

**INTER-OFFICE CORRESPONDENCE  
RECOMMENDATION FORM**

**TO:** Director, Office of Planning  
Attention: Development Review Division  
Jefferson Building  
105 West Chesapeake Avenue, Room 101  
Towson, MD 21204  
Mall Stop 3402

Building Permit No. R22-04801  
Zoning Office Reviewer JASON

Residential Processing Fee Paid (\$100.00) Accepted by <u>ROZ</u> Date <u>2/25/2022</u>
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**FROM:** Arnold Jablon, Director  
Department of Permits, Approvals and Inspections

**RE:** Undersized Lots UA-2022-0004-UL

Pursuant to Section 304.2 (Baltimore County Zoning Regulations) effective June 25, 1992, the Zoning Review Office of PAI is requesting recommendations and comments from the Office of Planning prior to Zoning Review Office approval of a residential building permit.

**MINIMUM APPLICANT SUPPLIED INFORMATION:**

Name of Applicant(s) GENE BRADFORD  
Applicant's Mailing Address 5520 CEDAR LANE COLUMBIA, MD 21044  
Applicant's Telephone Number (410) 580-0115 Applicant's Email Address GENECBRADFORD@GMAIL.COM  
Lot Address 5902 HILLTOP AV. CATONSVILLE, MD 21207 Election District \_\_\_\_\_ Council District \_\_\_\_\_ Lot Square Feet 6005  
Lot Location: NE S W/ side of HILLTOP 125 feet/at corner of NE S W/ side of INGLESIDE  
(street name) (ft of feet) (street name)

Land Owner(s): THE MASTERS BUILDER LLC 10 Digit Tax Account Number 22-00-018018  
Owner's Mailing Address: 5520 CEDAR LANE, COLUMBIA, MD, 21044  
Owner's Telephone Number (410) 580-0115 Owner's Email Address GENECBRADFORD@GMAIL.COM

**CHECKLIST OF MATERIALS-** (to be submitted at the filing appointment for design review by the Office of Planning)

**APPLICANT MUST PROVIDE 1 through 6**

	Planner Acceptance Check Off	
	YES	NO
1. This Recommendation Form (3 copies)	✓	_____
2. Permit Application <u>R22-04801</u>	✓	_____
3. Site Plan Property (3 copies)	✓	_____
4. Building Elevation Drawings	✓	_____
5. Photographs (please label all photos clearly) Adjoining Buildings	✓	_____
Surrounding Neighborhood	✓	_____
6. Current Zoning Classification: <u>DR 5.5</u>		

**TO BE FILLED IN BY THE OFFICE OF PLANNING ONLY**

**RECOMMENDATIONS / COMMENTS:**

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

Signed by: Brett M. Williams  
For the Director, Office of Planning

Date: 5/16/22

**BALTIMORE COUNTY, MARYLAND  
INTRA-OFFICE MEMORANDUM**

**TO:** Brett Williams  
Development Review Section

**DATE:** May 6, 2022

**FROM:** Josephine Selvakumar  
Sector Planner, Community Planning

**SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS**  
Case Number: UA 2022-0004-UL

**INFORMATION:**

**Property Address:** 5902 Hilltop Avenue  
**Petitioners:** Warren and Carole Grill  
**Zoning:** DR 5.5  
**Requested Action:** Undersize Lot

The Department of Planning has reviewed the above referenced project.

The subject property is located to the southwest of intersection of Hilltop Avenue and Ingleside Avenue. The site is within the Southwest Baltimore County Revitalization Strategy and Western Baltimore County Pedestrian and Bicycle Access Plan. A site visit was conducted on June 5, 2019. The applicant is proposing to improve the lot with a two-story dwelling.

The undersize lot was reviewed for the petition for a Variance (Case Number #2019-334-A) to permit a lot width of 40 feet and side yard setbacks of 7 feet and 7 feet in lieu of the required 55 feet, 10 feet and 10 feet respectively for a new dwelling in June 2019. The Department and the Administrative Law Judge denied the request. The Undersize lot and Variance request was denied previously in 2004 (Case Number #04-270-SPHA) for self-created difficulties. In its determination in the case of Warren Grill, et ux v. People's Counsel for Baltimore County, filed November 1, 1996, the Court of Special Appeals for Maryland established that the Grills who were the appellants in that case "*were not content to maintain it as a single residential lot, as it had been used in the past. Rather, they divided the property, sold part of it, created one undersized lot, and now seek relief from their own action*" (Page 8).

The subject site has extensive zoning history and the self-created hardship remains. The applicant has modified the side setback from six feet in 2004 request to 10' now. The proposed dwelling is compatible with the neighborhood. Though the Department denied the request in 2004, with the current Master Plan 2030 update, the department is also looking into the possible housing needs for the growing population. The department has no objections in granting the petitioned request. However, the applicant has to demonstrate to the satisfaction of the Administrative Law Judge the undersized lot and the variance request.

**Prepared by:**

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Josephine Selvakumar

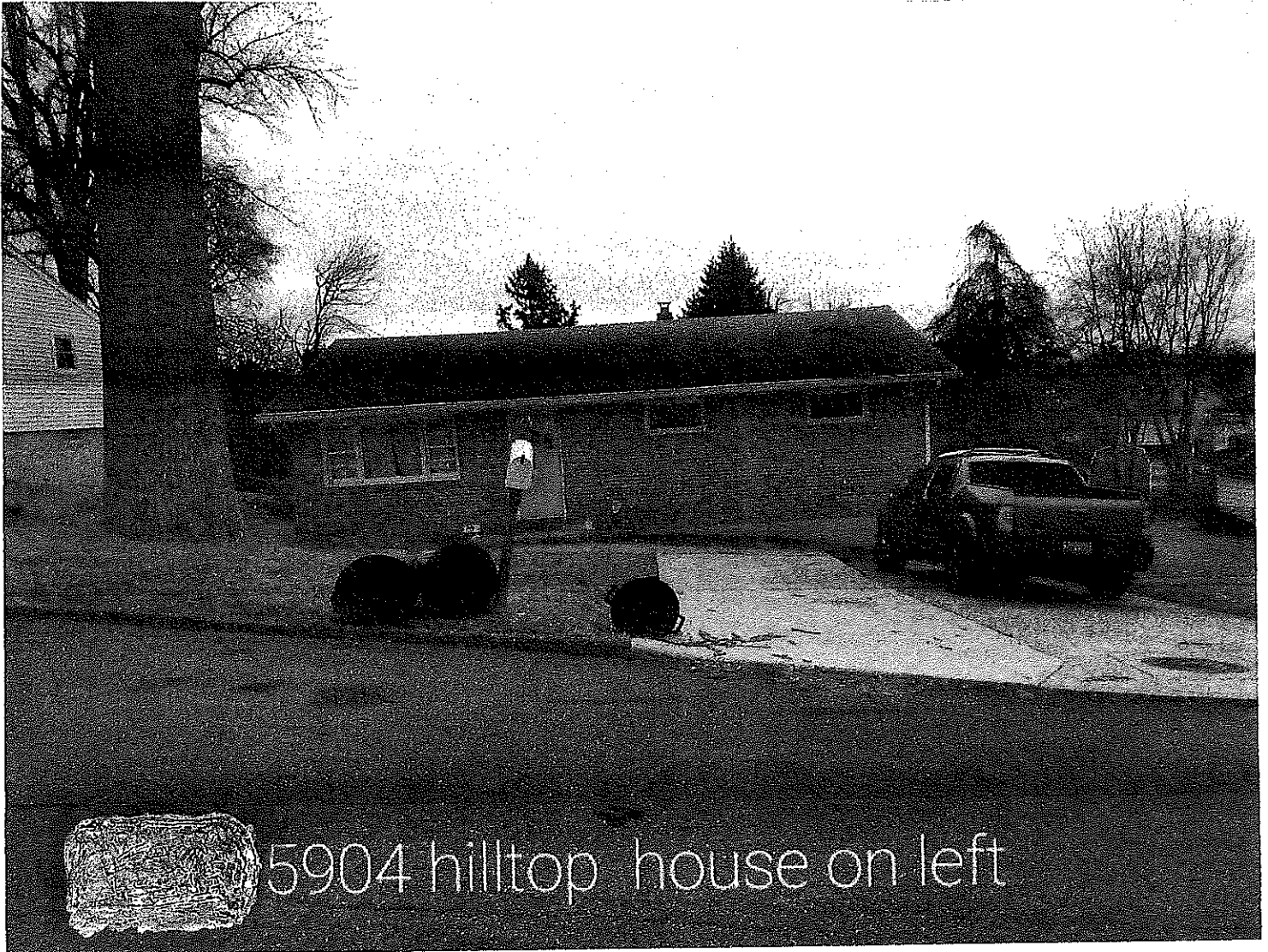
Real Property Data Search ( )  
Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration	
Special Tax Recapture: None			
Account Identifier:	District - 12 Account Number - 1219048570		
<b>Owner Information</b>			
Owner Name:	WILLIAMS ROBERT	Use: RESIDENTIAL	
Mailing Address:	6812 ROBERTS AVE	Principal Residence: YES	
	BALTIMORE MD 21222-1123	Deed Reference: /36276/ 00181	
<b>Location &amp; Structure Information</b>			
Premises Address:	6812 ROBERTS AVE	Legal Description: 6812 ROBERTS AVE	
	BALTIMORE 21222-1123	DEL-RAY PARK	
Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No:	Plat Ref: 0014/ 0066		
0103 0003 0458 12010012.04 0000 22 2021			
Town: None			
Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use			
1950 1,330 SF 6,500 SF 04			
StoriesBasementType ExteriorQualityFull/Half BathGarageLast Notice of Major Improvements			
1 1/2 NO STANDARD UNITSIDING/3 1 full			
<b>Value Information</b>			
	Base Value	Value	Phase-in Assessments
		As of	As of
		01/01/2021	07/01/2021
Land:	61,500	61,500	07/01/2022
Improvements	93,200	103,900	
Total:	154,700	165,400	158,267
Preferential Land:	0	0	161,833
<b>Transfer Information</b>			
Seller: LAMBROS JOHN	Date: 06/09/2015	Price: \$165,000	
Type: ARMS LENGTH IMPROVED	Deed1: /36276/ 00181	Deed2:	
Seller: FEDERAL NATIONAL MORTGAGE ASSOCIATION	Date: 09/05/2014	Price: \$82,400	
Type: NON-ARMS LENGTH OTHER	Deed1: /35335/ 00258	Deed2:	
Seller: HANLIN ROBERT L JR	Date: 09/05/2014	Price: \$134,935	
Type: NON-ARMS LENGTH OTHER	Deed1: /35335/ 00252	Deed2:	
<b>Exemption Information</b>			
Partial Exempt Assessments:	Class	07/01/2021	07/01/2022
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00 0.00	0.00 0.00
Special Tax Recapture: None			
<b>Homestead Application Information</b>			
Homestead Application Status: Approved 10/06/2015			
<b>Homeowners' Tax Credit Application Information</b>			
Homeowners' Tax Credit Application Status: No Application Date:			



SUBJECT LOT 5902 Hilltop Ln.

UA - 2022-0004-UL

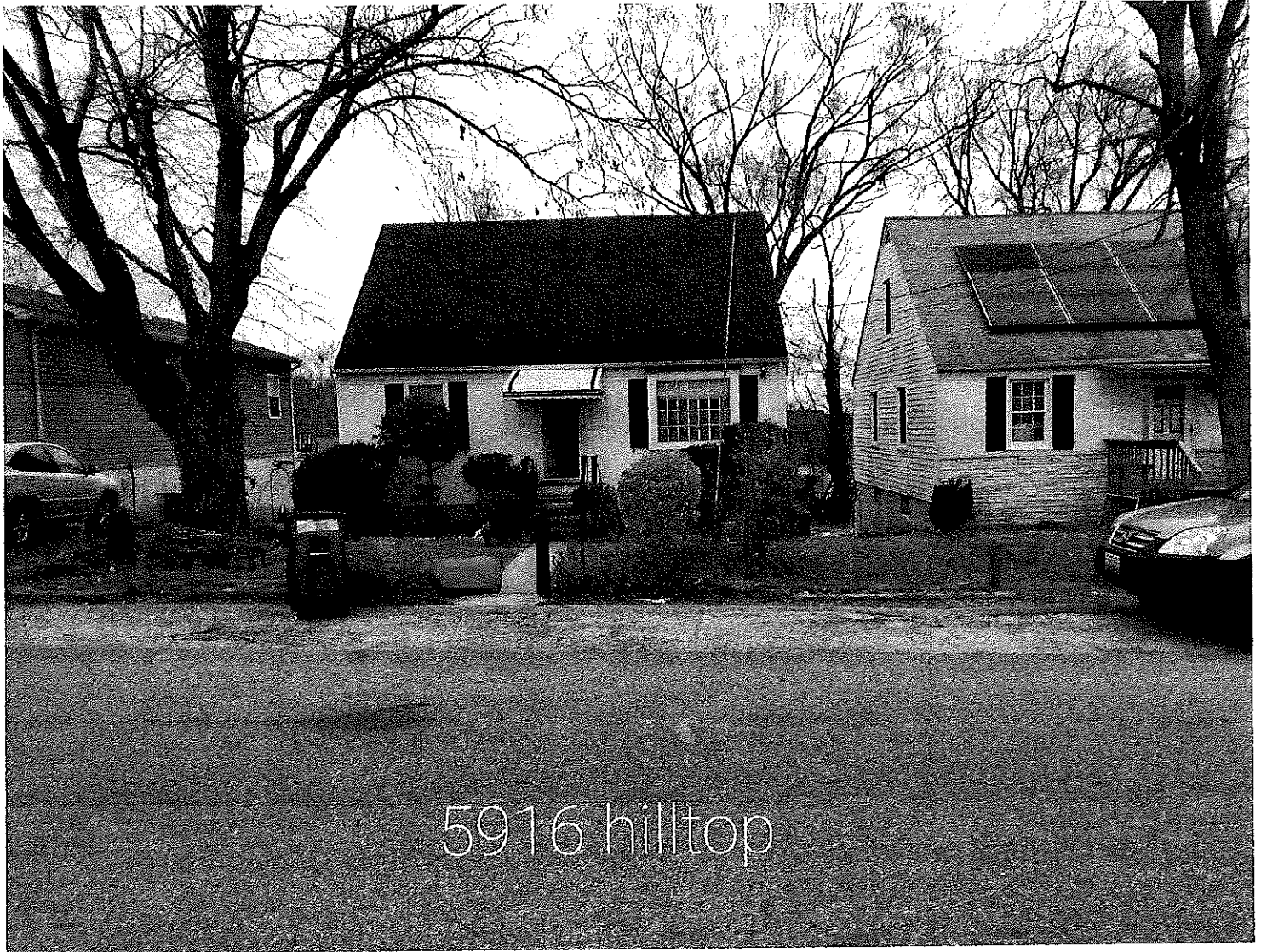


5904 hilltop house on left

ADJACENT



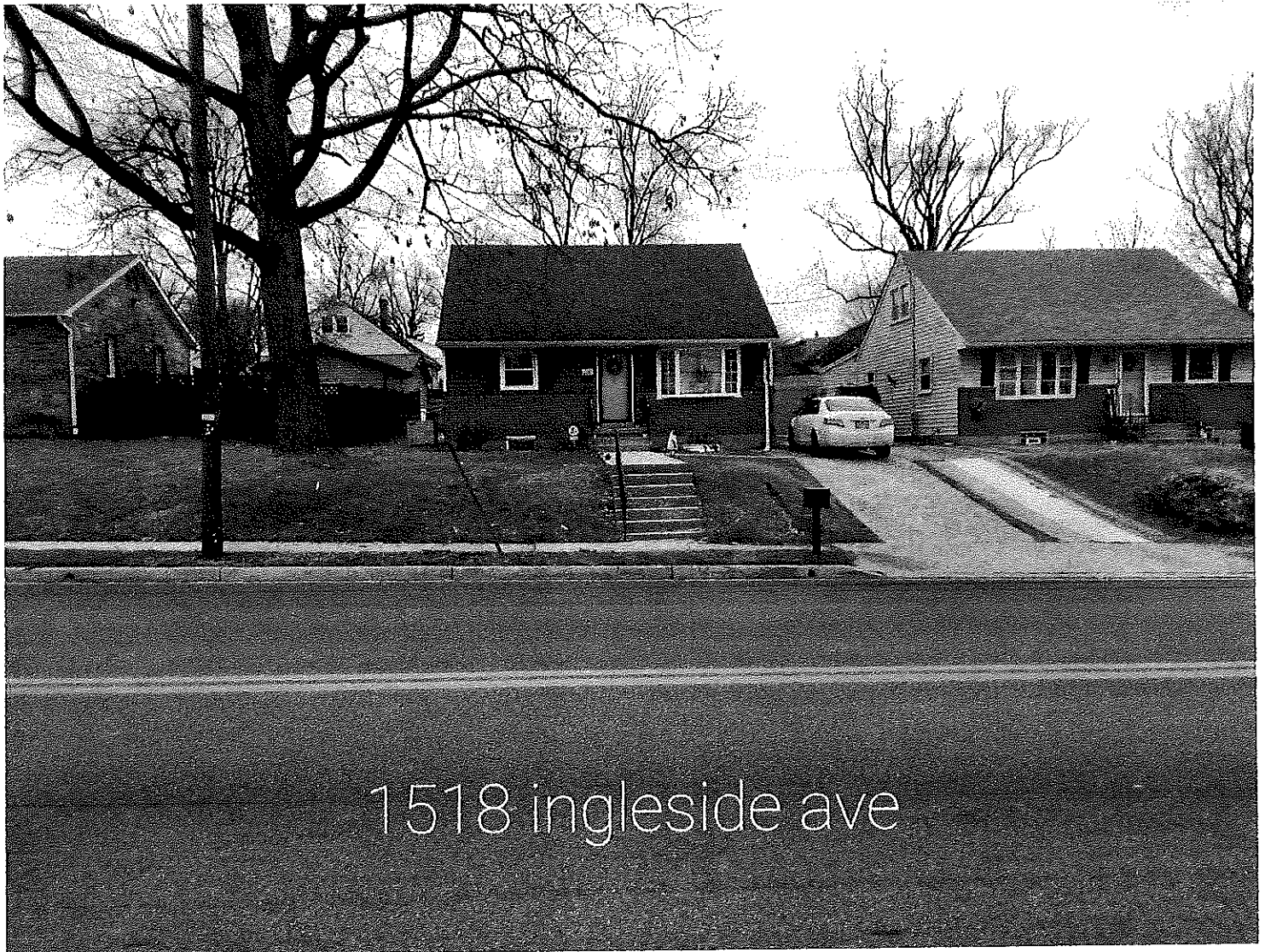
5914 hilltop



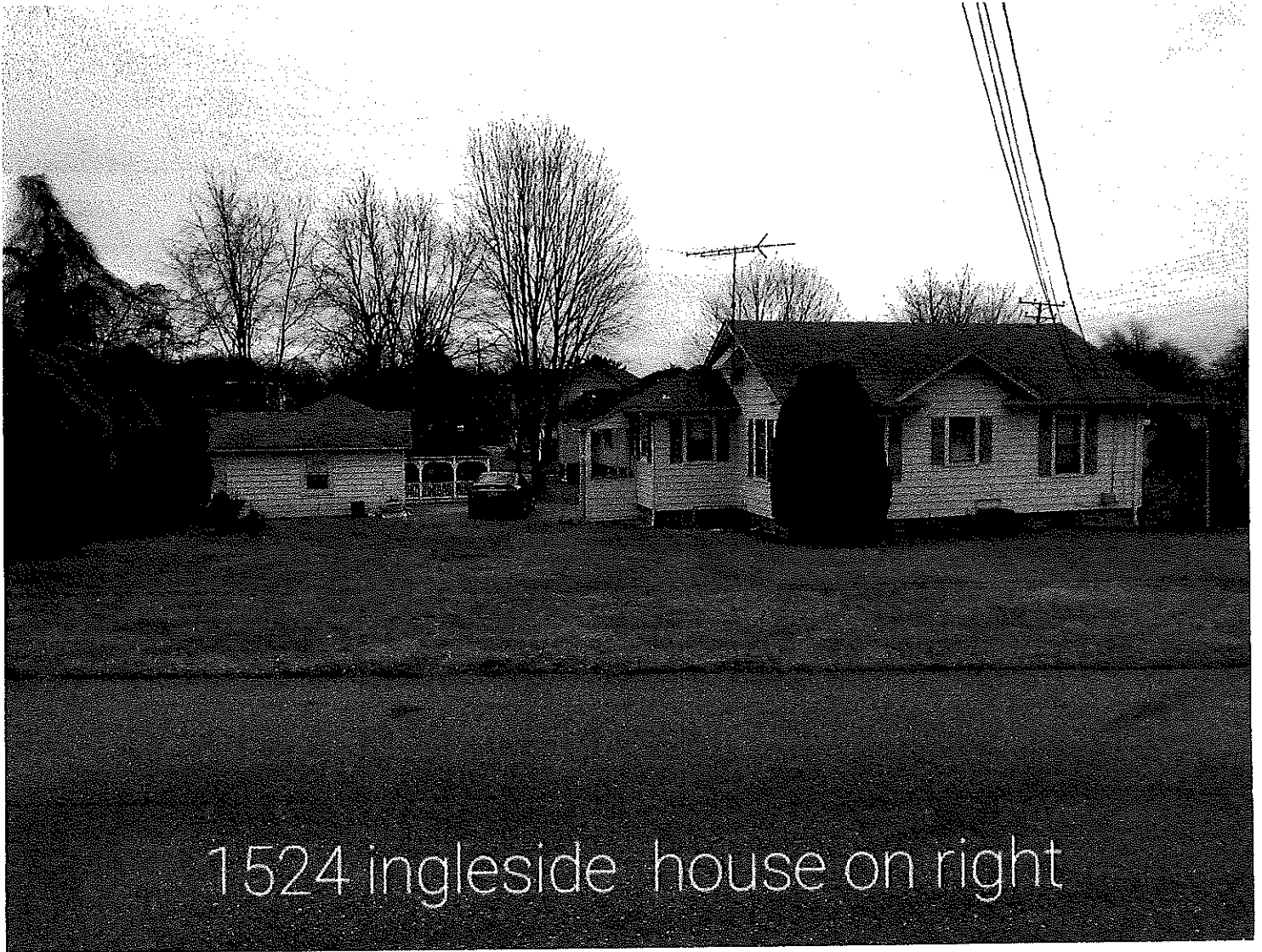
5916 hilltop



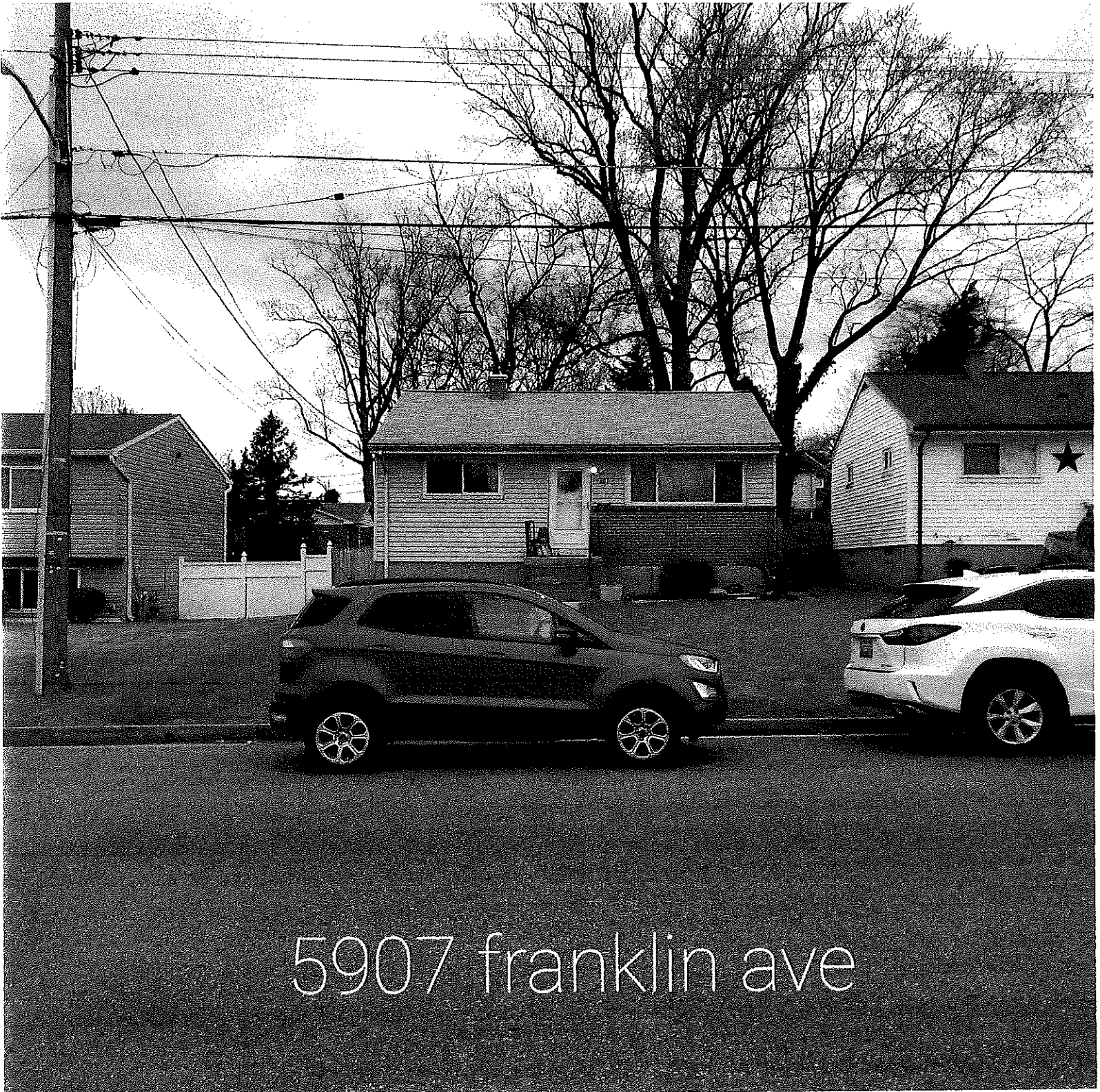
1518 1/2 ingleside ave



1518 ingleside ave



1524 ingleside house on right



5907 franklin ave



5909 franklin ave



5929 sunset ave



5932 sunset ave

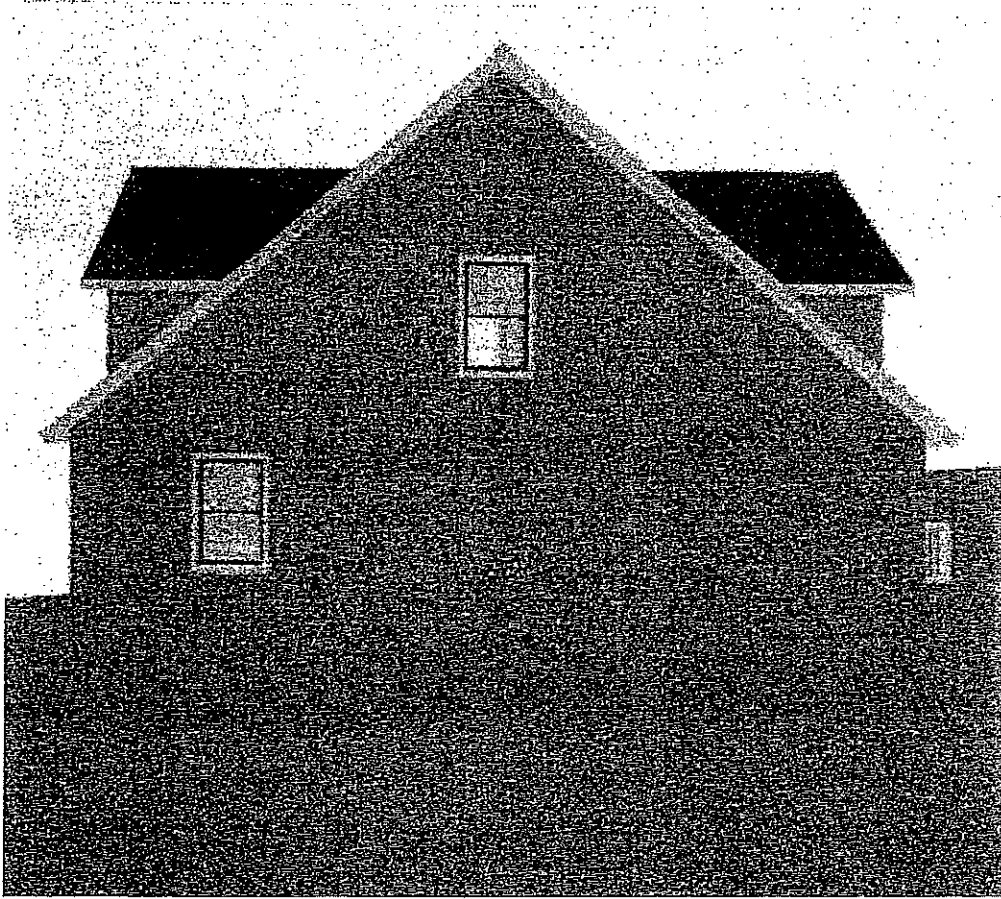


FRONT ELEVATION

SCALE: 1/4"=1'-0"

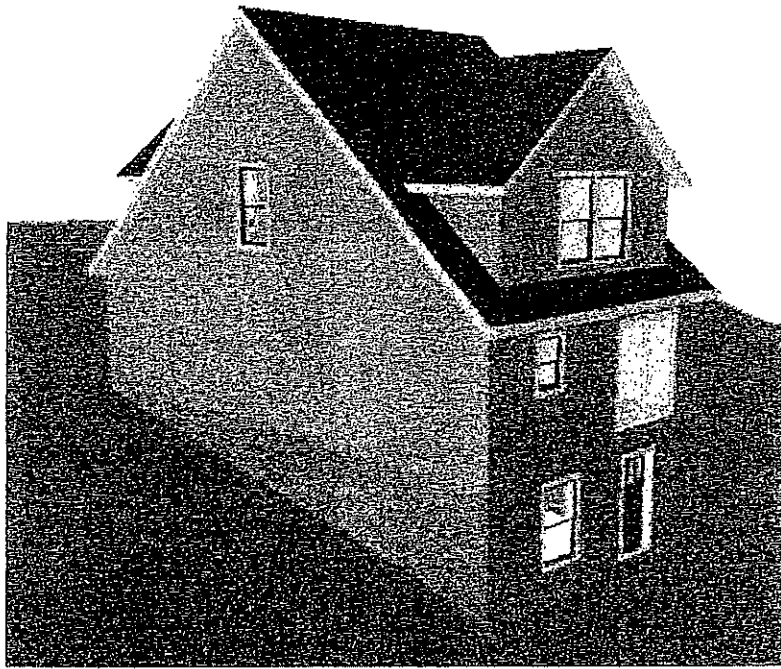
UA-2022-0004-02





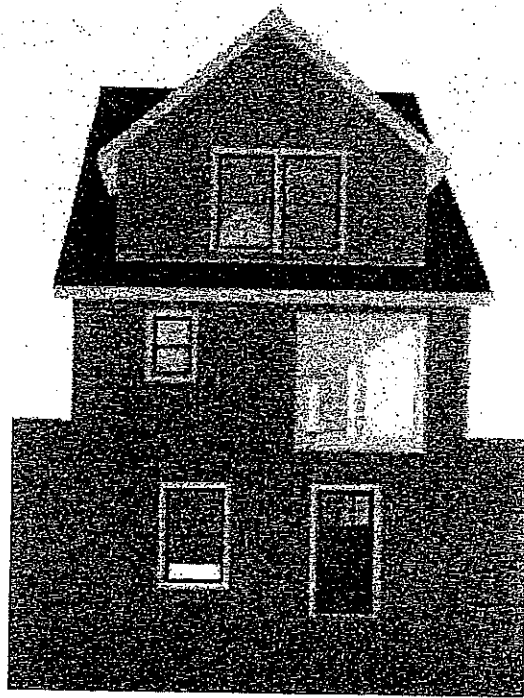
LEFT SIDE ELEVATION

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RIGHT SIDE ELEVATION

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REAR ELEVATION

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JOHN A. OLSZEWSKI, JR.  
*County Executive*

ADMINISTRATIVE LAW JUDGE  
*Office of Administrative Hearings*

August 20, 2019

Warren & Carole Grill  
6220 Rolling View Drive  
Sykesville, Maryland 21784

RE: **Motion for Reconsideration**  
Case No. 2019-0334-A  
Property: 5902 Hilltop Avenue

Dear Mr. & Mrs. Grill:

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "JEB", is written over the typed name.

JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB: sln  
Enclosure

C: Charles & Mary Moser, 2270 Baltimore Blvd., Finksburg, Maryland 21048

**IN RE: PETITION FOR VARIANCE**  
(5902 Hilltop Avenue)  
1<sup>st</sup> Election District  
1<sup>st</sup> Council District  
Warren G. & Carole L. Grill  
*Legal Owners*  
Petitioners

\*  
\*  
\*  
\*  
\*

BEFORE THE OFFICE  
OF ADMINISTRATIVE  
HEARINGS FOR  
BALTIMORE COUNTY  
**CASE NO. 2019-0334-A**

\* \* \* \* \*

**OPINION AND ORDER ON MOTION FOR RECONSIDERATION**


Now pending is a Motion for Reconsideration filed in the above case by Petitioners. Petitioners seek reconsideration of the Order dated July 19, 2019, which denied the petition for variance.

In their motion Petitioners described the process they followed from 1993-95 when they first sought zoning approval for this undersized lot. I was aware of this lengthy history, all of which was detailed in a letter (with enclosures) from People’s Counsel dated June 20, 2019. I am sympathetic to the Petitioners’ plight but am unable to grant the relief they seek.

While in practice motions for reconsideration are filed with some regularity in zoning cases, the reality is that the function of such a motion is quite limited. In *Calvert County v. Howlin Realty, Inc.*, 364 Md. 301 (2001), the court held that an administrative agency “may reconsider an action previously taken and come to a different conclusion upon a showing that ... some new or different factual situation exists that justifies the different conclusion.” In this case, I do not believe Petitioners have identified “some new or different factual situation.” *Id.* at 325. As such, the motion will be denied.

THEREFORE, IT IS ORDERED, this 20<sup>th</sup> day of **August, 2019**, by the Administrative Law Judge for Baltimore County, that the Motion for Reconsideration be and is hereby DENIED.

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



JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB/sln



JOHN A. OLSZEWSKI, JR.  
*County Executive*

ADMINISTRATIVE LAW JUDGE  
*Office of Administrative Hearings*

July 19, 2019

Warren & Carole Grill  
6220 Rolling View Drive  
Sykesville, Maryland 21784


RE: Petitions for Special Hearing and Variance  
Case No. 2019-0334-A  
Property: 5902 Hilltop Avenue

Dear Mr. & Mrs. Grill:

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

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

Sincerely,



JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB: sln  
Enclosure

C: David Billingsley, 601 Charwood Ct., Edgewood, MD 21040  
Charles & Mary Moser, 2270 Baltimore Blvd., Finksburg, Maryland 21048

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(5902 Hilltop Avenue)		
1 <sup>st</sup> Election District	*	OF ADMINISTRATIVE
1 <sup>st</sup> Council District		
Warren G. & Carole L. Grill	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2019-0334-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Warren and Carole Grill, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a lot width of 40 ft. and side yard setbacks of 7 ft. and 7 ft. in lieu of the required 55 ft., 10 ft., and 10 ft., respectively for a new dwelling. A site plan was marked as Petitioners’ Exhibit 1.

Mr. and Mrs. Warren Grill and David Billingsley appeared in support of the petition. The adjoining owners opposed the request. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency opposed the variance request. The unimproved site is approximately 6,005 square feet in size and is zoned DR 5.5.

As noted by the Office of People’s Counsel in correspondence dated June 20, 2019, this property has an “extensive zoning history.” While it is unnecessary to document in detail this history, it suffices for present purposes to note that the same owners sought approval in or about 1994 for an undersized lot pursuant to BCZR §304. Although the Zoning Commissioner granted the request, the County Board of Appeals (“CBA”) denied the petition and that decision was

ORDER RECEIVED FOR FILING

Date 7/19/19

By Den

affirmed by the Court of Special Appeals. The same owners filed a petition in 2004 seeking undersized lot approval pursuant to BCZR §304, although that petition was withdrawn. See Case No. 2004-0270-SPHA.

The current petition seeks variance relief under BCZR §307. Mr. Billingsley prepared a site plan and submitted a series of exhibits which present in a chronological fashion the history and evolution of this matter. Mr. Billingsley submitted a letter dated August 27, 1993 from the DRC granting the requested "Limited Exemption" and informing Petitioners they "may apply for a building permit." See Exhibit 11. Mr. Billingsley also submitted an aerial photo showing that there are seven (7) other dwellings on the same block which are constructed on 40 ft. wide lots. I believe both of these documents are significant, although not dispositive, in this case.

With regard to the former, Mr. Billingsley indicated the DRC approval was not presented or discussed in connection with the 1994 zoning case. The DRC granted an exemption under former BCC Section 26-171(a). The letter did not specify which of the ten enumerated exemptions was granted, but the only applicable provisions concern lot line adjustments or constructing a dwelling on a single lot or tract. A potential issue at this juncture is whether the County should be equitably estopped in this scenario, based on the grant of the exemption and the statement that the owners could apply for a building permit. Having reviewed the aforementioned Code section I do not believe estoppel would be applicable since the Code clearly states that all development for which an exemption was granted must comply with "all applicable zoning regulations." *Id.*

The aerial photo submitted by Petitioners (Ex. 12) shows that several dwellings on this same street are located on 40 ft. wide lots, and according to SDAT records submitted by Mr. Billingsley those lots are roughly the same size as or smaller than the subject property. I mention this only because I believe a proposed dwelling would not be incompatible with the community,

ORDER RECEIVED FOR FILING

2 Date 7/19/19  
By sen

and were I writing on a blank slate this would weigh heavily in favor of granting a variance. But as Mr. Zimmerman noted, this case has a long zoning history and I agree with his argument that the current petition is barred by *res judicata*.

In a zoning case whether or not *res judicata* is applicable hinges on whether or not there have been "substantial changes in fact and circumstances between the first case and the second." *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass'n.*, 192 Md. App. 719, 739-40 (2010). Though the legal theory involved (i.e., a request for undersized lot approval previously, a variance request presently) is different in this case, the zoning request, property description and facts are all the same. The owners could have, but apparently did not, include a variance request in their original zoning petition in 1994. Under Maryland law *res judicata* applies not only to claims which were litigated in an earlier proceeding, but also those claims which *could have* been brought in an earlier case. *MPC, Inc. v. Kenny*, 279 Md. 29 (1977). As such I believe the request must be denied.

THEREFORE, IT IS ORDERED, this 19<sup>th</sup> day of **July, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations to permit a lot width of 40 ft. and side yard setbacks of 7 ft. and 7 ft. in lieu of the required 55 ft., 10 ft., and 10 ft., respectively for a new dwelling, be and is hereby DENIED.

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



JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

ORDER RECEIVED FOR FILING

Date 7/19/19

By den