that is a question for, for Rick.

MS. KING: Okay, thank you. That's all I have.

MR. EVANS: Mr., Mr. Leibowitz, is, is there room for a rear, a rear garage and still to comply with the non-setback in the rear?

MR. LEIBOWITZ: From my knowledge, there is. And that's one of the reasons why there's the setback in the rear because I think that's what the County was going for but I, I don't know for certain. Again, that's a question for Rick, for the layout of the site plan.

MR. EVANS: Okay.

MR. GONTRUM: Mr. Evans, I would suggest that if you look at, at, there are criteria in the zoning regulations as to accessory structures in the rear yard, setbacks and also the amount of the rear yard that could be occupied by an accessory structure. So, that there would be limitations on the size of any accessory structure in the rear yard, as well as limitations on where it could be located, according to the zoning rules, without asking for variances.

MR. EVANS: Okay. I just don't want us to be in a situation where we're being asked to approve something where there's, you know, a hidden ball somewhere, frankly.

MR. GONTRUM: I understand.

CHAIR: Thank you, Mr. Gontrum. Mr. Sanders, do you have cross examination for Mr., questions for Mr. Leibowitz?

MR. SANDERS: Just briefly. Mr. Leibowitz, you said, were you the person who spoke with counsel of the neighbor (inaudible) smaller building footprint?

MR. LEIBOWITZ: No, I did not speak directly with counsel.

MR. SANDERS: Who was the one who you referenced speaking with counsel of the neighbor to make a smaller footprint. Who was that?

MR. LEIBOWITZ: It was Mr. Gontrum.

MR. SANDERS: And he was speaking with, do you know

what counsel?

MR. LEIBOWITZ: I don't know the specifics.

MR. SANDERS: Okay and, that's all the questions I have. Thank you.

CHAIR: Mr. Neal?

MR. NEAL: I have no questions, thank you.

CHAIR: Okay.

MS. BONARDI: Madam Chair, I have one question relating to the parking.

CHAIR: Sure. Go ahead, Ms. Bonardi, please.

MS. BONARDI: I, I just wanted to follow-up to the question that Mr. Evans had. Regarding the parking, the driveway that is proposed, is that similar to the parking arrangement with neighboring properties?

MR. LEIBOWITZ: Yes, ma'am. So, many of the, of the houses along the street, I don't know how many offhand, but all, I would venture to say ninety-nine percent of them have, have off street parking via a driveway.

MS. BONARDI: No further questions, thank you.

CHAIR: I just have one. Can you tell me a little bit about Dominion and --

MR. LEIBOWITZ: Yes.

CHAIR: -- what their primary product is and where?

MR. LEIBOWITZ: Yes, ma'am. So, we focus mostly our new construction in Baltimore County. The actual building arm

of Dominion is called Dominion Homes. Dominion Properties is one of the primary LLC's that, that the company uses. Our, you know, new construction product, we've built multiple houses in Catonsville before. And we've got another one in Arbutus going at the current moment.

But this, we, we're not a major builder by any stretch of the means. We are not Ryan Homes, we are not any of the, you know, the big guys. This is what we specialize in. We specialize in these one off, you know, lots. You know, these, these singular homes and it's what we've been doing for a long time. Dominion --

CHAIR: How long?

MR. LEIBOWITZ: -- Dominion has been in business for over twenty-five years at this point.

MR. EVANS: How many employees does Dominion, does, well, there are a number of connected LLC's, I take it, right?

MR. LEIBOWITZ: Yeah.

MR. EVANS: Okay. So, Dominion Properties, which is the entity you, you work for.

MR. LEIBOWITZ: Right.

MR. EVANS: How many employees does Dominion Properties have approximately?

MR. LEIBOWITZ: Yeah, sure. There's about thirty-five of us, but the entire company has about a hundred and twenty-five.

MR. EVANS: The entire company, meaning all the collected LLC's?

MR. LEIBOWITZ: Yep.

MR. EVANS: All right, thank you.

CHAIR: Does that include construction workers? Do you do your own construction?

MR. LEIBOWITZ: We do. We, we have, we have multiple construction workers on payroll. We also hire third parties. Just depends on what the particular work that is needed.

CHAIR: I have no further questions for Mr. Leibowitz, and I believe the Board has asked its questions.

MS. KING: I'm sorry to interrupt. Am I allowed to ask one more question or am I done?

CHAIR: You can ask one more question.

MS. KING: Okay, sorry, thank you. I just wanted to ask have you ever, I know you said this, this is your specialty, building on these one-off lots. Have you ever built a house on a lot this small before?

MR. LEIBOWITZ: Yes, we have. I don't remember the address right offhand, but we, we certainly have. A five thousand square foot lot is not uncommon in Baltimore County.

MS. KING: Okay, thank you.

MR. SANDERS: Oh, I, I have a question. Mr. Leibowitz, --

CHAIR: Who's speaking? Oh, Mr. Sanders.

MR. SANDERS: Barry Sanders.

CHAIR: Yes.

MR. SANDERS: Mr. Leibowitz, you're the contract purchaser with Mr. Helfrich?

MR. LEIBOWITZ: That is correct.

MR. SANDERS: And your contract is contingent upon approval of the variances?

MR. LEIBOWITZ: That is correct.

MR. SANDERS: And originally Mr. Helfrich had, had listed the lot for $75,000. Is that what the contract purchase price is?

MR. LEIBOWITZ: No, it's, I think, --

MR. GONTRUM: Objection.

CHAIR: And what is the basis of your objection, Mr. Gontrum?

MR. GONTRUM: Well, not only does it exceed the, the direct, the testimony on direct which didn't go into the contract at all. But it also is irrelevant to the issue of the zoning variances.

CHAIR: I'm going to sustain the objection. Mr. Sanders, do you have other questions?

MR. SANDERS: If, if your variance, variances are granted by the Board of Appeals, the case is subsequently appealed, is the contract still viable?

MR. GONTRUM: Objection.

CHAIR: And the basis is the same or different?

MR. GONTRUM: Same basis.

CHAIR: I'm going to --

MR. GONTRUM: Both exceeding the direct and --

CHAIR: I'm doing to sustain it. I don't think the line of questioning about the contract gives this Board much to, any additional value to our decision.

MR. SANDERS: Okay. Well, are you in contact with Mr. Helfrich? Mr. Leibowitz?

MR. LEIBOWITZ: Oh, yes. Yes, we've been in contact.

MR. SANDERS: Is, is he attending this hearing today?

MR. LEIBOWITZ: I am actually not sure.

MR. SANDERS: Okay. No further questions.

CHAIR: Thank you. Mr. Gontrum, do you have any further witnesses?

MR. GONTRUM: No, Your Honor. At this time, I do not.

CHAIR: Okay. It's 12:15. Ms. King, Mr. Sanders and Mr. Neal, are you each present, how do you wish to proceed with the Protestant's case? Will you be calling witnesses?

MS. KING: I, I had prepared, basically, a statement or testimony to read, which refers to the exhibits that I submitted and then I'm not sure what Mr. Sanders or Mr. Neal plan to do.

CHAIR: Mr. Sanders?

MR. SANDERS: I'm just going to testify.

CHAIR: And Mr. Neal?

MR. NEAL: I, I have some brief testimony and a letter to read and that's it.

CHAIR: Okay. Then rather than take a break, I am going to continue and ask Ms. King and we'll just proceed in the order we have and ask Ms. King to present her statement and her points.

MS. KING: Okay. I, I have a quick question about the exhibits. At the zoning hearing, we submitted them, and they were pulled up on the screen as I read through. Do I need to present my own exhibits here?

CHAIR: Yes, you do.

MS. KING: Okay. Let me just --

CHAIR: And have you submitted --

MS. KING: Yes.

CHAIR: I don't have my screen open to what was submitted. You submitted them to the Board prior to this hearing, did you not?

MS. KING: Yes, I did.

CHAIR: Okay, all right. Mr. Gontrum, you're not going to get to share any further. I am going to pass the baton to Ms. King so she can present her exhibits and share her screen.

MR. GONTRUM: Thank you, Your Honor. That, that is,

that's quite all right. I'm a little bit confused though because I'd inquired by the Board if any of the Protestants had filed exhibits and was informed that they had not as of this morning.

So, I don't know, I, I understand Ms. King said she submitted exhibits, but I wasn't aware that they're, they had been submitted. So, if they have been to the Board, you know, the forty-eight-hour rule or whatever it is, that's fine. I just, the Board this morning informed me they had not.

CHAIR: All right. Ms. King?

MS. KING: Yeah, I submitted all of my exhibits on Friday of last week and I got an e-mail confirming that they received all of my exhibits.

MR. GONTRUM: Yeah, it's possible Ms. Cannington just didn't realize that they had been submitted.

CHAIR: Well, it, it --

MR. SANDERS: Ms. King submitted her exhibits, that's not the issue.

CHAIR: Give me a second, please. Okay. I have spoken to the Board. Ms. Cannington was not aware that Ms. King had submitted the exhibits, but Mrs. Zahner was. They are in the open file and are available. If you would like to take a break so you can review them, we can do so or we can proceed.

MR. GONTRUM: No, I'm fine proceeding, Your Honor. We can, we can just go ahead. I, I just had, we're sort of a

little bit surprised, but that's all right. We, we can --

CHAIR: It was a little human error at our level, for which I apologize.

MR. GONTRUM: It's quite understandable. We also had a holiday weekend thrown in there, so I quite understand.

CHAIR: If you're good with that, how about Mr. Sanders, Mr. Neal, do you have any problem with our proceeding?

MR. SANDERS: No.

MR. NEAL: That's fine with me.

CHAIR: All right. Ms. King, you're able to share your screen and make your statement. If you'd proceed.

MS. KING: Okay, sorry. I am just trying to figure out how to share my screen, I'm so sorry. I do not know how to do that.

CHAIR: Well, there should be a button at the bottom of your screen that says share.

MS. KING: There isn't. I have a share at the top when I drop --

CHAIR: Well, then, I see what, if you click on that.

MS. KING: Um hm.

CHAIR: Do you get a drop-down menu that says file?

MS. KING: Yeah, but my screen is grayed out, so I'm unable to click that.

CHAIR: Oh, and let me see if, we certainly have given you all those privileges. Try it now.

MS. KING: Okay, let me try again. No, it, it is still grayed out.

MR. NEAL: I, I will say mine just became available. So, something worked.

MS. KING: Maybe I should send you all my exhibits.

CHAIR: I definitely have given you those privileges. Maybe you should go out of share and go back in and see if you.

MS. KING: Yeah, I keep kind of refreshing it and it's not doing anything. If, if Mr. Neal can, or has the ability to share, well, I guess that really, I don't know how that would work.

MR. NEAL: I can, I can share them as you, as you note what you're doing.

MR. EVANS: Yeah, why don't we do it that way? If you, Mr. Neal, if you can access those files, then you can share them as Ms. King refers to them, is that, does that work?

CHAIR: I've just passed the baton to Mr. Neal, if he is aware of what those documents are and has access to them.

MS. KING: Okay. I'm going to forward, I have to just e-mail him these exhibits really quick.

CHAIR: That's all right.

MS. KING: Okay, okay. Aaron, there's one, and let me go back in and do the other one. I'm sorry for the delay here.

CHAIR: It is not a problem. We are all struggling

with technology.

MS. KING: Yes. Okay.

CHAIR: I always say computers are like cars, you can't live with them, and you can't live without them.

MS. KING: That is very true. Okay. So, let me just make sure these went through.

MR. NEAL: Julie, if it makes you feel better, I had a Zoom trial set for last week and opposing counsel couldn't get Zoom to work, so we had to cancel the trial.

MS. KING: Well, at least we're all here, right? Okay. So, I, I sent those, Aaron, if you could, it's, I'm trying to refresh my sent to make sure they, okay, so it looks like they went through so it's two separate e-mails, so the file isn't too big. Just let me know --

MR. NEAL: (inaudible) pops through.

MS. KING: Okay. Yeah, I'm, I'm trying to share one more time, it, it still is grayed out so I'm not sure what the deal is, but.

CHAIR: Mr. Neal, how are we doing?

MR. NEAL: I, I'm hitting send/receive every, every ten to fifteen seconds hoping it comes through. If it's large, it may take a minute.

MS. KING: It's about ten pdfs. So, altogether --

CHAIR: It's large.

MS. KING: It's large. While we're waiting, can I

ask a technical question? As far as when I reference an exhibit, do I need to specific, specifically ask that they be submitted officially as an exhibit or, because I've sent them, and they are there.

CHAIR: It is the way we do things is you present something, identify it by exhibit number.

MS. KING: Um hm.

CHAIR: And ask that it be admitted into the record.

MS. KING: Okay.

CHAIR: Because there are often times where a party will submit multiple exhibits but not make all of them part of the record.

MS. KING: Okay.

CHAIR: So, we might have had twenty exhibits pre-filed and only ten will come useful in the case or introduced as evidence. So, that's the long answer to the yes of your question.

MS. KING: Okay, thank you.

CHAIR: And I will say, if you're presenting photographs, it would be helpful if you told us if you are the actual person who took them and when you took them and what they show.

MS. KING: Okay.

MR. NEAL: Julie, the only thing I can think of is if it's, I think, more than fifty megabytes, my system might kick

it back, had it send you a file share link to get it through my, my firm's e-mail system.

MS. KING: Okay. I'll –

MR. EVANS: What we've done in other cases, Mr. Gontrum, is opposing counsel, which has better access to the files, has been gracious enough to do the sharing. Is that possible here?

CHAIR: You're muted. John, you're muted. Try it now.

MR. GONTRUM: Oh, now I'm muted. I kept, I guess I held down my clicker too long and it went back and forth. At any rate, I'm, I'm more than willing to help out in any way I can. I will say I'm probably as technologically challenged as anybody in the, in the room. I can't tell you how long it's taken me to just be able to show my own exhibits.

MR. EVANS: Uh huh.

MR. GONTRUM: I'll be more than willing to pitch in and help, Mr. Evans. Perhaps if the Board was going to consider taking a recess for lunch, we could do this during that period and then upload it and just, basically, move quicker, quickly through it afterwards. Just a thought.

CHAIR: I'm willing to do that if the other parties are.

MR. EVANS: I think it's a good idea, frankly, yeah.

CHAIR: Okay. It's 12:30, we'll reconvene at 1:00.

MR. EVANS: Sounds good.

CHAIR: We're going off the record. Ms. King, Mr. Neal, Mr. Sanders, if you could work this out so you can --

MR. GONTRUM: And, and if they --

CHAIR: -- somebody can present the exhibits when we resume at 1:00.

MR. GONTRUM: If they wish for me to do it, I'd be happy to do it. If they're going to send me the pdfs, I'll just throw them in the way I did it before.

MR. EVANS: Okay, thank you.

MS. KING: Thank you very much.

CHAIR: Thank you, everyone.

MR. NEAL: Thank you.

CHAIR: We're going off the record for the next half hour.

(BREAK)

CHAIR: I just put us back on the record, so we're recording. Just waiting for Mr. Neal to rejoin us so Ms. King can present her thoughts. Mr. Neal?

MR. EVANS: He's unmuted.

CHAIR: But he's not saying anything. And it's 1:00. Mr. Neal? Well, while we're waiting. Mr. Gontrum, do you expect to have any further questions for Mr. Leibowitz? I was going to remove him as a panelist.

MR. GONTRUM: No, I, I think all my questions have

been asked.

CHAIR: Thank you. He is now back as an attendee. Mr. Neal, please let us know if you're here.

MR. EVANS: Well, now he's muted again.

MR. NEAL: I, I can hear Mr. Evans.

CHAIR: Ah, are you ready to resume?

MR. NEAL: I am ready, and we have sorted out the exhibit issue.

CHAIR: Great, thank you. Ms. King, please, it is, the floor is yours.

MS. KING: Okay. If okay, I'm just going to read through what I --

CHAIR: I think you have to be sworn.

MS. KING: Oh, yes, I'm sorry.

MS. BONARDI: Thank you, Ms. King. Will you please raise your right hand? Do you swear or affirm under penalties of perjury, that the testimony you're about to give is true and correct to the best of your knowledge and belief?

MS. KING: I do.

MS. BONARDI: Thank you. And would you please state your name again, your affiliation with the case and your address for the record? Thank you.

MS. KING: Yes. My name is Julia King. I live at 18 Locust Drive, the lot next door to 16 Locust Drive. And I am here to protest the requested variances.

CHAIR: Please proceed, thank you.

MS. KING: Thank you. Okay. My name is Julie King and my husband Ryan and I have owned our home at 18 Locust Drive for over seven years and are direct neighbors to the lot at 16 Locust Drive. We are participating in the appeal hearing to state our objection to the proposed zoning variance requests at 16 Locust Drive.

There are a number of reasons for our objection, which I would like to discuss. The first being that the lot at 16 Locust Drive is not physically unique based on the similarity and size, shape and topography of this property and the adjoining lots.

So, I submitted Exhibit 1. If Mr. Neal could be so kind as to pull that up? I don't know if he's sharing. There we go. And this, we, we have seen before with Mr. Richardson's testimony, but Exhibit 1 shows an aerial photo as well as a property map of Locust Drive.

And this just is showing that each lot is rectangular in shape with similar land features. So, if this could be submitted, submitted as Exhibit 1 on the record.

CHAIR: Protestant's Exhibit 1. Any objection, Mr. Gontrum?

MR. GONTRUM: No objection.

CHAIR: Well, we, the aerial photography, looks like it's from My Neighborhood, will be admitted as Exhibit 1 and

the second page is also part of the exhibit?

MS. KING: Yes. The, well, the, there's two pictures on one page.

CHAIR: Ah, okay.

MS. KING: They're both from My Neighborhood, I'm sorry, I should have stated that. The, the lower picture is just showing the topography of the area.

CHAIR: Okay, thank you.

MS. KING: Um hm. I've also included Exhibit 2, which I ask that be officially submitted as part of the record. This is, we've already seen this again with Mr. Richardson's testimony, but this is the plat of Locust Drive Extension from 1933, which shows, again, the size and shapes, similarities, between Lot 6, which is 16 Locust Drive, on Section A, I'm sorry. Lot 6 on Section A is 16 Locust Drive and the surrounding properties on Section A's side of the street.

CHAIR: And you're offering this as Protestant's Exhibit 2?

MS. KING: Yes.

CHAIR: Since it was previously admitted as Petitioner's exhibit, I'm going to guess there's no objection?

MR. GONTRUM: No objection.

CHAIR: And we will admit the recorded plat of Locust Drive Extension as Protestant's Exhibit 2.

MS. KING: Thank you. My next exhibit, Exhibit 3,

which I ask to be submitted to the record, includes the, it's three pages long. It's the SDAT real property searches. For the first page is 16 Locust Drive. The second page is for 18 Locust Drive and the third page is for 14 Locust Drive. And I've just highlighted that each property land area listed is roughly five thousand square feet. Again, just to show the similarity of the lot sizes.

CHAIR: And Mr. Gontrum, any objection?

MR. GONTRUM: No objection.

CHAIR: And the three pages of the State Department of Assessments Real Property data sheets will be admitted as Protestant's Exhibit 3.

MS. KING: Thank you. I'm done with the exhibits for, for those, I'll take a break from those. So, what I wanted to say about those first three exhibits is that although it is clear from the physical characteristics of this property that it is not unique, it was previously argued by the Petitioner during the original zoning hearing that the 1996 zoning change from DR-5.5 to DR-2 would qualify the lot as unique, based on the findings in the case in *Mueller v. Baltimore County*.

However, downzoning changes made in 1996, which was sixteen years before the property owner acquired the lot in 2012, those downzoning changes do not deem the property unique, given that the uniqueness of the property must come from the

property itself and not the practical difficulties relating to the property.

Furthermore, if downzoning is cited as the basis for proving the uniqueness of a property, then every downzoned property would be considered unique, and it would effectively nullify the impact and purpose of rezoning. Additionally, the property is not subject to any grandfathering protection from zoning changes per BCZR 304, based on the fact that the plat for Locust Drive was not recorded as an approved subdivision prior to March 30th, 1955.

It is my understanding from the case of *Cromwell v. Ward*, and based on the above facts, that the variance requests should be denied without consideration of any practical difficulties or hardship to the property owner, given that the property itself is not in any way unique.

However, we strongly believe that the property owner will not experience a practical difficulty or hardship if variance relief is not granted in this case. We do understand that the property owner has a right to do with his property what he finds will be most beneficial within the limitations of the law.

We also recognize that zoning laws have been put in place to prevent the building of homes in an area smaller than twenty thousand square feet to preserve green space and to stop overcrowding and overuse of the current infrastructure.

In this instance, the property owner has a sale contract in place with a real estate investment company contingent upon the variance relief requested to allow for a home to be built at 16 Locust Drive. This option would provide the most beneficial, oh, I'm sorry. This option would provide the most benefit to the property owner, given that this would yield the highest profit.

However, we feel that the property has great value in our neighborhood as a green space, especially from an environmental standpoint. Although zoning changes have altered the potential to build a home on this property, which in turn, alters the financial gain to the property owner, we do not agree that all beneficial use of the property will be lost if the requested variances are not granted.

We have offered to purchase the lot from the owner with zero contingencies and no plans for development. And although this option would not yield as high a profit for the property owner as would an offer from a real estate investor or developer, it would still provide an economic gain for the property owner.

It is clear that Mr. Helfrich's goal is to sell the property, which is why we are having this hearing. He needs the variances granted to complete the sale with Dominion Properties. We ask that you not grant these changes to the zoning laws for the sale of the property to a buyer that needs

variances granted when there are other opportunities to sell the property to a buyer who would not require variances at all.

Additionally, we do not believe that the downzoning changes made in 1996 and the fact that he is not being deprived of all, oh, I'm sorry, I skipped a line. Let me start that over, sorry about that.

Additionally, we do not believe that the downzoning changes made in 1996 and the denial of the requested variances on this property would constitute a taking based on the fact that he is not being deprived of all beneficial use of the property.

While we understand the proposed plans for a new home on this lot may be considered reasonable use of the property, it cannot be considered the only reasonable use for the property and should not be treated as such. There are other reasonable uses for the property that exist under the current zoning regulations and without the need for the requested variances as noted above.

So, I have submitted Exhibit 4, which I ask be officially entered on the record.

CHAIR: Mr. Neal, can you please put that up on the, thank you.

MS. KING: This Exhibit 4 includes e-mails from July of 2020, when we found out that the lot was listed for sale from, just by chance. From interested developers coming to

visit and measure the property, which shows our interest in trying to purchase the lot at that time.

That didn't go anywhere, as you see, because we are here now. I, I also have a, Exhibit 5, which I ask --

CHAIR: Uh --

MS. KING: Oh, I'm sorry. Go ahead.

CHAIR: You're offering an e-mail chain in which, between you and whom?

MS. KING: It's between me and my husband Ryan to Mr. Helfrich and also his realtor, the realtor doing the sale of, of the lot, Darren McShane.

CHAIR: And you're offering this to show your interest in acquiring the lot?

MS. KING: I'm offering this --

CHAIR: Or some other purpose?

MS. KING: I'm, I'm sorry, say that one more time?

CHAIR: What is the purpose of your offering this?

MS. KING: To show that from the beginning of this lot being listed, that we had expressed interest and that's, that's pretty much what I'm, what I'm showing.

CHAIR: Any objection, Mr. Gontrum?

MR. GONTRUM: I'm going to object on the grounds that I don't think it's relevant to the variance request. I'm prepared to concede. I didn't object to Ms. King's

representations that she was interested in purchasing the property.

I'm, you know, I have no problem with the fact that she's interested in purchasing the property, would be willing to, to agree to that, that she was interested in 2020. But I don't see the relevance of this exhibit to any of the issues before the Board.

MS. KING: I have, I have, my next exhibit is, we, we made an official offer to purchase the property, which I was going to show next.

CHAIR: Now, Ms. King, the question is, how does that go to the zoning issues that this Board has to address? What is the legal point that these support?

MS. KING: Well, I guess, I am not sure, as I am not a, a lawyer so if this is not something that is relevant, this particular exhibit, then I, I guess it can be removed. I have prepared this myself, so I (inaudible) --

MR. SANDERS: Madam Chair, Madam Chair?

CHAIR: Yes?

MR. SANDERS: There was testimony as to --

CHAIR: That's where I was going --

MR. SANDERS: -- the reason Petitioner, the reason Petitioners are building a house is, is due to economic viability. This is an issue.

CHAIR: That was not the, what I, where I was going

was that the, there was earlier testimony that was not objected to that there had been offers made by the neighbors to purchase the property. This merely supports those, that testimony. We will give it the weight we deem appropriate. I understand your objection, Mr. Gontrum. I'm going to admit the e-mail string as Protestant's Exhibit 4. Ms. King, please continue.

MS. KING: Thank you. The next exhibit is Exhibit 5, which I ask to be submitted on the record, please. It includes our most recent official offer to purchase the lot from the property owner because the original Exhibit 4 e-mails with the timing of the lot being for sale and the offers being closed on, three days after we found out the lot was for sale, we did not have time to work with our bank to get any kind of actual offer --

CHAIR: I think this is straying a little further than the testimony from before.

MS. KING: Okay. I was just trying to explain how it, how I feel that it links up with Exhibit 4 and Exhibit 5, but.

CHAIR: Mr. Gontrum?

MR. EVANS: I would like to see a, I, I, I would like to see it actually, if I --

CHAIR: Okay. Mr. Gontrum, any --

MR. GONTRUM: I do object to it because I don't see that off, putting in a contract when they know that the

property is under contract for sale, which they knew from the first hearing, now they're putting in a second, in a contract, and I don't see how that has any possible relevance to the zoning issues or to the legal standards that are in front of this Board.

It's not, you know, I've already been willing to concede that they're interested in purchasing the property. But this to me is so self-serving that I, and has no relevance whatsoever to it and --

CHAIR: Mr. Evans?

MR. EVANS: Well, I don't know how it's self-serving. It's a formal offer. It's a, if it's, if it's a contract that's being offered it could be accepted. So, I don't know how it's self-serving, okay? I mean, --

CHAIR: The question --

MR. GONTRUM: (inaudible) when it's already under contract?

MR. EVANS: But the contract isn't final because you don't have the zoning.

MR. NEAL: Even if it's self-serving, that, that's grounds for cross examination, not for objection to the particular exhibit. I, I think the exhibit goes to support the notion that there is alternative beneficial use and it's not hypothetical, it was, in fact, a, a very real possibility if the offer had been accepted rather than simply the, the kind of

esoteric notion that people are interested. So, it is relevant to the beneficial use issue.

MR. GONTRUM: May I, Madam Chair?

CHAIR: Yes, go ahead.

MR. GONTRUM: This contract is absolutely hypothetical in the sense that this is an unimproved land contract of sale that is dated as of May 28th, 2021. It has, it cannot be accepted, it can't be used, when there's an existing contract for sale.

We don't know if you, if the Board were to deny the variances, we don't know what the next steps would be. We don't know whether this contract would still be extant or not, we don't know whether or not this contract is any, it has absolutely no enforceability at this point. We couldn't enter into it if we wanted.

And so, I'm just suggesting to you that anyone can prepare a contract, submit it for any amount of money and at this point, it has equal weight, which is zip.

And I would also argue that it has no relevance as to whether or not we're entitled to variances under the Baltimore County Code.

MR. NEAL: So, unfortunately, Mr. Gontrum's client's contract is not in the record, so we have no idea, other than his own testimony whether they could or could not accept this.

CHAIR: You know, I understand everyone's point. I

understand that some of the Board members would like to see the contract. Generally speaking, contracts of sale have little bearing on zoning issues before this Board or in zoning cases that I'm aware of. And economics are not the determinant of the term of art of beneficial use of property.

So, I tend to agree with Mr. Gontrum as to the relevance. But I also understand that the interest of Mr. Evans in seeing it and I will admit it for i.d. only. I just question its value going to the issue of, the pertinent issues before us. Actually, I'm just going to admit it and give it whatever weight we think is appropriate and move on.

MR. EVANS: So, it's not, it's not for i.d. only. It's admitted?

CHAIR: Correct.

MR. EVANS: Okay, all right.

CHAIR: But I think that its relevance is marginal at best.

MR. EVANS: Right. I think that's all fair.

CHAIR: Let's go on, Ms. King.

MS. KING: So, although this appealing, appeal hearing is de novo, I would ask that you please cite Administrative Law Judge Mayhew's decision in this case as persuasive authority.

Moving on to perhaps what is most important in the opinion of our community, is our collective concern that the

construction of a new home on this property, which will eliminate much of the current open landscape, if not the majority of it now that --

CHAIR: I'm going to interrupt you, Ms. King. When you say our community, are you speaking for someone other than yourself? If so, you need to follow certain rules, so. You're either speaking for yourself or you're speaking for more than yourself and you identified yourself as speaking just on your own behalf, so.

MS. KING: Okay. I will speak on my own behalf.

CHAIR: Thank you. If you would continue.

MS. KING: Okay. We have concern that the construction of a new home on this property, which will eliminate much of the current open landscape will bring impermeable surfaces to an area that is already very easily saturated.

This will directly affect the surrounding neighbors, most of whom have experienced basement water issues due to the ground moisture and lack of adequate storm water drainage in this area. While we can appreciate that the original plans for the home have been revised to show a smaller footprint on the lot, we remain fearful that the, I remain fearful that the addition of another dwelling on our street will cause even more damage to our homes and our street than currently exist whenever we experience heavy rainfall.

We note, I note that BCZR 307 states that any such variance shall be granted in such manner as to grant relief without injury to public health, safety and general welfare. I am fearful that the building of a home on the lot at 16 Locust Drive and the disruption it will cause to our area and the existing infrastructure will undoubtedly cause damage to our homes and properties in the future.

We question the usage of the gross lot area shown on the variance request, as it is misleading to reference a lot area of five thousand eight hundred fifty square feet, when the actual net square footage of usable space on the lot is five thousand square feet, based on the information listed on the plat, the Deed, and the SDAT real property search.

I have Exhibit 6 that I have submitted and ask to be recorded officially. The first page of Exhibit 6 shows the Notice of Assignment for this case from the Board of Appeals of Baltimore County, and I have highlighted that they're asking for a variance for, to allow a lot area of five thousand eight hundred fifty square feet in lieu of the minimum required twenty thousand square feet.

The next page of Exhibit 6 is, again, the plat of Locust Drive Extension, just highlighting the Section A, Lot 6, which is 16 Locust Drive, is listed as fifty feet wide by one hundred feet deep.

Page three of Exhibit 6 is the, well, page three and

beyond, I'm sorry, is the Deed to the property at 16 Locust Drive, which on page four of the Deed lists the square footage of fifty feet by one hundred feet.

CHAIR: Any objection, Mr. Gontrum?

MR. GONTRUM: No objection.

CHAIR: Protestant's Exhibit 6, which is seven pages, all from the public, various public records, will be admitted. Go ahead, Ms. King.

MS. KING: We ask that you take into consideration the grossly undersized lot area of five thousand square feet, which is a mere twenty-five percent of the required twenty thousand square feet minimum lot area for any new home construction in our DR-2 zone.

Additionally, we respectfully request that you not make an exception to the law in this case in order to maintain the integrity of the current zoning regulations and ensure that a precedent is not set for future new home construction that does not fall within the limitations of the zoning laws in this area.

There are many residents in the neighborhood who are opposed to the change in use of this space, both direct neighbors and residents from surrounding streets have expressed concern over new home construction in this space, as well as the precedent that would be set if zoning variances were granted.

Exhibit 7, which I ask to be submitted on the record, please, shows the over forty signatures we have collected petitioning against the proposed variances and the community's wish to keep this area a green space. So, when I reference we as a community, this is what I'm talking about. These are the people that I'm speaking about, even though I'm not allowed to physically or be their spokesperson. They're all right here, four pages long.

CHAIR: Any objection, Mr. Gontrum?

MR. GONTRUM: Yes, for the record, I'll object to it, but I understand that the Board typically allows such petitions and gives them the weight that they merit.

CHAIR: Protestant's Exhibit 7, a four-page petition objecting signed by (inaudible) neighbors will be admitted. Please continue, Ms. King.

MS. KING: Okay. I, I have an Exhibit 8, which is two, two pages, a total of four pictures that I took myself of the homes closely surrounding the lot at 16 Locust Drive. I did this just because in the initial zoning hearing there were no pictures from the Petitioner that show any of this.

But there were this time around so you've kind of already seen this before. But I ask that it be submitted as Exhibit 8 on the record anyway.

CHAIR: And what, were these taken prior to the hearing before the ALJ or prior --

MS. KING: Yes. This was taken when the signs were posted on the, on the lot prior to the zoning hearing, just to show, because we had seen from the Department of Planning prior to the zoning hearing, what the proposed elevations were for the lot. And we were trying to show that the plans had in no way fit in with the houses on the street. But since, they have since altered the plans as we've discussed earlier.

CHAIR: Any objection, Mr. Gontrum?

MR. GONTRUM: No objection.

CHAIR: Protestant's Exhibit 8, which is two pages of photographs showing adjoining and surrounding properties, will be admitted. Okay, Ms. King.

MS. KING: Okay. Where am I here? Yes. So, kind of to wrap up, although several of our neighbors were unable to attend this appeals hearing due to work and other scheduling conflicts, we have included testimonies from those neighbors closest to the lot, who wish to express their concern to the Board, despite possibly not being able to speak at the hearing.

So, I have Exhibit 9, which is a letter from Laura Scherer, of 14 Locust Drive. And I know she is on this and called the office and said that she wished to speak and I, I believe they instructed that they would let her speak at the end. I don't know if she's allowed to read this letter herself or if I have to read it.

CHAIR: Let me say it would be, I'm not going to

admit it coming from you if she is in attendance. And when every, you and Mr. Neal and Mr. Sanders have finished I will be happy to take, to make Ms. Scherer an attendee or unmute her so she can offer her own statement.

MS. KING: Okay. I'm sure she would rather have her read it than me. So, that would be fine.

CHAIR: Yeah, and so would we.

MS. KING: Yeah.

CHAIR: So, let's move on, please.

MS. KING: Okay. Can Exhibit 9 please still be submitted as official --

CHAIR: This is from Mr. Neal. He's in attendance.

MS. KING: No, I'm talking about Exhibit 9 from Laura Scherer. I haven't gotten to Exhibit 10 yet.

CHAIR: Ms. Scherer can offer her own statement when the time comes.

MS. KING: I, I understand. I, I'm including this as an exhibit and I'm asking if it can be --

CHAIR: And I'm saying that Exhibit, we will not admit it from you. We will admit it from her when she, if she offers it when she speaks.

MS. KING: Okay, thank you.

CHAIR: So, Exhibit 9 will just have to wait until Ms. Scherer is at bat.

MS. KING: Okay. Same, same for Exhibit 10 and that

is from Kimberly and Aaron Neal, who live at 20 Locust Drive, who Aaron is on the call, so that kind of wraps it --

CHAIR: He can offer that.

MS. KING: Yes, at his, that's fine. I just, I just want to kind of express that we don't feel like we're asking for anything extraordinary here. Just that you maintain the zoning laws that have been put in place in our neighborhood. And in doing so, deny the requested variances. And I just thank you for your time and your grace, as I obviously have not done this before and, and not an attorney. So, thanks for bearing with me.

CHAIR: You've done a great job --

MS. KING: Thank you.

CHAIR: -- and have been altogether appropriate in your approach, so we appreciate that coming from you, knowing that this is new territory for you.

MS. KING: Yeah, okay. Thank you very much. And I'm, I'm all finished with what I have to say.

CHAIR: We would ask that you mute yourself and that you, Mr. Gontrum, well, before you mute yourself, do you have any questions?

MR. GONTRUM: I would just ask, Ms. King, were you the one who had, did you have any conversations with the Office of People's Counsel?

MS. KING: I, when we, when we got the letter, or the

notice, that this was being appealed, I called the Office of People's Counsel. That was, honestly, I have no idea when that was. It was a long time ago. In May. And I spoke to Peter Zimmerman, and he hadn't, he hadn't even looked, he had just gotten the file. He hadn't looked at it yet.

I was just calling him for some direction because I saw he was listed, he was copied on the appeal letter. But I haven't had any conversations with him beyond that initial conversation.

MR. GONTRUM: And you were also represented by Mr. Holzer at one point?

MS. KING: Yes.

MR. GONTRUM: And did Mr. Holzer make you aware that the house had been changed in size?

MS. KING: Yeah, --

MR. NEAL: Objection. I think that's attorney/client privilege and it's improper under the rules for Mr. Gontrum to ask (inaudible) disclose privileged information.

MR. GONTRUM: She's the client. She has the right to waive the privilege.

MR. NEAL: I think you have to advise her that she has the privilege before asking the question under the rules (inaudible).

CHAIR: I think you have done that and Ms. King, it's up to you whether or not you wish to answer.

MS. KING: Yeah, I, I don't want to put myself in any situation that I don't know how to get myself out of, so I will just not answer, if that's okay.

MR. GONTRUM: All right. Ms. King, you were, are you aware, were you aware prior to this hearing that the house had been reconfigured and, and downsized?

MS. KING: Can I choose to not answer or how, I think you're asking me the same question just in a different way.

CHAIR: No, he's asking you a different question. He asked if you had, if Mr. Holzer had advised you of that and you had the privilege not to answer, but you chose to exercise. Now what he's asking is if you had knowledge yourself that the --

MS. KING: Okay, I understand what you're saying. Yes, I did have knowledge of the new, the new plans.

MR. GONTRUM: Do you object to the downsizing of the house?

MS. KING: I object to a house. I, I object to the variance requests to have to build a house there.

MR. GONTRUM: Have you in any way utilized this property, 16 Locust?

MS. KING: No.

MR. GONTRUM: Okay. Do you have an opinion on whether or not this house, as now configured, is more in keeping with your house than the original proposed house?

MS. KING: I agree that the size of the house is along the, close to the same footprint as the other houses on our side of the street.

MR. GONTRUM: Do you have any knowledge of how far back your house sits from the rear property line?

MS. KING: Actually, I do. Give me one second. Let me see if I do. So, our house is thirty-three feet deep, the length of our house is thirty-three feet. So, how would I, with the twenty-five (inaudible) math, but our house is thirty, thirty-three feet. You can do the math there and you can figure that out, --

MR. GONTRUM: Does that include the porch area on the rear?

MS. KING: No, it's not, it's an open, it's not an enclosed space or anything. There's, no, it doesn't include the porch.

MR. GONTRUM: Okay and you have a garage on the rear of your property?

MS. KING: We have a shared garage and a shared driveway with our neighbors at 20 Locust Drive.

MR. GONTRUM: Okay and the house at 14 Locust also has a rear garage, is that correct?

MS. KING: They do have a rear garage. But I would, I would, I wouldn't, I don't want to answer for them, so.

MR. GONTRUM: No, I'm just asking if they have one, I

would (inaudible) --

MS. KING: Yeah, yeah, they do. Yes.

MR. GONTRUM: Okay and, check one more thing. And do you know what your setback of your house is from 16 Locust?

MS. KING: I'm not sure I understand what you're asking.

MR. GONTRUM: Do you know how far back your house sits from the property line, the lot line, between you and the subject, and the, and the lot we're discussing here today?

MS. KING: No, I, --

MR. GONTRUM: Okay. If you don't know, that's fine.

MS. KING: I'm sorry, I don't, I don't know that I'm understanding, are you talking about the side yard or?

MR. GONTRUM: Yes.

MS. KING: I, honestly, I don't, I'm sorry. I, I don't have that measurement for, for certain.

MR. GONTRUM: Okay. Do you know how wide your house is?

MS. KING: It is thirty feet wide.

MR. GONTRUM: Okay. I have no further questions of Ms. King.

CHAIR: Board members?

MS. BONARDI: I do not.

CHAIR: Mr. Evans?

MR. EVANS: I have no questions.

CHAIR: I have just a couple, Ms. King. My first question is, when was your house built, if you know?

MS. KING: It was built in 1940 or 41.

CHAIR: And are you, is part, are you in any way asserting that when this lot at 16 Locust Drive was created, it was improperly created or violated any laws at that time?

MS. KING: I have no idea. I, I was not around then. I, I don't know what the purpose --

CHAIR: Neither was I.

MS. KING: -- of, I'm not sure how to answer that question. I don't know.

CHAIR: Well, okay, thank you. Do either of the gentlemen, Mr. Sanders or Mr. Neal, do you want to have a, question Ms. King at all or just want to proceed with your own statements?

MR. NEAL: This is Aaron Neal. I have no cross of Ms. King.

MR. SANDERS: And I have no cross.

CHAIR: Okay. Thank you, Ms. King.

MS. KING: Thank you.

CHAIR: Mr. Sanders?

MR. SANDERS: I just, I want to ask Mr. Gontrum, is Mr. Helfrich available for questioning? Mr. Gontrum?

MR. GONTRUM: Mr. Helfrich? Is he available? I mean, Mr. Helfrich is attending the hearing.

MR. SANDERS: Is he available to ask a question?

CHAIR: Have you subpoenaed him?

MR. SANDERS: Pardon?

CHAIR: I mean, there, there are ways to call witnesses. He has not (inaudible) --

MR. SANDERS: Okay. Well, I'm calling him as an adverse witness.

MR. GONTRUM: I'm going to object.

MR. SANDERS: I just had one question for him.

MR. GONTRUM: You're willing, if you wish to proffer the question, but I, Mr. Sanders, I, you haven't subpoenaed Mr. Helfrich. I would basically, don't, and you were supposedly only going to give a statement. So, I would have an issue with you calling witnesses at this point.

MR. SANDERS: He's, I can call him as an adverse witness. He is a party opponent. My question is, is --

CHAIR: I do not, I think --

MR. SANDERS: -- who is Virginia T. Fields?

CHAIR: Mr. Sanders, I do not see Mr. Helfrich in attendance on our attendee list. So, I think --

MR. SANDERS: I think he's with Mr. Gontrum.

CHAIR: Oh, I don't know that one way or another.

MR. SANDERS: Mr. Gontrum said he's there. My question for the attorney is, who is Virginia T. Fields?

MR. HELFRICH: Am I on now so you can hear me?

MR. GONTRUM: You have to be sworn in, Mr. Helfrich.

CHAIR: He has to be sworn in.

MR. GONTRUM: I'll let Mr. Helfrich answer that question, Ms. Dopkin. He is here in my office. I don't know if, I don't know if, I'd have to arrange the seating so perhaps he could be closer to the microphone.

MR. SANDERS: I, I'd accept a proffer by you, Mr., Mr. Gontrum.

MR. GONTRUM: Okay. Let me find --

CHAIR: Would you repeat your question, Mr. Sanders?

MR. SANDERS: Yes, on the Deed, exhibit number six of the Petitioners, my question is who is Virginia T. Fields in relation to --

MR. GONTRUM: Virginia T. Fields was Mr. Helfrich's, I believe, aunt.

MR. SANDERS: I'm sorry, pardon?

MR. GONTRUM: It was her, his aunt.

MR. SANDERS: Thank you. That's all I, that's the only question I had of him.

MR. GONTRUM: And I would tell you that before that it was owned by his grandparents, the next, the adjoining lot. Okay?

MR. SANDERS: Thank you. Can I go ahead with my testimony?

CHAIR: I wish you would.

MS. BONARDI: Yes, let me please swear you in, sir. Please raise your right hand. I don't see a video. I'm assuming that your hand is raised.

MR. SANDERS: My hand is raised.

MS. BONARDI: Thank you. Do you swear or affirm under penalties of perjury, that the testimony you're about to give is true and correct to the best of your knowledge and belief?

MR. SANDERS: I do.

MS. BONARDI: Okay and please state your name for the record and again, your affiliation with this matter.

MR. SANDERS: My name is Barry Sanders and I'm a neighbor.

MS. BONARDI: And your address for the record, please?

MR. SANDERS: It's 21 Locust Drive.

CHAIR: Please proceed.

MR. SANDERS: Thank you. A variance which is before the Board is, and which is the only thing, there are three variances before the Board, is an exception to the area requirements of the local zoning laws. Such as front, side or rear yard setbacks, height restrictions, building size, lot widths or the like.

A variance must be reviewed, reviewed and approved by, by the local Board of Appeals after a public hearing and

after proper notice. Maryland Courts have directed that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.

The reason for such stringency is rooted in the very purposes of the zoning laws. Zoning is the process whereby the local jurisdictions comprehensive land use plan is put into effect. It divides an area into zones and defines, among other things, the permitted uses and area requirements for each zone. Zoning presumes that each district is peculiarly suitable for certain uses and, therefore, demands a high degree of uniformity within the zone.

With respect to setback requirements, for example. Zoning presumes that a certain amount of space between uses is necessary for the public benefit. A variance on the other hand, allows that which is otherwise prohibited and (inaudible) --

MR. GONTRUM: If, if I may --

MR. SANDERS: -- (inaudible) to the public.

MR. GONTRUM: Excuse me, Mr. Sanders. If I may, Madam Chair?

CHAIR: Yes.

MR. GONTRUM: I'm going to object in that, you know, I don't have a problem with Mr. Sanders giving argument as, or giving a personal opinion as an individual. But the statements he is making, if they're coming in as fact, or if they're

coming in as an expert opinion, I do have a problem with.

I mean, this is all basically sort of, I mean, his statement as to the law as to variances and when it should be granted and things along that line, I don't think are appropriate to be coming in as statements of fact from an individual, albeit an attorney, but one who is not, basically, evidenced any expertise in zoning laws and opinions. Nor should it be coming in as a statement of fact in evidence.

And, you know, I think this sort of goes against as to why you don't want us, you know, I understand Mr. Sanders has absolutely every right to object to the variance request, but I think they should be based on his ownership of a, a nearby lot, as opposed to legal representations as to what he believes the zoning laws to be. And that's argument, not testimony.

CHAIR: Well, I will agree it is argument and we generally take argument in the way of closing memoranda rather than as arguing the legal points during the actual hearing itself. Just as a matter of practice. And we would accept, and as such, it's, your arguments don't constitute evidence or testimony of the sort that goes, that has a probative effect for us on which to apply the law, which is our job.

So, I'm going to agree with Mr. Gontrum, at least in principle, and ask if you could perhaps tailor your remarks to the factual issues and submit your arguments in writing, as is

our practice.

MR. SANDERS: All right. Well, I'll just continue if, if we're, under the Baltimore County --

CHAIR: Well, --

MR. SANDERS: Am I allowed to continue test, my testimony?

CHAIR: Well, you're not testifying, you're arguing the law. That's my point. I think that was Mr. Gontrum's point. We are interested --

MR. EVANS: I guarantee, I guarantee we understand the law. We understand the law of variances. We understand it perfectly.

MR. SANDERS: Okay.

MR. EVANS: We really do.

MR. SANDERS: Okay. Well, then, I'll, I'll, I'll, I'll make a, my synopsis is --

CHAIR: And you'll have an opportunity to present those arguments to us in writing.

MR. SANDERS: Okay.

CHAIR: We're not trying to eclipse your right to do that, just the format for this hearing is to do that in writing at the close of presenting evidence and testimony.

MR. SANDERS: Okay. I'll, I'll, I'll summarize here. What, what the Petitioner's position, and which I oppose, is, they're saying when the comprehensive rezoning changed in 1996,

which was a legislative act, comprehensive rezoning, to DR-2 zone, they're saying after that was done, sixteen years later, now I can acquire a property and say this is a unique physical, the condition of the property under *Cromwell v. Ward*.

It's not. Please look at the, the ALJ's decision. I know this is a de novo hearing. It's, it's right on point. That's all I have to say.

CHAIR: Thank you, Mr. Sanders --

MR. EVANS: I have one question. Mr. Sanders, how long have you lived at your, in your home?

MR. SANDERS: Twenty-five years.

MR. EVANS: Okay. So, you, were you around when the CZMP occurred?

MR. SANDERS: Yes, that was in 1996.

MR. EVANS: Ninety-six, so you, did you just move there then at that point?

MR. SANDERS: I was there in 1995.

MR. EVANS: Nineteen ninety-five, okay.

CHAIR: I do have a question also. It appears that there was variance relief granted to the house next door to yours. Did you --

MR. SANDERS: There may have been. I don't know what the variance was for.

CHAIR: I don't know --

MR. SANDERS: I know it was not for an unbuildable

lot.

CHAIR: Well, there's a house, well, there's certainly a house there based on the exhibits we've seen. So, I don't know what that was either. But it was certainly since you moved in. If I'm reading this right, it was in 2004. So, I'm curious to know if you took a position on that matter. It too would have had to have been posted and presumably you would have been aware of it.

MR. SANDERS: It may, I don't really remember. I probably wasn't opposed. It probably wasn't, it wasn't probably a variance to, to, of this magnitude. Five thousand square foot instead of a twenty thousand.

CHAIR: Well, the lot looks like it is comparable to, in size, to the lot on your side of the street, as well as the structure seems equally comparable (inaudible) --

MR. SANDERS: The test isn't comparableness.

CHAIR: -- what I'm looking at from My Neighborhood is that there have been more than one, I'm not looking at the entire community, just at Locust Avenue. But if you look at the general area, the larger area, it seems as though the developed area, there are many, many undersized lots, many of which have been granted zoning relief, including --

MR. SANDERS: None of those cases were granted for substandard lots.

CHAIR: It depends when, doesn't it?

MR. SANDERS: I would, I assume so. And it's really irrelevant to this case.

CHAIR: Well, it, I'm not sure that's entirely correct that it --

MR. SANDERS: It's, it's not a compatibility test or neighbors did it, that's not the test.

VOICE: May I say what --

MR. SANDERS: This is under Baltimore County Zoning Regulation 307.

CHAIR: All variances are under 307. I'm trying to understand, not so much from a legal point of view, but from a practical point of view what is it about the houses that have been granted variances of similar size on similar lots subsequent to the change in zoning that is --

MR. SANDERS: There, there is no comparison to --

CHAIR: -- that is not objectionable or that makes them more worthy in an entirely residential area, just because the lots were all created at the same time. And they were built at different times. And it, it, it troubles me legally that someone could legally create a lot and not be treated in exactly the same way as every, literally, every other parcel on the street.

And I understand that you are taking a very strict approach to this. But to carry your argument to the absurdity, it's like because the subdivision predated zoning and the

zoning changed over the course of years, nobody's house is conforming or should be allowed any relief.

MR. SANDERS: So, your position is any, your position is any substandard lot should be, should be developed.

CHAIR: I'm not saying that.

MR. SANDERS: That's what you're saying.

CHAIR: I'm saying, how do you distinguish your rights or your next-door neighbor's rights as being so different since certainly the relief granted to your next-door neighbor was well after the change in zoning. I have trouble (inaudible) --

MR. EVANS: (inaudible) --

CHAIR: -- in the law just saying theoretically I have trouble reconciling the people who benefit and the people who don't benefit when facially the lots are all the same.

MR. EVANS: But, but, Ms. Dopkin, isn't, isn't there a provision for very modest expansion of non-conforming uses?

CHAIR: There is.

MR. EVANS: And, and so, without knowing the, the dates and --

CHAIR: That would not require a variance.

MR. EVANS: That would not require a variance, okay, okay.

CHAIR: If someone was expanding within the twenty-five percent that's permitted.

MR. EVANS: Right.

CHAIR: It's a matter of right.

MR. EVANS: Right.

MR. SANDERS: And Chair, under Baltimore County Zoning Regulations, Section 304, there is a grandfather provision that protects a landowner from change in the zoning laws. If, among other things, a lot was recorded by Deed prior to 1955, where the lot was recorded as part of a validly approved subdivision prior to 1955. That's not the case here.

CHAIR: Oh, but Mr. Sanders, when these lots, including your lot, was approved, none of those entities existed. So, if we take your argument, that none of the lots exist validly for any changes. So, that's, you know, you fall apart at that point.

But I see Mr. Gontrum is looking very distressed, so let's move on. You've made your point. I've asked my question. I understand where you're coming from, and I understand what the zoning regulations say.

MR. SANDERS: Thank you.

CHAIR: Do you have anything further to add?

MR. SANDERS: No.

CHAIR: Mr. Gontrum, do you have any questions for Mr. Sanders?

MR. GONTRUM: Just if I, Mr. Sanders, your neighbors at 23 Locust are John and Linda Shifflett?

MR. SANDERS: I, that's not me. I'm 21.

MR. GONTRUM: I know. I'm asking you are the, your neighbors at 23 Locust John and Linda Shifflett?

MR. SANDERS: As far as I know, yes, that's their name.

MR. GONTRUM: Okay and are you aware of the zoning case that came about in 2010, it's zoning case number 2010-0020-A, to have an addition put on the back of their home with a side yard setback of ten feet and a combination of twenty-seven feet in lieu of the minimum required fifteen and forty feet respectively? Are you aware of that case?

MR. SANDERS: I'm not familiar with that case.

MR. GONTRUM: Are you familiar with the addition that they put on the back of their home?

MR. SANDERS: I'm familiar that there was an addition put on their home.

MR. GONTRUM: Okay.

MR. SANDERS: I'd object, I'd object to the relevance, Madam Chair.

CHAIR: On what --

MR. SANDERS: These questions.

MR. GONTRUM: I'm asking you about the variance of your neighbor's home.

CHAIR: I'm going to overrule your objection.

MR. SANDERS: It's irrelevant to the Petition before

the Board. Whether or not someone else got a variance is not before the, an issue before the Board, under the criteria.

CHAIR: To the extent that you're objecting on the basis of precedent, I would say it probably has some relevance. I'd like to know, (inaudible) --

MR. SANDERS: Objection based upon --

CHAIR: -- let Mr. Gontrum continue.

MR. GONTRUM: So, I take it at this point, Mr. Sanders, that you did not object, since this was an administrative variance, you didn't ask for a hearing for the relief that was sought by your neighbors for the addition?

MR. SANDERS: I don't recall if I did or not. I, I don't remember participating in any case.

MR. GONTRUM: Okay. So, as far as you know, did you, you don't recall whether or not they ever even mentioned it to you?

MR. SANDERS: I'm sure they, they complied with the requisite notices and things they had to do, I don't --

MR. GONTRUM: And all you're saying is that you don't recall objecting to their putting on the addition on the rear of their home?

MR. SANDERS: Asked and told you that.

MR. GONTRUM: I beg your pardon?

MR. SANDERS: I already answered that question.

MR. GONTRUM: I know, but I'm an old person and I

tend to have a short memory.

CHAIR: It's been asked and answered.

MR. GONTRUM: All right.

CHAIR: Let's move on.

MR. SANDERS: Thank you.

MR. GONTRUM: Now, in 2010, you would concede that your property was zoned DR-2, would you not?

MR. SANDERS: Twenty ten what? It was zoned what?

MR. GONTRUM: In 2010, your property was zoned DR-2?

MR. SANDERS: I assume it was.

MR. GONTRUM: And your lot is fifty feet in width?

MR. SANDERS: I don't know what my lot is.

MR. GONTRUM: Would you concede that it's shown on the exhibits that were put in by Protestants and Petitioners pertaining to the record plat, that it's whatever the record plat shows?

MR. SANDERS: No, I wouldn't agree to that.

MR. GONTRUM: So, --

MR. SANDERS: This is beyond, this is beyond my direct testimony, Madam Chair. I don't even know where this is going. These questions on cross.

CHAIR: Yeah, Mr. Gontrum, where are you going with this?

MR. SANDERS: I didn't testify to anything about my house or --

MR. GONTRUM: I would only ask Mr. Sanders does he, does he have any idea of how his house is situated on his lot?

MR. SANDERS: No.

MR. GONTRUM: Okay. All right. I, I have no further questions of Mr. Sanders.

CHAIR: Thank you. Mr. Neal, do you have any questions for Mr. Sanders?

MR. NEAL: I have no cross of Mr. Sanders.

CHAIR: Mr. Sanders, any, any Board member have any questions for Mr. Sanders?

MR. EVANS: Not from me.

MS. BONARDI: No, Madam Chair.

CHAIR: Thank you. Mr. Neal, I believe it is your opportunity to be heard. Oh, and we have video. I thank you.

MS. BONARDI: Thank you, Mr. Neal. Would you please raise your right hand? Thank you. Do you swear or firm under the penalties of perjury, that the testimony you're about to give is true and correct to the best of your knowledge and belief?

MR. NEAL: I do.

MS. BONARDI: Thank you.

CHAIR: Now, Mr. Neal, will you be putting, sharing your screen at all?

MR. NEAL: I will not.

CHAIR: Okay. Well, I'm going to --

MS. BONARDI: And while they're passing the token, will you please just restate your name for the record and your address?

MR. NEAL: My name is Aaron Neal and I live at 20 Locust Drive.

CHAIR: And Mr. Neal, are you testifying on your own behalf today?

MR. NEAL: I am, though I will be reading a statement from my wife, who was on the call, or was, was on the hearing and had to step out at noon for another appointment.

CHAIR: And she is in title with you on your property?

MR. NEAL: Tenants by the entireties.

CHAIR: Okay. Please proceed.

MR. NEAL: Thank you. As I said, my name is Aaron Neal. I, I own and reside at 20 Locust Drive with my wife Kimberly and our son, Caleb, and have done so since 2013 when we moved to Catonsville. Our house is one house over to the south from the lot at issue on the other side of the Kings' property.

My wife was here today. She had another meeting to attend to, but I'd like to read the letter that she prepared, which Ms. King previously attempted to introduce it as Exhibit 10. And then, once I'm done with that, I'd offer a few additional, hopefully factual comments without veering into

closing argument territory.

CHAIR: Okay. Well, before you proceed, are you offering the letter into evidence?

MR. NEAL: I am.

CHAIR: As, as we'll call it Neal Exhibit, I'm going to pass the baton back to you so you can offer that exhibit and we'll call it Neal Exhibit, we'll call it Protestant's Exhibit 9 I think is what it was offered as.

MR. EVANS: I think it was actually offered as ten.

CHAIR: Okay. Protestant's Exhibit 10.

MR. EVANS: Yeah.

MR. NEAL: Yeah, I think Ms. Scherer's letter was going to be Exhibit 9.

MR. EVANS: Right.

MR. NEAL: And was identified but not admitted.

CHAIR: You are correct.

MR. NEAL: All right and I, I have shared Exhibit 10 and I will say that my wife has requested that I read this statement for her into the record, after which I will admit a statement of my own.

CHAIR: Mr. Gontrum, any objection?

MR. GONTRUM: I don't know that he needs to read it as well as, as submit it. But I, I think it would take longer to object than it would to read it.

CHAIR: I would agree with you on that. Mr. Sanders,

any object --

MR. SANDERS: No objection.

CHAIR: Ms. King?

MS. KING: No objection.

CHAIR: Let's admit this as Protestant's Exhibit 10. It's a letter from Mr. and Mrs. Neal. Mr. Neal?

MR. NEAL: Thank you. Dear Members of the Board of Appeals. We write in reference to the above matter, as close neighbors to the property in question and as local attorneys with an interest in the outcome of this, of this question of zoning law.

While we hope to participate in the hearing on September 9th, we have work conflicts and, therefore, wanted to express our concerns via this correspondence. And I will note that originally, I was going to be in trial today but that fell apart and (inaudible).

As noted by the record, this matter was first heard and decided by Managing Administrative Law Judge Mayhew in the spring of this year. Although this appeal is being considered de novo, we, we believe strongly that the arguments raised during that hearing and the rationale outlined in Judge Mayhew's decision are correct.

We ask this Board carefully consider the matter and deny the requested variance. From a purely legal standpoint, this Board can make no other finding. Our charming Catonsville

street is one of small, well-kept single-family homes that are either Cape Cod or colonial in style.

The homes are either all brick or mostly brick sitting on rectangular, approximately fifty by one-hundred-foot lots, with approximately fifty feet of direct road frontage. These facts are important because the appellants simply cannot show that the property located at 16 Locust Drive is unique, as required in order to receive the requested variance.

What is more, the property owner will not suffer unreasonable hardship if the variance is denied. The lot has been vacant for decades, reportedly kept vacant by the current owner, due to a family dispute and desire to deny siblings owning the neighboring property the ability to expand their lot. The zoning ordinance --

MR. GONTRUM: I'm going to object, only from the standpoint of this being submitted for the truth of the facts in the statement. If it's a, I, if that's why it's being submitted, then I would have a problem with that representation coming in as to why they don't think it's been developed.

Because I don't, I mean, that's like, it's third-degree hearsay, presumably, I mean, we're getting some hearsay, which is okay from the spouse, but now it's what the spouse is hearing from somebody else that may or may not be true. So, to the extent that it's coming in for the purposes of the truth of the facts alleged, I would have a problem with it.

MR. NEAL: There, there is a specific exception to the hearsay rule in the rules of civil procedure for statements regarding the repu, reputation in the community of the use and location and boundaries of property. And I can pull the, the specific exception if we need to take the time to do that. But it is one of the subsection of hearsay exceptions where the availability of the declarant is not at issue.

MR. GONTRUM: If I may?

CHAIR: Yes, Mr. Gontrum.

MR. GONTRUM: If I may, Madam Chair. I don't profess any expertise in trial attorneys or hearsay exceptions, but I am aware of the fact that this is just simply a speculation as to why something was undeveloped. The fact is it was undeveloped.

I think that is all that is relevant from the Board's standpoint, not as to why or any interpersonal relationships, speculation as to what those relationships were, I think has no bearing with respect to this hearing and it is pure speculation and that's not a hearsay exception that's just recited by Mr. Neal.

MR. NEAL: It, it may be hearsay, but it's not speculation. That is the reputation in the community of this piece of property and that's a specific hearsay exception.

CHAIR: Here's what I'm going to do. I'm going to let the letter, let Mr. Neal continue. We will give the letter

the weight we feel is appropriate. If he wants to argue as to why we should accept this information and give it more, more weight than third person hearsay, at best, if at all, he can do so in writing at the close of the hearing. I'd like to hear whatever relevant evidence this contains that might be more verifiable.

MR. NEAL: Thank you. Let's see, where was I. The zoning ordinance changing the setbacks that result in the requested variance was made effective twenty-five years ago and sixty plus years since the lot was created. Indeed, the owner has received other offers on the property that would not require variances but was uninterested in and/or unwilling to sell.

It is only this most recent offer made during a prime market and an amount that one might never have imagined that there was a sudden interest in selling. Still, while, while any of us may appreciate the owner's desire to cash out with such a generous offer, without the legal justification for a variance losing out on a great deal is an unfortunate situation but not an unreasonable hardship and does not make the lot unique.

From our personal standpoint, as neighbors one lot over raising a child in this small and happy community, we also do not wish to see the variance issued because it would set an unnecessary precedent and encourage overdevelopment.

Catonsville, especially our Forest Springs neighborhood, suffers from extensive water drainage issues.

Our homes have been in existence since the 1940's and we, as well as prior owners, have taken appropriate measures to waterproof our homes based on current conditions over the past eight decades. Building on the lot at 16 Locust will rob our street of green space that has existed and significantly impact drainage in the community by covering most of the lot in impervious surfaces.

Further, and to be perfectly frank, while one could build a house on the lot using the same footprint as our homes, it would be quite the construction feat without significantly disturbing the two adjacent neighbors' quiet enjoyment of their properties.

Indeed, it will negatively impact our entire block, which is a one-way block due to the narrow street and requirement that cars park on the street. For example, we share a driveway with our neighbor at 18 Locust. Each of us can only fit one car in the driveway.

Again, this is a scenario that has existed for decades. Months of construction and the construction vehicles that would necessarily accompany that construction, would leave the neighborhood families without places to park their cars during the day.

The addition of an entirely new residence would make

the parking disruption perpetual. The disruption to many families if a variance is granted and construction permitted is disproportionate to the relief offered to one property owner and his would-be buyer. We trust that you will take this extraordinary request for a variance under careful review and thank you for your diligence. Kind regards, Kimberly and Aaron Neal.

CHAIR: Thank you, Mr. Neal. We're going to, did you move your letter in as Protestant's Exhibit 10?

MR. NEAL: I, I thought it was accepted already, although I don't know that I formally moved it. So, to the extent that it's there, I'm now moving it into evidence.

CHAIR: And we will --

MR. EVANS: I thought it was accepted.

CHAIR: I thought so too. Over Mr., Mr. Gontrum's objection.

MR. EVANS: Act, actually, I don't think he did object. He objected after the fact. But at the time it was offered, he didn't object. But anyway. It's in.

CHAIR: Thank you, Mr. Neal. Do you have anything further to add?

MR. NEAL: Yes, briefly. I wanted to talk briefly about the title history of the, the lots at issue, 16 and 18, which were under common ownership for a period of many years within the Fields family. And under the same Fields title

owner for a period of at least fifteen years.

Sixteen Locust, the one at issue, was acquired in 2012 from the Estate of Virginia Fields, which Mr. Helfrich acknowledged is his aunt, and the Deed is already in the record. Virginia Fields acquired 16 Locust in 1959 by a Deed at Liber 3649, folio 398.

She acquired it from David and Bernadette Fields. Now, David Fields acquired Lots 5 and 6, so 16 and 18, in 1944 by Deed at Liber RGS 1340, Folio 392, which appears to be some kind of straw deed and I admit, I couldn't go any farther back in the grantor/grantee index because the online records only go back to 1964.

But as of at least 1944, the Fields family and David Fields, in particular, owned five and six. We know that the house on 18 Locust was built sometime in the 1940's based on Ms. King's testimony. So, from at least 1944 until 2012 or 2013, this lot was functionally used as an accessory lot.

It had a beneficial use in the community as an accessory lot for 18 Locust Drive. The fact that it was subsequently severed, and it was severed from David Fields' ownership in 1975 by a Deed at Liber 5572, Folio 747, but it remained in the Fields family.

It went to certain heirs of, of David and Bernadette Fields, was ultimately acquired by the Kings from those same heirs in 2014. It remained in use as an accessory lot until at

least 2012 or '13, a period of what's that, sixty, seventy-five years.

The fact that the intended use has changed, doesn't mean that there is no longer a beneficial use. While this property owner may not be able to make the use that they want, there is still a perfectly functional beneficial use to be made of this lot and that is not hypothetical.

The Kings have offered several times to purchase that piece of property. And I'll get into it in the written memoranda, the, the idea that merging lots can meet the beneficial use criteria and (inaudible) but I'm not going to get into it now.

The five thousand square foot issue, I'd just point out that Mr. Richardson acknowledged that, in fact, the lot is only five thousand square feet. I'm not sure where the fifty-eight fifty comes into play. I believe that is the gross area of, including to the center of the street.

However, obviously they can't build on that because they don't own it and, and the zoning regulations talk in terms of that area. The twenty thousand square foot in the zoning regulation figure specifically says net area.

So, I don't think that if they get a variance to five thousand eight hundred fifty square feet they could still build. Because the variance would not give them sufficient square footage. If they get a variance to fifty-eight fifty,

they have a lot of five thousand square foot net area. They can't build on that. So, this whole thing is an exercise in futility.

And I'd also add on to Mr. Sanders' testimony, these other houses that we're talking about for which variances were subsequently requested, the house itself was all there prior to 1996 and probably back in the 1940's. I, I've been here since 2013 and I can tell you there's, there's no new house in the neighborhood, at least in the Locust Drive extension part of the subdivision. These are all sixty, seventy, eighty-year-old houses.

So, none of these variances that were requested and shown on that GIS map that Petitioner showed were for seventy-five percent reductions in the square footage or anything like that. And with the understanding that I'll have the ability to submit a written memoranda detailing legal arguments, I'll reserve that for the written memoranda. Thank you.

CHAIR: Thank you, Mr. Neal. Mr. Gontrum, do you have any questions for Mr. Neal?

MR. GONTRUM: Only to this extent. Mr. Neal, based on your testimony, it's my understanding that Virginia Fields acquired ownership of this by virtue of a Deed dated December 1959 and it was owned by Virginia Neal, is that correct?

MR. NEAL: Virginia Fields.

MR. GONTRUM: Virginia Fields, excuse me, Mr. Neal. I

am old. And it was subsequently conveyed to Mr. Helfrich in 2012.

MR. NEAL: Correct.

MR. GONTRUM: Now, Virginia Fields did not own any other lots, did she?

MR. NEAL: I did not pull title for the entire neighborhood. I, I pulled title --

MR. GONTRUM: No, but I'm, she didn't own lot, I'm sorry, she didn't own Lot 5 nor Lot 7. She only owned Lot 6.

MR. NEAL: She did not, I, I never pulled Lot 7 and I did not do a search of the grantor/grantee index with that in mind. I did pull the chain of title for Lot 5, which is 18 Locust Drive. And Virginia Fields did not own that. That was owned by David and Bernadette Fields.

MR. GONTRUM: Okay. So, David and Bernadette owned Lot 5 and Virginia ended up owning Lot 6, is that correct?

MR. NEAL: As, as of nine, as of 1959.

MR. GONTRUM: So, your assertion that this was just simply an accessory lot to lot number five is based on your assumption that because the Fields were related that this was all sort of one big lot?

MR. NEAL: That's the way it's always been treated in the neighborhood.

MR. GONTRUM: Well, when you say --

MR. NEAL: I mean, nobody else has used it other than

the Fields that own that property. And when I moved in there, it was being sold as an assemblage. And ultimately, Mr. Helfrich didn't sell it that way, but it was being sold as an assemblage by the, by the Fields family back in 2012.

MR. GONTRUM: In 2012, Mr. Helfrich acquired it as he was personal representative of Virginia Fields' estate, was he not?

MR. NEAL: Correct.

MR. GONTRUM: And so, he acquired that lot as a result of the estate?

MR. NEAL: Correct.

MR. GONTRUM: It was not the estate of David Fields or the owner of lot number five?

MR. NEAL: Correct.

MR. GONTRUM: So, when you say it's an assemblage in lot, in 2012, it was simply Lot 6 that was transferred to Mr. Helfrich, is that not correct? It was not transferred --

MR. NEAL: I, I did not say that Lot 5 was transferred to Mr. Helfrich.

MR. GONTRUM: You said it was an assemblage and lot--

MR. NEAL: I, I said it was being, it was being sold as an assemblage. So, they were being advertised together, at least at some point, or there was a suggestion they, they were being sold together at some point, with Mr. Helfrich and the other Fields heirs selling the two lots together to (inaudible)

potential purchaser. That ultimately did not happen, but it was, at one point, the, the notion that you would be able to buy both at the same time.

MR. GONTRUM: But you don't know whether or not there was ever an intent not to build on lot number six.

MR. NEAL: I, I do not know what the subjective intent was of any of these parties.

MR. GONTRUM: Okay. I, I have no further questions.

CHAIR: Thank you. Mr. Sanders?

MR. SANDERS: No questions.

CHAIR: Ms. King?

MS. KING: No questions.

CHAIR: Board members? You're muted, Mr. Evans.

MR. EVANS: Sorry. I, I was having, you were speaking very fast, Mr. Neal.

MR. NEAL: I apologize.

MR. EVANS: No, that's okay. So, in your, I assume you're going to do a written submission, so I'll just request that you, I'm, I'm not talking about your letter now, that's, that's different. But that this, the question of the, the genealogy of the, the lots to the extent that you can include that in your written submission, that would be useful.

MR. NEAL: I will.

MR. EVANS: That's all. I have no other questions.

CHAIR: Ms. Bonardi?

MS. BONARDI: Thank you. And I was only asking that that submission also provide information regarding the gross versus the net area because I couldn't take note of that as quickly as I would like.

MR. NEAL: I, I will note both issues and, and explain them factually and legally (inaudible).

CHAIR: All right. If you have nothing further to add, I'm going to move Ms. Scherer --

MR. NEAL: I have nothing further. Thank you.

CHAIR: Ms. Scherer's first name is Laura, is that the correct, Ms. King?

MS. KING: Yes, it's Laura Scherer.

CHAIR: Okay. I want to get the right Scherer.

MS. KING: That's the right one.

CHAIR: Ms. Scherer, you had wanted to make a statement. I'm going to ask Mr. Neal if he could put your letter up. If you would like to introduce it. Ms. Scherer, you're muted, so if you intend to make a statement, we need to hear you.

MS. SCHERER: Can you hear me now?

CHAIR: We can.

MS. SCHERER: Thank you.

CHAIR: You have to be sworn in.

MS. SCHERER: Okay. I don't see my picture up there, but I am raising my right hand.

MS. BONARDI: Thank you very much. Do you swear or affirm under the penalties of perjury, that the testimony you're about to give is true and correct to the best of your knowledge and belief?

MS. SCHERER: I do.

MS. BONARDI: Thank you. Would you please state and spell your name for the record, as well as your address?

MS. SCHERER: Sure. My name is Laura, L-A-U-R-A, Wehland, W-E-H-L-A-N-D, last name Scherer, S-C-H-E-R-E-R. And that's the way it reads on the Deed to my property. I am a direct neighbor living at 14 Locust Drive, directly next to the lot in question at 16.

MS. BONARDI: Thank you. And your affiliation with this matter?

MS. SCHERER: Well, I'm the next-door neighbor to the lot. I live at 14 Locust Drive and I'm on the list of, I guess you say, Protestants.

CHAIR: That would be it.

MS. BONARDI: Thank you. And you're representing yourself, correct?

MS. SCHERER: Yes, I am. And I guess, for the record, my exhibit is, I believe, exhibit number nine that's up on the screen and I'd like it officially added to the records.

CHAIR: Mr. Gontrum, you want to take a look at this and Mr. Neal, Mr. Sanders, anyone object to the admission --

MR. SANDERS: No objection by Sanders.

MS. KING: No objection by Ms. King.

MR. NEAL: No objection from Aaron Neal.

MS. SCHERER: You know, I just --

CHAIR: Mr. Gontrum?

MR. GONTRUM: Yes, Your Honor. It, it's, I mean, it's, it's basically, some of it is argument, but some of it is I just don't want to see it built so I, I'll, you know, for the weight that it's there, I'm not going to object to it.

CHAIR: Thank you. Then Ex, Protestant's Exhibit 9 will be admitted.

MS. SCHERER: Okay. I would like to add something too, since I probably, as Mr. Gontrum said, pretty old. I've been here a long time. I've been in this house for sixty-five years, since 1956. Our house was built in 1938, so my parents lived here before me.

I inherited the house, so I'm pretty familiar with the neighborhood. I'd like to confirm what Mr. Neal said, is the lot at 16 Locust Drive, was always used by the Fields family as an accessory lot. For quite some time, the property at 18 was rented by the Fields family.

One renter, the Carrs, that were there for a very long time, used it as a garden for vegetables and flowers and they were allowed to do that, obviously. Other renters that rented that house over time had their children use it as,

excuse me, as a ball field.

So, just confirming that over my sixty-five years here, it was an accessory lot, and my dad did know Virginia Fields and had some conversations, but I don't think her intent was ever to sell that lot to be built on. But I'll, if it's all right, I'll just read my statement quickly into the record.

I've lived at 14 Locust Drive, the property directly next to 16 Locust, for more than sixty-five years. My husband and I are in complete agreement with the statement of Julie and Ryan King to not allow any variance to the current codes. Building a house at 16 Locust will negatively impact the surrounding houses, including ours, that have sump pumps and flooding basements, as well as compromise the entire neighborhood by adding to the strain on the current water and sewer services.

I assume the current zoning codes implemented by Baltimore County were put into place to protect its residents from over development. The requested variance is not a minor change, but instead, a major deviation, asking to construct a home on a lot that is one-quarter the required size.

Roughly, current zoning is two houses to an acre or forty thousand square feet, which translates into twenty thousand square feet for one house. Again, I know I'm repeating. The lot at 16 Locust is five thousand square feet and, you know, it's not a small variance.

I'm aware that over the years, several inquiries, even other than Julie and Ryan King's were made to purchase the property at 16 Locust Drive. Including one by my father many years ago in an effort to keep it undeveloped and green. So, I did want to mention that.

And the only other thing I wanted to mention is the expert witness that Dominion Properties had, you know, stated that they would, in their proposed plans, include measures to mitigate, mitigate, excuse me, damaging, water damage and flooding to neighboring homes, which would definitely include mine.

But I assume that Baltimore County was the experts on that and that when they put into place this current zoning, that they made great consideration to water drainage and flooding and, you know, in light of how things have happened in Ellicott City, keeping building to minimum standards is beneficial to everyone.

And I guess that's probably the end of, of what I wanted to add.

CHAIR: Thank you, Ms. Scherer. Do you have any questions for Ms. Scherer, Mr. Gontrum?

MR. GONTRUM: No, I don't.

CHAIR: Mr. Sanders?

MR. SANDERS: No, I do not.

CHAIR: Mr. Neal?

MR. NEAL: No, thank you.
CHAIR: Ms. King?
MS. KING: No.
CHAIR: Mr. Evans?
MR. EVANS: Well, I, Ms. Scherer, were you, you, do you recall the, the rezoning that occurred in, what nineteen ninety --
CHAIR: Six.
MR. EVANS: -- was it ’96 or ’99, during the comprehensive rezoning?
MS. SCHERER: Unfortunately, no, that wasn’t on my radar at that point.
MR. EVANS: Okay. So, you, you don’t know what, what thinking was behind that --
MS. SCHERER: No, I don’t.
MR. EVANS: Okay, thank you.
MS. SCHERER: I understand that the houses have all been, the ones that are on this street, were basically built around the time of mine, which was ’38. Most of the rest of them were built in the forties.
MR. EVANS: Okay. That’s all, that was my question. I have no, no, nothing else. Thank you.
MS. SCHERER: Okay, thank you.
CHAIR: Ms. Bonardi?
MS. BONARDI: No, I don’t have any questions. Thank

you.

CHAIR: And that would conclude the presentation by the Protestants. We will, what happens next is we will want the parties to submit written memoranda with the, in lieu of closing arguments. And today, September 9th, we would be looking at getting, is three weeks adequate time or would you like more time?

MR. GONTRUM: Three weeks is fine for me, Your Honor.

CHAIR: Mr. Neal?

MR. NEAL: I, I honestly prefer thirty days, but I can make three weeks work --

CHAIR: Thirty days is fine. Mr. Sanders?

MR. SANDERS: I, I need, thirty days would be more appropriate.

CHAIR: So, we're looking at, can we make it October 8th, which I think is twenty-nine days because it's a Friday?

MR. NEAL: That's fine.

CHAIR: So, we will ask that you submit your written memoranda or, if that's okay with Ms. King? I didn't mean to ignore you.

MS. KING: No, that's okay. That's fine with me.

CHAIR: October 8th by 3:00 p.m. is when we like to get them so they can be logged in and distributed. We will schedule a public deliberation to, at which time the three of us will reconvene. At the rate we're going, it will probably,

again, be remote and virtual. People can tune in but cannot, will not be given any opportunity to speak. But you will all be notified of the date of the deliberation. We usually schedule them several weeks after we receive your written memoranda. If no one has any further questions, I'm going to conclude this hearing.

MR. SANDERS: Does the memorandum just get submitted to appealsboard@baltimorecountymd.gov?

CHAIR: Correct. You can check with Ms. Cannington or Ms. Zahner on the form. I think we've been taking these as pdf files.

MR. SANDERS: Okay.

CHAIR: Mr. Gontrum?

MR. GONTRUM: Yes, Madam Chair. Since we have the burden of persuasion in this case, would we have any opportunity to rebut arguments that are raised since we're going to have several different memoranda? And I, you know, I hate to have to anticipate the different arguments that might be raised in my memorandum since I only have one shot at it. Would I have any opportunity for rebuttal?

CHAIR: How much time would you need?

MR. GONTRUM: Ten days.

MR. SANDERS: I would object, Madam Chair. The rules don't provide for rebuttal. Your rules of procedure do not provide for rebuttal, I mean, --

CHAIR: You know, this is an administrative agency and --

MR. SANDERS: Right, but you still have to comply by your rules.

CHAIR: I believe we have accepted such follow-up responses in the past. Mr. Evans, you have a view? You've been here longer than I have.

MR. EVANS: Well, no, no, no one on the Board wants anyone to be ambushed, right? And so, if there's, you, you know, if there's a practical difficulty with Mr. Gontrum trying to anticipate every conceivable argument. I mean, there are some arguments that have been made, runoff has been made and, you know, I mean, you know the arguments that have been made. But if there's something new that pops up, then I, I, I mean, why, why should he --

MR. NEAL: Might I suggest that, of course my dog starts barking now.

MR. EVANS: Go ahead, Mr. Neal.

MR. NEAL: I, I'm sorry, hold on just a second. Problems of Zoom hearings. Might I suggest just a normal briefing schedule so nobody is ambushed, and Mr. Gontrum can submit his, his brief in three weeks as he previously indicated was fine.

The Respondents can respond fourteen days from then and he can have ten days to file a reply. And then we're all

on the same page as to what's being filed and what arguments are being made and the reply can simply focus on anything additional that Mr. Gontrum didn't anticipate from the initial round of briefing from the Protestants.

CHAIR: So, what you're suggesting is Mr. Gontrum submit his brief by October 1st, that Protestants' briefs be submitted by October 15th?

MR. NEAL: Let me pull my calendar up here.

CHAIR: Just trying to follow your --

MR. NEAL: Yeah, the 15th is, yeah.

CHAIR: And Mr. Gontrum be given ten days in which to respond to anything new that is raised?

MR. NEAL: Yeah, I think that's a fair way to resolve that.

CHAIR: Mr. Gontrum, do you have any objection?

MR. GONTRUM: No, Your Honor.

CHAIR: Mr. Sanders?

MR. SANDERS: It's not in accordance with your rules and procedure, I, I'll just note my objection. But do what you want.

CHAIR: Your objection is noted.

MR. EVANS: We, we, we have the authority to make our hearings practical and efficient. You know, we have that inherent authorities. So, you know, when I joined the Board, I thought that briefing should be precisely as Mr. Neal has

suggested. That hasn't typically been the practice.

But it's eminently reasonable, it makes things move much more efficiently, and it, and it makes a heck of a lot of practical sense. So, you can object, Mr. Sanders. But really, it's, it's a very appropriate approach in a case of this sort, so.

MR. SANDERS: I don't, I don't disagree with you, with the, what you're saying. I'm, I'm just saying that's not in your procedure, that's all. That's my only objection.

MR. EVANS: Okay.

MR. NEAL: And, and I will add that, and I am not familiar with the Board's rules of procedure, and I don't know what service requirements are. I might suggest that all the parties that are participating indirectly in this proceeding serve briefs via e-mailing each other. I have Mr. Gontrum's e-mail address, I sent him an e-mail with exhibits, so he has mine. I think we can all circulate that today so there's no time lag in between.

CHAIR: And that is certainly what the practice has, to my knowledge, has been among counsel.

MR. SANDERS: Madam Chair, could you just reiterate the dates again for me so I can write them down?

CHAIR: Gladly. Mr. Gontrum will submit his memorandum in lieu of closing arguments by 3:00 p.m. October 1st. You, Mr. Sanders and Ms. King will have until October 15th

to submit your arguments. And Mr. Gontrum will have an additional ten days, till October 25th, to reply. And we, as I said before, we like it submitted by 3:00 p.m. in the afternoon if it, just as a practical matter.

MR. EVANS: And Mr. Gontrum, just because you have that, just because you have that, have that extra time for reply, doesn't mean you're obliged to use it, right?

MR. GONTRUM: I appreciate that, Mr. Evans. Yes, I, I understand exactly what you're saying.

MR. EVANS: All right, okay.

CHAIR: I want to thank everyone for being professional and helpful. I know we tend not to always agree with one another, but it is, I appreciate the way you've presented your respective views and we will proceed as discussed. It looks like we will deliberate some time in November, based on the schedule for submitting briefs. And you will be notified of that deliberation. Thank you, everyone. That concludes this hearing.

MR. EVANS: Thank you all. And I want to echo those words about how polite and civil everyone was. We, we do absolutely appreciate that. We really do. Thank you.

(OFF RECORD)

CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing in the matter of Cornelius David Helfrich, Dominion Properties, LLC, case number 20-224A, heard before the Board of Appeals of Baltimore County, September 9, 2021, were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 160 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 19th day of December 2021.

Christine R. Leary

Christine R. Leary

Transcriber