IN THE MATTER OF KRISTOPHER and MEAGAN HALLENGREN LEGAL OWNERS AND PETITIONERS FOR VARIANCE ON THE PROPERTY LOCATED AT 12014 BOXER HILL ROAD	*	BEFORE THE BOARD OF APPEALS OF
8th ELECTION DISTRICT 3rd COUNCIL DISTRICT	*	BALTIMORE COUNTY
	*	Case No.: 23-053-A

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

ORDER ON MOTION FOR RECONSIDERATION

This matter comes before the Board of Appeals for Baltimore County ("Board") on a timely Motion for Reconsideration filed by Michael S. Rifkin, acting *pro se*, seeking revisions to the January 25, 2024 Order of the Board in this matter. A Response to the Motion for Reconsideration was filed by Lawrence E. Schmidt, Esquire, counsel for Respondents.

A public deliberation was held on April 2, 2024 by Webex, at which the Board ruled to deny the Motion for Reconsideration.

Under the Board Rule 12, a party may file a motion for reconsideration. The Board may revise an order in the event of fraud, mistake or irregularity. The Motion for Reconsideration stated specific grounds and reasons underlying the motion. None of these alleged any newly discovered evidence, change in law, fraud, mistake or irregularity, which would have provided a basis for revising the Board's decision.

The Board held that its Order was supported by competent and complete testimony, and further held that Mr. Rifkin did not raise an appropriate basis for the Board to revise its Order.

ORDER

THEREFORE, IT IS THIS 30th day of April, 2024, by the Board of Appeals of Baltimore County

ORDERED that the Motion for Reconsideration filed by Michael S. Rifkin is **DENIED.**

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

BOARD OF APPEALS OF BALTIMORE COUNTY

Deborah Dopkin, Panel Chair

Sharonne R. Bonardi

Bryan T. Pennington

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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April 30, 2024

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Michael and Carol Rifkin
12015 Boxer Hill Road
Cockeysville, Maryland 21030

RE: In the Matter of: *Kristopher and Meagan Hallengren*
Case No.: 23-053-A

Dear Messrs. Schmidt and Rifkin:

Enclosed please find a copy of the Order on Motion for Reconsideration 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
Legal Administrative Secretary

KLC/taz
Duplicate Original Cover Letter
Enclosure

c: Kristopher and Meagan Hallengren
Patrick C. Richardson, Jr./Richardson Engineering, LLC
Hudson and Karen Myers, III
Barbara Loughlin
Office of People's Counsel
Maureen E. Murphy, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law

Board of Appeals of Baltimore County

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March 7, 2024

NOTICE OF DELIBERATION ON MOTION FOR RECONSIDERATION

IN THE MATTER OF: Kristopher and Meagan Hallengren
12014 Boxer Hill Road
23-053-A 8th Election District; 3rd Council District

Re: Petition for Variance relief from BCZR § 400.3 to permit an accessory building with a height of 24 ft. in lieu of the permitted 15 ft.

5/22/23 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was DENIED.

Pursuant to Rule 12 of the Board of Appeals' Rules of Practice and Procedure, a public deliberation on the Motion for Reconsideration and any response thereto is

ASSIGNED FOR: APRIL 2, 2024, 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.

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
Legal Administrative Secretary

c.	Counsel for Petitioner/Appellant	: Lawrence E. Schmidt, Esquire
	Petitioner/Appellant	: Kristopher and Meagan Hallengren
	Protestants	: Michael and Carol Rifkin, Hudson and Karen Myers, III

Patrick C. Richardson, Jr./Richardson Engineering, LLC
Barbara Loughlin

Office of People's Counsel
Maureen E. Murphy, Chief Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law

IN THE MATTER OF KRISTOPHER and MEAGAN HALLENGREN LEGAL OWNERS AND PETITIONERS FOR VARIANCE ON THE PROPERTY LOCATED AT 12014 BOXER HILL ROAD	*	BEFORE THE BOARD OF APPEALS OF
8th ELECTION DISTRICT 3rd COUNCIL DISTRICT	*	BALTIMORE COUNTY
	*	Case No.: 23-053-A

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

OPINION

This case comes before the Board of Appeals for Baltimore County ("Board") as an appeal of Baltimore County Administrative Law Judge, Paul Mayhew's May 22, 2023, Opinion and Order denying a Petition for Variance filed by Kristopher and Meagan Hallengren for the property located at 12014 Boxer Hill Road ("the Property"), requesting variance relief from the Baltimore County Zoning Regulations ("BCZR") §400.3 to permit a replacement accessory building (garage) with a height of 24 feet, in lieu of the maximum permitted height of 15 feet.

A *de novo* hearing was held before this Board on October 5, 2023, via WebEx. Petitioners were represented by Lawrence E. Schmidt, Esquire of Smith, Gildea & Schmidt, LLC. The Protestant, Michael Rifkin, appeared *pro se*.

Background

The Property is 1.630 acres in area, zoned R.C.4. It is located on Boxer Hill Road (near the intersection of Padonia Road and Falls Road) in the Cockeysville community of Baltimore County. The Property is improved with a detached single-family dwelling which is 1,936 square feet in area and was constructed in 1967. (See Petitioners' Ex. No. 9). In addition to the dwelling, there is an existing garage which is 38 feet by 24 feet in dimension and is 15 feet in height. This garage and driveway leading to it was constructed in 1992. (See Petitioners' Ex. No. 8). It is this

garage which is proposed to be replaced and the new building will be 24 feet in height. The "new" garage will be on the identical footprint as the existing garage. Thus, it will have no larger footprint than the building that has been on the Property for over 30 years. In addition to the dwelling and garage, there is also a small storage shed in the rear yard of the Property. Access to the Property is via a fairly long asphalt driveway which leads from Boxer Hill Road and then circles the garage. There were a series of photographs that were submitted at the hearing that depict the Property and the improvements thereon, including the significant amount of vegetation and landscaping that buffers the view of the improvements (and most significantly the garage) from adjacent properties and the public street. (See Petitioners' Ex. No. 5 and 6.) There are no public facilities (water and sewer) in the area and therefore the Property also includes a well and septic system.

On or about February 25, 2023, Petitioners applied for a variance to permit a replacement accessory building (garage) with a height of 24 feet, in lieu of the maximum permitted height of 15 feet. Petitioners applied for the variance administratively. The Protestant requested a hearing where testimony could be presented.

On or about May 22, 2023, after a hearing, Administrative Law Judge, Paul Mayhew, denied Petitioner's Administrative Variance request. The denial was based on the fact the Petitioner's Administrative Variance request did not meet the legal standard for variance approval. Petitioners filed a timely appeal.

During the hearing in front of this Board, Petitioner, Kristopher Hallengren, testified that he resides in the home with his wife and two children. They purchased the property in 2010. Petitioners desire to rebuild their detached garage on the same footprint, adding a second floor. This would be to provide his family with some needed space. The second floor would contain a

gym, an office and a recreation room. The office would be used part time by Petitioner and his wife when they bring work home. As previously stated, the garage is currently 15 feet high. The proposed garage would be 24 feet high.

Petitioner described the topography of his property. The property slopes from right to left and from front to back. (See Petitioner's Exhibit 5A). The garage sits significantly lower than the house itself. The top of the garage is at approximately the same level as the first floor of the house. (See Petitioner's Exhibit 5F and 5G).

The lot Petitioners own was once part of a larger lot (approximately six acres). The lots were subdivided into two separate lots. The larger property, which is owned by David and Jan Chapin, almost surrounds Petitioner's property. (See Petitioners' Exhibit 3A). This is unlike the other lots in the surrounding neighborhood.

Petitioner also discussed the wells on his property. Just outside the garage there are two wells in the ground. Both are to the side and rear of the yard. One of the wells belongs to the Petitioner. The other belongs to their neighbor, Mr. Hudson Myers. The Petitioner's well actually sits partially under the asphalt driveway adjacent to the garage. Mr. Myers' well is about 14 feet from Petitioner's well. Both are located on Petitioner's property.

Petitioner testified that they considered an addition to the house itself but because of its layout, it would not make practical sense. To add an addition that would increase the footprint of the house would require a variance. The rear of the house is a deck and a stone patio. Additionally, their septic system is located in the rear. The left side of the house sits on a severe slope with a retaining wall and a chimney. On the right front side is where the Petitioner's water line is located.

Petitioner testified that the proposed garage would have no adverse impact on the neighborhood. The well and septic systems would not be disturbed and the vegetation in front of the garage would continue to conceal the garage.

Mr. Patrick Richardson, Jr., a licensed engineer at Richardson Engineering, LLC, testified next. Mr. Richardson was accepted as an expert professional engineer and as an expert in the Baltimore County Zoning Regulations. He prepared and submitted the site plan for the zoning variance application.

Mr. Richardson discussed the zoning history of the property. The zoning for the property was changed in 2000 from R.C.5. to R.C.4. In the R.C.5. zone, there is no limit for lot coverage, only building coverage. The current lot coverage of this property would meet the requirements for R.C.5. In the R.C.4. zone, total lot coverage can only be 10%. This would include the buildings as well as all other surfaces such as the driveway. Petitioner's property currently has a lot coverage of approximately 18%. Because the property was non-conforming when the zoning was changed from R.C.5. to R.C.4., it is considered grandfathered in, however, it cannot be expanded.

Mr. Richardson also discussed the unique characteristics of the property. The configuration of the property is unique due to the shape of the lot. He also stated that he has never seen a property that contains someone else's well as this property does. He also described how much lower the garage sits from the house itself. This is due to the severe slope on the property right next to the house. Also, because of the wells, waterline and where the garage sits, it cannot be expanded outwards.[1] The only conceivable way to expand the garage is to build

[1] There is a recorded easement regarding the well and water line in the Baltimore County Land Records, Liber 3172, page 474.

upward. Another unique characteristic relating to the property is the off-site stream which creates a "forest buffer" on the property. This further reduces the ability to expand the footprint of the garage. Additionally, Mr. Richardson stated that because of the change in zoning from R.C.5. to R.C.4., they can't increase the lot coverage due to the limitations on impermeable surfaces.

The Protestant, Michael Rifkin, testified next. He and his wife live across the street from Petitioners at 12015 Boxer Hill Road. He feels that the granting of a variance would do an injustice to the neighborhood. He argued that the Petitioner's property is not dissimilar to many other properties in the area. He does not feel that the addition of an office and a gym are urgent necessities.

Mr. Henry Hudson Myers, III also testified. He resides at 12100 Boxer Hill Road. Mr. Myers is concerned about how the granting of a variance would impact the neighborhood.

Conclusion

The threshold issue in this matter is whether the Petitioners have met the test for entitlement to a variance as established in *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995).

In order to grant a variance, Baltimore County Zoning Regulations (BCZR) § 307.1 states, as relevant:

> "...The County Board of Appeals...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...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..."

In order to obtain a variance in this instance, Petitioner first must prove the uniqueness of the property and then that such uniqueness results in practical difficulty. *See Cromwell v. Ward*, *supra* 102 Md. App. at 703-722; 651 A.2d at 430-440. The uniqueness element requires that the subject property have an inherent characteristic not shared by other properties in the area, such as, shape, topography, sub-surface 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. *Id.*, 102 Md. App. at 710-11; 651 A.2d at 433-34, citing *North v. St. Mary's County*, 99 Md. App. 502, 514-15; 638 A. 2d 1175 (1994).

The second step of the variance test examines whether the disproportionate effect of the ordinance, caused by the uniqueness of the property, creates practical difficulty for or unnecessary hardship on the owner of the property. *Cromwell*, 102 Md. App. at 694-95. With respect to practical difficulty, there is a three-part review: (1) whether compliance with the strict letter of the restrictions governing area, setbacks, etc., 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 would do substantial justice for 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; and (3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel*, 407 Md. 53, 83-84; 962 A.2d 404, 422 (2008), citing *McLean v. Soley*, 270 Md. 208, 214-15; 310 A.2d 783, 787 (1973). The hardship at issue cannot be self-created. *Cromwell*, 102 Md. App. at 721-22; 651 A.2d at 439-40.

The first determination is that of uniqueness of the property. Based on the evidence presented and the testimony of the Petitioner, the Board is convinced that the property is unique. Petitioner's property was once part of a much larger lot (six acres). In around 1991, long before Petitioners owned the property, the lot was subdivided, and Petitioner's lot was carved out of the larger lot. Petitioner's lot became 1.63 acres. This is not a standard lot size for this neighborhood. For example, Mr. Rifkin's lot is just over one acre in area. The Myers property is 1.85 acre in area. The Chapin property, which is the remaining property from the subdivision described above, which sits to the rear and left of Petitioner's property, is 4.1 acres in area. Additionally, the lot is not shaped like any of the other lots in the neighborhood. (See Petitioners' Exhibit 3B).

A very distinct characteristic of the property, which alone makes the property unique, is the dramatic sloping of the yard between the house and the garage. When facing the lot from Boxer Hill Road, the Property slopes right to left. The house sits much higher (15+ feet) than the garage, in fact, evidence was presented that the first floor of the house is at the same level as is the peak of the existing garage. The severity of the slope is at its' greatest at the most impactful location; namely, between the house and the garage. The topographical lines on the site plan (Petitioners' Exhibit 2B) clearly demonstrate that the grade change is most severe immediately adjacent to the garage. The house and the garage are within close proximity. A retaining wall exists between the house and the garage evidencing the significant grade change between the garage and the house as the access to the garage sits below the house's basement level.

The Protestant contends that numerous neighborhood properties have sloping yards. However, Mr. Richardson notes that while this may be accurate, none of the other properties exhibit slopes as severe as those surrounding the Petitioners' property.

When the property was developed and when the garage and driveway were built, the Property was zoned R.C.5. The R.C.5. zone imposes no limitation on the amount of impermeable surface on a lot, rather, it only limits the number of buildings that can cover a lot to 15% of the area of the lot (See BCZR IA04.3.B.3). The Property was/is compliant with that standard. However, the Property's zoning was changed in 2000 to R.C.4., and thus the R.C.4. regulations govern any future building and development of the Property. Under the R.C.4. regulations (See BCZR IA03.4.B.3) "impermeable surface" is limited to 10% of the area of the lot. This restriction is at the very essence of the purpose of the R.C.4. zone, which was adopted to provide a zone which protects the reservoirs and drinking water provided to the Baltimore Metropolitan area. As shown on the site plan (Petitioners' Exhibit 2B, Note 24), the Property is currently at 18% impermeable surface, including the house, garage, shed and driveway. Thus, although the Property is grandfathered to its current impermeable area, that area cannot be further increased as such would be in violation of that limitation. It is also important to note that while the zoning was changed for Petitioner's property to R.C.4. in 2000, it was not changed for most of the remainder of the neighborhood. These other properties remain zoned R.C.5. (See Protestant's Exhibit 12).

Another characteristic which makes it unique is the existence of Mr. Myers' well and water line on this property. As previously stated, Mr. Myers has a recorded easement for the well and water line. The well is located just to the rear of the garage and the water line from the well runs through Petitioner's property to Mr. Myers' property.

With respect to the second determination, that of practical hardship or unnecessary hardship, the Board is also convinced that this requirement is satisfied. Compliance with the strict letter of the restriction would certainly render conformity with the restriction unnecessarily burdensome.

Because of the current zoning of the property, Petitioners are prohibited from, without a variance, expanding the footprint of any of the dwellings on their property. Even if they were permitted to do so, based on the evidence and testimony, adding on to the house would be near impossible due to the topography, the existing structures on the property, and the existing wells and water lines running on the side, front and rear of the house.

As far as attempting to somehow attach the garage to the house, that too would be unreasonably burdensome. A retaining wall exists between the house and the garage evidencing the significant grade change between the garage and the house as the access to the garage sits below the house's basement level. This factor makes it impossible to attach the garage to the house. The severity of the slope also limits the access point to the garage to its' existing location. That is, the driveway cannot be re-located or reconfigured.

The Board further finds that the granting of this variance would do substantial justice to the applicant as well as to other property owners in the district. The design of the proposed garage certainly fits in with the character of the neighborhood. (See Petitioners' Exhibits 10A-F). Additionally, the garage currently sits extremely low compared to the level of Boxer Hill Road. As previously discussed, the garage roof is currently on an even level with the first floor of the Petitioners' house. An additional nine feet would still have the garage sitting significantly lower than the top of the house. The presence of trees concealing the garage from the road supports the fulfillment of this requirement. Currently, the trees surpass the garage's height, and

even with a nine-foot addition, they would still obscure the top of the garage. Should any of the existing trees screening the garage die off, the Petitioner must immediately replace them with fast-growing evergreens. Additionally, no windows shall be placed on the side of the garage closest to the Rifkin property.

Lastly, the Board finds that the relief requested is in keeping with the spirit of the ordinance and public safety and welfare is secured. There is no evidence that the granting of the variance would adversely impact public safety and welfare whatsoever. In that the Petitioner had persuaded this Board that both prongs of the *Cromwell* analysis have been met, the requested variance relief is **GRANTED with conditions**.

ORDER

THEREFORE, IT IS THIS 25th day of January, 2024, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Variance to permit a replacement accessory building (garage) with a height of 24 feet, in lieu of the maximum permitted height of 15 feet, be and is hereby **GRANTED with the following conditions:**

1. If any of the current trees screening the garage from view die off, the Petitioner must immediately replace them with fast-growing evergreens; and

2. No windows shall be placed on the side of the garage closest to the Rifkin property.

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

BOARD OF APPEALS OF BALTIMORE COUNTY

Deborah Dopkin, Panel Chair

Sharonne R. Bonardi

Bryan T. Pennington

Board of Appeals of Baltimore County

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January 25, 2024

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Michael and Carol Rifkin
12015 Boxer Hill Road
Cockeysville, Maryland 21030

RE: In the Matter of: *Kristopher and Meagan Hallengren*
Case No.: 23-053-A

Dear Messrs. Schmidt and Rifkin:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

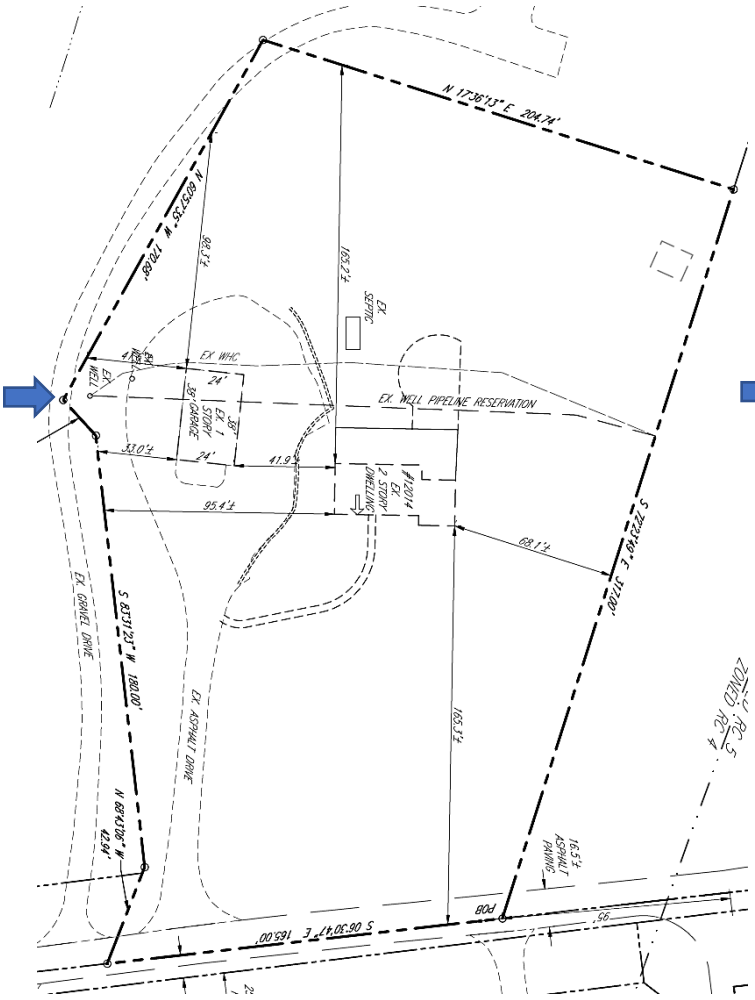
Krysundra "Sunny" Cannington
Legal Administrative Secretary

KLC/taz
Duplicate Original Cover Letter
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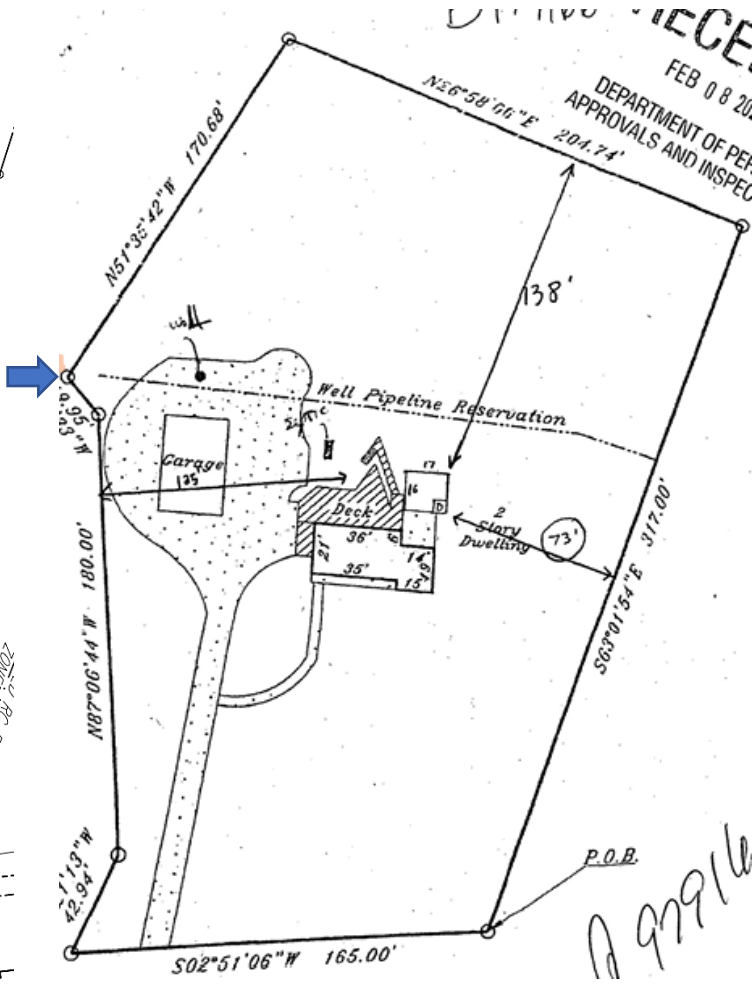
c: Kristopher and Meagan Hallengren
Patrick C. Richardson, Jr./Richardson Engineering, LLC
Hudson and Karen Myers, III
Barbara Loughlin
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law

Case #23-053-A Comments submitted by Micheal Rifkin (Protestant) in regards to an additional Site Plan (3_2_21) submitted by the Petitioners legal counsel (Lawrence Schmidt) after the hearing had ended.

During the hearing, the Appeal Board Chair (Ms. Deborah Dobkin) asked Mr. Richardson if there was a recorded document that exists that shows the "Well Pipeline Reservation" easement. At the end of the hearing, Ms. Dobkin reminded the Petitioners to submit a copy of the easement that was requested during the hearing.



Petitioners Exhibit 1 (admitted during the Hearing)



Site Plan 3_2_21 (submitted after the Hearing)

The "12014 BOXER HILL RD – SITE PLAN – 3_2_21.pdf" was submitted after the hearing and I object to this site plan drawing (received by the Department of Permits Approvals and Inspections on Feb 08, 2021). While the lot shape and Well Pipeline Reservation shown on the 3_2_21 site plan are consistent with the lot shape and position of the Well Pipeline Reservation shown on the site plans drafted/drawn by Richardson Engineering (Petitioners Exhibit 1, 2A, 2B), the position of the Garage, Dwelling, Deck, and Patio are positioned further forward towards Boxer Hill Rd on 3_2_21 site plan (when compared to Petitioners Exhibit 1, 2A, 2B), therefore avoiding the Well Pipeline Reservation. I do not know who created this site plan and what its purpose was for, and I believe the 3_2_21 site plan does not accurately represent the position of the structures located on the lot of 12014 Boxer Hill Rd.

Respectfully submitted as requested,

Michael Rifkin

Michael Rifkin

From: Mike Rifkin
To: "Lawrence Schmidt"; Krysundra Cannington
Cc: "Alyssa Moyers"; "Hallengren, Kristopher & Meagan"; Huddyman@verizon.net
Subject: RE: Hallogren easement
Date: Monday, October 23, 2023 9:47:10 AM

CAUTION: This message from mrifkin1@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Comments from Michael Rifkin - Case #23-053-A
The "12014 BOXER HILL RD – SITE PLAN – 3_2_21.pdf" was submitted after the hearing and I object to this site plan drawing (received by the Department of Permits Approvals and Inspections on Feb 08, 2021). While the lot shape and Well Pipeline Reservation shown on this site plan are consistent with the lot shape and position of the Well Pipeline Reservation shown on the site plans drafted/drawn by Richardson Engineering (Petitioners Exhibit 1, 2A, 2B), the position of the Garage, Dwelling, Deck, and Patio are positioned further forward towards Boxer Hill Rd on this site plan (when compared to Petitioners Exhibit 1, 2A, 2B), therefore avoiding the Well Pipeline Reservation. I do not know who created this site plan and what it's purpose was for, and I believe this site plan does not accurately represent the position of the structures located on the lot of 12014 Boxer Hill Rd.

The Appeal Board Chair only requested the Deed showing the Well Pipeline Reservation be submitted after the hearing.

I have also included my comments above on the acrobat.adobe.com website link to this site plan.
https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:c9d3fce1-c42a-4dab-9351-3c43a567eaef

If appropriate, please forward this email to the Board of Appeal Chair for this case.
Thank you,
Mike Rifkin

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Thursday, October 5, 2023 5:29 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Alyssa Moyers <amoyers@sgs-law.com>; Hallengren, Kristopher & Meagan (khallengren@vallitadvisors.com) <khallengren@vallitadvisors.com>; 'mrifkin1@verizon.net' <mrifkin1@verizon.net>
Subject: FW: Hallogren easement

Sunny: During today's hearing, reference was made to an easement on my client's (Hallengren) property allowing a well and water line serving their neighbor's lot. Attached is the Hallegren's deed and a drawing indicating the easement. Ms. Dopkin asked that we submit this for inclusion into the record. It appears that the original easement was put into place in 1957 and I'll see if I can track down that deed too. But the attached should suffice as evidence of the existing easement. Let me know if you or members of the panel have any questions regarding this matter.

Larry Schmidt
PS: Please note that I have forwarded this also to Mr. Rifkin. I do not have Mr. & Mrs. Meyers email and perhaps someone can forward to them . (they also attended the virtual hearing). Thanks.

I'm using Adobe Acrobat.
You can view and comment on "12014 BOXER HILL RD - SITE PLAN - 3_2_2021.pdf" at:
https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:c9d3fce1-c42a-4dab-9351-3c43a567eaef
You can view and comment on "deed 33945-34.pdf" at: https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:7d40c1e0-77a5-4247-83e9-55eb583f1f11

SGS Smith Gildea & Schmidt LLC
Lawrence E. Schmidt
PARTNER

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(410) 821-0071 (Fax)
lschmidt@sgs-law.com
http://secure-web.cisco.com/1sMBGqz4_xwagvX-Cz4RYd8SYFIBH16HVD28ljvg81obPnm24chDAXN5qIR12saospI77xrgB3jnp7eXdb3XEAcTxSv0LVxzknOYYTpr7SA8lBSinT3-358J9QRyw21zEjIYsifKgjAazrMm-IEzGuLz-y7ohxJP5UHajFcru7U87lPTkeJG63dcPwsIo1wR_JAaVare3X-6N9aYX82tUoxjj1K65u_TNlLhjeNs8z5xxknbfQwlnIRY41dw475stkKgl42byt4BwF8gc2op6B719jMk2l6Db67Uo-Hm9LQ2HxvhgFvN3kHUTumDLDDGyzl649WEidoQsTcRJleiSjCLbutEtvJpVJc9Nc3-DtcsX2pxofs2TmhMMep-eh2NLqz8OrS57etsjJzo7jVE2a4IO2K7dbX5CALVKjv-tYcTpaCs7_jglJOLqTyVk1zaa/http%3A%2F%2Fwww.sgs-law.com

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---

From: Richardson, Patrick <rick@richardsonengineering.net>
Sent: Thursday, October 5, 2023 2:01 PM
To: Lawrence Schmidt <lschmidt@sgs-law.com>
Subject: Hallogren easement

Rick Richardson
Richardson Engineering, LLC
7 Deneison Street
Timonium, MD 21093
410-560-1502-x1

From: Lawrence Schmidt
To: "Mike Rifkin"; Krysundra Cannington
Cc: Alyssa Moyers; "Hallengren, Kristopher & Meagan"; Huddyman@verizon.net
Subject: RE: Hallogren easement
Date: Monday, October 23, 2023 11:38:03 AM

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

Ms. Cannington: I believe that it is more appropriate and economical to address Mr. Rifkin's below comments in my closing memo, which will be filed on November 1, 2023, as directed by the Board. Unless the Board wants my substantive reply sooner, I will do so.

Thank you.

Larry Schmidt

SGS Smith Gildea & Schmidt LLC
Lawrence E. Schmidt
PARTNER

Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Baltimore, MD 21204
(410) 803-3854 (Direct)
(410) 821-0070 (Office)
(410) 821-0071 (Fax)
lschmidt@sgs-law.com
http://secure-web.cisco.com/1sXSEtD2kDQ4URh-ndYIQJeooXGmKyd0RYa9_27wQ2kYdFReJt4PB8BbMEzErORk5ixRTBV3uklAXu7E008f6d-KnQP50ism5PTGz-4sWCzf8ciZB34QECWPL0KjlTam2PHxmnuMQs5vLXyWJIr4wH0peu7PXeS8ErxmxjF8ie69mgGGPZBI_T7-gS6rjb4d__ZYybV9BQRkpIECnTS5QLCbj23IaAIyDUSqfN1E8fabgSF9Gibs91m0cLKDvnqMtUwRpsYZX5mNSpX9YbLNprIL5X_qmDdhb7EVIhs53PS6J640znsncIeSze9paB9cxXkP-xfQTljnZDH1tF36cjI7Ivy6e6sJhgil16VuQ3OEGS7zUO0lM0ME5V8EEmfD1v1R7VFnTp-wBfYsHs01SfdX2jgGcEJC7aOGMg04p17LJWrjXV96hS8kKOJlnvpxLNp3Q3amTpGKCNkBU25OmhQ/http%3A%2F%2Fwww.sgs-law.com

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---

From: Mike Rifkin <mrifkin1@verizon.net>
Sent: Monday, October 23, 2023 9:47 AM
To: Lawrence Schmidt <lschmidt@sgs-law.com>; 'Krysundra Cannington' <kcannington@baltimorecountymd.gov>
Cc: Alyssa Moyers <amoyers@sgs-law.com>; 'Hallengren, Kristopher & Meagan' <khallengren@vallitadvisors.com>; Huddyman@verizon.net
Subject: RE: Hallogren easement

Comments from Michael Rifkin - Case #23-053-A
The "12014 BOXER HILL RD – SITE PLAN – 3_2_21.pdf" was submitted after the hearing and I object to this site plan drawing (received by the Department of Permits Approvals and Inspections on Feb 08, 2021). While the lot shape and Well Pipeline Reservation shown on this site plan are consistent with the lot shape and position of the Well Pipeline Reservation shown on the site plans drafted/drawn by Richardson Engineering (Petitioners Exhibit 1, 2A, 2B), the position of the Garage, Dwelling, Deck, and Patio are positioned further forward towards Boxer Hill Rd on this site plan (when compared to Petitioners Exhibit 1, 2A, 2B), therefore avoiding the Well Pipeline Reservation. I do not know who created this site plan and what it's purpose was for, and I believe this site plan does not accurately represent the position of the structures located on the lot of 12014 Boxer Hill Rd.

The Appeal Board Chair only requested the Deed showing the Well Pipeline Reservation be submitted after the hearing.

I have also included my comments above on the acrobat.adobe.com website link to this site plan.
https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:c9d3fce1-c42a-4dab-9351-3c43a567eaef

If appropriate, please forward this email to the Board of Appeal Chair for this case.
Thank you,
Mike Rifkin

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Thursday, October 5, 2023 5:29 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Alyssa Moyers <amoyers@sgs-law.com>; Hallengren, Kristopher & Meagan (khallengren@vallitadvisors.com) <khallengren@vallitadvisors.com>; 'mrifkin1@verizon.net' <mrifkin1@verizon.net>
Subject: FW: Hallogren easement

Sunny: During today's hearing, reference was made to an easement on my client's (Hallengren) property allowing a well and water line serving their neighbor's lot. Attached is the Hallegren's deed and a drawing indicating the easement. Ms. Dopkin asked that we submit this for inclusion into the record. It appears that the original easement was put into place in 1957 and I'll see if I can track down that deed too. But the attached should suffice as evidence of the existing easement. Let me know if you or members of the panel have any questions regarding this matter.

Larry Schmidt
PS: Please note that I have forwarded this also to Mr. Rifkin. I do not have Mr. & Mrs. Meyers email and perhaps someone can forward to them . (they also attended the virtual hearing). Thanks.

I'm using Adobe Acrobat.
You can view and comment on "12014 BOXER HILL RD - SITE PLAN - 3_2_2021.pdf" at: https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:c9d3fce1-c42a-4dab-9351-3c43a567eaef
You can view and comment on "deed 33945-34.pdf" at: https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:7d40c1e0-77a5-4247-83e9-55eb583f1f11

SGS Smith Gildea & Schmidt LLC
Lawrence E. Schmidt
PARTNER

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lschmidt@sgs-law.com
http://secure-web.cisco.com/1sXSEtD2kDQ4URh-ndYIQJeooXGmKyd0RYa9_27wQ2kYdFReJt4PB8BbMEzErORk5ixRTBV3uklAXu7E008f6d-KnQP50ism5PTGz-4sWCzf8ciZB34QECWPL0KjlTam2PHxmnuMQs5vLXyWJIr4wH0peu7PXeS8ErxmxjF8ie69mgGGPZBI_T7-gS6rjb4d__ZYybV9BQRkpIECnTS5QLCbj23IaAIyDUSqfN1E8fabgSF9Gibs91m0cLKDvnqMtUwRpsYZX5mNSpX9YbLNprIL5X_qmDdhb7EVIhs53PS6J640znsncIeSze9paB9cxXkP-xfQTljnZDH1tF36cjI7Ivy6e6sJhgil16VuQ3OEGS7zUO0lM0ME5V8EEmfD1v1R7VFnTp-wBfYsHs01SfdX2jgGcEJC7aOGMg04p17LJWrjXV96hS8kKOJlnvpxLNp3Q3amTpGKCNkBU25OmhQ/http%3A%2F%2Fwww.sgs-law.com

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---

From: Richardson, Patrick <rick@richardsonengineering.net>
Sent: Thursday, October 5, 2023 2:01 PM
To: Lawrence Schmidt <lschmidt@sgs-law.com>
Subject: Hallogren easement

Rick Richardson
Richardson Engineering, LLC
7 Deneison Street
Timonium, MD 21093
410-560-1502-x1

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

October 13, 2023

NOTICE OF DELIBERATION

IN THE MATTER OF: Kristopher and Meagan Hallengren
12014 Boxer Hill Road
23-053-A 8th Election District; 3rd Council District

Re: Petition for Variance relief from BCZR § 400.3 to permit an accessory building with a height of 24 ft. in lieu of the permitted 15 ft.

5/22/23 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was DENIED.

This matter having been heard and concluded on October 5, 2023, a public deliberation has been

ASSIGNED FOR: NOVEMBER 16, 2023, 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 on **November 1, 2023 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
Legal Administrative Secretary

c.	Counsel for Petitioner/Appellant	: Lawrence E. Schmidt, Esquire
	Petitioner/Appellant	: Kristopher and Meagan Hallengren
	Protestants	: Michael and Carol Rifkin, Hudson and Karen Myers, III

Patrick C. Richardson, Jr./Richardson Engineering, LLC
Barbara Loughlin

Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law

Board of Appeals of Baltimore County

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

August 1, 2023

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Kristopher and Meagan Hallengren
12014 Boxer Hill Road
23-053-A 8th Election District; 3rd Council District

Re: Petition for Variance relief from BCZR § 400.3 to permit an accessory building with a height of 24 ft. in lieu of the permitted 15 ft.

5/22/23 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was DENIED.

This matter was assigned for hearing on September 7, 2023 and postponed by request. By agreement of the parties, this matter has been

REASSIGNED FOR: OCTOBER 5, 2023, 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
Legal Administrative Secretary

c.	Counsel for Petitioner/Appellant	: Lawrence E. Schmidt, Esquire
	Petitioner/Appellant	: Kristopher and Meagan Hallengren
	Protestants	: Michael and Carol Rifkin, Hudson and Karen Myers, III
	Office of People's Counsel	: Peter M. Zimmerman, Esquire, People's Counsel Carole S. Demilio, Esquire Deputy People's Counsel

Patrick C. Richardson, Jr./Richardson Engineering, LLC
Barbara Loughlin

Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law

RE:	PETITION FOR ADMINSTRATIVE VARIANCE	*	BEFORE THE BOARD
	12014 Boxer Hill Road; E/side of Boxer Hill Rd., 95 feet South of Labrador Lane.	*	OF APPEALS
	8th Election & 3rd Councilmanic Districts	*	FOR
	Legal Owners: Kristopher and Meagan Hallengren	*	BALTIMORE COUNTY
	Petitioner(s)		
		*	2023-053-A

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

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

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

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Suite 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188
peoplescounsel@baltimorecountymd.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 2023, a copy of the foregoing Entry of Appearance was emailed to Michael & Carole Rifkin, 121015 Boxer Hill Road, Cockeysville, Maryland 21030, Mrifkin1@verizon.net , Protestants ; Hudson & Karen Myers, 12100 Boxer Hill Road, Cockeysville, Maryland 21030, Huddyman@verizon.net and KSM999@msn.com , Protestants and Lawrence Schmidt, Smith, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, lschmidt@sgs-law.com, Attorney for Petitioner(s).

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

From: Mike Rifkin
To: "Lawrence Schmidt"; "Alyssa Moyers"; Appeals Board; Krysundra Cannington
Cc: clrifkin@verizon.net; huddyman@verizon.net; ksm999@msn.com; "Hallengren, Kristopher & Meagan"; Peoples Counsel
Subject: RE: Request to change hearing date for Case #23-053-A
Date: Tuesday, July 25, 2023 7:12:46 PM

CAUTION: This message from mrifkin1@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To Mr. Lawrence Schmidt, The Appeals Board, and all Parties Involved in Case #23-053-A,
As stated in my previous email, I have a severe hearing loss which requires me to wear hearing aids. I have a very difficult time understanding speech unless it is a one-on-one conversation where I am very close to the person. When I participated in the online Webex zoning variance hearing for Case #2023-0053-A on 5/15/2023, I also called in with my iPhone because I am able to stream the audio from the iPhone directly into my hearing aids. I had no problem understanding the dialog during that Webex hearing while using the streaming audio function of my iPhone. I have no idea what an in-person hearing would be like for me and I think it would be very unfair to place someone with my disability into an uncomfortable situation of such importance. If there is any question to the severity of my hearing loss, I can supply a copy of my audiology test results.

I appreciate your consideration in this matter.
Mike Rifkin

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Tuesday, July 25, 2023 5:56 PM
To: 'Michael Rifkin' <mrifkin1@verizon.net>; Alyssa Moyers <amoyers@sgs-law.com>; Appeals Board <appealsboard@baltimorecountymd.gov>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: clrifkin@verizon.net; huddyman@verizon.net; ksm999@msn.com; Hallengren, Kristopher & Meagan (khallengren@vallitadvisors.com) <khallengren@vallitadvisors.com>
Subject: RE: Request to change hearing date for Case #23-053-A

Ms. Cannington: In response to the below, as we've previously indicated, as the appellant/petitioner, we prefer and are requesting an in person hearing. I certainly respect and appreciate Mr. Rifkin's comments below. And, I state with great respect and deference, that it is counterintuitive that Mr. Rifkin's hearing disability would be better served via a remote Webex hearing as opposed to an in person. The Webex hearings are not, to the best of my knowledge, closed captioned or otherwise accommodating to people with a hearing loss. And I've experienced (in attending numerous remote hearings caused by the pandemic), that the quality of the program and ability to hear and understand the proceedings is certainly much more difficult with a remote hearing than live.

In any event, we'll defer to the Board's judgment, but I wanted to make our position known.

Thank you.

Larry Schmidt

SGS Smith Gildea & Schmidt LLC
Lawrence E. Schmidt
PARTNER

Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
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(410) 803-3854 (Direct)
(410) 821-0070 (Office)
(410) 821-0071 (Fax)
lschmidt@sgs-law.com
http://secure-web.cisco.com/1PqQum0GcvI2B0_PlhqIV9ZQ6uW_NQuUtc8Bf5TNU2t-6aZUdKwMAjwXGXDdmjikN7-12mbdz9NxSI9vMGVqy1I_gXpmEk12sXyEza0LTLKtdiJNI0HdIymL8_EPXtNibonsobgJg3MwDJH1y8PsnZxf4NTNEpN9URWOuuLzMosyuKQocZYKWFjrbEu-1H9-zjPZ2b-Bd4zQKWwFzSkq2VBEFqZptXYaGMULEVm6WY-qurgKYFTSl1PqoxOKMe7vz1IklxHAI6C0LgsoWapxcLZ1viueqZlSA_7N9HpPYhP69es5LiRl4ylx1dtI5iSoVGTOm2XNhf9GDuMv8g7gjhpxKtva0czQxxEuM06jFv7-Fo8898NaFFIxdOB2qC_nmhkpXKd4RsRJTsy2C0NM59P1ttW310BaEnI3H61Z8uBeZ81RlDJTehNUB79utw0S1/http%3A%2F%2Fwww.sgs-law.com

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From: Michael Rifkin <mrifkin1@verizon.net>
Sent: Tuesday, July 25, 2023 2:10 PM
To: Alyssa Moyers <amoyers@sgs-law.com>; Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; clrifkin@verizon.net; huddyman@verizon.net; ksm999@msn.com
Subject: Re: Request to change hearing date for Case #23-053-A

Hello Alyssa and Appeals Board,
Due to a hearing loss (I wear hearing aids), I am not comfortable with an in person hearing and prefer the WebEx hearing. The WebEx platform works much better for me with my disability.

Thank you for your understanding.
Mike Rifkin

On Jul 25, 2023, at 1:44 PM, Alyssa Moyers <amoyers@sgs-law.com> wrote:

> Ms. Cannington,
>
> I am following up on the rescheduling of this matter before the Board.

Please accept this email as our formal request to have an in-person hearing.

We assume the Board's September calendar is booked and that we will be looking to reschedule this matter in October/November. Please note that our team is only available October 5, 6, and 9th. However, if those dates do not work, November is fairly open at this point.

Thank you for your consideration.


Alyssa F. Moyers
SENIOR PARALEGAL

Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Baltimore, MD 21204
(410) 824-1165 (Direct) ***NEW NUMBER***
(410) 821-0070 (Office)
(410) 821-0071 (Fax)
amoyers@sgs-law.com
http://secure-web.cisco.com/1PqQum0GcvI2B0_PlhqIV9ZQ6uW_NQuUtc8Bf5TNU2t-6aZUdKwMAjwXGXDdmjikN7-12mbdz9NxSI9vMGVqy1I_gXpmEk12sXyEza0LTLKtdiJNl0HdIymL8_EPXtNibonsobgJg3MwDJH1y8PsnZxf4NTNEpN9URWOuuLzMosyuKQocZYKWFjrbEu-1H9-zjPZ2b-Bd4zQKWwFzSkq2VBEFqZptXYaGMULEVm6WY-qurgKYFTSl1PqoxOKMe7vz1IklxHAI6C0LgsoWapxcLZ1viueqZlSA_7N9HpPYhP69es5LiRl4ylx1dtI5iSoVGTOm2XNhf9GDuMv8q7gjhpxKtva0czQxxEuM06jFv7-Fo8898NaFFIxdOB2qC_nmhkpXKd4RsRJTsy2C0NM59P1ttW310BaEnI3H61Z8uBeZ81RlDJTehNUB79utw0S1/http%3A%2F%2Fwww.sgs-law.com

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Please consider the environment before printing this email.

From: Michael Rifkin <mrifkin1@verizon.net>
Sent: Friday, July 21, 2023 11:37 AM
To: Lawrence Schmidt <lschmidt@sgs-law.com>; Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: clrifkin@verizon.net; Alyssa Moyers <amoyers@sgs-law.com>; huddyman@verizon.net; ksm999@msn.com
Subject: Re: Request to change hearing date for Case #23-053-A

To Mr. Lawrence Schmidt and The Appeals Board,
Thank you for your consideration of our request.

Sincerely,
Mike and Carol Rifkin

On Jul 20, 2023, at 8:54 AM, Lawrence Schmidt <lschmidt@sgs-law.com> wrote:

> Sunny
> We have no objection to the request for pp. I've asked Alyssa in my office to contact you and coordinate a new date.
> Thank you.
> Larry Schmidt
>
> Sent from my iPad

> On Jul 20, 2023, at 8:43 AM, Appeals Board <appealsboard@baltimorecountymd.gov> wrote:
>
> Good morning Mr. Schmidt,
>
> We are in receipt of the email below requesting a postponement in the Hallengren matter, case number 23-053-A. Please advise if you have any objection to the postponement of the hearing scheduled for September 7, 2023.
>
> Thank you,
>
> Sunny
>
> Krysundra Cannington
> Legal Administrative Secretary
> 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

This electronic mail transmission contains confidential information belonging to the 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 notify the sender.

From: Carol Rifkin <clrifkin@verizon.net>
Sent: Wednesday, July 19, 2023 12:49 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Subject: Request to change hearing date for Case #23-053-A

CAUTION: This message from clrifkin@verizon.net 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/Madam,
We are protestants in the Petitioning for Variance Case 23-053-A and just received a Notice of Assignment and would like to request a new date as we will be on vacation the week of Sept 4th -9th. We appreciate your consideration in this matter.

Sincerely,
Carol and Mike Rifkin

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

From: Alyssa Moyers
To: "Michael Rifkin"; Lawrence Schmidt; Appeals Board
Cc: clrifkin@verizon.net; huddyman@verizon.net; ksm999@msn.com
Subject: RE: Request to change hearing date for Case #23-053-A
Date: Tuesday, July 25, 2023 1:45:16 PM

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

Ms. Cannington,

I am following up on the rescheduling of this matter before the Board.

Please accept this email as our formal request to have an in-person hearing.

We assume the Board's September calendar is booked and that we will be looking to reschedule this matter in October/November. Please note that our team is only available October 5, 6, and 9th. However, if those dates do not work, November is fairly open at this point.

Thank you for your consideration.

SGS SMITH GILDEA & SCHMIDT LLC
Alyssa F. Moyers
SENIOR PARALEGAL

Smith, Gildea & Schmidt, LLC
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Baltimore, MD 21204
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(410) 821-0071 (Fax)
amoyers@sgs-law.com
http://secure-web.cisco.com/1rABsh0iQ9tDibmyjLk0QXECMwKfQiFHvK88HbonPTFIMVeq370wKCp97IDnfZndncpF6zQS5mYF6CJeOiL_Qk3B_qBQBBG_TrQveqikruOvjlCnq6dcC3FhKaVfxbzjAqNWvk7bKUXN9bRybOALAb2zgsrf6JQUnoo5VaDskfmFtUqaf0sZR-VandiY7PYnM-_Bz68O8Pvps59qNUy8ZBTLl_iRwr9v5dTY2J2ghZx27Z5AL0rPKNHixAYrwVO72UgYM6M8kzxaVlFokqsZgFl3qTmlM_umgouO5ttcv9LrWWJ96RIKBoyVybgdzgd7uQhwe2O6sqqLa7Qtbw0eWOHq25OhFHL3JhhemkoL1_BNNCNY29QmQtYbyl1wma1SIrvYe7SU71TOLaH7H20s_gLnuygFgXhLCgCyXS4BfYvxT-ds820yMrDBspSVt0QIawmbkDV7Iaggyu_dMVr2SA/http%3A%2F%2Fwww.sgs-law.com

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Please consider the environment before printing this email.

From: Michael Rifkin <mrifkin1@verizon.net>
Sent: Friday, July 21, 2023 11:37 AM
To: Lawrence Schmidt <lschmidt@sgs-law.com>; Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: clrifkin@verizon.net; Alyssa Moyers <amoyers@sgs-law.com>; huddyman@verizon.net; ksm999@msn.com
Subject: Re: Request to change hearing date for Case #23-053-A

To Mr. Lawrence Schmidt and The Appeals Board,
Thank you for your consideration of our request.

Sincerely,
Mike and Carol Rifkin

On Jul 20, 2023, at 8:54 AM, Lawrence Schmidt <lschmidt@sgs-law.com> wrote:

> Sunny
> We have no objection to the request for pp. I've asked Alyssa in my office to contact you and coordinate a new date.
> Thank you.
> Larry Schmidt
>
> Sent from my iPad
>
> On Jul 20, 2023, at 8:43 AM, Appeals Board <appealsboard@baltimorecountymd.gov> wrote:
>
> Good morning Mr. Schmidt,
>
> We are in receipt of the email below requesting a postponement in the Hallengren matter, case number 23-053-A. Please advise if you have any objection to the postponement of the hearing scheduled for September 7, 2023.
>
> Thank you,
>
> Sunny
>
> Krysundra Cannington
> Legal Administrative Secretary
> 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: Carol Rifkin <clrifkin@verizon.net>
Sent: Wednesday, July 19, 2023 12:49 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Subject: Request to change hearing date for Case #23-053-A

CAUTION: This message from clrifkin@verizon.net 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/Madam,

We are protestants in the Petitioning for Variance Case 23-053-A and just received a Notice of Assignment and would like to request a new date as we will be on vacation the week of Sept 4th -9th. We appreciate your consideration in this matter.

Sincerely,
Carol and Mike Rifkin

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

From: Lawrence Schmidt
To: "Michael Rifkin"; Alyssa Moyers; Appeals Board; Krysundra Cannington
Cc: clrifkin@verizon.net; huddyman@verizon.net; ksm999@msn.com; Hallengren, Kristopher & Meagan (khallengren@vallitadvisors.com)
Subject: RE: Request to change hearing date for Case #23-053-A
Date: Tuesday, July 25, 2023 5:56:17 PM

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

Ms. Cannington: In response to the below, as we've previously indicated, as the appellant/petitioner, we prefer and are requesting an in person hearing. I certainly respect and appreciate Mr. Rifkin's comments below. And, I state with great respect and deference, that it is counterintuitive that Mr. Rifkin's hearing disability would be better served via a remote Webex hearing as opposed to an in person. The Webex hearings are not, to the best of my knowledge, closed captioned or otherwise accommodating to people with a hearing loss. And I've experienced (in attending numerous remote hearings caused by the pandemic), that the quality of the program and ability to hear and understand the proceedings is certainly much more difficult with a remote hearing than live.

In any event, we'll defer to the Board's judgment, but I wanted to make our position known.

Thank you.

Larry Schmidt

SGS Smith Gildea & Schmidt LLC
Lawrence E. Schmidt
PARTNER

Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Baltimore, MD 21204
(410) 803-3854 (Direct)
(410) 821-0070 (Office)
(410) 821-0071 (Fax)
lschmidt@sgs-law.com
http://secure-web.cisco.com/1jxTpBfKlwHzzv1zgmMcGBZQN4BzXqqgIgZr7uSoNO0sHPlBhT3PBQJ50URHwvlYSjgjXIGRVr4Gp3KLwvLi6Ij75aaJKRuKcaCAbB2FLqObu9dprpt736K59pR2VCSVMEBNxGNpNtvSQa53ukshFrv3o6E29J_DpQIV3MrNaq5ajkZ4FDDOqIEHscRo71nT7IAMgAnZ7TEm6BHQ-Z9p0i9BPVcwIl_Pq9zKbCAVTSQHmSnXXxpmTk7mXsdQ1HoHg1AeSTvT7ECR-L3mabUYOBaklYuzFmwp_LSDiGw7xR8QsGNPu9oZd0k8FkRxDnxTizu_RDEqDk3MP1agCi7MiBZiufoMHyzYXhvJqLuLU4Y5dKJ9SfuPlgivS9vBMX1IQEEtfIZJ7ed_tcGeFgkNqd0hYc2JavVnU8ef3bmO6eGCTA5B6YsuKQCYIdDHMgPX2/http%3A%2F%2Fwww.sgs-law.com

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---

From: Michael Rifkin <mrifkin1@verizon.net>
Sent: Tuesday, July 25, 2023 2:10 PM
To: Alyssa Moyers <amoyers@sgs-law.com>; Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; clrifkin@verizon.net; huddyman@verizon.net; ksm999@msn.com
Subject: Re: Request to change hearing date for Case #23-053-A

Hello Alyssa and Appeals Board,
Due to a hearing loss (I wear hearing aids), I am not comfortable with an in person hearing and prefer the WebEx hearing. The WebEx platform works much better for me with my disability.

Thank you for your understanding.
Mike Rifkin

On Jul 25, 2023, at 1:44 PM, Alyssa Moyers <amoyers@sgs-law.com> wrote:

> Ms. Cannington,
>
> I am following up on the rescheduling of this matter before the Board.
>
> Please accept this email as our formal request to have an in-person hearing.
>
> We assume the Board's September calendar is booked and that we will be looking to reschedule this matter in October/November. Please note that our team is only available October 5, 6, and 9th. However, if those dates do not work, November is fairly open at this point.
>
> Thank you for your consideration.
>
> <image001.jpg>
> **Alyssa F. Moyers**
> **SENIOR PARALEGAL**
>
> **Smith, Gildea & Schmidt, LLC**
> 600 Washington Avenue, Suite 200
> Baltimore, MD 21204
> (410) 824-1165 (Direct) ***NEW NUMBER***
> (410) 821-0070 (Office)
> (410) 821-0071 (Fax)
> amoyers@sgs-law.com
> http://secure-web.cisco.com/1jxTpBfKlwHzzv1zgmMcGBZQN4BzXqqgIgZr7uSoNO0sHPlBhT3PBQJ50URHwvlYSjgjXIGRVr4Gp3KLwvLi6Ij75aaJKRuKcaCAbB2FLqObu9dprpt736K59pR2VCSVMEBNxGNpNtvSQa53ukshFrv3o6E29J_DpQIV3MrNaq5ajkZ4FDDOqIEHscRo71nT7IAMgAnZ7TEm6BHQ-Z9p0i9BPVcwIl_Pq9zKbCAVTSQHmSnXXxpmTk7mXsdQ1HoHg1AeSTvT7ECR-L3mabUYOBaklYuzFmwp_LSDiGw7xR8QsGNPu9oZd0k8FkRxDnxTizu_RDEqDk3MP1agCi7MiBZiufoMHyzYXhvJqLuLU4Y5dKJ9SfuPlgivS9vBMX1IQEEtfIZJ7ed_tcGeFgkNqd0hYc2JavVnU8ef3bmO6eGCTA5B6YsuKQCYIdDHMgPX2/http%3A%2F%2Fwww.sgs-law.com
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>
> ***Please consider the environment before printing this email.***

From: Michael Rifkin <mrifkin1@verizon.net>
Sent: Friday, July 21, 2023 11:37 AM
To: Lawrence Schmidt <lschmidt@sgs-law.com>; Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: clrifkin@verizon.net; Alyssa Moyers <amoyers@sgs-law.com>; huddyman@verizon.net; ksm999@msn.com
Subject: Re: Request to change hearing date for Case #23-053-A

To Mr. Lawrence Schmidt and The Appeals Board,
Thank you for your consideration of our request.

Sincerely,
Mike and Carol Rifkin

On Jul 20, 2023, at 8:54 AM, Lawrence Schmidt <lschmidt@sgs-law.com> wrote:

> Sunny
> We have no objection to the request for pp. I've asked Alyssa in my office to contact you and coordinate a new date.
> Thank you.
> Larry Schmidt
>
> Sent from my iPad

> On Jul 20, 2023, at 8:43 AM, Appeals Board <appealsboard@baltimorecountymd.gov> wrote:
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> Good morning Mr. Schmidt,
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> We are in receipt of the email below requesting a postponement in the Hallengren matter, case number 23-053-A. Please advise if you have any objection to the postponement of the hearing scheduled for September 7, 2023.
>
> Thank you,
>
> Sunny
>
> Krysundra Cannington
> Legal Administrative Secretary
> 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
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> Confidentiality Statement
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From: Carol Rifkin <clrifkin@verizon.net>
Sent: Wednesday, July 19, 2023 12:49 PM

To: Appeals Board <appealsboard@baltimorecountymd.gov>
Subject: Request to change hearing date for Case #23-053-A

CAUTION: This message from clrifkin@verizon.net 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/Madam,
We are protestants in the Petitioning for Variance Case 23-053-A and just received a Notice of Assignment and would like to request a new date as we will be on vacation the week of Sept 4th -9th. We appreciate your consideration in this matter.

Sincerely,
Carol and Mike Rifkin

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www.baltimorecountymd.gov

From: Carol Rifkin
To: Appeals Board
Subject: Request to change hearing date for Case #23-053-A
Date: Wednesday, July 19, 2023 12:49:09 PM

CAUTION: This message from clrifkin@verizon.net 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/Madam,

We are protestants in the Petitioning for Variance Case 23-053-A and just received a Notice of Assignment and would like to request a new date as we will be on vacation the week of Sept 4th -9th. We appreciate your consideration in this matter.

Sincerely,

Carol and Mike Rifkin

From: Appeals Board
To: Lawrence Schmidt, Esquire
Cc: clrifkin@verizon.net; Alyssa Moyers (amoyers@sgs-law.com); mrifkin1@verizon.net; huddyman@verizon.net; ksm999@msn.com
Subject: FW: Request to change hearing date for Case #23-053-A
Date: Thursday, July 20, 2023 8:43:00 AM

Good morning Mr. Schmidt,

We are in receipt of the email below requesting a postponement in the Hallengren matter, case number 23-053-A. Please advise if you have any objection to the postponement of the hearing scheduled for September 7, 2023.

Thank you,

Sunny

Krysundra Cannington
Legal Administrative Secretary
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

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From: Carol Rifkin <clrifkin@verizon.net>
Sent: Wednesday, July 19, 2023 12:49 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Subject: Request to change hearing date for Case #23-053-A

CAUTION: This message from clrifkin@verizon.net 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/Madam,
We are protestants in the Petitioning for Variance Case 23-053-A and just received a Notice of Assignment and would like to request a new date as we will be on vacation the week of Sept 4th -9th. We appreciate your consideration in this matter.

Sincerely,
Carol and Mike Rifkin

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 13, 2023

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Kristopher and Meagan Hallengren
12014 Boxer Hill Road
23-053-A 8th Election District; 3rd Council District

Re: Petition for Variance relief from BCZR § 400.3 to permit an accessory building with a height of 24 ft. in lieu of the permitted 15 ft.

5/22/23 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was DENIED.

ASSIGNED FOR: SEPTEMBER 7, 2023, 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
Legal Administrative Secretary

c. Counsel for Petitioner/Appellant : Lawrence E. Schmidt, Esquire
Petitioner/Appellant : Kristopher and Meagan Hallengren

Protestants : Michael and Carol Rifkin,
Hudson and Karen Myers, III

Patrick C. Richardson, Jr./Richardson Engineering, LLC
Barbara Loughlin

Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law

Tammy Zahner

From: Appeals Board <appealsboard@baltimorecountymd.gov>
Sent: Thursday, March 7, 2024 10:41 AM
To: Alyssa Moyers
Subject: RE: Hallengren - 12014 Boxer Hil Road (Case No. 2023-053-A)

Received. Thank you.

Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
appealsboard@baltimorecountymd.gov
(410) 887-3180
(410) 887-3182 Fax

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From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Thursday, March 7, 2024 10:13 AM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: Mike Rifkin <mrifkin1@verizon.net>; 'huddyman@verizon.net' <huddyman@verizon.net>; Lawrence Schmidt <lschmidt@sgs-law.com>
Subject: Hallengren - 12014 Boxer Hil Road (Case No. 2023-053-A)

CAUTION: This message from amoyers@sgs-law.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,

Please see the attached Response to Motion for Reconsideration to be filed on behalf of the Petitioners in the above referenced matter.

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

SGS SMITH GILDEA & SCHMIDT LLC
Alyssa F. Moyers
SENIOR PARALEGAL

Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Baltimore, MD 21204
(410) 824-1165 (Direct)

(410) 821-0070 (Office)

(410) 821-0071 (Fax)

amoyers@sgs-law.com
http://secure-web.cisco.com/1QhGQhbzDGB717X8PATQrkOpJ7AJBe9AHX3uAlDo_Y6CHtG78sTnIFDrKs2hO_zTGQ2ZxFrMyHhht_oYQL54bq2KH1mJIRBd5ft8r-RAPy_UmfvSwWczqLxv6JaPiK_0w4U7Lf_-CYjdzXbkiUmyLCYX46t2FxUxWth-eLayKmcxhpTRj1hKRw1W1sgWcK

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Please consider the environment before printing this email.

From: Appeals Board <appealsboard@baltimorecountymd.gov>
Sent: Friday, February 23, 2024 12:25 PM
To: Lawrence Schmidt <lschmidt@sgs-law.com>; Alyssa Moyers <amoyers@sgs-law.com>
Cc: Mike Rifkin <mrifkin1@verizon.net>
Subject: RE: Motion for Reconsideration from Michael Rifkin (Protestant) 23-053-A

Good afternoon,

Per my conversation with Ms. Moyers, this email is to confirm that the response to the Motion for Reconsideration is due to the Board by 3 p.m. on March 8, 2024.

Thank you,

Sunny

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Tuesday, February 20, 2024 2:08 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: Mike Rifkin <mrifkin1@verizon.net>; Alyssa Moyers <amoyers@sgs-law.com>
Subject: Re: Motion for Reconsideration from Michael Rifkin (Protestant) 23-053-A

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

Ms. Cannington: I have received a copy of Mr. Rifkins motion. As indicated on my email away message, I am presently out of the office. I have not reviewed the motion in any detail nor spoken to my client but anticipate doing so upon my return. I shall return this Thursday. I anticipate filing a response and will do so as quickly as possible.
Thank you.
Larry Schmidt
Sent from my iPhone

On Feb 21, 2024, at 4:48 AM, Appeals Board <appealsboard@baltimorecountymd.gov> wrote:

The Board confirms receipt of your Motion for Reconsideration.

Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
appealsboard@baltimorecountymd.gov
(410) 887-3180
(410) 887-3182 Fax

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From: Mike Rifkin <mrifkin1@verizon.net>
Sent: Tuesday, February 20, 2024 11:40 AM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; 'Lawrence Schmidt' <lschmidt@sgs-law.com>
Subject: Motion for Reconsideration from Michael Rifkin (Protestant) 23-053-A

CAUTION: This message from mrifkin1@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To The Board of Appeals,
Attached to this email is a Motion for Consideration of the Opinion and Order for Appeals Case No. 23-053-A
Submitted via email by the Protestant Micheal Rifkin on February 20, 2024 @ approx. 11:30am.
Please reply to this email to confirm your receipt of the attached Motion for Consideration and all accompanying attachments.

I certify that a copy of the attached Motion for Consideration has also been emailed to Lawrence E. Schmidt @ lschmidt@sgs-law.com on February 20, 2024 @ approx. 11:30am.

Thank you,

Michael Rifkin (Protestant 23-053-A)
12015 Boxer Hill Road
Cockeysville, MD 21030
mrifkin1@verizon.net
443-761-9553



CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

IN THE MATTER OF:	*	BEFORE THE
KRISTOPHER and MEAGAN HALLENGREN *Petitioners/Legal Owners*	*	BOARD OF APPEALS FOR
12014 BOXER HILL ROAD	*	BALTIMORE COUNTY
8th Election District 3rd Councilmanic District	*	**Case No.: 2023-053-A**
	*	

* *

RESPONSE TO MOTION FOR RECONSIDERATION

Kristopher Hallengren and Meagan Hallengren, hereinafter referred to as "Petitioners" and/or "Property Owners", by Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, their attorneys, hereby responds to the Motion for Reconsideration filed herein by Michael Stuart Rifkin, hereinafter referred to as "Protestant" and/or "Rifkin", and state as follows:

Introduction

As noted in Protestant's Motion, this matter came before the County Board of Appeals ("Board") for a de novo hearing on the appeal by Petitioners of a decision by Administrative Law Judge ("ALJ") Paul M. Mayhew dated May 22, 2023, which denied their Petition for Variance requesting permission for a replacement accessory building (garage) with a height of 24 feet in lieu of the maximum 15 feet permitted pursuant to BCZR § 400.3. By written Opinion and Order dated January 25, 2024, the Board granted,

with restrictions, the variance. The Protestant, pursuant to Rule 12 of the Board's Rules of Practice and Procedure, has timely requested reconsideration of that decision

Argument

1. The Protestant asserts no grounds upon which a Motion for Reconsideration can properly be granted.

As noted above, Protestant's Motion is filed pursuant to Rule 12 of the Board's Rules of Practice and Procedure. That rule reads, in part, "(t)he motion shall state with specificity the grounds and reasons for the motion, including, but not limited to, newly discovered evidence; change in law; and/or fraud, mistake or irregularity." Protestant asserts none of the specifically enumerated grounds upon which a motion can be considered and granted.

Protestant alleges no newly discovered evidence. Rule 12 is based upon Maryland Rule 2-535; which governs reconsideration of matters in the Circuit Court. That rule requires that the newly discovered evidence could not have been reasonably ascertained before the trial of the matter. Within that context, no newly discovered is alleged here. Rifkin simply does not like the evidentiary findings of the Board and wants the Board to reconsider the evidence already presented to it. He could have asserted any of the "facts" he alleges in the Motion at the hearing before the Board.

There has been no change in the law. None has been asserted; and, in fact, there has been no change to the relevant law.

There is no fraud, mistake or irregularity. The courts have narrowly defined and strictly applied these terms (See *Thacker v. Hale* 146 Md. App. 203 (2002)). In the context

of a Motion for Reconsideration, there is no fraud alleged. Fraud in this context, has been defined as the occurrence of some act which "prevents an adversarial trial." (See *Jones v. Rosenberg* 178 Md. App. 54 (2008)). There has been no "mistake". In this setting, mistake has been defined as "a jurisdictional error." (See *Green v. Ford Motor Credit Co.*152 Md. App. 32 (2003)). There has been no "irregularity." In this setting, "irregularity" is deemed to mean "a non-conformity of process or procedure." (See *Davis v. Attorney General* 187 Md. App. 110 (2009)).

Thus, none of the enumerated grounds for a Motion to Dismiss have been asserted, much less exist. As is well settled, the Board is the "trier of fact" and makes certain findings based upon the evidence presented. Both sides presented the evidence that each thought necessary. Rifkin apparently now wants the Board to receive testimony from certain County employees (i.e. Jeff Perlow and Paul Dennis, see page 3 of Protestant's Motion). He could have subpoenaed Mr. Perlow and/or Mr. Dennis should he desired.[1] He did not. The parties had the full opportunity to present their evidence. As stated, Protestant simply doesn't like and disagrees with the Board's findings and conclusions. He wants a "do-over." That is simply not the proper basis upon which a Motion for Reconsideration should be granted.

Finally, it is well settled that such motions should be sparingly granted. The goal is to end litigation, not prolong it. Once each side has had a full opportunity and the

[1] The Petitioners and their counsel vehemently disagree with Protestant's inferenced substance of testimony from either Mr. Perlow or Mr. Dennis.

matter is decided, that should be the end of it. (See e.g. *Haskell v. Carey* 294 Md. 550 (1992) and *Schwartz v. Merchants Mfg. Co.* 272 Md. 305 (1974)).

2. The Protestant's Enumerated Grounds for his Motion are erroneous as a matter of law.

Petitioners acknowledge that Rule 12 states that the grounds of a Motion for Reconsideration are not restricted only to the enumerated grounds discussed immediately above. Indeed, the Rule says that such a Motion can include, "but is not limited to" these grounds. Thus, the arguments raised by Protestant shall be addressed herein by Petitioner, in turn.

A. Consideration of the Property based upon its current RC 4 zoning is proper.

In the first two arguments stated in his Motion, Rifkin asserts that the Board "mistakenly identifi(ed) the subject property zoning as RC 4" and "erroneously applied the RC 4 standards and limitations." These arguments are erroneous as a matter of law and must be rejected. There is no dispute that the Property is currently zoned RC 4. It is the fundamental bedrock principle of zoning law that the improvement and use of land is permitted only in accordance with the zoning regulations applicable to the property under the zoning classification attached to the property at the time of the proposed improvement or building thereon. BCZR § 102.1. states, "No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use." It is recognized that Mr. Rifkin is neither a member of the Maryland Bar nor an expert witness in the field of zoning. However, he has chosen to

represent himself and his arguments thus should have a proper foundation in the law. They do not.

Perhaps he is confusing the grandfathering provisions which exist in the BCZR (See e.g. Sections 104 – Non-conforming Uses) and similar provisions in the Development Regulations in Article 32 of the County Code. But as the Board is aware, land use is regulated in Baltimore County under two entirely different sets of law/regulation. Zoning is within the BCZR, and regulation of development/subdivision is in Article 32 of the Baltimore County Code ("BCC"). Rifkin confuses and improperly mingles the two. Insofar as zoning, the BCZR recognizes (and regulates) non-conforming uses. These are uses that existed before a change in the law/zoning applicable to a property. Upon proving that a use is non-conforming, it is essentially "grandfathered" and allowed to continue. There is no claim by Petitioners that the garage is non-conforming. Moreover, the construction proposed is new. This proposed construction is subject to the zoning classification of the Property now in effect.

Insofar as the development/subdivision regulations in the BCC, there is no development plan that was ever approved under the current development review process codified in Article 32. Moreover, there was no plan for the Property approved under the previous development/subdivision review process in effect prior to when the current process was adopted (1992); namely, the CRG (County Review Group) process. Nor was there a plan approved under the JSCP process which existed before the CRG. Thus, reference to regulations in the County Code are irrelevant.

Rifkin also cites to BCZR § 1A03.4.B.4. That section states:

"Exceptions for certain record lots. Any existing lot or parcel of land with boundaries duly recorded among the land records of Baltimore County *with the approval of the Baltimore County Department of Planning* [19] on or before December 22, 1975, and not part of an approved subdivision that cannot meet the minimum standards as provided within the zone, *may* be approved for *residential development* in accordance with the standards prescribed and in force at the time of the lot recordation." (emphasis added). That section does not apply for multiple reasons. First, as noted above, the Property has never been approved for development by the Dept. of Planning.[2] Second, the Petitioner is not proposing residential development now. The Property is already residentially developed. This section contemplates proposed development of an unimproved tract with a dwelling(s). Finally, the section uses the word "may", which, as the Board is aware, is a discretionary term and not a mandatory one. (See *Heit v. Stansbury* 199 Md. App. 155 (2011)). The intent of this section is clearly that if a property owner meets the criteria listed therein, they may elect to proceed in accordance with the regulations in effect at the time the subdivision was approved by the County (Dept. of Planning).

Finally, and perhaps most importantly, the section of the BCZR from which Petitioner seeks relief is BCZR § 400.3. This section regulates the height of all accessory structures, in whatever zone they might be. Thus, whether the Property was zoned RC

[2] As noted above, the Property was never the subject of a Development Plan, a CRG Plan nor a JSPC plan. The Dept. of Planning would be a reviewing agency under those review processes. Nor was the Property ever approved unilaterally by the Dept. of Planning.

4 or RC 5, the same limitation in § 400.3 applicable to an accessory structure (garage) would apply.

Thus, Rifkin's arguments that the Board "mistakenly" or "erroneously" considered the current RC 4 zoning of the Property are without merit.

B. The impact of the Property's RC 4 zoning can be the basis for the finding that the Property is unique.

Rifkin cites *Cromwell v. Ward* 102 Md. App. 691 (1995) and indeed that is a seminal case in terms of zoning variance law in Maryland. It is well settled that *Cromwell* imposes a two-part test that a property owner must satisfy in order for a zoning variance to be granted. That is, that the property under consideration must be unique, and second, that the property owner would suffer practical difficulty or unreasonable hardship if relief were not granted.

It is first noted that findings of uniqueness and practical difficulty/unreasonable hardship are findings of fact. As noted above, the Board has already made its findings based upon the evidence offered and Rifkin offers no new evidence to rebut them. Just because Rifkin does not like those findings cannot be a basis for them to be overturned.

As to uniqueness, typically the Board looks to physical characteristics of the property under consideration and indeed it did so here. The Board noted, for example, the unique shape and size of the Property and, most importantly, its grade. Indeed, a finding of uniqueness based on **any single characteristic** of the Property meets the *Cromwell* test and justifies the grant of the variance. Petitioner need not show that the Property is unique for a multitude of reasons, only one need be shown. The Board

identified a multitude of reasons why this Property was unique. Rifkin's attack on one of the basis found by the Board does not defeat the others.

In addition to the many physical characteristics associated with the land and Property itself, Petitioner also asserted that the Property is unique because of the disproportionate impact on the Property caused by its current RC 4 zoning and that the Property was originally improved when zoned RC 5. Specifically, the limits imposed in the RC 4 as to the amount of impermeable surface (BCZR § 1A03.4.B.3.) As the unrebutted evidence demonstrated, any new construction which increases the amount of impermeable surface on the Property would not be permitted as it would exceed the maximum allowed in that zone. In *Cromwell* the Court stated that uniqueness can be found based upon "historical significance" or "practical restrictions imposed by abutting properties". *Cromwell*, supra, at page 710. These characteristics are not physical traits of a property, like its size, shape, grade, environmental features, etc. Indeed, the designation of a property as "historic" (either, for example, designated by Baltimore County as a landmarked property or within a governmentally designated historic district) imposes restrictions upon its use and improvement. Thus, just as the designation of a property by a governmental entity as historic might make that property unique because of the limitations imposed by such designation, the designation of the Property with the RC 4 zoning classification makes the Property unique because of the limitations attendant with the RC 4 classification.

In sum, the Board made certain findings of fact that this Property was unique. And these findings cited a multitude of factors, any one of which would satisfy the test

enunciated in *Cromwell.* The Board's findings were proper and well supported by the evidence presented and should not be set aside.

3. The remaining arguments presented in the Motion are either wrong (as a matter of fact), improper, undecipherable and/or represent a misunderstanding of the Board's processes and procedures.

Again, the undersigned appreciates that Mr. Rifkin is neither a member of the Bar nor has any expertise in the subject of Baltimore County Zoning. His occupation, as indicated at the hearing, was that of working for a retail clothier for many years. But he has put himself in the place of representing himself, and thus must be held to the standard that his arguments must be cogent and have a reasonable basis in the law and accepted procedure.

In his argument number four, he only wants the Board to reconsider what it has already heard and decided. The evidence in this case was clear that the Property contains a substantial grade change, and that grade change is most severe in the area between the house and garage. As the evidence shows, the first floor of the house is at the existing roof level of the garage. This, obviously, is a unique characteristic of the Property. Asking the Board to look at the "My Neighborhood" County database, review again the pictures and evidence presented and considered, is manifestly improper.

In argument number 5, Rifkin asks the Board a series of questions (which it is suspected he wants the Board to answer) about issues already litigated and decided. He then supplies his own apparent answer only confirming that he does not like the Board's rationales and conclusions and that because he disagrees, they should be reversed.

In arguments 6 and 7, Rifkin expresses dissatisfaction with the manner in which the Board conducted its deliberation (mandated by the Maryland Open Meetings Act) and the wording of its Opinion. These objections barely merit a response other than to say that the Board's deliberation is exactly that; a required process where the panel members express their thoughts and conclusions on the matter before them. The deliberation is **not** a decision. Insofar as the Board's Opinion, it is extensive and well written. It sets out the Board's factual findings and the application of law to those findings. It is clear, concise and understandable.

Finally, Rifkin again argues that the Petitioners should construct a multi-level home addition instead of building a two-story garage. Again, this is "old news" that was brought up at the hearing. The following is not intended to disparage Rifkin or insult him. However, as he admits, he is neither a lawyer, architect, engineer, real estate appraiser nor has he engaged in any occupation relevant to the professional expertise attendant to the issues in this case. Nor does he profess any expertise in construction or home building/improvement. Respectfully, working at Joseph A. Banks does not make one an expert in residential architecture or construction. On a practical basis, Mr. and Mrs. Hallengren are seeking to enlarge their living space and renovate a garage that is in need of rehabilitation. Given the constraints of the Property, the architecture and functional design of the dwelling, the location of the garage and dwelling vis a vis one another and, as importantly, the applicable zoning ordinance, they have considered all the options (and consulted with experts) and have determined to build "up" and not "out." It makes the most sense for them and their family and they, ultimately, are the

most capable of deciding what is best (functionality, architecturally, cost, etc.) for them and their family. Most respectfully, by what right does Mr. Rifkin have to impose his will on another property owner and dictate to them how their property should be improved or used? Why does he deem himself the architectural guru for the neighborhood? In terms of impact upon him, the reconstructed building will be barely (if at all) visible from adjacent properties (Rifkin's included) given its location, the grade and the adjacent dwelling. Moreover, the Board has added restrictions to the grant of relief to eliminate any impact.

For all these reasons, the Petitioners respectfully request that the Motion for Reconsideration be denied.

Respectfully submitted,



LAWRENCE E. SCHMIDT
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Towson, MD 21204
(410) 821-0070
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of March, **2024,** a copy of the foregoing Response To Motion for Reconsideration was emailed to:

Michael Rifkin, mrifkin1@verizon.net

Hudson Myers, Huddyman@verizon.net



LAWRENCE E. SCHMIDT

Tammy Zahner

From: Appeals Board
Sent: Tuesday, February 20, 2024 12:48 PM
To: 'Mike Rifkin'
Cc: 'Lawrence Schmidt'
Subject: RE: Motion for Reconsideration from Michael Rifkin (Protestant) 23-053-A

The Board confirms receipt of your Motion for Reconsideration.

Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
appealsboard@baltimorecountymd.gov
(410) 887-3180
(410) 887-3182 Fax

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From: Mike Rifkin <mrifkin1@verizon.net>
Sent: Tuesday, February 20, 2024 11:40 AM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; 'Lawrence Schmidt' <lschmidt@sgs-law.com>
Subject: Motion for Reconsideration from Michael Rifkin (Protestant) 23-053-A

CAUTION: This message from mrifkin1@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

To The Board of Appeals,
Attached to this email is a Motion for Consideration of the Opinion and Order for Appeals Case No. 23-053-A Submitted via email by the Protestant Micheal Rifkin on February 20, 2024 @ approx. 11:30am.
Please reply to this email to confirm your receipt of the attached Motion for Consideration and all accompanying attachments.

I certify that a copy of the attached Motion for Consideration has also been emailed to Lawrence E. Schmidt @ lschmidt@sgs-law.com on February 20, 2024 @ approx. 11:30am.

Thank you,

Michael Rifkin (Protestant 23-053-A)
12015 Boxer Hill Road
Cockeysville, MD 21030

mrifkin1@verizon.net
443-761-9553



RE: PETITION FOR ADMIN. VARIANCE (12014 Boxer Hill Road) 8th Election District 3rd Council District Kristopher & Meagan Hallengren	*	BEFORE THE BALTIMORE COUNY BOARD OF APPEALS CASE NO. 23-053-A
Petitioners	*	

* * * * * * * * *

MOTION FOR RECONSIDERATION

I, Michael Stuart Rifkin (hereinafter "Mr. Rifkin", "Protestant", or "I"), submit this Motion for Reconsideration (hereinafter Motion), pursuant to Baltimore County Code (hereinafter BCC) APPENDIX B: - Rules of Practice and Procedure of County Board of Appeals - Rule 12, and respectfully request that the Board of Appeals (hereinafter "Board") convene a hearing to receive testimony, evidence, and/or argument on the Motion from an Opinion and Order issued in the above captioned matter dated January 25, 2024. In support of this Motion, I offer the following:

I. Procedural History

This matter came before the Board as an appeal of Baltimore County (hereinafter BC) Administrative Law Judge, Paul Mayhew's May 22, 2023, Opinion and Order denying a Petition for Administrative Variance filed by Kristopher and Meagan Hallengren (hereinafter "Petitioners" or "Hallengrens") for the property located at 12014 Boxer Hill Road (hereinafter "subject property") requesting Variance relief pursuant to the Baltimore County Zoning Regulations (hereinafter "BCZR") § 400.3: To permit an accessory building with a height of 24 ft. in lieu of the permitted 15ft. The Petitioners filed a timely appeal.

On October 5, 2023, a *de novo* hearing was held before the Board. The Petitioners, represented by Lawrence E. Schmidt (hereinafter "Mr. Schmidt") appeared at the hearing. Patrick "Rick" Richardson of Richardson Engineering (hereinafter "Mr. Richardson") also appeared as an expert witness for the Petitioners. Also in attendance at the hearing in opposition to the variance

request were the following neighborhood residents: Mr. Rifkin and Mr. Hudson Myers. Mr. Rifkin and Mr. Hudson Myers both represented themselves *Pro Se*. On January 25, 2024, the Board Granted the Petitioner's Variance.

II. Questions for the Board

1. Did the Board mistakenly identify the subject property zoning as R.C.4. by disregarding BCZR § 1A03.4.B.4 - Exceptions for Certain Record Lots, BCC § 32-4-101. - Definitions, and BBC § 32-4-264. -Vesting of Development Plans, as they apply to the subject property history that was proffered during the Appeals Hearing?
2. Did the Board erroneously apply BCZR R.C.4. standards and limitations to the subject property which narrowed their evaluation of testimony and exhibits during the Appeals Hearing and Deliberation?
3. Is a zoning designation (and the accompanying regulations) assigned to a property an "**Inherent Characteristic**" that can be used to determine the uniqueness of a property as defined in *Cromwell v. Ward* ?
4. Did the Board inappropriately disregard Petitioners Exhibits 2B, 5I and the Protestants testimony and Exhibits 5, 6, 7 and erroneously conclude that the tightly spaced topography lines between the south side of the Hallengrens house and the garage represented a very dramatic change in property grade (slope) not seen anywhere else in the entire neighborhood?
5. Did the Board egregiously ignore the second criteria for determining "Uniqueness of Property" (*… and that such uniqueness results in a practical difficulty not shared by other neighborhood properties*)?
6. Did the Board irregularly apply different standards of law while deliberating and ruling on the Petitioners "specific need for a variance" and "existing structures on the property"?

7. Did the Board erroneously misquote Mr. Rifkin in the Opinion and Order with regards to the "injustice" issue he proffered during the Hearing and Post-Hearing Memorandum?

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1. Did the Board mistakenly identify the subject property zoning as R.C.4. by disregarding BCZR § 1A03.4.B.4 - Exceptions for Certain Record Lots, BCC § 32-4-101. - Definitions, and BBC § 32-4-264. -Vesting of Development Plans, as they apply to the subject property history that was proffered during the Appeals Hearing and Petitioners Post-Hearing Memorandum?

The subject property was originally 5.82 acres when the home was built in 1967 (see attached 1967 Deed **A** and Petitioners Exhibit 9). During 1990, the subject property was subdivided into 2 lots. (See attached 1990 Deed **B** and 1990 Recorded MASTER Lot Plan **C**). The 1990 Recorded Lot Plan attached to this Motion identified the subject property as R.C.5. When the area surrounding the property was rezoned to R.C.4. in 2000, the subject property remained vested as R.C.5. due to BCZR §1A03.4.B.4, BCC § 32-4-101, and BCC § 32-4-264. Therefore, the Board (and Mr. Richardson) made a mistake by identifying the property as R.C.4. **Note:** Mr. Jeff Perlow (BC Zoning Supervisor) would be an excellent source for providing information with regards to the correct zoning of the subject property.

The Board should also take note that the Department of Environmental Protection and Sustainability Forest Buffer Easement (hereinafter DEPS FBE) shown on the attached Recorded Lot Plan does not match the location of Mr. Richardson's FBE shown on Petitioners Exhibit 2B. Petitioners Exhibit 2B shows the FBE boundaries extending into the subject property. The DEPS FBE shown on the attached Recorded Lot Plan does not extend into the subject property and should not be considered a unique characteristic of the subject property (also see DEPS-FBE on attached 12012 Boxer Hill Rd Recorded Lot Plan **D**). **Note:** Mr. Paul Dennis (BC Natural Resource Specialist - Environmental Impact Review) would be an excellent source for providing information with regards to the DEPS FBE shown on the attached **C** and **D** Recorded Lot Plans.

2. Did the Board erroneously apply BCZR R.C.4. standards and limitations to the subject property which narrowed their evaluation of testimony and exhibits during the Appeals Hearing and Deliberation?

This mistake is noteworthy since the Boards evaluation of testimony and exhibits was based on the subject property R.C.4. zoning and all of the limitations imposed due to this zoning. Argument and cross examination would have been different had the subject property been correctly zoned R.C.5. During the deliberation, this error restricted the Boards application of Mr. Rifkin's testimony and exhibits which referenced similar property characteristics throughout the neighborhood.

3. Is a zoning designation (and the accompanying regulations) assigned to a property an "Inherent Characteristic" that can be used to determine the uniqueness of a property as defined in *Cromwell v. Ward* ?

The Court in Cromwell defined the term "uniqueness" and stated: 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 has an **inherent characteristic** not shared by other properties in the area, i.e., it shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstruction) or other similar restrictions. *Cromwell,* 102 Md. App. at 703-722.

There is no definition for the word "inherent" in the BCZR. As provided in BCZR § 101.1 - Word usage; definitions. Any word or term not defined within the BCZR shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Dictionary.

According to Webster's Dictionary, "Inherent" is defined as: involved in the constitution or essential character of something: belonging by nature or habit.

Do zoning regulations assigned to one's property fit the definition shown above? If zoning regulations can be referenced as a "Unique Characteristic" of one's property and/or the cause of "Practical Difficulty", then anyone can claim the effect of zoning regulations as a reason for variance relief and the enforcement of zoning becomes meaningless. If zoning was to be considered a "unique" property feature for variance relief, then why wasn't "zoning" included as an "Inherent Characteristic" within the Cromwell definition of "Uniqueness"?

4. Did the Board inappropriately disregard Petitioners Exhibits 2B, 5I and the Protestants testimony and Exhibits 5, 6, 7 and erroneously conclude that the tightly spaced topography lines between the south side of the Hallengrens house and the garage represented a very dramatic change in property grade (slope) not seen anywhere else in the entire neighborhood?

Attached to this Motion is an enlarged portion of the site plan prepared by Mr. Richardson (Petitioners Exhibit 2B{**E**}) showing the topography between the south side of the house and the garage. Also attached are photos of this same area (Petitioners Exhibit 5I{**E**}, New Photos **E**). Mr. Richardson testified during the hearing that the space between the topography lines represents a 2-foot change in property grade. When adding up all of the spaces between the tightest portion of the topography lines between the paved area below the retaining wall (560 ft) and the south side of the house (572 ft), it equals 12 feet. When viewing the photos, there is about a 4 ½ -foot drop in grade between the south side of the house and the paved area below the retaining wall (based on 8" stone steps – see attached **E**-New Photos). Based on these photos, it is impossible that the tightly spaced topography lines accurately represent the grade change in the above-mentioned area.

In addition, the photos of the doorway shown below the deck further demonstrates that the tightly spaced topography lines shown on the site plan 2B between the south side of the home and the garage are erroneous. A 12-foot change in grade between the bottom of the retaining wall and the home would completely bury the doorway shown under the deck. The only thing shown in the photos that is about 12-feet higher from the bottom of the retaining wall to the south side of the home is the attached upper deck. Petitioners Exhibit 2B (prepared and submitted by Mr. Richardson) clearly identifies the rear section of the deck on the site plan, but the segment of deck on the south side of the home (where the tightly spaced topography lines are shown) is missing.

The BC "My Neighborhood" website has recently added "Contour History" to the Layers menu. This new feature was not available prior to the variance appeal hearing. Attached to this Motion are some images taken from the My Neighborhood website showing the contour history

from 2001 and 2005 on the subject property (attached Contour History **F**). These new images accurately represent the slopes on the subject property and confirm the similarity with other property slopes throughout the neighborhood. The attached Improvement History Images (G) also highlights the significant amount of self-created modifications that were constructed on the subject property.

5. Did the Board egregiously ignore the second criteria for determining "Uniqueness of Property" (*… and that such uniqueness results in a practical difficulty not shared by other neighborhood properties*)?

How does the 1.63 acre lot size of the subject property create a practical difficulty that necessitates the need for a height variance when compared to the lot size of other neighborhood properties? The subject lot size is larger than most of the other neighborhood lots (See Protestants Exhibit 10 – Land Area).

How does the shape of the subject lot create a practical difficulty that necessitates the need for a height variance when compared to the shape of other neighborhood lots? There are several homes in the neighborhood that are closer to the lot lines when compared to the home on the subject property (Petitioners Exhibits 3B, 3C, and Protestant Exhibit 5).

How does the **accurate** topography of the subject property (see Motion question **4**) effect the subject property differently when compared to the topography of other neighborhood properties (Petitioners Exhibits 2B, 5A-N, Protestant Exhibits 5, 6, 7)? Wouldn't the effect be the same on all similarly sloped lots? Exhibit 7 also documents several properties in the neighborhood with a much steeper degree of property slope when compared to the Petitioners property.

How does the Well Line Reservation of the subject lot create a practical difficulty that necessitates the need for a height variance when compared to well lines located on other neighborhood properties (Exhibit 2B, Hallengrens Post Hearing Memorandum with attached Deed[1])? Is a Well Line Reservation an "inherent characteristic" of the subject property?

[1] The Deed is the only factual information that was presented to the Board that shows the accurate location of the Well Line Reservation (Labeled Ex. Well Pipeline Reservation on Exhibit 2B).

6. Did the Board irregularly apply different standards of law while deliberating and ruling on the Petitioners "specific need for a variance" and "existing structures on the property"?

During the deliberation for the above-mentioned BC Case No. 23-053-A, Panel Chair Deborah Dopkin stated the follow in regards to the Petitioners specific needs for a variance,

"I don't think the uses that were given as justification have any real legal bearing so long as they're accessory to the principle structure".

Sharonne Bonardi did question the Petitioners "specific need for a variance" (she even mentioned the Mueller case I had referenced within my Post-Hearing Memorandum, *Mueller, 177 Md. App. at 70*), but then stated she felt Mr. Richardson and the Petitioners made a better presentation. I do not recall Bryan Pennington stating anything about the Petitioners "specific need for a variance" during the deliberation, but he did comment that the footprint of the garage could not be expanded due to property line set-back limitations. BCZR § 400.1. states an accessory structure shall be located no less than 2½ feet from any side or rear lot lines, so I'm not sure what Bryan Pennington is referring to when viewing the existing garage set-backs on the site plans (Petitioners Exhibit 1, 2A, 2B).

Within the conclusion of a previous *BC Case No. 20-121-A, Page 3*, the Board referenced,

"the specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant" (Mueller v. Peoples Council for BC, 177 Md. App. at 70.)

Why does the Board irregularly reference *Mueller v. Peoples Council for BC, 177 Md. App at 70?* Not only did the Board choose to disregard the Mueller ruling in above-mentioned BC Case No. 23-053-A, they also dismissed this criterion when it was being discussed during the deliberation.

The Board communicated the following sentence in the BC 23-053-A Conclusion,

*"With respect to the second determination, that of **practical hardship** or unnecessary hardship, the Board is also convinced that this requirement is satisfied".*

What is a "practical hardship"? Did the Board mean "practical difficulty"?

The Board also authored the following Conclusion in regards to "existing structures" located on the Petitioners property in the above-mentioned BC Case No. 23-053-A,

"Because of the current zoning of the property, Petitioners are prohibited from expanding the footprint of any of the dwelling on their property. Even if they were permitted to do so, based on the evidence and testimony, ***adding on to the house will be near impossible due to the*** *topography,* ***existing structures on the property****, and the existing wells and water lines running on the side, front and rear of the house".*

What existing structures on the property is the Board specifically referring to? Aren't "existing structures" a self-created item? If "existing structures" are not self-created item, how does the Board define them? Below is example how the Board irregularly rules on "existing structures".

In the *BC Case No. 20-121-A* mentioned earlier in this Motion, the Board ruled,

"While not necessary, but if the Board where to consider the second prong of the Cromwell analysis, it is clear that any resulting hardship is self-imposed. A ***"self-created" hardship is not a proper justification for granting a variance****. Mueller, supra, 177 Md. App. at 90-91".*

Shouldn't the Board apply the *Mueller, supra, 177 Md*. criteria **equally** to all variance requests?

7. Did the Board erroneously misquote Mr. Rifkin in the Opinion and Order with regards to the "injustice" issue he proffered during the Appeals Hearing and Post-Hearing Memorandum?

Within the Opinion and Order of BC Case No. 23-053-A, I was quoted as saying that the granting of a [height] variance would be an **injustice to the neighborhood**. Shown below is what I stated during the appeal hearing and was also included within my Post-Hearing Memorandum.

- Mr. Rifkin stated a 2- story accessory structure constructed in the same location as the existing 1-story garage would "*look like*" two dwellings on the same property. Mr. Rifkin felt this situation would not be compatible with the neighborhood and **would be an injustice to him**. (23-053-A Video @ 3:24:49 and Post-Hearing Memorandum, Page 13, Item 5B)

There are 92 homes within the Boxer Hill Park neighborhood and only one home has received a height variance for an unattached accessory structure (*BC Zoning Case No. 2021-0125-A*). The majority of homes within the neighborhood have received set-back variances and/or permits for additions to their homes. I feel that home additions are more compatible to the overall characteristics of the neighborhood (BBC Rule § 32-4-402. – Compatibility (§ 32-4-402.d.1. and § 32-4-402.d.8.).

Detached 2-Story Accessory Structure vs. Multi-Level Home Addition

The last thing I would like to respectfully introduce within this Motion is for the Hallengren's consideration, since they are razing the existing garage and rebuilding a new structure. Below is a suggestion I previously mentioned during the Appeals Hearing. I was employed by Jos. A. Bank for over 25 years as Director of Visual Merchandising & Store Development and was based at the Corporate Headquarters. While in this position, I worked directly with the Vice-President of New Store Construction and together we designed over 400 new store projects throughout the country. One of my responsibilities was to create "Visual Renditions" for proposed projects. Attached to this Motion are two Visual Renditions (attachment **H**). One rendition is predicated by the Hallengren's proposal for the detached 2-story garage (using details from Exhibit 4A). The other rendition represents a multi-level addition that would be attached to the south side of the home. Rather than state all of the pros and cons of each rendition, please ask yourselves,

What rendition would bring increased value to your home and provide additional enjoyment?
What rendition provides the opportunity to connect the exterior deck to the new living space?

I believe the proposed home addition (vs. a detached 2-story structure) would enhance the architectural theme of your property and elevate your dwelling to one of the showcase homes within the neighborhood.

I do not think a home addition would be unreasonably burdensome. There is no reason that the garage floor needs to be at the same level as the basement floor. An addition to a dwelling only needs to share a portion of one wall. There is no need to destroy the exterior chimney, as it would be enclosed within the new structure. A doorway through the home (or connected to the exterior deck) going into the new addition is not required, but would not be difficult to implement if desired. Only a small section of the retaining wall and accompanying landscape would need to be modified. The Hallengrens would also be able to add plumbing and drainage to a home addition. Most importantly, no variance relief would be needed. I believe the proposed unattached structure

would be more of a burden when someone has to go down a fight of stars, walk 42 feet outside in various weather conditions, then go inside your home just to go to the bathroom. Mr. Schmidt will most likely point out that I have no degree in architecture, engineering or law… and this is true. But instead of attempting to disparage me, please inform the Board what's incorrect within this motion.

Conclusion

In closing, I wanted to state that my wife and I have no embitterment towards Kristopher and Meagan Hallengren. We have been neighbors for over 12 years and have always had an amiable relationship with each other. But I am very concerned the proposed 1824 SQ/FT unattached 2-Story accessory structure (garage with above living space) is going to devalue my home and property since I live directly across the street from the Hallengrens. There have been previous issues within the neighborhood where structures like the proposed unattached 2-story garage have caused problems (*BC Zoning Case No. 2008-0471-SPH*). I'm not advocating the Hallengrens will create any issues, but what if the Hallengrens sell their residence at some point in the future and the new home owners remodel the unattached 2-story structure and then seek approval for an in-law/accessory apartment? My concerns may also be the same apprehensions of potential home shoppers when my residence is for sale at some point in the future. These are some of the things that worry me.

In Sum, Mr. Rifkin and his wife Carol Rifkin respectfully request that the Baltimore County Board of Appeals review this Motion for Reconsideration and convene a hearing to receive testimony, evidence, and/or argument.

Respectfully submitted,



CC: Lawrence E. Schmidt
February 20, 2024 @ approx. 11:30am
lschmidt@sgs-law.com
410-821-0070

Michael Rifkin
12015 Boxer Hill Road
Cockeysville, MD 21030
mrifkin1@verizon.net
443-761-9553

Motion for Reconsideration **APPENDIX** 23-053-A

Baltimore County Code (BCC)

Article 32,

TITLE 4. – DEVELOPMENT
SUBTITLE 1. - IN GENERA

§ 32-4-101. - DEFINITIONS.

(b) Accessory structure.

(1) "Accessory structure" means a building or other improvement to property that has a use or an intended use that is subordinate or customarily incidental to the use of the principal building on the same lot, parcel, or tract.

(p) Development. "Development" means:

(1) The improvement of property for any purpose involving building;
(2) The subdivision of property;
(3) The combination of any two or more lots, tracts, or parcels of property for any purpose;
(4) Subjecting property to the provisions of the Maryland Condominium Act; or
(5) The preparation of land for any of the purposes listed in this subsection.

(q) Development Plan. "Development Plan" means a written and graphic representation of a proposed development prepared in compliance with Subtitle 2 of this title.

(t) Final action. "Final action" on a Development Plan means:

(1) The approval of a Development Plan as submitted;

(z) Lot of record. "Lot of record" means a parcel of land:

(1) With boundaries as shown on a plat prepared in accordance with an approved Development Plan and recorded in the land records of the county; and
(2) Which is governed by the development and Baltimore County Zoning Regulations in effect on the date of the approval of the Development Plan.

(aa) Minor development. "Minor development" means:

(1) A development without a public works agreement;
(2) A residential development with a public works agreement involving only road widening; or
(3) A development in which the improvements are determined by the Director of Permits, Approvals and Inspections as minimal under § 32-4-304(e) of this title.

(kk) Plat. "Plat" means the graphic representation of a development prepared in accordance with the approved Development Plan for the purpose of recording in the land records of the county.

(ss) Residential development. "Residential development" means the development of land for any purpose or use allowed as of right or by special exception in residential zones in accordance with the Baltimore County Zoning Regulations.

(ww) Steep slope. "Steep slope" means an area where the natural grade is 25% or greater.

(yy) Subdivision. "Subdivision" means:

(1) The division of property into two or more lots; or
(2) The combination of lots, parcels, tracts, or other units of property previously divided for the purpose, whether immediate or future, of sale, rental, or building development.

(ccc) Vested. The term "vested" or "vesting" is a protected status conferred on a Development Plan. A vested Development Plan shall proceed in accordance with the approved Plan and the laws in effect at the time Plan approval is obtained. A property owner, developer or applicant obtains vested rights for a Development Plan in accordance with § 32-4-264 of this title.

Editor's note:

Section 3 of Bill No. 24-06 provides that this Act shall apply to any development, subdivision, parcel of land, or plat which received any form of approval from Baltimore County prior to the effective date of this Act as follows:

(a) A Development Plan or plat that vested in accordance with the law in effect prior to the effective date of this Act is subject to the zoning regulations and development regulations in effect at the time the Plan or plat was approved, if those regulations were not otherwise subsequently abrogated or superseded by other law; however, with respect to a material amendment to the Plan or plat, the provisions of § 32-4-262 shall apply.

§ 32-4-102. - DEVELOPMENT POLICIES.

(a) Conformity with Master Plan required.

(1) Subject to the limitations in the Charter and this Code, all development of land shall conform to:

(i) The Master Plan;

(ii) Adopted community plans; and

(iii) This title.

(2) (i) Land to be developed should be of such character that it can be used safely for building purposes without danger to health or peril from flood, fire, erosion or other menace.

§ 32-4-264. - *VESTING* OF DEVELOPMENT PLANS.

(a) In general. A Development Plan vests in accordance with the provisions of this section.

(c) Residential Development Plan.

(1) A residential Development Plan for which a plat is not recorded vests when substantial construction occurs with respect to any portion of the Plan.

(2) A residential Development Plan for which a plat is recorded *vests* when plat recordation occurs for any lot, tract, section or parcel thereof.

(d) Unless an extension has been granted under § 32-4-274, construction relating to a *vested* residential Development Plan that occurs more than 9 years after the Plan was granted final, non-appealable approval shall comply with all laws in effect at the time permits are issued unless the Development received growth allocation under Title 9 of this article in which case construction related to a *vested* residential Development Plan must occur within the latter of 25 years after:

(1) The plan was granted final, non-appealable approval, or

(2) The effective date of Bill No. 58-09.

§ 32-4-402. - COMPATIBILITY.

(a) "Neighborhood" defined. In this section, "neighborhood" means the existing buildings and land uses adjacent to and extending from the proposed development to:

(1) A definable boundary such as a primary collector street or arterial street;

(2) An area with a significant change in character or land use; or

(3) A major natural feature.

(d) Compatibility objectives. Subject to subsection (c) of this section, development of property shall be designed to achieve the following compatibility objectives in accordance with the guidelines in the comprehensive manual of development policies:

(1) The arrangement and orientation of the proposed buildings and site improvements are patterned in a similar manner to those in the neighborhood;

(8) The scale, proportions, massing, and detailing of the proposed buildings are in proportion to those existing in the neighborhood.

APPENDIX B: - Rules of Practice and Procedure of County Board of Appeals

Rule 12. Motion for reconsideration.

a. A Party may file a motion for reconsideration of an order of the Board of Appeals. The motion shall be filed within thirty days after the date of the original order. The motion shall state with specificity the grounds and reasons for the motion, including, but not limited to: newly discovered evidence; change in law; and/or fraud, mistake or irregularity. The filing of a motion for reconsideration shall stay all further proceedings in the matter, including the time limits and deadlines for the filing of a petition for judicial review.

Baltimore County Zoning Regulations (BCZR)
SECTION 1A03 - R.C.4 (Watershed Protection) Zone

§ 1A03.4. - Height and area regulations.

§ 1A03.4.B.4 - Exceptions for certain record lots.

Any existing lot or parcel of land with boundaries duly recorded among the land records of Baltimore County with the approval of the Baltimore County Department of Planning on or before December 22, 1975, and not part of an approved subdivision that cannot meet the minimum standards as provided within the zone, may be approved for residential development in accordance with the standards prescribed and in force at the time of the lot recordation.

A 12014 Boxer Hill Rd
23-053-A Pg.1

APP. #12167

LIBER 4727 PAGE 523

THIS DEED, Made this 21st day of February in the year nineteen hundred and sixty-seven, by and between ALFRED F. PIEREN AND FRIEDA M. PIEREN his wife, of Baltimore County, State of Maryland, parties of the first part, and FREDERICK H. KLAUNBERG, JR., Parties of the Second Part.

WITNESSETH, That in consideration of the sum of Five Dollars ($5.00) and other good and valuable considerations, this day paid, the receipt whereof is hereby acknowledged, the said Alfred F. Pieren and Frieda M. Pieren, his wife, do grant and convey unto the said Frederick H. Klaunberg, Jr., his heirs and assigns, in fee simple, all that parcel of ground situate lying and being in the Eighth Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

BEGINNING for the same at a pipe set on the Eastside of a 16.5 foot road, known as Boxer Hill Road, and in the second line of a parcel of land which by a Deed dated May 26, 1947, and recorded among the Land Records of Baltimore County in Liber JWB. No. 1569, folio 43, was conveyed by Elizabeth Swem to Howard D. English and wife, said pipe being distant South 01 degree 22 minutes West 377.20 feet measured along said second line from the beginning thereof and running thence with and binding on a part of said second line and binding on the East side of Boxer Hill Road, South 01 degree 22 minutes West 323.30 feet to the beginning of a parcel of land which by a Deed dated October 27, 1947 and recorded among the Land Records of Baltimore County in Liber JWB. No. 1610, folio 177, was conveyed by Howard D. English and wife, to Raymond R. Butler and wife, thence leaving said road and binding reversely on the last and fourth lines of said last mentioned parcel of land the two following courses and distance, viz: NOrth 85 degrees 26 minutes West 470.20 feet and North 39 degrees 22 minutes West 382.60 feet to the beginning of the last line of the aforesaid parcel of land which was conveyed by Swem to English, thence running with and binding on a part of said last line North 54 degrees 54 minutes East 344.98 feet to a pipe and thence leaving said outline and running for a line of division South 64 degrees 31 minutes East, binding in or near the center of a rose hedge there situate, 483.95 feet to the place of beginning.

CONTAINING 5.82 acres of land, more or less.

BEING all and the same property which by Deed dated October 27, 1962 and recorded among the Land Records of Baltimore County in Liber WJR. 4065, folio 501, was granted and conveyed by Edward T. Ormsby and Fern N. Ormsby, his wife, unto the said Alfred F. Pieren and Frieda M. Pieren, his wife, in fee simple.

TOGETHER WITH the buildings and improvments thereupon erected, made, or being and all and every the rights, alleys, ways, waters, privileges, appurtenances, and advantages to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lot of ground and premises, above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances, and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Frederick H. Klaunberg, Jr. his heirs and assigns, in fee simple, subject to and together with the right and use hereof in common with others entitled, thereto of the above mentioned Boxer Hill Road, which road leads from and through the herein described property in a southerly and easterly direction to Broadway Road.

SUBJECT to a reservation as set forth in a Deed from Howard D. English and wife, to Edward T. Ormsby and wife, dated June 8, 1957, and recorded among the Land Records of Baltimore County in Liber GLB. No. 3172, folio 474 of the use of a well located on the herein described parcel of land and the right to use and maintain a pipe line leading from said well to the dwelling located on property to the north, the center of said pipe line described as follows:

BEGINNING for the same at a point in the last line of the herein described parcel of land distant north 64 degrees 31 minutes West 209.8 feet measured reversely along said last line from the end thereof and running thence for the center of said pipe line the two following courses and distance, viz: South 22 degrees 39 minutes West 34 feet and South 10 degrees 09 minutes West 200.3 feet to the center of the aforesaid well.

STATE OF MARYLAND RECORDATION TAX ACT OF 1947 $22.00

STATE OF MARYLAND RECORDATION TAX ACT OF 1947 $5.50 $5.50

STATE OF MARYLAND RECORDATION TAX ACT OF 1947 $2.20 $2.20

STATE OF MARYLAND RECORDATION TAX ACT OF 1947 $1.10 $1.10

PAID 3 6 86 FEB 27 70.00 MSC

BALTIMORE COUNTY CIRCUIT COURT (Land Records) OTG 4727, p. 0523, MSA_CE62_4582. Date available 04/11/2006. Printed 02/14/2024.

A 12014 Boxer Hill Rd
23-053-A Pg.2

LIBER 4727 PAGE 524

AND the said parties of the first part hereby covenants that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby coveyed; that they will warrant specially the property granted and that they will execute such further assurances of the same as may requisite.

WITNESS the hands and seals of said grantors

TEST:

/ Constance C. Frostic

/ Alfred F. Pieren (SEAL)
Alfred F. Pieren

/ Frieda M. Pieren (SEAL)
Frieda M. Pieren

STATE OF CALIFORNIA, COUNTY OF ORANGE ,to wit:

I HEREBY CERTIFY, That on this 13TH day of February, 1967, before me, the subscriber, a Notary Public of the State of CALIFORNIA , in and for COUNTY OF ORANGE , personally appeared Alfred F. Pieren and Frieda M. Pieren, his wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

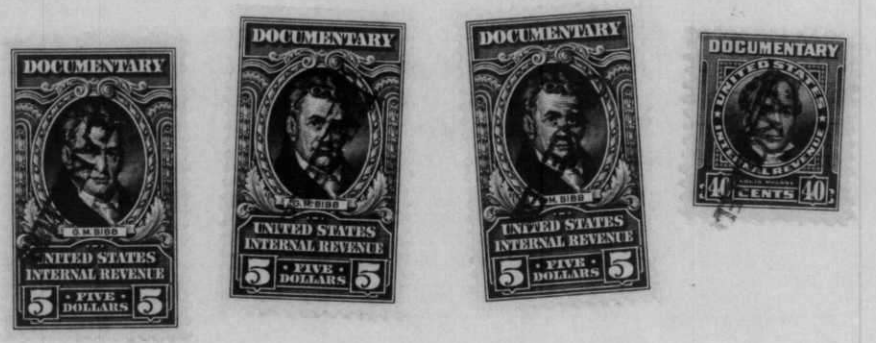
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

EMILY KORTKAMP NOTARY PUBLIC ORANGE CO. CALIF.

/ Emily Kortkamp
Notary Public

EMILY KORTKAMP
My Commission Expires Mar. 15, 1968

My Commission expires March 15, 1968



Rec'd for record FEB 27 1967 at 2 45 P M
Per Orville T. Gosnell, Clerk
Mail to MONUMENTAL TITLE CO.
Receipt No. 103372 $ 5.50

BALTIMORE COUNTY CIRCUIT COURT (Land Records) OTG 4727, p. 0524, MSA_CE62_4582. Date available 04/11/2006. Printed 02/14/2024.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) SM 8429, p. 0616, MSA_CE62_8284. Date available 03/09/2005. Printed 01/31/2024.

LIBER 8 4 2 9 PAGE 6 1 6

DEED — FEE SIMPLE — INDIVIDUAL GRANTOR — LONG FORM

File No. 106/jmt

This Deed, MADE THIS 8th day of MARCH

in the year one thousand nine hundred and ninety (1990) by and between

FREDERICK H. KLAUNBERG, JR.,

of Baltimore County, State of Maryland, Grantor and party of the first part, and

EDWARD B. STELLMANN, III and DAWN W. STELLMANN, His wife, Grantees and parties

of the second part.

WITNESSETH. That in consideration of the sum of ONE HUNDRED NINETY ONE THOUSAND FIVE HUNDRED and 00/100ths ($191,500.00) DOLLARS and other good and valuable considerations, the receipt whereof is hereby acknowledged,

C RC/F 29.00
C T TX 807.50
C DOCS 957.50
DEED
SM CLERK 1793.00
#65057 C001 RO? T12:3
03/16/9

the said party of the first part,

do es grant and convey to the said parties of the second part, as tenants by the entireties, their assigns, and unto the survivor of them and the survivor's heirs,

personal representatives/~~successors~~ 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:

FOR LEGAL DESCRIPTION SEE SCHEDULE "A" ATTACHED HERETO AND MADE A PART HEREOF

BEING PART OF the same property which by Deed dated February 21, 1967 and recorded among the Land Records of Baltimore County in Liber 4727 folio 523 was granted and conveyed from Alfred F. Pieren and Frieda M. Pieren, his wife unto Frederick H. Klaunberg, Jr., the within named Grantor.

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE [signature] DATE 3/16/90

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County
FAP 3/16/90

957.5
807.5
19

065****3064:0:a 6168A

B 12014 Boxer Hill Rd 23-053-A Pg.2

LIBER 8 4 2 9 PAGE 6 1 8

MCKEE & ASSOCIATES, INC.
Engineering - Surveying - Real Estate Development

SHAWAN PLACE, 5 SHAWAN ROAD HUNT VALLEY, MARYLAND 21030

Telephone: (301) 527-1555
Facsimile: (301) 527-1563

March 6, 1990

DESCRIPTION OF 1.630 ACRE ±
12014 BOXER HILL ROAD
EIGHTH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point situated on the east side of a 16.50 foot road, known as Boxer Hill Road, said point being at the end of the first or South 01°22' West 302.20 foot line of a deed dated April 30, 1980, and recorded among the land records of Baltimore County in Liber 6160, folio 494, said point also being at the beginning of the first or South 01° 22' West 323.30 foot line of a deed dated February 21, 1967, and recorded among the land records of Baltimore County in Liber 4727, folio 523; thence leaving said point and running with and binding on the east side of Boxer Hill Road and the first line of the last mentioned deed dated February 21, 1967, as now surveyed: South 02°51' 06" West 165.00 feet to a point; thence leaving said east side and running for new lines of division over, across, and through the aforesaid deed dated February 21, 1967, the following five (5) courses and distances: North 59°21' 13" West 42.94 feet to a point; thence North 87°06' 44" West 180.00 feet to a point; thence South 56°50' 33" West 19.95 feet to a point; thence North 51°35' 42" West 170.68 feet to a point; thence North 26°58' 06" East 204.74 feet to a point intersecting the second or South 64°31' East 483.95 foot line of the above mentioned deed dated April 30, 1980; thence running reversely with and binding on said second line South 63°01' 54" East 317.00 feet to the point of beginning. Containing 71,016 square feet or 1.630 acres of land, more or less.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) SM 8429, p. 0618, MSA_CE62_8284. Date available 03/05/2005. Printed 01/31/2024.

Description of 1.630 Acre ±
12014 Boxer Hill Road
March 6, 1990
Page Two

Subject to a reservation as set forth in a deed from Howard D. English and wife, to Edward T. Ormsby and wife, dated June 8, 1957, and record among the land records of Baltimore County in Liber G. L. B. 3172, folio 474 of the use of a well located on the herein described parcel of land and the right to use and maintain a pipe line leading from said well to the dwelling located on property to the north, the center of said pipe line described as follows:

Beginning for the same at a point in the last line of the herein described parcel of land as now surveyed, said point being distant North 63° 01' 54" West 209.80 feet measured reversely along said last line from the end thereof and running thence for the center of said pipe line the two following courses and distances: South 24° 08' 06" West 34.00 feet to a point; thence South 11° 38' 06" West 200.30 feet to the center of the aforesaid well.

Being part of a parcel of land as described in a deed dated February 21, 1967, and recorded among the land records of Baltimore County in Liber 4727, folio 523.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) SM 8429, p. 0619, MSA_CE62_8284. Date available 03/09/2005. Printed 01/31/2024.

LIBER 8 4 2 9 PAGE 6 2 0

A F F I D A V I T

STATE TRANSFER TAX EXEMPTION

THE UNDERSIGNED HEREBY EXECUTE THIS AFFIDAVIT AND MAKE OATH IN DUE FORM OF LAW THAT ~~XX~~WE HAVE PURCHASED THE PROPERTY LOCATED AT

12014 Boxer Hill Road

Lutherville, MD 21093

AS MY/OUR RESIDENCE AND THAT I/WE INTEND TO OCCUPY THE ABOVE PROPERTY WHICH WILL BE USED FOR OUR PERSONAL USE AS IS REQUIRED UNDER TAX PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND ARTICLE 13-203 (b) AS AMENDED BY ACTS OF 1988 CHAPTER 197.

EDWARD B. STELLMANN, III

DAWN W. STELLMANN

THIS IS TO CERTIFY THAT ON THE 8th DAY OF MARCH, 19 90, BEFORE ME THE SUBSCRIBER, A NOTARY PUBLIC OF THE STATE OF MARYLAND, APPEARED EDWARD B. STELLMANN III and DAWN W. STELLMANN His wife

AND MADE OATH IN DUE FORM THAT THE AFOREGOING AFFIDAVIT IS ~~HIS/HER~~ THEIR ACT.

NOTARY PUBLIC

MY COMMISSION EXPIRES: 7/1/90

BALTIMORE COUNTY CIRCUIT COURT (Land Records) SM 8429, fol:0620, MSA_CE62_8284. Date available 03/05/2008. Printed 01/31/2024.

LIBER 8429 PAGE 621

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

TO HAVE AND TO HOLD the said described lot of ground and premises to the said parties of the second part, as tenants by the entireties, their assigns, and unto the survivor of them and the survivor's heirs,

personal representatives ~~XXXXXXXXX~~

and assigns , in fee simple.

AND the said party of the first part hereby covenant s that he has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that he will warrant specially the property hereby granted; and that he will execute such further assurances of the same as may be requisite.

WITNESS the ~~hand~~ and seal of said grantor

Test:

Frederick H Klaunberg Jr. (SEAL)
FREDERICK H. KLAUNBERG, JR.

_____ (SEAL)

STATE OF MARYLAND, Balto. County, to wit:

I HEREBY CERTIFY, That on this 8th day of MARCH in the year one thousand nine hundred and ninety (1990), before me, the subscriber, a Notary Public of the State aforesaid, personally appeared FREDERICK H. KLAUNBERG, JR., known to me (or satisfactorily proven) to be the person whose name is/~~are~~ subscribed to the within instrument, and acknowledged the foregoing Deed to be his act, and in my presence signed and sealed the same.

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

NOTARY PUBLIC BALTIMORE CITY

Notary Public

My Commission expires:

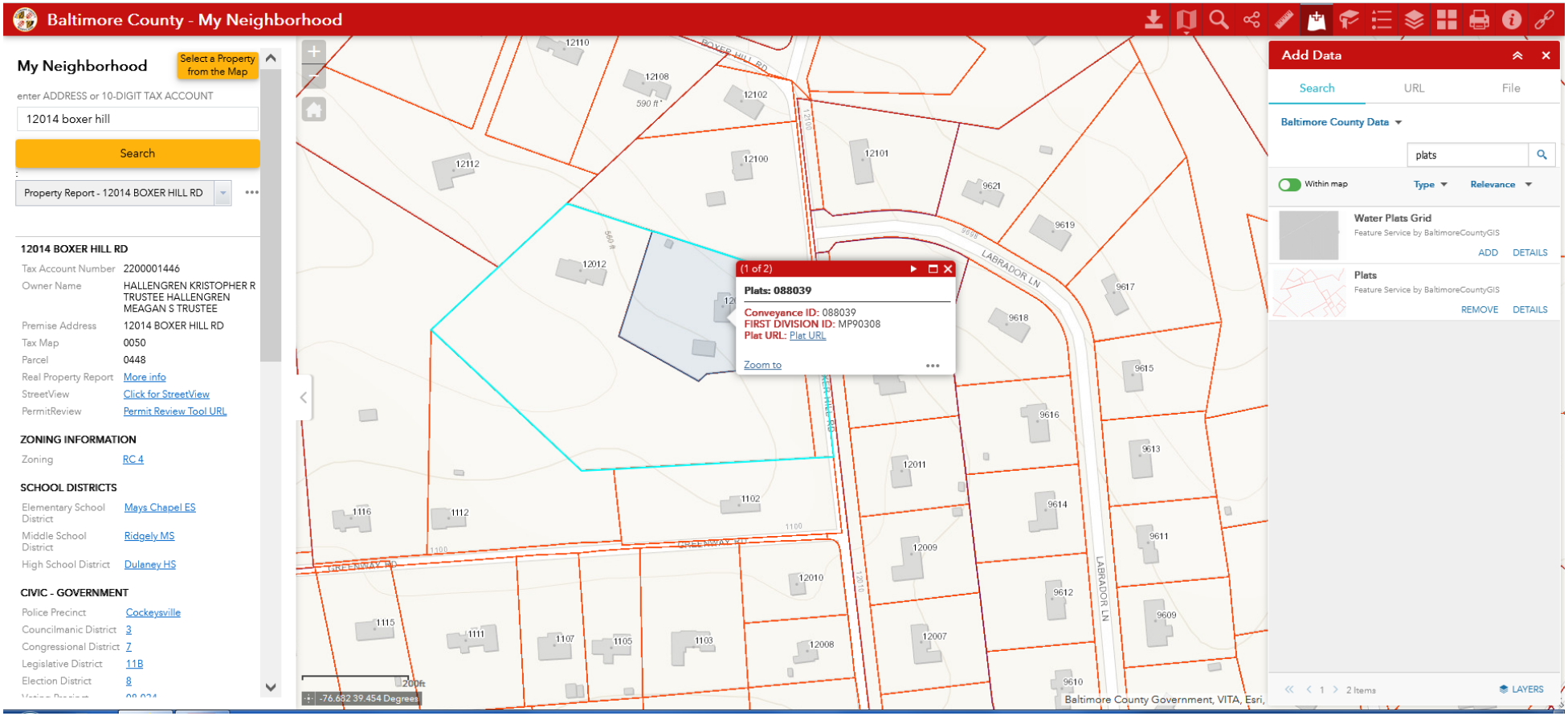
July 1, 1990

Title Resources
1402 York Rd
Lutherville, Md 21093

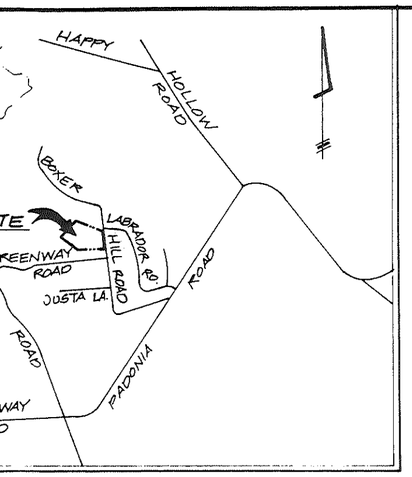
BALTIMORE COUNTY CIRCUIT COURT (Land Records) SM 8429, p. 0621, MSA_CE62_8284. Date available 03/09/2005. Printed 01/31/2024.

C 12014 Boxer Hill Road 23-053-A Page 1

Plat Plans available on My Neighborhood > Layers > Search “Plats” > Add Plat Layer > Click on Property (if plat is available, Plat Box will pop up)
To open Plat, click on Plat URL



See Plat Plan on Next Page



VICINITY MAP
SCALE: 1" = 2000'

NOTES

EXISTING ACREAGE OF SITE: 5.824 AC.±
EXISTING ZONING - RC-5
No. OF LOTS ALLOWED (0.667 × 5.824 AC.±) = 3
No. OF LOTS PROPOSED 2
PRIVATE WELLS AND SEPTICS.
RESTRICTIVE COVENANTS REGARDING THE USE OF FOREST BUFFER EASEMENT AND WETLAND AREAS SHALL BE RECORDED IN THE DEED OF LOT 2

PLAN APPROVAL — MINOR SUBDIVISIONS

This Project Has Received An Exemption Or Waiver From Div. 2 "Development Regs. of Balto. Co. Md."
Plan Is Hereby Accepted For Processing.
Technical Suiticiency: DPW ✓ OPZ
Plan Approved DPW David L. Thomas 10/29/90
Plan Approved OPZ

JAMES W. McKEE DATE
(MARYLAND REGISTERED No. 9012)

McKEE & ASSOCIATES, INC.
Engineering - Surveying - Real Estate Development
SHAWAN PLACE, 5 SHAWAN ROAD HUNT VALLEY, MARYLAND 21030
(301) 527-1555

REVISIONS
① REVISED TO SHOW NEW PROPERTY LINES; NEW 10,000 S.F. S.D.A. FOR LOT ONE.
② REVISED TO SHOW FOREST BUFFER EASMT & NOTE

REASON FOR AMENDMENT

CHANGED TRACT A TO LOT 2, AS APPROVAL OF SEPTIC AREA WETLANDS LOCATION, AND PROPOSED WELL ENVELOPE, HAS BEEN GRANTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.

BOXER HILL ROAD

#12016 EX. DWLG.
#12100 EX. DWLG.
#12018 EX. DWLG.
#12011 EX. DWLG.
#11102 EX. DWLG.

P.O.B. LOT 1
EX. PAVING
S 02° 51' 06" W 483.95'
EXISTING WELL
EXISTING WELL
50' FUTURE RIGHT-OF-WAY
323.30'
HIGHWAY WIDENING AREA (0.132 Ac±)
P.O.B. LOT 2
B.C.M.D.
GcC2 McD2
GnB McD3
1.630 Ac±
#12014
EXISTING DWELLING 1.5 HIGH
FRONT
M.B.S.L.
WELL LINE
RESERVATION FOR EX. WELL #12100 BOXER HILL RD.
EXISTING SEPTIC 5/10/5
10,000 SF RESERVE S.D.A.
294.74'
EX. S.D.A.
EXISTING WELL
EXISTING UTILITIES TO BE RELOCATED
PROPOSED DRIVEWAY
#12012
N 81° 06' 44" W 180.00'
S 51° 35' 42" E
N 26° 58' 06" E 138.±
S 63° 01' 54" E 166.95'
N 56° 23' 05" E 344.98'
N 37° 53' 58" W 382.48'
N 83° 56' 54" W 430.51'
FUTURE DRAINAGE & UTILITY EASEMENT
10' FUTURE DRAINAGE & UTILITY EASEMENT
FOREST BUFFER EASMT.
NOTE: NO CLEARING, GRADING OR DIST. WITHIN THE FOREST BUFFER OR WETLANDS EXCEPT AS ALLOWED BY THE BALTO. COUNTY DEPRM REGULATIONS.
LIMIT OF WETLANDS
FAILING PERC. TEST
PERENNIAL STREAM
SPRING
EX. WELL
APPROXIMATE LOCATION OF EX. WELL (UNDERGROUND)
WELL ENV.
10' FUTURE DRAINAGE & UTILITY EASEMENT
A
B
C
D
E
F

APPROVED: BALTIMORE CO. DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
DIRECTOR DATE

APPROVED: BALTIMORE CO. DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
Robert W Sheesley 3-6-90
DIRECTOR DATE

12012 Boxer Hill Road Property

MASTER

1ST AMENDED
D.E.P.R.M. MASTER

KLAUNBERG PROPERTY
(#12014 BOXER HILL ROAD)

8TH ELECTION DISTRICT
SCALE: 1" = 50'
BALTIMORE CO., MD.
FEBRUARY 9, 1990
REVISED 2/26/90
AMENDED 7/10/90

OWNER
FREDERICK H. KLAUNBERG, JR.
1640 BELFAST ROAD
SPARKS, MD. 21152
DEED REFERENCE: 4727/523
PROPERTY ACCOUNT No. 08-11-047710

D 12012 Boxer Hill Rd 23-053-A

BALTIMORE COUNTY CIRCUIT COURT (Land Records) SM 8762, p. 0521, MSA_CE62_8617. Date available 03/09/2005. Printed 02/02/2024.

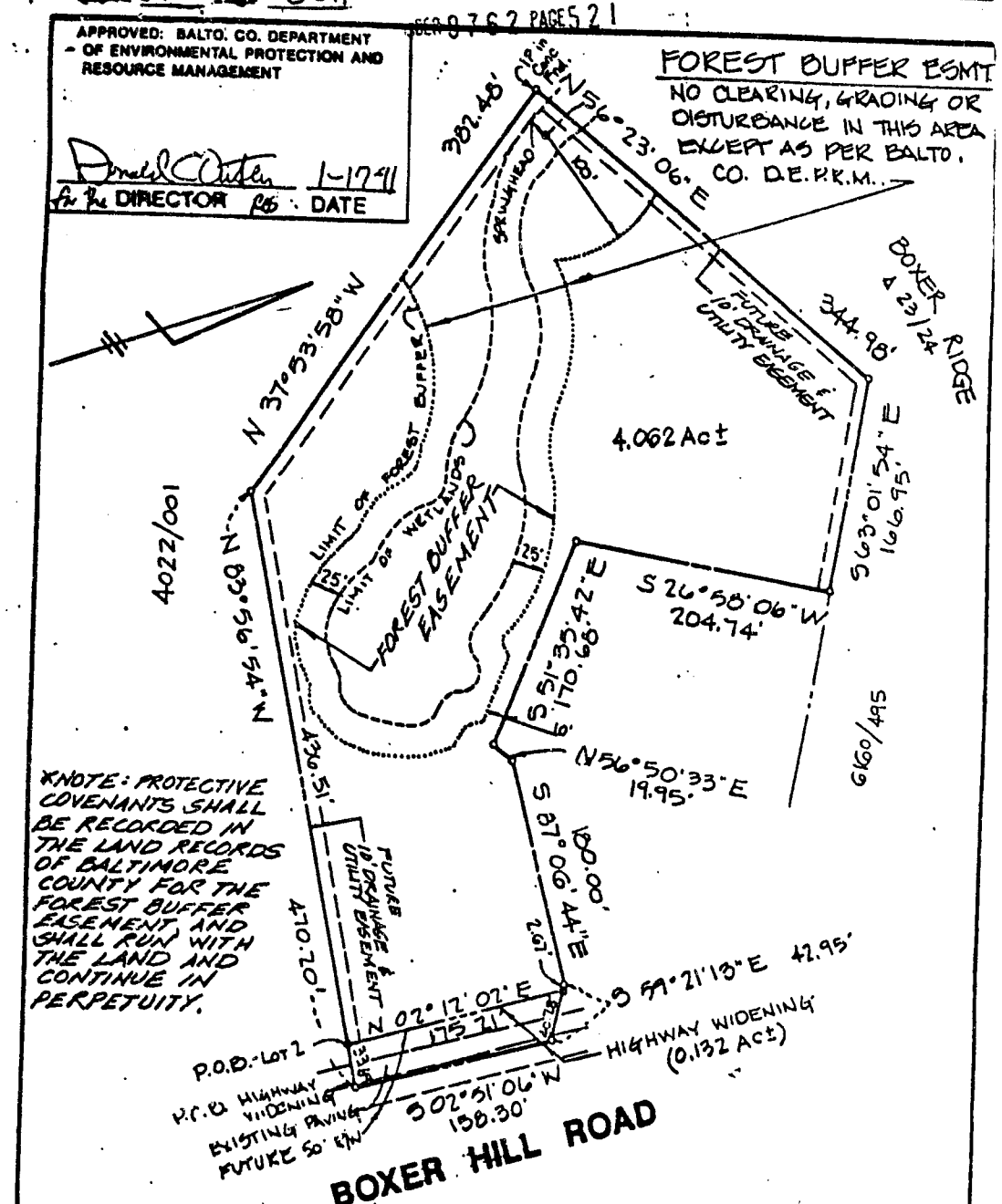
Liber 8762 Page 521

LIBER 8762 PAGE 521

APPROVED: BALTO. CO. DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

for the DIRECTOR BY: DATE 1-17-91

FOREST BUFFER ESMT
NO CLEARING, GRADING OR DISTURBANCE IN THIS AREA EXCEPT AS PER BALTO. CO. D.E.P.R.M.



NOTE: PROTECTIVE COVENANTS SHALL BE RECORDED IN THE LAND RECORDS OF BALTIMORE COUNTY FOR THE FOREST BUFFER EASEMENT AND SHALL RUN WITH THE LAND AND CONTINUE IN PERPETUITY.

PLAT TO ACCOMPANY DESCRIPTION

12012 BOXER HILL RD.

8TH. ELECT. DIST. BALTO. CO. MD.

SCALE: 1"= 100' SEPT. 7, 1990

NOTE: FOR ADDITIONAL INFORMATION PLEASE SEE PROJECT FILE NUMBER 90308 M ON FILE WITH BALTO. CO. BUREAU OF PUBLIC SERVICES.

STATE OF MARYLAND WILLIAM MICHAEL RAY No. 516 REGISTERED PROPERTY LINE SURVEYOR

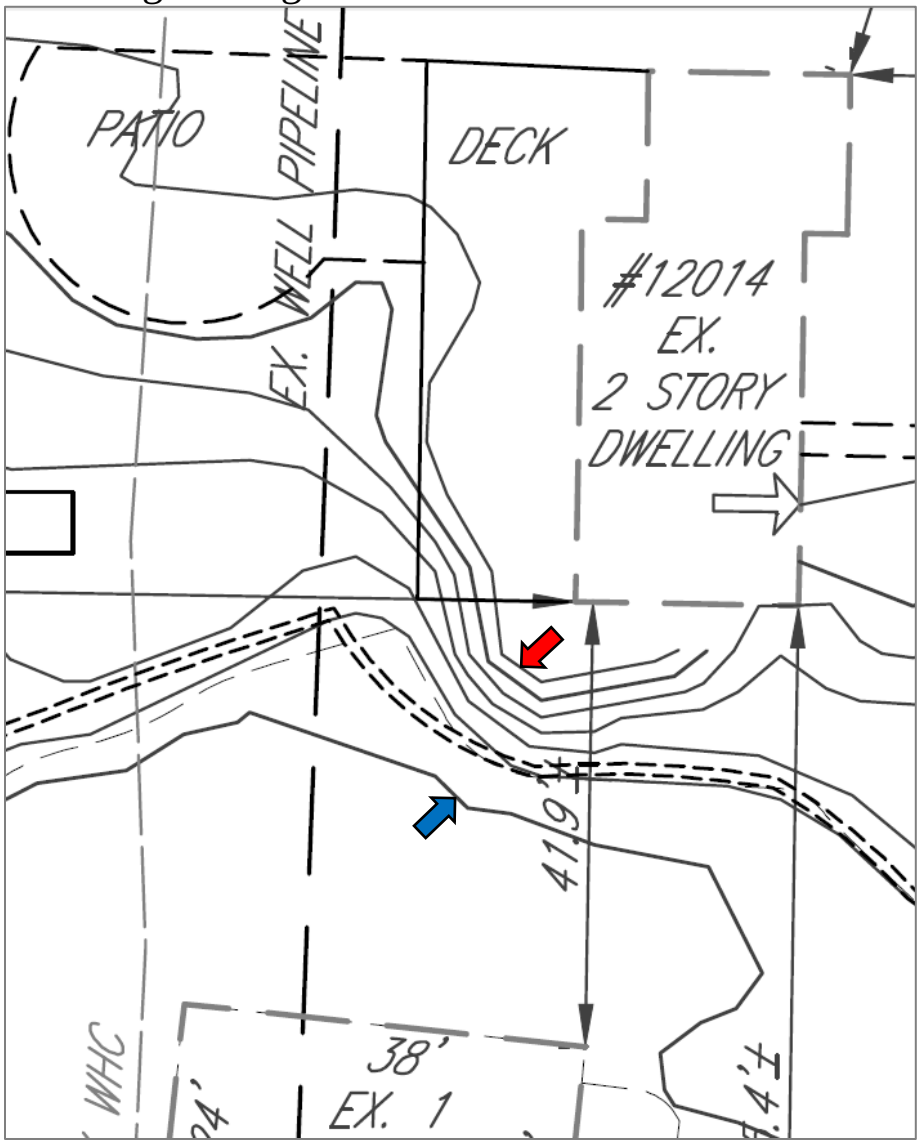
7/20/90
Date

WILLIAM MICHAEL RAY
MD REG. PLS. No. 516
McKEE & ASSOCIATES, INC.
CIVIL ENGINEERS • LAND SURVEYORS
Shawan Place • 5 Shawan Road
Hunt Valley, MD 21030
(301) 527-1555

E Side by Side Comparison (Topography vs Photograph) 23-053-A Page 1

NOTE: South Side of Deck is missing from Exhibit 2B

Enlarged Image from Petitioners Exhibit 2B



BLUE ARROW = 560' RED ARROW = 572' / 12 Foot Change in Grade

The "tightly spaced" topography lines between the South side of the House and the retain wall are <u>INCORRECT</u> based on the following photographic evidence.

Petitioners Exhibit 5I



The Retaining wall is approximately 4 feet high from the top of the yellow arrow to the bottom of the yellow arrow. (based on the stone steps being approx. 8" in the photo below) Where is the 12-foot drop in property grade?

E (New Photographs) 23-053-A Page 2 There is about a 4 ½ -foot drop in grade between the south side of the house and the paved area below the retaining wall (based on an 8" step drop).

Where is the 12' drop in property grade (as shown on Exhibit 2B above) between the South side of the home and the bottom of the retaining wall (paved driveway)?





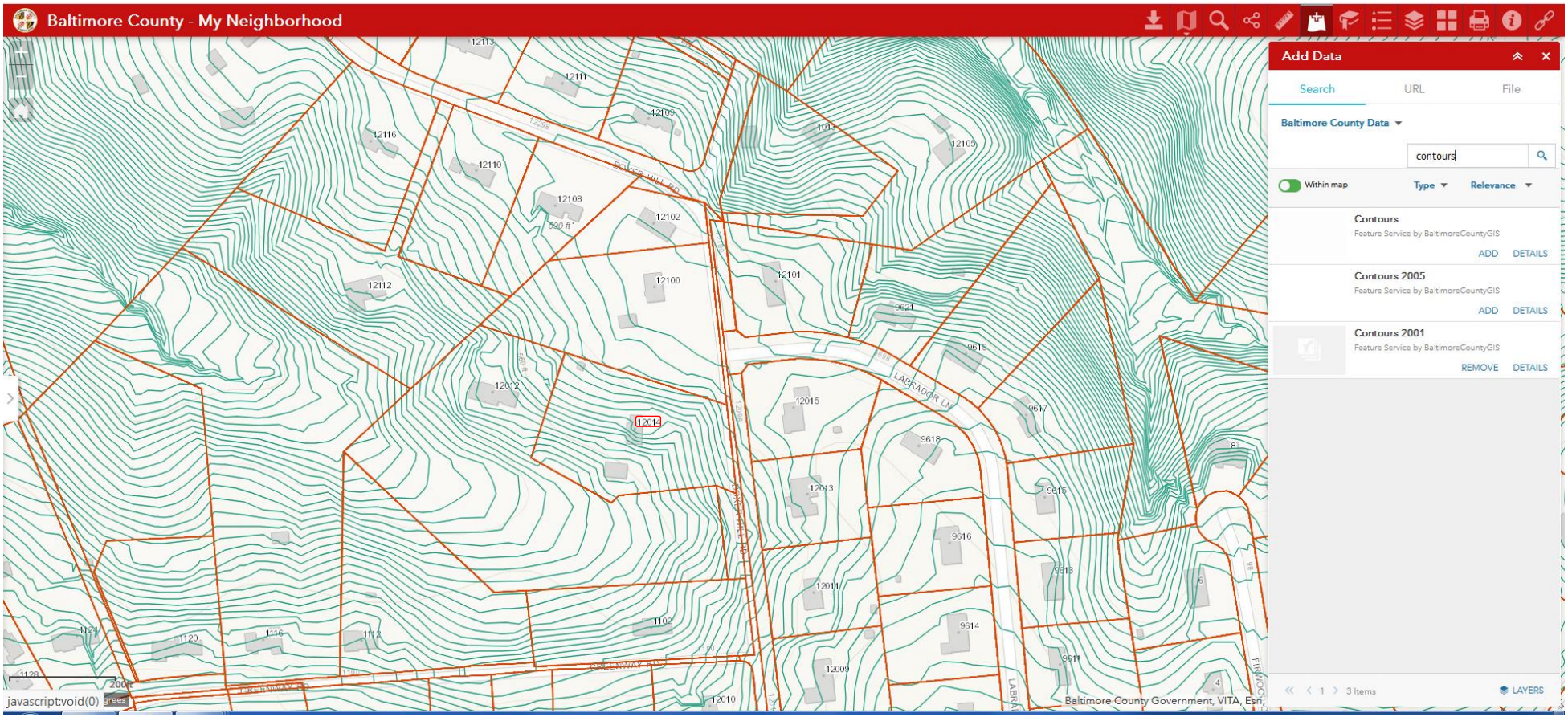
E (New Photographs) 23-053-A Page 3

Where is the 12’ drop in property grade (shown on Exhibit 2B-Topography) between the south side of the home and the bottom of the retaining wall?
How is the landscape grade around the home in this photo different from all the landscape photos submitted in Protestants Exhibit 6?
Where is the “Dramatic Sloping” of the yard between the house and the garage? (See Contour History “F” and Improvement History “G”)
Is the drop-off from a “self-created” retaining wall to a paved driveway an Inherent Characteristic of a property as defined in *Cromwell v. Ward*?

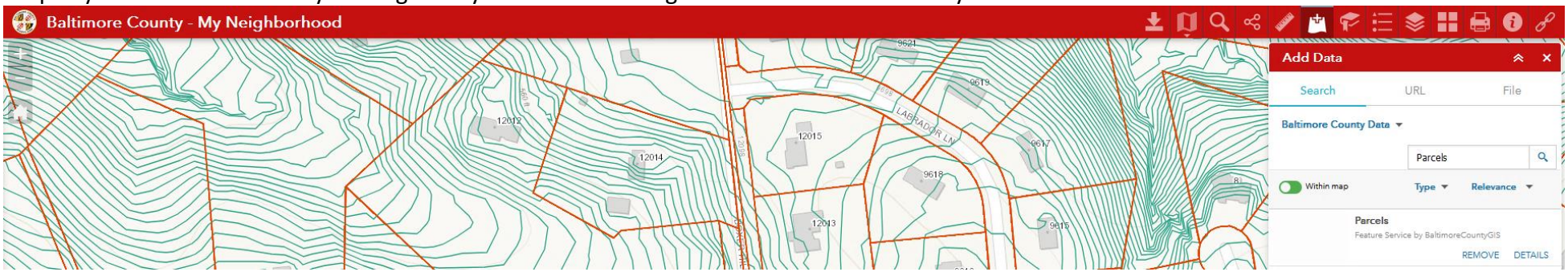


F My Neighborhood “NEW FEATURE” Contour History 23-053-A Page 1

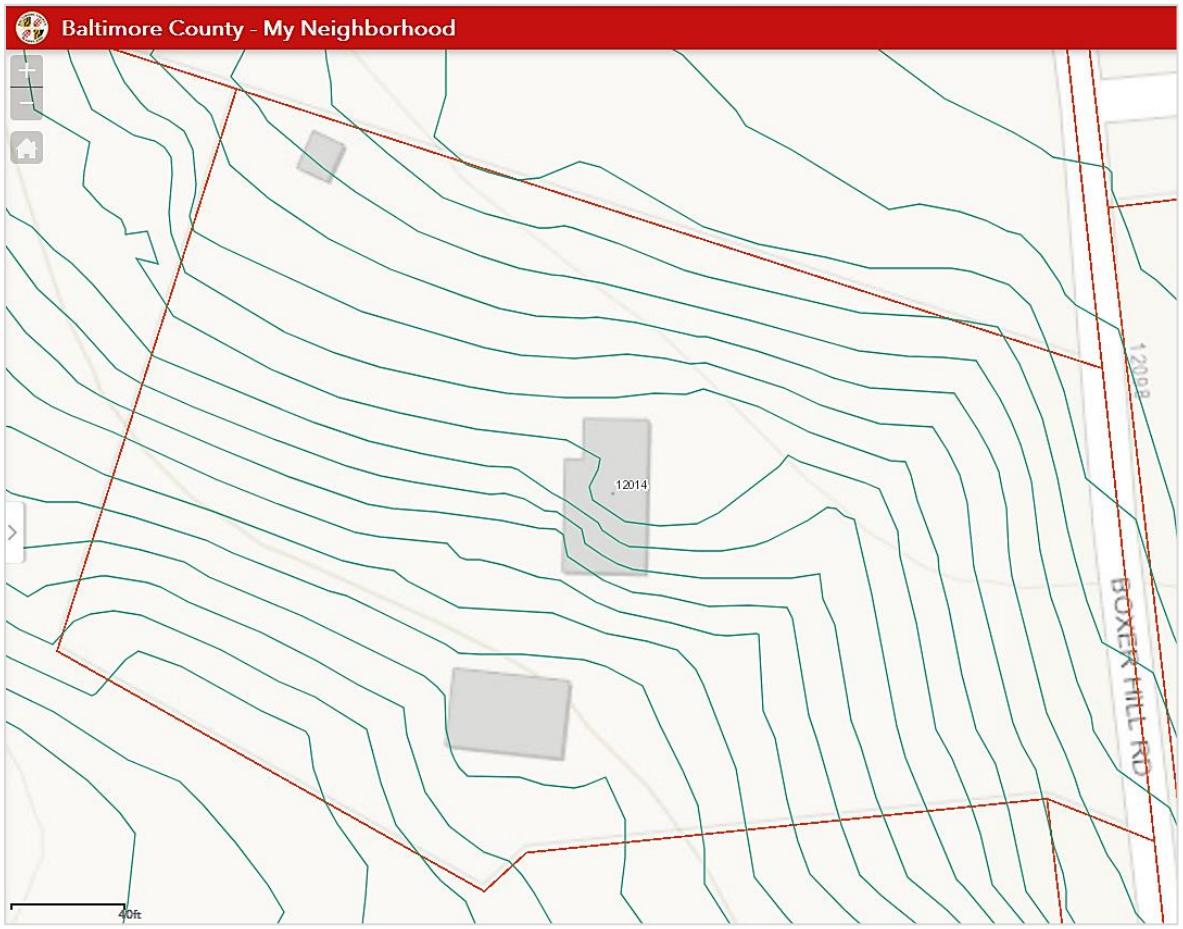
Contour History is now available on My Neighborhood > Layers > Search “Contours” > Add Contour 2001 Layer or 2005 Layer



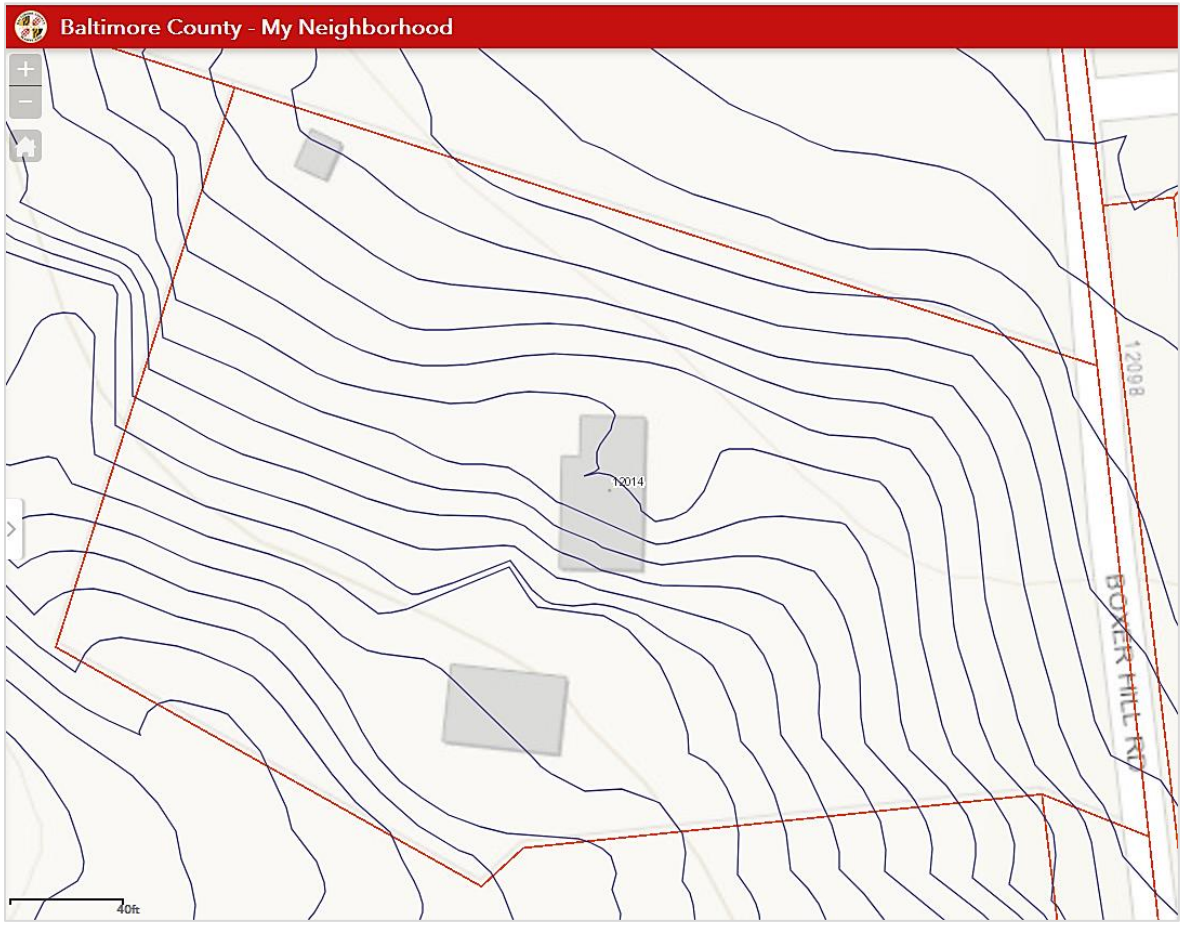
Property lines can be added by clicking on Layers > Searching “Parcels” > Add Parcels Layer



2001 Contours (See Orthophotography + Contour History Below)



2005 Contours (See Orthophotography + Contour History Below)



2000 Orthophotography + **2001** Contours (Prior to Deck, Patio, and Driveway Expansion)



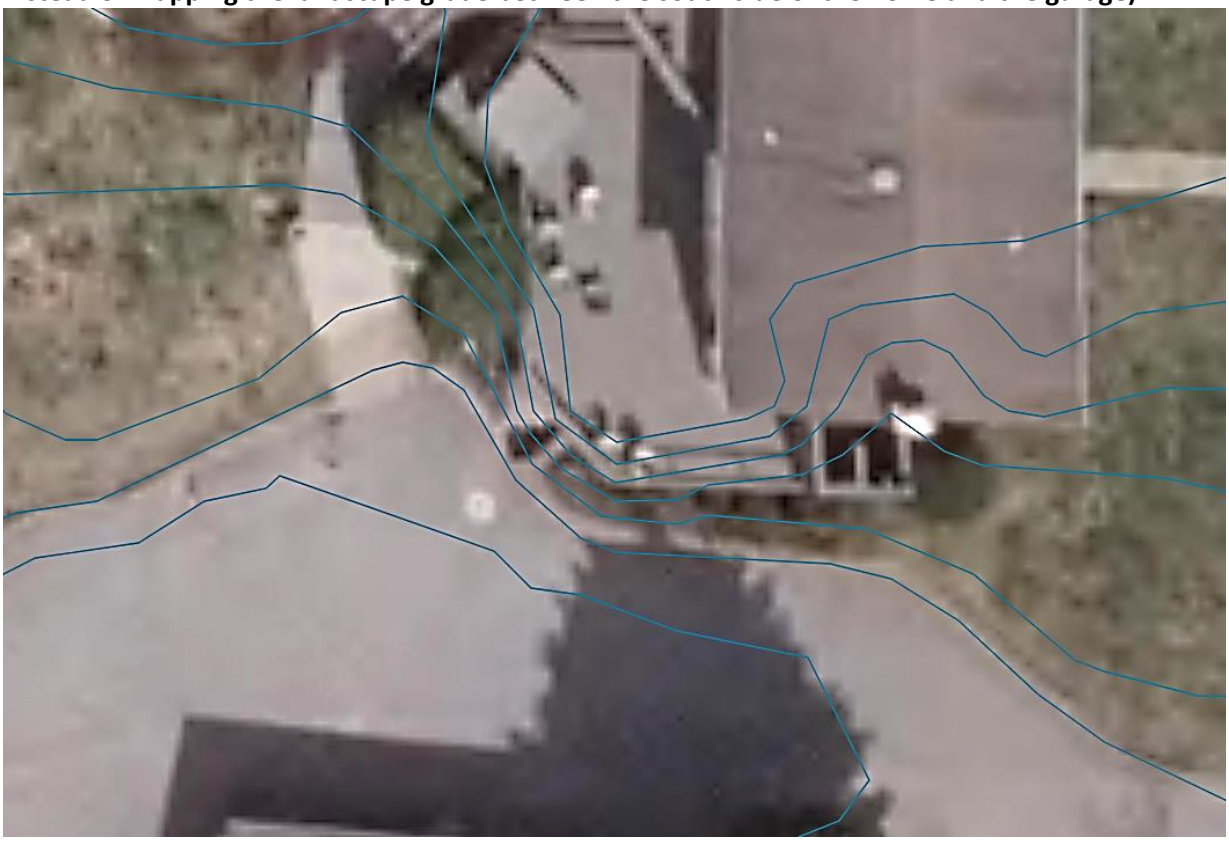
2005 Orthophotography + **2005** Contours (Notice the change in contours around the retaining wall)



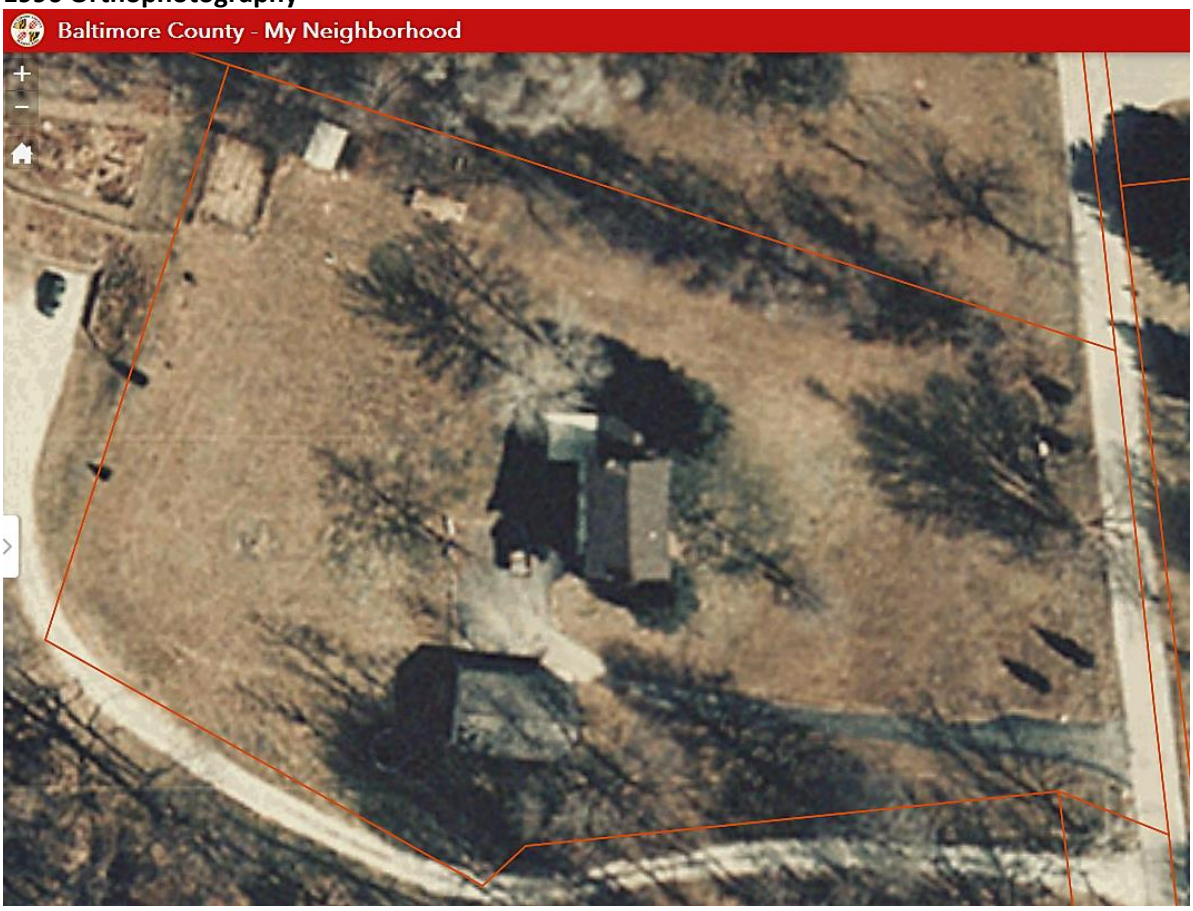
2020 Orthophotography + **2014** Contours (Notice the change in contours around the deck - see below)



2020 Orthophotography + Contour Zoom-in **(It appears the topography lines mapped the deck height instead of mapping the landscape grade between the south side of the home and the garage)**



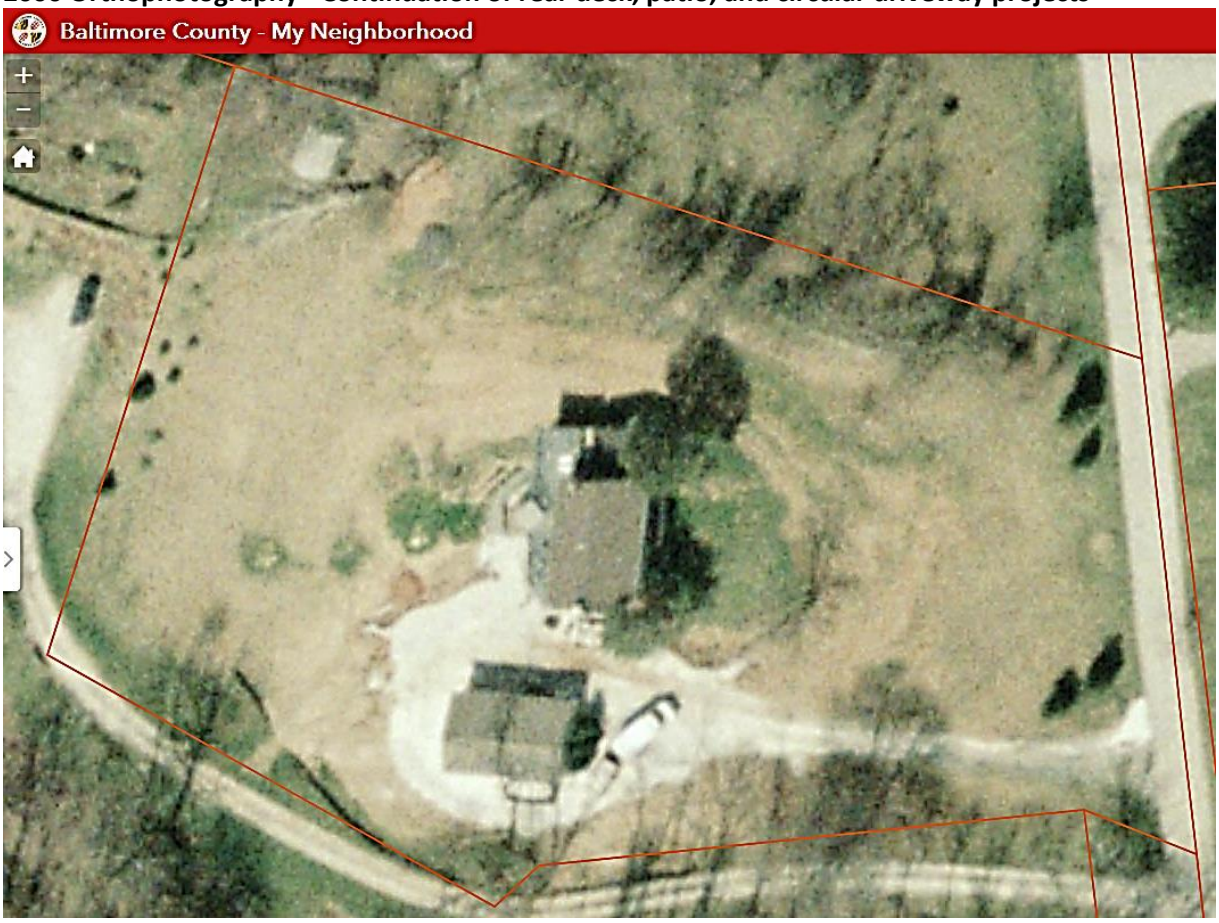
1996 Orthophotography



1998 Orthophotography – Beginning of rear deck, patio, and circular driveway projects



2000 Orthophotography - Continuation of rear deck, patio, and circular driveway projects



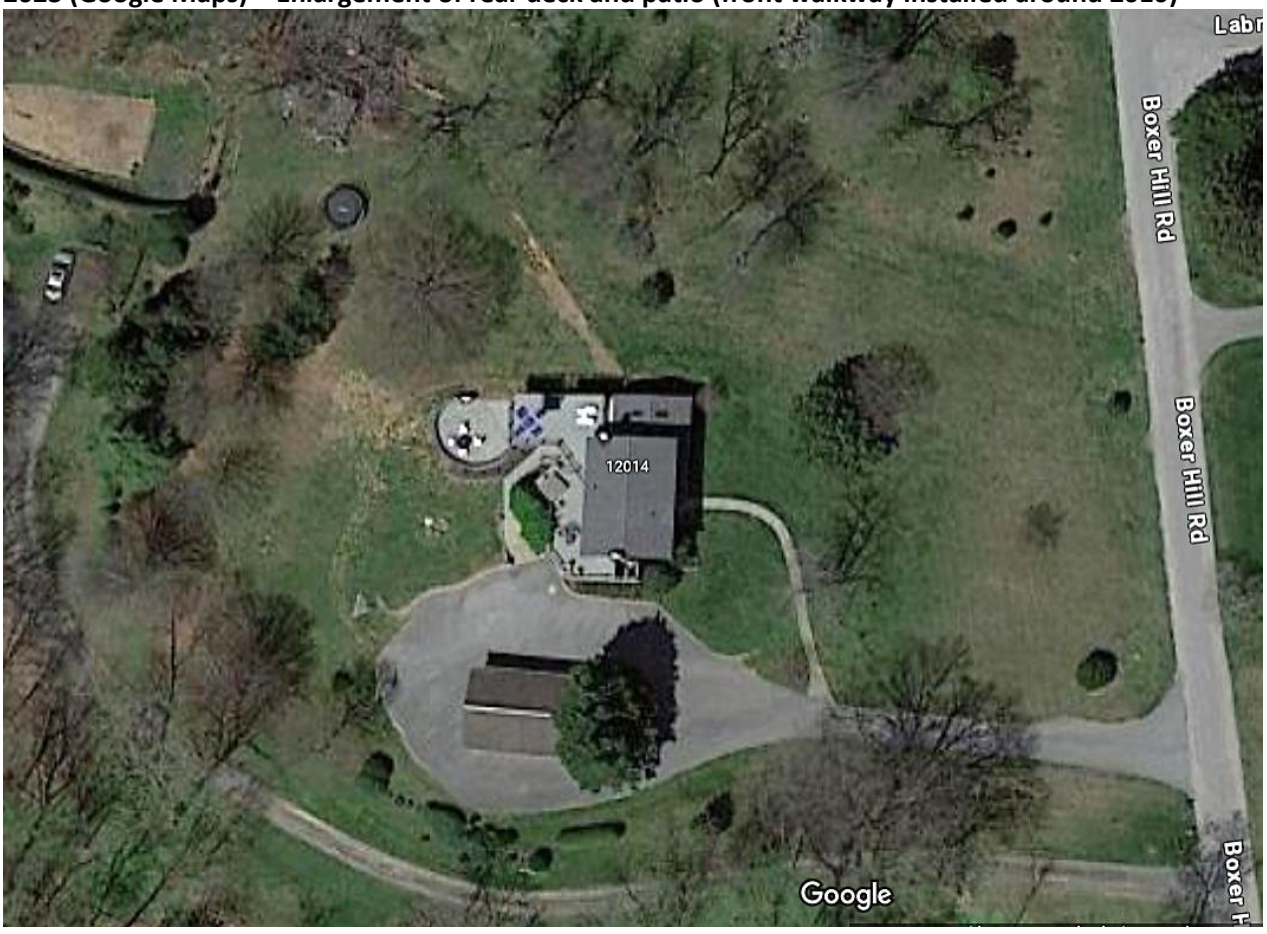
2002 Orthophotography – Deck, patio, and driveway project complete



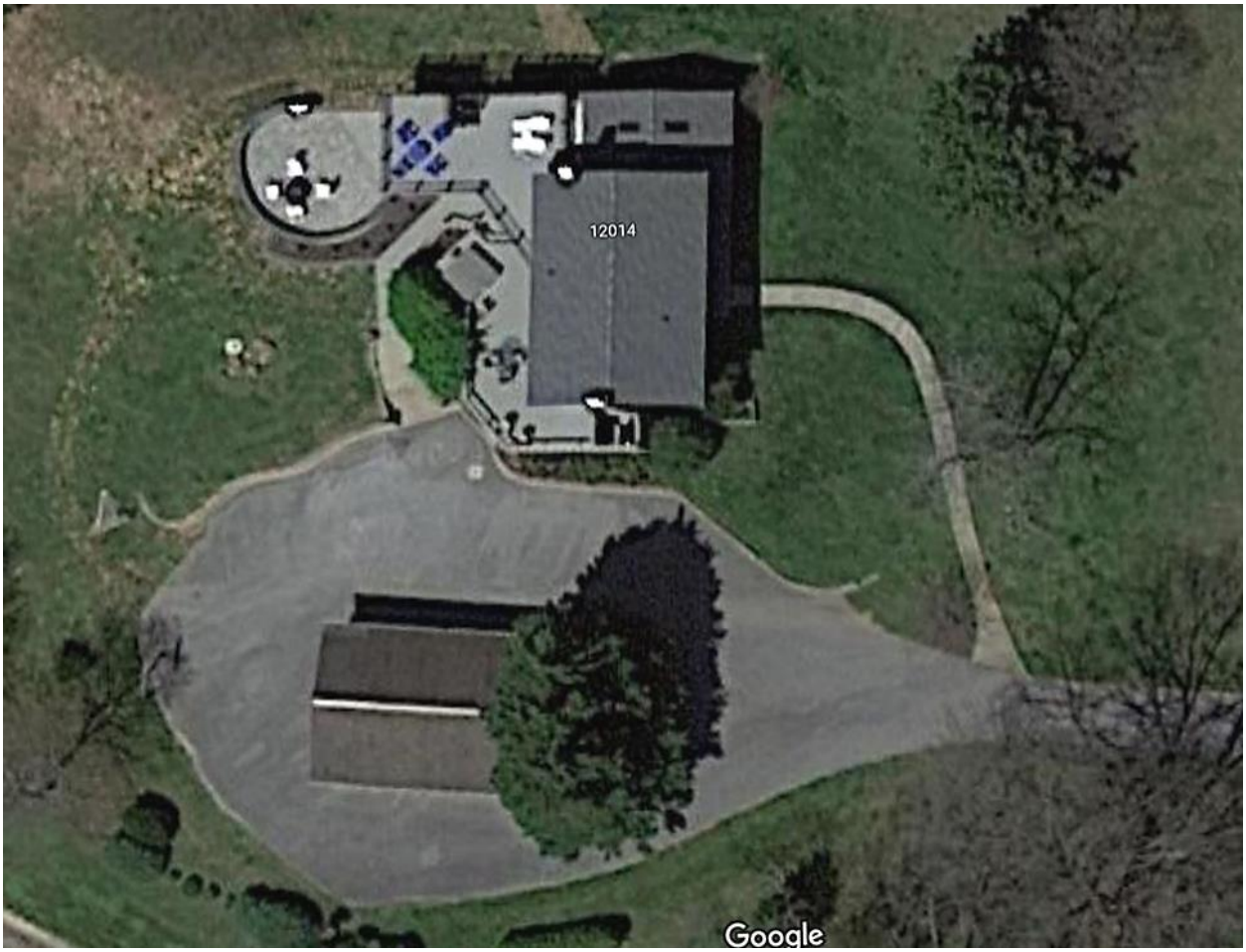
2005 Orthophotography – Installation retaining wall

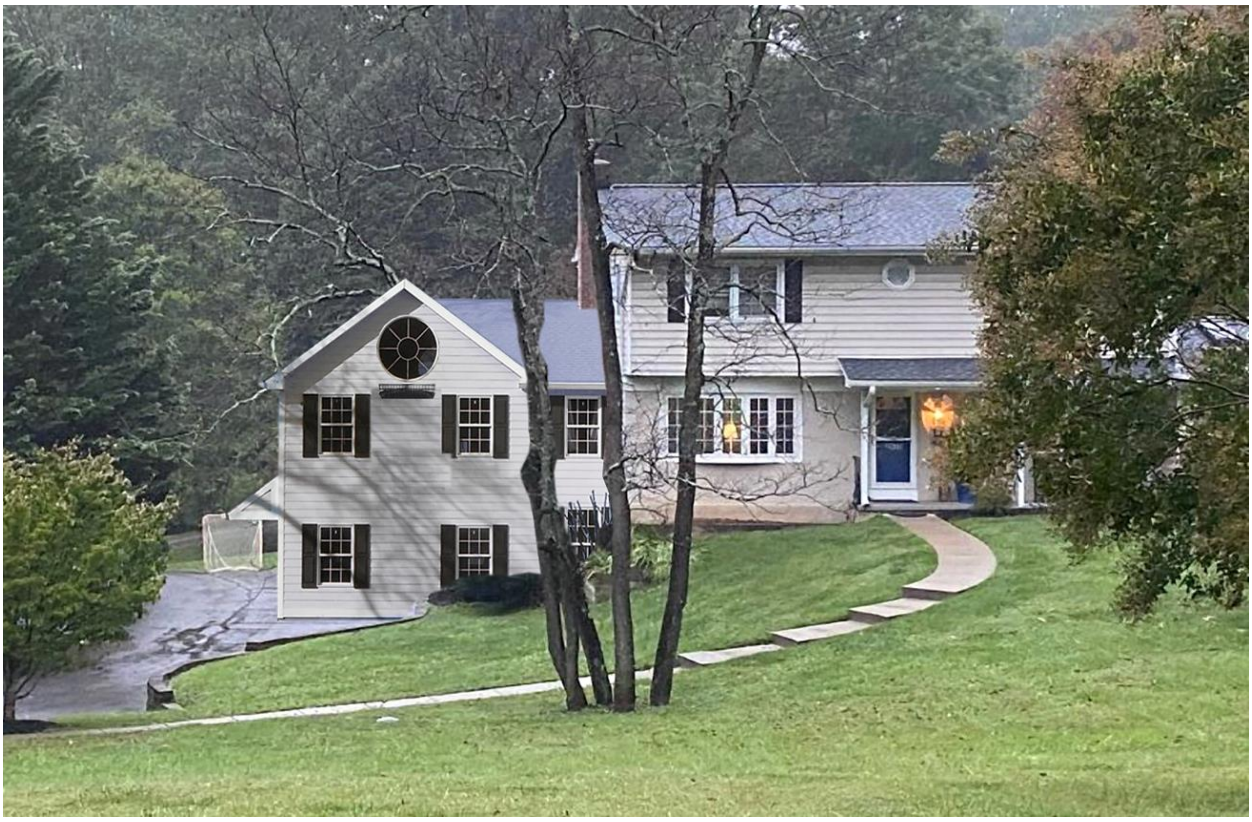


2023 (Google Maps) – Enlargement of rear deck and patio (front walkway installed around 2010)






12014
Google




12014
Google



Tammy Zahner

From: Michael Rifkin <mrifkin1@verizon.net>
Sent: Wednesday, November 1, 2023 3:56 PM
To: Appeals Board
Subject: Re: Post-Hearing Memorandum Michael Rifkin 23-053-A

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Thank you for the confirmation.
Mike

On Nov 1, 2023, at 3:36 PM, Appeals Board <appealsboard@baltimorecountymd.gov> wrote:

> Received.
> Thank you.
>
> **Board of Appeals for Baltimore County**
> **The Jefferson Building, Suite 203**
> **105 W. Chesapeake Avenue**
> **Towson, Maryland 21204**
> ***appealsboard@baltimorecountymd.gov***
> **(410) 887-3180**
> **(410) 887-3182 Fax**
>
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>
> **From:** Mike Rifkin <mrifkin1@verizon.net>
> **Sent:** Wednesday, November 1, 2023 3:00 PM
> **To:** Appeals Board <appealsboard@baltimorecountymd.gov>
> **Cc:** 'Lawrence Schmidt' <lschmidt@sgs-law.com>
> **Subject:** Post-Hearing Memorandum Michael Rifkin 23-053-A
> **Importance:** High
>
> **CAUTION:** This message from mrifkin1@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.
>
> **Post-Hearing Memorandum**
> From: Michael Rifkin (Protestant)
> Case Number 23-053-A
>
> To The Baltimore County Board of Appeals,

Pursuant to the instructions of the Baltimore County Board of Appeals, I am submitting my Post-Hearing Memorandum as a pdf attachment to this email.
A copy of this email with the attached Post-Hearing Memorandum was also sent to Lawrence Schmidt.

Please send a reply to this email to confirm receipt of the attached Protestant Post-Hearing Memorandum.

Thank you,
Michael Rifkin
12015 Boxer Hill Road
Cockeysville, MD 21030

CONNECT WITH BALTIMORE COUNTY



www.baltimorecountymd.gov

Tammy Zahner

From: Appeals Board <appealsboard@baltimorecountymd.gov>
Sent: Wednesday, November 1, 2023 2:50 PM
To: Alyssa Moyers
Subject: RE: In the Matter of: Kristopher and Meagan Hallengren (Case No. 23-053-A)

Received.
Thank you!

Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
Appealsboard
@baltimorecountymd.gov
(410) 887-3180
(410) 887-3182 Fax

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From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Wednesday, November 1, 2023 2:12 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>
Subject: In the Matter of: Kristopher and Meagan Hallengren (Case No. 23-053-A)

CAUTION: This message from amoyers@sgs-law.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 afternoon,

Please find the attached Memorandum In Lieu of Closing Memorandum for filing in the above referenced matter.

I will forward a copy of this email to Mr. Rifkin and Mr. Myers after 3pm.

Thanks so much,

SGS Smith Gildea & Schmidt LLC
Alyssa F. Moyers
SENIOR PARALEGAL

Smith, Gildea & Schmidt, LLC

600 Washington Avenue, Suite 200
Baltimore, MD 21204
(410) 824-1165 (Direct) ***NEW NUMBER***
(410) 821-0070 (Office)
(410) 821-0071 (Fax)
amoyers@sgs-law.com
http://secure-web.cisco.com/1h5wrBvjsLejYqY4180zqPpLTznSKK75ONSxYGWr25Erm5DOvU8_Cqb3XhIOik49yBVxKaHGiJZk6yUZNN9ku-qm4aBC05151kUq9arQcRLM5M4Mf-kwkSAuqaP1rQR8aP9M-JkO7Ue-C6PQq-Tvo7Qqdq4Rjj5i1fDk0Tc3SFnN6qb3llFVRP5-ptOaJGacFCpnVbEm7Ft_q6GSPdn5-rtoXfquLBcizKJvYZ87rNI9GsnRs1Nly7LohSdyryskLrkw6_5P9sebww94bx8hSfLm9YPTGSVeYRSqymB7bk2Uclx2qrI6kuQmZpJJdl4qNkp9Q_0c50AMMvXUfCqMNiw5kbELLe9hXuaepkhitez02rpT4KcbUsNuuIsjalpSWxqu9tYmIEEGyie3hjViVqvpuIoniPrsnihq1JbInLhcacXVNw8-xiF7/http%3A%2F%2Fwww.sgs-law.com

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RE: PETITION FOR ADMIN. VARIANCE (12014 Boxer Hill Road) 8th Election District 3rd Council District Kristopher & Meagan Hallengren Petitioners	*	BEFORE THE BALTIMORE COUNY BOARD OF APPEALS CASE NO. 23-053-A

* * * * * * * * *

POST-HEARING MEMORANDUM

I, Michael Stuart Rifkin (hereinafter "Mr. Rifkin" or "Protestant"), submit this Post-Hearing Memorandum, pursuant to the instruction of the Baltimore County Board of Appeals (hereinafter "Board") and respectfully state:

Statement of the Case

This matter comes to the Board for consideration of a Petition for Administrative Variance filed by the legal owners of the subject property, Kristopher and Meagan Hallengren (hereinafter "Petitioners" or "Hallengrens"). The Petitioners are requesting Variance relief pursuant to the Baltimore County Zoning Regulations (hereinafter "BCZR") § 400.3: To permit an accessory building with a height of 24 ft. in lieu of the permitted 15ft. On October 5, 2023, a public WebEx hearing was held in lieu of an in-person hearing. The Petitioners, represented by Lawrence E. Schmidt (hereinafter "Mr. Schmidt") appeared at the hearing. Patrick "Rick" Richardson of Richardson Engineering (hereinafter "Mr. Richardson") also appeared as a witness for the Petitioners. Also in attendance at the hearing in opposition to the variance request were the following neighborhood residents: Mr. Rifkin and Mr. Hudson Myers. Mr. Rifkin and Mr. Hudson Myers both represented themselves *Pro Se*. At the conclusion of the *de novo* hearing on October 5, 2023, the Board requested that the parties submit post-hearing memorandums on or before November 1, 2023 by 3pm.

Preliminary Statement

Mr. Rifkin and his wife Carol Rifkin (hereinafter "Rifkins") purchased their home at 12015 Boxer Hill Road on January 2, 1990, and have lived directly across the street from the subject lot for 33 years. The Rifkins state that it was the bucolic feel of the neighborhood that originally attracted them when they purchased their home. The proposed 24' x 38' 2-story garage would be located directly across the street from the Rifkin's residence. Due to the very large size of the proposed 2-story garage, it would appear that there are two dwellings on the same property and the Rifkins feel they would be substantially impacted by the proposed second story addition on the garage. Mr. Rifkin also believes that the Petitioners have not met the requirements to be granted variance relief.

Statement of Fact and Burden of Proof

Under Maryland common law "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 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) **I**t 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. Further, "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.

Finally, under Maryland law variance relief is properly denied when an owner can still make "reasonable use of his property" without the variance. *Montgomery County v. Rotwein,* 176 Md. App. 716, 732-33 (2006).

Argument

1. The Petitioners property at 12014 Boxer Hill Road is not unique.

The Court in Cromwell defined the term "uniqueness" and stated: 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 has an inherent characteristic not shared by other properties in the area, i.e., it shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstruction) or other similar restrictions. *Cromwell,* 102 Md. App. at 703-722.
(Protestant Exhibit 4 - Page 1, 55 of pdf)

The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is — in and of itself — unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property.
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. *Cromwell*, 102 Md. App. at 694-695, 651 A.2d at 426.
(Protestant Exhibit 4 - Page 1, 36 of pdf.)

Mark Tosti (1207 Providence Road) CASE NO. 2021-0272-A 12/30/2021
The Cromwell Court connected the variance law in Baltimore County with the law in Maryland and emphasized that: 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. (Protestant Exhibit 4 - Pages 1, 68-69 of pdf.)

(Cromwell) In *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:
(T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
(T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
(Protestant Exhibit 4 - Page 2, 64 of pdf)

Yoseph Orshan and Randi Orshan (3401 Overbrook Road) CASE NO:2021-0183-A 10/04/2021
Gregory Schaub and Karen Schaub (2203 Forest Ridge Road) CASE NO:2021-0162-A 10/05/2021
Id. When comparing the property at issue with other properties to determine 'uniqueness,' the terms 'area', 'neighborhood' and district have all been used interchangeably. (*Easter v. Mayor & City Council,* 195 Md. 395, 400 (1950) citing Rathkopf, Zoning, 2d Ed., p. 215); *Marino v. City of Baltimore*, 215 Md. 206, 219 (1957); *Chesley v. Annapolis*, 933 A.2d 475, 176 Md. App. 413 (Md. App., 2007).
(Protestant Exhibit 4 - Pages 3, 108, 117 of pdf)

the lots have rear yards with declining slopes; some are more sloped and some are less. This fact does not make the Property unique under *Cromwell*, *supra*.
The Court in *Cromwell, supra*, emphasized that the 'uniqueness' element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood.
(Protestant Exhibit 4 - Pages 1, 85-86 of pdf)

A) Sloping property topography is a common characteristic within the neighborhood.

- Mr. Kristopher Hallengren (hereinafter "Mr. Hallengren), testified that the location of the home and garage on the property makes his property unique. (23-053-A Video @ 1:25:02)
- Mr. Richardson also stated the location of the home and garage make the property unique.

The location of the house or other improvements on the property cannot establish the peculiar condition that supports a practical difficulty. *Cromwell*, 102 Md. App.at 710, 651 A.2d at 433-434; North, 99 Md. App. at 514, 638 A.2d at 1181.

- The topography map that Mr. Richardson presented only showed a few properties that were adjacent to the Petitioners property. (Petitioners Exhibits 2A, 2B)
- On cross examination, Mr. Richardson testified that there were other home properties shown on his topography map that also had slopping landscapes similar to the Petitioners property. (23-053-A Video 2:10:02 and 2:10:40)
    - Mr. Richardson was asked if he had any topography maps for the entire neighborhood for review during the hearing. Mr. Richardson stated that he was not being paid to look at the whole neighborhood. (23-053-A Video @ 2:34:03)
- Mr. Rifkin presented detailed topography maps, property shapes, property information, property photos, environmental information, and a zoning map showing several other neighborhood properties that had similar landscape, environmental characteristics, unusual property shape, and zoning when compared to the Petitioners property. (Protestant Exhibits 5,6,7,8,12) (23-053-A Video, started this portion of the presentation @ 2:50:49)
    - Practical Difficulties relating to sloping property, unusual lot shape, and zoning would be common to several of the other home owners within the neighborhood.

B) Heavy rain water runoff during a strong storm due to sloping property.

- Mr. Hallengren testified that when it rains hard, there is a significant amount of drainage on his property. (23-053-A Video @ 52:36, 1:27:28)
- Mr. Rifkin asked the Petitioners if they had any documentation that showed the drainage patterns for any of the other neighborhood homes. (23-053-A Video @ 1:36:38)
    - Petitioners did not present any documentation that their property was the only one in the neighborhood that experienced water drainage issues.
    - The Petitioners property is not in a floodplain. (Exhibit 2B > General Notes > #22)
- Mr. Hallengren testified that he had a leak in his basement during heavy rain storms due to the sloping property.
    - Petitioners did not show any photos, estimates, or repairs bills to address any water leak in the basement.
- No expert testimony or documentation was presented to support that the Petitioners home was the only home in the neighborhood effected by rain water runoff during a strong storm.

C) Unusual property shape is not uncommon within the neighborhood.

- Several of the properties throughout the entire neighborhood are shown to have an unusual shape. (Petitioners Exhibit 3B, 3C and Protestant Exhibit 5, 6)
    - Mr. Rifkin mentioned several times during his presentation of Protestant Exhibit 6, that many of the properties in the neighborhood are irregularly shaped. (23-053-A Video @ 3:04:15, 3:08:58, 3:11:34)

D) The change from RC-5 zoning to RC-4 zoning.

- Mr. Richardson discussed the change from RC-5 zoning to RC-4 that occurred in the Petitioners neighborhood during 2000. (23-053-A Video @ 1:50:57 to 1:55:48)
- Mr. Richardson stated the change in zoning created a practical difficulty for the Petitioners. (23-053-A Video @ 2:01:45)

- The change in zoning was applied to 1,364 acres (Petitioners Exhibit 11B) (23-053-A Video @ 1:43:55), and effected all neighborhood properties within the new RC-4 zone, not just the Petitioners property. (Protestant Exhibit 12 - Page 2)

E) "WELL PIPELINE RESERVATION"

- The "Well Pipeline Reservation" is for a well and a well line that was installed on the property by a previous owner (Property Deed).
- Petitioners Exhibits 1, 2B show a "WELL PIPELINE RESERVATION" (dashed line) that runs underneath the existing garage, driveway, retaining wall, and the new patio extension.
    - Mr. Richardson stated that he had no documentation showing where the well lines are actually located on the Petitioners property. (23-053-A Video @ 2:22:01)
- The Well Pipeline Reservation has not kept the previous and current property owners from reasonably using their property. (Petitioners Exhibit 3A,5A-L,8,9 and Protestant Exhibit 8)
    - 2-story home built on property in 1967
    - Large garage and paved driveway constructed (Garage Permit – 1992)
    - Several retaining walls and walkways installed on the property
    - Large deck and patio addition installed by the Petitioners
- The maintaining or repairing of the well line located on the Well Pipeline Reservation would be no different than all the other home owners in the neighborhood that have well lines on their property. (Petitioners Exhibit 2B > General Notes > #17)
    - Mr. Hallengren stated that he would repair any damage to Mr. Hudson Myers well and/or well line that could occur during any construction on the Hallengren's property. (23-053-A Video @ 1:37:13)
    - Mr. Richardson stated that Mr. Hudson Myers well line could be moved as needed. (23-053-A Video @ 2:29:04)

F) Forest Buffer Easement (FBE) shown on Petitioners Exhibit 2B is not an approved FBE according to the County. (23-053-A Video @ 2:06:04, 2:24:28)

G) Tightly spaced topography lines between the left/south side of the home and the garage do not make the property unique. (Identified as the left/south side by Petitioners. Video @ 16:35)

- Mr. Schmidt questioned Mr. Richardson about the very tightly spaced elevation lines shown on the topography map between the left/south side of the home and the garage. (Petitioners Exhibit 2B) (23-053-A Video @ 2:31:07)
- Mr. Richardson testified that the tightly spaced lines on the map represented a very steep drop-off in elevation and this area makes this home different. (23-053-A Video @ 2:31:54)
    - Earlier, Mr. Richardson testified that the property slope between the left/south side of the residence and the retaining wall was minimal, slowly sloping away from this side of the house. (23-053-A Video @ 2:26:22) (Petitioners Exhibit 5I)
    - Mr. Hallengen testified that it looked like a fair amount of earth was moved from the left/south side of the house when the garage was built (23-053-A Video @ 27:53), and the retaining wall on the left/south side of the home is about 5' high. (23-053-A Video @ 31:23)
    - When questioned about revisions that were made to the site plan (Petitioners Exhibit 1A), Mr. Richardson's mentioned a retaining wall (located between the left/south side of the Hallengren residence and the garage). (23-053-A Video @ 1:50:16)
- Mr. Rifkin stated the tightly spaced topography lines (steep drop-off) between the left/south side of the home and the garage was a retaining wall that was constructed at this location. (23-053-A Video @ 2:52:16) (Protestant Exhibit 5 – Page 1), see "Self-Inflicted" argument.
    - Mr. Rifkin also stated that other properties within the neighborhood have very tightly spaced topography lines during his presentation. (Protestant Exhibits 5,6) (23-053-A Video @ 2:54:34, 2:56:32, 3:07:04)

2. Some of the Petitioners Practical Difficulties were Self-Inflicted

The general rule on self-inflicted hardship is succinctly stated in 2 Rathkopf, The Law of Zoning and Planning, 48-1:
"§ 1. Hardship Caused by Affirmative Acts of Commission. (*the decision to do something)*

"Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions of the zoning ordinance, hardship arises which is capable of being relieved through the grant of a variance. The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship.
If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, i.e., that the hardship be caused *solely* through the manner of operation of the ordinance upon the particular property, is lacking.
In such case, a variance will not be granted; the hardship, arising as a result of the act of the owner or his predecessor will be regarded as having been self-created, barring relief."
This rule is simple and of general application in the several states."
(Protestant Exhibit 4 - Page 2 of pdf)

(Cromwell) In *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:
(T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
(T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
(Protestant Exhibit 4 - Page 2, 64 of pdf)

Speaking for the Court in Cromwell, supra, Judge Cathell noted:
Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. *Cromwell*, at 722.
(See Protestant Exhibit 4, Page 2 and 70 of pdf)

- The tightly spaced topography lines (steep drop-off) between the left/south side of the Hallengren's home and the garage is from a retaining wall that drops to a paved driveway, and is a self-inflicted condition from a prior owner. (Petitioners Exhibits 5F, 5G, 5H, 5I)

- Mr. Richardson testified that the land on the Petitioners property exceeded the impervious surface limit of RC-4 zoning that was implemented in 2000 (but no violations due to grandfathering), and Baltimore County would "push back hard" on any request for additional lot coverage to the property. (23-053-A Video @ 1:53:55)
    - Mr. Richardson also testified that man-made items placed on the landscape created an imperious surface. (23-053-A Video 1:53:18)

- Mr. Rifkin stated the Petitioners added a large patio and deck to the home's existing patio and deck around 2021 (Petitioners exhibit 5D > zoom in on patio surface, and Protestant Exhibit 8 – Satellite Photos). Earlier in the hearing, Mr. Rifkin asked the Protestants if there was any consideration to not build the new patio, but remove some of the existing patio and deck to create space for a home addition? (23-053-A Video @ 1:29:25)
    - Mr. Schmidt asked Mr. Hallengren questions about the impervious nature of the new patio and deck (23-053-A Video @ 3:42:12), instead of asking their witness Mr. Richardson, who completed the impervious surface survey on the Petitioner's property. (Petitioners Exhibit 2B > General Notes > #24)
    - No documentation, construction plans, or surveys stating the impervious surface characteristics of the new patio addition were presented by the Petitioners.

3. The Petitioners Practical Difficulty for Variance Relief Is Not Substantial and Urgent.

"the 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.

- The Petitioners testified that the practical difficulty that necessitated a variance was the need for more storage, an office, and a gym (see Protestant Exhibit 1, Pg. 2, Affidavit) and when questioned by the Board, added that they also needed space in the garage for 2 future vehicles for their children (ages 12 and 15) to park. (23-053-A Video @ 1:41:33)
    - The Petitioners testified they own 2 cars, and have only parked 2 vehicles in the 4-car garage since ownership of this residence. (23-053-A Video @ 50:19, 1:41:23)
- Mr. Rifkin stated during the hearing that he believed the need for the additional storage, recreation, and a home gym is not urgent, rather they are for the convenience of the Petitioners. (23-053-A Video @ 2:41:18, 2:43:03)

4. The Petitioners Can Still Make Reasonable Use of Their Property Without A Variance.

Where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue hardship" standard. In order to justify the grant of an area variance the applicant need show only that:

"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, 787 (1973), quoting 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972).

under Maryland law, variance relief is properly denied when an owner can still make reasonable use of their property without a variance (*Montgomery County v. Rotwein,* 176 Md. App. 716, 732-33 (2006).

A) Recent home improvements completed by the Petitioners.

- Petitioners have recently added a large deck and patio to the home's existing deck and patio in 2021. (Petitioners Exhibit 5D and Protestant Exhibit 8 – Page 1) (23-053-A Video @ 1:29:25, 3:18:32)

B) Home addition and attached garage discussions.

- The Petitioners and Mr. Richardson were questioned by Mr. Schmidt, the Protestant, and the Board about several possibilities of adding a home addition to their existing dwelling, or attaching the garage to their existing dwelling so that no variance relief would be needed. Mr. Hallengren and Mr. Richardson both stated "anything is possible" and also spoke about cost being an issue. (23-053-A Video @ 56:01, 57:28, 1:06:40, 1:33:41, 1:35:17, 2:15:31)

"Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program."
(See Protestant Exhibit 3 *Cromwell v Ward*, Page 30 of pdf)

- Mr. Hallengren testified that a setback variance would be needed for a home addition, but he never stated the details of the home addition that would necessitate a setback variance. (23-053-A Video @ 55:00 and @ 1:33:25)
    - See Petitioners Exhibit 1 (dwelling to property line distances) and Petitioners Exhibit 1 > General Notes > #16, and Protestant Exhibit 12 – Page 1 (RC-4 Setback distance from property lines)
- Mr. Schmidt asked Mr. Rifkin, *"If the Hallengrens put an addition on their home, depending on where that addition went, would it not make that home go closer to the adjacent property lines"*. Mr. Rifkin answered *"No."* (23-053-A Video @ 3:32:20), based on an option that was previously discussed during the hearing.
    - Option to construct a second level/story, that would be added on top of the home's 1-level portion on the right side of the dwelling. (23-053-A Video @ 1:33:00) (Petitioners Exhibits 5C, 5K and Protestants Exhibit 8 > Page 1 > Photo at top left)
- Mr. Rifkin stated if an addition was constructed onto the dwelling, no variance would be needed since a home addition would be within the zoning setbacks. (23-053-A Video @ 3:32:49) (Petitioners Exhibit 1 > General Notes > #16, and Protestant Exhibit 12 – Page 1)
    - Mr. Rifkin also stated that he would have no opposition to a home addition that was constructed onto the dwelling because it would still look like one home.
- Mr. Richardson was asked if there was any documentation received by the Hallengrens stating an addition could not be built due to watershed issues. (23-053-A Video @ 2:15:50)
    - Mr. Richardson testified he was not aware of any. (23-053-A Video @ 2:16:07)
- Mr. Rifkin presented photos that identified other areas in the rear portion of the Hallengrens property that could be used to construct another accessory structure.

  (Protestant Exhibit 8 - Page 1 Flat Area and Page 2) (23-053-A Video @ 3:19:31)

5. The Proposed 2-Story Accessory Structure Would Not Be Compatible with The Neighborhood

A) Proposed 2-story garage compared to other accessory structures in the neighborhood.

- Petitioners presented photos of other properties with accessory structures they felt exceeded the 15-foot limit and represented compatibility with the neighborhood. (Petitioners Exhibit 10A thru 10F) **Note: Petitioners Exhibit 10B, and 10C show the incorrect home address.**
    - Mr. Hallengren testified the accessory structure shown on Petitioners Exhibit 10A (12207 Boxer Hill Rd) is "actually a horse farm". (23-053-A Video @ 47:10)
    - Mr. Hallengren described the accessory structure on Petitioners Exhibit 10B (**12120 Boxer Hill Rd***) as a "barn type structure". (23-053-A Video @ 47:56)

    *** = This is the correct address for the property and home shown in Petitioners Exhibit 10B.**

    - Mr. Hallengren did state he was not sure if the address shown in Petitioners Exhibit 10C was correct. (23-053-A Video @ 48:36)
- Mr. Rifkin asked the Petitioners if they knew what the acreage was for the properties with the comparable accessory structures (23-053-A Video @ 1:20:27), and what zoning variance was used to construct the accessory structures. (23-053-A Video @ 1:22:33)
    - Mr. Rifkin asked if they had the zoning variance information for 1013 Painters Ln.
- Petitioners testified that they did not have information for the zoning variance that was granted for the property shown on Petitioners Exhibits 10E (23-053-A Video @ 1:22:58).
- The Board asked Mr. Richardson if he had variance information for any of the buildings shown by the Petitioners that exceeded 15 feet. (23-053-A Video @ 2:27:28) (Petitioners Exhibit 10A-F)
    - Mr. Richardson stated that he hadn't looked to see if any of those properties had variances or how they were obtained. (23-053-A Video @ 2:28:19)

- Mr. Rifkin asked the Petitioners if there was a zoning regulation that allowed a taller height if the accessory structure is identified as a barn. (23-053-A Video @ 1:21:41)
    - Mr. Hallengren testified he was not aware of any regulation.
- Mr. Rifkin later stated that BCZR does allow a barn to exceed the 15 feet height limit for an accessory structure. (23-053-A Video @ 3:23:45), (BCZR § 300.1. – Applicability)

B) Proposed 2-story garage compared to other homes within the neighborhood.

- Mr. Rifkin presented an "above ground level" square footage comparison of the proposed 2-story accessory structure vs the Petitioners dwelling. (Protestant Exhibit 10)
- The square footage shown for the proposed accessory structure on Exhibit 10 was based on a 2-story structure with a footprint of 24 feet x 38 feet (24 x 38 = 912 x 2 = 1824).
- Mr. Rifkin testified that Exhibit 10 also compared the square footage of the proposed 2-story garage with all the other home sizes on Boxer Hill Rd, as well as the home sizes for entire neighborhood.
    - Mr. Rifkin stated a 2- story accessory structure constructed in the same location as the existing 1-story garage would "*look like*" two dwellings on the same property. Mr. Rifkin felt this situation would not be compatible with the neighborhood and would be an injustice to him. (Protestant Exhibit 10) (23-053-A Video @ 3:24:49)

C) Shielding a zoning violation from view is not an acceptable compromise by the Protestant.

- The Petitioners presented several photos of trees and bushes shielding the existing garage from view. (Petitioners Exhibit 6A thru 6K)
- Mr. Rifkin asked the Petitioners if they knew of any BCZR that states if you shield a zoning violation from view, it would make that acceptable. (23-053-A Video @ 1:20:02)
    - Mr. Hallengren replied that he was not aware of any. (23-053-A Video @ 1:20:13)

D) Letters of Support for the Petitioners

- The Petitioners presented letters from several of their neighbors who do not object to the requested variance.
- The Rifkins *do* oppose the requested variance, and they live right across the street from the Hallengrens. The Rifkins feel that they would be substantially impacted by the proposed second story addition on the garage.

"citizens [like the Rifkins] are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds, supra.*

6. Petitioners failed to meet the Burden of Proof to be Granted a Variance.

The burden is on the applicant to show facts to warrant a variance. *Easter v. Mayor and City Council of Baltimore,* 195 Md. 395, 400, 73 A.2d 491 (1950).

"The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood. *Rathkopf, Zoning,* (2d Ed.), p. 215; *Levy v. Board of Standards and Appeals*, 267 N.Y. 347, 196 N.E. 284." Protestant Exhibit 4, *Easter vs City of Baltimore*, Bookmark #2.

Throughout the hearing, the Petitioners made several statements with regards to why they could not construct an addition to the home, or attach the garage to their home.

The Petitioners:

- Spoke of contractor visits to discuss possible home additions.
- Used phrases like "damaged" and "destroyed" to describe the issues that could result from any home addition and/or attached garage options.
- Spoke about the several modifications that would be needed to complete a home addition.
- Spoke about existing home issues that would complicate any home additions.
- Spoke about difficult floor plan layouts and height restrictions within the home.
- Spoke about setback variances without any details as to why they would be needed.
- Spoke about "cost" several times.
- Spoke about the lack of storage space.

The Petitioners did not present any interior home photos or interior garage photos, blueprints, floor plans, wall elevations, official documentation, repair bills, contractor bids, estimates, or storm water drainage surveys, that would help support their claims.

Conclusion

In closing, Mr. Rifkin feels that he has presented sufficient evidence that shows the Hallengrens property was not peculiar, unusual, or unique when compared to other properties in the neighborhood, such that the ordinance's height restriction impact upon the Hallengrens property would be different than the restriction's impact upon neighboring properties. In essence, it would be the same. 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 (*Cromwell*, 102 Md. App. at 694-695, 651 A.2d at 426).

Mr. Rifkin also believes the Hallengrens can make reasonable use of their property without a variance. And under Maryland law, variance relief is properly denied when an owner can still make reasonable use of their property without a variance (*Montgomery County v. Rotwein*, 176 Md. App. 716, 732-33 (2006). And as property owners directly across the street from the Hallengrens, the proposed second story addition to the 24' x 38' existing garage would have substantial impact on the Rifkins.

The Rifkins respectfully request that the Baltimore County Board of Appeals affirms the decision of the Managing Administrative Law Judge Paul M. Mayhew and **deny** the variance request of the Petitioners.

Respectfully submitted,



Michael Rifkin
12015 Boxer Hill Road
Cockeysville, MD 21030

CC: Lawrence E. Schmidt
November 1, 2023 @ approx. 3:00pm
lschmidt@sgs-law.com

IN THE MATTER OF:	*	BEFORE THE
KRISTOPHER and MEAGAN HALLENGREN *Petitioners/Legal Owners*	*	BOARD OF APPEALS FOR
12014 BOXER HILL ROAD	*	BALTIMORE COUNTY
8th Election District 3rd Councilmanic District	*	**Case No.: 2023-053-A**
	*	

* *

MEMORANDUM IN LIEU OF CLOSING ARGUMENT

This matter comes before the Board as an appeal of the decision of Administrative Law Judge ("ALJ") Paul M. Mayhew dated May 22, 2023, which denied a Petition for Variance filed by Kristopher Hallengren and Meagan Hallengren, his wife, ("Petitioners"). Mr. and Mrs. Hallengren are owners of the subject property, known as 12014 Boxer Hill Road (the "Property"). The Petition for Variance requested relief from BCZR §400.3 to permit a replacement accessory building (garage) with a height of 24 feet, in lieu of the maximum permitted height of 15 feet.

As noted above, the Petition initially came in for public hearing before ALJ Mayhew. At the hearing, the Petitioners were not represented by counsel. After ALJ Mayhew's decision denying the petition was issued, the Petitioners retained the undesigned counsel and instituted this appeal to the Board. The Board's hearing was conducted on a single day, on October 5, 2023. In addition to the Petitioners and their counsel, Patrick Richardson, P.E. appeared before the Board and testified in support of the request. Appearing in opposition to the request was a neighbor, Mike Rifkin. Also present was a second neighbor, Hudson Myers. Mr. Myers chief concern appeared to

be about the impact of the proposed garage upon an easement on the Property for his well and water line and any precedent that a grant of the variance may establish.

Following the conclusion of the hearing and at the request of the parties and consent of the Board, the submittal of post hearing memorandum was agreed to; and this memorandum, on Petitioners' behalf, follows.

Statement of Facts

Most of the relevant facts are undisputed. The Property is 1.630 acres in area, zoned RC 4. It is located on Boxer Hill Road (near the intersection of Padonia Road and Falls Road) in the Cockeysville community of Baltimore County. The Property is improved with a detached single-family dwelling which is 1,936 square feet in area and was constructed in 1967 (see Petitioners' Ex. No. 9). In addition to the dwelling, there is an existing garage which is 38 feet by 24 feet in dimension and is fifteen feet in height. This garage and driveway leading to it was constructed in 1992 (see Petitioners' Ex. No. 8). It is this garage which is proposed to be replaced and the new building will be 24 feet in height. The "new" garage will be on the identical footprint as the existing garage. Thus, it will have no larger footprint than the building that has been on the Property for over 30 years. In addition to the dwelling and garage, there is also a small storage shed in the rear yard of the Property. Access to the Property is via a fairly long asphalt driveway which leads from Boxer Hill Road and then circles the garage. There were a series of photographs that were submitted at the hearing that depict the Property and the improvements thereon, including the significant amount of vegetation and landscaping that buffers the view of the improvements (and most significantly the garage) from adjacent properties and the public street. (Petitioners' Ex. No. 5 and 6) There are no public facilities (water and sewer) in the area and therefore the Property also includes a well and septic system.

The Zoning history of the Property

Although its significance will be discussed in detail hereinafter, the zoning history of the Property is important to the legal issue presented. Beginning with the creation /adoption of the RC zones in the 1970's, the Property was zoned RC 5. However, as part of Issue 3-108 in the 2000 Comprehensive Zoning Map Process ("CZMP"), the Property's zoning was changed to RC 4. (See Petitioners' Ex. 11). There has been no change to the Property's zoning classification since the 2000 CZMP and that remains the zoning classification at the present time.

The Protestant's Positions

At the hearing, the Petitioners presented some 12 letters of support from neighbors expressing the view that they support the request and do not object to the granting of the variance and the proposed garage. (Petitioners' Ex. 7A-7M). Insofar as the two neighbors who appeared, i.e., Mr. Myers and Mr. Rifkin, a review of their objections is instructive.

As noted above, Mr. Myers concerns are two-fold, namely, any potential impact on his well and any adverse precedent established by the granting of a variance. In somewhat of a unique circumstance, the well serving the Myers house is located on the subject Property. Water from that well is pumped to the Myers house via a water line that is located immediately next to the Petitioners' garage and extends across the Property to the Myers lot. The actual location of the water line (mere feet from the garage) is shown by the blue line drawn on a photograph submitted as Petitioners' Ex. 5N. Indeed, the location of this water line prohibits the expansion of the footprint of the garage towards the rear of the Property as it would interfere with the waterline. Thus, any expansion of the garage must be "up" and not "out", due to the location of this line. Moreover, there is an easement recorded in the Land Records of Baltimore County firmly establishing the

Myers' legal rights to the water line and well on the Property.[1] The granting of the variance and the proposal for a variance will not impact the Myers' waterline and well and their rights to that continued use will not be affected. The Petitioners testified that they do not intend to impact the Myers well and waterline and will continue to respect and abide by the terms of the easement. As to the precedential impact of granting relief in this case, it is well established under law that variances are considered on a case-by-case basis and the mere fact that one property owner is entitled to variance relief does not mean that his/her neighbors are. Moreover, decisions of the Board are not legal precedent, per se, as they are not reported decisions of Maryland's appellate courts. Simply stated, this fear of establishing a precedent is not a valid concern, under law. Significantly, Mr. Myers offered no testimony that the proposal would adversely affect him or his property. To the contrary, he testified that he cannot see the garage from his home, owing to the location of the intervening house and the grades/vegetation.

As for Mr. Rifkin, the reasons for his opposition are difficult to ascertain. Unlike most every neighbor who appears before the Board in opposition to a zoning variance, he expressed no real practical objection to the relief. He acknowledged that given the grade and vegetation, his view of the garage is extremely limited and thus there is no visibility concern. Indeed, the fact that there is already a garage in the same location belies any reasonable objection from a visibility standpoint. He further expressed no concern over the proposed use of the garage, or other objections based upon odor, noise, lights etc. or similar impacts that are often expressed by

[1] Attached hereto as Exhibit I is the deed (Liber 3172, Page 474, 6/8/57) establishing the easement. A second deed (Exhibit II) is also attached (Liber 33945, Page 034, 7/3/2013) which reinforces the easement and is executed by Mr. & Mrs. Hallengren. These deeds were submitted to the Board after the hearing at the Board's request. In the interest of completeness, undersigned also submitted a drawing. This drawing (which was not attached to either deed and is not in the Land Records) was obtained by Petitioner's engineer from the Dept. of Environmental Protection and Sustainability (Groundwater Division). The Petitioners and their consultants believe that the drawing (unsealed and unsigned) is inaccurate as the correct location of the easement and the physical improvements (well/waterline) were field located by Mr. Richardson and are accurately shown on the site plans submitted at the hearing. As such, the Board may properly disregard it.

neighbors in a variance case of this type. His sole objection that is based upon the practical impact of the garage was that it would be inconsistent with the pattern of development in the area and would be "too large." But this objection has little merit, given the large size of the Property, the fact that a garage is already located on this same footprint and that the "expansion" is a mere nine feet. Most importantly, photographs of the neighborhood (Petitioners' Ex. No. 10) show that there are large houses and accessory structures and garages (some attached to the dwelling and others not) in the area. Respectfully, any suggestion that the proposed garage is "out of scale" or "overwhelms" the Property and/or neighborhood is simply not credible.

Instead, Mr. Rifkin's objections are nearly entirely based upon the legal merit of the case and his interpretation of the relevant standard of law. In the end, the Board will make that judgment and although admittedly any witness can offer his/her thoughts on that issue, Mr. Rifkin is neither a lawyer, an engineer/surveyor nor a qualified expert witness with knowledge of the Baltimore County Zoning Regulations and the law.[2] Indeed, the Board's Rules of Practice and Procedure recognize the distinction between expert testimony and that of a lay person. Inexplicably, Mr. Rifkin's exhibits were primarily forms and information sheets published by the County Zoning Office for use by applicants and as background information regarding the variance process. Most respectfully, Mr. Rifkin's lecture to the Board enunciating his legal interpretations of BCZR §307 and *Cromwell v. Ward* 102 Md. App. 691 (1995) is presumptuous.

The Legal Standard for Variance

The Board has considered so many appeals regarding zoning variances that this memorandum need not dwell upon the legal standard to be applied. Briefly stated, the Court in the seminal *Cromwell* case held that BCZR §307 imposes a two-part test that a petitioner need satisfy

[2] During cross examination, Mr. Rifkin testified that he is now retired from employment and that his primary career was working for a clothier (Jos. A. Banks).

in order for a requested variance to be granted. First, a petitioner needs to prove that the property at issue is unique; and that such uniqueness drives the need for variance. Upon a showing of uniqueness, the second prong of required proof comes into play; to wit, that a petitioner must demonstrate that a "practical difficulty" would result if the variance were denied.

The uniqueness must relate to the property at issue, not the petitioner's personal circumstances. Most often, the uniqueness arises due to a physical characteristic of the land at issue, such as its shape, size, topography, configuration, environmental characteristics, etc. Further, as noted above, this uniqueness must drive the need for the variance. As to practical difficulty, the term has generally been defined as the circumstance where the property owner would be deprived of a reasonable and permitted use of his/her property commonly enjoyed by others if the variance were denied.

The appellate courts of this State have stated, in *Cromwell* and its progeny, that variances are to be granted sparingly and only if the two tests are met. But this does not mean that zoning variances should never be granted. If they were always to be denied, then BCZR §307 would be superfluous and without meaning. Why would Baltimore County enact such a regulation if the authority thereunder could never be exercised? Since *Cromwell*, the appellate courts of Maryland have affirmed the grant of zoning variances when the two-pronged test has been satisfied (See e.g. *Dan's Mt. Wind Force, LLC v. Allegany Cty. Bd. of Zoning Appeals* 236 Md. App. 483 (2018))

The subject property is unique

If ever there was a property that was unique for zoning variance purposes, then the Hallengren property so qualifies. From a purely physical standpoint, the Property is unique in multiple facets. First, its size. The Property is 1.63 acres. By contrast, the Rifkin property is just over one acre in area. The Myers property is 1.85 acres. The Chapin property (which is to the side

and rear of the Property and whose home was built in 1991 via a subdivision of the Hallengren lot) is 4.1 acres. "Unique" means "one of a kind" and, in a zoning context, highly unusual. This is not a cookie cutter residential subdivision where all of the lots are sized the same. Each is different and, daresay, none of the other lots in the area are 1.63 acres as is the Hallengren lot.

Second, the Property has a unique configuration. It is not square nor rectangular. Its' shape is not geometrical. Again, it possesses a shape unlike any other lot nearby. Third, and perhaps most importantly, the Property has a unique grade. It is highly sloped. Mr. Rifkin argues that all of the lots in the neighborhood are sloped and thus the Property is not unique. But that is a false comparison. Indeed, all of the lots have slopes and most certainly this area of Baltimore County is not like the eastern shore of Maryland, where all lots share the identical character of flatness. But although all lots in the area have slopes, the Property's slope is more severe than elsewhere (particularly where the house is situated) and unique when compared to other nearby lots. Here, the Property slopes not only front (roadside) to rear, but also side to side. When facing the lot from Boxer Hill Road, the Property slopes right to left. Indeed, as demonstrated at the hearing, the house sits much higher (15+ feet) than the garage, in fact, evidence was presented that the first floor of the house is at the same level as is the peak of the existing garage. The severity of the slope is at its' greatest at the most impactful location; namely, between the house and the garage. The topographical lines on the site plan (Petitioners' Ex. 2B) clearly demonstrate that the grade change is most severe immediately adjacent to the garage. The house and the garage are within close proximity. A retaining wall exists between the house and the garage evidencing the significant grade change between the garage and the house as the access to the garage sits below the house's basement level. This factor makes it impossible to attach the garage to the house. The severity of the slope also limits the access point to the garage to its' existing location. That is, the driveway

cannot be re-located or reconfigured. Due to all of these physical characteristics, the Petitioner cannot build "out" (i.e. expand the footprint of the garage) but must go "up" (build taller than the fifteen foot height limit/current height) in order to obtain additional usable space. These unique factors drive the need for the variance.

In addition to these physical characteristics of the land itself, there are other factors that make the Property unique and satisfy the first prong of the variance standard. In *Cromwell,* the Court noted that other factors associated with a property other than the physical character of the land can constitute uniqueness. For example, the Court held that "historical significance" can be an attribute of a property that can render it unique. (*Cromwell*, infra. pg. 711, citing *North v. St. Mary's County,* 99 Md. App. 502 (1994) at pg. 512). Protections and limitations on a property afforded by statutes designed to preserve and protect a site's historic value and context can constitute uniqueness. In this case, a number of limitations on the Property imposed under the County's zoning ordinance and similar regulations causes the Property to be unique.

First, as noted above, at the time the Property was built out (1967 for the house/shed and 1992 for the garage and current driveway) the Property was zoned RC 5. The RC 5 zone imposes no limitation on the amount of impermeable surface on a lot, rather, it only limits the amount of buildings that can cover a lot to 15% of the area of the lot (See BCZR 1A04.3.B.3) The Property was/is compliant with that standard. However, the Property's zoning was changed in 2000 to RC 4, and thus the RC 4 regulations govern any future building and development of the Property. Under the RC 4 regulations (See BCZR 1A03.4.B.3) "impermeable surface" is limited to 10% of the area of the lot. This restriction is at the very essence of the purpose of the RC 4 zone, which was adopted to provide a zone which protects the reservoirs and drinking water provided to the Baltimore Metropolitan area. As shown on the site plan (Petitioners' Ex. 2B, Note 24), the Property

is currently at 18% impermeable surface, including the house, garage, shed and driveway. Thus, although the Property is grandfathered to its current impermeable area, that area cannot be further increased as such would be in violation of that limitation. The height limitation imposed for accessory structures under BCZR §400 pales in comparison to the importance of the impermeable surface regulation when the underlying purpose of the RC 4 zone is considered. Thus, the Petitioners cannot enlarge the square footage of the garage or the existing house and expand the impermeable area. They must build "up" and not "out" in order to achieve more living area. In addition to the RC 4 limitations within the BCZR, other zoning regulations restrict the Petitioners and render the Property unique. For example, BCZR §400 limits any accessory structure (i.e. the garage) to the rear yard only and it cannot be located in the front or side yard. Where situated, the garage is just inside demarcation of the rear yard and thus expansion towards the street (i.e., into the side and front yard) is impermissible.

Mr. Myers' well and water line also constitutes a unique attribute of the Property. County regulation requires a minimum setback to the well and although the current garage is non-compliant (yet grandfathered) with that requirement, enlargement of the garage in that direction (towards the side property line) is not possible. Additionally, the water line leading from the Myers' well towards their property is immediately "behind" the garage; thereby prohibiting construction and disturbance to that line. As noted above, the Petitioners will respect the Myers' easement and not impact the Myers' well or waterline. As to the well serving the Petitioners' dwelling, the waterline from their well extends immediately across the front of the garage, thereby preventing expansion of the footprint of the garage in that direction.

Lastly, an off-site stream creates a "forest buffer" onto the Property in which disturbance and building is prohibited. This further reduces the available building area within the Property.

Thus, Mr. Rifkin's assertions notwithstanding, any garage on the Property must be located precisely where it is and expansion of its footprint or a re-location of the garage elsewhere is simply not possible. Collectively, the physical characteristics of the Property (size, shape, slope) and the limitations on the Property occasioned by the County's zoning and building ordinances clearly renders the Property unique in a zoning variance context.

The Petitioners would suffer a practical difficulty if the variance was denied

As noted above, the second prong necessary to obtain a variance is a finding that the applicant would suffer a practical difficulty if relief were denied.[3]

Practical difficulty has been defined as:

1) Whether compliance with the strict letter of the restrictions governing area, set backs, 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. (See *McLean v. Soley* 270 Md. 208 (1973), *Red Roof Inns v. People's Counsel for Balto. Co.* 96 Md. App. 219 (1993), *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County* 407 Md. 53 (2004))

In this case, the Petitioner testified that they proposed the new/higher garage to replace a existing garage that is in a state of disrepair and in order to obtain additional living area. The first floor of the garage will be used as the existing garage is used now (storage) and the second floor will provide needed living space. The existing garage is over 30 years old and in poor condition. Additionally, given their growing family (two children, a teen and pre-teen), additional living space is needed. The Petitioners noted that their house is of modest size. Mr.

[3] BCZR § 307 actually states that the test requires a finding of "practical difficulty **or** unreasonable hardship". (emphasis added). Numerous appellate decisions (including *Cromwell*) have established that practical difficulty is applicable in an area variance case as it is the "lesser" standard.

Hallengren, in particular, desires space to allow for home gym equipment and adult office space. By occupation, he is a forensic accounting and economics expert and serves as an expert witness in many court cases, testifying in divorce and business dissolution cases about economic damages, business valuations and the like. Although his company maintains an office outside the home, he indicated that he often comes home from days in court and appreciates a space where he might prepare for the next day's testimony, attend to household matters (pay bills, review mail, etc.) and generally have a quiet area. It is further anticipated that Mrs. Hallengren, a teacher, might prepare lesson plans for her next day classes in this area. With two active children, an area within the garage is desirable for such activities.

Moreover, Mr. Hallengren testified that the gym/fitness center that he frequented closed during the Covid-19 crisis and he thus plans to use the garage area for a "workout room." The garage will not have bathroom nor kitchen facilities. It is not proposed for use as an in-law apartment or additional bedroom. It will not provide separate living quarters. It will not be a Home Office (as defined and regulated by the BCZR) as both Mr. and Mrs. Hallengren work in offices outside the home. The first floor of the garage will be used to store automobiles and other household items (lawn mower, snow blower, deck and outdoor furniture, etc.) and the second floor will have the den/office space and workout area. Thus, a second story for the garage (with a height of 24 feet) mandates the need for the variance.

As described within the discussion above, the Petitioners explored other options to obtain additional living space. As with the garage, building an addition to the house is not feasible. The same factors described as prohibiting a garage expansion "out" apply to the house too. The grade/slope change prohibits such expansion. So too does the impermeable surface limitation within the RC 4 zoning regulations. Additionally (and particularly applicable to a possible

expansion of the house on the Myers side of the dwelling) any addition to the dwelling is impractical, create additional impermeable surface and would destroy the architectural theme and functionality of the house. It would cause such addition to be accessible only by going through a bedroom and is simply impractical. Similarly, attaching the garage to the house via a breezeway is not possible. Under such a scenario, the garage would become part of the house and thus not subject to the height limitations for accessory structures in BCZR §400. But this option is not feasible given the differences in grade (any breezeway would be an elevated structure leading into the second floor of the garage) and would compromise the architectural function and aesthetics of the dwelling. In sum, the sole option to provide additional living space is to add a second floor to the garage. There was no testimony or evidence presented in this case that contradicts the Petitioners position in this regard.

Clearly, the Petitioners satisfy the "practical difficulty" standard. The use of the second story of the garage (for which the variance is requested) is to accommodate a permitted purpose under the RC 4 regulations. The extent of the variance is minor and is the minimum required. The proposed second floor will be of a reasonable and typical height with other structures in the neighborhood. As shown on the elevation drawing for the garage (Petitioners Ex. 4), it will have a roof pitch and architectural style consistent and matching the dwelling. The garage will "fit" within the lot and character of the neighborhood. Most importantly, given the grade of the Property the garage will sit lower than the public street and most of the surrounding lots. Its impact on the neighborhood will be minimal. The proposal is consistent with the character of the neighborhood and will be consistent with the spirit and intent of the RC 4 zoning classification.

Conclusion

In sum, although it is acknowledged that zoning variances are not favored and are to be sparingly granted, the facts and circumstances presented in this matter are compelling to a conclusion that the variance should be granted. From a practical standpoint, it is difficult to fathom the opposition, as the impact of the additional nine feet in height above the limitation imposed by BCZR §400 is minimal. Moreover, the garage exists, the proposal is not a new building. It has been there for over thirty years. Finally, more to the point, this is one of those rare cases where the evidence presented clearly satisfies the variance standard at law. The Property is indisputably unique, based upon both the physical features of the land, the Myers well/waterline easement and the constraints imposed on the property by the BCZR and environmental regulations. As to the practical difficulty requirement, that too is satisfied as the Petitioners seek only the opportunity to use the Property for a permitted purpose. The request is entirely reasonable and appropriate under the circumstances and the variance should therefore be granted.

Respectfully submitted,



LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **1st** day of **November, 2023,** a copy of the foregoing Memorandum in Lieu of Closing Argument was emailed to:

Michael Rifkin, mrifkin1@verizon.net

Hudson Myers, Huddyman@verizon.net



LAWRENCE E. SCHMIDT

THIS DEED, Made this 6th day of June, in the year one thousand nine hundred and fifty-seven, between Howard D. English and Ethel C. English, his wife, of the County of Baltimore, in the State of Maryland, of the first part, Grantors and Edward T. Ormsby and Fern N. Ormsby, his wife, of the County of Baltimore, in the State of Maryland, of the second part, Grantees.

WITNESSETH, that in consideration of the sum of Five Dollars, and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Howard D. English and Ethel C. English, his wife, do grant and convey unto the said Edward T. Ormsby and Fern N. Ormsby, his wife, as tenants by the entireties, their assigns, the survivor of them and the survivor's heirs and assigns, in fee simple, all that lot of ground situate, lying and being in Baltimore County, State of Maryland, aforesaid, and described as follows, that is to say:-

BEGINNING for the same at a pipe set on the east side of a 16.5 foot road, known as Boxer Hill Road, and in the second line of a parcel of land which by a deed dated May 26, 1947 and recorded among the Land Records of Baltimore County in Liber J.W.B. No. 1569 folio 43 was conveyed by Elizabeth Swem to Howard D. English and wife, said pipe being distant South 1 degree 22 minutes West 377.20 feet measured along said second line from the beginning thereof and running thence with and binding on a part of said second line and binding on the east side of Boxer Hill Road, South 1 degree 22 minutes West 323.30 feet to the beginning of a parcel of land which by a deed dated October 27, 1947 and recorded among the Land Records of Baltimore County in Liber J.W.B. No. 1610 folio 177 was conveyed by Howard D. English and wife to Raymond R. Butler and wife thence leaving said road and binding reversely on the last and fourth lines of said last mentioned parcel of land the two following courses and distances viz: North 85 degrees 26 minutes West 470.20 feet and North 39 degrees 22 minutes West 382.60 feet to the beginning of the last line of the aforesaid parcel of land which was conveyed by Swem to English, thence running with and binding on a part of said last line North 54 degrees 54 minutes/544198 feet to a pipe and thence leaving said outline and running for a line of division South 64 degrees 31 minutes East, binding in or near the center of a rose hedge there situate, 483.95 feet to the place of beginning.

Containing 5.82 Acres of land more or less.

BEING a part of the parcel of land which by a deed dated May 26, 1947 and recorded among the Land Records of Baltimore County in Liber J.W.B. No. 1569 folio 43 was conveyed by Elizabeth Swem to Howard D. English and wife.

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lot of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Edward T. Ormsby and Fern N. Ormsby, his

STATE OF MARYLAND RECORDATION TAX JUN 17 '57 $7.15

EXHIBIT I

wife, as tenants by the entireties, their assigns, the survivor of them and the survivor's heirs and assigns, in fee simple, subject to and together with the right and use thereof in common with others entitled thereto of the above mentioned Boxer Hill Road which road leads through and from the herein described property in a southerly and easterly direction to Broadway Road.

Subject to the reservation by the grantors herein, their heirs and assigns of the use of a well located on the herein described parcel of land and the right to use and maintain a pipe line leading from said well to the dwelling located on other property of said Grantors herein adjoining the herein described parcel to the North the center of said pipe line being described as follows to wit:

BEGINNING for the same at a point in the last line of the herein described parcel of land distant North 64 degrees 31 minutes West 209.8 feet measured reversely along said last line from the end thereof and running thence for the center of said pipe line the two following courses and distances viz: South 22 degrees 39 minutes West 34 feet and South 10 degrees 09 minutes West 200.3 feet to the center of the aforesaid well.

AND the said parties of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property granted; and that they will execute such further assurances of the same as may be requisite.

WITNESS the hands and seals of the said Grantors the day and year first above written.

TEST:

E. Scott Moore

Howard D. English (SEAL)
Howard D. English

Ethel C. English (SEAL)
Ethel C. English

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, That on this 9th day of June, in the year one thousand nine hundred and fifty seven, before me, the subscriber, a Notary Public of of the State of Maryland, in and for the County of Baltimore, aforesaid, personally appeared Howard D. English and Ethel C. English, the above named Grantors, and they acknowledged the foregoing Deed to be their act.

ORMSBY S. MOORE NOTARY PUBLIC BALTIMORE CO. MD.

Ormsby S. Moore
NOTARY PUBLIC

Rec'd for Record JUN 11 1957 at 2 P.M.
Per George L. Byerly, Clerk,
Mailed to E. Scott Moore

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33945, p. 0034, MSA_CE62_33801. Date available 07/30/2013. Printed 10/23/2023.

NAME CORRECTION DEED BETWEEN HUSBAND AND WIFE

Lawyers Express Title, LLC
File No. **13-2247**
Tax ID # **08 22-00-001446**

This Deed, made this 3rd day of July, 2013, by and between **Kristopher R. Hallengren** and **Meagan R. Hallengren,** GRANTORS, and **Kristopher R. Hallengren** and **Meagan S. Hallengren, also known of record as Meagan R. Hallengren**, GRANTEES.

Witnesseth –

That in consideration of the sum of NO ACTUAL CONSIDERATION 00/100 ($0.00), which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt of which is hereby acknowledged, the said Grantor does hereby grant and convey to the said Grantees, 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 City of Cockeysville, County of Baltimore, State of Maryland and described as follows, that is to say:

BEGINNING FOR THE SAME at a point situated on the East side of a 16.50 foot road, known as Boxer Hill Road, said point being at the end of the first or South 1 Degree 22' West 302.20 foot line of a deed dated April 30, 1980, and recorded among the Land Records of Baltimore County in Liber 6160, folio 494, said point also being at the beginning of the first or South 01 Degree 22' West 323.30 foot line of a deed dated February 21, 1967 and recorded among the Land Records of Baltimore County in Liber 4727, folio 523; thence leaving said point and running with and binding on the Eastside of Boxer Hill Road and the first line of the last mentioned deed dated February 21, 1967, as now surveyed; South 02 Degrees 51' 06" West 165.00 feet to a point; thence leaving said East side and running for new lines of division over, across and through the aforesaid deed dated February 21, 1967, the following five (5) course and distances; North 59 Degrees 21 Minutes 13" West 42.94 feet to a point; thence North 87 Degrees 06' 44" West 180.00 feet to a point; thence South 56 Degrees 50' 33" West 19.95 feet to a point; thence North 51 Degrees 35' 42" West 170.68 feet to a point; thence North 26 Degrees 58' 06" East 204. 74 feet to a point intersecting the second or South 64 Degrees 31' East 483.95 foot line of the above mentioned deed dated April 30, 1980; thence running reversely with and binding on said second line South 63 Degrees 01' 54" East 317 feet to the point of beginning.

Containing 71,016.00 square feet or 1.630 acres of land, more or less.

The improvements thereon being known as No. 12014 Boxer Hill Road, Cockeysville, Maryland 21030.

Subject however, to an reservation as set forth in a deed from Howard D. English and wife, to Edward T. Ormsby and wife, dated June 8, 1957, and recorded among the Land Records of Baltimore County in Liber GLB No. 3172 folio 474 of the use of a well located on the herein described parcel of land and the right to use and maintain a pipe line leading from said well to the dwelling located on the property to the north, the center of said pipe line described as follows:

EXHIBIT
II

Beginning for the same at a point in the last line of the herein described parcel of land as now surveyed, said point being distant North 63 Degrees 01' 54" West 209.80 feet measured reversely along last line from the end thereof and running thence for the center of said pipe line the two following courses and distances: South 24 Degrees 08'06" West 34.00 feet to a point; thence South 11 Degrees 38'06" West 200.30 feet to the center of the aforesaid well.

BEING the same the lot of ground which by Deed dated May 27, 2010 and recorded among the Land Records of Baltimore County in Liber RDA, Jr. No. 29520, folio 140 was granted and conveyed by Edward B. Stellmann, III and Dawn W. Stellmann unto Kristopher R. Hallengren and Meagan R. Hallengren.

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 Kristopher R. Hallengren and Meagan S. Hallengren, as tenants by the entirety unto the survivor of them, his or her heirs and assigns, in fee simple.

And the Grantor hereby covenants that he has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that he will warrant Specially the property hereby granted; and that he will execute such further assurances of the same as may be requisite.

In Witness Whereof, Grantor has caused this Deed to be properly executed and sealed the day and year first above written.

Kristopher R. Hallengren (SEAL)
Kristopher R. Hallengren

Meagan R Hallengren
AKA Meagan S Hallengren (SEAL)
Meagan S. Hallengren, also known of record as
Meagan R. Hallengren

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33945, p. 0035, MSA_CE62_33801. Date available 07/30/2013. Printed 10/23/2023.

STATE OF MARYLAND }
COUNTY OF BALTIMORE } ss

I hereby certify that on this 3rd day of July, 2013, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Kristopher R. Hallengren and Meagan S. Hallengren, also known of record as Meagan R. Hallengren, the Grantor herein, known to me (or satisfactorily proven) to be the person whose name are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be his 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.

ROBERT KNORR
NOTARY PUBLIC
HARFORD COUNTY
MARYLAND
MY COMMISSION EXPIRES 02-28-2014

Notary Public

My Commission Expires: 2/28/14

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.

Attorney Nicole R. Hewitt, Esquire

AFTER RECORDING, PLEASE RETURN TO:
Lawyers Express Title, LLC
828 Dulaney Valley Road
Suite 11
Towson, MD 21204

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33945, p. 0036, MSA_CE62_33801. Date available 07/30/2013. Printed 10/23/2023.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33945, p. 0037, MSA_CE62_33801. Date available 07/30/2013. Printed 10/23/2023.

J0 33945 037

File No. 13-2247

OWNER OCCUPANCY AFFIDAVIT

Kristopher R. Hallengren and Meagan S. Hallengren, 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.

WITNESS:

As to All

Kristopher R. Hallengren (SEAL)

Meagan S. Hallengren (SEAL)

STATE OF MARYLAND, Harford, to wit:

I HEREBY CERTIFY, that on this 3rd day of July, 2013, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Kristopher R. Hallengren and Meagan S. Hallengren, 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.

ROBERT KNORR
NOTARY PUBLIC
HARFORD COUNTY
MARYLAND
MY COMMISSION EXPIRES 02-28-2014

Notary Public

My Commission Expires: 2/28/14

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)

1033945 038

Space Reserved for Circuit Court Clerk Recording Validation

IMP FD SURE 40.00
RECORDING FEE 20.00
TOTAL 60.00
Rcpt # BA04 Rcpt # 27619
JLE CR Blk # 2216
Jul 16, 2013 11:43 am

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

☒ Deed / Deed of Trust | ☐ Mortgage / Lease | ☐ Other | ☐ Other

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	Name Correction Deed between Husband and Wife
State Transfer	Name Correction Deed between Husband and Wife
County Transfer	Name Correction Deed between Husband and Wife

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$	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
08	22-00-001446				☐ (5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	SqFt/Acreage (4)
					60

Location/Address of Property Being Conveyed (2): 12014 Boxer Hill Road, Cockeysville, MD 21030

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

Residential ☒ or Non-Residential ☐ | Fee Simple ☒ 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)
Kristopher R. Hallengren	
Meagan R. Hallengren	
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)
Kristopher R. Hallengren	
Meagan S.Hallengren	

New Owner's (Grantee) Mailing Address: 12014 Boxer Hill Road, Cockeysville, MD 21030

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: Marina
Firm: Lawyers Express Title, LLC
Address: 828 Dulaney Valley Road, Suite 11
Towson, MD 21204 Phone: (410) 825-2255

☒ 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

☒ 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).

Space Reserved for County Validation

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	Parcel	Plat	Lot
Buildings			Use	Ward	Section	Occ. Cd.
Total			Town Cd.	Ex. Cty.	Ex. Cd.	

REMARKS:

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

☐ COUNTY TRANSFER TAX Per ____ ART 11 TITLE 8 SUBTITLE 2, 11-3-202

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

Date 7/16/13

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

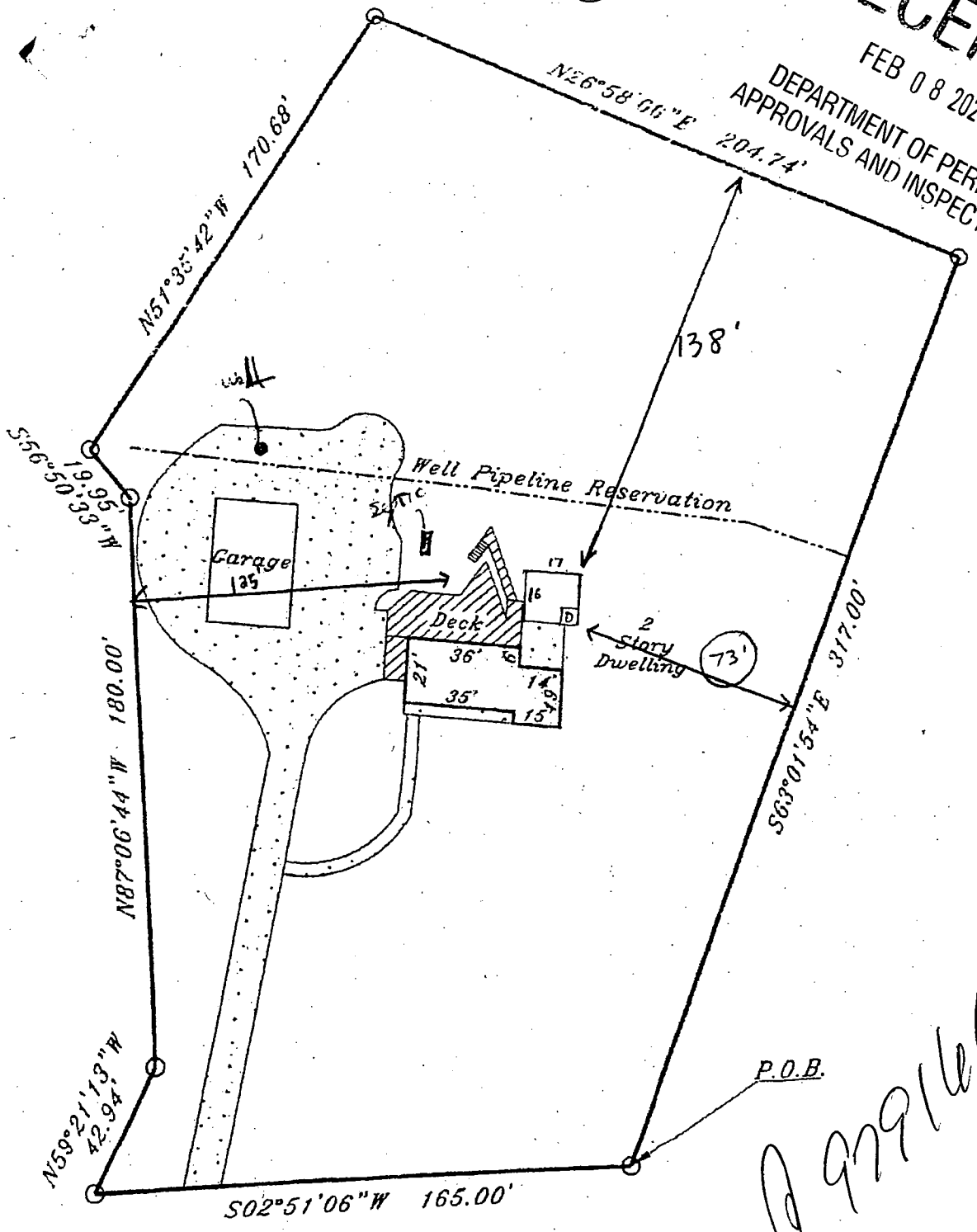
AOC-CC-300 (5/2007)

13-2247

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33945, p. 0038, MSA_CE62_33801. Date available 07/30/2013. Printed 10/23/2023.

B979166

RECEIVED
FEB 08 2021
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS



B979166

12014 BOXER HILL ROAD

RECEIVED
FEB 17 2021
DEVELOPMENT COORDINATION

open deck - OK
3/2/21

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33945, p. 0034, MSA_CE62_33801. Date available 07/30/2013. Printed 03/02/2023.

NAME CORRECTION DEED BETWEEN HUSBAND AND WIFE

Lawyers Express Title, LLC
File No. **13-2247**
Tax ID # **08 22-00-001446**

This Deed, made this 3rd day of July, 2013, by and between **Kristopher R. Hallengren** and **Meagan R. Hallengren,** GRANTORS, and **Kristopher R. Hallengren** and **Meagan S. Hallengren, also known of record as Meagan R. Hallengren**, GRANTEES.

Witnesseth –

That in consideration of the sum of NO ACTUAL CONSIDERATION 00/100 ($0.00), which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt of which is hereby acknowledged, the said Grantor does hereby grant and convey to the said Grantees, 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 City of Cockeysville, County of Baltimore, State of Maryland and described as follows, that is to say:

BEGINNING FOR THE SAME at a point situated on the East side of a 16.50 foot road, known as Boxer Hill Road, said point being at the end of the first or South 1 Degree 22' West 302.20 foot line of a deed dated April 30, 1980, and recorded among the Land Records of Baltimore County in Liber 6160, folio 494, said point also being at the beginning of the first or South 01 Degree 22' West 323.30 foot line of a deed dated February 21, 1967 and recorded among the Land Records of Baltimore County in Liber 4727, folio 523; thence leaving said point and running with and binding on the Eastside of Boxer Hill Road and the first line of the last mentioned deed dated February 21, 1967, as now surveyed; South 02 Degrees 51' 06" West 165.00 feet to a point; thence leaving said East side and running for new lines of division over, across and through the aforesaid deed dated February 21, 1967, the following five (5) course and distances; North 59 Degrees 21 Minutes 13" West 42.94 feet to a point; thence North 87 Degrees 06' 44" West 180.00 feet to a point; thence South 56 Degrees 50' 33" West 19.95 feet to a point; thence North 51 Degrees 35' 42" West 170.68 feet to a point; thence North 26 Degrees 58' 06" East 204. 74 feet to a point intersecting the second or South 64 Degrees 31' East 483.95 foot line of the above mentioned deed dated April 30, 1980; thence running reversely with and binding on said second line South 63 Degrees 01' 54" East 317 feet to the point of beginning.

Containing 71,016.00 square feet or 1.630 acres of land, more or less.

The improvements thereon being known as No. 12014 Boxer Hill Road, Cockeysville, Maryland 21030.

Subject however, to an reservation as set forth in a deed from Howard D. English and wife, to Edward T. Ormsby and wife, dated June 8, 1957, and recorded among the Land Records of Baltimore County in Liber GLB No. 3172 folio 474 of the use of a well located on the herein described parcel of land and the right to use and maintain a pipe line leading from said well to the dwelling located on the property to the north, the center of said pipe line described as follows:

Beginning for the same at a point in the last line of the herein described parcel of land as now surveyed, said point being distant North 63 Degrees 01' 54" West 209.80 feet measured reversely along last line from the end thereof and running thence for the center of said pipe line the two following courses and distances: South 24 Degrees 08'06'' West 34.00 feet to a point; thence South 11 Degrees 38'06" West 200.30 feet to the center of the aforesaid well.

BEING the same the lot of ground which by Deed dated May 27, 2010 and recorded among the Land Records of Baltimore County in Liber RDA, Jr. No. 29520, folio 140 was granted and conveyed by Edward B. Stellmann, III and Dawn W. Stellmann unto Kristopher R. Hallengren and Meagan R. Hallengren.

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 Kristopher R. Hallengren and Meagan S. Hallengren, as tenants by the entirety unto the survivor of them, his or her heirs and assigns, in fee simple.

And the Grantor hereby covenants that he has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that he will warrant Specially the property hereby granted; and that he will execute such further assurances of the same as may be requisite.

In Witness Whereof, Grantor has caused this Deed to be properly executed and sealed the day and year first above written.

Kristopher R. Hallengren

_____ (SEAL)
Kristopher R. Hallengren

Meagan R Hallengren

AKA Meagan S Hallengren (SEAL)
Meagan S. Hallengren, also known of record as
Meagan R. Hallengren

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33945, p. 0035, MSA_CE62_33801. Date available 07/30/2013. Printed 03/02/2023.

THIS DEED, Made this 8th day of June, in the year one thousand nine hundred and fifty-seven, between Howard D. English and Ethel C. English, his wife, of the County of Baltimore, in the State of Maryland, of the first part, Grantors and Edward T. Ormsby and Fern N. Ormsby, his wife, of the County of Baltimore, in the State of Maryland, of the second part, Grantees.

WITNESSETH, that in consideration of the sum of Five Dollars, and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Howard D. English and Ethel C. English, his wife, do grant and convey unto the said Edward T. Ormsby and Fern N. Ormsby, his wife, as tenants by the entireties, their assigns, the survivor of them and the survivor's heirs and assigns, in fee simple, all that lot of ground situate, lying and being in Baltimore County, State of Maryland, aforesaid, and described as follows, that is to say:-

BEGINNING for the same at a pipe set on the east side of a 16.5 foot road, known as Boxer Hill Road, and in the second line of a parcel of land which by a deed dated May 26, 1947 and recorded among the Land Records of Baltimore County in Liber J.W.B. No. 1569 folio 43 was conveyed by Elizabeth Swem to Howard D. English and wife, said pipe being distant South 1 degree 22 minutes West 377.20 feet measured along said second line from the beginning thereof and running thence with and binding on a part of said second line and binding on the east side of Boxer Hill Road, South 1 degree 22 minutes West 323.30 feet to the beginning of a parcel of land which by a deed dated October 27, 1947 and recorded among the Land Records of Baltimore County in Liber J.W.B. No. 1610 folio 177 was conveyed by Howard D. English and wife to Raymond R. Butler and wife thence leaving said road and binding reversely on the last and fourth lines of said last mentioned parcel of land the two following courses and distances viz: North 85 degrees 26 minutes West 470.20 feet and North 39 degrees 22 minutes West 382.60 feet to the beginning of the last line of the aforesaid parcel of land which was conveyed by Swem to English, thence running with and binding on a part of said last line North 54 degrees 54 minutes/344.98 feet to a pipe and thence leaving said outline and running for a line of division South 64 degrees 31 minutes East, binding in or near the center of a rose hedge there situate, 483.95 feet to the place of beginning.

Containing 5.82 Acres of land more or less.

BEING a part of the parcel of land which by a deed dated May 26, 1947 and recorded among the Land Records of Baltimore County in Liber J.W.B. No. 1569 folio 43 was conveyed by Elizabeth Swem to Howard D. English and wife.

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lot of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Edward T. Ormsby and Fern N. Ormsby, his



BALTIMORE COUNTY CIRCUIT COURT (Land Records) GLB 3172, p. 0474, MSA_CE62_3027. Date available 08/09/2006. Printed 10/06/2023.

wife, as tenants by the entireties, their assigns, the survivor of them and the survivor's heirs and assigns, in fee simple, subject to and together with the right and use thereof in common with others entitled thereto of the above mentioned Boxer Hill Road which road leads through and from the herein described property in a southerly and easterly direction to Broadway Road.

Subject to the reservation by the grantors herein, their heirs and assigns of the use of a well located on the herein described parcel of land and the right to use and maintain a pipe line leading from said well to the dwelling located on other property of said Grantors herein adjoining the herein described parcel to the North the center of said pipe line being described as follows to wit:

BEGINNING for the same at a point in the last line of the herein described parcel of land distant North 64 degrees 31 minutes West 209.8 feet measured reversely along said last line from the end thereof and running thence for the center of said pipe line the two following courses and distances viz: South 22 degrees 39 minutes West 34 feet and South 10 degrees 09 minutes West 200.3 feet to the center of the aforesaid well.

AND the said parties of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property granted; and that they will execute such further assurances of the same as may be requisite.

WITNESS the hands and seals of the said Grantors the day and year first above written.

TEST:

E. Scott Moore

Howard D. English (SEAL)
Howard D. English

Ethel C. English (SEAL)
Ethel C. English

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, That on this 8th day of June, in the year one thousand nine hundred and fifty seven, before me, the subscriber, a Notary Public of of the State of Maryland, in and for the County of Baltimore, aforesaid, personally appeared Howard D. English and Ethel C. English, the above named Grantors, and they acknowledged the foregoing Deed to be their act.

ORMSBY S. MOORE NOTARY PUBLIC BALTIMORE CO., MD.

Ormsby S. Moore
NOTARY PUBLIC

Rec'd for Record JUN 11 1957 at 2 53 P.M.
Per George L. Byerly, Clerk,
Mailed to E. Scott Moore

BALTIMORE COUNTY CIRCUIT COURT (Land Records) GLB 3172, p. 0475, MSA_CE62_3027. Date available 08/09/2006. Printed 10/06/2023.

IN THE MATTER OF:
KRISTOPHER AND MEAGAN HALLENGREN
Case No. 2023-0053-A
BOA Hearing: October 5, 2023 at 10am
Petitioner's Exhibit List

Description	**Exhibit**
Plan to Accompany Petition for Zoning Hearing	1 ✓
Plan to Accompany Petition for Zoning Hearing with Topography	2A ✓
Plan to Accompany Petition for Zoning Hearing with Elevations & Lot Coverage	2B ✓
Aerial (closest)	3A ✓
Aerial (mid)	3B ✓
Aerial (far)	3C ✓
Elevation Drawings	4A-B ✓
Photos	5A-N ✓
Photos Showing Vegetative Screening	6A-K ✓
Letters of Support	7A-M ✓
Well Variance Approval	8 ✓
SDAT	9 ✓
Photos of Properties in Neighborhood with Detached Garages	10A-F ✓
2000 CZMP Map and Log of Issues 3-108	11A-B ✓

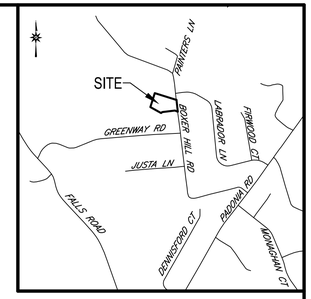
10/5/23 Jay

IN THE MATTER OF:
KRISTOPHER AND MEAGAN HALLENGREN
Case No. 2023-0053-A
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SDAT	9 ✓
Photos of Properties in Neighborhood with Detached Garages	10A-F ✓
2000 CZMP Map and Log of Issues 3-108	11A-B ✓

10/5/23 Jay





VICINITY MAP

SCALE: 1" = 1000'

GENERAL NOTES

1. OWNER: KRISTOPHER & MEGAN HALLENGREN
   12014 BOXER HILL ROAD
   COCKEYSVILLE, MD 21030-1732
   TEL:(410) 340-3327
2. AREA OF TRACT: NET: 71,015 SF OR 1.63 AC.±
3. ZONING CLASSIFICATION: RC 4 (ZONING MAP 050C3)
4. TAX ACCOUNT NUMBER: #2200001446
5. PLAT REFERENCE: N/A
6. DEED REFERENCE: 33945/34
7. TAX MAP #: 50
   GRID 18
   PARCEL: 448
8. CENSUS TRACT: 4083.04
9. REGIONAL PLANNING DISTRICT: CHESTNUT RIDGE
10. GROWTH TIER: IV
11. WATERSHED: LOCH RAVEN RESERVOIR
12. SEWERSHED: N/A
13. MASTER WATER AND SEWER DESIGNATION: WATER W-7
    SEWER S-7
14. EXISTING USE: ONE SINGLE FAMILY DETACHED DWELLING WITH DETACHED GARAGE
15. PROPOSED USE: ONE SINGLE FAMILY DETACHED DWELLING WITH DETACHED GARAGE WITH 2ND FLOOR ADDITION
16. RC 4 SETBACK-MINIMUM REQUIREMENTS

FRONT FROM ROAD PAVING	35'
REAR	25'
SIDE	25'
MAX BLDG HGT	35'

17. ALL LOTS SHOWN HEREON ARE SERVED BY PRIVATE WELL AND SEPTIC TANK.
18. THE PROPOSED DEVELOPMENT IS NOT LOCATED IN ANY DEFICIENT AREAS ON THE BASIC SERVICES MAPS PURSUANT TO SECTION 4A02, BCZR.
19. THIS SITE DOES NOT INCLUDE NOR IS IT CONTIGUOUS TO ANY BUILDINGS, PROPERTY OR SITES REGISTERED ON THE HISTORICAL INVENTORIES LIST.
20. THE SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
21. PRIOR ZONING CASES:
    THERE IS NO KNOWN ZONING HISTORY
22. THERE ARE NO KNOWN FLOODPLAINS ON SITE PER FLOOD INSURANCE RATE MAP (FIRM) PANEL #2400100235F DATED SEPTEMBER 26, 2008.
23. EXISTING DWELLING: 1026 SF
    EXISTING GARAGE: 864 SF

Richardson ENGINEERING
7 Deneison Street
Timonium, Maryland 21093
Phone: 410-560-1502, info@richardsonengineering.net

PLAN TO ACCOMPANY ZONING PETITION
FOR

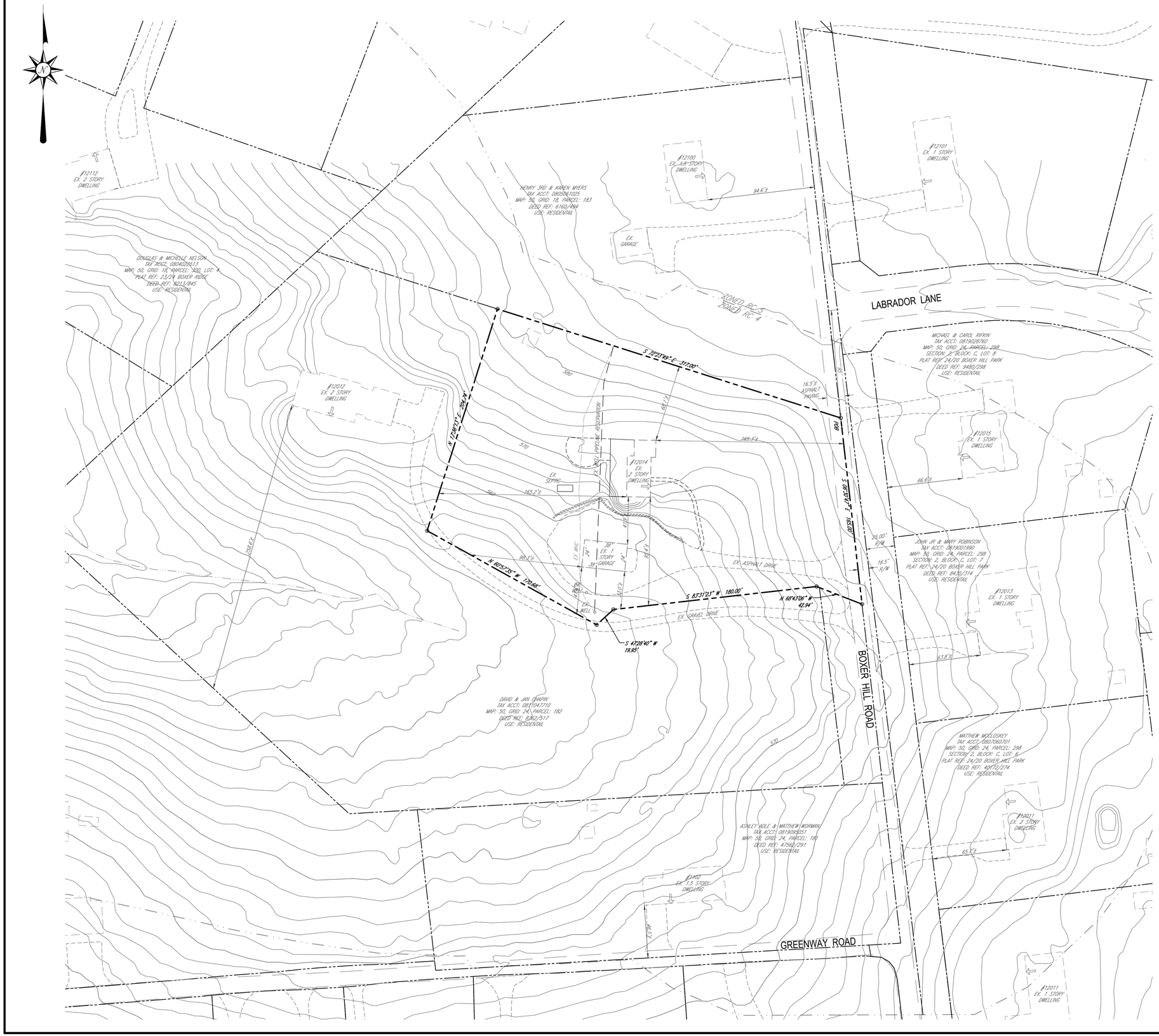
HALLENGREN RESIDENCE

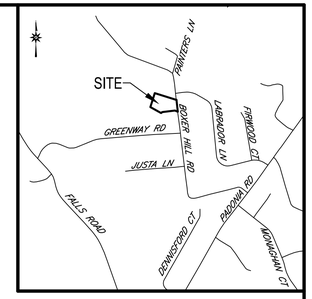
12014 BOXER HILL ROAD

BALTIMORE COUNTY MARYLAND
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

REVISIONS	DRAWN BY:	CHECKED BY:	SCALE:
5/9/23 ZONING HEARING	AAR	PCR	1" = 40'
	DATE: 03-03-23	JOB NO.: 23014	SHEET NO.: 1 OF 1

Petitioner's Exhibit 1





VICINITY MAP

SCALE: 1" = 1000'

GENERAL NOTES

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   12014 BOXER HILL ROAD
   COCKEYSVILLE, MD 21030-1732
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7 Deneison Street
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PLAN TO ACCOMPANY ZONING PETITION
FOR

HALLENGREN RESIDENCE

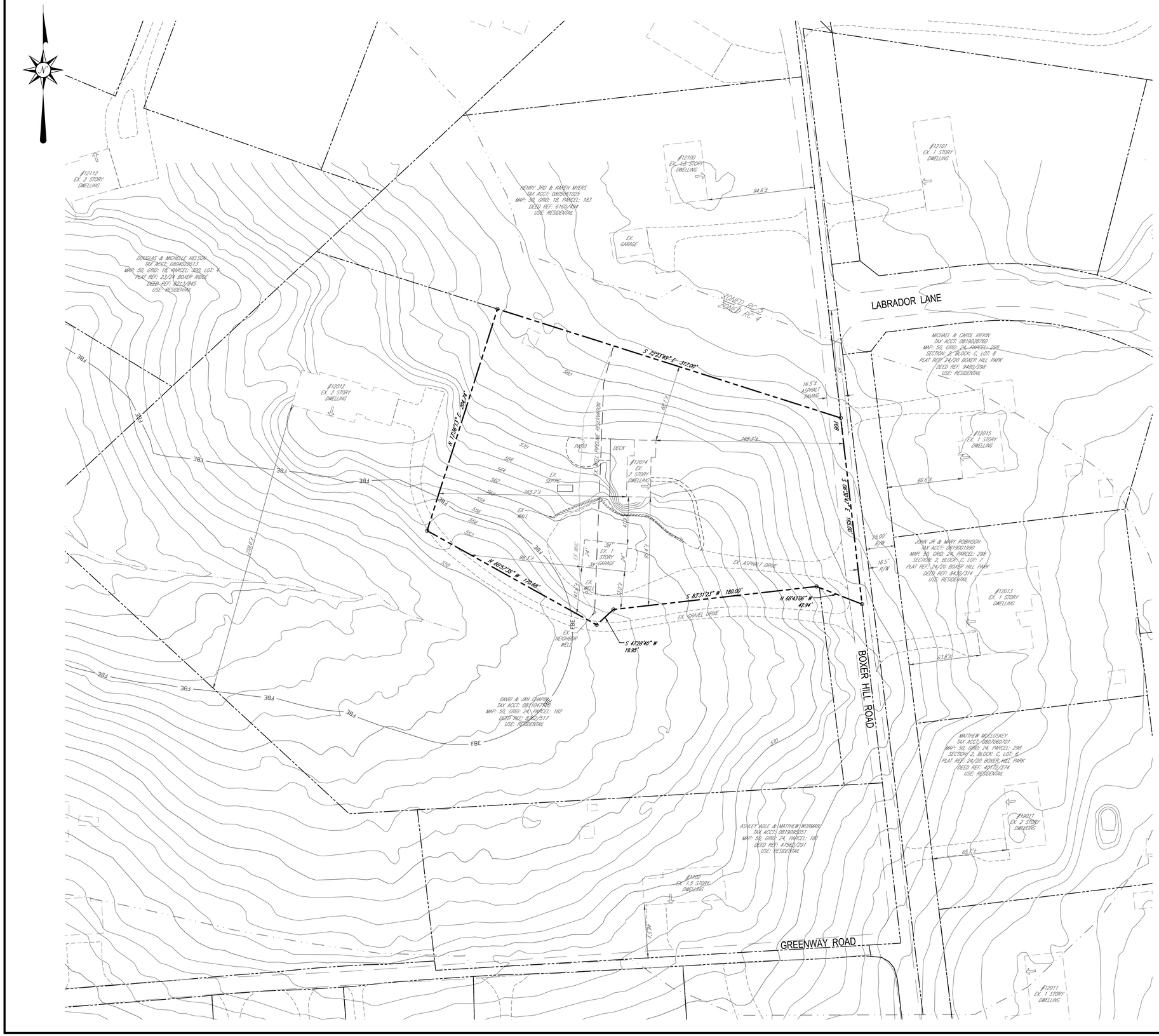
12014 BOXER HILL ROAD

BALTIMORE COUNTY — MARYLAND
8TH ELECTION DISTRICT — 3RD COUNCILMANIC DISTRICT

REVISIONS
5/9/23 ZONING HEARING

DRAWN BY:	CHECKED BY:	SCALE:
AAR	PCR	1" = 40'
DATE:	JOB NO.:	SHEET NO.:
03-03-23	23014	1 OF 1

Petitioner's Exhibit 2A


#12110
EX. 2 STORY
DWELLING
#12100
EX. 1.5 STORY
DWELLING
#12101
EX. 1 STORY
DWELLING
HENRY 3RD & KAREN MYERS
TAX ACCT: 0805261025
MAP: 50, GRID: 18, PARCEL: 183
DEED REF: 6160/484
USE: RESIDENTIAL
EX.
GARAGE
94.6'±
DOUGLAS & MICHELLE NELSON
TAX ACCT: 0804022813
MAP: 50, GRID: 18, PARCEL: 302, LOT: 9
PLAT REF: 23/24 BOXER RIDGE
DEED REF: 9213/845
USE: RESIDENTIAL
ZONED RC 5
ZONED RC 4
LABRADOR LANE
MICHAEL & CAROL RIFKIN
TAX ACCT: 0819026760
MAP: 50, GRID: 24, PARCEL: 298
SECTION: 2, BLOCK: C, LOT: 8
PLAT REF: 24/20 BOXER HILL PARK
DEED REF: 9480/298
USE: RESIDENTIAL
#12012
EX. 2 STORY
DWELLING
S 72°21'16" E 317.00'
N 12°43'13" E 284.74'
16.5'±
ASPHALT
PAVING
60'
R/W
#12015
EX. 1 STORY
DWELLING
66.6'±
PATIO
DECK
#12014
EX.
2 STORY
DWELLING
EX. SEPTIC
EX. WELL PRIVATE ACCESSWAY
EX. WALL
EX. WELL
EX. WELL
EX. ASPHALT DRIVE
EX. GRAVEL DRIVE
EX. WELL
EX. WELL
EX. WELL

Baltimore County - My Neighborhood



Petitioner's Exhibit 3A

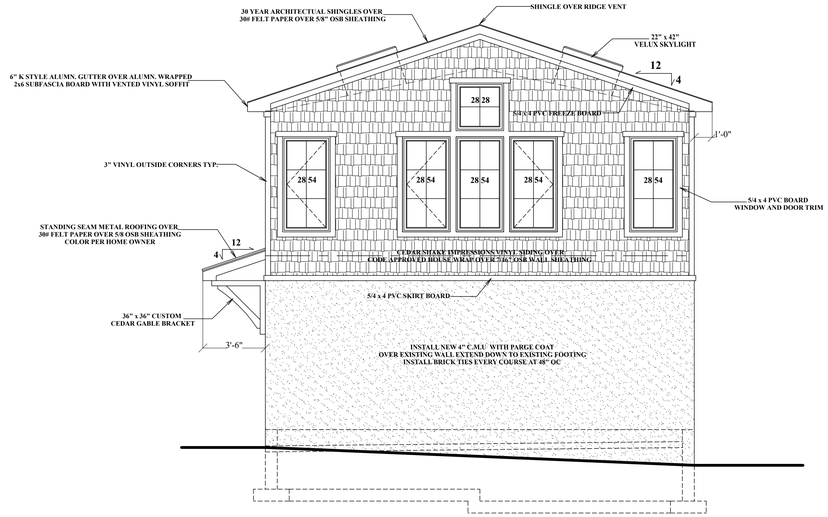
Baltimore County - My Neighborhood



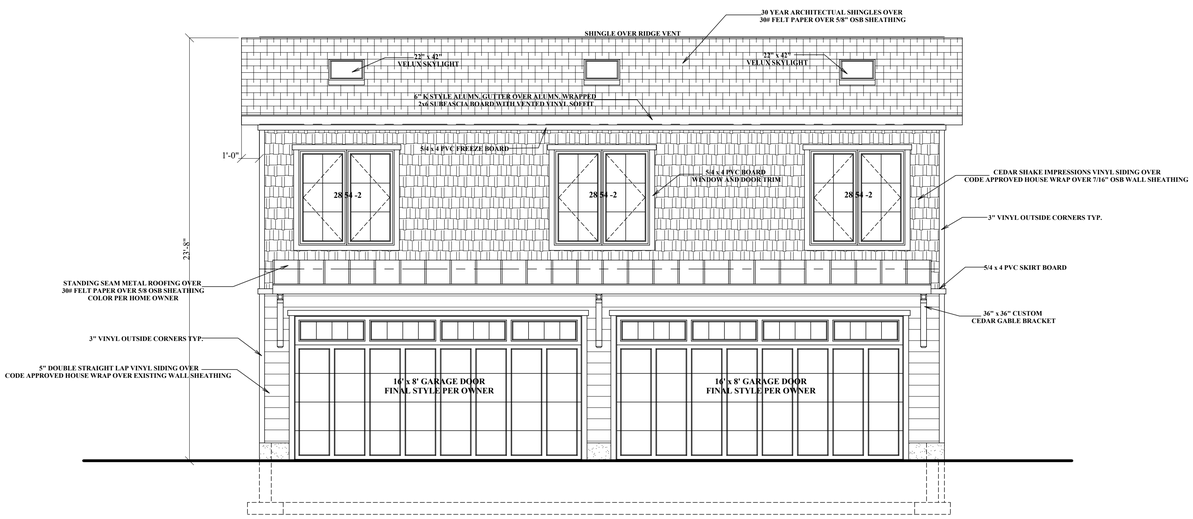
Baltimore County - My Neighborhood



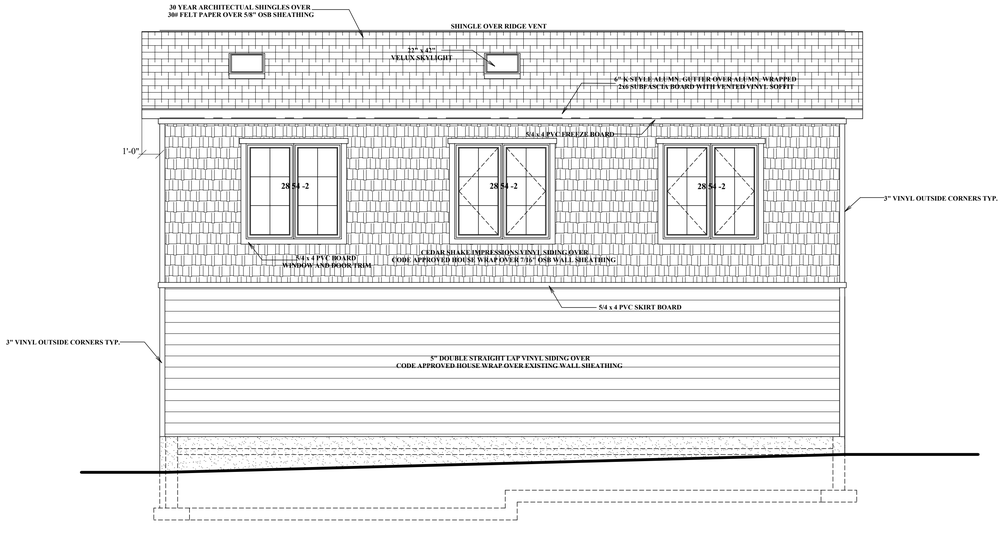
Petitioner's Exhibit 3C



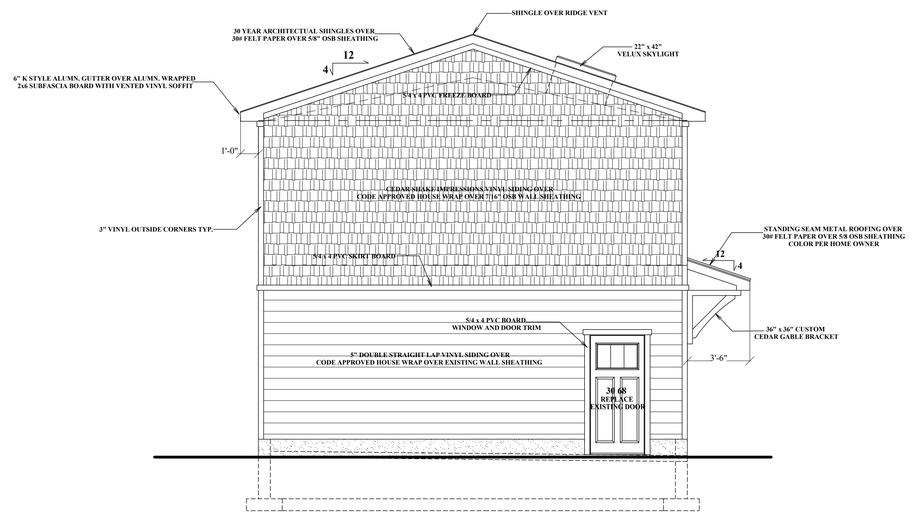
RIGHT ELEVATION



FRONT ELEVATION



REAR ELEVATION



LEFT ELEVATION

Petitioner's
Exhibit 4A

12/16/22	RB
12/26/22	RB
1/27/23	RB

RB Home Design
2061 D MOUNT HOREB RD STREET MD 21154
RBHOMEDESIGN@HOTMAIL.COM
443-613-5115

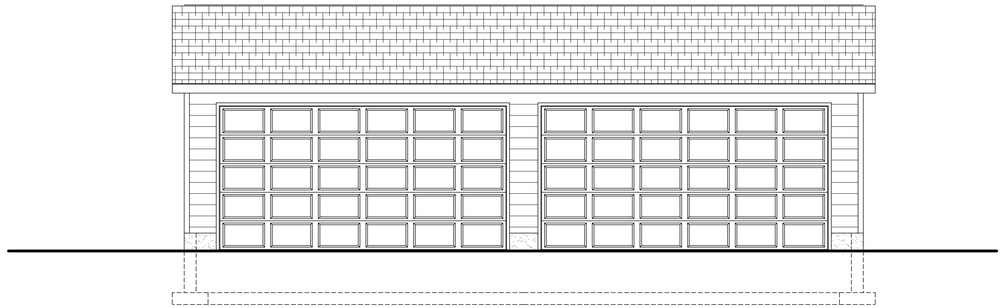
HALLENGREN RESIDENCE
GARAGE ADDITION PLANS
12014 BOXER HILL RD
COCKEYSVILLE MD 21030

THE CONTRACTOR IS
RESPONSIBLE FOR DIMENSIONS
TO BE CONFIRMED AND CORRELATED
AT SITE FOR INFORMATION THAT
PERTAINS SOLELY TO THE FABRICATION
PROCESSES OR TO THE MEANS,
METHODS, TECHNIQUES, SEQUENCES,
AND PROCEDURES OF CONSTRUCTION
OF THE WORK OF ALL TRADES

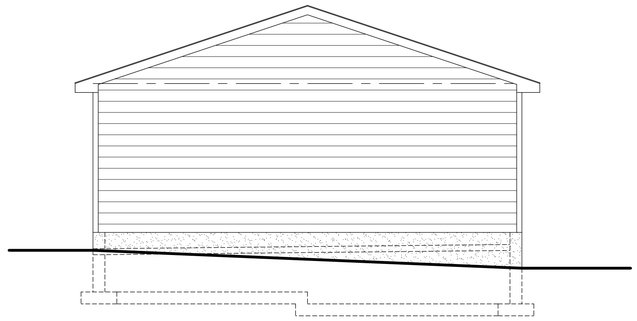
RB HOME DESIGN	
DATE:	12/26/22
SCALE:	1/4" = 1'
DRAWN BY:	RB
EXTERIOR ELEVATIONS	
SHEET NO.	A-1



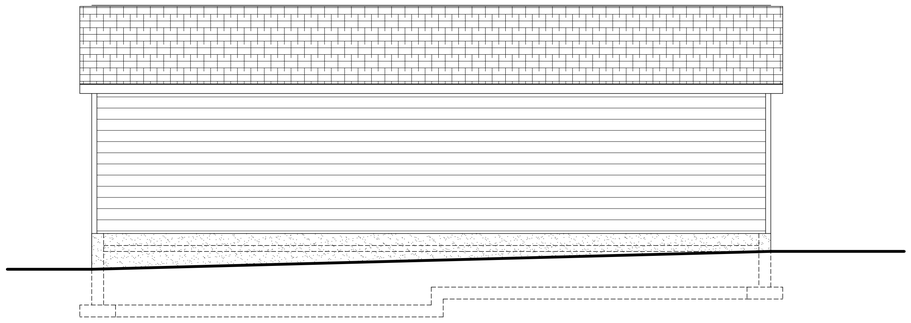
LEFT ELEVATION
EXISTING PLAN



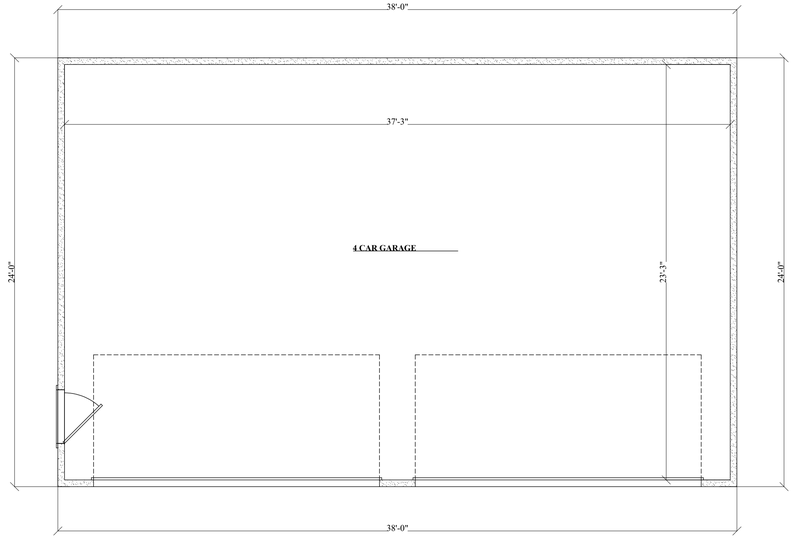
FRONT ELEVATION
EXISTING PLAN



RIGHT ELEVATION
EXISTING PLAN



REAR ELEVATION
EXISTING PLAN



GARAGE PLAN
EXISTING PLAN

Petitioner's
Exhibit 4B

12/16/22	RB

RB Home Design
2061 D MOUNT HOREB RD STREET MD 21154
RBHOMEDESIGN@HOTMAIL.COM
443-613-5115

HALLENGREN RESIDENCE
GARAGE ADDITION PLANS
12014 BOXER HILL RD
COCKEYSVILLE MD 21030

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RB HOME DESIGN

DATE: 12/16/22

SCALE: 1/4" = 1'

DRAWN BY: RB

EXISTING PLANS

SHEET NO.

A-3



Petitioner's Exhibit 5A



Petitioner's
Exhibit 5B



Petitioner's
Exhibit 5C



Petitioner's
Exhibit 5D



Petitioner's
Exhibit 5E



Petitioner's
Exhibit 5F



Petitioner's
Exhibit 5G



Petitioner's
Exhibit 5H



Petitioner's
Exhibit 5I



Petitioner's
Exhibit 5J



Petitioner's
Exhibit 5K



Petitioner's
Exhibit 5L



Petitioner's
Exhibit 5M





Petitioner's
Exhibit 5N

Petitioner's
Exhibit 6A



Petitioner's
Exhibit 6B

Petitioner's
Exhibit 6C

Petitioner's
Exhibit 6D


Petitioner's
Exhibit 6E



Petitioner's
Exhibit 6F

Petitioner's
Exhibit 6G

Petitioner's
Exhibit 6H



Petitioner's
Exhibit 6I



Petitioner's
Exhibit 6J

Petitioner's
Exhibit 6K

To whom it may concern,

We are writing in support of the Hallengren's application for modification of an existing garage, case number #2023-0053. We are neighbors of the Hallengren's at 12112 Boxer Hill Rd and have a similar house and property set up. Both of our houses sit below the street and have lots over 2 acres. The proposed addition of adding 9 feet up on an existing structure will not be seen from the road as it sits behind a stand of Leland Cypress trees that are easily over 30 feet tall. As this existing structure sits at the edge of woods, the views would not be impacted with the addition of 9 feet height to the project while using the existing footprint. We believe there will be minimal to no lasting environmental impact as they are not adding any water or septic to this existing structure. Additionally, all neighbors enjoy and benefit when existing properties are enhanced in the neighborhood. Thank you in advance for your time.

Frances Michelle Nelson

Frances Michelle Nelson

Douglas Gordon Nelson

D.G. Nelson

Petitioner's Exhibit 7A

May 7, 2023

To Whom It May Concern,

RE: Mr. & Mrs. Hallengren's Zoning Hearing

I am a current neighbor of Mr. and Mrs. Hallengren and reside at 1102 Greenway Road, Cockeysville, MD 21030.

The back of my home looks directly into the Hallengren's yard. It is my understanding that the Hallengren's would like to update their current garage structure and I am in favor of their plans. I have personally reviewed all of the detailed drawings and have no issue with the proposed construction.

Please let me know if you have any questions or concerns.

Sincerely,

DocuSigned by:
Ashley Adle
AD8CA944DF3B40E

Ashley Adle

1102 Greenway Road

Cockeysville, MD 21030

(443) 415 – 6814

Amadle17@gmail.com

Petitioner's Exhibit 7B

May 8, 2023

To Whom It May Concern,

I am writing in support of case number #2023-0053-A. I have seen Meg and Kris Hallengren's plans for their garage and am in support of these plans. The improved structure will be visually attractive and address the needs of their family. I fully support their project.

Sincerely,

Leigh Bank
Ward Bank

Leigh and Ward Bank
12007 Boxer Hill Road, Cockeysville, MD 21030

Petitioner's Exhibit 7C

May 4, 2023

Baltimore County Department of Permits

County Office Building

111 West Chesapeake Avenue

Towson, MD 21204

To Whom it May Concern,

I am writing a letter in support of case #2023-0053-A. I have lived in this neighborhood for nearly 9 years and have been privileged to get to know Meg and Kris Hallengren and their children since that time. Our properties are only about 360 feet apart in distance, and I pass by their house nearly every single day.

I have seen the plans for their project and I believe that the improved structure will be visually attractive, add value to the neighborhood, and will help to address the needs of their family. I fully support their project and would be happy to discuss it further with anyone.

Thank you for your attention,

Anna Wong

A. Wong

410-917-1203, abwong@gmail.com

9619 Labrador Lane

Cockeysville, MD 21030

Petitioner's Exhibit 7D

May 1, 2023

Baltimore County Department of Permits

County Office Building

111 West Chesapeake Avenue

Towson, Maryland 21204

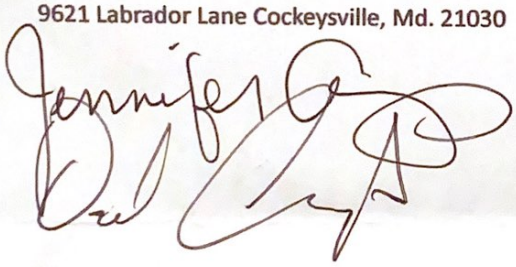
To Whom it may Concern,

I am writing a letter of support for case # 2023-0053-A. As a resident as a resident of the Boxer Hill community since 1999 we would like to support the Hallengrens in any effort to improve their property. We have discussed their current garage project and feel it will only improve the aesthetic of our neighborhood. In addition, it is located at the base of the driveway behind a large, beautiful tree. We live 3 houses away from Meg and Chris and look forward to seeing the new, improved garage space.

Sincerely,

Jennifer Arrup and Des Arrup

9621 Labrador Lane Cockeysville, Md. 21030



Petitioner's Exhibit 7E

To Baltimore County Zoning Board, 4/30/2023

My Name is Suzanne Mays-Hornung and I live at 12121 Boxer Hill Rd.

I want to tell you I am so pleased with the property at 12014 Boxer Hill Rd. The owners have not only made their house and their property stunning, it has been an example to others in the neighborhood and they too have followed suit.

I do understand they want to further their building upwards and correct a few problems and I am all for the addition at the property stated above.
I honestly do Not Believe this will harm the land, burden others, be wrong for the wildlife, surrounding properties or the airway. I do think it will increase the value of the homes around us as well.

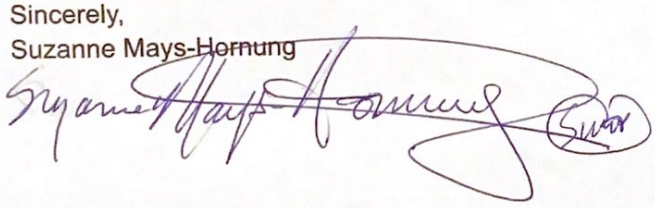
I am for the residents at the property 12014 Boxer Hill Rd. It would be a grave error to not allow this to go forward, as this family is a big part of our community and a fine example of a good neighbor should be - as it states in the Bible.

I believe the family has established a positive appearance and will continue to do so. It is also an addition to the necessity for some to work at home since Covid.

I am asking the Zoning Board to Please consider all that has been said and to allow the residents and fellow neighbors at 12014 Boxer Hill Rd,To continue with their property addition.

Thank you,

Sincerely,
Suzanne Mays-Hornung



Petitioner's Exhibit 7F

Hi, my name is Mandy Burton, 5/9/2023
My address is- 12014 Boxer Hill Road
Cockeysville, MD 21030

I have seen the plans, I am happy they are improving the property and making the garage look better than It does now.
I have NO objection and support the plan.

Sincerely,
Mandy L Burton

Petitioner's Exhibit 7G

To Whom It May Concern,

I am writing in support of case number #2023-0053-A. I have seen Meg and Kris Hallengren's plans for their garage and am in support of these plans. The improved structure will be visually attractive and will address the needs of their family. I fully support their project.

Sincerely,

Chris Lauer

Digitally signed by Chris Lauer
DN: cn=Chris Lauer, o, ou, email=cjlauer22@yahoo.com, c=US
Date: 2023.05.09 20:40:59 -04'00'

Chris Lauer

9610 Labrador Lane

Cockeysville, MD 21030

Petitioner's
Exhibit 7H

19

Hi, my name is Sara A. Thompson, 5/9/2023
My address is- 12003 Boxer Hill Rd.
Cockeysville, MD 21030

I have seen the plans, I am happy they are improving the property and making the garage look better than It does now.
I have NO objection and support the plan.

Sincerely,
Sara A. Thompson

Petitioner's Exhibit 7I

Hi, my name is Karen Wilson, 5/9/2023
My address is-
12113 Boxer Hill Rd.

I have seen the plans, I am happy they are improving the property and making the garage look better than It does now.
I have NO objection and support the plan.

Sincerely,
Karen Wilson

Petitioner's Exhibit 7J

Stephen Tenberg

—

12206 Boxer Hill Rd.
Cockeysville, MD 21030

813.421.2305
StephenTenberg@gmail.com

10 May 2023

Re: Subject Property: **12014 Boxer Hill Rd Cockeysville, MD 21030**

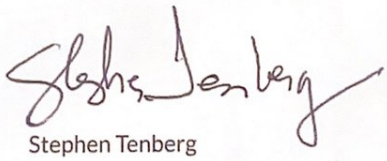
Hello,

I own the property and the end of Boxer Hill Rd on the left (12206), past the subject property at 12014 Boxer Hill Rd.

I have seen the zoning notice and the planned garage increase, and **have no objections to the plan and would like to offer my support for its approval.**

Thank You.

Kind Regards



Stephen Tenberg

Petitioner's Exhibit 7K

May 8th, 2023

To Whom It May Concern,

This letter is in reference to my neighbors The Hallengrens and their variance number 2023-0053-A to permit an accessory building with a height of 24 feet in lieu of the permitted 15 feet.

Our neighborhood is fairly old with a mixture of beautifully renovated homes and much older homes. Over the years many of us have made changes to update old structures and utilize the beautiful properties we steward.

I am in favor of this permit to increase the height of their free-standing garage. The garage is at the bottom of the hill and offers no threat to obstruct anyone's view for acres. The Hallengrens have always taken very good care of their property, are active in our community and are very kind neighbors.

I may mention that my husband and I not only renovated our property 13 years ago but actually knocked down our whole house and built a new house much bigger and higher. My immediate neighbors were gracious, welcomed the upgrade and were happy for our growing vibrant family.

I hope you will consider my support to approve this permit.

Thank you very much,

Bonnie Tarantino

Bonnie Tarantino *Bonnietarantino.com* *1105 Justa Lane Cockeysville MD. 21030*

Petitioner's Exhibit 7L

Hi, my name is Heidi Mozoki, 5/9/2023
My address is- 1209 Boxer Hill Road

I have seen the plans, I am happy they are improving the property and making the garage look better than
It does now.
I have NO objection and support the plan.

Sincerely,
Heidi Mozoki

Petitioner's
Exhibit 7M

File Name

OK to file _____
Follow-up date _____

Inspection X
Telephone _____

ACTION REPORT

Baltimore County Department of Environmental Protection and Resource Management

Date 6/15/92
Time 9:20 AM

Dist. 8

FILE LOCATION: 12014 Boxer Hill Rd
Cockeysville 21030

PERSON CONTACTED: Ned Stellman Owner
(name and title)

ADDRESS: _____ Phone # 235 9905

REASON FOR INSPECTION: Cell. request variance to build 24 ½ ft from well.

RECORD OF ACTION: Mr. Stellman is proposing to build a pole barn/garage on top of an existing concrete pad, which will be 24 ½ ft from the well. The pole barn will be constructed of pressure treated 6 X 6's and concrete

RECOMMENDATIONS: OK to approve variance & issue permit

DATE: 6/15/92 SANITARIAN S Farmer

REFERRED TO: _____ FOR _____

DATE: _____ BY _____

COPY TO _____

Petitioner's Exhibit 8

Real Property Data Search ( )
Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 08 **Account Number -** 2200001446

Owner Information

Owner Name:	HALLENGREN KRISTOPHER R HALLENGREN MEAGAN S	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	12014 BOXER HILL RD COCKEYSVILLE MD 21030-1732	**Deed Reference:**	/33945/ 00034

Location & Structure Information

Premises Address:	12014 BOXER HILL RD COCKEYSVILLE 21030-1732	**Legal Description:**	1.63 AC WS 12014 BOXER HILL RD 450 N GREENWAY RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0050	0018	0448	8080150.04	0000				2023	Plat Ref:

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1967	1,936 SF		1.6300 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	YES	STANDARD UNIT	SIDING/4		2 full/ 1 half	1 Detached	

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2023	As of 07/01/2023	As of 07/01/2024
Land:	186,000	186,000		
Improvements	328,800	373,200		
Total:	514,800	559,200	529,600	544,400
Preferential Land:	0	0		

Transfer Information

Seller: HALLENGREN KRISTOPHER R	**Date:** 07/16/2013	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /33945/ 00034	**Deed2:**
Seller: STELLMANN EDWARD B,3RD	**Date:** 06/01/2010	**Price:** $540,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /29520/ 00140	**Deed2:**
Seller: KLAUNBERG F H,JR	**Date:** 03/16/1990	**Price:** $191,500
Type: ARMS LENGTH IMPROVED	**Deed1:** /08429/ 00616	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2023	07/01/2024
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

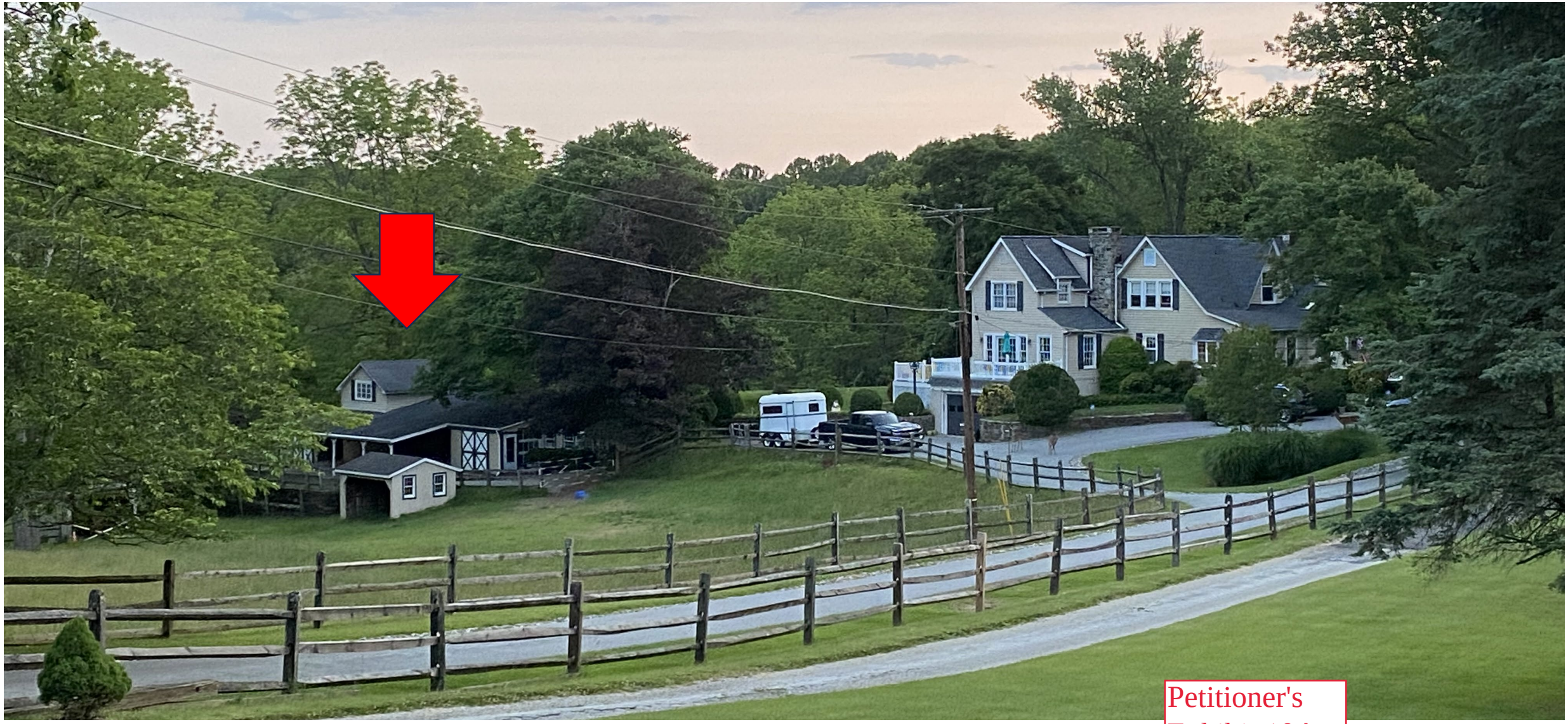
Homestead Application Status: Approved 11/08/2011

Homeowners' Tax Credit Application Information

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

Petitioner's Exhibit 9

12207 Boxer Hill Road



Petitioner's
Exhibit 10A

12115 Boxer Hill Road





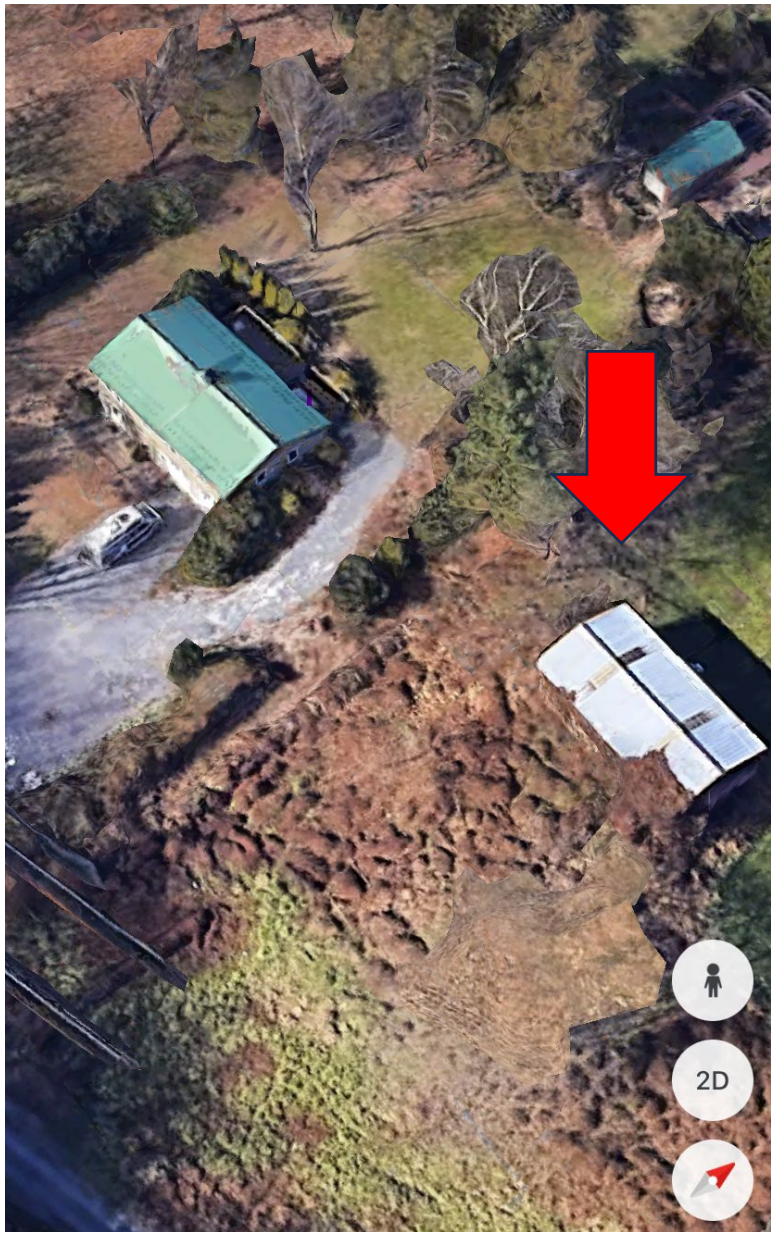
Petitioner's
Exhibit 10B

11970 Boxer Hill Road



Entrance from Boxer Hill Road





Petitioner's Exhibit 10C

1130 Greenway Road





Petitioner's
Exhibit 10D

1013 Painters Lane









Petitioner's
Exhibit 10E

1138 Greenway Road





Petitioner's
Exhibit 10F

Baltimore County - My Neighborhood



Petitioner's Exhibit 11A

Baltimore County 2000 Comprehensive Zoning Map Issues

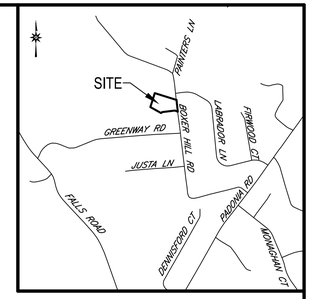
Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-108	Falls Road Community Association	Beaver Dam Run Watershed Area	RC 5 2,440.0 Total 2,440.0	RC 4 2,440.0 Total 2,440.0	RC 5 2,440.0 Total 2,440.0	RC 4 1,364.0 RC 5 1,076.0 Total 2,440.0	See Issues 3-061, 3-070, 3-083, 3-159
3-109	Garrison Realty Investors, LLC	North side of Reisterstown Rd, 1100' northwest of Greenspring Valley Rd	ML IM 0.1 Total 0.1	BM IM 0.1 Total 0.1	BM 0.1 Total 0.1	BM 0.1 Total 0.1	See Issue 3-074
3-110	James L. Rouse	3012 & 3016 Anderson Rd, 750' to Zelda Ct	RC 2 26.3 Total 26.3	RC 4 26.3 Total 26.3	RC 2 26.3 Total 26.3	RC 2 26.3 Total 26.3	
3-111	Harrison & Grass	15 Gwynnbrook Ave, southeast corner of Walk Ave and Gwynnbrook Ave	DR 3.5 0.3 Total 0.3	BM 0.3 Total 0.3	DR 3.5 0.3 Total 0.3	DR 3.5 0.3 Total 0.3	See Issues 3-017, 3-112, 3-113, 3-114, 3-115, 3-116, 3-151
3-112	Harrison & Grass	12 Walk Ave, west side of Walk Ave 400' south of Gwynnbrook Ave	DR 3.5 0.6 Total 0.6	BM 0.6 Total 0.6	DR 3.5 0.6 Total 0.6	DR 3.5 0.6 Total 0.6	See Issues 3-017, 3-111, 3-113, 3-114, 3-115, 3-116, 3-151
3-113	Harrison & Grass	6 Walk Ave, west side of Walk Ave 200' south of Gwynnbrook Ave	DR 3.5 0.5 Total 0.5	BM 0.5 Total 0.5	DR 3.5 0.5 Total 0.5	DR 3.5 0.5 Total 0.5	See Issues 3-017, 3-111, 3-112, 3-114, 3-115, 3-116, 3-151
3-114	Harrison & Grass	11123 Reisterstown Rd, east side of Reisterstown Rd 416' south of Gwynnbrook Ave	OR 2 1.0 Total 1.0	BM 1.0 Total 1.0	OR 2 1.0 Total 1.0	OR 2 1.0 Total 1.0	See Issues 3-017, 3-111, 3-112, 3-113, 3-115, 3-116, 3-151

Petitioner's Exhibit 11B

IN THE MATTER OF:
KRISTOPHER AND MEAGAN HALLENGREN
Case No. 2023-0053-A
BOA Hearing: October 5, 2023 at 10am
Petitioner's Exhibit List

Description	**Exhibit**
Plan to Accompany Petition for Zoning Hearing	1
Plan to Accompany Petition for Zoning Hearing with Topography	2A
Plan to Accompany Petition for Zoning Hearing with Elevations & Lot Coverage	2B
Aerial (closest)	3A
Aerial (mid)	3B
Aerial (far)	3C
Elevation Drawings	4A-B
Photos	5A-N
Photos Showing Vegetative Screening	6A-K
Letters of Support	7A-M
Well Variance Approval	8
SDAT	9
Photos of Properties in Neighborhood with Detached Garages	10A-F
2000 CZMP Map and Log of Issues 3-108	11A-B





VICINITY MAP

SCALE: 1" = 1000'

GENERAL NOTES

1. OWNER: KRISTOPHER & MEGAN HALLENGREN
   12014 BOXER HILL ROAD
   COCKEYSVILLE, MD 21030-1732
   TEL:(410) 340-3327
2. AREA OF TRACT: NET: 71,015 SF OR 1.63 AC.±
3. ZONING CLASSIFICATION: RC 4 (ZONING MAP 050C3)
4. TAX ACCOUNT NUMBER: #2200001446
5. PLAT REFERENCE: N/A
6. DEED REFERENCE: 33945/34
7. TAX MAP #: 50
   GRID 18
   PARCEL: 448
8. CENSUS TRACT: 4083.04
9. REGIONAL PLANNING DISTRICT: CHESTNUT RIDGE
10. GROWTH TIER: IV
11. WATERSHED: LOCH RAVEN RESERVOIR
12. SEWERSHED: N/A
13. MASTER WATER AND SEWER DESIGNATION: WATER W-7
    SEWER S-7
14. EXISTING USE: ONE SINGLE FAMILY DETACHED DWELLING WITH DETACHED GARAGE
15. PROPOSED USE: ONE SINGLE FAMILY DETACHED DWELLING WITH DETACHED GARAGE WITH 2ND FLOOR ADDITION
16. RC 4 SETBACK-MINIMUM REQUIREMENTS

FRONT FROM ROAD PAVING	35'
REAR	25'
SIDE	25'
MAX BLDG HGT	35'

17. ALL LOTS SHOWN HEREON ARE SERVED BY PRIVATE WELL AND SEPTIC TANK.
18. THE PROPOSED DEVELOPMENT IS NOT LOCATED IN ANY DEFICIENT AREAS ON THE BASIC SERVICES MAPS PURSUANT TO SECTION 4A02, BCZR.
19. THIS SITE DOES NOT INCLUDE NOR IS IT CONTIGUOUS TO ANY BUILDINGS, PROPERTY OR SITES REGISTERED ON THE HISTORICAL INVENTORIES LIST.
20. THE SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
21. PRIOR ZONING CASES:
    THERE IS NO KNOWN ZONING HISTORY
22. THERE ARE NO KNOWN FLOODPLAINS ON SITE PER FLOOD INSURANCE RATE MAP (FIRM) PANEL #2400100235F DATED SEPTEMBER 26, 2008.
23. EXISTING DWELLING: 1026 SF
    EXISTING GARAGE: 864 SF

Richardson ENGINEERING
7 Deneison Street
Timonium, Maryland 21093
Phone: 410-560-1502, info@richardsonengineering.net

PLAN TO ACCOMPANY ZONING PETITION
FOR

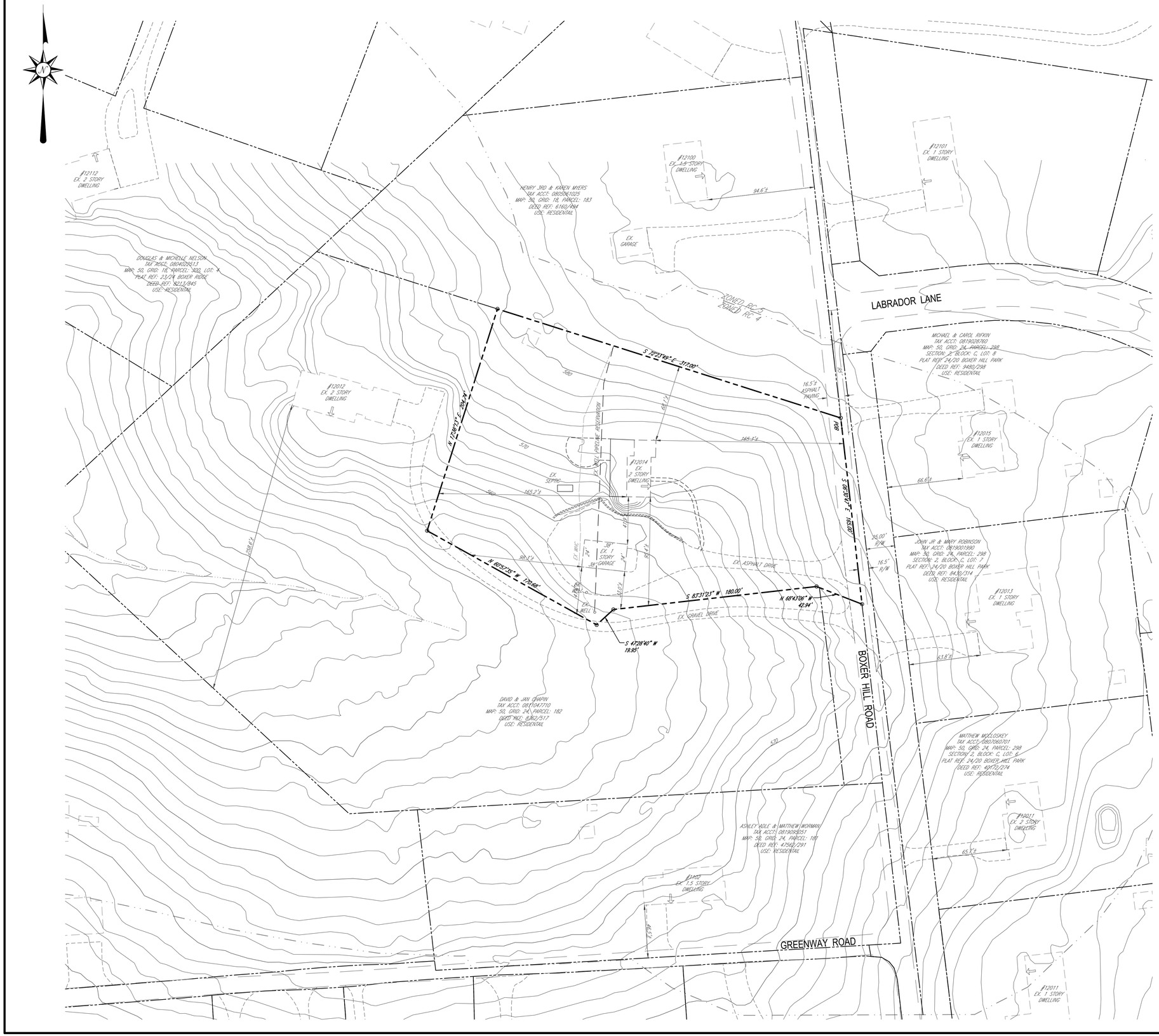
HALLENGREN RESIDENCE

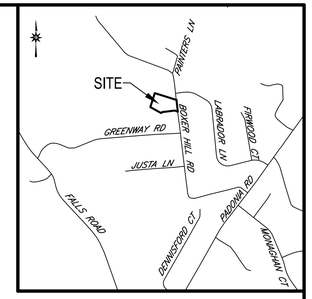
12014 BOXER HILL ROAD

BALTIMORE COUNTY MARYLAND
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

REVISIONS	DRAWN BY:	CHECKED BY:	SCALE:
5/9/23 ZONING HEARING	AAR	PCR	1" = 40'
	DATE: 03-03-23	JOB NO.: 23014	SHEET NO.: 1 OF 1

Petitioner's Exhibit 1





VICINITY MAP

SCALE: 1" = 1000'

GENERAL NOTES

1. OWNER: KRISTOPHER & MEGAN HALLENGREN
   12014 BOXER HILL ROAD
   COCKEYSVILLE, MD 21030-1732
   TEL:(410) 340-3327
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4. TAX ACCOUNT NUMBER: #2200001446
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   GRID 18
   PARCEL: 448
8. CENSUS TRACT: 4083.04
9. REGIONAL PLANNING DISTRICT: CHESTNUT RIDGE
10. GROWTH TIER: IV
11. WATERSHED: LOCH RAVEN RESERVOIR
12. SEWERSHED: N/A
13. MASTER WATER AND SEWER DESIGNATION: WATER W-7
    SEWER S-7
14. EXISTING USE: ONE SINGLE FAMILY DETACHED DWELLING WITH DETACHED GARAGE
15. PROPOSED USE: ONE SINGLE FAMILY DETACHED DWELLING WITH DETACHED GARAGE WITH 2ND FLOOR ADDITION
16. RC 4 SETBACK-MINIMUM REQUIREMENTS

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REAR	25'
SIDE	25'
MAX BLDG HGT	35'

17. ALL LOTS SHOWN HEREON ARE SERVED BY PRIVATE WELL AND SEPTIC TANK.
18. THE PROPOSED DEVELOPMENT IS NOT LOCATED IN ANY DEFICIENT AREAS ON THE BASIC SERVICES MAPS PURSUANT TO SECTION 4A02, BCZR.
19. THIS SITE DOES NOT INCLUDE NOR IS IT CONTIGUOUS TO ANY BUILDINGS, PROPERTY OR SITES REGISTERED ON THE HISTORICAL INVENTORIES LIST.
20. THE SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
21. PRIOR ZONING CASES:
    THERE IS NO KNOWN ZONING HISTORY
22. THERE ARE NO KNOWN FLOODPLAINS ON SITE PER FLOOD INSURANCE RATE MAP (FIRM) PANEL #2400100235F DATED SEPTEMBER 26, 2008.
23. EXISTING DWELLING: 1026 SF
    EXISTING GARAGE: 864 SF

Richardson ENGINEERING
7 Deneison Street
Timonium, Maryland 21093
Phone: 410-560-1502, info@richardsonengineering.net

PLAN TO ACCOMPANY ZONING PETITION
FOR

HALLENGREN RESIDENCE

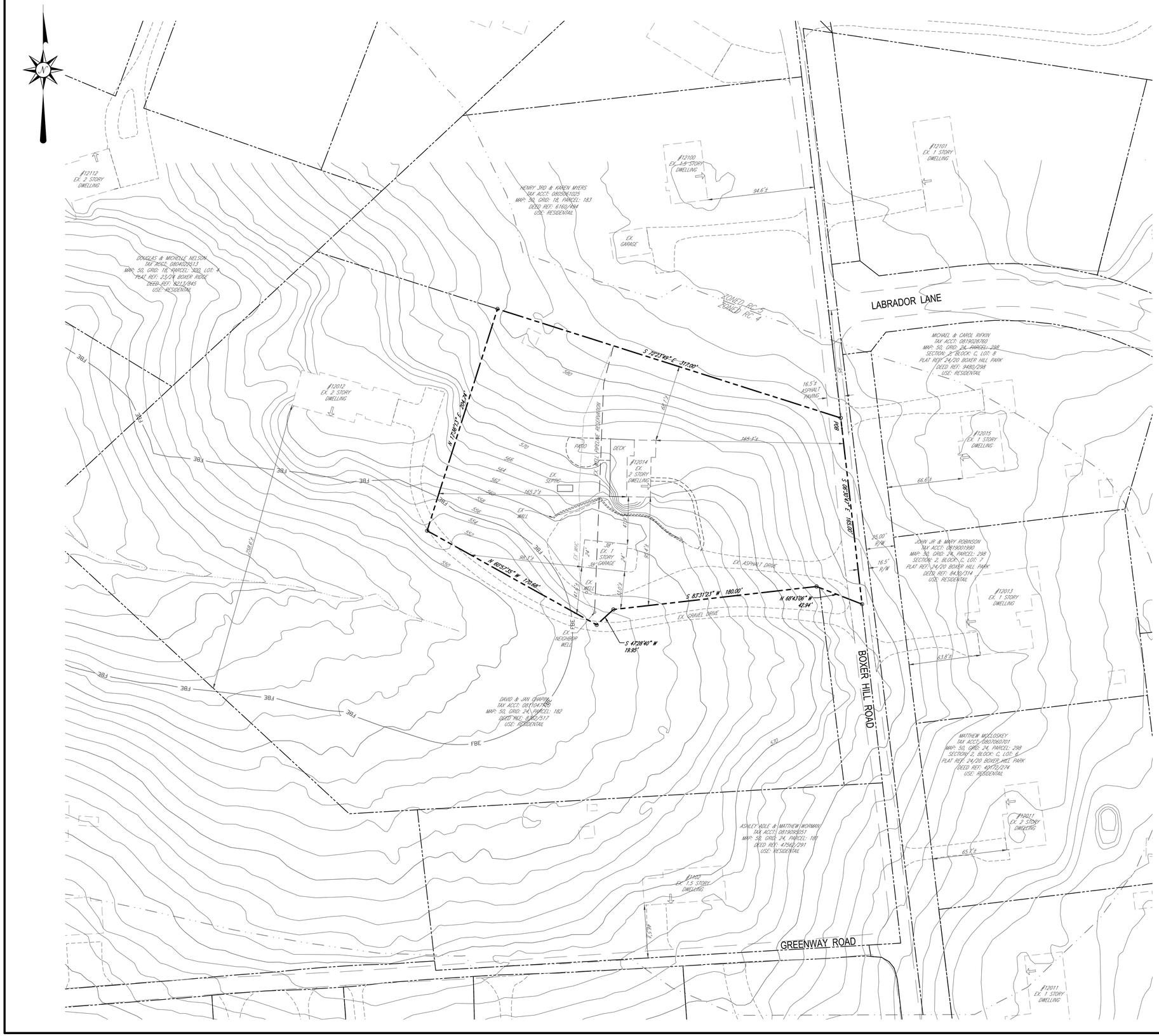
12014 BOXER HILL ROAD

BALTIMORE COUNTY — MARYLAND
8TH ELECTION DISTRICT — 3RD COUNCILMANIC DISTRICT

REVISIONS
5/9/23 ZONING HEARING

DRAWN BY:	CHECKED BY:	SCALE:
AAR	PCR	1" = 40'
DATE:	JOB NO.:	SHEET NO.:
03-03-23	23014	1 OF 1

Petitioner's Exhibit 2A


#12110
EX. 2 STORY
DWELLING
#12100
EX. 1.5 STORY
DWELLING
#12101
EX. 1 STORY
DWELLING
HENRY 3RD & KAREN MYERS
TAX ACCT: 0805261025
MAP: 50, GRID: 18, PARCEL: 183
DEED REF: 6160/484
USE: RESIDENTIAL
EX.
GARAGE
94.6'±
DOUGLAS & MICHELLE NELSON
TAX ACCT: 0804022813
MAP: 50, GRID: 18, PARCEL: 302, LOT: 9
PLAT REF: 23/24 BOXER RIDGE
DEED REF: 9213/845
USE: RESIDENTIAL
ZONED RC 5
ZONED RC 4
LABRADOR LANE
MICHAEL & CAROL RIFKIN
TAX ACCT: 0819026760
MAP: 50, GRID: 24, PARCEL: 298
SECTION: 2, BLOCK: C, LOT: 8
PLAT REF: 24/20 BOXER HILL PARK
DEED REF: 9480/298
USE: RESIDENTIAL
#12012
EX. 2 STORY
DWELLING
S 72°21'16" E 317.00'
N 12°43'13" E 284.74'
16.5'±
ASPHALT
PAVING
60'
R/W
#12015
EX. 1 STORY
DWELLING
66.6'±
PATIO
DECK
#12014
EX.
2 STORY
DWELLING
EX. SEPTIC
EX. WELL PRIVATE ACCESSWAY
EX. WALL
EX. WELL
EX. WELL
EX. ASPHALT DRIVE
EX. GRAVEL DRIVE
EX. WELL
EX. WELL
EX. WELL

Baltimore County - My Neighborhood



Petitioner's Exhibit 3A

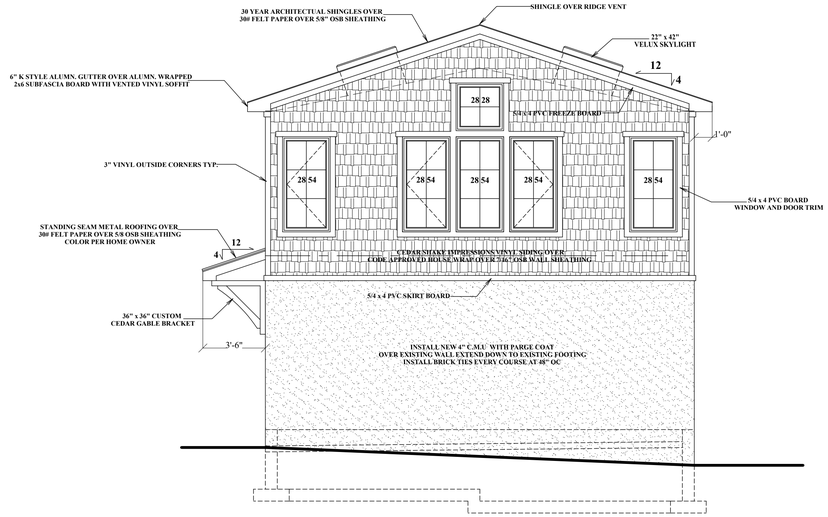
Baltimore County - My Neighborhood



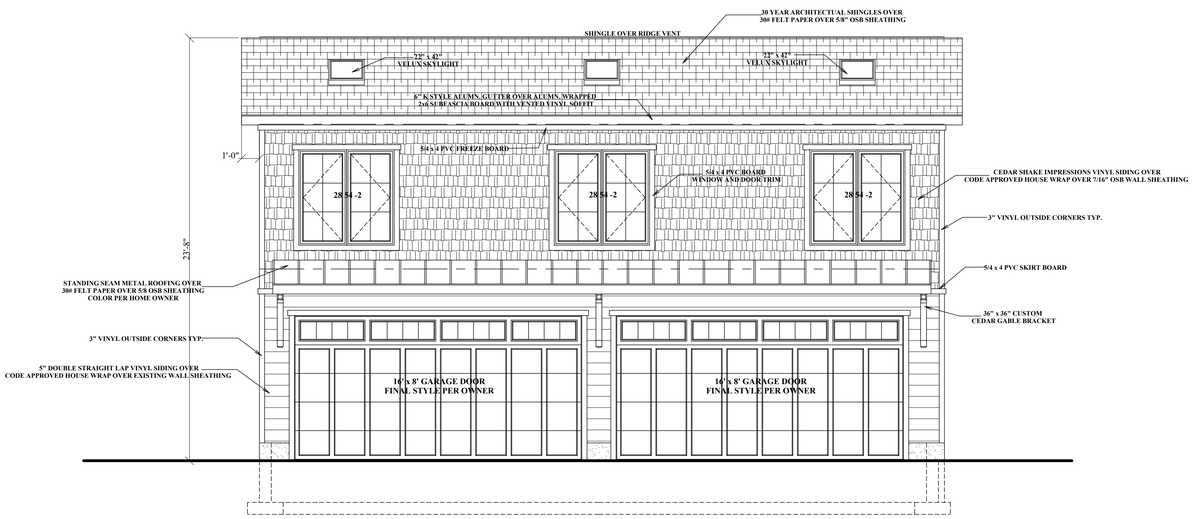
Baltimore County - My Neighborhood



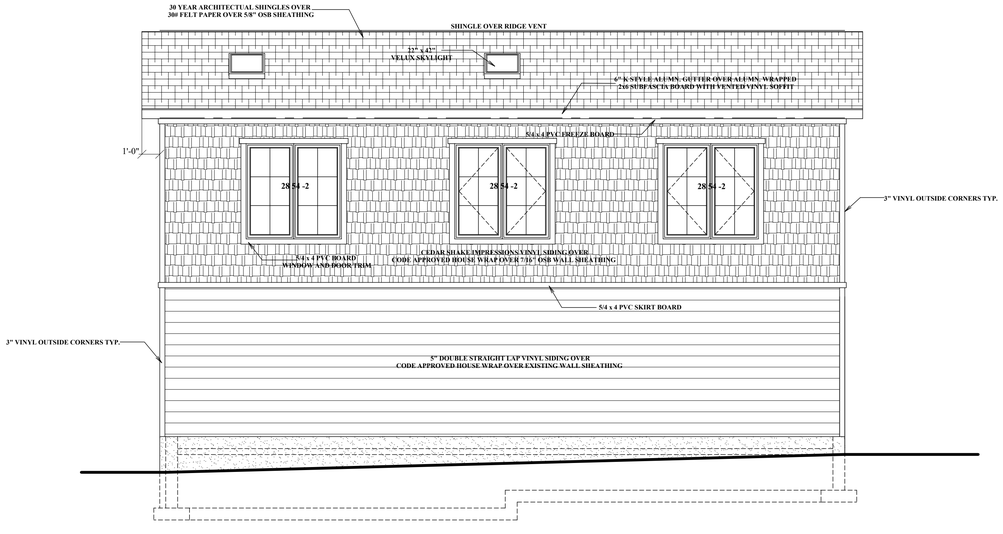
Petitioner's Exhibit 3C



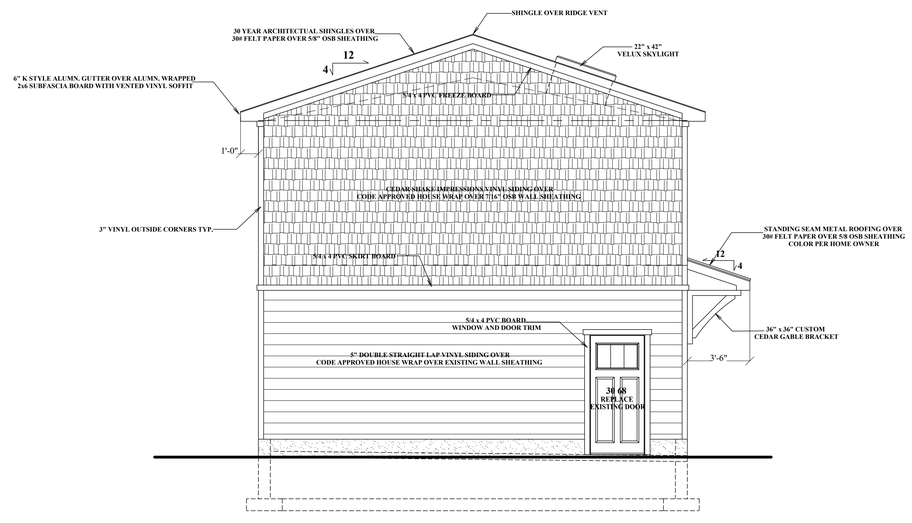
RIGHT ELEVATION



FRONT ELEVATION



REAR ELEVATION



LEFT ELEVATION

Petitioner's
Exhibit 4A

12/16/22	RB
12/26/22	RB
1/27/23	RB

RB Home Design
2061 D MOUNT HOREB RD STREET MD 21154
RBHOMEDESIGN@HOTMAIL.COM
443-613-5115

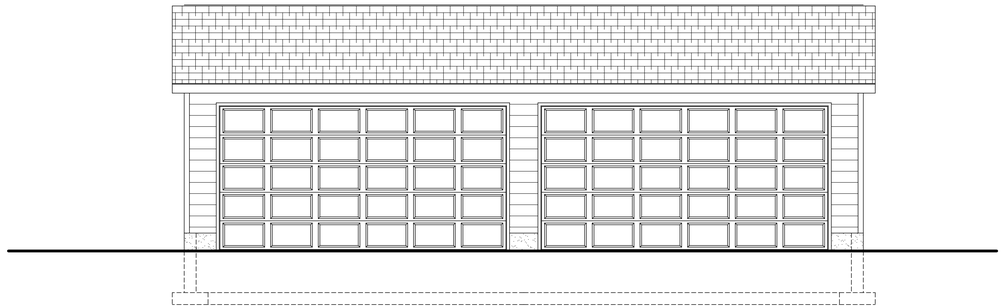
HALLENGREN RESIDENCE
GARAGE ADDITION PLANS
12014 BOXER HILL RD
COCKEYSVILLE MD 21030

THE CONTRACTOR IS
RESPONSIBLE FOR DIMENSIONS
TO BE CONFIRMED AND CORRELATED
AT SITE FOR INFORMATION THAT
PERTAINS SOLELY TO THE FABRICATION
PROCESSES OR TO THE MEANS,
METHODS, TECHNIQUES, SEQUENCES,
AND PROCEDURES OF CONSTRUCTION
OF THE WORK OF ALL TRADES

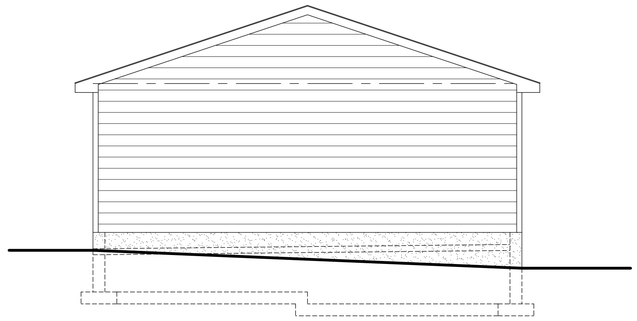
RB HOME DESIGN	
DATE:	12/26/22
SCALE:	1/4" = 1'
DRAWN BY:	RB
EXTERIOR ELEVATIONS	
SHEET NO.	A-1



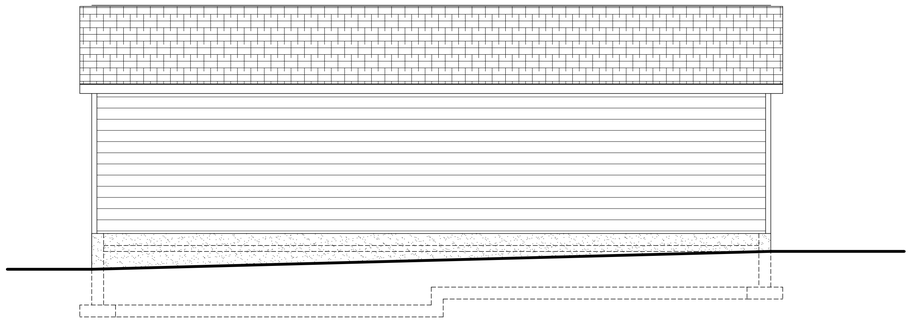
LEFT ELEVATION
EXISTING PLAN



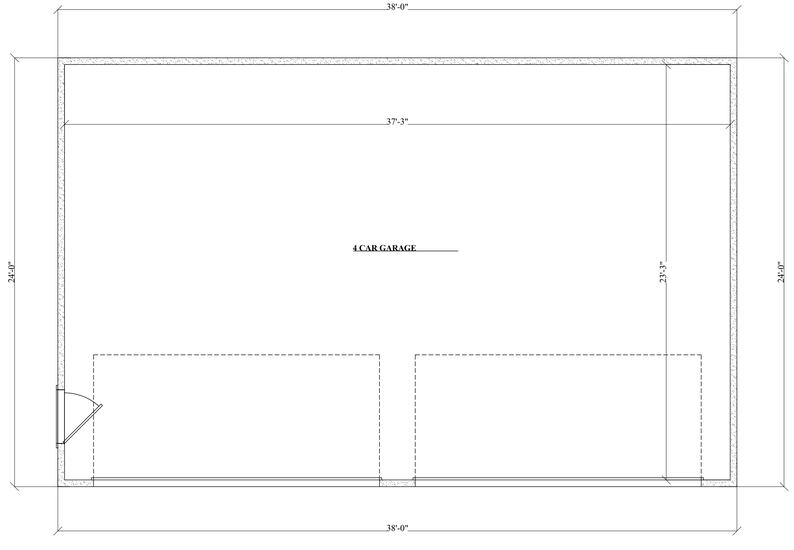
FRONT ELEVATION
EXISTING PLAN



RIGHT ELEVATION
EXISTING PLAN



REAR ELEVATION
EXISTING PLAN



GARAGE PLAN
EXISTING PLAN

Petitioner's
Exhibit 4B

12/16/22	RB

RB Home Design
2061 D MOUNT HOREB RD STREET MD 21154
RBHOMEDESIGN@HOTMAIL.COM
443-613-5115

HALLENGREN RESIDENCE
GARAGE ADDITION PLANS
12014 BOXER HILL RD
COCKEYSVILLE MD 21030

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RB HOME DESIGN

DATE: 12/16/22

SCALE: 1/4" = 1'

DRAWN BY: RB

EXISTING PLANS

SHEET NO.

A-3



Petitioner's Exhibit 5A



Petitioner's
Exhibit 5B



Petitioner's
Exhibit 5C



Petitioner's
Exhibit 5D



Petitioner's
Exhibit 5E



Petitioner's
Exhibit 5F



Petitioner's
Exhibit 5G



Petitioner's
Exhibit 5H



Petitioner's
Exhibit 5I



Petitioner's
Exhibit 5J



Petitioner's
Exhibit 5K



Petitioner's
Exhibit 5L



Petitioner's
Exhibit 5M





Petitioner's
Exhibit 5N

Petitioner's
Exhibit 6A



Petitioner's
Exhibit 6B

Petitioner's
Exhibit 6C

Petitioner's
Exhibit 6D


Petitioner's
Exhibit 6E



Petitioner's
Exhibit 6F

Petitioner's
Exhibit 6G

Petitioner's
Exhibit 6H



Petitioner's
Exhibit 6I



Petitioner's
Exhibit 6J

Petitioner's
Exhibit 6K

To whom it may concern,

We are writing in support of the Hallengren's application for modification of an existing garage, case number #2023-0053. We are neighbors of the Hallengren's at 12112 Boxer Hill Rd and have a similar house and property set up. Both of our houses sit below the street and have lots over 2 acres. The proposed addition of adding 9 feet up on an existing structure will not be seen from the road as it sits behind a stand of Leland Cypress trees that are easily over 30 feet tall. As this existing structure sits at the edge of woods, the views would not be impacted with the addition of 9 feet height to the project while using the existing footprint. We believe there will be minimal to no lasting environmental impact as they are not adding any water or septic to this existing structure. Additionally, all neighbors enjoy and benefit when existing properties are enhanced in the neighborhood. Thank you in advance for your time.

Frances Michelle Nelson

Frances Michelle Nelson

Douglas Gordon Nelson

D.G. Nelson

Petitioner's Exhibit 7A

May 7, 2023

To Whom It May Concern,

RE: Mr. & Mrs. Hallengren's Zoning Hearing

I am a current neighbor of Mr. and Mrs. Hallengren and reside at 1102 Greenway Road, Cockeysville, MD 21030.

The back of my home looks directly into the Hallengren's yard. It is my understanding that the Hallengren's would like to update their current garage structure and I am in favor of their plans. I have personally reviewed all of the detailed drawings and have no issue with the proposed construction.

Please let me know if you have any questions or concerns.

Sincerely,

DocuSigned by:
Ashley Adle
AD8CA944DF3B40E

Ashley Adle

1102 Greenway Road

Cockeysville, MD 21030

(443) 415 – 6814

Amadle17@gmail.com

Petitioner's Exhibit 7B

May 8, 2023

To Whom It May Concern,

I am writing in support of case number #2023-0053-A. I have seen Meg and Kris Hallengren's plans for their garage and am in support of these plans. The improved structure will be visually attractive and address the needs of their family. I fully support their project.

Sincerely,

Leigh Bank
Ward Bank

Leigh and Ward Bank
12007 Boxer Hill Road, Cockeysville, MD 21030

Petitioner's Exhibit 7C

May 4, 2023

Baltimore County Department of Permits

County Office Building

111 West Chesapeake Avenue

Towson, MD 21204

To Whom it May Concern,

I am writing a letter in support of case #2023-0053-A. I have lived in this neighborhood for nearly 9 years and have been privileged to get to know Meg and Kris Hallengren and their children since that time. Our properties are only about 360 feet apart in distance, and I pass by their house nearly every single day.

I have seen the plans for their project and I believe that the improved structure will be visually attractive, add value to the neighborhood, and will help to address the needs of their family. I fully support their project and would be happy to discuss it further with anyone.

Thank you for your attention,

Anna Wong

A. Wong

410-917-1203, abwong@gmail.com

9619 Labrador Lane

Cockeysville, MD 21030

Petitioner's Exhibit 7D

May 1, 2023

Baltimore County Department of Permits

County Office Building

111 West Chesapeake Avenue

Towson, Maryland 21204

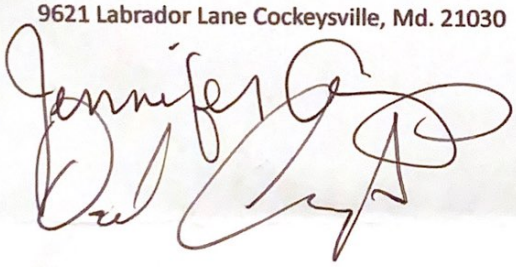
To Whom it may Concern,

I am writing a letter of support for case # 2023-0053-A. As a resident as a resident of the Boxer Hill community since 1999 we would like to support the Hallengrens in any effort to improve their property. We have discussed their current garage project and feel it will only improve the aesthetic of our neighborhood. In addition, it is located at the base of the driveway behind a large, beautiful tree. We live 3 houses away from Meg and Chris and look forward to seeing the new, improved garage space.

Sincerely,

Jennifer Arrup and Des Arrup

9621 Labrador Lane Cockeysville, Md. 21030



Petitioner's Exhibit 7E

To Baltimore County Zoning Board, 4/30/2023

My Name is Suzanne Mays-Hornung and I live at 12121 Boxer Hill Rd.

I want to tell you I am so pleased with the property at 12014 Boxer Hill Rd. The owners have not only made their house and their property stunning, it has been an example to others in the neighborhood and they too have followed suit.

I do understand they want to further their building upwards and correct a few problems and I am all for the addition at the property stated above.
I honestly do Not Believe this will harm the land, burden others, be wrong for the wildlife, surrounding properties or the airway. I do think it will increase the value of the homes around us as well.

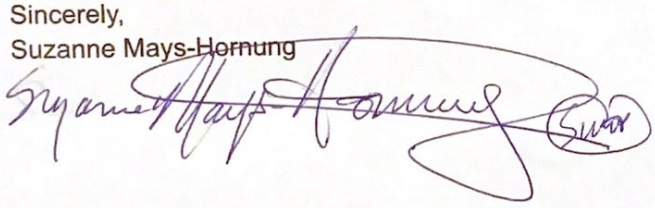
I am for the residents at the property 12014 Boxer Hill Rd. It would be a grave error to not allow this to go forward, as this family is a big part of our community and a fine example of a good neighbor should be - as it states in the Bible.

I believe the family has established a positive appearance and will continue to do so. It is also an addition to the necessity for some to work at home since Covid.

I am asking the Zoning Board to Please consider all that has been said and to allow the residents and fellow neighbors at 12014 Boxer Hill Rd,To continue with their property addition.

Thank you,

Sincerely,
Suzanne Mays-Hornung



Petitioner's Exhibit 7F

Hi, my name is Mandy Burton, 5/9/2023
My address is- 12014 Boxer Hill Road
Cockeysville, MD 21030

I have seen the plans, I am happy they are improving the property and making the garage look better than It does now.
I have NO objection and support the plan.

Sincerely,
Mandy L Burton

Petitioner's Exhibit 7G

To Whom It May Concern,

I am writing in support of case number #2023-0053-A. I have seen Meg and Kris Hallengren's plans for their garage and am in support of these plans. The improved structure will be visually attractive and will address the needs of their family. I fully support their project.

Sincerely,

Chris Lauer

Digitally signed by Chris Lauer
DN: cn=Chris Lauer, o, ou, email=cjlauer22@yahoo.com, c=US
Date: 2023.05.09 20:40:59 -04'00'

Chris Lauer

9610 Labrador Lane

Cockeysville, MD 21030

Petitioner's
Exhibit 7H

19

Hi, my name is Sara A. Thompson, 5/9/2023
My address is- 12003 Boxer Hill Rd.
Cockeysville, MD 21030

I have seen the plans, I am happy they are improving the property and making the garage look better than It does now.
I have NO objection and support the plan.

Sincerely,
Sara A. Thompson

Petitioner's Exhibit 7I

Hi, my name is Karen Wilson, 5/9/2023
My address is-
12113 Boxer Hill Rd.

I have seen the plans, I am happy they are improving the property and making the garage look better than It does now.
I have NO objection and support the plan.

Sincerely,
Karen Wilson

Petitioner's Exhibit 7J

Stephen Tenberg

—

12206 Boxer Hill Rd.
Cockeysville, MD 21030

813.421.2305
StephenTenberg@gmail.com

10 May 2023

Re: Subject Property: **12014 Boxer Hill Rd Cockeysville, MD 21030**

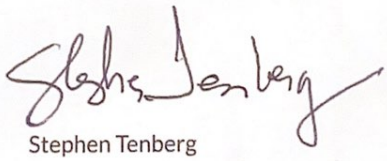
Hello,

I own the property and the end of Boxer Hill Rd on the left (12206), past the subject property at 12014 Boxer Hill Rd.

I have seen the zoning notice and the planned garage increase, and **have no objections to the plan and would like to offer my support for its approval.**

Thank You.

Kind Regards



Stephen Tenberg

Petitioner's Exhibit 7K

May 8th, 2023

To Whom It May Concern,

This letter is in reference to my neighbors The Hallengrens and their variance number 2023-0053-A to permit an accessory building with a height of 24 feet in lieu of the permitted 15 feet.

Our neighborhood is fairly old with a mixture of beautifully renovated homes and much older homes. Over the years many of us have made changes to update old structures and utilize the beautiful properties we steward.

I am in favor of this permit to increase the height of their free-standing garage. The garage is at the bottom of the hill and offers no threat to obstruct anyone's view for acres. The Hallengrens have always taken very good care of their property, are active in our community and are very kind neighbors.

I may mention that my husband and I not only renovated our property 13 years ago but actually knocked down our whole house and built a new house much bigger and higher. My immediate neighbors were gracious, welcomed the upgrade and were happy for our growing vibrant family.

I hope you will consider my support to approve this permit.

Thank you very much,

Bonnie Tarantino

Bonnie Tarantino *Bonnietarantino.com* *1105 Justa Lane Cockeysville MD. 21030*

Petitioner's Exhibit 7L

Hi, my name is Heidi Mozoki, 5/9/2023
My address is- 1209 Boxer Hill Road

I have seen the plans, I am happy they are improving the property and making the garage look better than
It does now.
I have NO objection and support the plan.

Sincerely,
Heidi Mozoki

Petitioner's
Exhibit 7M

File Name

OK to file _____
Follow-up date _____

Inspection X
Telephone _____

ACTION REPORT

Baltimore County Department of Environmental Protection and Resource Management

Date 6/15/92
Time 9:20 AM

Dist. 8

FILE LOCATION: 12014 Boxer Hill Rd
Cockeysville 21030

PERSON CONTACTED: Ned Stellman Owner
(name and title)

ADDRESS: _____ Phone # 235 9905

REASON FOR INSPECTION: Cell. request variance to build 24 ½ ft from well.

RECORD OF ACTION: Mr. Stellman is proposing to build a pole barn/garage on top of an existing concrete pad, which will be 24 ½ ft from the well. The pole barn will be constructed of pressure treated 6 X 6's and concrete

RECOMMENDATIONS: OK to approve variance & issue permit

DATE: 6/15/92 SANITARIAN S Farmer

REFERRED TO: _____ FOR _____

DATE: _____ BY _____

COPY TO _____

Petitioner's Exhibit 8

Real Property Data Search ( )
Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District -** 08 **Account Number -** 2200001446

Owner Information

Owner Name:	HALLENGREN KRISTOPHER R HALLENGREN MEAGAN S	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	12014 BOXER HILL RD COCKEYSVILLE MD 21030-1732	**Deed Reference:**	/33945/ 00034

Location & Structure Information

Premises Address:	12014 BOXER HILL RD COCKEYSVILLE 21030-1732	**Legal Description:**	1.63 AC WS 12014 BOXER HILL RD 450 N GREENWAY RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0050	0018	0448	8080150.04	0000				2023	Plat Ref:

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1967	1,936 SF		1.6300 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	YES	STANDARD UNIT	SIDING/4		2 full/ 1 half	1 Detached	

Value Information

	Base Value	Value	Phase-in Assessments	
		As of 01/01/2023	As of 07/01/2023	As of 07/01/2024
Land:	186,000	186,000		
Improvements	328,800	373,200		
Total:	514,800	559,200	529,600	544,400
Preferential Land:	0	0		

Transfer Information

Seller: HALLENGREN KRISTOPHER R	**Date:** 07/16/2013	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /33945/ 00034	**Deed2:**
Seller: STELLMANN EDWARD B,3RD	**Date:** 06/01/2010	**Price:** $540,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /29520/ 00140	**Deed2:**
Seller: KLAUNBERG F H,JR	**Date:** 03/16/1990	**Price:** $191,500
Type: ARMS LENGTH IMPROVED	**Deed1:** /08429/ 00616	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2023	07/01/2024
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

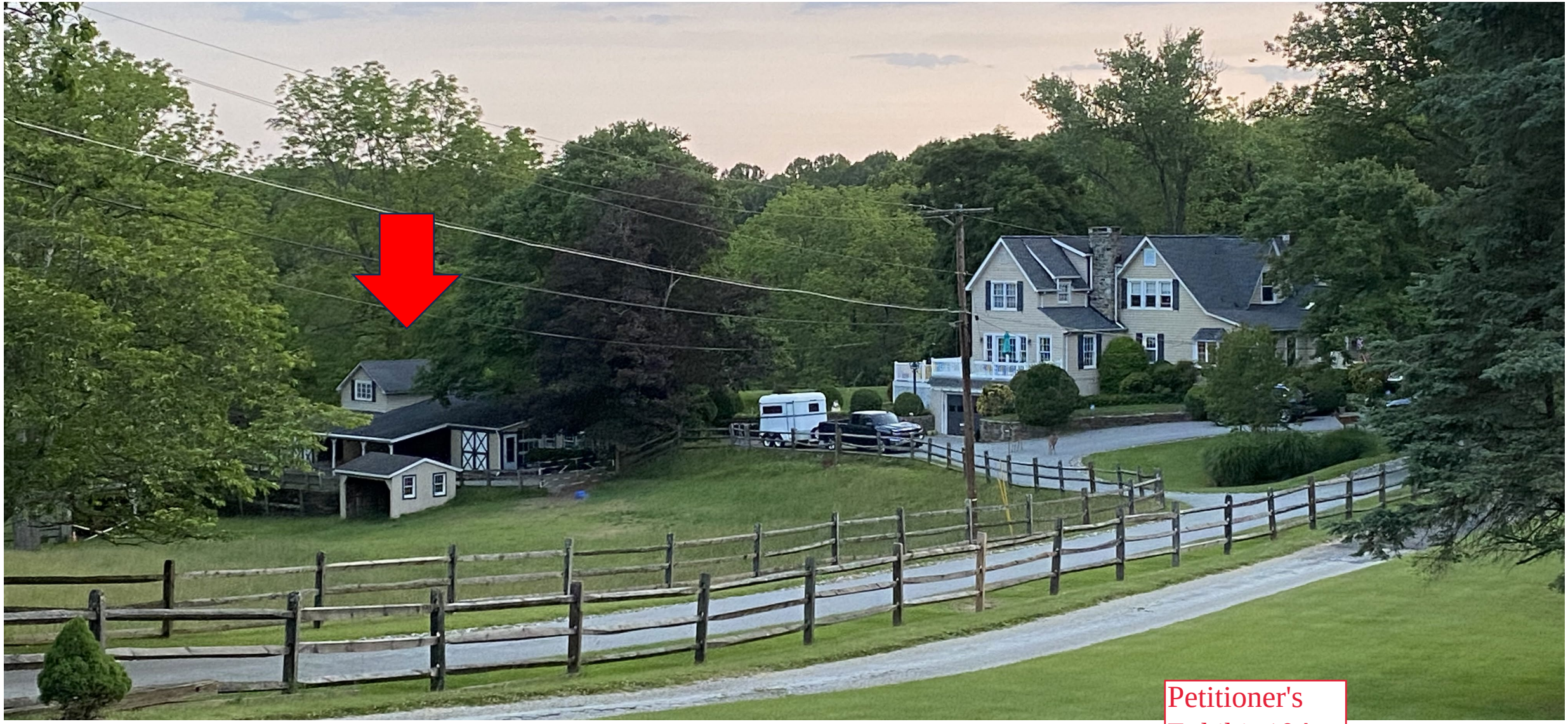
Homestead Application Status: Approved 11/08/2011

Homeowners' Tax Credit Application Information

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

Petitioner's Exhibit 9

12207 Boxer Hill Road



Petitioner's
Exhibit 10A

12115 Boxer Hill Road





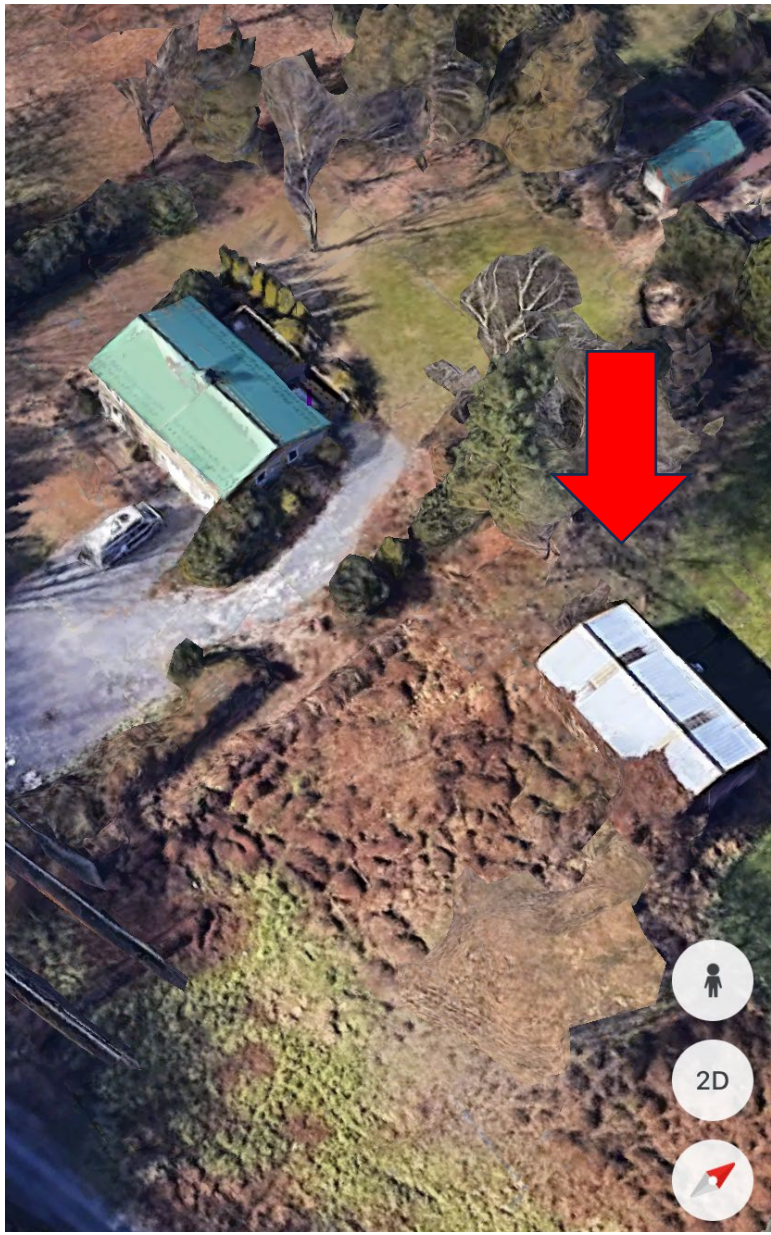
Petitioner's
Exhibit 10B

11970 Boxer Hill Road



Entrance from Boxer Hill Road





Petitioner's Exhibit 10C

1130 Greenway Road





Petitioner's
Exhibit 10D

1013 Painters Lane









Petitioner's
Exhibit 10E

1138 Greenway Road





Petitioner's
Exhibit 10F

Baltimore County - My Neighborhood



Petitioner's Exhibit 11A

Baltimore County 2000 Comprehensive Zoning Map Issues

Issue Number	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
3-108	Falls Road Community Association	Beaver Dam Run Watershed Area	RC 5 2,440.0 Total 2,440.0	RC 4 2,440.0 Total 2,440.0	RC 5 2,440.0 Total 2,440.0	RC 4 1,364.0 RC 5 1,076.0 Total 2,440.0	See Issues 3-061, 3-070, 3-083, 3-159
3-109	Garrison Realty Investors, LLC	North side of Reisterstown Rd, 1100' northwest of Greenspring Valley Rd	ML IM 0.1 Total 0.1	BM IM 0.1 Total 0.1	BM 0.1 Total 0.1	BM 0.1 Total 0.1	See Issue 3-074
3-110	James L. Rouse	3012 & 3016 Anderson Rd, 750' to Zelda Ct	RC 2 26.3 Total 26.3	RC 4 26.3 Total 26.3	RC 2 26.3 Total 26.3	RC 2 26.3 Total 26.3	
3-111	Harrison & Grass	15 Gwynnbrook Ave, southeast corner of Walk Ave and Gwynnbrook Ave	DR 3.5 0.3 Total 0.3	BM 0.3 Total 0.3	DR 3.5 0.3 Total 0.3	DR 3.5 0.3 Total 0.3	See Issues 3-017, 3-112, 3-113, 3-114, 3-115, 3-116, 3-151
3-112	Harrison & Grass	12 Walk Ave, west side of Walk Ave 400' south of Gwynnbrook Ave	DR 3.5 0.6 Total 0.6	BM 0.6 Total 0.6	DR 3.5 0.6 Total 0.6	DR 3.5 0.6 Total 0.6	See Issues 3-017, 3-111, 3-113, 3-114, 3-115, 3-116, 3-151
3-113	Harrison & Grass	6 Walk Ave, west side of Walk Ave 200' south of Gwynnbrook Ave	DR 3.5 0.5 Total 0.5	BM 0.5 Total 0.5	DR 3.5 0.5 Total 0.5	DR 3.5 0.5 Total 0.5	See Issues 3-017, 3-111, 3-112, 3-114, 3-115, 3-116, 3-151
3-114	Harrison & Grass	11123 Reisterstown Rd, east side of Reisterstown Rd 416' south of Gwynnbrook Ave	OR 2 1.0 Total 1.0	BM 1.0 Total 1.0	OR 2 1.0 Total 1.0	OR 2 1.0 Total 1.0	See Issues 3-017, 3-111, 3-112, 3-113, 3-115, 3-116, 3-151

Petitioner's Exhibit 11B

Exhibit List and Descriptions for Case #23-053-A

- Exhibit 1 – Zoning Petition, Affidavit, and Demand for Hearing Forms
- Exhibit 2 – Residential Zoning Checklist for Baltimore County (Two-Step Test for a Zoning Variance)
- Exhibit 3 – Cromwell vs Ward (Case Law)
- Exhibit 4 – Supporting Case Law and Hearing Information
- Exhibit 5 – Topography of Neighborhood Homes
- Exhibit 6 - Images and Information of Neighborhood Homes
- Exhibit 7 - Environmental Information of Neighborhood Homes
- Exhibit 8 – Potential Property Areas for Home Addition and/or Accessory Structure
- Exhibit 9 – Correspondence (Letter and Emails)
- Exhibit 10 – Proposed 2-Story Garage Square Footage vs Existing Neighborhood Homes
- Exhibit 11 – Opinion and Order from Case #2023-0053-A
- Exhibit 12 – Neighborhood Zoning

10/5/23 Jay

Exhibit List and Descriptions for Case #23-053-A

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- Exhibit 11 – Opinion and Order from Case #2023-0053-A
- Exhibit 12 – Neighborhood Zoning

10/5/23 Jay

23-087 SC

ADMINISTRATIVE ZONING PETITION

FOR ADMINISTRATIVE VARIANCE – OR – ADMINISTRATIVE SPECIAL HEARING

To be filed with the Department of Permits, Approvals and Inspections
To the Office of Administrative Hearings for Baltimore County for the property located at:

Address 12014 Boxer Hill Road, Cockeysville, MD 21030 **Currently Zoned** residential

Deed Reference 33945 / 00037 **10 Digit Tax Account #** 2200001476

Owner(s) Printed Name(s) Kristopher R & Meagan S Hallengren

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION(S) AND ADDING THE PETITION REQUEST)

For Administrative Variances, the Affidavit on the reverse of this Petition form must be completed and notarized.

The undersigned, who own and occupy the property situate in Baltimore County and which is described in the plan/plat attached hereto and made a part hereof, hereby petition for an:

1. X **ADMINISTRATIVE VARIANCE** from Section(s) 400.3 TO PERMIT AN ACCESSORY STRUCTURE BUILDING HEIGHT OF 24' IN LIEU OF THE PERMITTED 15'

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County.

2. ___ **ADMINISTRATIVE SPECIAL HEARING** to approve a waiver pursuant to Section 32-4-107(b) of the Baltimore County Code: (*indicate type of work in this space: i.e., to raze, alter or construct addition to building*)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County.

Property is to be posted and advertised as prescribed by the zoning regulations.
I/ we agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Owner(s)/Petitioner(s):

Name #1 – Type or Print	Name # 2 – Type or Print
Kristopher R Hallengren	Meagan S Hallengren
Signature #1	Signature # 2
12014 Boxer Hill Road	Cockeysville MD
Mailing Address	City State
21030 (410) 340-3327	krhallengren@hotmail.com
Zip Code Telephone #'s (Cell and Home) (443) 540-6569	Email Address meghallengren@gmail.com

Attorney for Owner(s)/Petitioner(s):

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

1 DENEVSON STREET TIMONIUM, MD
Mailing Address City State

21093 410 560 1582 RICK@RICHARDSONENGINEERING.NET
Zip Code Telephone # Email Address

A PUBLIC HEARING having been formally demanded and/or found to be required, it is ordered by the Office of Administrative Hearings for Baltimore County, this _____ day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, and re-posted as required by the zoning regulations of Baltimore County.

Administrative Law Judge for Baltimore County

Case Number 2023-053-A **Filing Date** 3/13/23 **Estimated Posting Date** 3/26/23 **Reviewer** SC

Revised 8/2022

Affidavit in Support of Administrative Variance

(THIS AFFIDAVIT IS NOT REQUIRED FOR AN HISTORIC ADMINISTRATIVE SPECIAL HEARING)

The undersigned hereby affirms under the penalties of perjury and upon personal knowledge to the Administrative Law Judge for Baltimore County, that the information herein given is true and correct and that the undersigned is/are competent to testify in the event that a public hearing is scheduled in the future with regard thereto. In addition, the undersigned hereby affirms that the property is not the subject of an active Code Enforcement case and that the residential property described below is owned and occupied by the undersigned.

Address: 12014 Boxer Hill Road (Print or Type Address of Property) Cockeysville (City) MD (State) 21030 (Zip Code)

Based upon personal knowledge, the following are the facts upon which I/we base the request for an **Administrative Variance** at the above address. **(Clearly state practical difficulty or hardship here)**

Given the grade elevations and landscape of our home there is no feasible way to create an addition. We are requesting a variance to raise the garage roof to 24 feet from 15 feet & add a second floor. The addition will mostly be hidden by current trees, which we intend to keep. There will be no increase to impervious roof area. This space will not have water or septic & will be used for storage & recreation - not any type of "in law" space.

(If additional space for the petition request or the above statement is needed, label and attach it to this Form)

Signature of Owner (Affiant) — Kristopher R. Hallengren

Signature of Owner (Affiant) — Meagan S. Hallengren

Name - Print or Type — Kristopher R. Hallengren

Name - Print or Type — Meagan S. Hallengren

The following information is to be completed by a Notary Public of the State of Maryland

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 27 day of FEB, 2023, before me a Notary of Maryland, in and for the County aforesaid, personally appeared:

Print name(s) here: Kristopher & Meagan Hallengren

the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notaries Seal

Notary Public

My Commission Expires 11/7/2026

ROBIN JAMES DAVIS SR NOTARY PUBLIC BALTIMORE COUNTY, MD MY COMMISSION EXPIRES NOVEMBER 7, 2026

FORMAL DEMAND FOR HEARING
(ADMINISTRATIVE VARIANCE, USE PERMITS AND USE APPROVALS)

Case Number: 2023-0053-A

Property Address: 12014 Boxer Hill Rd

Legal Owners (Petitioners): Meagan & Kristopher Hallengren

TO THE ADMINISTRATIVE LAW JUDGE OF BALTIMORE COUNTY:

Protestant #1 Michael Riftkin 443-761-9553 410-252-0367

Protestant Name(s) - Type or Print | Telephone # (Cell) | Alternate Phone #

mrifkin1@verizon.net

Email Address

the (✓) Owner(s) **or** ( ) Occupant(s) of

12015 Boxer Hill Rd Cockeysville MD 21030

Address | City | State | Zip Code

Protestant #2 _____

Protestant Name(s) - Type or Print | Telephone # (Cell) | Alternate Phone #

_____

Email Address

the ( ) Owner(s) **or** ( ) Occupant(s) of

_____

Address | City | State | Zip Code

which is located approximately 0 feet from the property (must be within 1,000 ft. of subject property), which is the subject of the above petition, **do hereby submit a formal demand for a public hearing regarding this matter.***

I/WE HAVE SUBMITTED THE REQUIRED PROCESSING FEE FOR THIS DEMAND AND REQUEST THAT A HEARING BE SCHEDULED FOR THE SUBJECT PETITION.

*Failure to accept two proposed Hearing dates will result in the Demand request being dismissed and the Hearing will be held and/or a review by the Hearing Officer will take place without the protestants input. It is the responsibility of the protestant to verify the location, or web address, date and time of the hearing.

_____ 4/6/23

Signature | Date

_____

Signature | Date

Revised 3/2022

Exhibit 2 Case #23-053-A

Zoning Review
Department of Permits, Approvals and Inspections
Baltimore County Office Building
111 W. Chesapeake Ave, Rm 124
Towson, MD 21204

ZONING CHECKLIST

INDIVIDUAL RESIDENTIAL LOTS:

Administrative Special Hearings

- **Administrative Variances**
- **Posting and Waivers**
- **Special Hearings**
- **Variances**

Revised 5/2023

Please be aware that this checklist is for your information only and
it is not intended to offer, or to be considered, legal advice.

First and most importantly: You must understand that the relief you request is a quasi- judicial decision and you are responsible for meeting the burden of law required by the Baltimore County Zoning Regulations (BCZR). A judicial hearing is an adversary process and, therefore, there may be opposition to your request. During a judicial hearing, the parties will be permitted to testify, present evidence, and cross-examine witnesses. The Office of Administrative Law will rule on the evidence and testimony to determine whether or not the petition will be granted.

Second: You must understand that if a hearing is required, you are permitted to have representation by an attorney of your choice. You are not required to have an attorney, though it is recommended that you consider obtaining legal representation. If you are incorporated, it is considered a requirement that you be represented by an attorney.

Third: It is strongly recommended that you read and understand the requirements of the BCZR and related policies.

Fourth: No employee of the Department of Permits, Approvals and Inspections (PAI) may provide legal advice to anyone. The representations and opinions of any employee are not to be construed as definitive in any case. Only the decision of the Administrative Law Judge rendered after the statutory required public hearing is considered dispositive in matters relating to the interpretation of the BCZR. Even though there may not be opposition in a given case, your request may be denied.

When you have completed the following steps, **petitions may be submitted by using the U.S. Postal Service, private delivery service (FedEx, UPS, etc.) or in-person drop-off at the Zoning counter. Revisions will not be processed or accepted if they are just delivered or mailed. Revisions must be filed with the original intake Planner.**

AUTHORITY AND PETITIONER'S BURDEN:

INFORMATION ONLY, NOT LEGAL ADVICE

All requests for zoning residential lot variances and special hearings are handled by the Department of Permits, Approvals and Inspections (PAI). *Applications are obtained from and filed with the Zoning Review section of PAI* and all hearings are scheduled before an Office of Administrative Law Judge (**ALJ**). The enabling legislation providing the ALJ with this authority is in Sections 307 and 500 of the Baltimore County Zoning Regulations (BCZR). The Director of PAI interprets and enforces the BCZR. Any disagreement with said interpretation may be taken to the Office of Administrative Law per Section 500.7 (BCZR).

Legal representation is recommended in all cases, but in the case of a corporation, it is a requirement. The information that proceeds is provided to give the petitioner a basic understanding of the legal burden of proof that must be satisfied prior to the granting of the petition. It is not a substitute for private legal counsel nor should it be construed as legal advice.

VARIANCES

Under the authority of Section 307.1 (BCZR), the Administrative Law Judge, (ALJ) applying the two-step test set forth in Cromwell v. Ward, 100 Md. App. 691 (1995), has the authority to grant variance from the height, area, parking, and sign regulations.

A. The first step requires the petitioner to prove, to the satisfaction of the ALJ, that the property whereon structures are to be placed (or uses conducted) is unique, unusual, and different from the surrounding properties such that the uniqueness causes the zoning provision to impact more on the subject property than on the surrounding properties.

B. The second step of the test requires that the petitioner must demonstrate that strict compliance with the BCZR would result in either practical difficulty or unreasonable hardship. The Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, stated:

1. "To prove undue hardship for a use variance, the following three criteria must be met:
   (i) Applicant must be unable to secure a reasonable return or make any reasonable use of his property (mere financial hardship or opportunity for greater profit is not enough).
   (ii) The difficulties or hardship is peculiar to the subject property in contrast with other properties in the zoning district.
   (iii) Hardship was not the result of applicant's own actions.

2. To provide practical difficulty for an area variance, the following criteria must be met:

   (i) Whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome.
   (ii) Whether the grant would be substantial injustice to applicant, as well as other property owners in district, or whether a lesser realization than that applied for would give substantial relief.
   (iii) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

C. No increase in residential density beyond that allowed by the zoning regulations shall be permitted.

D. The relief requested must be in strict harmony with the spirit and intent of height, area, off-street parking, or sign regulations.

E. And only in such manner as to grant relief without substantial injury to public health, safety, and general welfare.

SPECIAL HEARINGS

Under the authority of Section 500.6 (BCZR), the Office of Administrative Law has the power, upon notice to the parties in interest, to conduct hearings involving any violation or alleged violation or noncompliance with any zoning regulations, or the proper interpretation thereof, and to pass his order regarding this matter.

Under the authority of Section 500.7 (BCZR), any person can petition the Office of Administrative Law to hold a public hearing to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such a person in any property insofar as they are effected by the BCZR.

USE PERMITS

Certain uses have singular, individual characteristics which make it necessary, in the public interest (even though other County permits may not be required), to specify regulations for each zoning classification. Under the authority of Section 500.4 (BCZR), the Director of PAI has the power to issue certain use permits (certain others are issued under the authority of the Office of Administrative Law) provided that all of the conditions for that particular use specified in the BCZR are met. Under the authority of Section 500.7 (BCZR), the Director has the right to require a public hearing whenever the Director deems it in the public interest.

GENERAL APPLICATION PROCEDURE

A zoning hearing can only address issues regulated by the BCZR. You must contact other county/state agencies (see page 5) to determine if your plan meets their requirements!

Normally before granting any relief, the Office of Administrative Law shall require advertising and posting of the property and shall require, as applicable, a public hearing. All orders of an ALJ shall contain a finding of fact specifying the reason or reasons for granting or denying each request.

The normal time period from time of filing a petition until the time of receipt of the written order is usually somewhere between 45 and 60 days. Also, in addition to filing fees, costs are incurred for posting the property and advertising the hearing in area newspapers.

At the time of petition filing, petitioners will pay the filing costs. **Be aware that fees are subject to change without notice. The posting must be arranged by the petitioner**. The property must be posted and the posting sign must remain *visible* on the property for a period of 15 days. Check with your sign poster before removing the sign.

Zoning petitions may be submitted by using the U.S. Postal Service, private delivery service (FedEx, UPS, etc.) or in-person drop-off at the Zoning counter. Applications/forms are available from Zoning Review or online**. All information on the forms must be typed or printed and they must be signed by the legal owner(s) or a corporate officer, with his/her title, the address, zip code, work and home telephone numbers and Email address provided. While the planner will assist the petitioner in interpreting those provisions of the BCZR applicable to the particular case, the final wording of the request and other information submitted, as set forth in the application, shall be the sole responsibility of the petitioner(s).

County employees requesting a hearing must have Council approval. Speak to a planner.

** http://www.baltimorecountymd.gov/Agencies/permits/pdm_zoning/zonforms.html#forms

Administrative Variances Hearing/Posting

To save the individual Baltimore County homeowner time and money, effective March 30, 1990, an administrative variance procedure for an **owner occupied residential lot** was established pursuant to **Section 32-3-303,** Baltimore County Code. This procedure may not require newspaper advertising or a public hearing and, as such, the overall time period from the date of filing to written order will diminish and possibly save costs.

If a formal hearing demand (challenge) is not filed with Zoning Review by a property owner within 1,000 feet of site during the posting period, the administrative procedure may continue. Beyond 1,000 feet, a challenge is honored at the discretion of the Administrative Law Judge. The challenge fee is $60.00 paid by the challenger.* (Call 410-887-3391 to confirm the challenge fee.) Without paying the $60.00 processing fee for a demand for a full hearing, any interested party may address their concerns or concurrence to the hearing officer in writing, well in advance of a decision, c/o Zoning Review Office, which will be forwarded to the Judge making the decision.

***Failure to accept two proposed Hearing dates will result in the Demand request being dismissed. The Hearing will be held and/or a review by the Hearing Officer without the protestants input. An additional Formal Demand can be requested at the original fee.**

Possible Full Public Hearing Required

If a hearing demand, as described above, is filed and/or if the Administrative Law Judge, decides there is a need, the application will leave the administrative process, necessitating advertising, re-posting, and a public hearing. In such cases, the petitioner will receive written notice that a standard public hearing will be scheduled under the standard time/cost framework. Petitioners will receive notification by mail. The new fees should be paid by mail upon receipt of the statements.

Who May Use The Administrative Variance Procedure

Legal owner(s) of a single family owner-occupied residential property.

The above parties must submit a notarized affidavit attesting to the fact that they do now own **and** occupy said residential property and that there are no active Code Enforcement violation cases on the subject property.

Who May Not Use The Administrative Variance Procedure

1. Contract purchaser(s) of a single family residential property.
2. Petitioners filing a residential variance in combination with a special hearing and/or special exception. (Other than an Administrative Special Hearing for Historic Properties)
3. Petitioners filing non-residential variances.
4. A builder or developer requesting variance(s) for lot(s).
5. Vacant lots for homes to be built are not eligible per **Section 32-3-303, BCC.**
6. Properties under an active zoning violation may not use this type of variance.

Administrative Special Hearing Waiver for Historic Properties

Per Section 500.7 BCZR and Title 32, Baltimore County Code, alterations to historic property may require a posting notification/or a waiver/public hearing similar to the Administrative Variance process. Contact the Landmarks Preservation Commission representative in the Office of Planning (410-887-3495). Use the following wording in the petition request:

Special Hearing to approve a waiver pursuant to Sections 32-4-107(b), 32-4-223(8), and Section 32-4-416(a)(2) to raze, alter or construct addition to building: (indicate type of work in this space).

The Petition Application Must Contain

1. Four (4) copies and one (1) PDF of the hearing plan with information as indicated on checklist. (See Example #1).

2. Three (3) copies of petition, typed or printed, with original signatures and applicable information on each copy with day time telephone numbers and Email address.

3. Three (3) copies of the property description. (See Page # 9).

4. One (1) copy of the GIS Zoning Map available from the Zoning Review Counter. (See Example # 2).

5. Photographs of the property and describe the location of the photograph. **(Administrative Petition ONLY)**

6. One (1) completed copy of the advertising and posting requirements and procedures form – To be completed at time of filing. (See last page of this checklist).

7. Filing Fees: Contact Zoning Review (410-887-3391) to confirm the fees. Variance or special hearing - $75.00 filing fee due at the time of petition filing. Newspaper will mail the bill to the party indicated on the advertising/posting form for required newspaper advertising. Posting fees vary and are billed by the sign poster you engage to post your property. An additional $75.00 (as a special hearing fee) is required for an amendment to a final development plan (required for any lot which is on an approved zoning final development plan).

Review / ZAC Agencies

Once filed, the petition information is forwarded by Zoning Review to the Zoning Advisory Committee (ZAC) agencies as necessary for their review. The Petitioner(s) should contact the following agencies prior to plan preparation to be made aware of any comments/issues for their particular case.

1. Assessments (SDAT)	410-512-4906
2. Development Plans Review (traffic issues)	410-887-3751
3. Fire Department	410-887-3998
4. State Highway Administration	410-545-5600
5. County Roads	410-887-3739
6. Planning (design, screening, landscaping, historic)	410-887-3211
7. Plans Review (construction/fire/floodplain plans)	410-887-3987
8. Department of Environmental Protection and Sustainability (DEPS) (see note)	410-887-3980
9. If *floodplain*, Maryland Department of the Environment	Kevin.Wagner@maryland.gov
10. If *critical area*, Maryland Office of Planning	410-767-4485

NOTE: For CBCA (Critical Area) sites: Without **DEPS comments** the ALJ will not write an order.
Floodplains and historic buildings should be identified and addressed as needed.
Flood Plain determination/issues call the Dept. of Public Works at 410-887-3300.
Historic issues/questions call the Office of Planning at 410-887-3480.

100-Year Floodplains and Waivers

The 100-year floodplain information and requirements (Bill 173-93, 11/17/93) may be obtained in the Development Plans Review Division (room 107) and Building Plans Review (room 110) in the Baltimore County Office Building. Flood Plain waivers require a Special Hearing. The following wording must be used:

Riverine Wording: (No New Buildings): Special Hearing for a waiver pursuant to BCZR Section 500.7; Building Code Parts 123, 124, 125; and BCC Sections 32-4-414, 32-4-107(a)(2), 32-8-301 to permit a proposed _____ (i.e., replacement or rebuilt building/structure; repair to a building/structure, etc.) in a riverine floodplain.

Tidal Wording: Special Hearing for a waiver pursuant to BCZR Section 500.7; Building Code Parts 123, 124, 125; and BCC Sections 32-4-107(a)(2), 32-8-301 to permit a proposed _____ (i.e., new building/structure; addition to a building/structure; replacement or rebuilt building/structure; repair to a building/structure, etc.) in a tidal floodplain.

Note:
DRC recommendations must accompany the petition and the State Department of Natural Resources (DNR), must also review all petition documents as part of the Zoning Advisory Committee (ZAC).

Hearing Plan Requirements

4 copies required and 1 PDF. The plans shall be legible, accurate and in no case can it be larger than 24" x 36". **Plans must be trimmed or folded to a neat 8-1/2" x 11" size**. Use of the checklist blank plan form is not required. Plans shall contain the following information:

1. **TEXT:** Election & Councilmanic districts, hearing type, subdivision information, owner's name(s), property address, plan date, (if, or not in CBCA / historic / or floodplain), zoning, GIS map copy#, and any active zoning violation# with stated reasons for citation.

2. **DRAWING SCALE:** 1"=20', 1**"**= 30**'**, 1**"**=40**'** or 1"=50'. If 40 acres or more, use 1"=100' scale.

3. **OUTLINE OF PROPERTY:** Indicated by a heavy bold line include lot lines, distances and area of the parcel(s) by square feet and acreage. (To figure acreage, divide square feet by 43,560.)

4. **VICINITY MAP:** A legible vicinity map with site outline must be included on all plans WITH SITE AND INTERSECTING ROADS CLEARLY AND ACCURATELY SHOWN AND NAMED. DO NOT PUT ON A SEPARATE SHEET; IT MUST BE ON THE SITE PLAN SHEET!

5. **PRIOR ZONING CASES:** The case #, date of the order(s), what was granted or denied, and any restrictions from prior zoning case(s), must be listed on the hearing plan.

6. **CURRENT OR OUTSTANDING ZONING VIOLATIONS:** Any correction notice # and/or citation # and the inspector's name must be listed on the hearing plan.

7. **OWNERSHIP:** On subject and adjacent properties including owner's name(s), lot numbers, subdivision name, 10 digit tax account numbers, and/or deed references. See your GIS Map copy and contact SDAT or Land Records for more complete information.

8. **LOCATION:** North Arrow, Street address and names of adjoining street(s), beginning point of description and distance from property corner to the nearest public street centerline. Measure this onsite or use record plats, SDAT records, or the utilities maps from room 206, County Office Building.) This beginning point and distance should start the written zoning description.

9. **STREETS, WIDENING, R/W, EASEMENTS:** Include all existing public boundary streets with the existing right-of-way and paving width. Include any existing or proposed easements with the stated type/purpose or any right-of-ways shown and labeled as being public or private.

10. **BUILDINGS:** Use, dimensions, height and location of all existing buildings/improvements on property with building-to-property line and building-to-building setbacks shown for each structure. Also, front orientation of any dwellings and the use, dimension and location of all proposed buildings or additions and the proposed use if changing. The general use, building and lot dimensions and all facing property line setbacks of buildings on adjoining lots.

11. **STREET SETBACKS:** If a new dwelling is proposed or the new addition or improvement is located on the street side (front) and if either adjacent side is unimproved and your property is zoned D.R.-2, D.R.-3.5 or D.R.-5.5, then you must show the front setback of all dwellings on your side of the street within a distance of 200 feet from the joint side property lines.

12. **UTILITIES:** Show location and size of all public utilities and right-of-ways both adjacent to and on-site. If no public water or sewer exist, well and septic system locations and setbacks must be indicated. (Public utilities drawings are available in Room 206, County Office Building.)

13. **FEATURES:** Location of streams, storm water management systems drainage, pipe systems on or within 50 feet of the property, and the location of the 100 year floodplain (if any). If floodplain or not, state this on the plan, including the elevation.

14. **B.O.C.A.:** Buildings must meet the building code and fire code requirements.

15. **SPECIAL REQUIREMENTS:** For special hearings on 2 apartment dwellings, floor plans detailing each floor with room square footages and uses are required. For waterfront construction (over the water), such as piers and piles, ask for a copy of the checklist for waterfront construction.

16. **SPECIAL DISTRICT OR AREA LOCATION:** For sites located in the Back River Neck or Bowleys Quarters Peninsula districts or in the Martin State Airport 3 mile proximity radius, check with Zoning Review for applicability of any special regulations as they relate to your petition request.

EXAMPLE # 1 - HEARING PLAN

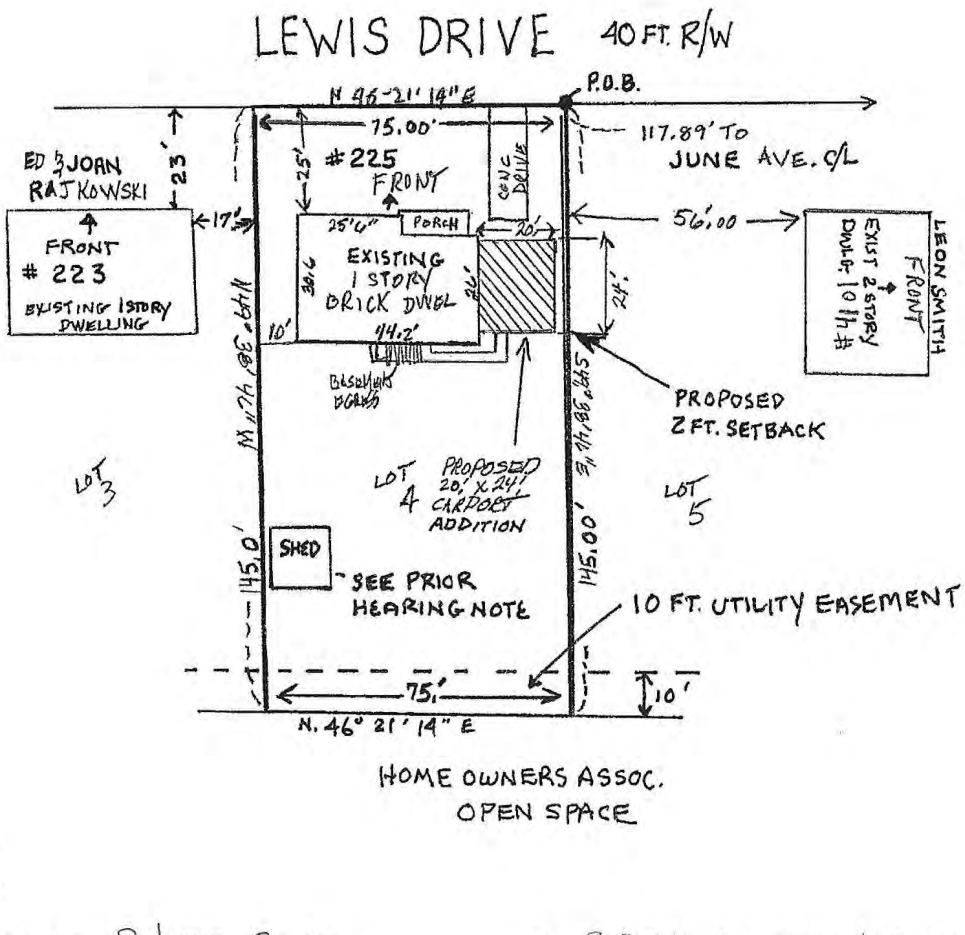
4 COPIES AND 1 PDF. DESIGN YOUR SCALED DRAWING (See Page 6, # 2) TO FIT THE PROVIDED BLANK PLAN FORM. IF A LARGER PLAN IS NEEDED, YOU MAY **ENLARGE** THE BLANK PLAN FORM ***BEFORE*** ADDING YOUR CHECKLIST DETAILS.

Zoning Hearing Plan for Variance X for Special Hearing _____ Mark Type Requested with (X)

Address 225 Lewis Drive Owners(s) Name(s) Robert & Sandra Smith

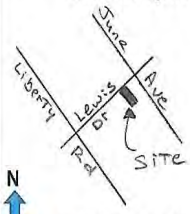
Subdivision Name Withering Heights Plat 2 Lot # 4 Block # G Section # N/A

Plat Book # 23 Folio # 178 10 Digit Tax # 2175900035 Deed Reference# 6587/100238



Plan Drawn By Robert Smith Date 3-30-11 Scale: 1 inch = 40 Feet

Site Vicinity Map



MAP IS NOT TO SCALE

Zoning Map # 108C1

Zoning DR 5.5

Election District 1 ST

Council District 13 TH

Lot Area Acreage .249

Lot Square Footage 10,875

Historic (Yes or No) NO

CBCA (Yes or No) NO

Flood Plain (Yes or No) NO

Utilities – Mark with (X)

Water is:

Public X Private ____

Sewer is:

Public X Private ____

Prior Hearing (Yes or No) Yes

If (Yes) list Case Number(s) and order result(s) below:

2009-0327-A

Variance Granted

For 1 FT Shed

Setback

Violation Case Number(s)

THE ZONING PETITION PROPERTY DESCRIPTION

Three (3) typed copies (separate pages) of the zoning description of the property is required. Standard 8-1/2" x 11" sheets are acceptable. Most property descriptions, as stated on a deed, are too wordy but some of the information must be used. (Note: Old deed information such as perches or a stone, etc. cannot be used as is.) Read your deed, your location survey and your State Assessment record to determine which of the three options you should use. DO NOT PHOTOCOPY THE DESCRIPTION IN THE DEED. The zoning property description must comply with Part A and Part B:

PART A (START DESCRIPTION WITH THE FOLLOWING):

ZONING PROPERTY DESCRIPTION FOR_____
(address or location)

*Beginning at a point on the (north, south, east or west) side of (name of street on which property fronts) which is (number of feet of right-of-way width) wide at the distance of (number of feet) (north, south, east or west) of the centerline of the nearest improved intersecting street (name of street) which is (number of feet of right-of-way width) wide.

*Be aware that the Beginning Point and the distance in feet to the street centerline intersection, as stated in the zoning property description, must be shown and labeled on the hearing plan. The lot area (total square feet or acres) on the hearing plan and the zoning description must agree.

PART B (CONTINUE DESCRIPTION WITH ONE OF THE FOLLOWING 3 OPTIONS):

OPTION 1: (Metes and Bounds Sample – lot not part of record plat or minor subdivision):

THIS IS A SAMPLE ONLY: Thence the following courses and distances: (1st Point of Call- "POC") N.87 12' 13" E. 321.1', (2nd POC) S.18 27' 03" E. 87.2', (3rd POC) S.62 19' 00" W. 318', and (4th POC) N.08 15' 22" W. 80', back to the point of beginning as recorded in Deed Liber (_), Folio (_), containing (number of total square feet or acres in lot). Located in the (_) Election District and (_) Council District.

OPTION 2: (Subdivision Lot – lot is part of record plat):

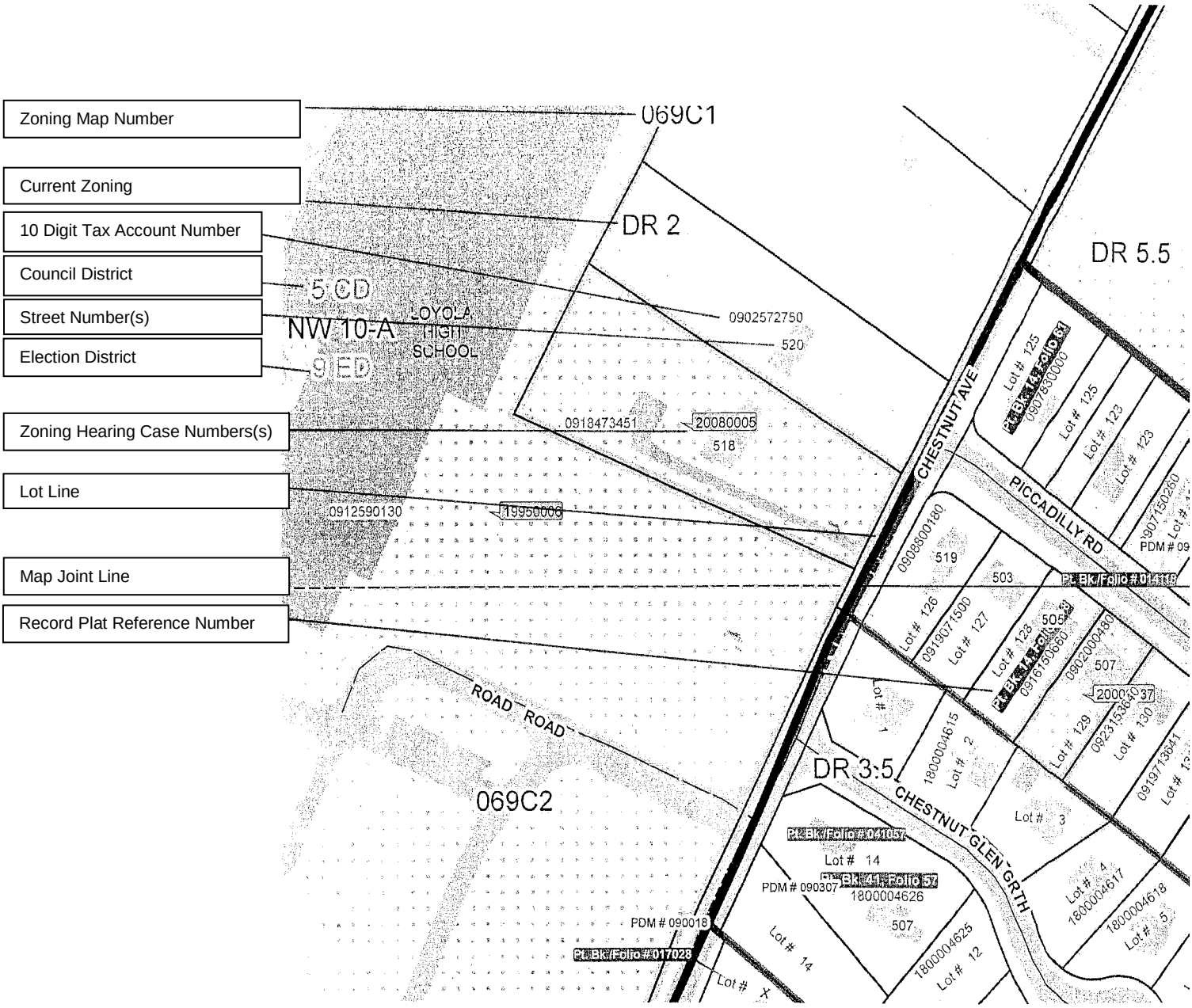
Being Lot # (_), Block (_), Section # (_) in the subdivision of (name of subdivision) as recorded in Baltimore County Plat Book # (_), Folio # (_), containing (number of total square feet or acres in lot). Located in the (_) Election District and (_).

OPTION 3: (Minor Subdivision Lot Sample):

THIS IS A SAMPLE ONLY: Thence the following courses and distances: (1st Point of Call- "POC") N.87 12' 13" E. 321.1', (2nd POC) S.18 27' 03" E. 87.2', (3rd POC) S.62 19' 00" W. 18', and (4th POC) N.08 15' 22" W. 80' back to the point of beginning, as recorded in Deed Liber (_), Folio (_), containing (number of total square feet or acres in lot). Located in the (_) Election District and (_) Council District. Also known as Lot # (_) in the minor subdivision of (name of minor subdivision), minor subdivision # (_ _ -- _ _ _ -- M), as maintained by the Development Management Division of the Department of Permits, Approvals and Inspections.

EXAMPLE # 2 - GIS MAP COPY

Available from the Zoning review counter. The color copy of this map is required for petition filing. This black and white example is keyed to the map information outlining the hearing site clearly on this map.



Zoning Hearing Plan for Variance _____ for Special Hearing _____ Mark Type Requested with (X)

Address _____ Owners(s) Name(s) _____

Subdivision Name _____ Lot # _____ Block # _____ Section # _____

Plat Book # _____ Folio # _____ 10 Digit Tax # _ _ _ _ _ _ _ _ _ _ Deed Reference# _ _ _ _ _ _ / _ _ _ _ _ _

N

Plan Drawn By _____ Date _____ Scale: 1 inch = _____ Feet

11

Site Vicinity Map

N

MAP IS NOT TO SCALE

Zoning Map # _____

Zoning _____

Election District _____

Council District _____

Lot Area Acreage _____

Lot Square Footage _____

Historic (Yes or No) _____

CBCA (Yes or No) _____

Flood Plain (Yes or No) _____

Utilities – Mark with (X)

Water is:

Public _____ Private _____

Sewer is:

Public _____ Private _____

Prior Hearing (Yes or No) _____

If (Yes) list Case Number(s)

and order result(s) below:

_____

_____

_____

_____

Violation Case Number(s)

_____

_____

BALTIMORE COUNTY DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number: - -A Address _____

Contact Person: _____ Phone Number: 410-887-3391
Planner, Please Print Your Name

Filing Date: _____ **Posting Date:** _____ **Closing Date:** _____

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 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 a neighbor (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 Administrative Law Judge. The judge may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. If all County/State agencies' comments are received, you will receive written notification as to whether the petition has been granted, denied, or will proceed to a public hearing. This decision is usually made within 10 days of the closing date. The written 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 Administrative Law Judge), 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.

Petitioner: This Part of the Form is for the Sign Poster Only (Detach Along Dotted Line)

USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT

Case Number: - -A Address _____

Petitioner's Name: _____ Telephone (Cell) _____

Posting Date: _____ Closing Date: _____

Wording for Sign: To Permit _____

_____

_____

_____

_____

Revised 1/2022

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Case Number: _____

Property Address: _____

Legal Owners (Petitioners): _____

Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: Company/Firm (if applicable): _____

Address: _____

_____

_____

Telephone Number: _____

*Failure to advertise and/or post a sign on the property within the designated time will result in the Hearing request being delayed. The delayed Hearing Case will be cycled to the end of pending case files and rescheduled in the order that it is received. Also, a $250.00 rescheduling fee may be required after two failed advertisings and/or postings.

Revised 3/2022

Exhibit 3 Case #23-053-A

David Cromwell et al. v. Arthur Thomas Ward, III,
No. 617, September Term, 1994

HEADNOTE: Zoning variances and special exceptions distinguished; variance process is a multi-step process; the first step is in regards to a determination of whether the property, for which the variance from the terms of the ordinance is sought, in and of itself possesses any unique or peculiar characteristic, *i.e.*, topography, narrowness, abnormal subsurface characteristics, historical or architectural significance, not shared generally by other similarly located properties in the area, so that the ordinance's impact on the subject property is more severe than the impact upon neighboring properties generally; if the requirements of the first step, uniqueness or peculiarity, are not met, no further steps are taken, *i.e.*, practical difficulty or unreasonable hardship and the variance must summarily be denied; self-inflicted hardship is not the type of practical difficulty or unnecessary hardship contemplated by zoning ordinance variance procedures; mistakes by governmental officials generally do not constitute practical difficulty or unnecessary hardship for the purpose of zoning variance procedures, though they may, under some circumstances, give rise to equitable actions.

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 617

SEPTEMBER TERM, 1994

DAVID CROMWELL *et al.*

v.

ARTHUR THOMAS WARD, III

Wenner,
Cathell,
Murphy,

JJ.

Opinion by Cathell, J.

Filed: January 4, 1995

#93CV7265

Appellant, David Cromwell, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas Ward, III. Appellant poses the following questions:

> I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.
>
> II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?
>
> III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of §307 of the Baltimore County Zoning Regulations?

While those questions are limited, appellant expands in his arguments supporting the questions and argues that

> [t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property*, must be the proximate cause of the hardship [Emphasis added.]

and

> Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request . . . . [Emphasis added.]

and

> Mr. Ward's property *is not unique* from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.*, it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) 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. 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. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or[1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness,

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[1] Some ordinances use the conjunctive, "and," creating a requirement that both practical difficulty "and" unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, "or," to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when "use" variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser "practical difficulty" standard when "area" variances are sought.

exists. Further consideration must then be given to the general purposes of the zoning ordinance.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice*, appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process – an inherent uniqueness of the subject property not shared by surrounding properties.

The Facts

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;"

"[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14'" and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height

elevations might have been discernable, though we are at a loss to understand why the elevations were not given in feet and why the plans contained no scale.[2]

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.[3] Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

The Law

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.

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[2] Appellee, several times in his brief, states that the plans "clearly" show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown – they are not shown at all – but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

[3] As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

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 Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

> [M]odification only of density, bulk, or area requirements in the zoning ordinance . . . where *owing to conditions peculiar to the property, and not the result of any action taken by the applicant*, a literal enforcement . . . would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, *i.e.*, height, may be granted

> 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 . . . would result in practical difficulty or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions . . . peculiar to the land . . . and . . . practical difficulty . . . ." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,[4] if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. 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).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses [5]

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[4] It is not clear that section 307, "Variances," would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of "area" variance requests.

[5] Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to "use" issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense,

(continued...)

(where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub judice*.

Special Exceptions (and Conditional Uses) and Variances — Distinguished

The treatise writers define the concept as:

> A variance is an authorization for [that] . . . which is prohibited by a zoning ordinance. . . .
>
> . . . [T]he difference between the two [variances and special exceptions] . . . is of practical significance. . . .
>
> > ". . . [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception contemplates a permitted use . . . [once] the prescribed conditions therefor are met."
>
> . . . [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."

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[5](...continued)
however, "conditional uses" refer to uses while exceptions normally apply to area, *i.e.*, yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

> . . . [T]he standards for . . . exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.
>
> "A special exception . . . is one which is controlled and . . . permissible in a given zone. It is granted . . . upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized . . . where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02-03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County*, 239 Md. 189, 193 (1965)). *See also Schultz v. Pritts*, 291 Md. 1, 11 (1981); *People's Counsel v. Mangione*, 85 Md. App. 738, 748 (1991).

> A distinction commonly is made between [special] exceptions . . . and variances . . . . An "exception" . . . is a dispensation permissible where a board . . . finds existing those facts . . . specified in the ordinance as sufficient . . . . ". . . But zoning ordinances usually provide for another kind of dispensation, . . . by which a variance . . . may be authorized . . . where a literal enforcement . . . would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

> The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances. . . . A variance should be strictly construed . . . .

Id. § 25.162 (footnotes omitted). *See also* 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* § 38.01 (4th ed. 1981); 3 E. C. Yokley, *Zoning Law and Practice* § 21-6 (4th ed. 1979); 3

Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

> There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception . . . is expressly permissible . . . . [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property . . . or by reason of exceptional topographical conditions or other extraordinary situations . . . of specific parcels of property, the strict application . . . would result in . . . unusual practical difficulties to, or exceptional or undue hardship . . . .

Stacy, 239 Md. at 193.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 288-91 (1953):

> It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area . . . the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance. . . .
>
> . . . .
>
> . . . There is a distinction between . . . the ordinance provisions . . . in those cases [Baltimore City cases] and the facts and the ordinance provision in this case . . . .

See also our case of *Martin Marietta Aggregates v. Citizens*, 41 Md. App. 26, 34-35 (1978).

> A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional[6] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met . . . . While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use . . . so long as . . . conditions are met. Therefore, conditional use grants cannot be encompassed within the . . . statutory authority to grant variances.

Eberhart v. Indiana Waste Systems, Inc., 452 N.E.2d 455, 459 (Ind. App. 3 Dist. 1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals*, 464 N.E.2d 347, 350 (Ind. App. 1 Dist. 1984), opined:

> A great deal of confusion has been generated . . . because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions . . . . A variance involves a deviation . . . from the legislated zoning classification . . . . A special exception involves a use which is permitted . . . once certain statutory criteria have been satisfied. [Citations omitted.]

See also Lindquist v. Board of Adjustment, 490 So.2d 16, 18 (Ala. Civ. App. 1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the . . . burden of proving . . . hardship"); *Wolfner v. Board of Adjustment*, 672 S.W.2d 147, 150 (Mo. App. 1984) ("an

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[6] Exceptional is used here in its generic sense.

exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes*, 431 A.2d 163, 167 (N.J. Super. A.D.), *cert. denied*, 434 A.2d 1099 (1981) (special exception and variance defined - case decided on zoning estoppel basis); *A. J. Grosek & Associates v. Zoning Hearing Bd.*, 450 A.2d 263, 265 (Pa. Commonwealth 1982); *Bell v. City Council*, 297 S.E.2d 810, 813-14 (Va. 1982).

VARIANCE - The First Step - Uniqueness or Peculiarity of the Subject Property

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 Morrow 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).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md. Code Article 66B, and it is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws – and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because

> the board of zoning appeals is in effect given the power to set aside or annul the ordinance . . . with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships" . . . . [U]nder our system of written constitutions it is essential that they accomplish those . . . objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them . . . . For such phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred . . . .

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, *appeal dismissed*, 290 U.S. 585 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church*, 164 Md. 487 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore*, 187 Md.

296, 300 (1946). By the time of its decision in *Heath*, the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances in his own discretion." 187 Md. at 301. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar*, the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible where the Board . . . finds . . . those facts . . . specified in the ordinance . . . ." *Id*. at 303.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their

respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore*, 231 Md. 280, 285 (1963) ("In Baltimore City there appears to be no distinction between the two terms . . . .").[7] We also attempted to indicate the problem in *North v. St. Mary's County*, 99 Md. App. 502, 510 (1994), in footnote 3:

> Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances. . . . [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

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[7] Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore*, 195 Md. 395, 400 (1950), where the Court noted "facts to justify an exception . . . [show] that the hardship affects the particular premises and is not common to other property in the neighborhood." This is a variance standard.

> [I]t was incumbent upon the Marinos to have shown . . . (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants' own actions.

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

> The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees. . . .

240 Md. at 554. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning*, § 48-1, and then noted:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions . . . hardship arises . . . . The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship. . . . [T]he hardship, arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief. . . ."
>
> The instant case fits squarely within the above general rule. . . . [I]f the appellees had used proper diligence . . . and then made accurate measurements . . . [the resultant

> hardship could have been avoided]. The hardship . . . was entirely self-created . . . .

Id. at 554-55 (emphasis added). Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. *See also Burns v. Mayor and City Council of Baltimore*, 251 Md. 554, 559 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore*, 233 Md. 372, 378 (1964) ("[There was] no evidence of any limitation . . . by . . . size of yards, irregularity of shape of land or buildings, topography, grade or accessibility" . . . .); *Mayor and City Council v. Sapero*, 230 Md. 291 (1962); *Frankel v. Mayor and City Council of Baltimore*, 223 Md. 97, 104 (1960) ("It was incumbent . . . to show that the hardship . . . affected his particular premises and was not . . . common to other property in the neighborhood. . . . [H]e met the burden . . . ."); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.*, 216 Md. 271, 277-78 (1958).

> Secs. 14 (b), 14 (d) and 16 . . . have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property . . . .

Mayor and City Council v. Polakoff, 233 Md. 1, 9 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore*, 247 Md. 601, 606-07 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

> Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant

> a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "*urgent necessity, hardship peculiar to the particular property* . . . ." . . . Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley*, 270 Md. 208, 210 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

> Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy . . . that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance . . . .

. . . .

> Concededly, this is a close case, but it is nevertheless sufficient . . . .

Id. at 215. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman*, 227 Md. 243 (1961), and *Frankel v. Mayor & City Council of Baltimore*, 223 Md. 97 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs*, 307 Md. 307 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances

sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question . . . that do not apply generally to other properties . . . in the . . . district." *Id.* at 340. The Court concluded:

> The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary *characteristics* of the *land itself* and therefore not the kind of hardship cognizable under the Zoning Ordinance. . . .
>
> We think the Board's decisions . . . reflect no error of law.

Id. at 340-41 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel*, 96 Md. App. 219, 224 (1993), after noting the standard of review, we said:

> In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.
>
> The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist *that are peculiar to the land* . . . and where strict compliance . . . would result in practical difficulty

. . . ." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances *of a particular location* and must be analyzed individually." *Id.* at 227-28 (emphasis added).

In *North v. St. Mary's County*, 99 Md. App. at 512, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land . . . ." We there stated that, in the zoning context, the term "unique" has a customized meaning:

> 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.
>
> . . . .
>
> In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, in *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

> Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific . . . property . . ., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of . . . property . . . the literal enforcement . . . would make it exceptionally difficult . . . to comply . . . and would cause unwarranted hardship and injustice. . . .
>
> The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.*

Id. at 514-15.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean, supra*; *Stacy, supra*; *Sapero, supra*; *Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra*. All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel, Loyola*, and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly . . . close case . . . ." *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky*, 239 Md. 611 (1965), involved one of the same issues that was presented in *Frankel, i.e.*, whether a zoning restriction so

compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance – a variance Frankel was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged that Borinsky had the "same expert witness," "he was asked the same general questions . . . and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* at 624. The Court, nevertheless, made a factual distinction and declined to apply *Frankel*. Judge Barnes opined in dissent that, based on what the Court had done in *Frankel*, the facts for variances were stronger in *Borinsky*. *Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel*, *Loyola*, and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York*, 482 N.W.2d 537 (Neb. 1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell*, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank*, the court said at 545: "[A] variance [may be granted] . . . only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of the zoning

ordinance] 'would result in peculiar and exceptional practical difficulties . . . or exceptional . . . hardships . . . .'"

In *Shafer v. Zoning Bd. of Appeals*, 511 N.E.2d 635 (Mass. App. Ct. 1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

> There was no evidence . . . regarding "soil conditions, shape or topography of [the property] . . . especially affecting [the property] but not affecting generally the zoning district in which it is located" . . . . The . . . argument that the insufficient width . . . constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

511 N.E.2d at 636-37 (citation omitted). *See also VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn. 1983) ("the plight of respondent was not due to circumstances 'unique to his property.' . . . [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware . . . .")

In *St. Clair v. Skagit County*, 715 P.2d 165 (Wash. App. 1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board,

approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings . . . ." 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist . . . peculiar to the land . . . ." *Id.* The court then noted that the applicant had done there what Ward attempts to do in the case *sub judice*:

> [The appellant] relied primarily upon the fact that the County issued a building permit . . . and that she acted in good faith . . . .

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself . . . . Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75-foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity . . . ." *Id.* at 169. In the case *sub judice*, the Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment*, 706 P.2d 899 (Okla. 1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had

expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner . . . constitutes no valid basis for a variance . . . . [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

> The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44-107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property*.

Id. at 904-05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992), but had facts similar to *Lucas*, the Supreme Court of Delaware in *Baker v. Connell*, 488 A.2d 1303 (Del. Supr. 1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0-1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight

of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the property could not conform to open space land. The appellate court affirmed, stating:

> [F]inancial return . . . alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0-1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R-2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard*, ___ U.S. ___, [62 U.S.L.W. 4576] (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment*, 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice*. The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance . . . the applicant [must] show . . . that there are special conditions with regard to the property . . . ." 685 P.2d at 1035-36. The court continued:

> What must be shown . . . is that the property itself contains some special circumstance that relates to the hardship complained of . . . .
>
> . . . The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of

> property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.
>
> . . . .
>
> Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos[es] brought their losses upon themselves. The application affirmatively alleged . . . that no dwelling existed . . . [8]

Id. at 1036-37 (footnotes omitted).

The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice*, that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice . . . in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication . . . and . . . shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id*. at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimen-

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[8] The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

sions from other schematics, they certainly were not required to do so in light of appellants' affirmative statement of compliance.

See also Chambers v. Smithfield City, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond*, 300 S.E.2d 781 (Va. 1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A-1 district." *Id.*

The court in *Richardson v. Town of Salisbury*, 455 A.2d 1059, 1061 (N.H. 1983), noted:

> We have defined unnecessary hardship as follows:
>
> > "A hardship exists only if due to special conditions *unique* to a *particular parcel of land*, the ordinance unduly restricts the use . . . . The hardship must relate to the special character of the land

> rather than to the personal circumstances of the landowner." [Emphasis added.]

See also Margate Motel, Inc. v. Gilford, 534 A.2d 717 (N.H. 1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment*, 459 A.2d 244 (N.H. 1983).

In *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

> [T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
>
> . . . .
>
> . . . [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
>
> . . . .
>
> . . . However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size. . . .
>
> . . . However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also Williams v. Salem Township, 500 A.2d 933 (Pa. Commonwealth 1985) *alloc. denied*, 531 A.2d 781 (1987); *Hersh v. Zoning Hearing Bd. of Marlborough Township*, 493 A.2d 807 (Pa. Commonwealth 1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem*, 480 A.2d 362 (Pa. Commonwealth 1984) (burden sustained); *Davis v. Zoning Bd. of Adjustment*, 468 A.2d 1183 (Pa. Commonwealth 1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment*, 456 A.2d 1110

(Pa. Commonwealth 1983); *Immordino v. Zoning Hearing Bd.*, 441 A.2d 818, 821 (Pa. Commonwealth 1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property* . . . .") (Emphasis added.)

> A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area . . . . Indialantic's zoning restrictions are common difficulties shared by all other ocean-front lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla. App. 5th Dist. 1981), *aff'd*, 419 So.2d 1041 (1982) (citation omitted). *See also Fort Lauderdale Bd. of Adjustment v. Nash*, 425 So.2d 578, 579 (Fla. App. 4th Dist. 1983); *City of Naples v. Clam Court Marina Trust*, 413 So.2d 475, 477 (Fla. App. 2d Dist. 1982); *Lakeshore Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments*, 481 So.2d 162, 168 (La. App. 4th Cir. 1985), *cert. denied*, 494 So.2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231 (D.C. App. 1979), where, due to the size of the lot, no viable economical

use of the property could be had without the variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in *U-Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord*, 451 A.2d 1315, 1317 (N.H. 1982), saying: "The location and characteristics of the property involved create greater security requirements . . . than . . . other property in the area because the parcel . . . is less central . . . less populated and . . . less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland*, 637 P.2d 1302 (Or. App. 1981), *cert. denied*, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. *See also Higgins v. Township of Radnor*, 318 A.2d 761, 763 (Pa. Commonwealth 1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

> It is *fundamental* that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *to particular property* and not general in character . . . . [I]t is not uniqueness of the plight of the owner, but

> uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides] . . . . [T]he hardship [in order to justify a variance, however,] . . . must relate to the particular property of the applicant . . . .

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

> [I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, *supra* § 14.55 (1968).

> It follows that the unnecessary hardship . . . must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance . . . .
>
> In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question. . . .
>
> . . . .
>
> Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

> The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot . . . arises from circumstances peculiar to that lot . . .; and in that case the appropriate remedy is . . . a variance . . . . In the other types of cases, the hardship . . . may arise because of conditions which are general in the neighborhood; . . . it is often held that the

> appropriate remedy is a change in the zoning . . . . [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

> The great strengthening of the criteria for granting variances, . . . has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question . . . . Moreover, the courts have again emphasized that a variance granted to take care of some hardship personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. *See also* Rathkopf, *supra* § 38.04; Yokley, *supra* § 21-6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.").

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals*, 93 N.E.2d 645, 647 (N.Y. 1950):

> [T]he record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21-6.

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.

Self-Inflicted Hardship

We have before referred to *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206. There, the Court said, "it was incumbent [on the applicant] to [show] . . . that the hardship was not the result of the applicants' own actions." *Id.* at 218. The Court of Appeals noted in *AD + Soil, Inc. v. County Comm'rs*, 307 Md. at 340:

> The essence of Ad + Soil's argument . . . is that the setback requirements . . . would cause . . . unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements. . . . The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted . . . and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals*, 438 A.2d 1186, 1190 (Conn. 1982) ("'[S]elf-inflicted or self-created hardship . . . is never considered proper grounds for a variance.' . . . '[W]here the applicant . . . creates a nonconformity, the board lacks power to grant a variance.'") (citations omitted); *Volkman v.*

City of Kirkwood, 624 S.W.2d 58 (Mo. App. 1981); *Matter of Schrader*, 660 P.2d 135 (Okl. 1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals*, 310 S.E.2d 438 (S.C. App. 1983); *McClurkan v. Board of Zoning Appeals*, 565 S.W.2d 495 (Tenn. 1977); *Steele v. Fluvanna County Bd. of Zoning Appeals*, 436 S.E.2d 453, 456 (Va. 1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements . . . was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Granting of the Permit

In *Francis v. MacGill*, 196 Md. 77 (1950), a property owner sought equitable injunctive relief. The facts were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

> "Adoption of zoning ordinance *ipso facto* revokes permit for construction . . . where no construction has begun."
>
> . . . They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro*, 187 Md. 623, 634 (1947), *overruled on other grounds in Nutter v. Non-Profit Housing Co.*, 230 Md. 6 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit . . . does not create a vested right, or estop[9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Synder*, 186 Md. 342, 347 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward*, 186 Md. 330, 340 (1946), the Court held:

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[9] The applicability of the "doctrine of zoning estoppel" has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council*, 96 Md. App. 526 (1993), *rev'd in part*, 334 Md. 499 (1994).

> The Board . . ., as an administrative body, was bound to follow the regulations it adopted, in the exercise of . . . delegated legislative power. The fact that it might have rezoned . . . does not alter its obligation to adhere to existing regulations . . . .

In the case of *Lipsitz v. Parr*, 164 Md. 222 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

> A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law. . . . [T]he ordinance forbade the officials . . . to grant the permit which the plaintiff asked and obtained . . . .
>
> . . . [I]t was therefore unlawful for the officers . . . to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued . . . does not . . . prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality. . . . *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.
>
> So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act . . . it is not estopped by the unauthorized or wrongful act of its officer . . . in issuing a permit that is forbidden by the explicit terms of an ordinance. . . . *Valentine v. Rds. Directors*, 146 Md. 199, 206 [(1924)] . . . . [Citations omitted, emphasis added.]

164 Md. at 227-28.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates*, the Court opined that "[c]onsequently, '[e]very-one dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.'" 313 Md. at 437. The Court added: "[T]he doctrine of equitable estoppel 'cannot be . . . invoked to defeat the . . . enforcement of . . . ordinances, because of an error or mistake committed by one of its officers . . . which has been relied on by the third party to his detriment.'" *Id.*

Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward.

The authorities elsewhere are in accord.

> The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land*, not to the circumstances of the *owner*.

Richardson, 455 A.2d at 1062.

> [R]elator argues the Board should be estopped from denying the height variance because a

> city building inspector visited the premises several times and observed the construction taking place but made no complaint . . . .
>
> In any case there is no authority on the part of a building inspector to grant a variance . . . .

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La. App. 4th Cir. 1970). *See also Klanke v. Zoning Bd. of Adjustment*, 477 A.2d 907, 909 (Pa. Commonwealth 1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra*.

Resolution

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 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 policy-makers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

Case Law (General information)

A variance request involves a two-step process summarized as follows:
1. **it must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness and peculiarity must necessitate variance relief; and ·**
2. **if variance relief is denied the petitioner will experience a practical difficulty or hardship**.
Cromwell v. Ward, 102 Md. App 691 (1995). Cromwell #1

"`A variance is an authorization for [that] . . . which is prohibited by a zoning ordinance. . . .'" Cromwell v. Ward, 102 Md.App. 691, 699, 651 A.2d 424 (1995) (citation omitted). Cromwell #2

In general, **"the specific need for the variance `must be substantial and urgent and not merely for the convenience of the applicant[.]'"** Chesley v. City of Annapolis, 176 Md.App. 413, 432, 933 A.2d 475 (2007) Chesley v. City of Annapolis #1

The burden is on the applicant to show facts to warrant a variance. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 400, 73 A.2d 491 (1950). Easter v. City of Baltimore #1 + #2

Unique Property

To obtain a variance, Petitioner first must prove the uniqueness of the property. The Court in Cromwell defined the term "uniqueness" and stated: 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 has an inherent characteristic not shared by other properties in the area**, i.e., it shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstruction) or other similar restrictions. Cromwell, 102 Md. App. at 703-722. Cromwell #3

Mark Tosti (1207 Providence Road) CASE NO. 2021-0272-A 12/30/2021
On the Property's side of Providence Rd., the lots have rear yards with declining slopes; some are more sloped and some are less. This fact does not make the Property unique under Cromwell, supra.
The Court in Cromwell, supra, emphasized that the 'uniqueness' element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. Mark Tosti #1

The Cromwell Court connected the variance law in Baltimore County with the law in Maryland and emphasized that: **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. Cromwell #4

The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is — in and of itself — unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. **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.**
Cromwell, 102 Md. App. at 694-695, 651 A.2d at 426. Cromwell #1

Practical Difficulty

Where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue hardship" standard. In order to justify the grant of an area variance the applicant need show only that:

"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, 787 (1973), quoting 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972).
Anderson vs Board of Appeals #1

Self-inflicted Hardship (owner and prior owner)

The general rule on self-inflicted hardship is succinctly stated in 2 Rathkopf, The Law of Zoning and Planning, 48-1:
"§ 1. Hardship Caused by Affirmative Acts of Commission. (*the decision to do something)*
"Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions of the zoning ordinance, hardship arises which is capable of being relieved through the grant of a variance. **The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship.**

If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, i.e., that the hardship be caused *solely* through the manner of operation of the ordinance upon the particular property, **is lacking.**
In such case, a variance will not be granted; the hardship, arising as a result of the act of the owner or his predecessor will be regarded as having been self-created, barring relief.
This rule is simple and of general application in the several states."

(Cromwell) In Sibley v. Inhabitants of the Town of Wells, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:
(T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
(T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
Cromwell #5

Speaking for the Court in Cromwell, supra, Judge Cathell noted:
Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also **emasculate zoning ordinances. Zoning would become meaningless.** We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. Cromwell, at 722.
Cromwell #6

Use of: Surrounding Area / Neighborhood

Yoseph Orshan and Randi Orshan (3401 Overbrook Road) CASE NO: 2021-0183-A 10/04/2021
Gregory Schaub and Karen Schaub (2203 Forest Ridge Road) CASE NO: 2021-0162-A 10/05/2021
Id. **When comparing the property at issue with other properties to determine 'uniqueness,' the terms 'area', 'neighborhood' and district have all been used interchangeably.** (Easter v. Mayor & City Council, 195 Md. 395, 400 (1950) citing Rathkopf, Zoning, 2d Ed., p. 215); Marino v. City of Baltimore, 215 Md. 206, 219 (1957); Chesley v. Annapolis, 933 A.2d 475, 176 Md. App. 413 (Md. App., 2007). Orshan #1 + Schaub #1

David Cromwell et al. v. Arthur Thomas Ward, III, No. 617, September Term, 1994
Conclusion
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 the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. Cromwell #7

(Cromwell) Another typical Baltimore City case in that regard is Easter v. Mayor and City Council of Baltimore1 195 Md. 395, 400 (1950), where the Court noted "facts to justify an exception ... [show] that the hardship affects the particular premises and is not common to **other property in the neighborhood**." This is a variance standard. Cromwell #8

(Cromwell) Id. at 169. In the case sub judice, the Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the **properties in the neighborhood.** Cromwell #9

(Cromwell) In Sibley v. Inhabitants of the Town of Wells, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:
(T]he need for a variance [must be] due to the unique circumstances of the property and not to the general **conditions in the neighborhood**;
(T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner. Cromwell #5

A. Rathkopf, 3 The Law of Zoning and Planning ' 58:11 (2004)
If the hardship is one which is common to the area the remedy is to seek a change of the **zoning for the neighborhood** rather than to seek a change through a variance for an individual owner. Thus, some exceptional and undue hardship to the individual landowner, unique to that parcel of property and not shared by property owners in the area, is an essential prerequisite to the granting of such a variance.

Opinion and Order / Use of "Neighborhood"

Mark Tosti (1207 Providence Road) CASE NO. 2021-0272-A 12/30/2021
On the Property's side of Providence Rd., the lots have rear yards with declining slopes; some are more sloped and some are less. This fact does not make the Property unique under Cromwell, supra.
The Court in Cromwell, supra, emphasized that the 'uniqueness' element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. Mark Tosti #1

Dorina Natiga and Shifra Natiga (3100 Marnat Road) CASE NO. 2021-0188-A 12/08/2021
A threshold condition precedent for variance relief is uniqueness. In this case, there was no evidence presented that the Property is unique, peculiar or different than **other properties in the neighborhood** in accordance with the standards set forth in BCZR, §307.1 as clarified in Cromwell, supra. Natiga #1

John & Elisabeth Martin (1540-1542 S. Rolling Road) CASE NO: 2021-0166-A 9/22/2021
There was no evidence presented that the Property is unique as compared to **other properties in the neighborhood.** Martin #1

Gregory Schaub and Karen Schaub (2203 Forest Ridge Road) CASE NO: 2021-0162-A 10/05/2021
The evidence presented here was overwhelmingly that the Property is similar to other **properties in the neighborhood** in that the rear yards have both slopes and trees. Schaub #1

Dr. Crystal Greene (8632 Windmill Road) CASE NO: 2020-0234-A 01/12/2021
Cromwell v. Ward, 102 Md. App. 691 (1995). In order to grant a variance, there must first be evidence of uniqueness of the physical characteristics of the property at issue as compared to **other properties in the neighborhood**. In requiring a pre-requisite finding of "uniqueness", the court in *Cromwell* defined the term as stated: Greene #1

Danielle Vaziri & Francis Bonadio, Jr. (808 Dartmoor Road) CASE NO. 2021-0215-A 11/03/2021
Moreover, it is significant that there are no other **properties in the neighborhood** which have attached garages in the side yards other than those garages which were built as part of the home.
(and…) In my view, granting such a variance will also have an adverse domino effect on this established **neighborhood of homes** with limited yard sizes. Vaziri and Bonadio #1

Bradley J. and Amy B. Murphy 7317 Bellona Avenue CASE NO. 2021-0334-A 12/21/2021
Variance relief runs with the land and the proposed pool in the side yard **would negatively impact this established neighborhood** and cannot be granted within the spirit and intent of the BCZR which requires pools to be located in the rear yard. Murphy #1

Differences in degree of property slopes

Mark Tosti (1207 Providence Road) CASE NO. 2021-0272-A 12/30/2021
On the Property's side of Providence Rd., the lots have rear yards with declining slopes; some are more sloped and some are less. This fact does not make the Property unique under Cromwell, supra.
The Court in Cromwell, supra, emphasized that the 'uniqueness' element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. Mark Tosti #1

Permitting

The ordinance was amended again in 1991 to add a "compatibility review" to the process, requiring a landowner who seeks a building permit to show that the proposed dwelling is **appropriate to the neighborhood.**

Anderson vs Board of Appeals

Summary
holding that, even though party sought an area variance, the ordinance required them to prove an unnecessary hardship

Opinion

No. 531, September Term, 1973.

Decided July 12, 1974.

ZONING — Variance — Special Exception — "Practical Difficulty" And "Unnecessary Hardship" In Owner's Reasonable Use Of Land Or Building Involved Was Not Shown Under Circumstances Of Instant Case, And Granting Of Variances From Zoning Ordinance's Requirement Relating To Minimum Horizontal Distance Between Facing Walls Of Two Buildings And Granting A Special Exception For Multiple Dwellings In A Marine Commercial Recreation District Held Arbitrary And Capricious. pp. 29-38

ZONING — Use Variance — Area Variance — "Hardship" — "Practical Difficulty" — "Fairly Debatable" — Use Variances Are Customarily Concerned With "Hardship" Cases, Where Land Cannot Yield A Reasonable Return If Used Only In Accordance With Use Restrictions Of Ordinance And A Variance Must Be Permitted To Avoid Confiscatory Operation Of Ordinance, **While Area Variances Are Customarily Concerned With "Practical Difficulty" — Mere Financial Hardship Or An Opportunity To Get An Increased Return From Use Of Property Is Not Sufficient For Granting A Variance — Difficulties Or Hardships Must Be Peculiar To Property In Question And Contrast With Other Owners In Same District, And Hardship Must Not Be Result Of Applicant's Own Actions** — Where Standard Of "Practical Difficulty" Applies, Applicant Is Relieved Of Burden Of Showing A Taking In A Constitutional Sense — In Case At Bar Where Zoning Ordinance In Question Permits Area Variances Only, And Not Only Expresses The Criteria Of Practical Difficulty And Unnecessary Hardship In Conjunctive. **But Also Independently Requires No Area Variance Be Granted Unless Strict Application Of Regulations Deprives Applicant Of Reasonable Use Of His Land, An Area Variance Can Be Granted Only Upon Proof That Strict Application Of Regulations Would Result In An Unnecessary Hardship And Deprives Owner Of Reasonable Use Of His Land — Proof Of "Practical Difficulties" Alone Is Insufficient, And One Who Shows No More Than That Granting Of A Variance Would Do No Harm And It Would Be Profitable To Him Fails To Meet Required Burden As Defined By Specific Ordinance Involved** — Based On Record Here. Question Of Whether Strict Application Of Distance Between Buildings Requirement Would Result In An Unnecessary Hardship By Depriving Applicant Of A Reasonable Use Of His Land Was Not Fairly Debatable. pp. 38-42

J.A.R.

Appeal from the Circuit Court for Calvert County (BOWEN, J.).

McRae Anderson and Carmen Anderson, his wife, filed an order of appeal in the court below from a decision of the Board of Appeals of the Town of Chesapeake Beach granting a special exception and granting a variance to Ronald W. Pickett from the town's zoning ordinance's requirement relating to

distance between facing walls and for multiple dwellings in a marine commercial recreation district. From an order affirming the decision, they appeal.

Order reversed. Costs to be paid by appellees.

The cause was argued before MOYLAN, MENCHINE and DAVIDSON, JJ.

Eugene E. Pitrof, with whom were Pitrof Starkey on the brief, for appellants.

Steny S. Hoyer, with whom were Hoyer Fannon and Allen S. Handen on the brief, for appellees.

DAVIDSON, J., delivered the opinion of the Court.

This appeal is from an order of the Circuit Court for Calvert County which affirmed a decision of the Board of Appeals of the Town of Chesapeake Beach granting variances from the town's zoning ordinance's requirement relating to minimum horizontal distance between facing walls of two buildings and granting a special exception for multiple dwellings in the MCR (Marine Commercial Recreation) district. After a careful review of the record, we find that the action of the Board of Appeals in granting the variances was arbitrary and capricious and should not be sustained. Because the special exception is conditioned on the placement of the buildings as shown on the site plan, and because that placement, absent the grant of the requested variances, is violative of the "distance between facing walls" requirement of the ordinance, the granting of the special exception should not be upheld.

On 26 May 1972 the Mayor and Town Council of Chesapeake Beach enacted a zoning ordinance for the town, which is located in Calvert County. Section 300 of the ordinance divides the town into six classes of districts, or zones, one of which was delineated as the Marine Commercial Recreation (MCR) district. Sections 401(c) and 406 provide that multiple dwellings may be permitted in the MCR district if the Board of Appeals grants a special exception and certain other specified requirements are met. One such specified requirement, contained in § 406 (5)(b) (i), relates to the minimum horizontal distance permitted between facing walls of any two buildings on one lot.

More specifically, § 406 (5)(b) (i) provides:
"[W]here two (2) facing walls both contain a window or windows the minimum horizontal distance shall be three (3) feet of horizontal distance for each foot of average height of the facing wall of the building with greatest height but in no case less than seventy-five (75) feet. . . ."

On 19 January 1973 Ronald W. Pickett, contract purchaser of the subject property and one of the appellees in this proceeding, filed an application for a zoning permit and an application for a special exception to develop 22.10 acres of land zoned MCR with 320 condominium apartment units and a 38,000 square foot convenience shopping center. A site plan was attached which indicated that in addition to the commercial facility the applicant proposed to build four apartment buildings, each nine stories high. Parking spaces were to be provided for 898 cars, with 640 spaces allocated to service the apartment dwellers and 258 to service the shopping center. An existing swimming pool, bathhouse and clubhouse were to be improved and retained for use by the residents of the proposed condominiums and four tennis courts were to be constructed for their enjoyment. All four buildings were to be positioned in a row along the edge of the Chesapeake Bay and were to be parallel to one another. The

existing swimming pool and bathhouse lies between the proposed sites of Building No. 1 and Building No. 2, which were to be separated by a distance of more than 300 feet. The distance between Buildings No. 2 and No. 3 was to be approximately 90 feet while that between Buildings No. 3 and No. 4 was to be approximately 100 feet. Section 406 (5)(b) (i) requires a minimum distance of about 250 feet between buildings of the height proposed.

The site was previously occupied by the Chesapeake Beach Amusement Park.

The record is unclear as to the precise distances involved. The minutes of a meeting of the Planning and Zoning Commission held on 7 February 1973 indicate that the proposed buildings were to be 86 feet high, which would necessitate a distance of 258 feet between buildings and that the distance between Buildings No. 2 and No. 3 was to be 90 feet, while between Buildings No. 3 and No. 4 the distance was to be 100 feet. Under this set of facts variances of 168 feet and 158 feet are required.
Although the zoning permit application indicates a building height of 81 feet, the architect testified at the public hearing held by the Board of Appeals on 12 April 1973 that the maximum height would be 80 feet. A site plan submitted to the Board of Appeals at this hearing indicates a distance of approximately 100 feet both between Buildings No. 2 and No. 3 and between Buildings No. 3 and No. 4. Under this set of facts, two variances of either 143 or 140 feet each would be required.
However, at the hearing before the Board of Appeals and here on appeal the parties agree that the ordinance requires a minimum distance of 240 feet between the buildings and that variances of 153 feet and 143 feet are necessary.

On 7 February 1973 the application for a special exception and the accompanying site plan were reviewed by the Planning and Zoning Commission. The minutes of that meeting reflect that a member of the staff of the State Planning and Zoning Commission advised the Commission not only that variances were required because of non-compliance with § 406 (5)(b) (i) but also that the inclusion of a shopping area was violative of § 406. The Planning and Zoning Commission voted to recommend to the Board of Appeals that the proposed special exception be granted, "providing that all commercial buildings be deleted and that the Board of Appeals grant a variance for the non-compliance of distances between buildings." On 13 February 1973 the Board of Appeals received the following written communication from the Chairman of the Planning and Zoning Commission:

Section 406 provides for a minimum lot area of 3,000 square feet for each unit in an MCR development. The staff member pointed out that on a tract of 22.1 acres, where 960,000 square feet would be needed to fulfill the requirements for the erection of 320 units, only 2,676 square feet would be left for the construction of the shopping area.

"The Planning and Zoning Commission accepts the plan submitted by Mr. Ron Pickett to construct four nine-story buildings on site of attached plan, providing you delete all commercial on said plan and that you grant a variance for the non-compliance of distances between buildings required in Section 406 (5)(b) (i)."

Thereafter Mr. Pickett filed an application for a variance alleging that:

"Due to the exceptional physical characteristics of the site a hardship is created by conforming to the 3' for 1' which would deprive me of the reasonable use of the land and buildings."

On 12 April 1973 a hearing was held before the Board of Appeals. The site plan submitted there deleted the proposed commercial use in its entirety, but the four proposed apartment buildings remained in approximately the same position they had occupied on the original site plan.

Two witnesses testified with respect to the need for the requested variances. Mr. Ronald W. Pickett, the contract purchaser of the property, testified that the property, bounded on the west by Route 261 and the east by the Chesapeake Bay, is "very unique." It is "almost like an L shape" with the southern portion of the property being considerably narrower than the northern portion. Building No. 1 is located on "Pool Hill," a hill which "slopes rather quickly down to the swimming pool." The location of Building No. 1 was dictated by the setback requirements of the ordinance and the slope of the hill, which together prohibited the placement of the building on any other spot. According to Mr. Pickett "there is no other way for us to locate that building. . . . We were locked in on the first building site, we virtually had no alternative if we were going to use that particular piece of property, Pool Hill. Because of the requirements of the ordinance and the dimensions of the building, that building had to go there."

Mr. Pickett further testified that the topography of the site also dictated the location of the remaining three buildings. He pointed out that the terrain generally slopes upward from Route 261, the western boundary of the property, to the center of the property, and then slopes downward, finally leveling off near the water's edge. Three alternatives were available. Buildings No. 2, No. 3 and No. 4 could have been located near the western boundary of the property at the bottom of the slope, "which would have meant that our people wouldn't even have any view of the water." They could have been located on the top of the hill, "which would have given us higher elevations and probably more water view," but which also "would have been much more obtrusive from Route 261." Finally, they could have been located on the level land on the east side of the slope near the water's edge. The latter alternative was chosen to maximize the residents' view of the water and minimize the visibility of the structures from Route 261.

Mr. Pickett testified that the possibility of replacing Buildings Nos. 2, 3 and 4 with two buildings was considered. He pointed out that in order to "use the density to maximize the value of the property" the two substitute buildings would have to be 12 or 13 stories in height. While such a mode of development would have obviated the need for a variance and would have been more economical to construct, this alternative was rejected "in order to minimize the appearance of the structures from the road." Consideration was also given to placing Building No. 3 to the rear of, rather than between, Buildings No. 2 and No. 4. This alternative was rejected for a variety of reasons. Since the balconies on the rear building would overlook the balconies on the front buildings, the arrangement would interfere with the privacy which the balconies were specifically designed to provide. Parking would have to be provided in front of Building No. 3, which would interfere with the residents' view of the natural beauty of the shoreline. Either Building No. 3 would have to be located on the crown of the hill, making the building more visible from the road, or the crown of the hill would have to be removed to make the building less visible from the road, neither of which was a desirable mode of development. Finally, the principles of sound planning would be violated by the changes in the traffic patterns which would be required and which would result in residents from all the buildings driving in front of Building No. 3. Under the proposed site plan, mobile activity is confined to the rear of all the buildings.

Mr. Herbert Fleischer, an architect, engineer and planner, who had prepared the site plan for the subject property, qualified as an expert. He testified that the subject property had "intriguing natural beauty" with distinct contours and vegetation which should not be disturbed. He opined that the buildings are located so as to preserve the shoreline and indeed to enhance the view from the bay toward the project. He stated that although it would have been possible to place Building No. 3 in a different

location, the plan as drawn maximized the permissible density while producing a "well-organized project." In his view, the four roughly parallel buildings are more in harmony with the appearance and character of Chesapeake Beach than a "staggered" layout would be. Moving the building to the west, behind Buildings No. 2 and No. 4, would mean building it in a "hole" behind the hill. In addition a parking area would be required in front of the building which would have divided the planned open park recreation area. Such a parking lot would destroy the "resort" character of the project and create traffic hazards for pedestrians attempting to use it. Mr. Fleischer concluded his testimony on direct examination by stating that the grant of the requested variances would have no adverse effect on the residents of the buildings, the abutting property owners, the surrounding properties or the neighborhood of Chesapeake Beach. Indeed, in his view, the development as planned would enhance the general area.

On recross-examination the following colloquy took place:

"Q. The only other question I would ask, can you tell the board what hardship would be suffered by your client if the variance was not granted?

"A. The only hardship would be the loss of income because you couldn't have the other buildings. You see, you have to approach it two ways. My opinion is, the density that we have is a low one, in my opinion.

"Q. If you would just try to answer the question directly, if you can, what hardship would you suffer if the variance is not granted?

"A. Maybe poor planning.

"Mr. Handen [Town Attorney for Chesapeake Beach]: I think we have batted back and forth enough, gentlemen, it's got to come to an end."

On 18 April 1973 the Board of Appeals issued a written statement and decision. With respect to the request for variances, the Board of Appeals found, among other things:

"1. That, as a matter of fact, the variance requested will not be contrary to the public interest and that practical difficulties and unnecessary hardship would result if it is not granted.

* * *

"4. That, as a matter of fact, the Petitioner met the burden of proving unique circumstances in that a strict application of the Zoning Ordinance would deprive the Petitioner of the reasonable use of his land and proposed buildings.

"5. That, as a matter of fact, Petitioner met the burden of proving unnecessary hardship as required by the Ordinance in that to disallow the variance would impose a special hardship on the subject property.

"6. That, in addition to paragraphs numbered 1 through 5 above, the Board found as a fact that the granting of the variance is necessary for the reasonable use of the land and Petitioner's buildings; that the hardship complained was not economical nor self-created; that the hardship resulted from the

application of the Ordinance and that the hardship would be specifically suffered by the property in question."

With respect to the special exception the Board of Appeals found:

"7. That, as a matter of fact, the special exception requested is consistent with the spirit, purpose and intent of the Ordinance.

"8. That, as a matter of fact, the special exception requested is suitable for the property in question and designed to be in harmony with and appropriate in appearance with the existing and intended character of the general vicinity; and that the special exception does not adversely effect street traffic and safety."

The Board of Appeals granted the variances and special exception subject to a condition, among others, "that petitioner must substantially adhere to matters of construction to the initial plans presented before the Board."

Section 1002 (c) of the zoning ordinance states that each resolution of the Board of Appeals "shall contain a statement of the grounds and any findings forming the basis of such action or decision." Despite repeated admonitions by the Court of Appeals that the findings of administrative boards are not to be limited to conclusions couched in the terms of the ordinance itself but rather are to include specific findings of facts that support their conclusions, the Board of Appeals in this case set forth its conclusions in its statement and decision in a boilerplate form employing the terms of the ordinance itself without setting forth any specific findings of fact. See, e.g., Hooper v. City of Gaithersburg, 270 Md. 628, 637, 313 A.2d 491, 496 (1974); Baker v. Board of Trustees, 269 Md. 740, 747, 309 A.2d 768, 771-72 (1973); Pistorio v. Zoning Board, 268 Md. 558, 570, 302 A.2d 614, 619 (1973); Turner v. Hammond, 270 Md. 41, 56, 310 A.2d 543, 551 (1973).

On 3 August 1973 the Circuit Court for Calvert County affirmed the grant of the variances and the special exception. With respect to the variances, the Court said:

"Finally, with respect to the granting of the Variance, the Appellant's position seems to be that because the Applicants' desire to use their land to the fullest extent, the need for the Variance is something they created and, therefore, it should not be considered. The Board, however, seemed to take the position that there was a problem created by the special topographic features and existing structures on this property, as well as its relation to the principal natural feature of the area; that is, the Chesapeake Bay, which entitled the Applicants to some consideration. Once again, this is a matter of judgment and in view of the evidence bearing on this question, the Court is satisfied that the Board had before it sufficient evidence to support the result it reached."

The appellants, McRae and Carmen Anderson, who opposed the granting of the application at the Board of Appeals hearing and appealed the Board's decision to the Circuit Court, contend that the zoning ordinance of the Town of Chesapeake Beach requires the applicant to show that a denial of the requested variance would result not only in "practical difficulty" but also in an "unnecessary hardship" depriving the owner of the reasonable use of the land or building involved. They maintain that because this dual showing was not made, the action of the Board in granting the variances was arbitrary and capricious.

The appellees, the Board of Appeals and Mr. Pickett, the applicant, contend that the variances requested in this case involve an "area variance" (a variance from area, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings) and not a "use variance" (a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses). They maintain that area variances may be allowed on proof of "practical difficulty" alone and that such variances do not require a showing of "undue hardship." They insist that more than sufficient evidence was presented to make the question of whether practical difficulties would result from the denial of the requested variances "fairly debatable." They conclude that the action of the Board in granting the requested variances and the special exception should be upheld.

The Court of Appeals has recognized a distinction between a use variance, which changes the character of the zoned district, and an area variance, which does not. Use 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 a variance must be permitted to avoid confiscatory operation of the ordinance, while area variances are customarily concerned with "practical difficulty." Loyola Loan Ass'n v. Buschman, 227 Md. 243, 248, 176 A.2d 355, 358 (1961). Where the standard of undue hardship applies, the applicant, in order to justify the grant of the variance, must meet three criteria:

1) If he complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property. Pem Co. v. Baltimore City, 233 Md. 372, 378, 196 A.2d 879, 882 (1964); Marino v. City of Baltimore, 215 Md. 206, 218, 137 A.2d 198, 202 (1957); see Salisbury Bd. v. Bounds, 240 Md. 547, 555, 214 A.2d 810, 815 (1965). Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance. Daihl v. County Board of Appeals, 258 Md. 157, 167, 265 A.2d 227, 232 (1970); Salisbury Bd. v. Bounds, supra, 240 Md. at 555, 214 A.2d at 814; Marino v. City of Baltimore, supra; Easter v. City of Baltimore, 195 Md. 395, 400, 73 A.2d 491, 492 (1950).

2) The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district. Burns v. Baltimore City, 251 Md. 554, 559, 248 A.2d 103, 106 (1968); Marino v. City of Baltimore, supra; Easter v. City of Baltimore, supra.

3) The hardship was not the result of the applicant's own actions. Salisbury Bd. v. Bounds, supra; Marino v. City of Baltimore, supra; Gleason v. Keswick Impvt. Ass'n, 197 Md. 46, 50-51, 78 A.2d 164, 165-66 (1951).

Where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue hardship" standard. In order to justify the grant of an area variance the applicant need show only that:

"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, 787 (1973), quoting 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972).

The lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance.

While a distinction between use and area variances has been recognized and clearly articulated in Maryland, the Court of Appeals has applied the "practical difficulty" standard to area variance applications in only three cases. McLean v. Soley, supra, 270 Md. at 213-14, 310 A.2d at 786-87; Zengerle v. Bd. of Co. Comm'rs, 262 Md. 1, 21, 276 A.2d 646, 656 (1971); Loyola Loan Ass'n v. Buschman, supra, 227 Md. at 248-50, 176 A.2d at 358-59. In each of them the governing local ordinance authorized the grant of an area variance when strict compliance with the regulations would result in practical difficulties or unreasonable hardship. In each of them the Court of Appeals emphasized that the grant of the requested area variance was justified on proof of "practical difficulty" alone and that proof of hardship was not required because the governing zoning ordinance, which phrased the criteria of "practical difficulty or unreasonable hardship" in the disjunctive, could be construed as requiring that only the lesser standard of proof be applied.

The zoning ordinance of the Town of Chesapeake Beach differs from those ordinances in a number of significant respects. Section 1005 (c)(2) of the ordinance prohibits the Board of Appeals from granting a use variance. Section 1005 (a) authorizes the Board to grant an area variance only where the strict application of the regulations "would result in practical difficulty and unnecessary hardship depriving the owner of the reasonable use of land or building involved. . . ." (Emphasis added.) Section 1005 (c) provides that the applicant must show that "practical difficulty and unnecessary hardship will result if [the variance] is not granted." (Emphasis added.) Section 1005 (c)(3) provides that:

"There must be proof of unique circumstances . . . and that said circumstances or conditions are such that strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building."

Finally, § 1005 (c)(5) requires an applicant to show:

"That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose. It is not sufficient proof of hardship to show that greater profit would result if the variance were awarded. Furthermore, hardship complained of cannot be self-created; it cannot be claimed by one who purchases with or without the knowledge of restrictions; it must result from the application of the Ordinance; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered."

Thus the zoning ordinance of the Town of Chesapeake Beach permits area variances only. Not only does it express the criteria of practical difficulty and unnecessary hardship in the conjunctive, but it also independently requires that no area variance be granted unless it is shown that strict application of the regulations will deprive the applicant of the reasonable use of his land and that the grant of the variance

is necessary for the reasonable use of the land. It defines the hardship which must be shown as the equivalent of a constitutional taking, and utilizes the same criteria employed by the Court of Appeals for establishing undue hardship. The words of the statute are clear and unambiguous and require no construction. Under the express terms of the ordinance, an area variance can be granted only if there is proof that the strict application of the regulations would result in an unnecessary hardship which deprives the owner of the reasonable use of his land. Proof of "practical difficulties" alone is insufficient. McLean, Zengerle and Loyola, supra, are inapposite.

Appellees do not contend that the applicant presented sufficient proof of an unnecessary hardship which deprived the owner of the reasonable use of his land. The record shows that the only hardship allegedly suffered by the applicant as a result of the strict application of the ordinance is "loss of profit" and "may be poor planning." This evidence falls far short of a showing of unnecessary hardship as defined by the specific ordinance here involved as well as by the Court of Appeals. One who shows no more than that the granting of the variance would do no harm and that it would be profitable to him fails to meet the burden. M. C.C. v. Polakoff, 233 Md. 1, 9, 194 A.2d 819, 824 (1963). Moreover, the very testimony which shows the practical difficulties encountered in attempting to develop the land at a maximum density in accordance with the distance between buildings restriction simultaneously establishes unequivocally that not only is it possible to develop the land at the maximum permitted density in accordance with the distance between buildings requirement, but also that such development could be less costly than the mode of development proposed. Given the evidence presented on behalf of the applicant, it is impossible for him to contend that the strict application of the ordinance prevents him from making a reasonable use of his land.

Based on the record before us, we find that the question of whether the strict application of the distance between buildings requirement would result in an unnecessary hardship to the applicant by depriving him of the reasonable use of his land was not fairly debatable. Baltimore v. Sapero, 230 Md. 291, 296, 186 A.2d 884, 887 (1962); Marino v. City of Baltimore, supra, 215 Md. at 222, 137 A.2d at 205. The action of the Board of Appeals in granting the variances was arbitrary and capricious and cannot be sustained. Daihl v. County Bd. of Appeals, supra, 258 Md. at 167, 265 A.2d at 232; Dampman v. M. C.C. of Baltimore, 231 Md. 280, 286-87, 189 A.2d 631, 634 (1963). Because the grant of the special exception is conditioned on adherence to a site plan in which, absent the variances, the buildings are located in a manner violative of the ordinance, it too cannot be sustained. Accordingly, the order of the lower court affirming the grant of the variances and the special exception shall be reversed. Order reversed.

In view of our decision, all of the other contentions made by appellants need not be considered.

Costs to be paid by appellees.

Court of Special Appeals of Maryland.

William F. CHESLEY, et ux. v. CITY OF ANNAPOLIS, Maryland.

No. 1104, Sept. Term, 2006.

Decided: September 27, 2007

Argued before DAVIS, JAMES R. EYLER, and ADKINS, JJ. Sager A. Williams, Jr. (Blumenthal, Delavan & Williams, PA on the brief), Annapolis, for appellant. Jonathan P. Kagan (Brassell, Baldwin, Kagan & May, PA., Shaem Spencer, City Attorney on the brief), Annapolis, for appellee.

William and Robin Chesley, appellants, challenge the denial of a front yard setback variance that would enable them to build a one car garage within three feet of the street along their Chesapeake Bay waterfront property in Annapolis. They present two questions for our review:

I. Did the Board of Appeals err in denying the Chesleys' zoning variance because the Board's conclusions are not supported by substantial evidence and because the Board failed to apply the law correctly?

II. When the City appears as a party at a public hearing before the Board of Appeals through officials who work for the City's Planning Department, and when those City officials testify in favor of a variance application, is it improper for the City in a subsequent petition for judicial review of the Board's decision to oppose the variance by taking positions contrary to the positions City officials took before the Board?

Finding no error, substantial evidence in the administrative record to support the Board's denial of this variance, and no impropriety in the City's advocacy, we shall affirm the judgment.

City Regulations

The Annapolis City Code sets minimum setbacks of six feet for side yards and 30 feet for front yards for accessory structures in an R2 zone, such as the Chesleys' proposed garage. See Annapolis City Code § 21.18.040(C)(hereafter cited as "Code"). The Chesley property is subject to other building restrictions, however, due to its location at 15 Eastern Avenue in the Eastport section of Annapolis, on the Chesapeake Bay.

First, the approximately one-third acre lot is in the Chesapeake Bay Critical Area, and therefore all buildings on this lot must be set back at least 44 feet from the shoreline. Impervious surfaces may not cover more than fifty percent of the lot. As a result, the residence, driveway, and accessory structures may not occupy more than approximately 7,870 square feet of the Chesley property.

Second, the Chesley property lies in a Residential Conservation Overlay District, which requires formal Site Design Plan Review by the City's Department of Planning and Zoning prior to issuance of all building permits for any construction that impacts the street facade. See Code § 29.69.030. The purpose of this regulation

is to preserve patterns of design and development in residential neighborhoods characterized by a diversity of styles and to ensure the preservation of a diversity of land uses, together with the protection of buildings, structures or areas the destruction or alteration of which would disrupt the existing scale and architectural character of the neighborhood. The general purpose includes . [c]ompatibility of new construction . with the existing scale and character of surrounding properties[.]

Code § 21.69.010. The RC overlay standards encourage traditional urban design, inter alia, by permitting reduced building setbacks to the extent that the proposed new construction maintains building patterns of the neighborhood. See City of Annapolis Dep't of Planning and Zoning, The Eastport Residential Conservation Overlay District: A Guide to the Process and Design Guidelines 2.

The third and final factor affecting use of the property is that the Chesley lot lies within the Eastport Residential Conservation Overlay District. See id. Eastport originated in the late 19th century, and remained an independent town until the City of Annapolis (the City) annexed it in 1951. See id. at 8. The neighborhood is located within walking distance to downtown Annapolis and the City Dock, on the Horn Point peninsula, between Spa Creek and Back Creek, where the Severn River enters the Chesapeake Bay. See id. Eastport homes reflect that community's working-class and maritime roots, characterized architecturally by "social and physical diversity, together with its small, intimate scale" and an ambiance described as "[d]elicate, unique, special, charming, historic, quiet, [and] personal [.]" See id. To preserve that character, "all new construction, including . accessory structures which may be visible from the street [must] be reviewed for compliance with the guidelines in Section 21.98.050.D [.]" Id. With respect to building setbacks from the street, these must "observe the established setbacks for the block on which [the construction] is proposed, or the setback requirement of the underlying zone, whichever is less [.]" Id. at 4.

The Annapolis City Code permits the Board to grant a variance from applicable setback requirements, see Code § 21.28.040.A, upon finding that the following conditions have been satisfied:

1. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out;

2. The conditions upon which a petition for a variation is based are unique to the property for which the variance is sought, and are not applicable, generally, to other property within the same zoning classification;

3. The purpose of the variance is not based exclusively upon a desire to increase financial gain;

4. The alleged difficulty or hardship is caused by this title and has not been created by any persons presently having an interest in the property;

5. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;

6. The proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values with [sic] the neighborhood.

Former Code § 21.80.030(A)(1996)(emphasis added). See also Code § 21.28.050 (2005)(current variance standards and conditions are substantially the same).

The Chesleys' Development Proposals

Immediately after purchasing the property in 2000, the Chesleys consulted with the City's Department of Planning and Zoning regarding their wish to replace the existing residence with new construction, including a house with attached two car garage and a pool. As a result of negotiations over 18 months, during which the Department of Planning and Zoning (the Department) pressed for a public view corridor along the southern boundary of the property and design changes to make the new home "more Eastport-like," the Chesleys amended their plans to propose a detached two car garage.[1] The Department noted that this would require side and front yard setback variances, but told the Chesleys that the Department would "support" the request. See Code § 21.28.020.B (planning staff reviews variance applications and makes reports and recommendations to the Board).

In support of their garage variance, the Chesleys advised that when Mr. Chesley's wheelchair-bound adult son Billy visits, he uses a special van with a metal lift and ramp that becomes slippery in rain, snow, or ice. In addition, waterfront lot owners along Eastern Avenue treat their front yards as their rear yards for purposes of garages. The Chesleys contend that "[n]o waterfront property along Eastern Avenue has its water view blocked by a detached garage built between the home and the water." Moreover, the lots on each side of the Chesleys have detached garages within a few feet of the street.

The City approved plans for a new 5,000 sq. ft. residence, but concluded that further review of the pool and garage proposals was necessary. In addition to those exclusions, the City's approval was subject to specific conditions. One condition was that the Chesleys enter into a "View Cone Covenant and Agreement" [2] with two neighbors across the street, in order to preserve a public view to the Chesapeake Bay. They did so. These two agreements prohibit development of an 18-20 foot wide strip along the westerly side of the lot. According to Mr. Chesley, his is the only lot that the City has required a recorded view cone agreement as a condition of approval.

The Chesleys proceeded to build their house as approved by the City, i.e., without a garage. During construction, they petitioned for approval of a variance that would allow them to build a one story, two car, detached garage, within three feet of Eastern Avenue, in the location suggested by planning authorities. As promised, the Planning Department submitted a staff report supporting this request. After a public hearing, at which neighbors opposed the Chesleys' proposal, the Board unanimously denied the application on July 17, 2002.

The Chesleys completed construction of both the house and the pool, then occupied their home for the next 18 months, during which time they had a daughter.[3] In 2005, the Chesleys filed a second application for a variance, this time to build a scaled-back one story, one car garage in the same location, also requiring a variance to allow a three foot setback, but no side setback variance. The garage would be custom-designed to accommodate the van used to transport Billy. The Department again supported the variance application.

At a June 7, 2005 hearing, counsel for the Chesleys proffered the testimonies and qualifications of an architect and a land planner, as well as Mr. Chesley's testimony.[4] Two neighbors then testified for, and two against, the proposal.

On June 29, after public deliberation, the Board issued a written 2-1 decision denying the variance. A majority of the Board quorum [5] concluded that the Chesleys failed to satisfy the six required conditions for a setback variance. Specifically, the Board found that no hardship exists, that the claimed hardship was self-created, and that the proposed garage would have a negative impact on the neighborhood.

The Chesleys petitioned for judicial review in the Circuit Court for Anne Arundel County. The City Attorney, acting as counsel for the Board, gave notice of the Board's intent to participate. Later, outside counsel appeared on behalf of the City. The circuit court affirmed the Board's decision, and the Chesleys filed this timely appeal.

DISCUSSION

I.Setback Variances

A variance authorizes the property owner " 'to use his property in a manner forbidden' " by applicable zoning restrictions. See Cromwell v. Ward, 102 Md.App. 691, 700, 651 A.2d 424 (1995) (citation omitted). In contrast to special exceptions, which " 'contemplate[] a permitted use . [once] the prescribed conditions therefor are met[,]' " a variance " 'contemplates a departure from the terms of the [zoning] ordinance in order to preclude confiscation of the property [.]' " Id. at 699-700, 651 A.2d 424 (citation omitted). Although "the purpose of a variance is to protect the landowner's rights from the unconstitutional application of zoning law[,]" variances are frequently permitted in circumstances when application of the setback requirement would not constitute a "taking." See Belvoir Farms Homeowners Ass'n, Inc. v. North, 355 Md. 259, 281, 734 A.2d 227 (1999).

There are different types of variances, including the "ordinary" front yard setback variance at issue here and the variances from the setbacks established by statute for critical areas in an effort

to regulate development of waterfront properties. Not surprisingly then, "there are different criteria that must be met for 'ordinary' or 'general' zoning variances and critical area variances." Becker v. Anne Arundel County, 174 Md.App. 114, 139, 920 A.2d 1118 (2007). The criteria for a yard setback variance are established by the City, as set forth above.

The Board's Findings

During deliberations, the two Board members in the majority articulated what amounts to a "caveat builder" perspective concerning the Chesleys' predicament. In their view, because the Chesleys knew that they would need a front yard setback variance to build a detached garage in the location recommended by planning authorities, they should have either (a) waited to construct their home and pool until they obtained a variance for the garage, or (b) "redesigned [the house] in a way that they wouldn't have this problem." Referring to how the footprint of the house sits on the lot, the other Board member in the majority observed that the Chesleys could have addressed concerns about the 30 foot setback by "modif[ying] the size of the home to allow for a detached garage next to it from the opposite [side] from the view cone and they could have changed the configuration in the house."

In its written opinion, the Board concluded that the Chesleys did not satisfy the threshold requirement in the Code that there be a hardship resulting from "the particular physical surroundings, shape or topographical conditions." Concern regarding the large size of the house in relation to the lot is evident in the Board's findings:

Through Site Design Plan Review, the applicant established a view cone covenant along the southwestern end of the property in order to preserve the views, from the public right of way, out to the Chesapeake Bay. The Board finds as it did once before that despite the view cone restriction, there was adequate room on the property to construct a reasonable size residence with a detached or an attached garage without the need for the requested variance. The applicant chose to construct a larger home, and then request a variance rather than plan for a home when it had the space and ability to construct the garage within existing restrictions. Accordingly, the Board again finds that no hardship exists. (Emphasis added.)

With respect to the second requirement that "[t]he conditions upon which a petition for a variation is based are unique to the property[,]" the Board found "that the typical constraints of waterfront development within the critical area and the view cone covenant do not in and of themselves necessitate the requested variance."

With respect to the fourth condition that "[t]he alleged difficulty or hardship is caused by this title and has not been created by" the Chesleys, the Board ruled:

Although a view cone covenant was supported by Planning and Zoning prior to the site design approval for the new residence, the applicant consented to the covenant as part of the overall redevelopment of the property and could have planned for the redevelopment with a garage and the viewcone. The Board finds that the claimed hardship has been created by the applicant.

Finally, with respect to the fifth and sixth requirements that the variance "will not," inter alia, be "injurious to other property . in the neighborhood [,]" or "substantially diminish or impair property values with[in] the neighborhood," the Board concluded:

Testimony was presented at the hearing about the location of the garage on that side of Eastern Avenue. Concerns were raised about the negative impact on the streetscape. The Board finds that adding a garage at this location will contribute to the walling off of that side of Eastern Avenue with structures and create a visually unattractive streetscape. The Board finds that this would substantially diminish or impair property values in the neighborhood. (Emphasis added.)

The circuit court ruled that the Chesleys cannot challenge the Board's 2005 findings that the Chesleys did not suffer hardship and that any hardship they claim to have suffered was self-created, because they did not challenge the Board's 2002 finding on the same questions by seeking judicial review of that decision.[6]

The Chesley Challenges

The Chesleys contend that "[t]he Board premised its negative findings on a misunderstanding of Maryland law applicable to the variance concepts of 'hardship' and 'self-created hardship.' " With respect to neighborhood impact, the Chesleys assert that the Board's negative findings are arbitrary and capricious because they are not based on any empirical data or other competent evidence that refute the undisputed evidence provided by the Chesleys' expert witnesses and the City's professional planners. The City contends that the Board's decision is legally correct and supported by the record.[7]

Satisfying Conditions For Variance

"The burden of showing facts to justify . [a] variance rests upon the applicant[.]" Easter v. Mayor of Baltimore, 195 Md. 395, 400, 73 A.2d 491 (1950). In cases involving critical area variances, it has been made clear by statute that applicants "have the burden of meeting all of the requirements" enumerated in the law governing such variances. See Md.Code (1973, 2000 Repl.Vol., 2006 Cum.Supp.), § 8-1808(d)(4)(ii) of the Natural Resources Article (NR)(to obtain a critical area variance, applicant must satisfy each one of the statutory conditions); Becker, 174 Md.App. at 130-32, 920 A.2d 1118 (reviewing legislative history of criteria for critical area variances, including recent change requiring satisfaction of all statutory conditions). Whether the applicant must satisfy all of the City's enumerated conditions for an "ordinary" front yard setback variance is less clear.

In a line of critical area variance cases that prompted legislative action, the Court of Appeals held that the "determinative factor" in granting a variance was whether there is hardship, so that all other conditions for the grant of such a variance were construed as merely providing guidance and could not be individually cited as grounds to deny the variance. In White v. North, 356 Md. 31, 50, 736 A.2d 1072 (1999), the Court explained, using language that is arguably broad enough to encompass all types of variances, that the dispositive question is whether denial of the requested variance will create hardship:

The variance provisions of the ordinance at issue include, as do most such ordinances, a list of other factors that must be considered with respect to the grant or denial of a variance. They are described as (1) a deprivation of rights commonly enjoyed by others; (2) that no special privilege will be conferred on an applicant; (3) that the need for relief not be caused by an applicant's own acts; (4) the need for a variance does not arise from conditions on adjacent property; (5) a variance will not adversely affect water quality, fish, wildlife, or plant habitat; (6) a variance will be in harmony with the general spirit of the particular zoning regulation; (7) that the variance is the minimal necessary to afford relief; (8) the variance will not alter the essential character of a neighborhood; (9) the variance will not impair an appropriate use of adjacent property; (10) the variance will not counter acceptable clearing and replanting requirements; and (11) the variance will not be detrimental to the public welfare. If total compliance with every specific requirement were necessary, relief would be nearly impossible and serious "taking" questions might arise. It is our view that these specifically stated requirements are to be considered in the context of the entire variance ordinance, to the end that, when interpreted as a whole, either they are or are not generally met.

Moreover, the essential determination is whether an unwarranted hardship exists. The specific factors that must be considered cannot be construed individually to overrule a finding of unwarranted hardship any more than they could overrule a finding of an unconstitutional taking of one's property. The individual provisions that must be considered are part of the entire matrix that defines what information is necessary to reach a finding as to the existence or nonexistence of an unwarranted hardship.

White, 356 Md. at 50-51, 736 A.2d 1072. See also Lewis v. Dep't of Natural Resources, 377 Md. 382, 413, 833 A.2d 563 (2003)("We have recently held, in White, that these criteria must be applied in total and generally, and that no individual factor is to be determinative").

In response to White, the 2002 General Assembly amended the critical area law to explicitly require compliance with all the variance conditions set by statute. See 2002 Md. Laws, ch. 431, 432; Becker, 174 Md.App. at 131-33, 920 A.2d 1118. There is no analogous certainty in cases involving other types of variances. Unlike the revised critical area statute, the City's zoning code does not specifically address whether all the enumerated variance conditions must be satisfied. Nor have we been cited to a case affirming the denial of a variance for a single reason unrelated to hardship. Cf. Stansbury v. Jones, 372 Md. 172, 204, 812 A.2d 312 (2002)(declining to decide "whether self-created hardship alone is sufficient to deny an area variance[,]" while noting that Court of Appeals has "assumed, without any extensive investigation of the matter, that it was sufficient").

Here, the City did not argue to either the Board or this Court that the denial of the Chesleys' variance application should be affirmed on the basis of non-hardship factors. Nor did the Board rest its decision solely on a negative finding regarding a single factor. For that reason, we shall address whether the Board erred in determining both that the Chesleys failed to establish a hardship that was not self-created and that the proposed garage would have a negative impact on the neighborhood.

Appellate Review Of The Board's Decision

The standard governing appellate review of variance decisions is "the same whether the agency grants or denies" the application. See Stansbury, 372 Md. at 185, 812 A.2d 312. "Our role in reviewing whether the Board, as an administrative agency, correctly reached the conclusions required by the Zoning Ordinance for . a variance . 'is precisely the same as that of the circuit court.' This means we must review the administrative decision itself." Mastandrea v. North, 361 Md. 107, 133, 760 A.2d 677 (2000) (citation omitted). Thus, we repeat the task performed by the circuit court. See Red Roof Inns, Inc. v. People's Counsel for Baltimore County, 96 Md.App. 219, 224, 624 A.2d 1281 (1993).

Because we review the Board decision, rather than the circuit court decision, our focus is on the reasons given by the Board. See Gigeous v. Eastern Corr. Inst., 363 Md. 481, 495-96, 769 A.2d 912 (2001). Consequently, this Court may consider any ground cited by the Board for its decision, even if the circuit court did not reach that issue in affirming the Board. See, e.g., Md.-Nat'l Capital Park and Planning Comm'n v. Friendship Heights, 57 Md.App. 69, 83, 468 A.2d 1353 (reviewing issue of whether there was substantial evidence to support zoning agency's decision, after ruling that circuit court erred in deciding that it lacked jurisdiction to entertain the action for judicial review), cert. denied, 300 Md. 89, 475 A.2d 1200 (1984); Wheaton Moose Lodge No. 1775 v. Montgomery County, 41 Md.App. 401, 417-18, 397 A.2d 250 (1979)(fact that circuit court affirmed zoning board's denial of rezoning petition on only one of multiple issues decided by the Board did not preclude Court of Special Appeals from reviewing the sufficiency of the evidence in the administrative record for the Board's findings on other issues).

On a legal issue, "a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law." People's Counsel for Baltimore County v. Md. Marine Mfg. Co., 316 Md. 491, 497, 560 A.2d 32 (1989). The zoning ordinance central to this appeal is former section 21.80.030 of the Annapolis City zoning ordinance, now recodified without change material to this appeal at Code § 21.28.050. We give considerable weight to the Board's interpretation and application of this ordinance, because of that administrative agency's expertise in administering it. See Marzullo v. Kahl, 366 Md. 158, 172, 783 A.2d 169 (2001).

For factual findings, "the correct test . is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions." White, 356 Md. at 44, 736 A.2d 1072 (citation omitted). If we find evidence to support the Board's finding, we may not substitute our judgment, even if the evidence also supports different factual inferences. See Mastandrea, 361 Md. at 134, 760 A.2d 677. However, when "an administrative agency's conclusions are not supported by competent and substantial evidence, or where the agency draws impermissible or unreasonable inferences and conclusions from undisputed evidence, such decisions are due no deference." Lewis, 377 Md. at 407, 833 A.2d 563. "Whether reasoning minds could reasonably reach a conclusion from facts in the record is the essential test." Stansbury, 372 Md. at 182, 812 A.2d 312.

Hardship

The Chesleys argue that the Board erred in concluding that their need for the setback variance did not result from a hardship within the meaning of established case law. We disagree.

In Belvoir Farms Homeowners Ass'n, Inc. v. North, 355 Md. 259, 734 A.2d 227 (1999), the Court of Appeals recognized that the purpose of zoning restrictions is "to prevent exceptions as far as possible," so that the specific need for the variance "must be substantial and urgent and not merely for the convenience of the applicant[.]" Id. at 276, 734 A.2d 227 (citing Carney v. City of Baltimore, 201 Md. 130, 137, 93 A.2d 74 (1952)). The Belvoir Farms Court held that a variance is warranted if the " 'applicable zoning restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership.' " Id. at 276, 734 A.2d 227 (quoting Marino v. Mayor of Baltimore, 215 Md. 206, 217, 137 A.2d 198 (1957)). Alternatively, if application of the zoning ordinance would deny the property owner "a reasonable and significant use for the property," there is also "unwarranted hardship" justifying a variance. See id. at 282, 734 A.2d 227. This hardship standard is "less restrictive than the unconstitutional taking standard." See id. "Whether a property owner has been denied a reasonable and significant use of the property is a question of fact best addressed by the expertise of the Board of Appeals, not the courts." Id.

In White v. North, 356 Md. 31, 49, 736 A.2d 1072 (1999), the Court of Appeals confirmed that "an unwarranted hardship can result from the denial of a reasonable and significant use," and that the local zoning agency is presumed to possess the "necessary expertise to decide what is reasonable and significant." In that case, the Court reversed judicial decisions that the local zoning board acted arbitrarily and capriciously in granting a buffer variance to construct a concrete swimming pool on a sloped lot. See id. at 52, 736 A.2d 1072. The White Court emphasized that determination of whether the proposed pool was a reasonable and significant use, and whether denial of a variance was an unwarranted hardship, are factual findings on which courts must give deference to the Board. See id. at 50, 736 A.2d 1072.

The Chesleys rely on Mastandrea v. North for the proposition that their circumstances constitute a hardship. In that case, the Court of Appeals affirmed the local board's grant of a critical area variance to build a brick path along the waterfront of the Mastandreas' Talbot County home, for the purpose of enabling their wheelchair-bound child to enjoy that portion of the property. See Mastandrea, 361 Md. at 143, 760 A.2d 677. The Court held that the Talbot County Board of Zoning Appeals "was required to (and did) consider whether the property owners, in light of their daughter's disability, would be denied a reasonable and significant use of the waterfront of their property without the access that the path provided." Id. at 136, 760 A.2d 677. After examining the administrative record, the Court concluded that there was substantial evidence "establishing that, without the path, a person in a wheelchair could not enjoy the waterfront portion of the property." Id. In these circumstances, the board correctly granted the variance. See id. at 143, 760 A.2d 677.

The Chesleys argue that, like the Mastandreas, they are being denied a reasonable and significant use of their property, both to accommodate Billy's disability and to enhance pickup and drop off for the Chesleys' elderly mothers and young daughter. Mastandrea, however, has been largely abrogated by statutes, enacted in 2002 and 2004. See Becker v. Anne Arundel County, 174

Md.App. 114, 131-33, 920 A.2d 1118 (2007)(reviewing the legislative enactments). The General Assembly amended the critical area law for the explicit purpose of eliminating the "reasonable use within the buffer standard" used in Mastandrea and Lewis v. Dep't of Natural Resources, 377 Md. 382, 419, 833 A.2d 563 (2003).[8] As explained in Becker, the 2002 amendment

added a requirement that in considering an application for a variance, the Board should consider the reasonable use of the entire parcel or lot for which the variance is requested. The preambles to the bills expressly stated that it was the intent of the General Assembly to overrule recent decisions of the Court of Appeals, in which the Court had ruled that . a board could grant a variance if the critical area program would deny development on a specific portion of the applicant's property rather than considering the parcel as a whole.

Becker, 174 Md.App. at 132, 920 A.2d 1118 (emphasis in original). Judge James Eyler, writing for this Court in Becker, explained the 2004 amendment to the critical area law:

The General Assembly expressly stated that its intent in amending the law was to overrule Lewis and reestablish the understanding of unwarranted hardship that existed before being "weakened by the Court of Appeals." . The amendment also created a presumption that the use for which the variance was being requested was not in conformity with the purpose and intent of the Critical Area Program. See § 8-1808(d)(2)(1).

Id. at 132-33, 920 A.2d 1118 (quoting 2004 Md. Laws, ch. 526); NR § 18-1808(d).

The Mastandrea Court cited, inter alia, the daughter's disability as a legitimate consideration by the Board. There is no question that a resident's disability could, in an appropriate case, be a non-controlling factor for the Board to consider in determining whether a hardship would exist if the variance in question is not granted.[9]

The problem here is that we cannot say that the evidentiary record is so compelling that the Board was obligated to conclude that, without a garage to accommodate Billy's disability, a hardship exists. The record shows merely that Billy visits the Chesleys, and does not reside there. It does not reveal the frequency or duration of his visits. Moreover, there was no evidence to prove a "particular physical surrounding[], shape or topographical condition of the specific property" prevents the vehicular loading for which the Chesleys seek this garage variance. See former Code § 21.80.030(a). Indeed, the testimony was that the Chesleys were successfully using the property "as is" for parking and loading, by Billy and the Chesleys.

Rather, the essence of the Chesleys' argument is that a garage would make loading more convenient, and that a variance will allow them to locate the garage where the City's Planning Department preferred. The City Code requires more than a showing of "mere inconvenience[.]" See former Code § 21.80.030(A). As the Court of Appeals has recognized, it generally is not a hardship to be without a desired convenience or amenity on one's property, because zoning restrictions are to be enforced in the absence of a "substantial and urgent" need for a variance. See Belvoir Farms Homeowners Ass'n, 355 Md. at 261, 734 A.2d 227. When a variance would be required to build within the critical area buffer, for example, the fact that a

particular improvement would enhance the owner's enjoyment of the property did not establish that it would be a hardship to continue using the property without the variance. See, e.g., Citrano v. North, 123 Md.App. 234, 717 A.2d 960 (1998)(fact that proposed deck created "pleasant amenity" did not create hardship); North v. St. Mary's County, 99 Md.App. 502, 519, 638 A.2d 1175 (owner's desire to build gazebo to read and view creek is not evidence of hardship), cert. denied sub nom. Enoch v. North, 336 Md. 224, 647 A.2d 444 (1994). The City Code's distinction between "mere inconvenience" and true hardship reflects the application of this principle to setback variances.

We conclude, therefore, that the Board drew an appropriate distinction between hardship and "mere inconvenience." Whether this particular variance is necessary to avoid hardship is a question of fact for the Board. See Mastandrea, 361 Md. at 143, 760 A.2d 677; Belvoir Farms Homeowners Ass'n, 355 Md. at 282, 734 A.2d 227. We find substantial evidence in the administrative record to support the Board's determination that the denial of a 27 ft. front yard setback variance would not be a "particular hardship" on the Chesleys, given their undisputed current use of their front yard for loading and the evidence supporting the Board's conclusion that the garage would be a "mere convenience."

"Self-Created" Hardship10

Similarly, we are not persuaded by the Chesleys' contention that City planning authorities' insistence on the view cone covenant created their need for this garage variance. The Court of Appeals examined self-inflicted hardships in Richard Roeser Prof'l Builder, Inc. v. Anne Arundel County, 368 Md. 294, 793 A.2d 545 (2002); Stansbury v. Jones, 372 Md. 172, 812 A.2d 312 (2002); and Lewis v. Dep't of Natural Resources, 377 Md. 382, 833 A.2d 563 (2003). The lessons from those cases are instructive here.

In Roeser, a developer bought a lot with knowledge that a variance from the critical area buffer would be necessary to build a house of the size that it planned. The local zoning board denied the variance on the ground that the conditions surrounding the request were " 'self-created.' " See Roeser, 368 Md. at 297, 793 A.2d 545. The circuit court reversed, holding that " '[h]ardships of this type are normally those which are created by the owners of the property and not by the property itself.' " Id. at 298, 793 A.2d 545. The court reasoned that Roeser had not created the topography and placement of the property, which were the reasons that the lot required a variance. See id.

The Court of Appeals affirmed the circuit court's decision and rationale. See id. at 320, 793 A.2d 545. Writing for the Court, Judge Cathell explained that

[t]he types of hardships that are normally considered to be self-created in cases of this type do not arise from purchase, but from those actions of the landowner, himself or herself, that create the hardship, rather than the hardship impact, if any, of the zoning ordinance on the property.

Id. at 314, 793 A.2d 545. Thus, the "typical type of self-created hardship [is] . an act of commission by the owner[.]" Id. at 317, 793 A.2d 545. Mere purchase of a property, even with knowledge that a variance will be needed in order to accomplish the purchaser's plans, does

not constitute a self-created hardship meriting denial of a variance request, because zoning law regulates the property itself, rather than the title to it. See id. at 319, 793 A.2d 545. Therefore, " '[i]t should not be within the discretion of a board of appeals to deny a variance solely because a purchaser bought with knowledge of zoning restrictions[.]' " Id. at 304, 793 A.2d 545 (quoting 3 Arden H. Rathkopf & Daren A. Rathkopf, The Law of Zoning and Planning § 58.22, 141-48 (1991)).

To illustrate this principle, the Roeser Court contrasted the mere purchase of a property in the hope of obtaining a variance with instances in which the property owner took some affirmative action that created the hardship for which the variance was sought. The cited case law included examples of buildings constructed in violation of established setbacks, height restrictions, and building permit requirements. See id. at 314-16, 793 A.2d 545. See, e.g., Ad + Soil, Inc. v. County Comm'rs of Queen Anne's County, 307 Md. 307, 316, 340, 513 A.2d 893 (1986)(construction that violated setbacks was self-inflicted condition creating need for requested variance request); Randolph Hills, Inc. v. Montgomery County, 264 Md. 78, 83, 285 A.2d 620 (1972)(subdivision that created unbuildable lot was self-inflicted condition creating variance request); Salisbury Bd. of Zoning Appeals v. Bounds, 240 Md. 547, 554-55, 214 A.2d 810 (1965)(construction without building permit was self-inflicted condition creating variance request); Wilson v. Mayor of Elkton, 35 Md.App. 417, 428, 371 A.2d 443 (1977)(addition of unit to nonconforming apartment building was self-inflicted condition creating need for setback variance).

In Stansbury, the Court considered a variance request by a property owner who, in accordance with local ordinances encouraging her to do so, combined "antiquated lots" that did not conform with current lot size requirements, then sought to re-subdivide them into "closer-to-standard" size lots. The problem was that some of the resulting lots were subject to percolation requirements that made them unbuildable without a variance. The owner attempted to obtain variances from those restrictions. See Stansbury, 372 Md. at 175, 812 A.2d 312.

The Court of Appeals held that the variance request did not result from self-inflicted conditions or self-created hardship. See id. at 198-201, 812 A.2d 312. The Court recognized that the need to obtain a variance arose from the property owner's combination of non-conforming lots, which admittedly was an act of "commission," but distinguished that action as one the legislature actively encouraged. See id. at 200-01, 812 A.2d 312. It reiterated that "[t]raditionally, self-created hardship requires an affirmative action, exclusively by a property owner or his predecessor in title, that is itself the sole reason for the need for the variance[,]" and reasoned that "subdividing property in accordance with all applicable statutes does not, generally, constitute a self-created hardship[.]" Id. at 192, 198, 812 A.2d 312.

In Lewis v. Dep't of Natural Resources, the Court of Appeals again rejected the notion that a property owner's purchase of land that cannot be developed as the owner wishes without a variance constitutes a self-created hardship. There, Lewis began to build a hunting camp for his personal use, on an island that he already used for hunting. He belatedly discovered that the critical area buffer consumed 96 percent of the property, including the camp site, then halted construction and sought a variance. The Court of Appeals vacated the local board's denial of

the variance, holding, inter alia, that the request did not result from a self-inflicted hardship. See id. at 422, 833 A.2d 563.

The Court emphasized that Lewis's premature construction did not create the hardship. "The existence of the partially constructed camp, in no way, was determinative of his need for a variance." Id. at 424, 833 A.2d 563. Lewis still would have needed a variance even if there had been no construction. See id. Thus, the presence of already constructed buildings was "a 'red herring' " because the owner "needed a variance to build any camp on the island[.]" Id. at 425, 833 A.2d 563.

The Chesleys cite Stansbury in support of their argument that they did not create the hardship they now claim. Stansbury is easily distinguished, as are Lewis and Roeser, because there was substantial evidence to support the Board's finding that the Chesleys' need for this variance resulted from their unilateral decision to build a large house before obtaining a decision on whether the garage variance would be granted.

The Chesleys' argument that the Planning Department negotiated this plan, then failed to deliver a final approval, has some superficial appeal. To be sure, correspondence from the City makes it clear that the view corridor easement was required by the City as a condition to approval of the Chesleys' house and pool plans. City planners took the site plan review criterion that scenic views "shall be preserved and protected to the maximum extent as practicable" (Code § 21.98.050.E) as justification for making the view corridor "a major factor" in approving the plans for the Chesley residence. The Planning Director insisted that preservation of the water view across the Chesley property was required by law, citing several code sections, and told the Chesleys that it "will be necessary" to execute "appropriate documents to preserve the view across your side yard." The Planning Department explicitly conditioned approval of the Chesleys' home plans and a demolition permit for the existing house on the lot upon recordation of the view cone agreements.

Given the course of dealing between the Chesleys and the Planning Department, however, the record supports the Board's determination that the view cone agreements were not a binding quid pro quo for the garage variance, but a negotiated part of the Chesleys' deal to obtain the City's permission to demolish the existing house and build a much larger one. The Board was entitled to conclude, as it apparently did, that given Mr. Chesley's extensive experience as a real estate developer and the Board's denial of the Chesley variance application in 2002, the Chesleys understood that the Board alone had the power to grant the variance they would need to build the garage in the location favored by planning authorities. See infra, part II. Although the Planning Department promised to support such a variance, there was never a binding promise that the Board would approve one.

Ultimately, the Chesleys' contention that the Board erred in finding that they could have avoided the need for a setback variance by designing their home differently rests on the flawed premise that they cannot be held accountable for choosing to build a 5,000 sq. ft. residence before obtaining the variance necessary to build the garage. In contrast to the hunting camp in Lewis, then, the Chesley garage might have been built without a variance. Moreover, in contrast to Stansbury, there is substantial evidence in this record to support the Board's determination that

the Chesleys' predicament did not result from mere compliance with applicable zoning and development laws, but from the Chesley's own actions in developing the property.

The record supports the Board's finding that the Chesleys created the need for the variance by developing the property before obtaining the garage variance. When they built their house and pool, the Chesleys eliminated the possibility of locating a garage where no variance would be required. Among the options the Chesleys chose not to pursue was designing a smaller house that would permit a detached garage on the side of the property, opposite the viewshed that City planners were seeking to protect, in a location that would not require a setback variance. Alternatively, the Chesleys could have waited for a ruling on their garage variance application before proceeding with construction of the larger house and pool. Instead of getting the Board's answer first, so that they could reconsider their development plans if the Board denied a front yard setback, the Chesleys proceeded to build the house and pool at the risk of what happened here-that the Board would not approve a front yard variance for the garage, notwithstanding support by the Planning Department for the Chesleys' applications. In these circumstances, we find no legal or factual error in the Board's conclusion that the Chesleys' claimed hardship was self-created.

Neighborhood Impact

Citing testimony and community "[c]oncerns . about the negative impact on the streetscape[,]" the Board found "that adding a garage at this location will contribute to the walling off [of] that side of Eastern Avenue with structures and create a visually unattractive streetscape." This phenomenon "would substantially diminish or impair property values in the neighborhood." The Chesleys argue that the testimony of two neighbors in opposition to the variance on the question of how the proposed garage would impact the neighborhood does not provide a reasonable basis for the Board's conclusions.

Marty Russell, the Chesleys' next door neighbor, opposed the variance, claiming that "seven out of the ten immediate neighbors across the street" also opposed the garage in letters to the City.[11] Ms. Russell complained that

the walling off of that side of Eastern with structures creates a visibly unattractive street scape for the neighbors and it could have a negative effect on property values. And it has already been mentioned, it completely blocks our house from view. And I have two realtor friends [who] . feel that it would definitely impact and lower our property values slightly which is not a really big issue but it's there. The garage also for me personally, if you are asking about neighborhood impact, and I'm the immediate neighbor, will cut out light and air coming into my kitchen and my side of the house. I've already got their house structure which totally obliterates all the southern sun that . used to come into my home . and that's gonna eliminate completely the rest of that late afternoon sun which is the only sun that I get on that side of the house anymore.

Carolyn Kantor, a neighbor whose house is situated "across the street and two houses over" and who is a named beneficiary of the view cone agreement, also opposed the Chesleys' garage at the hearing. Kantor complained, inter alia, that "overbuilding and overcrowding loom on the

horizon" due to the "rush to build the largest house possible and sell it for top dollar." She stated that she wants to enjoy the "beauty of Eastern [Avenue] from my front porch without having to look at another imposing structure across the street and find the solace that first attracted me" to the street in 1997.

During public deliberations, the Board reviewed and considered, inter alia, its July 17, 2002 ruling on the Chesleys' previous variance application for a two car garage. The Board's 2002 opinion mirrors the Board's subsequent findings regarding neighborhood impact of the 2005 proposal:

Neighborhood Impact: There was much testimony presented, both in writing and at the hearing, that neighboring property owners objected to the location of the proposed garage. A petition signed by over forty property owners was submitted objecting to any variances on the property. Some of those signatories withdrew their initial objection when the applicant agreed to withdraw his request for the side yard variance; however there remained numerous parties still objecting to any setback variance to permit a garage. The testimony was that the new residence under construction is substantially larger than the structure it replaced and the neighbors are concerned about additional bulk on the property. Concerns were also raised about the negative impact on the streetscape of the proposed garage so near to the street. Adding a garage at this location will contribute to the walling off that side of Eastern Avenue with structures and create a visually unattractive streetscape for the neighbors and could have a negative effect on property values. [F]or the reasons stated above, the Board finds that the requested variance would have a negative impact on the neighborhood. (Emphasis added.)

During deliberations, both members of the Board's majority also noted the next-door neighbor's concern about property devaluation and that the Chesley "garage would block the view of her home."

In support of their "arbitrary and capricious" challenge to the Board's negative findings regarding neighborhood impact, the Chesleys rely on the Court of Appeals' decision in Lewis v. Dep't of Natural Resources, 377 Md. 382, 407-09, 833 A.2d 563 (2003), vacating the denial of a critical area variance. Specifically, they cite the Lewis Court's ruling that "the record contains little or no empirical data to support the Board's conclusions or to refute the studies and reports of petitioner's experts." See id. at 409, 833 A.2d 563. The Chesleys posit that all evidence presented to the Board, with the exception of the testimony of the two neighbors recounted above, supported the Chesley variance. In their view, this record does not provide a reasonable basis for the Board's negative findings. We disagree.

As a threshold matter, the Chesleys' argument ignores the photographic and map evidence. These exhibits, presented by the Chesleys themselves, support the Board's finding that the proposed garage will "contribute to the walling off" of the streetscape on this waterfront side of Eastern Avenue, by adding a structure that blocks significant portions of both the Russell and Chesley lots from street view.

The Chesleys acknowledge in this Court that the garage would directly obstruct approximately 25 percent of their own facade, consuming "20 feet of the 85 feet of street frontage" when

viewed from directly in front of the Chesley home. At the Board hearing, the Chesleys' attorney conceded that the planned one-story garage "somewhat masks the Russell garage" next door, as well as "the Chesley home" itself.

The extent of the streetscape impact is shown by the plans and photographs confirming that the new structure would sit next to the Russells' detached garage in such a way as to obscure portions o f both the Russell and Chesley facades from the streetscape. For example, the Chesleys' photographic illustration of the street with the proposed garage "photo-shopped" in place demonstrates that an existing view of the front part of the Russell home, now visible from the street and Ms. Kantor's property, between the Russell garage and the Chesley home, would be entirely blocked by the proposed garage.

In addition to this evidence, the Board was entitled to consider and credit the neighbors' complaints regarding the effect of the proposed garage on the Eastern Avenue streetscape. Observations and opinions regarding the view from and to one's own property, and the effect that diminished views would have on enjoyment of one's property, are not the type of lay opinions that must be supported by empirical data or expert testimony. Cf. Anderson v. Sawyer, 23 Md.App. 612, 618-19, 329 A.2d 716 (1974)(lay witness testimony about "traffic congestion" concerns did not rebut qualified traffic expert's testimony that street was capable of absorbing traffic increase created by proposal).

Here, Russell had a reasonable basis, as the next-door neighbor who would look out her window onto the new Chesley garage rather than the Eastern Avenue streetscape, and whose own house would become completely obstructed from street view to pedestrians and vehicles traveling toward Horn Point, to complain about the elimination of her home from that streetscape, as well as the negative effect of the proposed garage on her property's views, air, and light. Similarly, Kantor had a reasonable basis, as a neighbor whose view of the Chesley and Russell properties would be affected by the proposed garage, to complain that overcrowding and "imposing structure[s]" harm her views and enjoyment of the neighborhood. Moreover, because the City is charged with preserving the "small, intimate scale" of Eastport, the City was entitled to rely on this evidence in determining that the proposed garage would damage this streetscape. See City of Annapolis Dep't of Planning and Zoning, The Eastport Residential Conservation Overlay District: A Guide to the Process and Design Guidelines 2.

II.

City's Appearance Before The Board

The Chesleys ask this Court to "either dismiss the City as a party to the petition for judicial review or bar the City from presenting any argument in the courts that is contrary to the positions it took before the Board of Appeals." They argue that,

when the City appears as a party at a public hearing before the Board, through officials who work for the City's Planning Department, and when those officials testify in favor of a variance, it is improper for the City in a petition for judicial review of the Board's decision to oppose the variance by taking positions contrary to the positions the City took before the Board.

Citing principles of judicial estoppel, the Chesleys point to the testimony of City planners Kevin Scott and Tom Smith that the Chesleys suffer a hardship caused by the three sets of zoning regulations, as well as Planning Director Jon L. Arason's written report to the same effect.

To be sure, a party may not take a position in an administrative proceeding and then take the contrary position in a subsequent court proceeding. See Abrams v. Am. Tennis Courts, Inc., 160 Md.App. 213, 224-25, 862 A.2d 1094 (2004), cert. denied, 386 Md. 181, 872 A.2d 46 (2005); Chaney Enter. Ltd. P'ship v. Windsor, 158 Md.App. 1, 45, 854 A.2d 233 (2004). But the Chesleys' argument fundamentally mischaracterizes the positions of the Planning and Zoning Director and his staff as binding decisions made by the City itself. The Board of Zoning Appeals, not the Planning Director, is the entity authorized to make the City's final decision on a variance application. See City Code § 21.08.040. The Board's decision not to accept the recommendations of the Planning Department must be permitted, or else the Planning Department would effectively become the final arbiter of every variance. Thus, the City's position on this variance was established when the Board denied the Chesleys' application, and is consistent with the City's subsequent opposition to the variance during judicial review.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

FOOTNOTES

1. The Planning Department advised that these two goals could be met, inter alia, by detaching the garage and locating it in the front yard next to the detached garage located on the Russell property next door. The Planning Director characterized this area of the Chesley property as a "dead zone" where a detached garage would not adversely impact the neighbors or streetscape. In addition, planning authorities advised that construction in this location would add an "inexact" symmetry consistent with Eastport's eclectic character.

2. A "view cone" is "a space defined by two projected lines from the centerline of a street right-of-way that is to be kept free of obstructions so as to preserve a distant view." Code § 21.72.010.

3. After the Chesleys petitioned for judicial review in 2005, Mrs. Chesley's mother moved into the home for health reasons. She resides there full-time.

4. Consideration of the Chesley variance application began at 12:30 a.m. on June 8. Responding to the perception that the Board wanted a short hearing, counsel for the Chesleys submitted most of their evidence in documentary form and by proffer.

5. The Board has five members. Four were present for the 2005 hearing, two of those having voted to deny the Chesleys' 2002 variance application. Three of the members present at the 2005 hearing, including both who were on the Board in 2002, participated in the deliberations and decision in 2005. Two of those members voted to deny the application, while one of the 2002 Board members voted to grant it.

6. In its 2002 decision, the Board found that,despite the cone view restriction, there was adequate room on the property to plan for and construct a reasonable size residence with a detached or attached garage without the need for the requested variance. The applicant chose to construct a larger home and then request this variance to build the garage in the requested location, rather than plan to construct the garage within the existing restrictions.

7. The City also argues that the Chesleys are collaterally estopped from challenging the Board's hardship findings, because they did not seek review of the Board's substantially similar hardship findings in 2002. "Under settled Maryland law, appellate review of administrative decisions is limited to those issues and concerns raised before the administrative agency." Capital Commercial Props., Inc. v. Montgomery County Planning Bd., 158 Md.App. 88, 96, 854 A.2d 283 (2004). 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." Eastern Outdoor Adver. Co. v. Mayor of Baltimore, 128 Md.App. 494, 516, 739 A.2d 854 (1999)(emphasis and citation omitted), cert. denied, 358 Md. 163, 747 A.2d 644 (2000). Moreover, "[i]t is the function of the reviewing court to review only the materials that were in the record before the agency at the time it made its final decision." Dep't of Labor v. Boardley, 164 Md.App. 404, 415 (2005). For these reasons, "[w]e do not allow issues to be raised for the first time in actions for judicial review of administrative agency orders [.]" Delmarva Power & Light Co. v. Public Serv. Comm'n of Md., 370 Md. 1, 32, 803 A.2d 460, motion for reconsideration granted on other grounds, 371 Md. 356, 809 A.2d 640 (2002). See, e.g., Cicala v. Disability Review Bd. for Prince George's County, 288 Md. 254, 261-63, 418 A.2d 205 (1980) (failure to argue at administrative hearing that the board did not have a report that it was required to obtain and consider prevented consideration of that issue on judicial review); Swoboda v. Wilder, 173 Md.App. 615, 641, 920 A.2d 518 (2007)(opponents of proposed building permit waived objection to zoning board's consideration of expert testimony by failing to object at administrative hearing); Cremins v. County Com'rs of Washington County, 164 Md.App. 426, 445, 883 A.2d 966 (2005) (property owners waived argument that unsworn testimony before zoning authority should not be considered by failing to object at administrative hearing); Capital Commercial Props., 158 Md.App. at 102, 854 A.2d 283 (declining to consider whether board's decision complied with certain statutory requirements because that issue was not presented to the board). A contrary rule "would allow the courts to resolve matters ab initio that have been committed to the jurisdiction and expertise of the agency." Delmarva Power & Light, 370 Md. at 32, 803 A.2d 460.Here, the issue of whether the Chesleys were collaterally estopped in 2005 as a result of the Board's hardship finding in 2002 was not preserved for judicial review, because (1) the City did not argue collateral estoppel to the Board; (2) the administrative record does not include the 2002 records necessary to determine whether collateral estoppel is warranted; (3) the Board did not conduct the requisite inquiry into whether the proceedings on the 2002 variance "embraced elements of adjudicatory procedure consistent with established principles of due process," see Batson v. Shiflett, 325 Md. 684, 705, 602 A.2d 1191 (1992) (citation omitted); and (4) the Board did not rest its decision to deny the variance on principles of collateral estoppel.

8. In Lewis v. Dep't of Natural Resources., 377 Md. 382, 833 A.2d 563 (2003), the Court of Appeals held that, "with respect to variances in [critical area] buffer zones, the correct standard was . whether he or she was being denied reasonable use within the buffer[.]" Becker v. Anne Arundel County, 174 Md.App. 114, 132, 920 A.2d 1118 (2007) (reviewing Lewis).

9. As in Mastandrea v. North, 361 Md. 107, 128-29, 760 A.2d 677 (2000), we do not decide whether federal disability laws can compel the granting of a variance to accommodate a disability.

10. We address this variance criteria because the Board cited it as additional reason to deny the variance.

11. The record presented to this Court does not contain any such letters.

ADKINS, J.

David Cromwell et al. v. Arthur Thomas Ward, III,
No. 617, September Term, 1994

HEADNOTE: Zoning variances and special exceptions distinguished; variance process is a multi-step process; the first step is in regards to a determination of whether the property, for which the variance from the terms of the ordinance is sought, in and of itself possesses any unique or peculiar characteristic, *i.e.*, topography, narrowness, abnormal subsurface characteristics, historical or architectural significance, not shared generally by other similarly located properties in the area, so that the ordinance's impact on the subject property is more severe than the impact upon neighboring properties generally; if the requirements of the first step, uniqueness or peculiarity, are not met, no further steps are taken, *i.e.*, practical difficulty or unreasonable hardship and the variance must summarily be denied; self-inflicted hardship is not the type of practical difficulty or unnecessary hardship contemplated by zoning ordinance variance procedures; mistakes by governmental officials generally do not constitute practical difficulty or unnecessary hardship for the purpose of zoning variance procedures, though they may, under some circumstances, give rise to equitable actions.

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 617

SEPTEMBER TERM, 1994

DAVID CROMWELL *et al.*

v.

ARTHUR THOMAS WARD, III

Wenner,
Cathell,
Murphy,

JJ.

Opinion by Cathell, J.

Filed: January 4, 1995

#93CV7265

Appellant, David Cromwell, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas Ward, III. Appellant poses the following questions:

> I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.
>
> II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?
>
> III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of §307 of the Baltimore County Zoning Regulations?

While those questions are limited, appellant expands in his arguments supporting the questions and argues that

> [t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property*, must be the proximate cause of the hardship [Emphasis added.]

and

> Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request . . . . [Emphasis added.]

and

> Mr. Ward's property *is not unique* from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.*, it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) 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. 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. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or[1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness,

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[1] Some ordinances use the conjunctive, "and," creating a requirement that both practical difficulty "and" unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, "or," to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when "use" variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser "practical difficulty" standard when "area" variances are sought.

exists. Further consideration must then be given to the general purposes of the zoning ordinance.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice*, appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process – an inherent uniqueness of the subject property not shared by surrounding properties.

The Facts

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;"

"[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14'" and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height

elevations might have been discernable, though we are at a loss to understand why the elevations were not given in feet and why the plans contained no scale.[2]

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.[3] Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

The Law

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.

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[2] Appellee, several times in his brief, states that the plans "clearly" show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown – they are not shown at all – but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

[3] As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

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 Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

> [M]odification only of density, bulk, or area requirements in the zoning ordinance . . . where *owing to conditions peculiar to the property, and not the result of any action taken by the applicant*, a literal enforcement . . . would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, *i.e.*, height, may be granted

> 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 . . . would result in practical difficulty or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions . . . peculiar to the land . . . and . . . practical difficulty . . . ." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,[4] if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. 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).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses [5]

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[4] It is not clear that section 307, "Variances," would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of "area" variance requests.

[5] Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to "use" issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense,

(continued...)

(where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub judice*.

Special Exceptions (and Conditional Uses) and Variances — Distinguished

The treatise writers define the concept as:

> A variance is an authorization for [that] . . . which is prohibited by a zoning ordinance. . . .
>
> . . . [T]he difference between the two [variances and special exceptions] . . . is of practical significance. . . .
>
> > ". . . [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception contemplates a permitted use . . . [once] the prescribed conditions therefor are met."
>
> . . . [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."

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[5](...continued)
however, "conditional uses" refer to uses while exceptions normally apply to area, *i.e.*, yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

> . . . [T]he standards for . . . exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.
>
> "A special exception . . . is one which is controlled and . . . permissible in a given zone. It is granted . . . upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized . . . where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02-03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County*, 239 Md. 189, 193 (1965)). *See also Schultz v. Pritts*, 291 Md. 1, 11 (1981); *People's Counsel v. Mangione*, 85 Md. App. 738, 748 (1991).

> A distinction commonly is made between [special] exceptions . . . and variances . . . . An "exception" . . . is a dispensation permissible where a board . . . finds existing those facts . . . specified in the ordinance as sufficient . . . . ". . . But zoning ordinances usually provide for another kind of dispensation, . . . by which a variance . . . may be authorized . . . where a literal enforcement . . . would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

> The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances. . . . A variance should be strictly construed . . . .

Id. § 25.162 (footnotes omitted). *See also* 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* § 38.01 (4th ed. 1981); 3 E. C. Yokley, *Zoning Law and Practice* § 21-6 (4th ed. 1979); 3

Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

> There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception . . . is expressly permissible . . . . [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property . . . or by reason of exceptional topographical conditions or other extraordinary situations . . . of specific parcels of property, the strict application . . . would result in . . . unusual practical difficulties to, or exceptional or undue hardship . . . .

Stacy, 239 Md. at 193.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 288-91 (1953):

> It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area . . . the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance. . . .
>
> . . . .
>
> . . . There is a distinction between . . . the ordinance provisions . . . in those cases [Baltimore City cases] and the facts and the ordinance provision in this case . . . .

See also our case of *Martin Marietta Aggregates v. Citizens*, 41 Md. App. 26, 34-35 (1978).

> A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional[6] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met . . . . While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use . . . so long as . . . conditions are met. Therefore, conditional use grants cannot be encompassed within the . . . statutory authority to grant variances.

Eberhart v. Indiana Waste Systems, Inc., 452 N.E.2d 455, 459 (Ind. App. 3 Dist. 1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals*, 464 N.E.2d 347, 350 (Ind. App. 1 Dist. 1984), opined:

> A great deal of confusion has been generated . . . because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions . . . . A variance involves a deviation . . . from the legislated zoning classification . . . . A special exception involves a use which is permitted . . . once certain statutory criteria have been satisfied. [Citations omitted.]

See also Lindquist v. Board of Adjustment, 490 So.2d 16, 18 (Ala. Civ. App. 1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the . . . burden of proving . . . hardship"); *Wolfner v. Board of Adjustment*, 672 S.W.2d 147, 150 (Mo. App. 1984) ("an

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[6] Exceptional is used here in its generic sense.

exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes*, 431 A.2d 163, 167 (N.J. Super. A.D.), *cert. denied*, 434 A.2d 1099 (1981) (special exception and variance defined - case decided on zoning estoppel basis); *A. J. Grosek & Associates v. Zoning Hearing Bd.*, 450 A.2d 263, 265 (Pa. Commonwealth 1982); *Bell v. City Council*, 297 S.E.2d 810, 813-14 (Va. 1982).

VARIANCE -
The First Step - Uniqueness or Peculiarity of the Subject Property

> 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 Morrow 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).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md. Code Article 66B, and it is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws – and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because

> the board of zoning appeals is in effect given the power to set aside or annul the ordinance . . . with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships" . . . . [U]nder our system of written constitutions it is essential that they accomplish those . . . objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them . . . . For such phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred . . . .

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, *appeal dismissed*, 290 U.S. 585 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church*, 164 Md. 487 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore*, 187 Md.

296, 300 (1946). By the time of its decision in *Heath*, the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances in his own discretion." 187 Md. at 301. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar*, the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible where the Board . . . finds . . . those facts . . . specified in the ordinance . . . ." *Id*. at 303.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their

respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore*, 231 Md. 280, 285 (1963) ("In Baltimore City there appears to be no distinction between the two terms . . . .").[7] We also attempted to indicate the problem in *North v. St. Mary's County*, 99 Md. App. 502, 510 (1994), in footnote 3:

> Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances. . . . [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

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[7] Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore*, 195 Md. 395, 400 (1950), where the Court noted "facts to justify an exception . . . [show] that the hardship affects the particular premises and is not common to other property in the neighborhood." This is a variance standard.

> [I]t was incumbent upon the Marinos to have shown . . . (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants' own actions.

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

> The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees. . . .

240 Md. at 554. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning*, § 48-1, and then noted:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions . . . hardship arises . . . . The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship. . . . [T]he hardship, arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief. . . ."
>
> The instant case fits squarely within the above general rule. . . . [I]f the appellees had used proper diligence . . . and then made accurate measurements . . . [the resultant

> hardship could have been avoided]. The hardship . . . was entirely self-created . . . .

Id. at 554-55 (emphasis added). Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. *See also Burns v. Mayor and City Council of Baltimore*, 251 Md. 554, 559 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore*, 233 Md. 372, 378 (1964) ("[There was] no evidence of any limitation . . . by . . . size of yards, irregularity of shape of land or buildings, topography, grade or accessibility" . . . .); *Mayor and City Council v. Sapero*, 230 Md. 291 (1962); *Frankel v. Mayor and City Council of Baltimore*, 223 Md. 97, 104 (1960) ("It was incumbent . . . to show that the hardship . . . affected his particular premises and was not . . . common to other property in the neighborhood. . . . [H]e met the burden . . . ."); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.*, 216 Md. 271, 277-78 (1958).

> Secs. 14 (b), 14 (d) and 16 . . . have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property . . . .

Mayor and City Council v. Polakoff, 233 Md. 1, 9 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore*, 247 Md. 601, 606-07 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

> Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant

> a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "*urgent necessity, hardship peculiar to the particular property* . . . ." . . . Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley*, 270 Md. 208, 210 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

> Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy . . . that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance . . . .

. . . .

> Concededly, this is a close case, but it is nevertheless sufficient . . . .

Id. at 215. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman*, 227 Md. 243 (1961), and *Frankel v. Mayor & City Council of Baltimore*, 223 Md. 97 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs*, 307 Md. 307 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances

sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question . . . that do not apply generally to other properties . . . in the . . . district." *Id.* at 340. The Court concluded:

> The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary *characteristics* of the *land itself* and therefore not the kind of hardship cognizable under the Zoning Ordinance. . . .
>
> We think the Board's decisions . . . reflect no error of law.

Id. at 340-41 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel*, 96 Md. App. 219, 224 (1993), after noting the standard of review, we said:

> In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.
>
> The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist *that are peculiar to the land* . . . and where strict compliance . . . would result in practical difficulty

. . . ." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances *of a particular location* and must be analyzed individually." *Id.* at 227-28 (emphasis added).

In *North v. St. Mary's County*, 99 Md. App. at 512, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land . . . ." We there stated that, in the zoning context, the term "unique" has a customized meaning:

> 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.
>
> . . . .
>
> In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, in *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

> Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific . . . property . . ., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of . . . property . . . the literal enforcement . . . would make it exceptionally difficult . . . to comply . . . and would cause unwarranted hardship and injustice. . . .
>
> The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.*

Id. at 514-15.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean, supra*; *Stacy, supra*; *Sapero, supra*; *Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra*. All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel, Loyola*, and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly . . . close case . . . ." *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky*, 239 Md. 611 (1965), involved one of the same issues that was presented in *Frankel, i.e.*, whether a zoning restriction so

compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance – a variance Frankel was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged that Borinsky had the "same expert witness," "he was asked the same general questions . . . and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* at 624. The Court, nevertheless, made a factual distinction and declined to apply *Frankel*. Judge Barnes opined in dissent that, based on what the Court had done in *Frankel*, the facts for variances were stronger in *Borinsky*. *Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel*, *Loyola*, and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York*, 482 N.W.2d 537 (Neb. 1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell*, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank*, the court said at 545: "[A] variance [may be granted] . . . only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of the zoning

ordinance] 'would result in peculiar and exceptional practical difficulties . . . or exceptional . . . hardships . . . .'"

In *Shafer v. Zoning Bd. of Appeals*, 511 N.E.2d 635 (Mass. App. Ct. 1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

> There was no evidence . . . regarding "soil conditions, shape or topography of [the property] . . . especially affecting [the property] but not affecting generally the zoning district in which it is located" . . . . The . . . argument that the insufficient width . . . constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

511 N.E.2d at 636-37 (citation omitted). *See also VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn. 1983) ("the plight of respondent was not due to circumstances 'unique to his property.' . . . [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware . . . .")

In *St. Clair v. Skagit County*, 715 P.2d 165 (Wash. App. 1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board,

approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings . . . ." 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist . . . peculiar to the land . . . ." *Id.* The court then noted that the applicant had done there what Ward attempts to do in the case *sub judice*:

> [The appellant] relied primarily upon the fact that the County issued a building permit . . . and that she acted in good faith . . . .

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself . . . . Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75-foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity . . . ." *Id.* at 169. In the case *sub judice*, the Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment*, 706 P.2d 899 (Okla. 1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had

expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner . . . constitutes no valid basis for a variance . . . . [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

> The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44-107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property*.

Id. at 904-05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992), but had facts similar to *Lucas*, the Supreme Court of Delaware in *Baker v. Connell*, 488 A.2d 1303 (Del. Supr. 1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0-1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight

of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the property could not conform to open space land. The appellate court affirmed, stating:

> [F]inancial return . . . alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0-1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R-2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard*, ___ U.S. ___, [62 U.S.L.W. 4576] (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment*, 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice*. The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance . . . the applicant [must] show . . . that there are special conditions with regard to the property . . . ." 685 P.2d at 1035-36. The court continued:

> What must be shown . . . is that the property itself contains some special circumstance that relates to the hardship complained of . . . .
>
> . . . The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of

> property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.
>
> . . . .
>
> Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos[es] brought their losses upon themselves. The application affirmatively alleged . . . that no dwelling existed . . . [8]

Id. at 1036-37 (footnotes omitted).

The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice*, that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice . . . in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication . . . and . . . shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id*. at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimen-

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[8] The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

sions from other schematics, they certainly were not required to do so in light of appellants' affirmative statement of compliance.

See also Chambers v. Smithfield City, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond*, 300 S.E.2d 781 (Va. 1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A-1 district." *Id.*

The court in *Richardson v. Town of Salisbury*, 455 A.2d 1059, 1061 (N.H. 1983), noted:

> We have defined unnecessary hardship as follows:
>
> > "A hardship exists only if due to special conditions *unique* to a *particular parcel of land*, the ordinance unduly restricts the use . . . . The hardship must relate to the special character of the land

> rather than to the personal circumstances of the landowner." [Emphasis added.]

See also Margate Motel, Inc. v. Gilford, 534 A.2d 717 (N.H. 1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment*, 459 A.2d 244 (N.H. 1983).

In *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

> [T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
>
> . . . .
>
> . . . [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
>
> . . . .
>
> . . . However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size. . . .
>
> . . . However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also Williams v. Salem Township, 500 A.2d 933 (Pa. Commonwealth 1985) *alloc. denied*, 531 A.2d 781 (1987); *Hersh v. Zoning Hearing Bd. of Marlborough Township*, 493 A.2d 807 (Pa. Commonwealth 1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem*, 480 A.2d 362 (Pa. Commonwealth 1984) (burden sustained); *Davis v. Zoning Bd. of Adjustment*, 468 A.2d 1183 (Pa. Commonwealth 1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment*, 456 A.2d 1110

(Pa. Commonwealth 1983); *Immordino v. Zoning Hearing Bd.*, 441 A.2d 818, 821 (Pa. Commonwealth 1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property* . . . .") (Emphasis added.)

> A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area . . . . Indialantic's zoning restrictions are common difficulties shared by all other ocean-front lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla. App. 5th Dist. 1981), *aff'd*, 419 So.2d 1041 (1982) (citation omitted). *See also Fort Lauderdale Bd. of Adjustment v. Nash*, 425 So.2d 578, 579 (Fla. App. 4th Dist. 1983); *City of Naples v. Clam Court Marina Trust*, 413 So.2d 475, 477 (Fla. App. 2d Dist. 1982); *Lakeshore Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments*, 481 So.2d 162, 168 (La. App. 4th Cir. 1985), *cert. denied*, 494 So.2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231 (D.C. App. 1979), where, due to the size of the lot, no viable economical

use of the property could be had without the variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in *U-Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord*, 451 A.2d 1315, 1317 (N.H. 1982), saying: "The location and characteristics of the property involved create greater security requirements . . . than . . . other property in the area because the parcel . . . is less central . . . less populated and . . . less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland*, 637 P.2d 1302 (Or. App. 1981), *cert. denied*, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. *See also Higgins v. Township of Radnor*, 318 A.2d 761, 763 (Pa. Commonwealth 1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

> It is *fundamental* that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *to particular property* and not general in character . . . . [I]t is not uniqueness of the plight of the owner, but

> uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides] . . . . [T]he hardship [in order to justify a variance, however,] . . . must relate to the particular property of the applicant . . . .

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

> [I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, *supra* § 14.55 (1968).

> It follows that the unnecessary hardship . . . must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance . . . .
>
> In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question. . . .
>
> . . . .
>
> Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

> The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot . . . arises from circumstances peculiar to that lot . . .; and in that case the appropriate remedy is . . . a variance . . . . In the other types of cases, the hardship . . . may arise because of conditions which are general in the neighborhood; . . . it is often held that the

> appropriate remedy is a change in the zoning . . . . [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

> The great strengthening of the criteria for granting variances, . . . has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question . . . . Moreover, the courts have again emphasized that a variance granted to take care of some hardship personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. *See also* Rathkopf, *supra* § 38.04; Yokley, *supra* § 21-6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.").

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals*, 93 N.E.2d 645, 647 (N.Y. 1950):

> [T]he record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21-6.

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.

Self-Inflicted Hardship

We have before referred to *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206. There, the Court said, "it was incumbent [on the applicant] to [show] . . . that the hardship was not the result of the applicants' own actions." *Id.* at 218. The Court of Appeals noted in *AD + Soil, Inc. v. County Comm'rs*, 307 Md. at 340:

> The essence of Ad + Soil's argument . . . is that the setback requirements . . . would cause . . . unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements. . . . The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted . . . and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals*, 438 A.2d 1186, 1190 (Conn. 1982) ("'[S]elf-inflicted or self-created hardship . . . is never considered proper grounds for a variance.' . . . '[W]here the applicant . . . creates a nonconformity, the board lacks power to grant a variance.'") (citations omitted); *Volkman v.*

City of Kirkwood, 624 S.W.2d 58 (Mo. App. 1981); *Matter of Schrader*, 660 P.2d 135 (Okl. 1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals*, 310 S.E.2d 438 (S.C. App. 1983); *McClurkan v. Board of Zoning Appeals*, 565 S.W.2d 495 (Tenn. 1977); *Steele v. Fluvanna County Bd. of Zoning Appeals*, 436 S.E.2d 453, 456 (Va. 1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements . . . was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Granting of the Permit

In *Francis v. MacGill*, 196 Md. 77 (1950), a property owner sought equitable injunctive relief. The facts were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

> "Adoption of zoning ordinance *ipso facto* revokes permit for construction . . . where no construction has begun."
>
> . . . They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro*, 187 Md. 623, 634 (1947), *overruled on other grounds in Nutter v. Non-Profit Housing Co.*, 230 Md. 6 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit . . . does not create a vested right, or estop[9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Synder*, 186 Md. 342, 347 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward*, 186 Md. 330, 340 (1946), the Court held:

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[9] The applicability of the "doctrine of zoning estoppel" has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council*, 96 Md. App. 526 (1993), *rev'd in part*, 334 Md. 499 (1994).

> The Board . . ., as an administrative body, was bound to follow the regulations it adopted, in the exercise of . . . delegated legislative power. The fact that it might have rezoned . . . does not alter its obligation to adhere to existing regulations . . . .

In the case of *Lipsitz v. Parr*, 164 Md. 222 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

> A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law. . . . [T]he ordinance forbade the officials . . . to grant the permit which the plaintiff asked and obtained . . . .
>
> . . . [I]t was therefore unlawful for the officers . . . to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued . . . does not . . . prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality. . . . *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.
>
> So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act . . . it is not estopped by the unauthorized or wrongful act of its officer . . . in issuing a permit that is forbidden by the explicit terms of an ordinance. . . . *Valentine v. Rds. Directors*, 146 Md. 199, 206 [(1924)] . . . . [Citations omitted, emphasis added.]

164 Md. at 227-28.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates*, the Court opined that "[c]onsequently, '[e]very-one dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.'" 313 Md. at 437. The Court added: "[T]he doctrine of equitable estoppel 'cannot be . . . invoked to defeat the . . . enforcement of . . . ordinances, because of an error or mistake committed by one of its officers . . . which has been relied on by the third party to his detriment.'" *Id.*

Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward.

The authorities elsewhere are in accord.

> The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land*, not to the circumstances of the *owner*.

Richardson, 455 A.2d at 1062.

> [R]elator argues the Board should be estopped from denying the height variance because a

> city building inspector visited the premises several times and observed the construction taking place but made no complaint . . . .
>
> In any case there is no authority on the part of a building inspector to grant a variance . . . .

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La. App. 4th Cir. 1970). *See also Klanke v. Zoning Bd. of Adjustment*, 477 A.2d 907, 909 (Pa. Commonwealth 1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra*.

Resolution

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 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 policy-makers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

Easter vs City of Baltimore

Summary

In Easter v. The Mayor and City Council of Baltimore, 195 Md. 395, 400, 73 A.2d 491 (1950) we said: "The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements.

Opinion

[No. 176, October Term, 1949.]

Decided May 12, 1950.

Zoning — Special Exceptions or Variances — In Granting, Board of Municipal and Zoning Appeals Must Consider Factors Set Out in Zoning Ordinance — Action Must Be Reasonable in Light of These and Other Pertinent Facts — Power of Board to Grant Exceptions Must Be Strictly Construed — Burden of Showing Facts to Justify Exceptions or Variances Rests upon Applicant — Must Show That Hardship Affects Particular Premises — Not Common to Other Property in Neighborhood — Fact That Granting of Variance Would Make Property More Profitable — Not Sufficient — Prior Exceptions — In Themselves Not Controlling — Ill-Advised or Illegal Variances Furnish No Grounds for Repetition of Wrong — Annulment of Zoning — Legislative Function — Beyond Domain of Zoning Board — Non-Conforming Uses — Zoning Ordinance Tolerates Their Continuance — Looks Towards Their Ultimate Elimination — Same Principle Applies to Special Exceptions — Similar Extensions in Other Cases — Approval of, Raises No Estoppel Against Board — Area and Setback Rules — Facts Did Not Justify Exception to.

The Board of Municipal and Zoning Appeals must consider the factors set out in Baltimore City Ordinance No. 1247 (1930-1931), par. 32 (j), in granting an exception or variance, and its action must be reasonable in the light of these and all other pertinent facts. p. 399

The power of the Board of Municipal and Zoning Appeals to grant exceptions under Baltimore City Ordinance No. 1247 (1930-1931), par. 33 (c), must be strictly construed. pp. 399-400

The burden of showing facts to justify an exception or variance under the Zoning Ordinance, Baltimore City Ordinance No. 1247 (1930-1931), par. 33(c), rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood. p. 400

The mere fact that the granting of a variance under the Zoning Ordinance, Baltimore City Ordinance No. 1247 (1930-1931), par. 33(c), would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. p. 400

Prior exceptions to zoning requirements are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. The annulment of zoning is a legislative function that is beyond the domain of the zoning board. p. 400

In the case of non-conforming uses the Zoning Ordinance, Baltimore City Ordinance No. 1247 (1930-1931), tolerates their continuance, but looks towards their ultimate elimination. The same principle applies to special exceptions. p. 401

No estoppel can be raised against the Board of Municipal and the Zoning Appeals, Baltimore City Ordinance No. 1247 (1930-1931), par. 33(c), by an applicant for an exception or variance from the Ordinance, because of the Board's approval of similar extensions in other cases. p. 401

In the case at bar an appeal was taken from a judgment of the Baltimore City Court affirming the action of the Board of Municipal and Zoning Appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling. Although the permit allowed the store front to be brought out to the building line in contravention of the Zoning Ordinance, Baltimore City Ordinance No. 1247 (1930-1931), par. 24, and of the percentage of occupancy requirements under par. 21, the permit was granted under par. 33(c), on the ground that due to the peculiar location and surroundings the case was one of practical difficulty and hardship, because a tavern located next to the store and dwelling obstructed the view of the store where the addition was proposed. In reversing the judgment of the lower court, the Court of Appeals *held* that the facts did not justify an exception to the area and set-back rules. The fact that the lot was irregular had no bearing on the question, nor was it material that three buildings, some distance away, extended to the building line. The existence of an exception on the adjoining lot, where the tavern was located, although detrimental to the applicant, did not justify the action of the Board in granting the permit. pp. 398-401

J.E.B.

Decided May 12, 1950.

Appeal from the Baltimore City Court (NILES, J.).

Petition by Andrew J. Easter for appeal from the action of the Board of Municipal and Zoning Appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling owned by John P. Easter and Annie C. Easter, his wife. From a judgment affirming the action of the Board, petitioner appeals.

Judgment reversed.

The cause was argued before MARBURY, C.J., DELAPLAINE, COLLINS, GRASON, HENDERSON and MARKELL, JJ.

John F. Heath for the appellant. *Benjamin Kann* and *Malcolm J. Coan* for the appellees, John P. Easter and Annie C. Easter, his wife.

Submitted on brief by *Thomas N. Biddison, City Solicitor of Baltimore, Edwin Harlan, Deputy City Solicitor,* and *Hamilton O'Dunne, Assistant City Solicitor,* for the appellee, the Mayor and City Council of Baltimore.

HENDERSON, J., delivered the opinion of the Court.

This appeal is from a judgment of the Baltimore City Court affirming the action of the Board of Municipal and Zoning appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling at 6418 Belair Road, owned by John P. Easter. The only protestant, Andrew J. Easter, is a brother of the permittee, residing at 6420 Belair Road, where he conducts a tavern.

As stated by the trial Court, "The property is in a First Commercial Use, C. Area District, and the permit would allow the store front to be brought out to the building line, in contravention of paragraph 24 of the Zoning Ordinance, which requires a 10-foot minimum depth of front yard in the area in question, and of the percentage of occupancy requirements under paragraph 21, bringing the percentage of occupancy to 85% as opposed to 60%, as provided in the Ordinance. The Board of Municipal and Zoning Appeals granted the permit under the provision of Paragraph 33(c) on the ground that `* * * due to its peculiar location and surroundings it is a case of practical difficulty and unnecessary hardship, since the Tavern already obstructs the view of the store where the addition is now proposed'". The court thought there was "evidence sufficient to support the legal definition of a hardship and * * * in fact, it would be a hardship to allow one brother to have a tavern all the way out to the street, and to deny the other brother the right to build his store out to the same line as the tavern."

The Board found that the store was "on the west side of Belair Road, 105 feet south of Easter Terrace. * * * Adjacent to the premises under appeal is a building containing a tavern which is built out to the front line of the lot. To the north between Easter Avenue and Kenwood Avenue there are several buildings constructed to the front lines of the lot and the proposed addition would not affect access of light and air to any neighboring properties, nor would it even cut off the view up and down the street. The lot in question is of very shallow depth and irregular in shape * * *." The store and tavern were built as semi-detached buildings. In 1935 Andrew J. Easter obtained a permit to build a sort of covered entrance-way out to the building line. John P. Easter did not object, and there were no protests. In his present application John P. Easter states that since his brother "has built out in front of us it has hid our store making it difficult to rent." There is a small triangular vacant lot to the south of 6418, and a church property adjoining to the south, across an alley laid out but apparently not opened. The church is set back the required distance. Andrew J. Easter has applied for a permit, and obtained the approval of the Board, to develop the land to the north, comprising about six acres, as a shopping center with off-street parking facilities and the required set-back. If this project is carried out, he states that he proposes to remove the entrance in front of his tavern.

We may assume here, as we have assumed in previous cases, that the delegation to the Board of Zoning Appeals of the power to make special exceptions or variances is valid, and that the

standards set up in Section 32(j) are adequate. *Colati v. Jirout,* 186 Md. 652, 656, 47 A.2d 613; *Heath v. Mayor and City Council of Baltimore,* 187 Md. 296, 49 A.2d 799; *Heath v. Mayor and City Council of Baltimore,* 190 Md. 478, 483, 58 A.2d 896, 898. The Board must consider the factors set out in that section and "its action must be reasonable in the light of these and all other pertinent facts." *Heath v. Mayor and City Council of Baltimore, supra,* (187 Md. 305, 49 A.2d 804). The power to grant exceptions must be strictly construed. *Colati v. Jirout, supra,* 186 Md. page 659, 47 A.2d 613.

The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood. Rathkopf, Zoning, (2d Ed.), p. 215; *Levy v. Board of Standards and Appeals,* 267 N.Y. 347, 196 N.E. 284. The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. *Garden View Homes v. Board of Adjustment,* 137 N.J.L. 44, 57 A.2d 677.

In the instant case there is no suggestion that the Board failed to "act as a fact finding body" or to "give consideration to the rules, regulations, restrictions, guides and standards set forth" in the Ordinance (paragraph 33(c)). The question is whether the undisputed facts support the Board's action. The fact that the lot is irregular has no bearing on the question, nor is it material that three buildings, some distance to the north, extend to the building line. These may have been built before the passage of the Ordinance or they may have been built under permit or without permit. As was said in *Potts v. Board of Adjustment,* 133 N.J.L. 230, 43 A.2d 850, 854: "Prior exceptions granted by the adjustment board 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." See also the cases collected in a note, 168 A.L.R. 13, 41-44. The same principle was announced and applied in *Heath v. Mayor and City Council of Baltimore, supra,* 190 Md. 478, 483-484, 58 A.2d 896, 898; *Mayor and City Council of Baltimore v. Byrd,* 191 Md. 632, 638, 62 A.2d 588, 591; and *Cassell v. Mayor and City Council of Baltimore,* 195 Md. 348, 73 A.2d 486.

The principal fact relied upon to justify an exception to the area and set-back rules, adopted in the general interest under the police power, is the existence of an exception on the adjoining lot. Undoubtedly this is detrimental to the applicant, although his case is somewhat weakened by his tacit acceptance of the situation over a period of years. But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. "It is by these gradual encroachments, individually of relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *." *Dubin v. Wich,* 120 N.J.L. 469, 200 A. 751, 754. In the case of non-conforming uses, the ordinance tolerates their continuance, but looks towards their ultimate elimination. *Colati v. Jirout, supra*. The same principle applies to special exceptions. *Heath v. Mayor and City Council of Baltimore, supra,* (190 Md. 478, 58 A.2d 896). Use variances are doubtless more serious than dimensional changes, but that is only a matter of degree.

In *People ex rel. Fordham Manor Reformed Church v. Walsh,* 244 N.Y. 280, 286, 155 N.E. 575, 577, it was contended that the existence of a garage immediately adjoining the proposed garage

was sufficient justification for the grant of an exception on the ground of unnecessary hardship. But the Court, speaking through Chief Judge Cardozo, said: "We think the reasons assigned are insufficient to supply a basis for a departure from the map. They amount to nothing more than this, that a garage may be built because there is another one next door." See also *Ventresca v. Exley,* 358 Pa. 98, 56 A.2d 210, 212. No estoppel can be raised against the Board by reason of its approval of similar extensions in other cases. *Appeal of Valicenti,* 298 Pa. 276, 148 A. 308; note, 119 A.L.R. 1509, 1517.

Under the circumstances we think the action of the Board cannot be sustained.

IN RE: PETITION FOR VARIANCE **(8632 Windmill Road)** 2nd Election District 4th Council District Dr. Crystal Greene Legal Owner Petitioner	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2020-0234-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by Dr. Crystal Greene (the "Petitioner") for property located at 8632 Windmill Rd. (the "Property"). The Petitioner is requesting variance relief from Baltimore County Zoning Regulations ("BCZR") § 427.1 to permit a 6 ft. high fence to be erected in the side and rear yard which abuts the front yard of a neighboring property, in lieu of the maximum allowed fence height of 42 inches.

Although this case was filed as an Administrative Variance, under Baltimore County Code ("BCC"), §32-3-303(b), the owner of 4129 Windmill Circle, Lauretta Holliday, filed a request for a public hearing. Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan was marked and accepted into evidence. (Pet. Ex. 7). Dr. Crystal Greene appeared at the hearing. Derrick Burnett, President of Owings Mills Overlook Community Association (the "Association") and Lauretta Holliday both appeared in opposition to the Petition.

There was one Zoning Advisory Committee ("ZAC") comment submitted by Department of Environment Protection and Sustainability ("DEPS") which agency did not oppose the requested relief.

According to the SDAT record in the County file, the Property is approximately 6,969 sq. ft. and is zoned DR 3.5. Dr. Greene testified in regard to the photographs she submitted of her Property. (Pet. Ex. 1-5). The photographs show that a 42 inch tall wood fence exists around one-half of the rear yard which faces the front yard of 4129 Windmill Circle (Lauretta Holliday's house) and which continues along the western side yard facing the sidewalk along Windmill Circle. (See Pet. Ex. 7). This shorter fence is the portion she wishes to replace with a taller one. The remaining one-half of the rear yard and eastern side yard have a 6 ft. +/- high fence.

Dr. Greene and her husband, Michael Ogunbamwo, live with Dr. Greene's two sons whom she described as having special needs. Her oldest son, Kevin Thomas is 28 years old and has an 'impulsive' behavioral disorder which is described in a document entitled "Tier 2 Support Plan". (Pet. Ex. 6). Her younger son, London Greene, is 10 years old, and has Attention Deficit Hyperactivity Disorder (ADHD). Prior to COVID, Dr. Greene testified that Kevin attended a vocational program and London was in school. In the summer, her sons went away to camps. Because of COVID, both Kevin and London are at home all day. In addition, Dr. Greene works out of her home. She testified that her sons often play basketball in the driveway in the front of the home but she feels it is not safe due to the traffic. She also stated that if it were not for the COVID restrictions keeping her sons at home, she would not be requesting to replace the shorter fence here with a taller one. Specifically, she is concerned that her sons will jump the shorter fence if she does not replace it with a taller one. As a result, she emphasized that the basis for the variance request is out of concern for the safety of her children.

Derrick Burnett testified on behalf of the Association. The Association includes 80 homes in Owings Mills Overlook community and is opposed to the Petition because the Association's Bylaws prohibit property owners from erecting 6 ft. tall fences on corner lots. Mr. Burnett gave a copy of the Bylaws to Dr. Greene. Mr. Burnett also testified that he is familiar with Dr. Greene's sons, that they play basketball in the driveway and he does not believe that the boys will jump the

shorter fence. In addition, he highlighted that, because the boys play basketball, Dr. Greene would need to install a concrete basketball court in the rear yard. Mr. Burnett believes that granting this Petition will set a precedent for other owners in the neighborhood to request the same.

Lauretta Holliday testified that she has lived in her home for 30 years. She is opposed to the Petition because replacing the shorter fence with a 6 ft. privacy fence will block the view of cars exiting her driveway. Ms. Holliday presented photographs of the view from her driveway. (Prot. Ex. 1-4). Ms. Holliday acknowledged that Dr. Greene did come to her to discuss the Petition and, at that time, Ms. Holliday requested that Dr. Greene show transparent fencing options.

While I am sympathetic to Dr. Greene's concern regarding the safety of her sons and the difficulty of caring for them while she is working at home during a pandemic, based on the evidence presented and the law governing variances, I am not able to grant this variance. A variance request involves a two-step process, summarized as follows:

> (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
>
> (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995). In order to grant a variance, there must first be evidence of uniqueness of the physical characteristics of the property at issue as compared to other properties in the neighborhood. In requiring a pre-requisite finding of "uniqueness", the Court in Cromwell defined the term and stated:

> 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 has 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 in bearing or parting walls....

Id. at 710. The Cromwell Court held that if no evidence is presented as to uniqueness, there is no analysis of the 'practical difficulty' factor. Id. at 698. Because there was no evidence presented here of this Property's uniqueness, the Petition for Variance must be denied.

THEREFORE, IT IS ORDERED, this 12th day of January 2021, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §427.1 to permit a 6 ft. high fence to be erected in the side and rear yard which abuts the front yard of a neighboring property, in lieu of the maximum allowed fence height of 42 inches is hereby DENIED.

_____Signed_____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County
MEM/dlm

IN RE: PETITION FOR VARIANCE **(1207 Providence Road)** 9th Election District 3rd Council District Mark Tosti Legal Owner	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS OF BALTIMORE COUNTY
Petitioner	*	**CASE NO. 2021-0272-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by the Petitioner, Mark Tosti ("Petitioner") for the property located at 1207 Providence Rd. (the "Property"). Petitioner is requesting variance relief from the Baltimore County Zoning Regulations ("BCZR"), §1B02.3 (§ 202.3 of the 1955 Regulations) to permit a proposed dwelling addition (garage) with a side yard setback of 4 ft., in lieu of the required 20 ft. and a sum of side yard setbacks of 16 ft. in lieu of the required 50 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. Petitioner Mark A. Tosti did not appear at the hearing. Bruce E Doak of Bruce E. Doak Consulting, LLC appeared with a site plan which he prepared and sealed (the "Site Plan"). (Pet. Ex. 1). Pete Beyrodt, the builder of the proposed garage, also appeared. Adjacent property owner, John Bathon, 1205 Providence Rd. appeared and testified in opposition.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP"), Department of Environmental Protection and Sustainability ("DEPS") and Development Plans Review ("DPR") which agencies did not oppose the requested relief.

The Property is 0.575 acres +/- (25, 047 sf) and is improved with a 2-story dwelling built in or about 1957. (Pet. Ex. 2). A 1-car garage was built into the ground floor of the home. The Property was created as Lot 4 on the Plat of "Providence Acres' (PB 22, 40) in or about 1956. (Pet. Ex. 1). The neighborhood of Providence Acres consists of ½ acre rectangle lots with split level homes. It is zoned Density Residential (DR 1).

Mr. Doak explained that the Petitioner, who currently resides at another property, intends to move to the Property along with his 91-year old father to live in it. As a result, Petitioner desires to build an attached 1-story, 528 sf, 2-car garage on the western side of the Property where the existing attached garage is located. Mr. Doak added that it would be difficult for Petitioner's father to maneuver a vehicle into the existing garage due to the limited turning radius. The Site Plan indicates that paving in the driveway area will be added. However, as noted by DOP and the street view photographs submitted, the paving and a retaining wall have already been added. (Pet. Exs. 4B-4D). The paved driveway extends nearly to the Property line. (Pet. Ex. 4D). Petitioner also constructed a retaining wall along the driveway. (Pet. Ex. 4B).

Mr. Doak opined the Property is unique due to its severe slope in the rear which makes construction of a detached garage in that area not an option. Additionally, Mr. Doak indicated that if a garage was constructed in the rear yard, there is not sufficient room at the south western corner of the home and the Property line to enter or exit it. While acknowledging that other properties in the neighborhood have rear sloping yards, Mr. Doak opined that this Property has a more severe slope. The proposed attached garage in the side yard here would extend within 4 ft. of the western Property line.

Mr. Beyrodt testified that if a 1 ½ car garage was constructed, rather than a 2-car garage, it would be 16 ft. wide and would be 10 ft. from the Property line.

John Bathon testified that he is opposed to the construction of a garage in the side yard facing his home. Mr. Bathon confirmed that his home and the Petitioner's home have identical layouts; both are 4-bedroom, split level homes with 4 steps up and 4 steps down to a walkout basement. He stated that the Petitioner has rented the home since his purchase in 1998 which rental has resulted code violations. At one point, he said that the Petitioner put the Property on the market for sale. Mr. Bathon objects to construction of a garage because the setback is not great enough between the homes. From his viewpoint, his home sits downhill and he would be staring up at a wall of the garage.(Pet. Exs. 4I, 4J, 4K). Mr. Bathon testified that the Property has a flat area in the rear yard next to the home for a garage. (Pet. 4L). He said that there is a concrete patio in that area. He added that the Petitioner had recently removed trees from the side and rear of his Property.

DOP ZAC Comment indicated that DOP did not support the Petition absent a demonstration of an unreasonable hardship and requested explanation of the requested setback distance.

A variance request involves a two-step process, summarized as follows:

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

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

The Property is rectangular in shape as are the other lots in Providence Acres. On the lots On the Property's side of Providence Rd., the lots have rear yards with declining slopes; some are more sloped and some are less. This fact does not make the Property unique under *Cromwell*, *supra*. The Court in *Cromwell*, *supra*, emphasized that the 'uniqueness' element of a property in

Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. Accordingly, in this case, I find that the Property is not 'unique' for zoning purposes, based on the evidence presented.

In the event that the Property is found to be unique, I find that neither the Petitioner nor the Property will suffer a practical difficulty or unreasonable hardship if the variance request is denied. First, an attached garage already exists in the home and therefore it can be used for its intended purpose. Second, the Property is being rented by tenants. Third, the rear yard photograph reflects, and Mr. Bathon's testimony corroborates, that there is a flat area in the rear yard next to the house for an attached garage. (Pet. Ex. 4L). Fourth, the requested area variance is driven by the Petitioner's desire to construct a 2-car garage on a Lot created in 1956 with limited side yard setbacks. *McLean v. Soley*, 270 Md. 208 (1973); *Trinity Assembly of God v. People's Counsel*, 407 Md. 53 (2008). To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

> 1. Whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
>
> 2. Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Mclean at 214-215.

The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722. As applied here, the desire to construct another garage, much less a 2-car garage up to the Property line, is a self-imposed hardship created by the Petitioner.

I also find, based on Mr. Bathon's testimony that the requested variance relief cannot be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare of Mr. Bathon and his Property. There is not sufficient space between the properties to construct an additional structure (even an attached one) in the proposed side yard. Mr. Bathon would be staring up a hill at a wall of the proposed garage. The required zoning setbacks for the DR 1 zone are designated to provide for the minimum amount of separation between homes and this request falls well short of the required setbacks.

THEREFORE, IT IS ORDERED, this **30th** day of **December, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §1B02.3, (§ 202.3 of the 1955 Regulations) to permit a proposed dwelling addition (garage) with a side yard setback of 4 ft., in lieu of the required 20 ft. and a sum of side yard setbacks of 16 ft. in lieu of the required 50 ft. is hereby **DENIED**.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

IN RE: PETITION FOR VARIANCE (1540-1542 S. Rolling Road)	*	BEFORE THE
13th Election District 1st Council District	*	OFFICE OF ADMINISTRATIVE
John & Elisabeth Martin	*	HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO: 2021-0166-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by John Martin and Elisabeth Martin, Petitioners (the "Petitioners") for property located at 1540 – 1542 S. Rolling Road, Relay (the "Property"). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations ("BCZR") §100.6 to approve fowl or poultry on 0.939 acres of land in lieu of the required minimum 1 acre of land.

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. The Petitioners appeared at the hearing along with Mrs. Martin's son, Arthur Wheeler, and his wife Adrienne Wheeler (the "Wheelers"). Adjacent property owner Sharyn Herman, 1538 S. Rolling Rd. appeared in opposition.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP") and Department of Environmental Protection and Sustainability ("DEPS") which agencies did not oppose the requested relief.

The Property is approximately 40,920 sq. ft., is zoned Density Residential (DR2) and is located in the Relay Historic District. It is improved with a duplex dwelling addressed as 1540 and 1542. The portion addressed as 1540 is rented by Kathy and/or Jane Parks and the other

portion is rented by the Wheelers. (Pet. Exs. 10). Notwithstanding the separate rental of these units, the Wheelers apparently use the entire rear yard, part of which is being used to raise, grow and house chickens, geese and ducks. Photographs of the rear yard were provided. (Pet. Exs. 12-14).

According to the Wheelers, they have 7 chickens, 5 geese and 6 ducks. The chickens are housed in a chicken coop; the ducks and geese are housed in a separate, movable facility called a tractor. All of the poultry roam together in an outdoor pen which is connected to a solar-powered electric fence. The movable pen allows the poultry to eat different areas of the grass. The Wheelers stated that they have owned chickens for 12 years, geese for 3 years and ducks for 3-4 years. Admittedly, they readily adopt baby chicks. At one point, the Wheelers owned at least two (2) roosters but have since disposed of them. The Wheelers testified that they have personally observed foxes, coyote and hawks in their yard and surrounding neighborhood. They acknowledged that foxes, coyote and hawks are attracted to the Property because of the poultry but believe that having the geese provides a deterrent.

The owners of 1544 S. Rolling Rd. (Muecio/Sheets) also have animals including a rooster(s). However, they have one (1) single family home (not a duplex) which sits on a larger property (1.34 acres). The Muecio/Sheets have a chicken coop for 10 chickens and 2 roosters.

After unsuccessful attempts to resolve the noise and other nuisance problems stemming from the Wheelers' poultry as experienced by Sharyn Herman, the owner of 1538 S. Rolling Rd., a Code Violation Complaint was filed. Ms. Herman provided a copy of an email string with the Wheelers dated February 7, 2021 – April 2, 2021 outlining her complaints about the poultry. (Prot. Ex. 2). The emails reflect that as of February of 2021, the Wheelers owned 2 roosters which were only put down after Ms. Herman voiced her complaints. Like the units at 1540/1542 S. Rolling

Rd., Ms. Herman's home is one-half of a duplex and sits adjacent to 1540/1542. There is no fence to separate 1536/1538 from 1540/1542.

Ms. Herman testified that the squawking noise from the Wheelers' poultry is constant and intolerable particularly, the noise from the rooster and geese. It can be heard at all hours of the day and night. It keeps her awake and disturbs her ability to work from home. She testified that the poultry are not always contained within the pen and often freely wander into her yard, even up to her rear porch. She added that the Wheelers initially set up the pen onto Ms. Herman's property and removed trees belonging to her without her permission. At Ms. Herman's request, the pen was moved from its initial location near the homes to the rear of the Property. While moving the poultry farther away from the homes reduced the noise, the problem still occurs all day. The ducks quacking and the geese squawking is a constant disruption of Ms. Herman's enjoyment of her home. The noise is amplified by the area between the homes at 1536/1538 and 1540/1542 which acts as a wind tunnel.

In the spring of 2021, Ms. Herman put her house on the market for sale. A buyer who was initially interested in buying the Property, declined to make an offer due to the Wheelers' poultry farm. Due to the constant noise disturbance and nuisance of the poultry, and the negative effect it is having on her ability to sell her home, Ms. Herman is opposed to having poultry at the Property located at 1540-1542.

A variance request involves a two-step process, summarized as follows:

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

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

There was no evidence presented that the Property is unique as compared to other properties in the neighborhood. Indeed, the existence of a duplex home, on a rectangular shaped lot with a wooded area in the rear is similar to the property at 1536/1538 S. Rolling Rd. Thus, I do not find that it meets the uniqueness test. In the alternative, even if the Property was found to be unique, I find that such uniqueness would not cause an unreasonable hardship or practical difficulty for the Petitioners in not being able to have poultry on land which is less than 1 acre.

While the metes and bounds description for the Property contains the area for both 1540 and 1542 which together is 2,640 sq. ft. shy of the required 1 acre under BCZR, §100.6, in this case, the Wheelers are the owners of the poultry but not the owners of the Property. Of significance here is that the portion of the Property that they rent is actually ½ of the total 40,920 sq. ft. Because the Wheelers are tenants and not owners of 1542, granting a variance to permit poultry in perpetuity as one that will run with the land, is not within the spirit and intent of the BCZR. In short, the Property is not a farm; it is a duplex house with a narrow yard, surrounded by other residences. Ms. Herman and her home are directly affected by the presence of the poultry adjacent to her home. It been demonstrated that Ms. Herman is being deprived of the use and enjoyment of her home due to the noise and uninvited poultry which enter her yard. It was only after Ms. Herman exhausted her pleas to the Wheelers to remove the poultry that the Wheelers put the roosters down and moved the pen away from her home. The evidence supports the conclusion that the noise will continue if the poultry remains, particularly because the adult geese, who, according to the Wheelers must be present to protect the chicken from the foxes, coyote and hawks, must remain.

Because the Wheelers clearly desire to have a farm, they should find property which is suitably zoned for their needs. The fact that they were able to obtain signatures from other

neighbors stating that they are not opposed to the poultry does not mean that the presence of the same is in the interest of health, safety or general welfare of the neighborhood. Indeed, it is not surprising that Kathy/Jane Parks, who are also renting 1540 from the Petitioners, would sign such a Petition.

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

I find that the variance here cannot be granted within the strict harmony of the BCZR which specifies that 1 acre minimum lot size for a chicken coop is required. I further find that this Petition is at the request of the Wheelers who are not the legal owners of the Property and a variance, if granted, would run with the land. This Petition is for the mere convenience and personal desire of the Wheelers to have chickens, ducks and geese; it is not a necessity. The Wheelers can still make reasonable use of the 1542 property without having poultry. Indeed, a self-imposed hardship is not a legal justification for granting a variance. The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but

> we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Cromwell, at 722.

Because this area is not farmland but DR 2 zoned land, I find that having a chicken coop on this undersized lot will be detrimental to this neighborhood of homes which are close together. It is undisputed that having poultry on this Property has already attracted foxes, coyotes and hawks which creates increased danger to this residential neighborhood.

THEREFORE, IT IS ORDERED, this **22nd** day of **September 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR § 100.6 to approve fowl or poultry on 0.939 acres of land in lieu of the required minimum 1 acre of land is hereby **DENIED**.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

IN RE: PETITION FOR ADMIN. VARIANCE (7317 Bellona Avenue)	*	BEFORE THE
9th Election District 2nd Council District	*	OFFICE OF ADMINISTRATIVE
Bradley J. and Amy B. Murphy	*	HEARINGS FOR
Petitioners	*	BALTIMORE COUNTY
	*	**CASE NO. 2021-0334-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for Baltimore County for consideration of a Petition for Administrative Variance filed by the legal owners, Bradley J. and Amy B. Murphy ("Petitioners") for the property located at 7317 Bellona Avenue, Baltimore, MD 21212 (the "Property"). Petitioners are requesting Variance relief pursuant to the Baltimore County Zoning Regulations ("BCZR"), §400.1 to permit a proposed in-ground pool (accessory structure) to be located in the side yard in lieu of the required rear yard. The Property and requested relief is more fully depicted on the site plan (the "Site Plan") that was marked and accepted into evidence as Petitioners' Exhibit 1.

The Zoning Advisory Committee ("ZAC") comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Environmental Protection and Sustainability (DEPS") dated December 10, 2021, indicating that development must comply with the Forest Conservation Regulations.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on November 28, 2021, 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 Baltimore County Code ("BCC"), §32-3-303.

A variance request involves a two-step process, summarized as follows:

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

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

First, the Site Plan is misleading because it states that there are no previous zoning cases for this Property. Indeed, there are two (2) prior zoning cases namely: Case No.: 2005-0656-SPH and 1981-0169-A. In the 1981 Case, the Property was found to be unique. As such, in comparing the 1981 Site Plan with the Site Plan filed in this case (Pet. Ex. 1), I find that the Property has not changed. The doctrine of collateral estoppel bars relitigation of an issue of fact or law that was "actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment." *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 368 (2016). Accordingly, the previous finding of uniqueness will apply here under the doctrine of collateral estoppel. Second, the Site Plan indicates that the proposed pool would not only be located in the side yard but also in the front yard as the pool deck extends beyond the front foundation line of the home. As a result, the requested relief should have included a variance for a pool partly located in the front yard.

Based upon the information available, the requested Administrative Variance must be denied. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted are not sufficient to provide facts to comply with the requirements of §307.1 of the BCZR. *Montgomery County v. Rotwein*, 169 Md. App. 716, 906 A.2d 959 (2006). *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). The practical difficulty alleged by the Petitioners (i.e. 'that the side yard is the only option for best management practice') is not the

type of practical difficulty required by case law. Specifically, this Property is 5 acres. The photographs and Site Plan reveal that there are no structures or other obstacles which would prevent the construction of a pool in the rear yard. (Pet. Exs. 1, 3A-3G). In fact, the 1981 Site Plan describes the rear yard as a "slope." The topographical site plan confirms a gentle slope from the front yard to the farthest part of the rear yard; declining in 10 ft. increments. (Pet. Ex. 4). This 'slope' does make construction of a pool in the rear yard impossible; it may cost the Petitioners more money to build a rear yard pool. (Pet. Ex. 4). Furthermore, the topographical Site Plan shows that the proposed side/front yard where the pool would be located has the same degree of slope as the rear yard. Moreover, the photographs of the rear yard and the Site Plan reveal that trees would not have to be cleared to construct a pool in the rear, whereas the Site Plan shows the removal of trees in the side yard. There is no evidence about the condition of those trees other than a bald characterization on the Site Plan that those trees are dead. Thus, there is no more hardship in the construction of a rear yard than with a side yard pool.

Even if a rear yard pool would cost more money, the law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722. The Court of Special Appeals in *Montgomery County v. Rotwein*, 176 Md. 716, 732-33 (2006) citing *Cromwell*, held that economic loss alone does not satisfy the 'practical difficulties' test:

> Economic loss alone does not necessarily satisfy the 'practical difficulties' test because, as we have previously observed, 'every person requesting a variance can indicate some economic loss.' *Cromwell* at 715…..Indeed, to grant a variance application any time economic loss is asserted, we have warned, 'would make a mockery of the zoning program.

As applied here, there is no evidence that not having a pool in the side yard would unreasonably prevent the Petitioners' use of the Property as a home. While a pool in the side yard might be a more convenient place to build, and a pool might be a nice feature, I cannot find that not having a pool in the side yard would deprive the Petitioners use of their Property as a 'home.' Indeed, the fact that the Property is improved with a garage per the 1981 Site Plan (now labeled as existing building on the Site Plan), and with both rear and side yard decks, confirms that the Petitioners are maximizing the use of the Property. Variance relief runs with the land and the proposed pool in the side yard would negatively impact this established neighborhood and cannot be granted within the spirit and intent of the BCZR which requires pools to be located in the rear yard.

Pursuant to the posting of the property and the provisions of both the BCC and the BCZR, and for the reasons given above, the requested variance will be **DENIED**.

THEREFORE, IT IS ORDERED, this **21th** day of **December, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from BCZR, §400.1 to permit a proposed in ground pool (accessory structure) to be located in the side yard and the front yard in lieu of the required rear yard, be and is hereby **DENIED**.

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

Signed

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlw

IN RE: PETITION FOR VARIANCE **(3100 Marnat Road)** 3rd Election District 2nd Council District Dorina Natiga and Shifra Natiga *Legal Owners* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2021-0188-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by Dorina Natiga and Shifra Natiga ("Petitioners") for property located at 3100 Marnat Rd., Pikesville (the "Property"). The Petitioners are requesting variance relief from Baltimore County Zoning Regulations ("BCZR"), §1B02.3.B (Section III.C.3, 1953 Zoning Regulations) to permit an existing dwelling addition (carport) to remain with a zero (0) ft. setback in lieu of the minimum required 7 ft. setback.

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. Petitioner, Dorina Natiga appeared, *pro se*, at the hearing in support of the Petition. Behnam Barkhorder, 3102 Marnat Rd. testify in opposition. Avraham Feldman, 3028 Marnat Rd. provided a letter of support.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP") which opposed the requested relief. Department of Environmental Protection Sustainability ("DEPS") did not have a substantive comment. People's Counsel provided

FACTS AND EVIDENCE

The Property is a 9,180 sf +/- and is improved with a 1-story home built in or around 1955. It is zoned Density Residential (DR 5.5). The My Neighborhood map attached to People's Counsel's October 5, 2021 letter reflects mid-century style homes along Marnat Rd. setback evenly

along Marnat Rd with spacious front yards. The homes have very little side yards and as such, sit very close together. Many homes do not have driveways although the testimony was that some homeowners applied for access permits to install driveways as shown on My Neighborhood map. Given the narrow spacing of the homes along Marnat Rd., the homes do not have either garages or carports.

The Property here was not constructed with either a driveway, garage or a carport. Petitioners obtained a building permit (B967308) to construct a 1-story addition attached to the rear of the home. On January 20, 2020, a Residential Access Permit was issued by the Bureau of Highways to the Petitioners for a proposed driveway. (Pet. Ex. 2). On June 9, 2020 and on June 25, 2020, a Baltimore County Building Inspector approved a foundation and concrete slab under Permit B967308. (Pet. Ex. 6). In or about October, 2020, a complaint was filed with Code Enforcement that a carport, front driveway and 2-story addition were being constructed at the Property without a permit. Petitioner acknowledged service of the Code Enforcement Citation on October 22, 2020. (Pet. Ex. 2), see email from Pet. dated 10/22/2020). Street view photographs reveal that construction of the carport is nearly complete. (Pet. Ex. 12).

Between the end of October, 2020 through January of 2021, Petitioner, through email, was in contact with the Code Enforcement Inspector who informed him that Permit B967308 was only issued for the addition and not the carport. (Pet. Ex. 2). Petitioner told the Inspector that he believed he had approval to build the carport based on the Building Inspector's approval of a foundation and a concrete slab. (Pet. Ex. 6). The email chain makes clear that the Petitioner was seeking advice from the Inspector about whether he needed to obtain a new permit, or whether he could have Permit B967308 amended to include the carport. (Pet. Ex. 2). On that issue, the Inspector referred the Petitioner to Building Permit Office. (*Id.*). By email dated December 7,

2020, Petitioner was informed by the Building Permit Office that the application for the Permit B967308 did not state that a carport would be built. The architect plans showed a long hatched area, part of which is where the carport now stands, and part of which is the new driveway, but it was not labeled as a 'carport' and the request to build a carport was also missing from the application. (Pet. Ex. 7). Petitioner had intended to apply for the carport permit on or around December 7, 2020 but had to suddenly leave the country due to his father's cancer diagnosis.

On January 19, 2021, Petitioner's architect revised the plans, correctly labeled the carport, and filed for a permit. (Pet. Ex. 2). In March of 2021, Permit B979036 was attributed to the carport but was not signed because the carport as-built has zero foot setbacks. (Pet. Exs. 3, 4). As a result, Petitioner was required to apply for the instant variance relief before the permit can be authorized. There are two (2) pending Code Violations cases (CB 2100325 and CB2012855) in regard to the improvements constructed without permits and/or without zoning relief. (See File). On April 7, 2021, a Code Enforcement hearing was held and it appears that the case(s) may have been stayed pending the outcome of this case.

Street view photographs of the constructed carport show that it is located on the side of the home next to Mr. Barkhordar's home. In fact, Mr. Barkhordar testified that he, his wife, and 3 children reside in his home located at 3102 Marnat Rd. Mr. Barkhordar opposes the carport as it is too close to his home, and because it is next to a bedroom, which interferes with his family's use and enjoyment of their home. Because the carport is so close to his home, Mr. Barkhordar is also concerned that it is a fire hazard.

The file does reflect that Avraham Feldman, 3028 Marnat Rd., the neighbor who owns the property on the opposite side of Petitioners' home where the carport is located, provided a letter which stated that he did not have any concerns about the carport. (Pet. Ex. 9). While Mr. Feldman

did not testify or appear for the hearing, Hadassah Gholian, identified herself as a future resident of Mr. Feldman's house, and stated that she had no problem with the carport.

DECISION

A variance request involves a two-step process, summarized as follows:

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

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

A threshold condition precedent for variance relief is uniqueness. In this case, there was no evidence presented that the Property is unique, peculiar or different than other properties in the neighborhood in accordance with the standards set forth in BCZR, §307.1 as clarified in *Cromwell*, *supra*. Indeed, the My Neighborhood maps attached to People's Counsel's letter of October 5, 2021 shows that the Property is a rectangle as are all other lots set forth on the plat. The Property and each property along Marnat Rd., and within the neighborhood, are also similarly sized with nearly identical mid-century modern homes set back at the same distance from the streets on which they front. The lots were not designed with driveways, carports or garages. Vehicles are parked on the street unless a property owner has been granted an access permit for a driveway.

The practical difficulty alleged by the Petitioners (i.e. health issues of a family member) is not the type of practical difficulty required by case law. To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

1. That compliance with the strict letter of the restriction would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such

> restrictions unnecessarily burdensome;
>
> 2. Whether the grant of the variance applied for would do substantial justice to applicant as well as 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; and
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 39 (1974).

As applied here, I find that the requested relief is a self-imposed hardship and was caused by construction of the carport with a zero foot setback, without prior relief being granted, which generated the Code Enforcement cases. Assuming *arguendo* that the Property was somehow determined to be unique, no showing of practical difficulty has been established here. *Montgomery County v. Rotwein*, 169 Md. App. 716, 906 A.2d 959 (2006). Without the granting of the zero foot setback, Petitioners can still make reasonable use of the Property as their home. While a carport may be a nice convenience to have, the Property does not become useless as a home because it does not have a carport. Indeed, the Petitioners were granted an access permit for the driveway which does not need variance relief and therefore can remain.

While I recognize that this result may be harsh as it requires the removal of the unauthorized carport, the law is clear that self-inflicted hardship cannot form the basis of a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Cromwell, at 722.

Additionally, the Variance relief here cannot be granted within the spirit and intent of the BCZR and without harming and negatively impacting the Barkhordars' health, safety, and general welfare and that of the neighborhood. The carport is literally at Barkhordars' bedroom wall. If Petitioners had requested the carport addition on the application for Permit B967308, they would have received the same instruction from the Office of Zoning Review to apply for a variance before a permit can be issued. While I can sympathize with the Petitioners who did not appear to be misleading the County and believed that they had the permit to construct the carport, unfortunately, the impact to the Barkhordars and to the neighborhood is substantial. As mentioned by DOP, the lack of any setback from the property line will cause problems with maintenance. In regard to the spirit and intent of the BCZR, I find that granting a zero foot setback for a carport or garage in this neighborhood of homes situated so compactly upon one another that they are already devoid of side yards, will have an adverse domino effect, and if granted, will generate other requests in this neighborhood for the same types of structures.

THEREFORE, IT IS ORDERED, this **8th** day of **December 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §1B02.3.B (Section III.C.3, 1953 Zoning Regulations) to permit an existing dwelling addition (carport) to remain with a zero (0) ft. setback in lieu of the minimum required 7 ft. setback is hereby **DENIED**.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(3401 Overbrook Road)		
3rd Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
Yoseph Orshan and Randi Orshan	*	HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO: 2021-0183-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by the Petitioners, Yoseph Orshan and Randi Orshan ("Petitioners") for property located at 3401 Overbrook Road, Dumbarton the "Property"). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations ("BCZR"), §400.1 to approve an accessory structure (pool) in the right side yard in lieu of the required rear yard only.

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. Petitioners appeared at the hearing in support of the Petition. Adjacent neighbor, David Gichtin, MD, 3403 Overbrook Rd. appeared and testified in opposition and was represented by Michael McCann, Esquire.

A Zoning Advisory Comment was received from the Department of Environmental Protection and Sustainability ("DEPS") which indicated that the file had been reviewed but there was no substantive comment on the Petition.

The Property is approximately 28,350 sq. ft. and is improved with a 2-story brick home built in or around 1933. The Property is part of the Dumbarton neighborhood which is listed on the National Register of Historic Places (BA-3237). (Prot. Rosen Ex. 1). It is zoned Density-Residential (DR 2). The Property is surrounded on 3 sides by Seven Mile Lane, Southvale Rd.

and Overbrook Rd. The Petitioners described the Property as a rectangle with equal front and rear yards. They purchased it in August of 2020.

Through the Petitioners' photographs of the Property, Mr. Orshan explained that he and his wife reside in the home with their 4 children. The photographs show that there is a 3-car detached garage (600 sf.) which can be accessed via Seven Mile Lane and Southvale Rd. (Pet. Ex. 4). In front of the detached garage, an in ground basketball net has been installed near Southvale Rd. The Petitioners are creating a basketball court in that area. (*Id*.). A stone fish pond is partly in the left side yard and partly in the rear yard near to Southvale Rd. A stone patio area (168 sf.) and various stone walkways are located in the rear yard. (*Id*.). There is an old Magnolia tree which is in the rear yard. (*Id*.). In the right side yard is a trampoline and swing set. Trees line the right side yard along a perimeter fence between the Property and Dr. Gichtin's property.

Petitioners desire to build the in-ground pool and pool deck in the right side yard. A site plan prepared by a pool company shows the proposed in-ground pool measuring 16 ft. by 34 ft. along with a pool deck. (Pet. Ex. 2). Petitioners explained that they did not want to remove the improvements and things in rear yard.

It was undisputed that the Dumbarton Development Corporation ("DDC") is the existing neighborhood organization which approves plans for alterations and additions to properties. The DDC is charged with enforcing restrictive covenants applicable to this neighborhood. Indeed, the Petitioners received approval from the DDC for their proposed pool in the right side yard. (Pet. Ex. 3).

Petitioners contend that they will suffer a practical difficulty if the pool is not able to be constructed in the right side yard as proposed because (1) they want a pool for their children; and (2) they believe that the rear yard will be destroyed if they have to construct a pool there. Petitioners

assert that Dr. Gichtin does not reside in this home year round, that the Gichtin's have a pool in their rear yard which is 5 ft. from the Property line, and that the proposed pool will be 30 ft. from the Property line. (Pet. Ex. 6). Petitioners also highlight that they received letters of support from neighbors/friends about their Petition. (Pet. Ex. 7). A list of pools located in the rear yards of properties in the neighborhood was submitted. (Pet. Ex. 8).

On cross examination, Mr. Orshan, an attorney, agreed that the Property was rectangular in shape and that it was similar to other lots in Dumbarton. Mr. Orshan further agreed that his Property was not the only corner lot in Dumbarton. Additionally, he acknowledged that other lots have large, mature trees as well as sheds and garages. Mr. Orshan agreed that the proposed pool could fit in the rear yard, especially without a pool deck surrounding it, but that to do so would "destroy the backyard" and the "expenses would be double." However, the Petitioners concede that they did not obtain estimate(s) for constructing the pool in the rear yard. On cross, Mr. Orshan also agreed that there were no pools in the side yards of any of the properties in the neighborhood.

Dr. Gichtin testified that he is opposed to the location of the pool in the right side yard which is adjacent to his house, even with the fence proposed along the perimeter. Dr. Gichtin stated that when he had his pool installed 20 years ago, it was done at great expense, where trees had to be removed, a new driveway had to be installed, and his garage had to be rebuilt and reconfigured. Dr. Gichtin believes that the proposed pool can fit in the Petitioners' rear yard and demonstrated the same on a copy of the Petitioners' site plan. (Prot. Gichtin Ex. 2). He contends that a pool located in a side yard in this neighborhood will set a precedent for other owners to request the same and it will negatively affect property values.

A variance request involves a two-step process, summarized as follows:

(1) It must be shown the property is unique in a manner which makes it unlike

surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and

(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995). In requiring a finding of "uniqueness", the Court of Special Appeals in *Cromwell* referred to the definition of "uniqueness" provided in *North v. St. Mary's County*, 99 Md. App. 502, 514 (1993):

> 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 has 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 in bearing or parting walls.

Cromwell at 710. The *Cromwell* Court connected the variance law in Baltimore County with the law in Maryland and emphasized that:

> 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.

Id. When comparing the property at issue with other properties to determine 'uniqueness,' the terms 'area', 'neighborhood' and district have all been used interchangeably. (*Easter v. Mayor & City Council*, 195 Md. 395, 400 (1950) citing *Rathkopf, Zoning, 2d Ed*., p. 215); *Marino v. City of Baltimore*, 215 Md. 206, 219 (1957); Chesley *v. Annapolis*, 933 A.2d 475, 176 Md. App. 413 (Md. App., 2007). The Court in *Cromwell*, *supra*, emphasized that the 'uniqueness' element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance

relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. As admitted during cross examination, within this neighborhood, the Property is similar to other rectangular lots, to other corner lots, to lots with mature trees, sheds and garages. It is neither large nor small; rather it is similar in size to other lots in the neighborhood. Accordingly, in this case, I find that the Property is not 'unique' for zoning purposes, based on the evidence presented.

If the Property is determined to be "unique," then the issue of practical difficulty or unreasonable hardship must be decided. Toward this end, a variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973); *Trinity Assembly of God v. People's Counsel*, 407 Md. 53 (2008). To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

> 1. Whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
>
> 2. Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Mclean at 214-215.

As applied here, the law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty

> or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722. The Court of Special Appeals in *Montgomery County v. Rotwein*, 176 Md. 716, 732-33 (2006) citing *Cromwell*, held that economic loss alone does not satisfy the 'practical difficulties' test:

> Economic loss alone does not necessarily satisfy the 'practical difficulties' test because, as we have previously observed, 'every person requesting a variance can indicate some economic loss.' *Cromwell* at 715…..Indeed, to grant a variance application any time economic loss is asserted, we have warned, 'would make a mockery of the zoning program.

As applied here, in the event that an appellate court would find that the Property is 'unique', I find that the facts here do not satisfy the 'practical difficulties' test to justify approval of the variance. Indeed, as demonstrated by Mr. McCann, the proposed pool can be located in the rear yard. The Petitioners need to make choices about whether they desire a pool or the existing arrangement of items in the rear yard. First, applying the 3-part test in *McLean*, there was no evidence that not having a pool in the right side yard would unreasonably prevent the Petitioners' use of the Property as a home. While a pool in the side yard might be a nice feature, I cannot find that not having a pool would deprive the Petitioners 'use' of their Property. Indeed, the fact that the Property is improved with a variety of recreational amenities such as a 3-car garage, basketball court, stone patio, fish pond and stone pathways confirm that the Petitioners are maximizing the use of the Property. Accordingly, approving a pool in the side yard would be for the convenience of the Petitioners only which is contrary to the variance case law. I find that the Petitioners' alleged practical difficulty is the result of a self-imposed hardship created by the choice of recreational amenities in the rear yard.

Second, I cannot find that denying a pool in the side yard would cause 'substantial injustice' to the Petitioners. At worst, the size of the pool would be reduced, the pool could be moved to the rear yard, and/or constructing a pool in the rear yard may (or may not) cost more money. Conversely, I find that granting this variance would cause injustice to Dr. Gichtin and subsequent owners of his property, particularly in light of the fact that there are no pools located in the side yards of homes in the Dumbarton neighborhood. Variance relief runs with the land and the proposed relief here would negatively impact this established neighborhood.

THEREFORE, IT IS ORDERED, this **4th** day of **October 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §400.1 to approve an accessory structure (pool) in the right side yard in lieu of the required rear yard only is hereby **DENIED**.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

IN RE: PETITION FOR VARIANCE **(2203 Forest Ridge Road)** 8th Election District 3rd Council District Gregory Schaub and Karen Schaub	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO: 2021-0162-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by the Petitioners, Gregory and Karen Schaub ("Petitioners") for property located 2203 Forest Ridge Road, Timonium (the "Property"). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations ("BCZR"), §400.1 to approve an accessory structure (above-ground pool) in the side yard in lieu of the required rear yard only.

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. Petitioners appeared, pro se, at the hearing in support of their Petition. Many neighbors were present and testified in opposition to this Variance request. A Zoning Advisory Committee ("ZAC") comment was received from Department of Public Works & Transportation ("DPWT") which agency noted that the proposed above-ground pool is located in the existing drainage and utility easement and must be moved.

The Property is approximately 41,304 sf. and is improved with a 2-story home built in 1971 which fronts on Forest Ridge Rd. The Property is zoned Density Residential (DR 2). Mr. Schaub explained the site plan and the need for the variance relief. (Pet. Exs. 1 and 2). The Property is shaped wider in the rear than in the front. (Pet. Ex. 2). Outside of the western boundary line of the

Property is the drainage and utility easement noted by DPWT. The request for Variance relief here arose out of a Code Enforcement citation for the installation of an above-ground pool located on the western side yard. The above-ground pool measures 12 ft. x 24 ft. (288 sf). (Pet. Ex. 2). It is proposed to be located 5 ft. from the western Property line, an area where the Petitioners previously graded and leveled. (Pet. Ex. 2). The Petitioners propose to screen the pool with landscaping.

Photographs of the Property were submitted showing that the rear of the Property has a concrete patio on a level area surrounded by a retaining wall. (Pet. Ex. 4). The topography in the rear gradually rises in slope and is lined with trees on the northern boundary. (Id.). Photographs of the side yard show the proposed location of the pool. Petitioners emphasized that the pool is seasonal. Petitioners assert that they will suffer a practical difficulty and unreasonable hardship if the above-ground pool had to be located in the rear yard due to the grading required. Additionally, if the pool were located on the rear patio, Petitioners would not be able to use the patio.

There were many Protestants/neighbors who testified in opposition. Each person in attendance was also permitted to ask questions of the Petitioners and the Petitioners were permitted to ask questions of the Protestants. The Protestants were as follows:

1. Frank Hodgetts - 2202 Forest Ridge Rd.
2. Julie Hubbard, President Pine Valley Valleywood Comm. Assoc., PO Box 434, Timonium, 21094
3. Kathy Langan – 2105 Forest Ridge Rd.
4. Mark McCoy – 309 Jody Way
5. Jennifer Stick – 313 Gail Ridge Rd.
6. Joan Mahan – 2114 Old Pine Rd.
7. Kim Walz – 315 Presway
8. Chris Richardson – 2137 Pine Valley Dr.
9. Rebekah Richardson – 2137 Pine Valley Dr.
10. Susan Hyde – 220 Burning Tree Rd.
11. David Alexander – 2104 Forest Ridge Rd.

In support of his position that the pool location will have a negative impact on adjacent and nearby properties, Frank Hodgett used My Neighborhood map and measured the distance from the pool location to 2205 Forest Ridge Rd. as 120.3 ft., and the distance to 2204 Forest Ridge Rd. as 172.5 ft. (Prot. Hodgett, Exs. A1, A2). Mr. Hodgett's home is directly across the street from the pool and he provided a photograph of his view of the pool when it has installed. (Prot. Hodgett, Ex. C). Mr. Hodgett argued that the pool can be located in the rear yard and provided an exhibit showing that there is a 779.4 sf. area in the location of the rear patio where a 288 sf. pool could be located. (Prot. Hodgett, Ex. B). Mr. Hodgett also testified that the Property is not unique as 95% of the rear yards in the neighborhood have sloping yards and trees. He believes there are no special circumstances or conditions which would create an undue burden on the Petitioners to install the above-ground pool in the rear yard. In reviewing the topography, Mr. Hodgett indicated that the slope is not as severe as alleged by the Petitioners. Mr. Hodgett testified that the cost to level an area in the rear yard would be comparable to the cost that the Petitioners spent renting equipment to level and grade the side yard.

Kathy Langan testified in opposition and also submitted exhibits. A rendering of the type of above-ground pool was provided. (Prot. Langan, Ex. B). Several photographs of the pool location from different angles were also provided. (Prot. Langan, Ex. A, H). In Exhibit C, Ms. Langan testified that the property line from My Neighborhood shows the Petitioners' western boundary line crossing through their front walkway. As such, Ms. Langan agrees with DPWT that the location of the pool is in the Utility and Drainage Easement. (Prot. Langan, Ex. C-1). She also highlighted a discrepancy between the proposed 5 ft. setback indicated on the site plan and the proposed 10 ft. setback in the Petitioners' narrative as in Pet. Ex. 1. (Prot. Langan, Ex. C-2). Ms. Langan provided signatures of property owners who are opposed to the Petition. (Prot. Langan,

Ex. E).

Jennifer Stick, who is licensed appraiser with 44 years of experience, who has previously been admitted as an expert witness, was admitted here as an expert appraiser. It was her opinion that the above-ground pool in the side yard is a safety hazard for neighborhood children and would be an attractive nuisance. She opined that property values will decrease in the neighborhood and houses will be less marketable if the Petition is granted. She indicated that above-ground pools negatively impacts property values. She agreed that the rear yard is large enough to accommodate this pool.

Kim Walz reiterated that the neighborhood has steep areas but that it is not overly burdensome for property owners who wish to have pools in their rear yards. Because there will be a 3-sided view of this pool in this side yard, she noted that shrubs will not be tall enough to adequately screen the pool; the 24 ft. length of the pool which will remain visible. She highlighted that it would be a very tight space to plant a tree in a 5 ft. setback. Ms. Walz foresees that while the Petitioners indicated that they would put the ladder to the pool away when not using it, there will be situations, whether emergency or not, when the ladder will be left on the pool and will be used by unattended children.

Julie Hubbard, President of Pine Valley Valleywood Community Association acknowledged that Restrictive Covenants which apply to the Property in this neighborhood would need to be separately enforced in a court proceeding and are not evidence here. Ms. Hubbard testified that of the 460 homes within the Community Association area, only a small fraction have pools. She reiterated that the Community Association's official position is against this above-ground pool as it is an eye sore and visible from the Forest Ridge Rd.

Mark McCoy emphasized that properties on Forest Ridge Rd. and Jody Way have hills and trees in the rear. While it may be difficult to put construct a pool, the slope does not make the Property unique.

Both Chris Richardson and Rebekah Richardson brought a different perspective. Mr. Richardson testified that property values are about supply and demand and not someone's perception of what is an eye sore. He indicated that the neighborhood has other eye sores such as sheds and fences in need of repair. Ms. Richardson testified that most of the properties in the neighborhood are flat and that the Petition should be granted if there is an economic hardship.

Susan Hyde testified that she has lived in the neighborhood since 2002 and is concerned about the above ground pool in this side yard. She stated that most properties do not have pools but if they do, the pools are in the rear yard. She pointed out that the Petitioners have not suffered an economic hardship simply because grading the rear yard may cost more money.

A variance request involves a two-step process, summarized as follows:

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

Cromwell v. Ward, 102 Md. App. 691 (1995). In requiring a finding of "uniqueness", the Court of Special Appeals in *Cromwell* referred to the definition of "uniqueness" provided in *North v. St. Mary's County*, 99 Md. App. 502, 514 (1993):

> 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 has 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 in bearing or parting walls.

Cromwell at 710. The *Cromwell* Court connected the variance law in Baltimore County with the law in Maryland and emphasized that:

> 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.

Id. When comparing the property at issue with other properties to determine 'uniqueness,' the terms 'area', 'neighborhood' and district have all been used interchangeably. (*Easter v. Mayor & City Council*, 195 Md. 395, 400 (1950) citing *Rathkopf, Zoning, 2d Ed*., p. 215); *Marino v. City of Baltimore*, 215 Md. 206, 219 (1957); Chesley *v. Annapolis*, 933 A.2d 475, 176 Md. App. 413 (Md. App., 2007). The Court in *Cromwell*, *supra*, emphasized that the 'uniqueness' element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. The evidence presented here was overwhelmingly that the Property is similar to other properties in the neighborhood in that the rear yards have both slopes and trees. Indeed, the rear yard is a larger area than the side yard. Accordingly, in this case, I find that the Property is not 'unique' for zoning purposes, based on the evidence presented.

If the Property is determined to be "unique," then the issue of practical difficulty or unreasonable hardship must be decided. Toward this end, a variance may be granted where strict application of the zoning regulations would cause practical difficulty to a petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973); *Trinity Assembly of God v. People's Counsel*, 407 Md. 53

(2008). To prove practical difficulty for an area variance, a petitioner must produce evidence to allow the following questions to be answered affirmatively:

> 1. Whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
>
> 2. Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Mclean at 214-215.

The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722. The Court of Special Appeals in *Montgomery County v. Rotwein*, 176 Md. 716, 732-33 (2006) citing *Cromwell*, held that economic loss alone does not satisfy the 'practical difficulties' test:

> Economic loss alone does not necessarily satisfy the 'practical difficulties' test because, as we have previously observed, 'every person requesting a variance can indicate some economic loss.' *Cromwell* at 715…..Indeed, to grant a variance application any time economic loss is asserted, we have warned, 'would make a mockery of the zoning program.

As applied here, in the event that an appellate court would find that the Property is 'unique', I find that the facts here do not satisfy the 'practical difficulties' test to justify approval of the

variance. First, because this is an above-ground pool, it is seasonally set up and dismantled. Indeed, as demonstrated by the photographs and the site plan provided by Mr. Hodgett, the proposed aboveground pool can be located in the rear yard. It may take grading an area to make it flat or using the patio area while the pool is seasonably used. Thus, I find that the Petitioners' alleged practical difficulty is the result of a self-imposed hardship created by the choice of recreational amenities in the rear yard.

Applying the 3-part test in *McLean*, there was no evidence that not having a pool in the proposed side yard would unreasonably prevent the Petitioners' use of the Property as a 'home.' While a pool in the side yard might be a nice feature, and a more convenient place for the Petitioners, the Petitioners are not deprived of the 'use' of their Property if they cannot erect this above-ground pool. Indeed, the fact that the Property is improved with a concrete patio, retaining wall, grass area and garden, confirm that the Petitioners are maximizing the use of their Property. However, approving a pool in the side yard would be for the convenience of the Petitioners only and contrary to the variance case law.

Second, I cannot find that denying a pool in the side yard would cause 'substantial injustice' to the Petitioners. At worst, the Petitioners would need to level an area in the rear yard as they did in the size yard, or use the patio area for their seasonal use of this pool, dismantling it when not in season. The evidence was inconclusive at best that grading an area in the rear yard would be cost prohibitive. Even if there is a cost to grade, the case law is clear that economic hardship cannot form the basis for approving a variance request.

Conversely, I find that granting this variance would cause substantial injustice to this established neighborhood, in that variance relief runs with the land. In particular, I make this finding in light of the fact that very few homes have pools, much less above-ground pools, and that to the

extent they exist, the pools are located in the rear yards. Given the open space surrounding this side yard, I find that this above-ground pool, in this particular side yard, will be visible from 3 sides, even if landscaping is added to screen it. I find both the size and location of this pool will present an open and obvious danger to neighborhood children and even to children who do not reside in the neighborhood; it is an attraction sitting in plain view. On the other hand, if this above-ground pool is set up in the Petitioners' rear yard, it would substantially reduce the risk of a child drowning as it is blocked from view and contained within the rear property lines behind the house. Thus, I agree with the Protestants that the proposed relief here would negatively impact this established neighborhood.

THEREFORE, IT IS ORDERED, this **5th** day of **October 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §400.1 to approve an accessory structure (pool) in the side yard in lieu of the required rear yard only is hereby **DENIED**.

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

Signed
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

IN RE: PETITION FOR VARIANCE **(808 Dartmoor Road)**	*	BEFORE THE
8th Election District 3rd Council District	*	OFFICE OF ADMINISTRATIVE
Danielle Vaziri & Francis Bonadio, Jr.	*	HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO. 2021-0215-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by Danielle Vaziri and Francis Bonadio, Jr., (the "Petitioners") for property located at 808 Dartmoor Road (the "Property"). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations ("BCZR"), §1B02.3.C.1 to permit a proposed dwelling addition (attached garage) with a side setback of 5 ft. in lieu of the required 10 ft.

This matter was originally filed as an Administrative Variance, with a closing date of August 16, 2021. On August 16, 2021, David Satterfield, 808 Dartmoor Rd. filed a formal demand for a hearing. 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, with the public notice on the sign posting indicating that the hearing would be conducted virtually. The Petitioners appeared at the hearing. David M. Satterfield did not appear.

A Zoning Advisory Committee ("ZAC") comment was received from the Department of Environmental Protection and Sustainability ("DEPS") which agency did not oppose the requested relief.

The Property is approximately 13,554 sf and is improved with a split-level home built in or about 1965. The Property was created on *Plat Two Meadowland* in or around June of 1964

which Plat includes other similarly sized yards and homes. (Pet. Ex. 11). The Property is enclosed with a wooden fence. (Pet. Exs. 1, 2, 6, 7, 8). It zoned DR 3.5. (Pet. Exs. 12A, 12B). Street view photographs of the Property were submitted. (Pet. Exs. 1-9).

Petitioners stated that they desire to construct an attached garage measuring 12x28 on the side of the house as shown on a site plan (the "Site Plan"). (Pet. Ex. 10). The garage is attached by only 8 ft. (*Id*.). They reasoned that, as shown in the photographs of the rear yard, they do not want to construct the detached garage in the rear yard because there is a tree which they believe would be negatively impacted and in particular the critical root zone of that tree. The photographs of the rear yard show a tree with a round, mulched area at its base, in which sits a table and chairs as well as a children's play area. The photograph of the side yard where Petitioner proposes to construct the garage shows a decline in grade next to Mr. Satterfield's property. (Pet. Ex. 6). No evidence was submitted in regard to whether the tree was a specimen tree and no expert testimony was provided in regard to a critical root zone.

It is the location of the proposed attached garage on the side yard that requires variance relief from the side setback next to Mr. Satterfield's property. While the Site Plan and Affidavit filed for the Administrative Variance indicate that the Variance needed in one area is 0.3 ft., and in another 4.9 ft., the Petition requests a side yard setback of 5 ft. in lieu of the required 10 ft. Petitioners also argued that the other side of the house is next to a Forest Buffer so a garage cannot be constructed there. Upon inquiry, Petitioners indicate that no other properties in the neighborhood have side yard garages.

A variance request involves a two-step process, summarized as follows:

(1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and

(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

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

As shown on the 1964 Plat and My Neighborhood Zoning Maps, I find that the Property is unique due to its irregular shape. (Pet. Exs. 11, 12). However, the practical difficulty alleged by the Petitioners (that the critical root zone of a tree is disturbed) was only speculation. The location of the attached garage is for the convenience of the Petitioners as moving the garage to the rear yard (such that it would become detached) would be closer to the mulched area which has a table, chairs and children's play area. The hardship is therefore self-imposed. BCZR, §307.1. *Montgomery County v. Rotwein*, 169 Md. App. 716, 906 A.2d 959 (2006). *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). There was no evidence that the tree is a specimen tree which would require the approval of a Forest Conservation Variance prior to removal. There was no expert testimony in regard to the alleged critical root zone.

Petitioners can still make reasonable use of their Property without the granting of the requested variance and they can still construct a detached garage in their rear yard without a variance provided they meet the area setback and height regulations. The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Cromwell, at 722.

While the requested setback may seem inconsequential in terms of the amount, the consequences to the peace and enjoyment of the Satterfield property, including the increased water

run-off from the garage down the slope and closer to his home, are not. There was no evidence provided of storm water management being installed, or the control of water flow away from the Satterfield property. As such, I find that the requested variance relief cannot be granted in strict harmony with the spirit and intent of the BCZR, without injury to the health, safety or general welfare of Mr. Satterfield's property. Moreover, it is significant that there are no other properties in the neighborhood which have attached garages in the side yards other than those garages which were built as part of the home. The reason for the lack of side yard garages is that this is an older subdivision which does not have sufficient areas of separation between the homes as required under the current BCZR. In my view, granting such a variance will also have an adverse domino effect on this established neighborhood of homes with limited yard sizes.

THEREFORE, IT IS ORDERED, this **3rd** day of **November, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §1B02.3.C.1 to permit a proposed dwelling addition (attached garage) with a side setback of 5 ft. in lieu of the required 10 ft. is hereby **DENIED**.

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

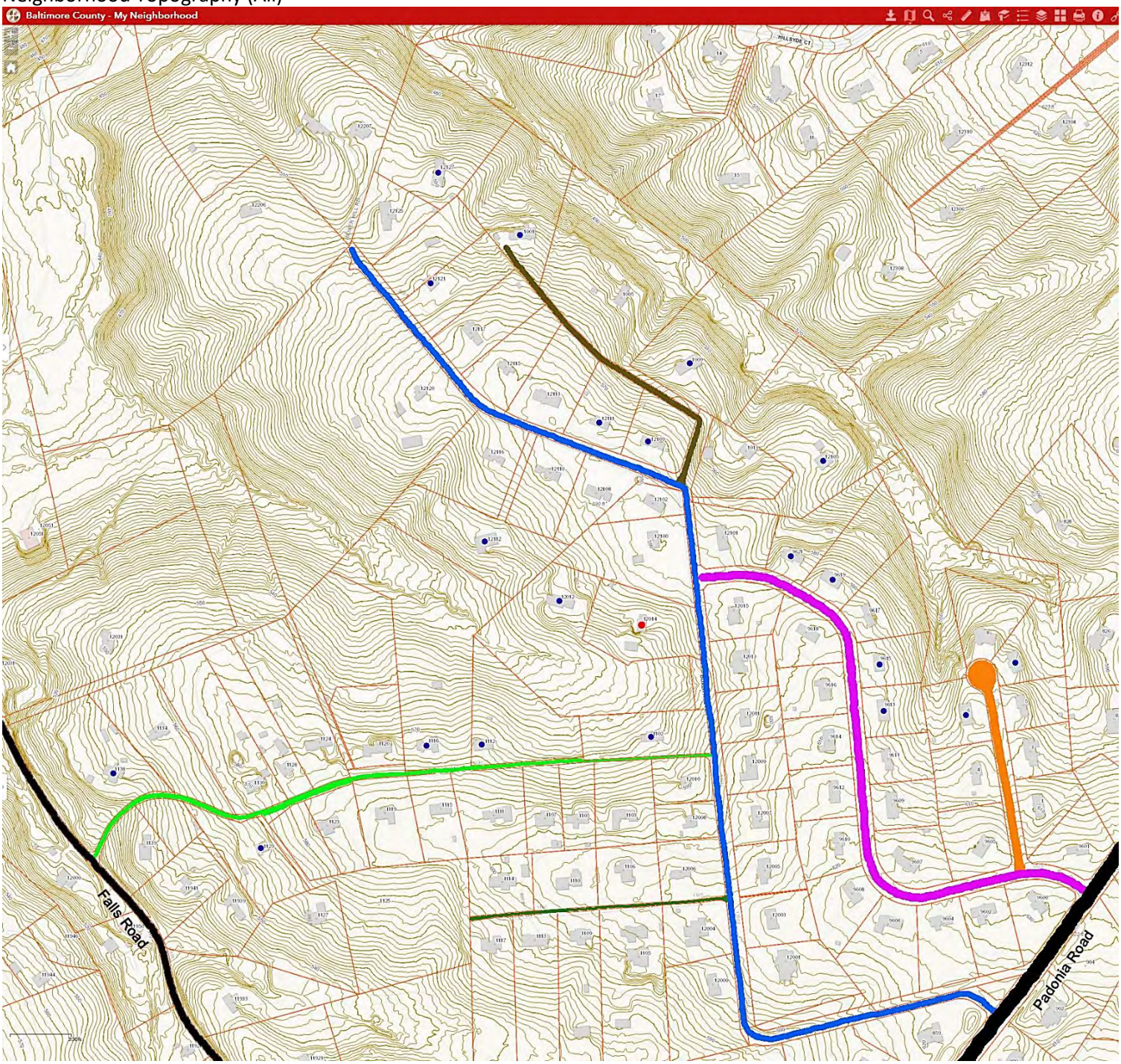
Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

Exhibit 5 Case #23-053-A

Neighborhood Topography (All)



Neighborhood Streets

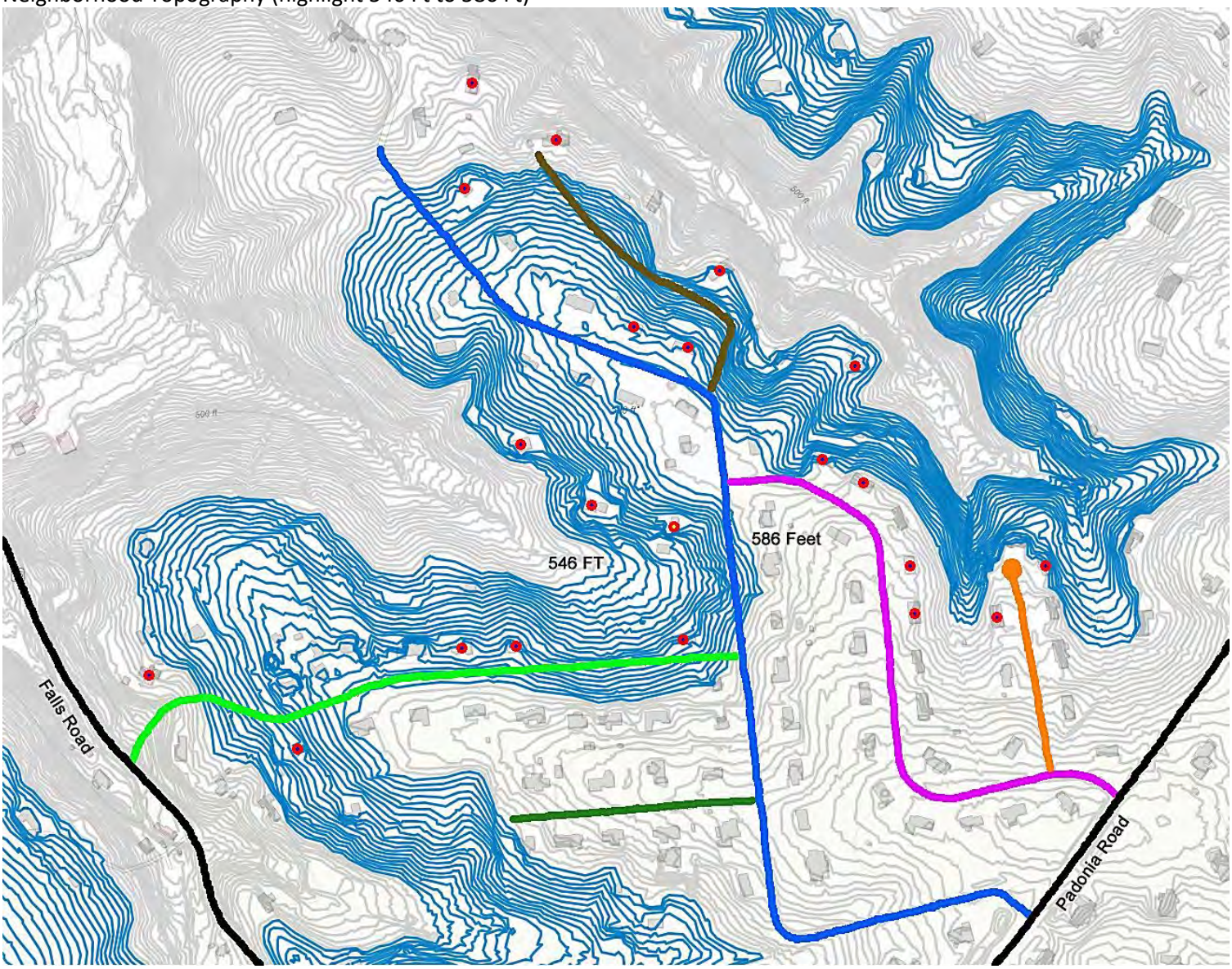
Boxer Hill Rd, Greenway Rd, Labrador Ln, Painter Ln, Justa Ln, Firwood Ct

= 12014 Boxer Hill Rd (Hallengren Residence)

= Other properties with similar characteristics to the Hallengren's property
(Shown in Exhibit 6)

Exhibit 5 Case #23-053-A

Neighborhood Topography (highlight 546 Ft to 586 Ft)



Neighborhood Streets

Boxer Hill Rd, Greenway Rd, Labrador Ln, Painter Ln, Justa Ln, Firwood Ct

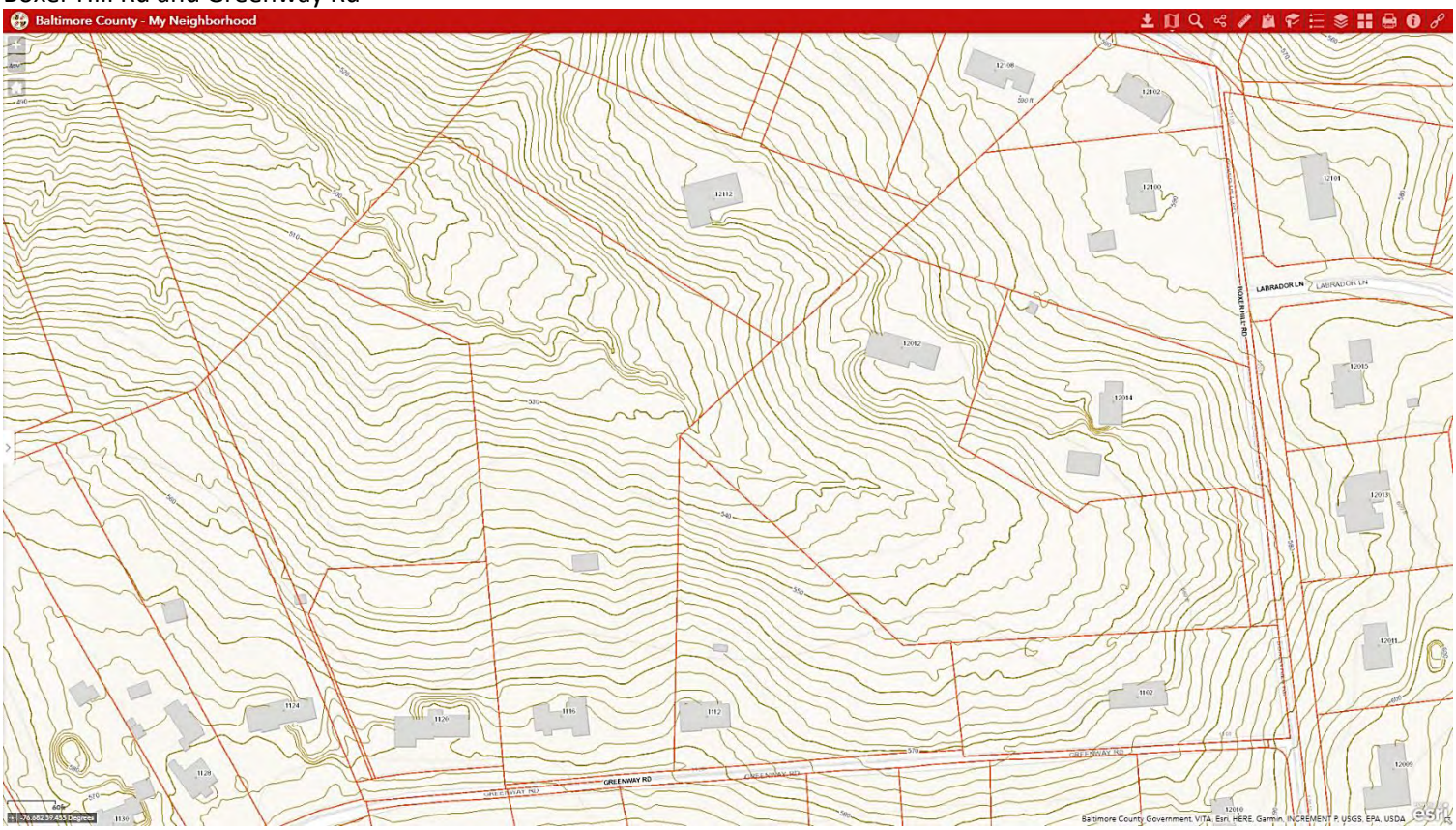
= 12014 Boxer Hill Rd (Hallengren Residence)

= Other properties with similar characteristics to the Hallengren's property
(Shown in Exhibit 6)

Exhibit 5 Case #23-053-A

Neighborhood Topography

Boxer Hill Rd and Greenway Rd



Greenway Rd

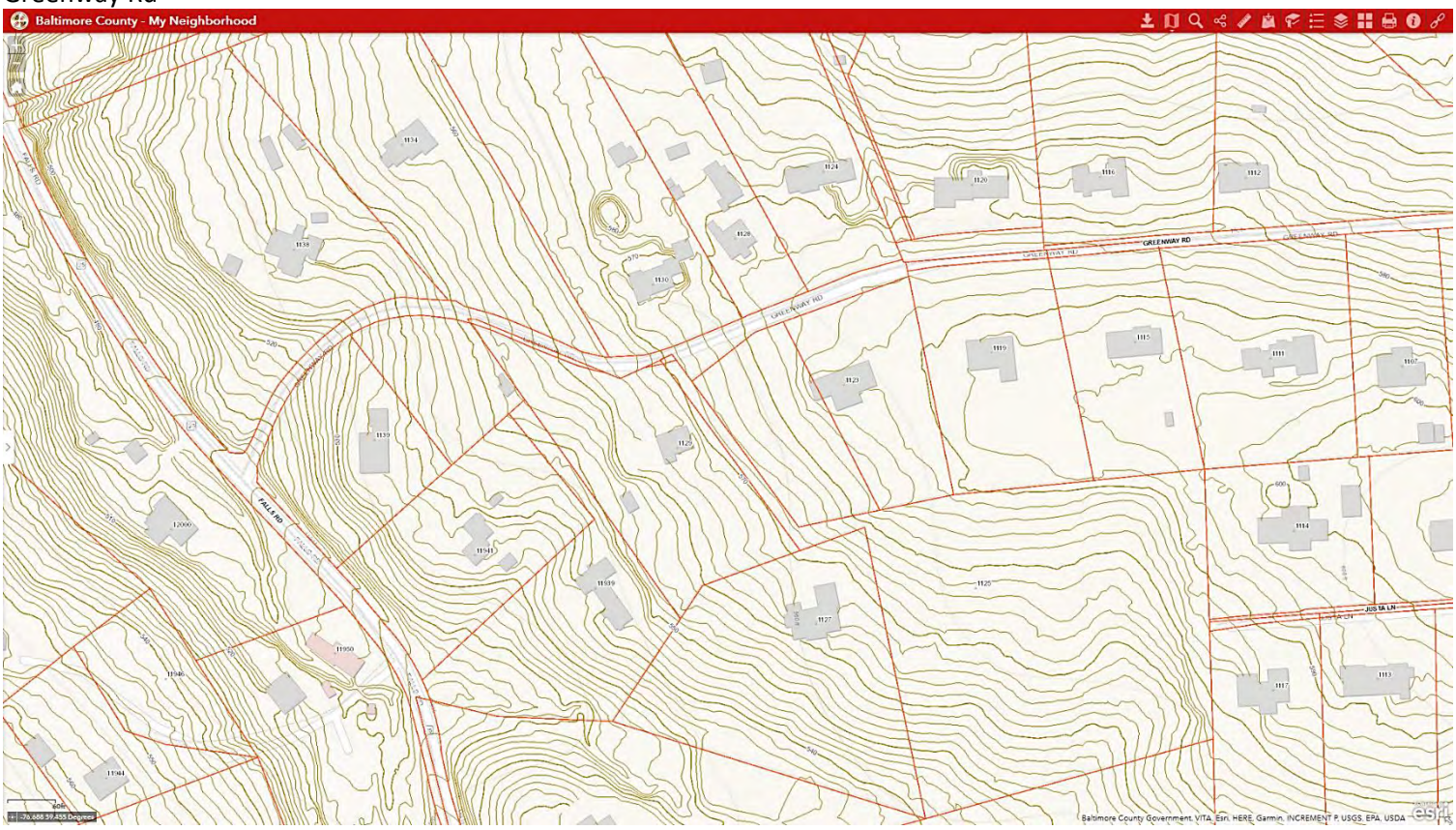
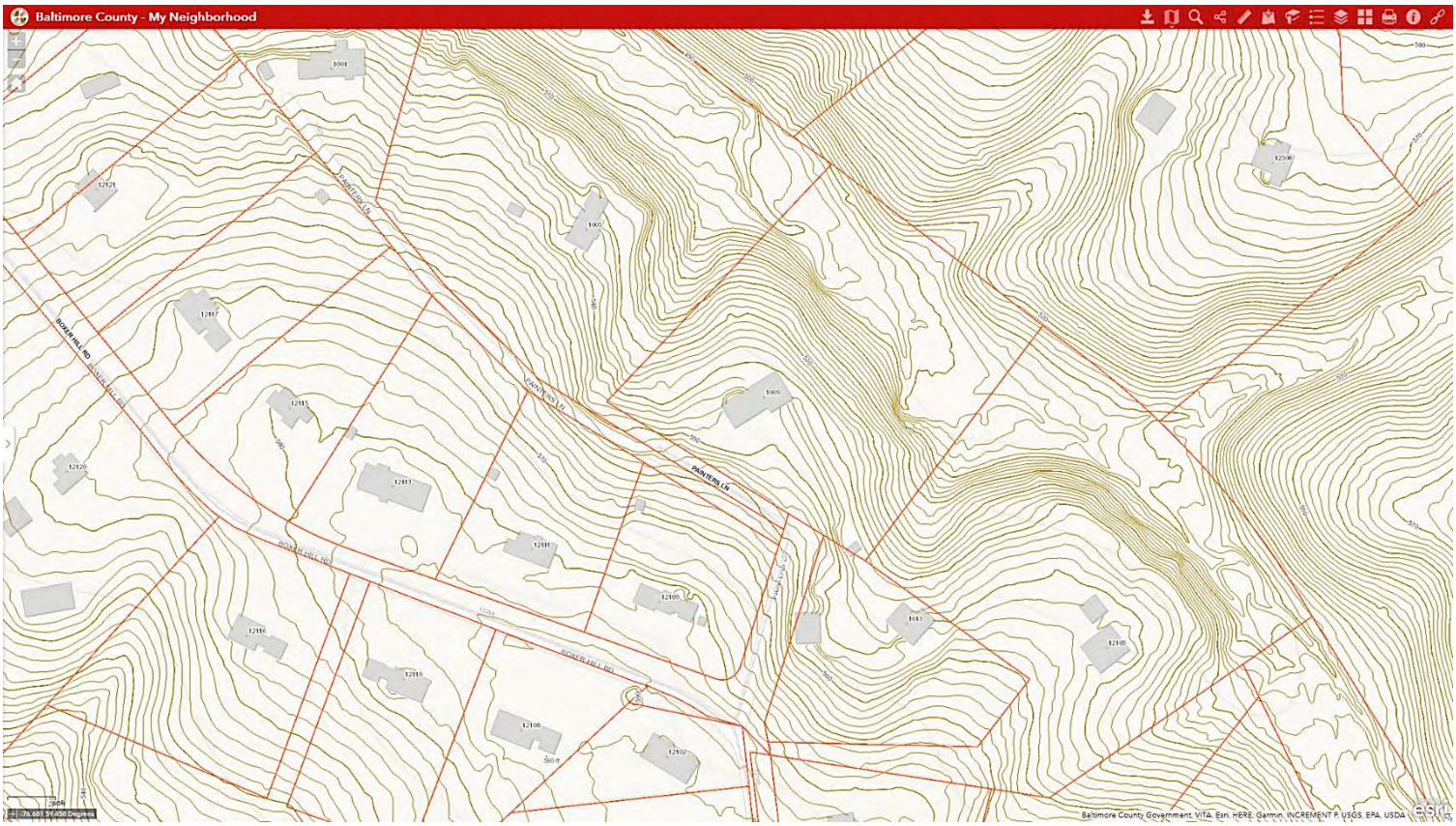


Exhibit 5 Case #23-053-A

Neighborhood Topography

Boxer Hill Rd and Painters Ln



Boxer Hill Rd and Painters Ln

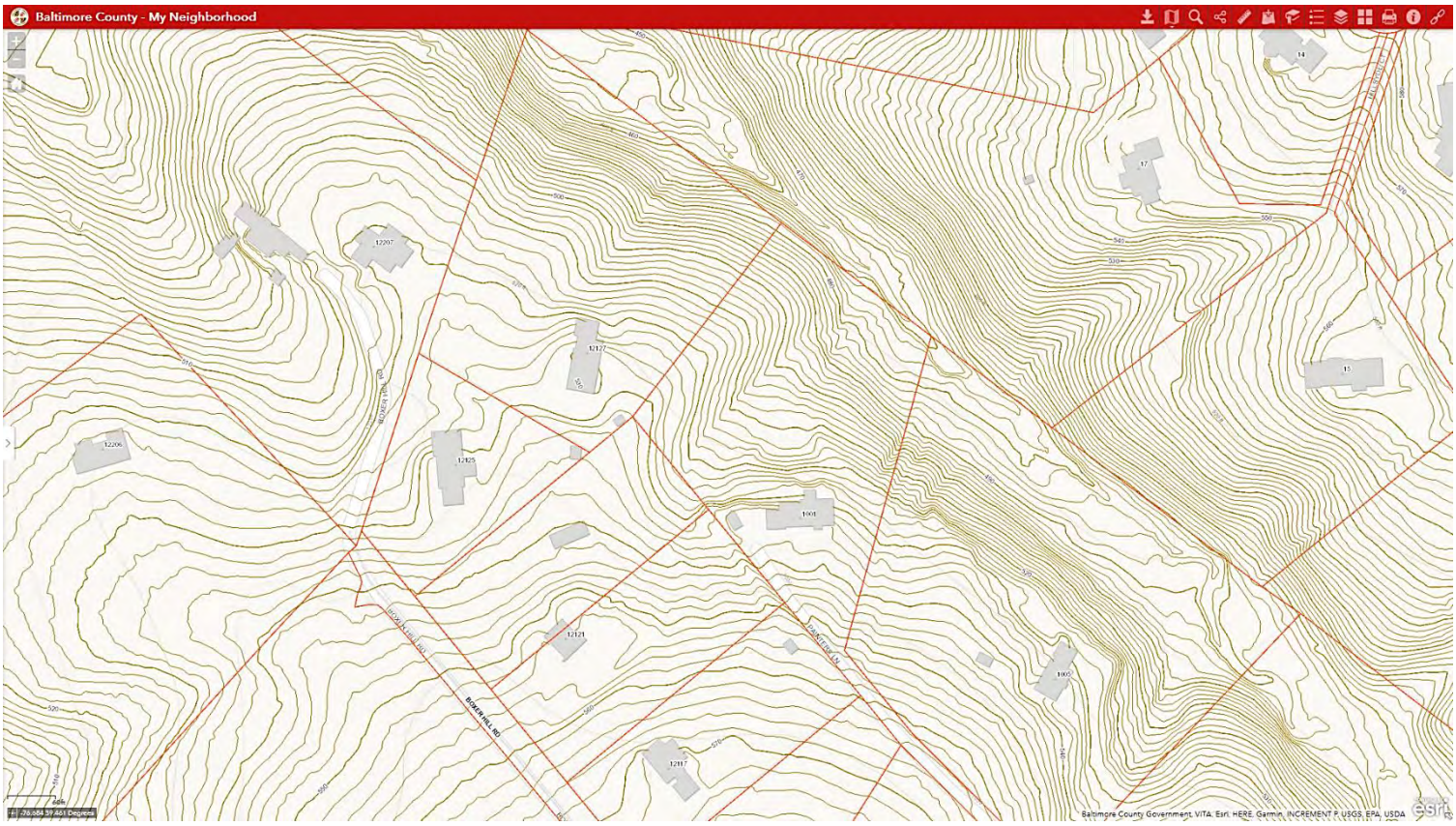
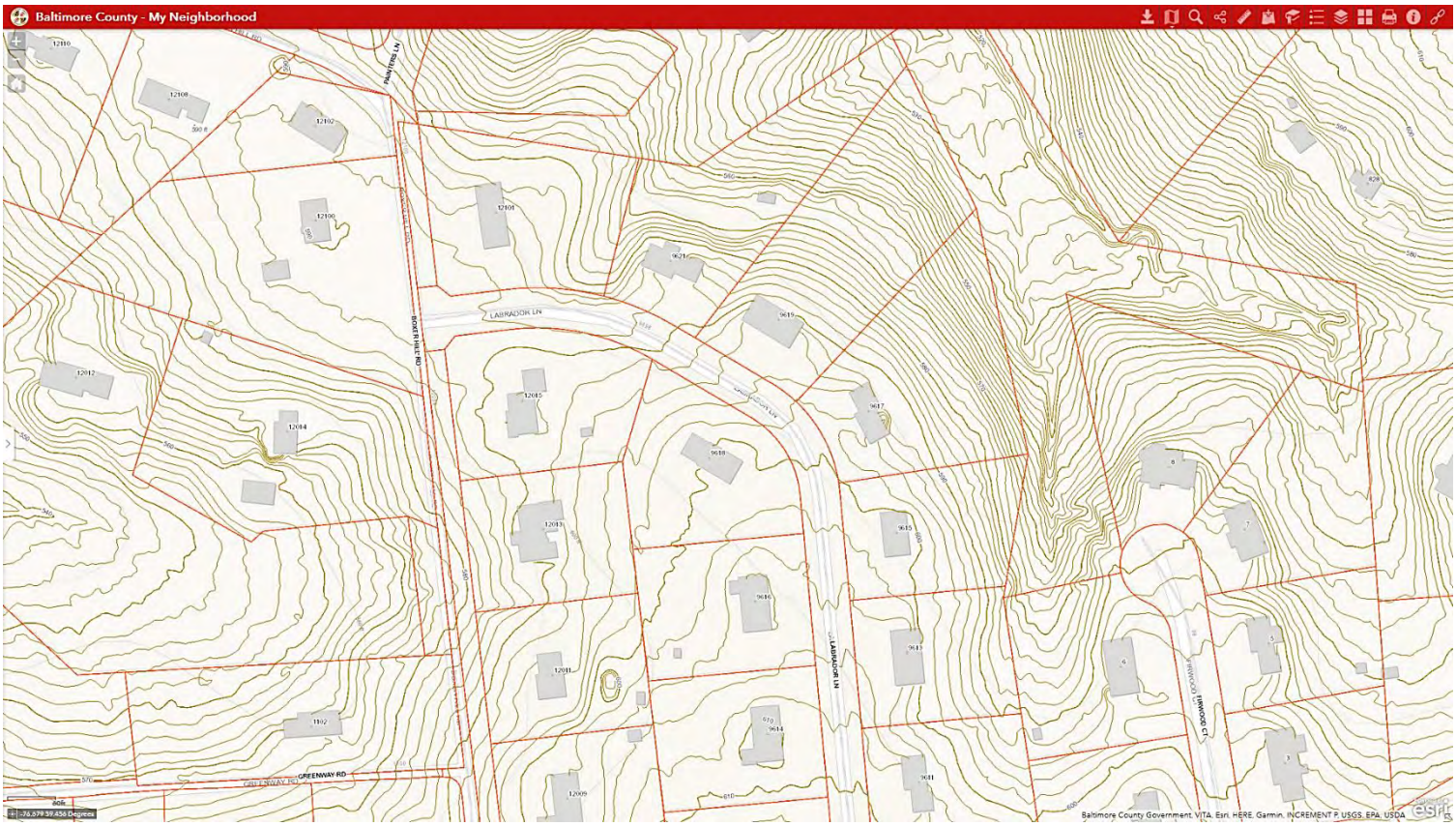


Exhibit 5 Case #23-053-A

Neighborhood Topography

Labrador Ln and Firwood Ct



Labrador Ln and Firwood Ct

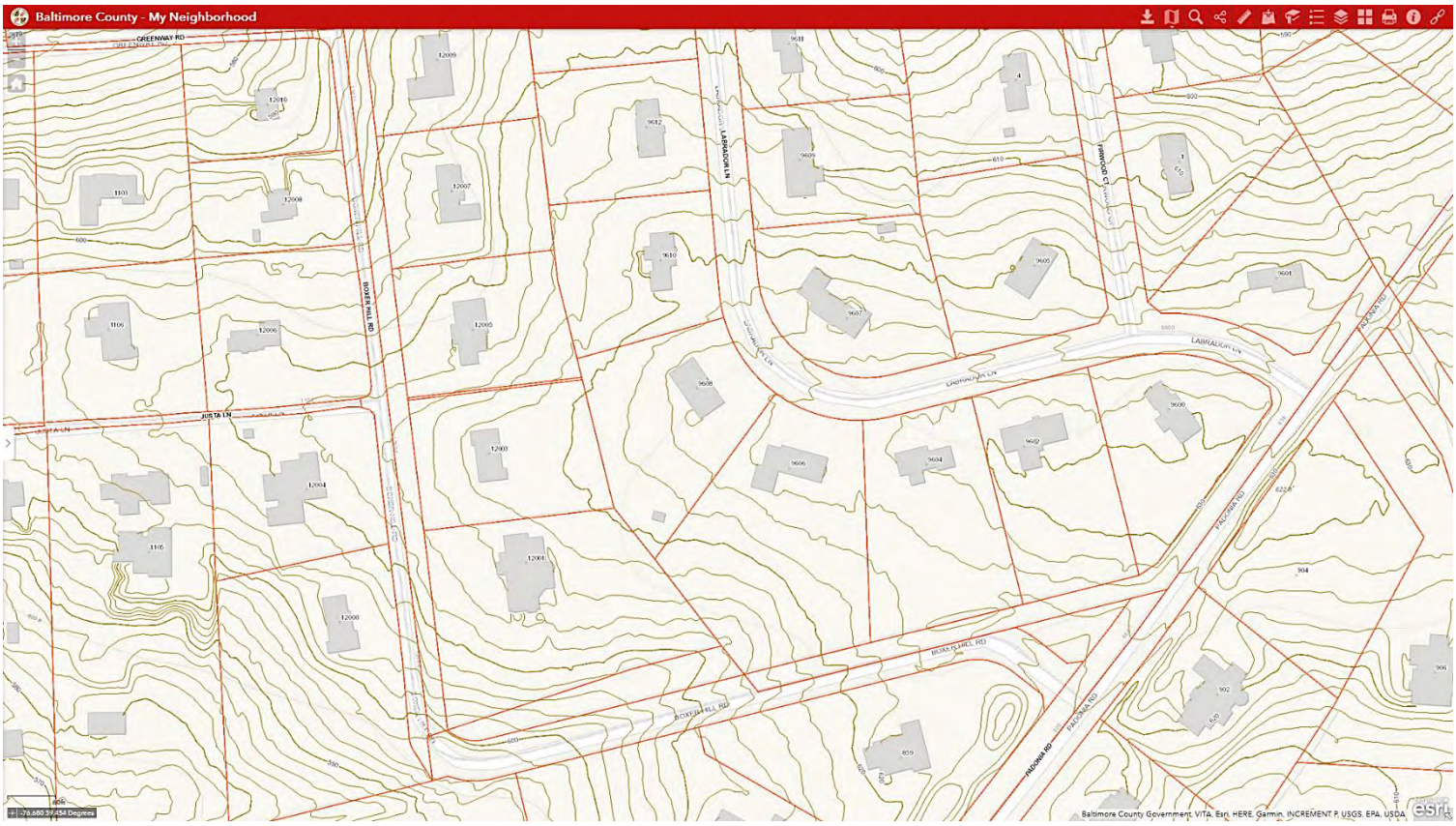
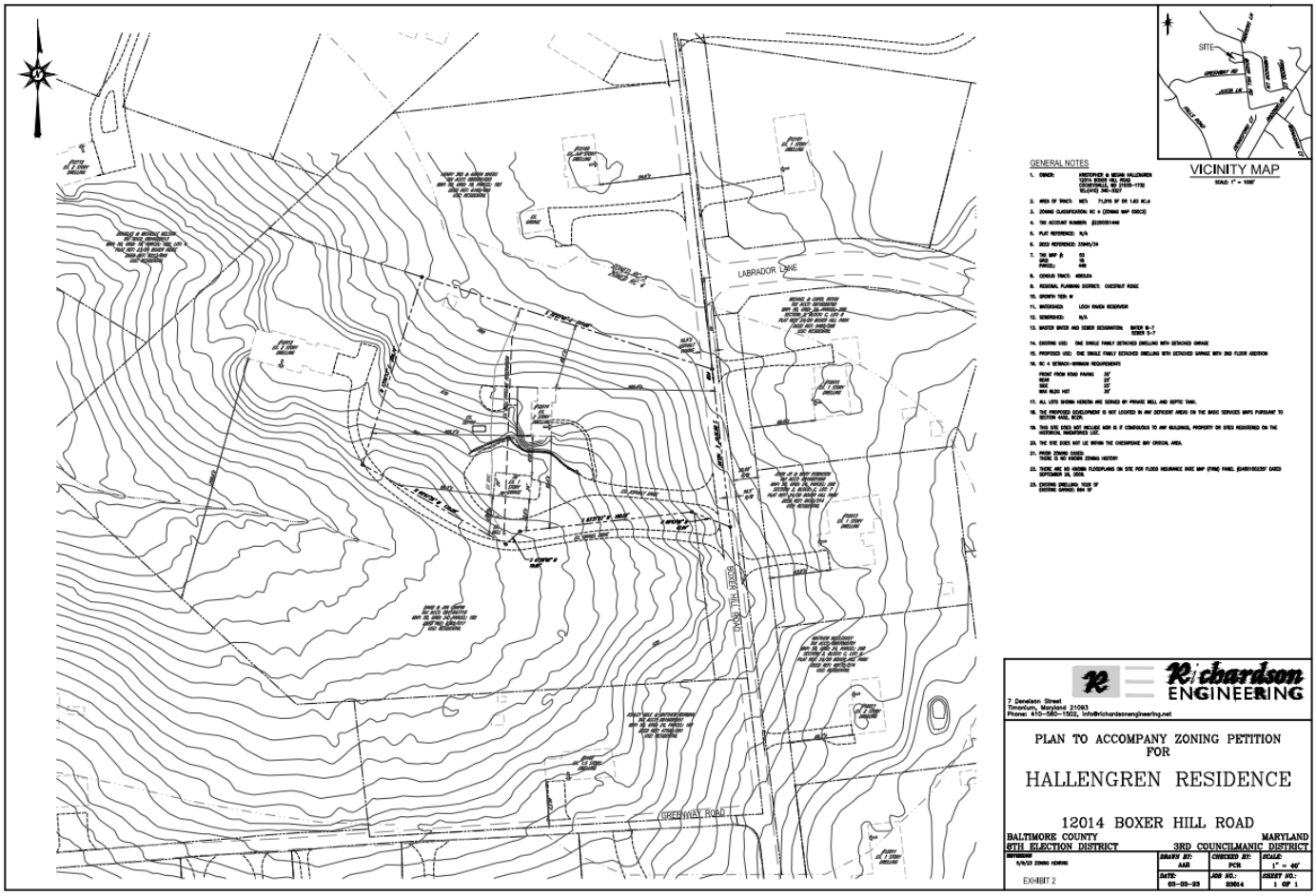


Exhibit 5 Case #23-053-A

Neighborhood Topography



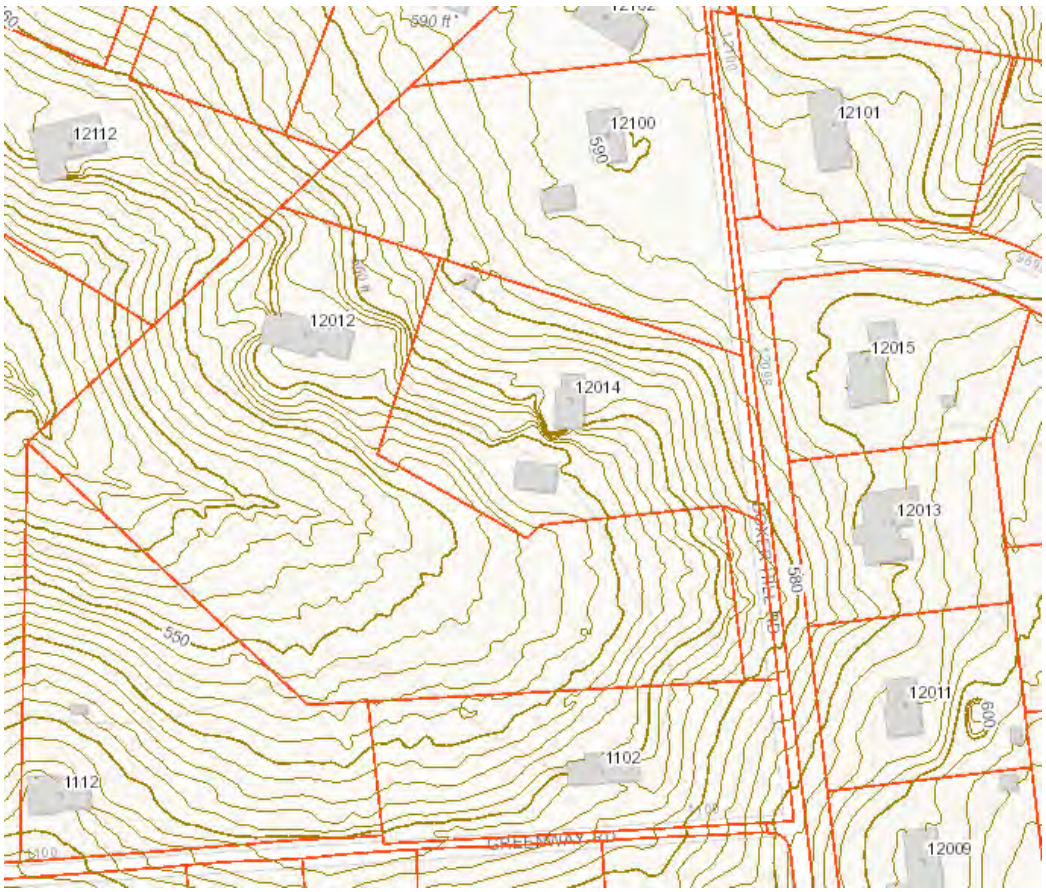
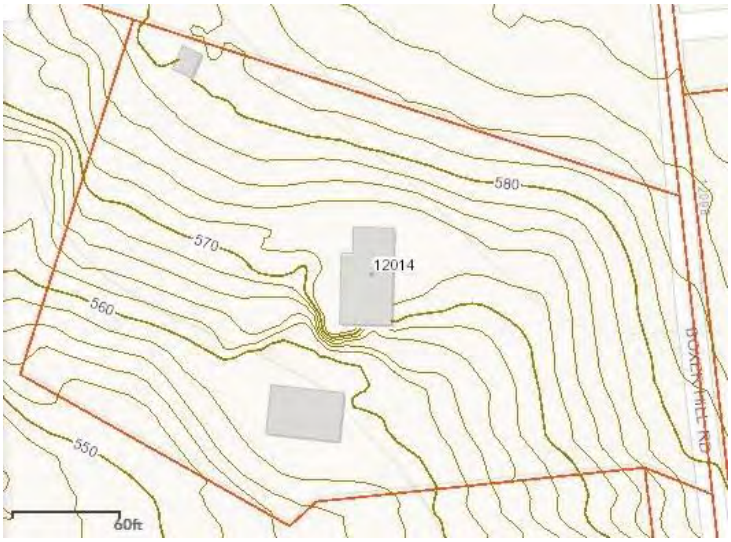


Exhibit 6 12014 Boxer Hill Rd Case #23-053-A

1.63 Acres Zone RC-4



Left Front (view from Rifkin residence)



Right Front



Right Side



Back Right

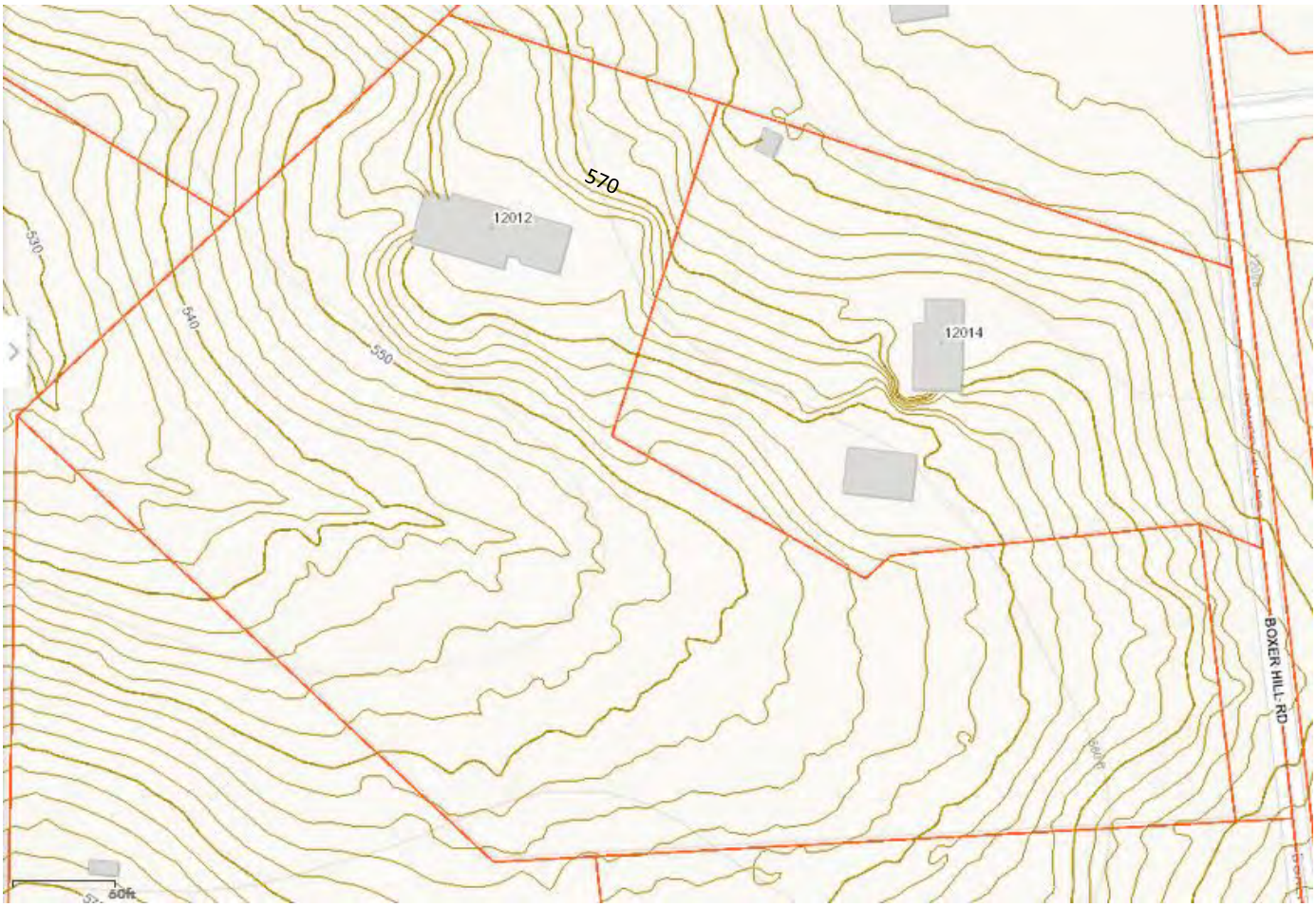


Back Left



Exhibit 6 12012 Boxer Hill Rd Case #23-053-A

4.06 Acres Zone RC-4



Back Left



Back Right





Home to Home Approx. 210 Feet / Property to Property 0 Feet

Exhibit 6 12112 Boxer Hill Rd Case #23-053-A

2.73 Acres Zone RC-4 / RC-5



Front



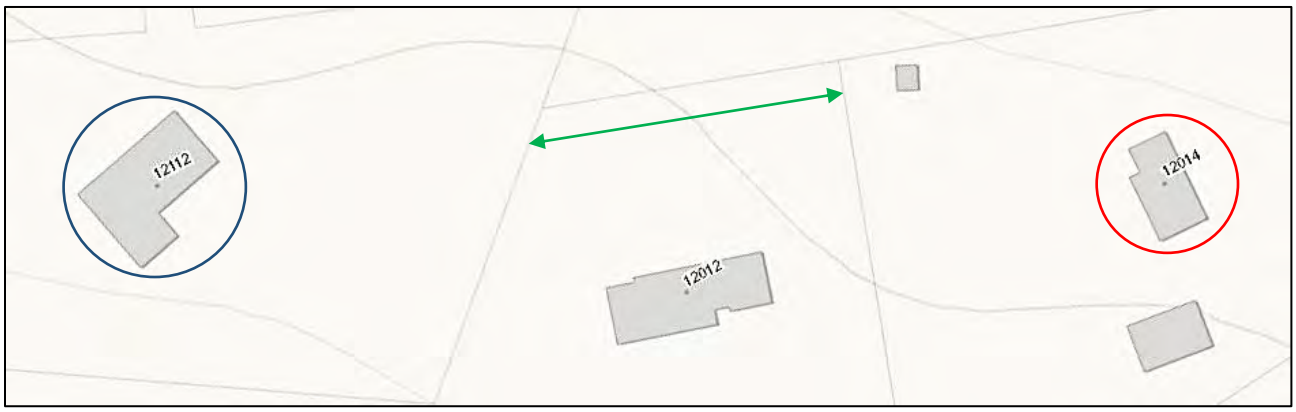


Left Side



Back

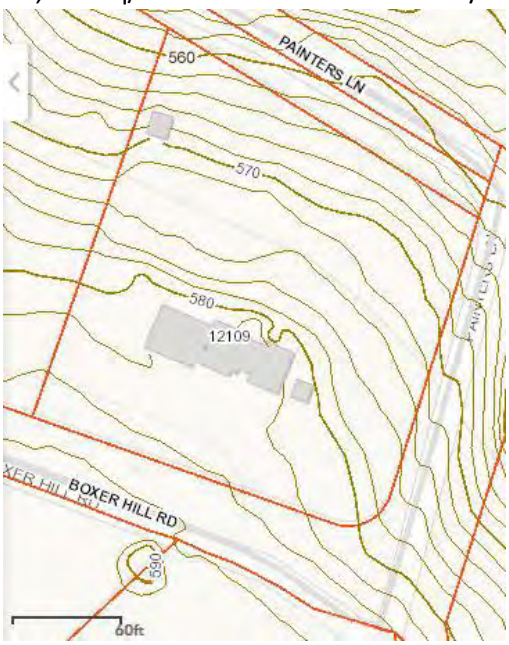




Home to Home Approx. 507 Feet / Property to Property Approx. 176 Feet (See Letter: Last Page)

Exhibit 6 12109 Boxer Hill Rd Case #23-053-A

40,075 Sq/Ft = 0.92 Acre Zone RC-4 / RC-5



Right Side

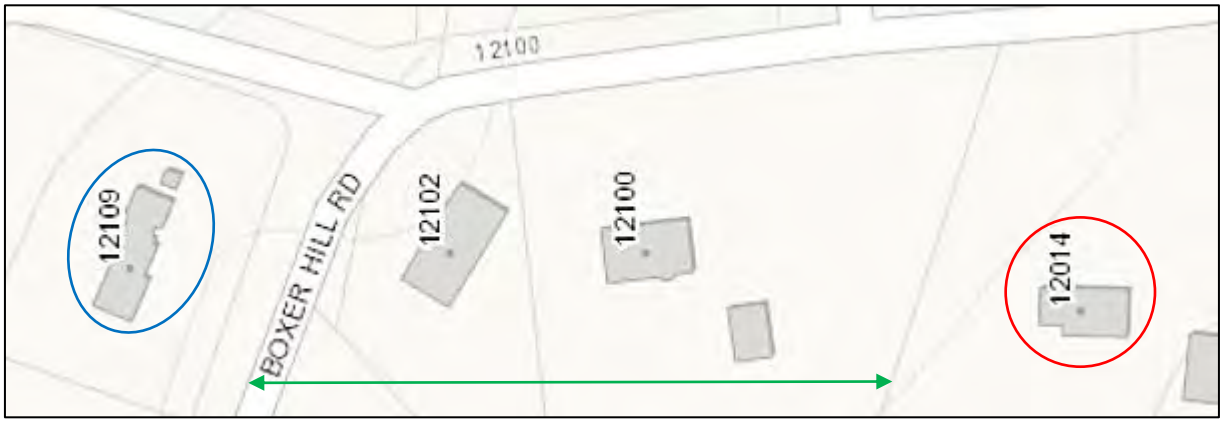


Back Left



Back Right

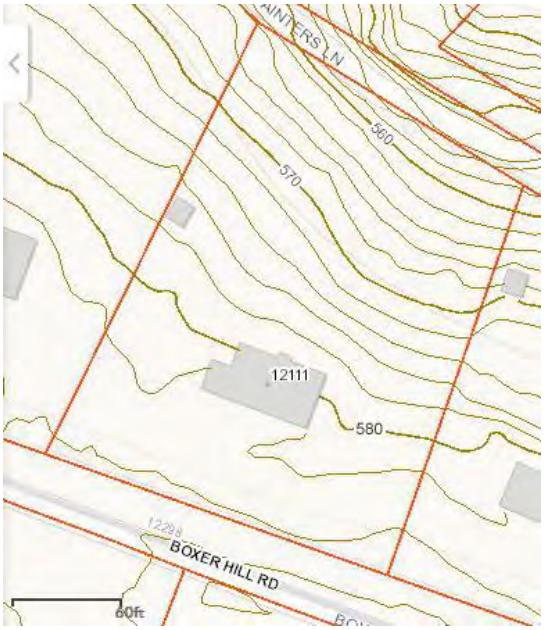




Home to Home Approx. 525 Feet / Property to Property Approx. 366 Feet

Exhibit 6 12111 Boxer Hill Rd Case #23-053-A

1.02 Acres Zone RC-5



Front Right Side

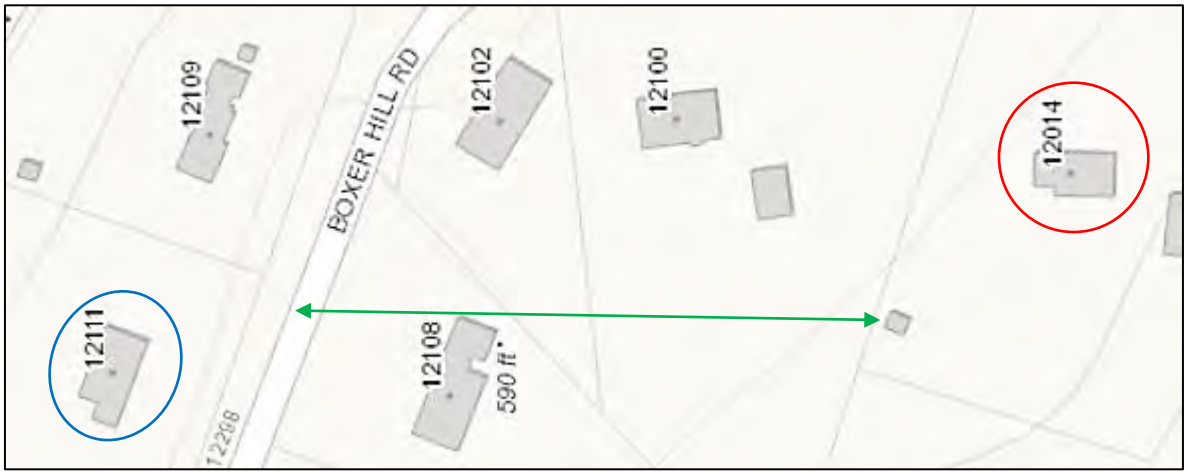


Back Left



Back Right

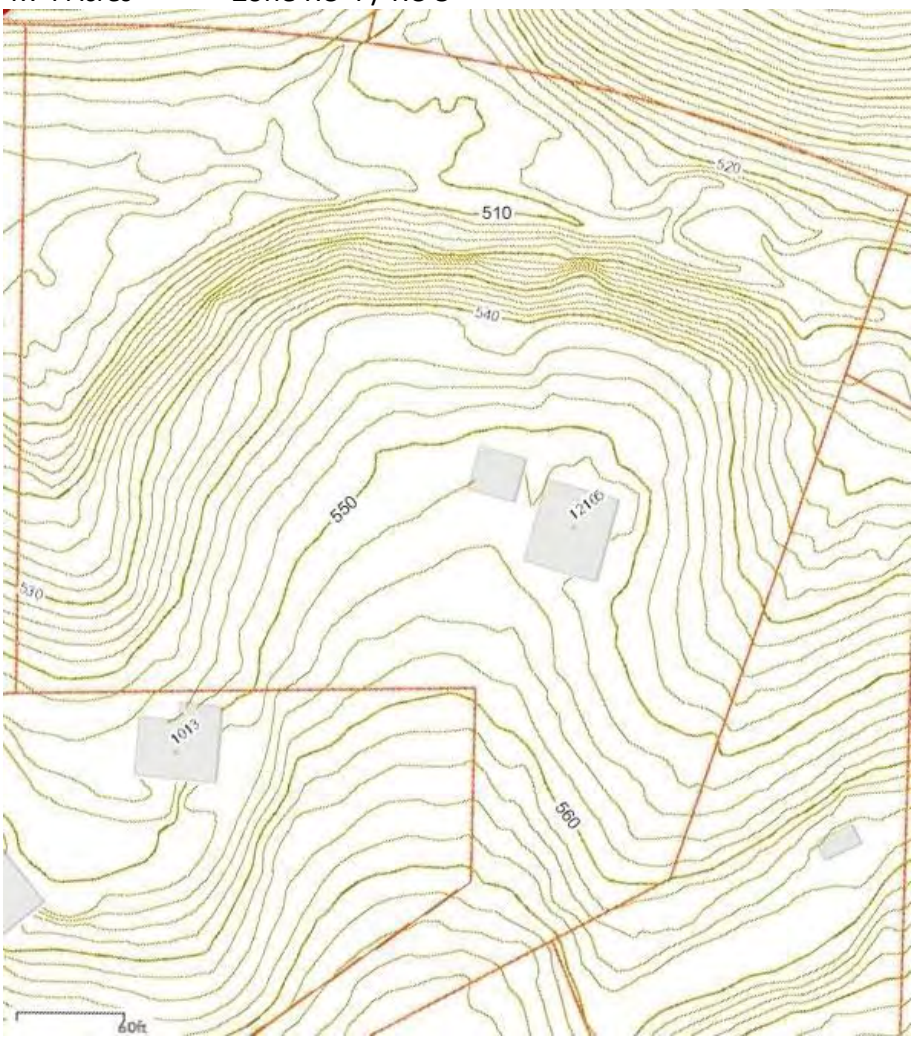




Home to Home Approx. 598 Feet / Property to Property Approx. 383 Feet

Exhibit 6 12105 Boxer Hill Rd Case #23-053-A

4.74 Acres Zone RC-4 / RC-5



Front



Right Side

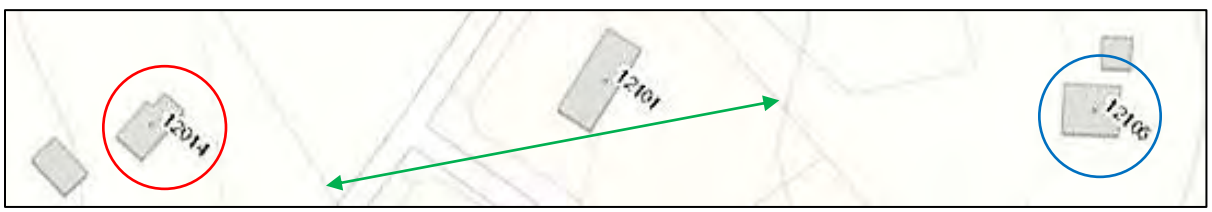


Back Right



Back Left

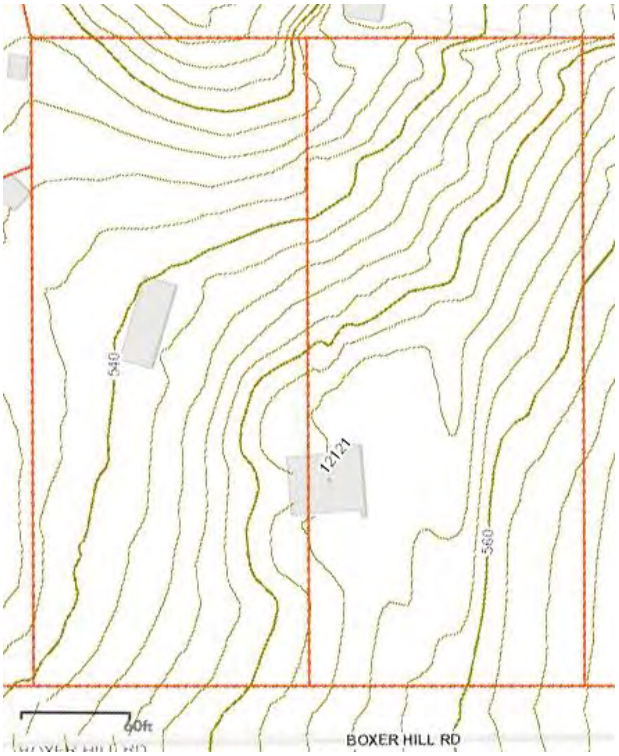




Home to Home Approx. 727 Feet / Property to Property Approx. 384 Feet

Exhibit 6 12121 Boxer Hill Rd Case #23-053-A

2.44 Acres Zone RC-5



Left Side

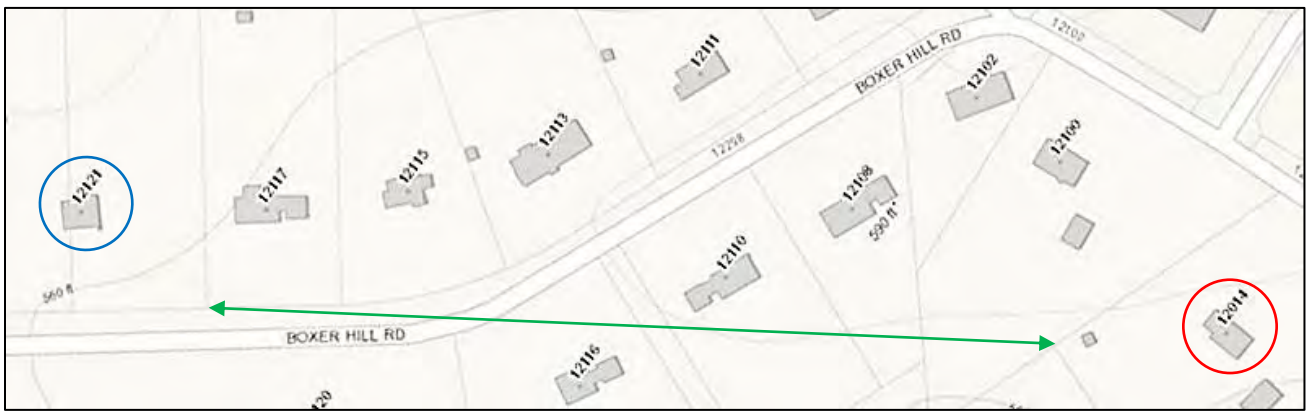


Back Left



Back Right

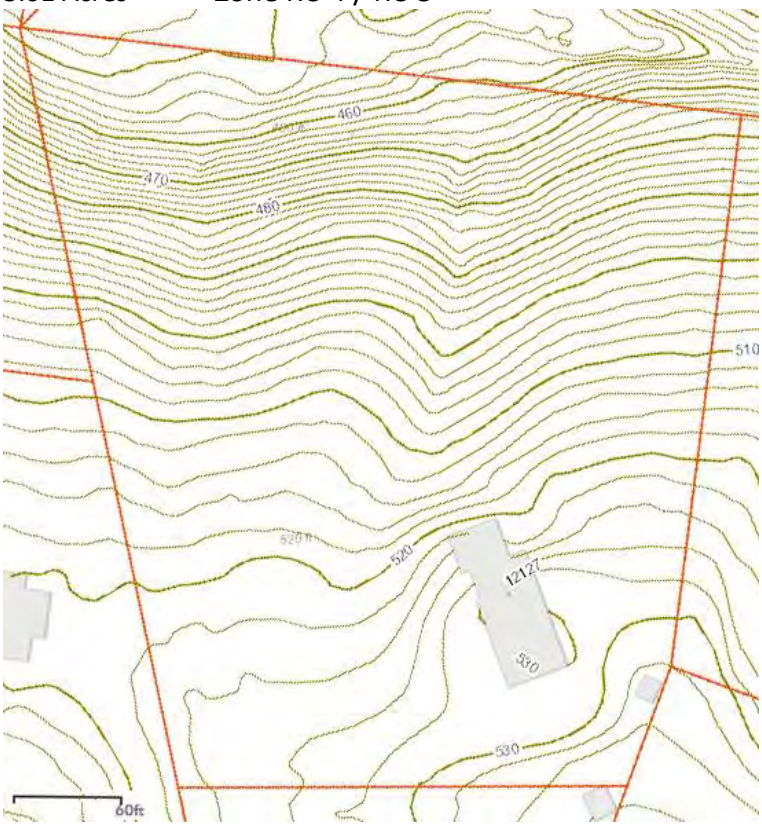




Home to Home Approx. 1,231 Feet / Property to Property Approx. 940 Feet

Exhibit 6 12127 Boxer Hill Rd Case #23-053-A

3.01 Acres Zone RC-4 / RC-5



Front



Left Side



Back

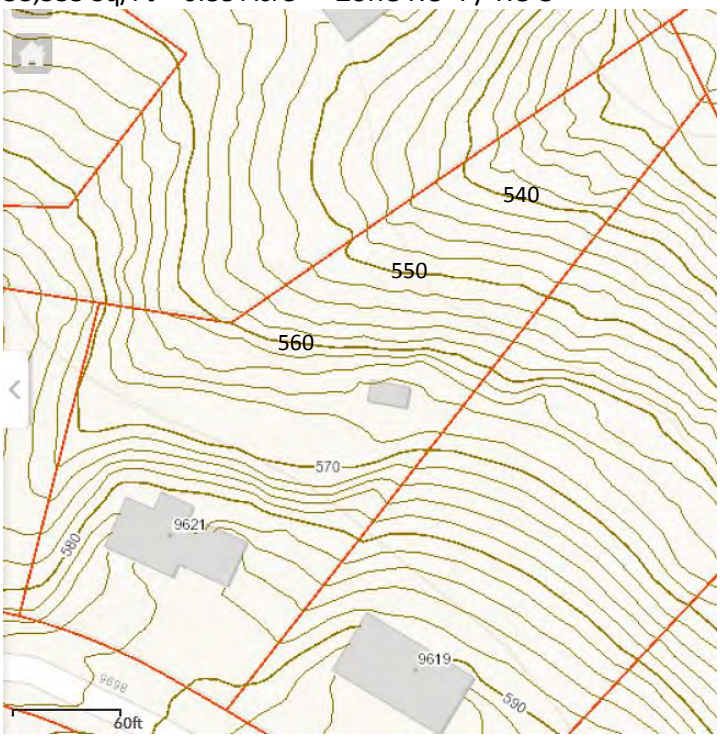




Home to Home Approx. 1,505 Feet / Property to Property Approx. 1,291 Feet

Exhibit 6 9621 Labrador Lane Case #23-053-A

38,333 Sq/Ft = 0.88 Acre Zone RC-4 / RC-5



Front Left Side

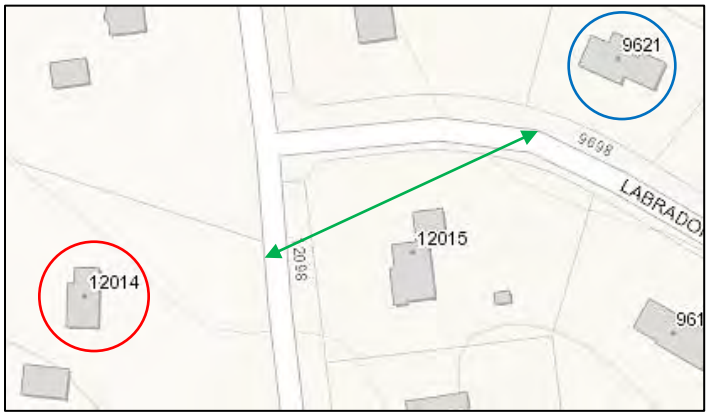


Right Side



Back

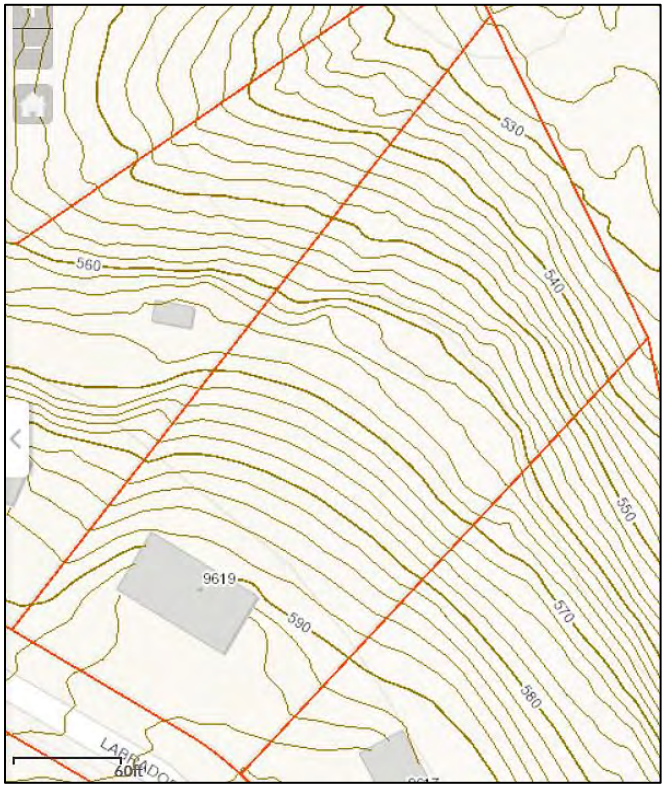




Home to Home Approx. 325 Feet / Property to Property Approx. 265 Feet

Exhibit 6 9619 Labrador Rd Case #23-053-A

1.15 Acres Zone RC-4 / RC-5



Right Side

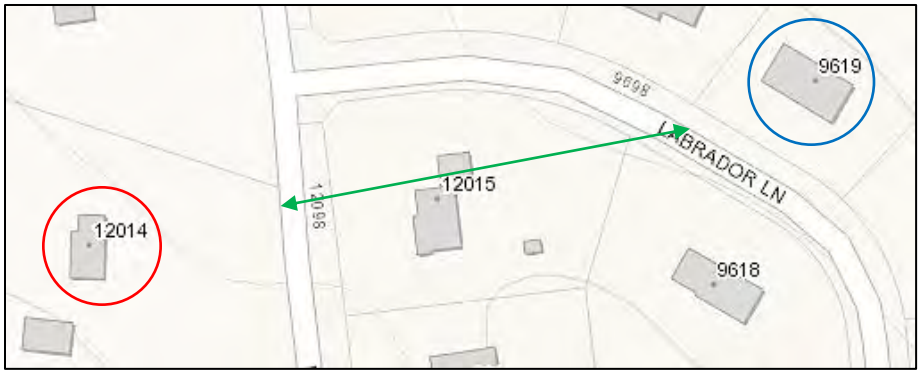


Left Side



Back

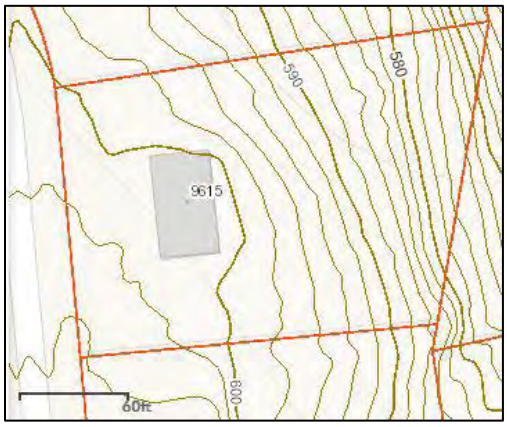




Home to Home Approx. 527 Feet / Property to Property Approx. 350 Feet

Exhibit 6 9615 Labrador Ln Case #23-053-A

0.77 Acre (33,541 SQ/FT) Zone RC-4



Left Side

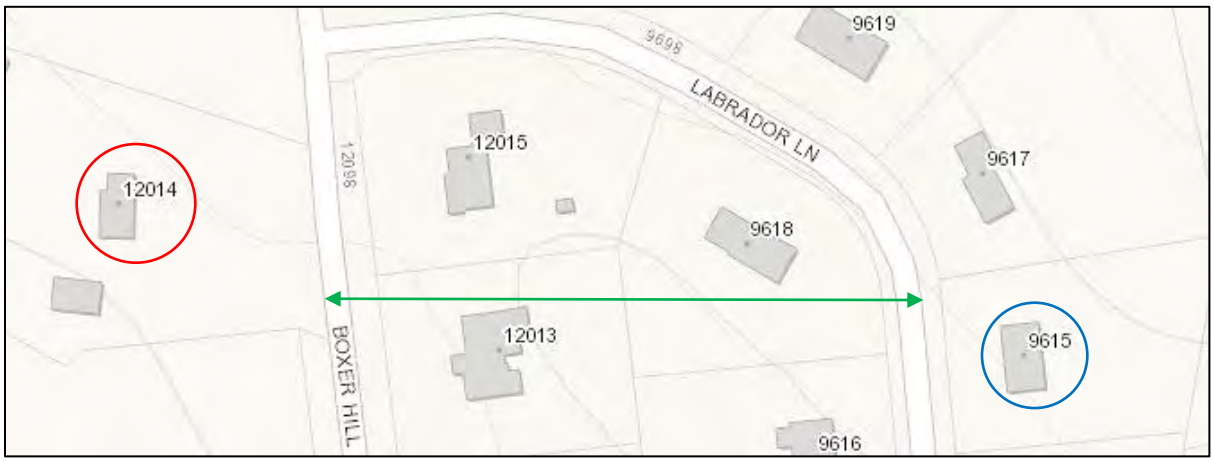


Right Side



Back





Home to Home Approx. 735 Feet / Property to Property Approx. 504 Feet

Exhibit 6 9613 Labrador Ln Case #23-053-A

0.72 Acre (31,363SQ/FT) Zone RC-4 / RC-5

Left Side



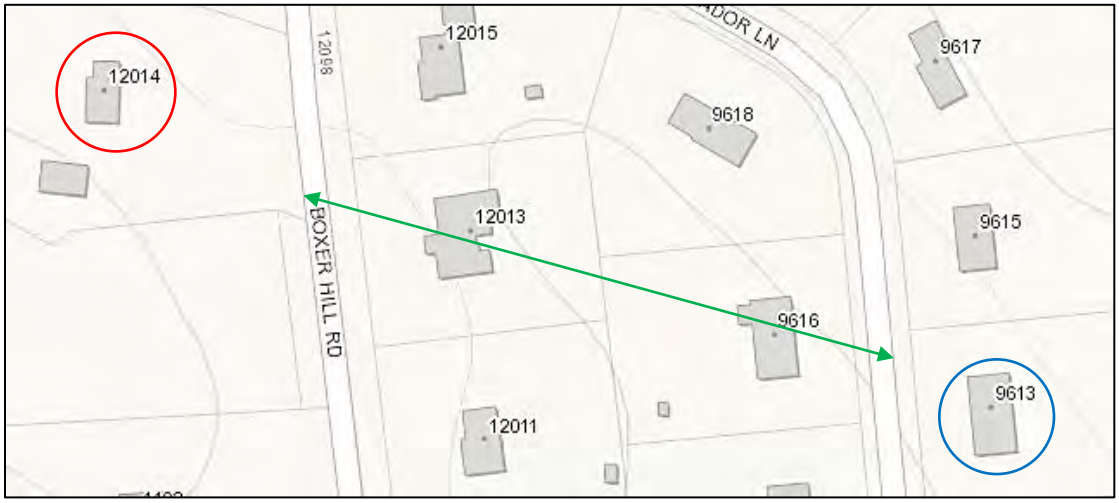


Right Side



Back

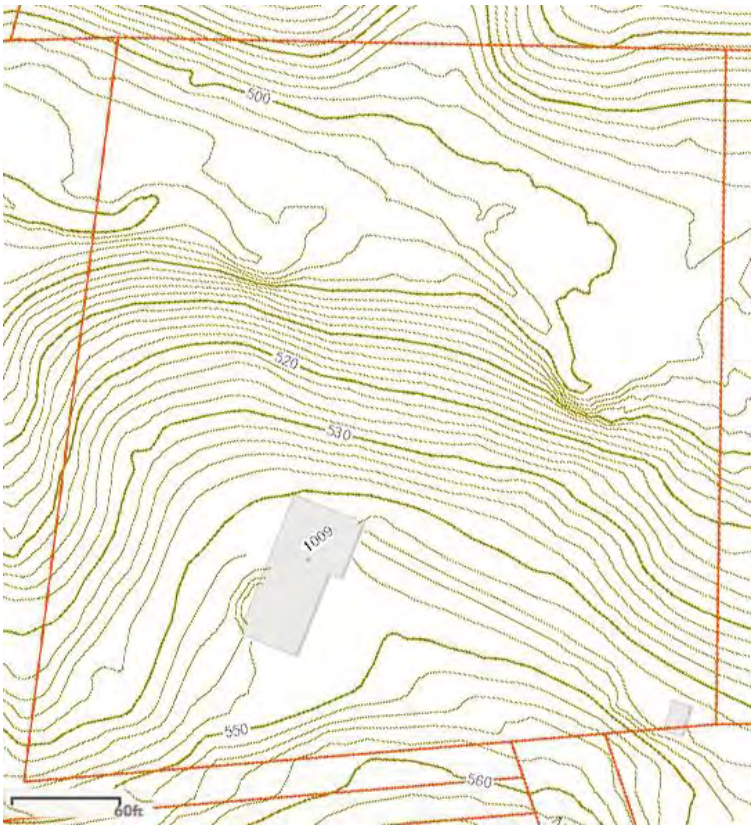




Home to Home Approx. 775 Feet / Property to Property Approx. 514 Feet

Exhibit 6 1009 Painters Ln Case #23-053-A

2.63 Acres Zone RC-4 / RC-5



Front

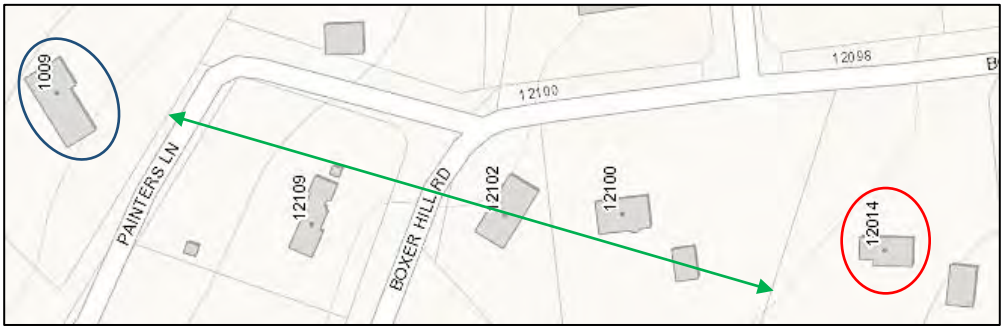


Left Side



Back

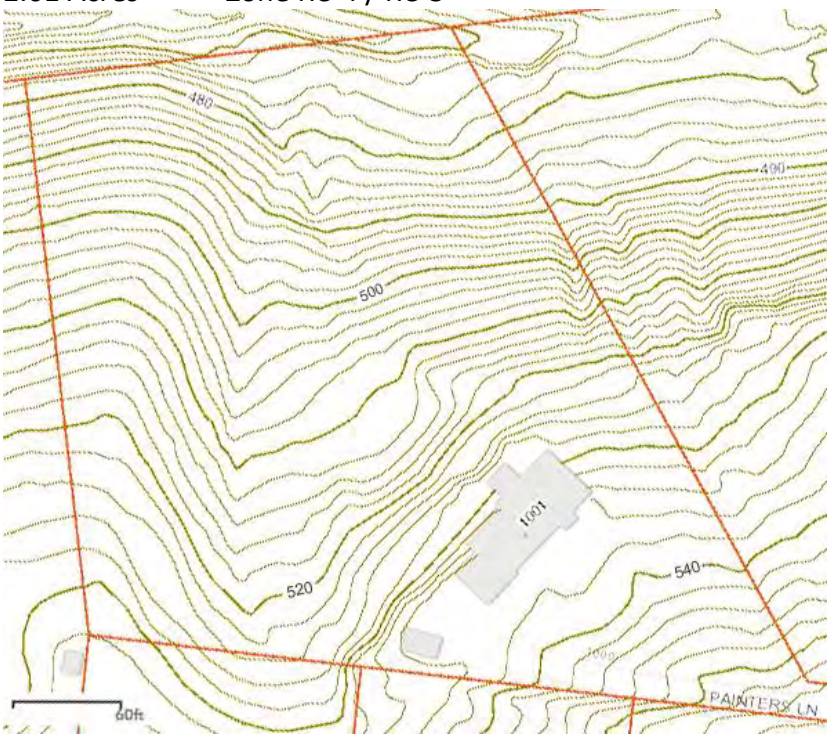




Home to Home Approx. 772 Feet / Property to Property Approx. 620 Feet

Exhibit 6 1001 Painters Ln Case #23-053-A

2.61 Acres Zone RC-4 / RC-5



Front

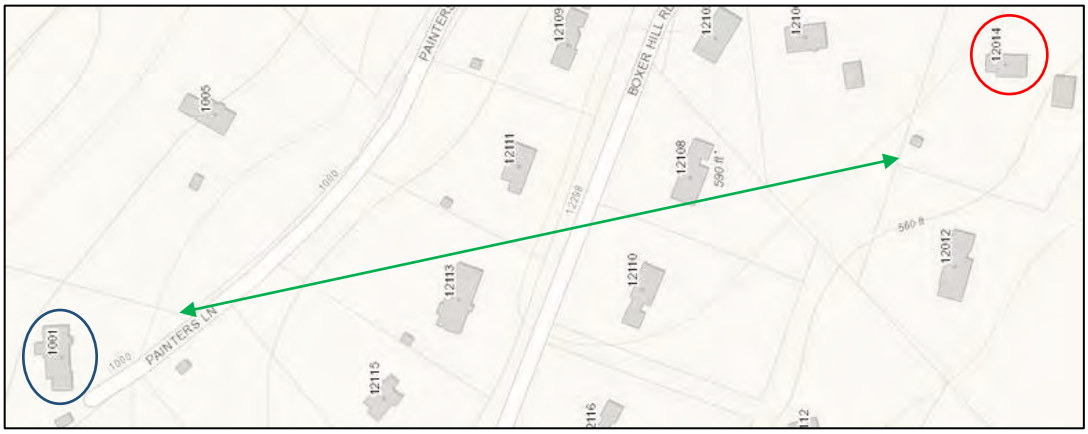


Right Side



Back

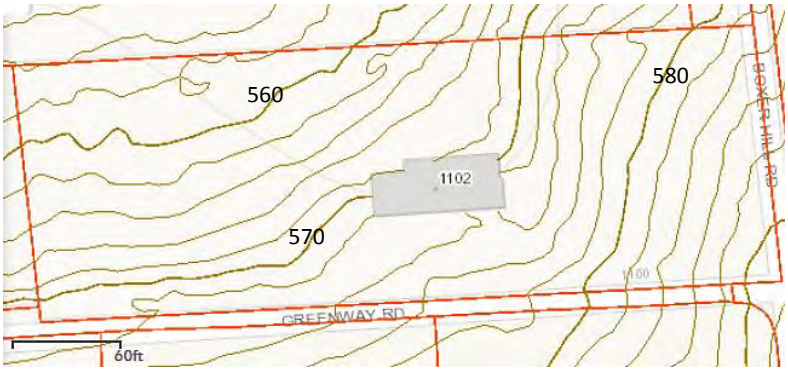




Home to Home Approx. 1,247 Feet / Property to Property Approx. 961 Feet

Exhibit 6 1102 Greenway Road Case #23-053-A

1.33 Acres Zone RC-4 / RC-5



Right Side

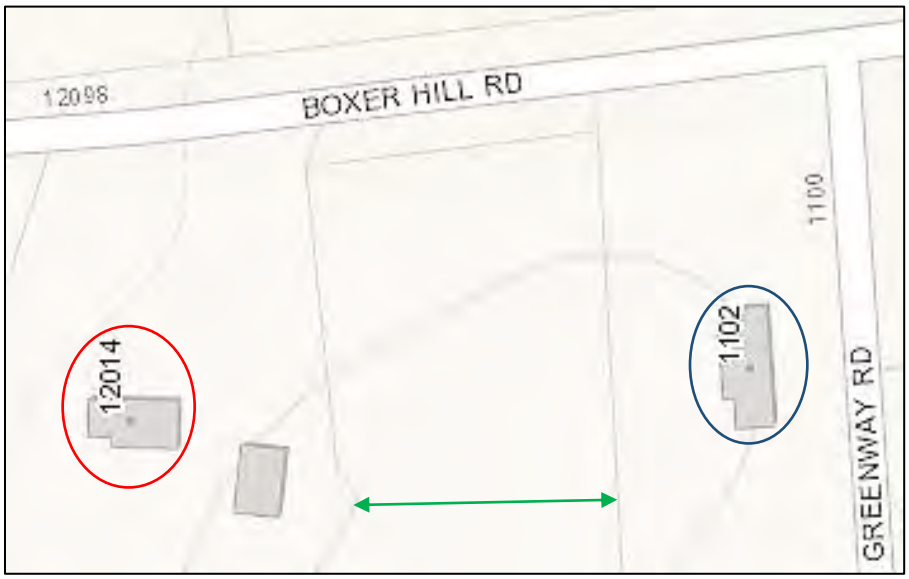


Left Side



Back

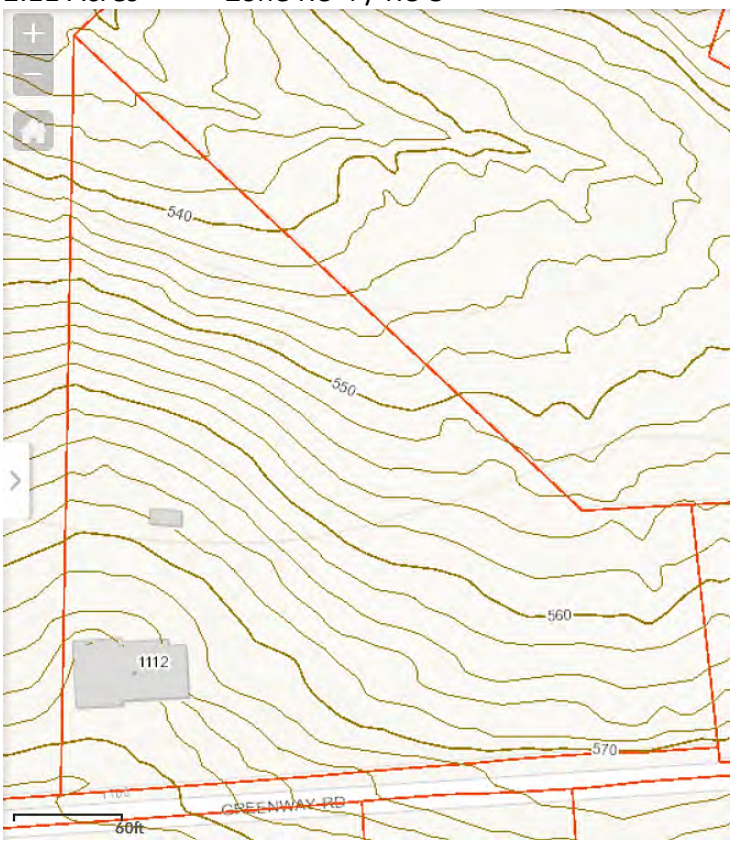




Home to Home Approx. 322 Feet / Property to Property Approx. 156 Feet

Exhibit 6 1112 Greenway Rd Case #23-053-A

2.11 Acres Zone RC-4 / RC-5



Right Front

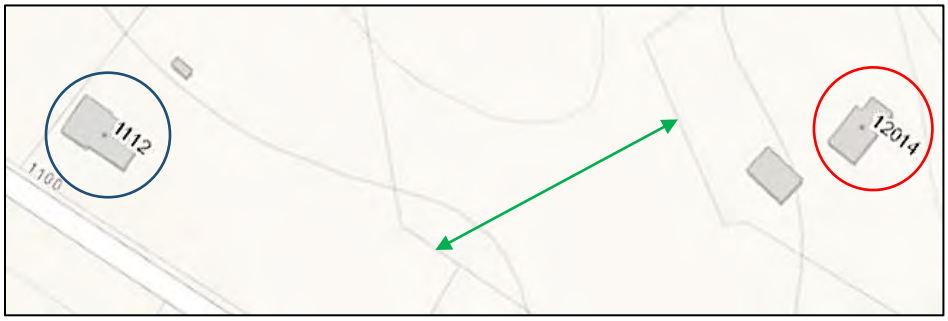


Right Side



Back





Home to Home Approx. 582 Feet / Property to Property Approx. 230 Feet

Exhibit 6 1116 Greenway Rd Case #23-053-A

4.80 Acres Zone RC-4 / RC-5

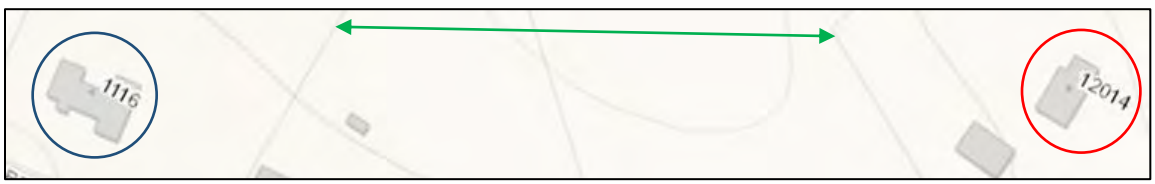


Right Side



Back

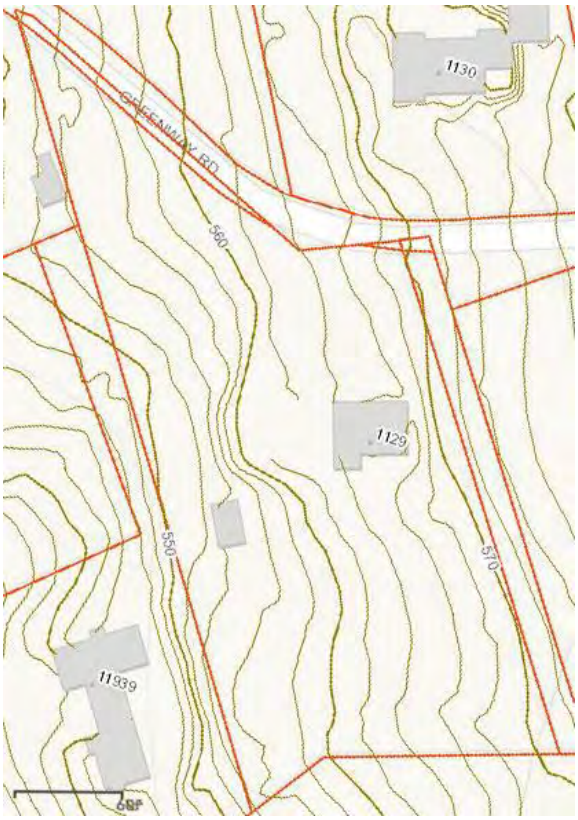




Home to Home Approx. 729 Feet / Property to Property Approx. 412 Feet

Exhibit 6 1129 Greenway Rd Case #23-053-A

1.34 Acres Zone RC-5



Front

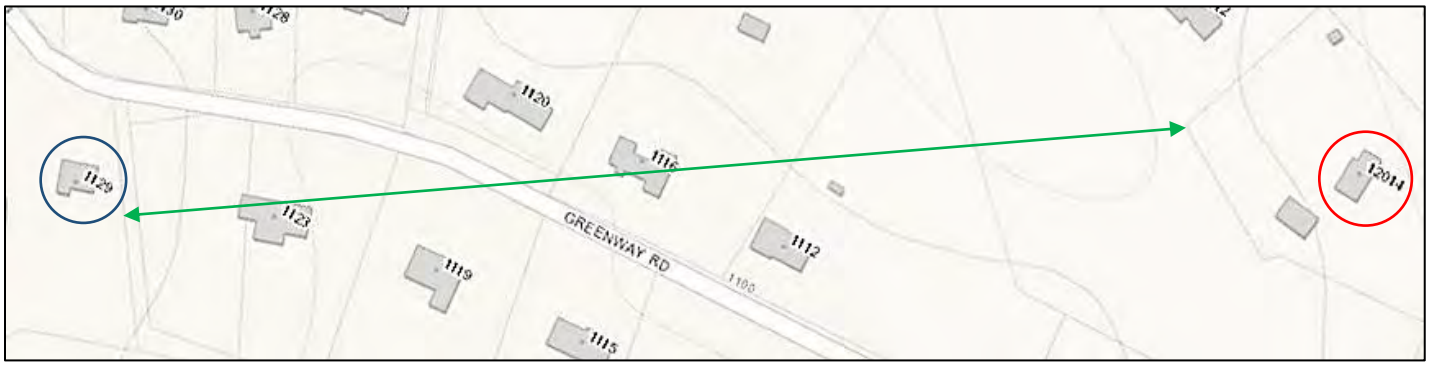


Left Side



Right Side





Home to Home Approx. 1,370 Feet / Property to Property Approx. 1,180 Feet

Exhibit 6 1138 Greenway Rd Case #23-053-A

3.37 Acres Zone RC-4 / RC-5



Left Side

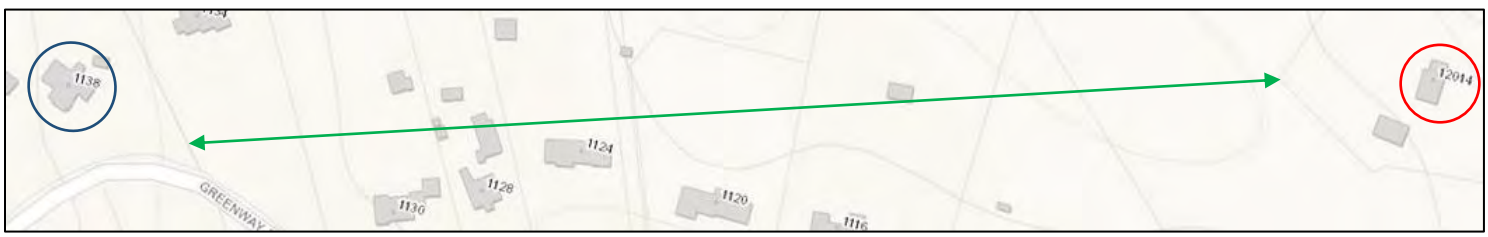


Back Left



Back





Home to Home Approx. 1,709 Feet / Property to Property Approx. 1,410 Feet

Exhibit 6 6 Firwood Ct Case #23-053-A

0.87 Acre (37,897 SQ/FT) Zone RC-4 / RC-5



Front Right

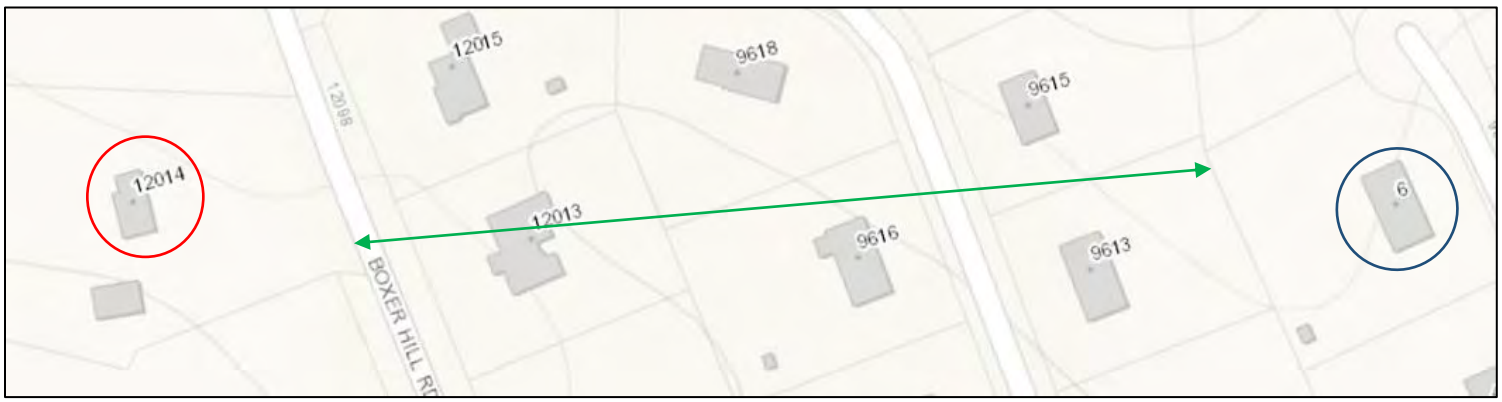


Right Side



Back



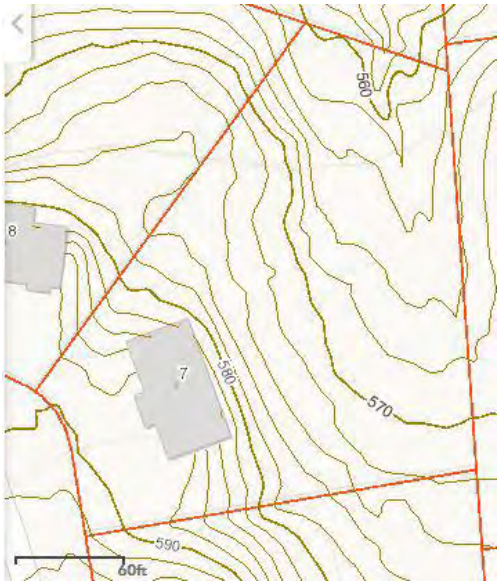


Home to Home Approx. 1,035 Feet / Property to Property Approx. 739 Feet

Exhibit 6 7 Firwood Ct Case #23-053-A

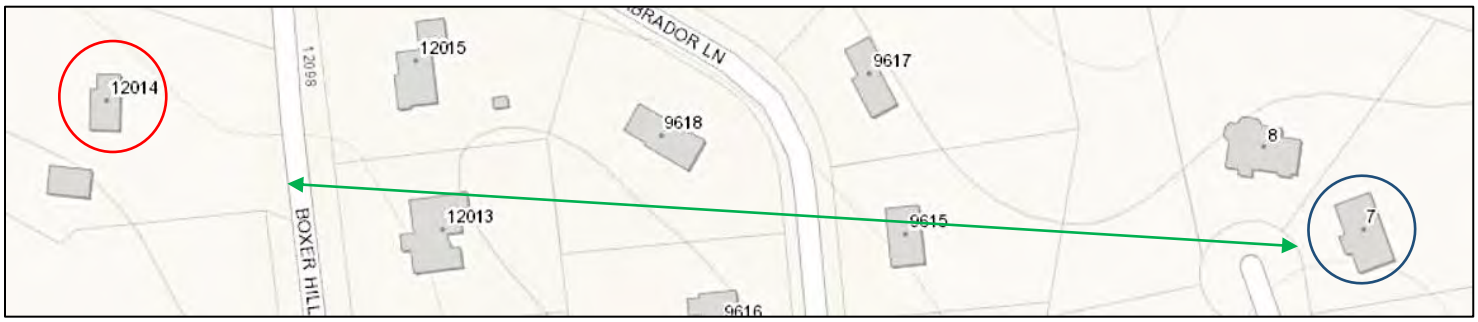
7 Firwood Ct

1 Acre Zone RC-4



Right Side





7 Firwood Ct Home to Home Approx. 1,163 Feet / Property to Property Approx. 956 Feet

Exhibit 6 Letter from Neighbor (12112 Boxer Hill Rd) Case #23-053-A

To whom it may concern,

We are writing in support of the Hallengren's application for modification of an existing garage, case number #2023-0053. We are neighbors of the Hallengren's at 12112 Boxer Hill Rd and have a similar house and property set up. Both of our houses sit below the street and have lots over 2 acres. The proposed addition of adding 9 feet up on an existing structure will not be seen from the road as it sits behind a stand of Leland Cypress trees that are easily over 30 feet tall. As this existing structure sits at the edge of woods, the views would not be impacted with the addition of 9 feet height to the project while using the existing footprint. We believe there will be minimal to no lasting environmental impact as they are not adding any water or septic to this existing structure. Additionally, all neighbors enjoy and benefit when existing properties are enhanced in the neighborhood. Thank you in advance for your time.

Frances Michelle Nelson

Frances Michelle Nelson

Douglas Gordon Nelson

D.G. Nelson

Baltimore County - My Neighborhood https://bcgis.baltimorecountymd.gov/myneighborhood/

12014 Boxer Hill Rd

ENVIRONMENTAL

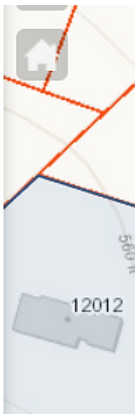
Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenelg loam, 8 to 15 percent slopes
Soil Name	Glenville silt loam, 3 to 8 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes
Soil Name	Glenelg loam, 0 to 3 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes



12012 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 8 to 15 percent slopes
Soil Name	Glenville silt loam, 3 to 8 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes



12112 Boxer Hill Rd

ENVIRONMENTAL

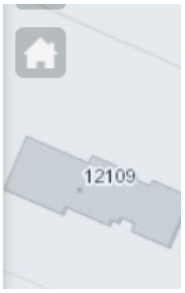
Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenelg loam, 3 to 8 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes
Soil Name	Glenelg loam, 0 to 3 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes



12109 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 0 to 3 percent slopes



12111 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 0 to 3 percent slopes



12105 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes



12121 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes



12127 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes



9621 Labrador Ln

ENVIRONMENTAL

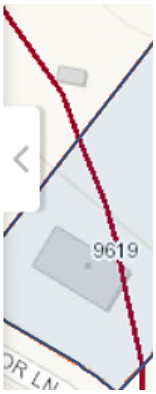
Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 0 to 3 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes



9619 Labrador Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes



9615 Labrador Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenelg loam, 3 to 8 percent slopes



9613 Labrador Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenelg loam, 3 to 8 percent slopes



1009 Painters Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes



1001 Painters Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes



1102 Greenway Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 8 to 15 percent slopes



1112 Greenway Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenville silt loam, 3 to 8 percent slopes



1116 Greenway Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenville silt loam, 3 to 8 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes



1129 Greenway Rd

ENVIRONMENTAL

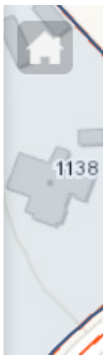
Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenelg loam, 8 to 15 percent slopes



1138 Greenway Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenelg loam, 8 to 15 percent slopes
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor loam, 15 to 25 percent slopes



6 Firwood Ct

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenelg loam, 3 to 8 percent slopes



7 Firwood Ct

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes



12014 Boxer Hill Rd







2017 Baltimore County – My Neighborhood



2023 Google Maps

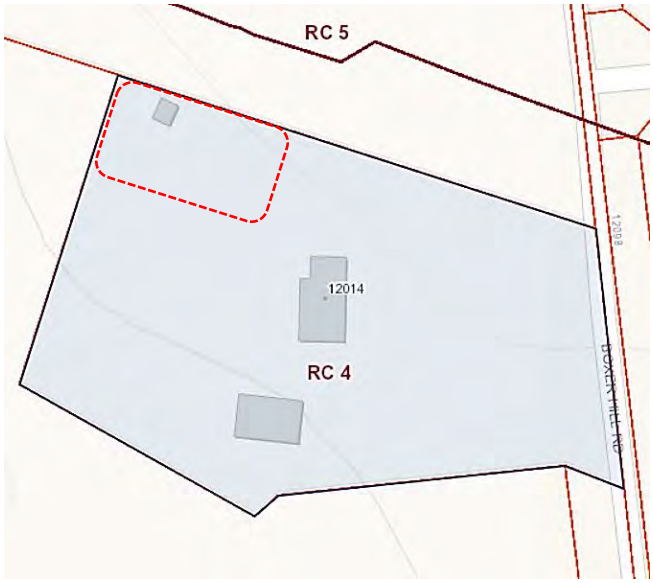
Additional Flat Area






1


2


RC 5
12014
RC 4
BOXER HILL RD


2
1
12014
Boxer Hill Rd

BOXER HILL ESTATE DIRECTORY - 2023

Exhibit 10 23-053-A

Proposed Garage vs Existing Home Size

House #	Homeowner	Year Built	Above Grade Living Area SF	Land Area	Proposed Garage
12014	**Kris and Meg Hallengren**	1967	1936	1.63 A	**1824**

The proposed 2-story garage would be larger than 41% of the homes on Boxer Hill Road
The proposed 2-story garage would be larger than 37% of the homes within the neighborhood*
*Neighborhood = Boxer Hill Rd, Labrador Ln, Greenway Rd, Painters Ln, Justa Ln, Firwood Ct

House #	Homeowner	Year Built	Above Grade Living Area SF	Land Area	Number of Homes
Boxer Hill Rd.					
12000	Kevin Sabolcik	1964	2508	1.37 A	1
12001	Howard and Jodene Weitzman	1958	3263	1.61 A	2
12003	Charlie and Sally Zipp	1958	**1715**	37897 SF	3
12004	Justin and Kate Elfrey	1952	5464	1.02 A	4
12005	Linda Stutz	1959	**1631**	33977 SF	5
12006	Harry and Carol Kakel	1949	2144	41382 SF	6
12007	Ward and Leigh Bank	1959	2583	30928 SF	7
12008	Bill and Mary Hamlin-Spencer	1951	**1443**	26571 SF	8
12009	John and Charlotte Guntner	1962	2142	33541 SF	9
12010	Betty Patrick	1951	**1443**	30492 SF	10
12011	Matt McCloskey and Mandy Burton	1959	2085	33541 SF	11
12012	David Chapin	1993	2968	4.06 A	12
12013	John and Mary Robinson	1965	2376	33541 SF	13
12014	**Kris and Meg Hallengren**	1967	1936	1.63 A	14
12015	Mike and Carol Rifkin	1968	**1491**	35719 SF	15
12100	Hudson and Karen Myers	1949	1913	1.85 A	16
12101	Drew and Jennifer Carlino	1967	**1464**	1.07 A	17
12102	Vi Clements	1953	**1040**	23086 SF	18
12105	Jerry and Barbara Loughlin	1948	2824	4.78 A	19
12108	Mohammad Sajadi and Carolyn Case	1956	**1456**	40075 SF	20
12109	Todd and Heidi Mozoki	1955	**1000**	40075 SF	21
12110	Glenn and Pat Lieske	1957	**1278**	39640 SF	22
12111	Drew and Lindsey Delis	1956	**1456**	1.02 A	23
12112	Doug and Michelle Nelson	1963	2652	2.73 A	24
12113	Jeff and Karen Wilson	1953	2556	1.25 A	25
12115	Nicole Huebler	1953	**1512**	1.05 A	26
12116	Paul Oliver	1956	**1628**	1.46 A	27
12117	Liz Kelly	1956	2656	1.21 A	28
12120	Mike Bohli	1947	**1244**	12.18 A	29
12121	Susie Mays	1955	2030	2.44 A	30
12125	Dave and Donna Diaz	1989	1952	1.00 A	31
12127	Valerie Ballard	1991	2940	3.01 A	32
12206	Marvin Tenberg	1989	1941	19.51 A	33
12207	Bill and Bee Peck	1912	3269	33.16 A	34
			14/34 Smaller Homes = 41%	Boxer Hill Only	

BOXER HILL ESTATE DIRECTORY - 2023

Exhibit 10 23-053-A

House #	Homeowner	Year Built	Above Grade Living Area SF	Land Area	Number of Homes
Labrador Lane					
9600	Reverend Mark and Jean Smiley	1969	2440	35719 SF	1
9601	Ginger James	1969	1960	42689 SF	2
9602	Rob and Adriana Pfaff	1970	1953	40475 SF	3
9604	Chris and Lisa Wilson	1963	2064	1.04 A	4
9605	Ed and Millie Book	1970	**1499**	1.00 A	5
9606	Meg Truchon	1970	3094	1.32 A	6
9607	Michelle and Brandon Arnold	1971	2916	37026 SF	7
9608	Emily and Jamie Bateman	1972	2693	43124 SF	8
9609	Wendy Hallam	1971	2096	31363 SF	9
9610	Chris and Nicole Lauer	1963	2104	34848 SF	10
9611	Bill Zorella	1971	2104	30492 SF	11
9612	Speros and Lisa Morekas	1972	**1350**	33541 SF	12
9613	John and Brenda Koch	1971	**1636**	31363 SF	13
9614	Leo and Anita Charpentier	1972	2322	33977 SF	14
9615	Steve and Molly LaChance	1972	2046	33541 SF	15
9616	Harold Rojas	1972	**1707**	34848 SF	16
9617	Scott and Michelle Livingston	1969	2104	1.40 A	17
9618	Dale and Jolene Campbell	1972	**1350**	36155 SF	18
9619	Chris and Anna Wong	1971	**1596**	1.51 A	19
9621	Des and Jen Arrup	1972	2104	38333 SF	20
			6/20 Smaller Homes = 30%		
Justa Lane					
House #	**Homeowner**				
1105	Scott and Bonnie Tarantino	2010	3792	2.59 A	1
1106	Mark and Stephanie Gross	1964	**1446**	36154 SF	2
1109	Gary and Barbara Mueller	1957	3111	1.78 A	3
1110	Jess Sheldon	1964	2292	39204 SF	4
1113	Skip Darrell	1967	**1738**	1.85 A	5
1114	Rich and Lenore Koors	1979	2270	39640 SF	6
1117	Patrick and Kim Dasch	1960	3424	1.92 A	7
			2/7 Smaller Homes = 29%		
Painters Lane					
1001	Charles and Suzanne Huebler	1983	2840	2.61 A	1
1005	David and Kelly Huebler	1964	**1524**	4.64 A	2
1009	Mark and Melissa Kodenski	1965	**1819**	2.63 A	3
1013	Jack and Erica Dunn	2003	2850	1.08 A	4
			2/4 Smaller Homes = 50%		

BOXER HILL ESTATE DIRECTORY - 2023

Exhibit 10 23-053-A

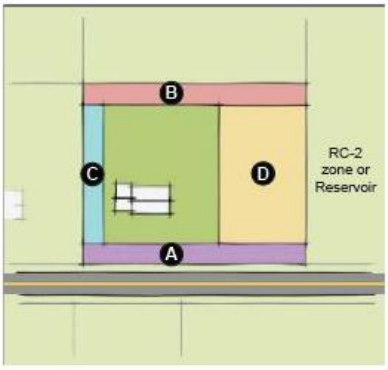
House #	Homeowner	Year Built	Above Grade Living Area SF	Land Area	Number of Homes
Greenway Road					
1102	Matt and Ashley Worman	1958	**1040**	1.33 A	1
1103	Kay Mellor	1955	2201	1.29 A	2
1105	Jeremy and Lisa Doehnert	1957	**1656**	31798 SF	3
1107	William T. and Linda Light	1956	**1379**	31363 SF	4
1111	Meg Truchon	1957	2538	1.44 A	5
1112	Georgeanna Harvey	1948	**1341**	2.11 A	6
1115	Naomi Burroughs	1956	**1410**	40946 SF	7
1116	Mary Virginia King	1948	1920	4.80 A	8
1119	Josh and Linda Ludwig	1962	**1678**	1.19 A	9
1120	Esther Coffin Miller	1954	2430	1.18 A	10
1123	Temple and Nicole Moore	1965	2282	39240 SF	11
1124	Shaun and Rebecca Brown	1945	3184	2.20 A	12
1125	Phil and Shelly Hack	2019	2527	3.52 A	13
1127	Matt and Lauren Falcao	1988	2889	1.80 A	14
1128	John Debaugh	1955	**1216**	1.03 A	15
1129	George and Annette Zubritsky	1968	2196	1.34 A	16
1130	Michael Myronuk	1950	6502	2.23 A	17
1134	Jeff and Michelle Mon	1953	**1424**	1.90 A	18
1138	Tim and Lori Fitch	1966	3167	3.37 A	19
1139	Al and Jackie Fabian	1954	2170	41382 SF	20
			8/20 Smaller Homes = 40%		
Firwood Court					
1	Ken Snow and Vicki Disbrow	1971	**1320**	39640 SF	1
3	Jane Suter	1971	1960	30492 SF	2
4	Jeff and Sue Caldwell	1971	3288	40946 SF	3
5	Stephen Hiegel & Michelle Brennan	1971	2104	31363 SF	4
6	David and Karen Schaefer	1971	**1596**	37897 SF	5
7	Aaron and Marna Burch	1971	2016	1.00 A	6
8	Valerie Eisman	1971	3626	1.32 A	7
			2/7 Smaller Homes = 29%		

TOTAL	34/92 Smaller Homes = 37%	Neighborhood

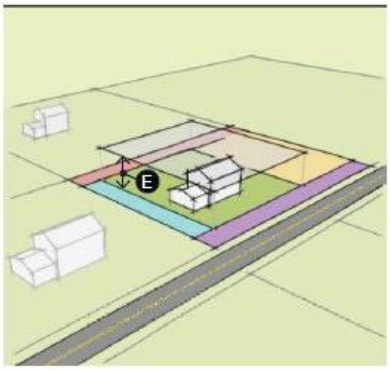
RC-4
Watershed Protection

Height and Area Requirements		
A	Minimum front setback from public road right-of-way[1]	25 feet
B	Minimum rear setback	25 feet
C	Minimum side setback	25 feet
D	Minimum setback from RC-2 or reservoir property [2]	100 feet
E	Maximum building height	35 feet

[1] 35 feet from the edge of a private road
[2] 50 feet from a Conservancy Area in agricultural use







Intent: To protect metropolitan Baltimore's public water supply by preventing contamination through unsuitable types or levels of development in the reservoir watersheds.

Typical Uses Permitted by Right: Single-family detached dwelling, farm.

Typical Uses Permitted by Special Exception: Antique shop, church, golf course/country club, landscape operation.

Notes:

- The RC-4 zone has explicit criteria that must be met to apply for a reclassification, including proximity of the parcel to a reservoir or contributing stream.
- Residential development in the RC-4 zone requires clustering of the dwelling units to allow a conservancy area of at least 70% of the tract. The conservancy area includes the site's sensitive environmental features and may contain one single family dwelling. Overall permitted density is 0.20 dwellings per acre, with a minimum lot size of 1 acre.
- An alternative, non-clustering development option is available at a permitted density of 0.10 dwellings per acre, with a minimum lot size of 3 acres. The development plan must be approved by the Planning Board.

RC-5
Rural Residential

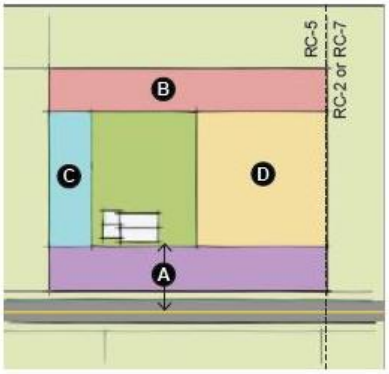
Intent: To provide for rural residential development in areas of Baltimore County where public water and sewer are not anticipated. It is intended that the placement of the zone will help eliminate encroachment onto productive agricultural and watershed areas.

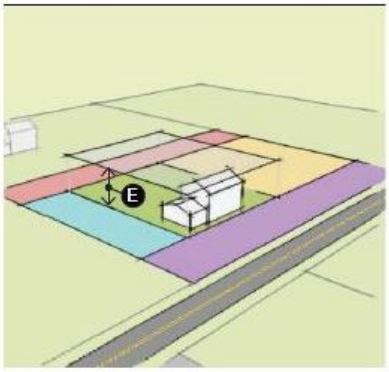
Typical Uses Permitted by Right: Single-family dwelling, farm, school.

Typical Uses Permitted by Special Exception: Antique shop, golf course/country club.

Notes:

- Subject to performance standards that include site plan and architectural review for quality of design and reflection of rural character. (The Back River Neck District is excluded from this RC-5 requirement.)
- The minimum lot size is 1 1/2 acre.

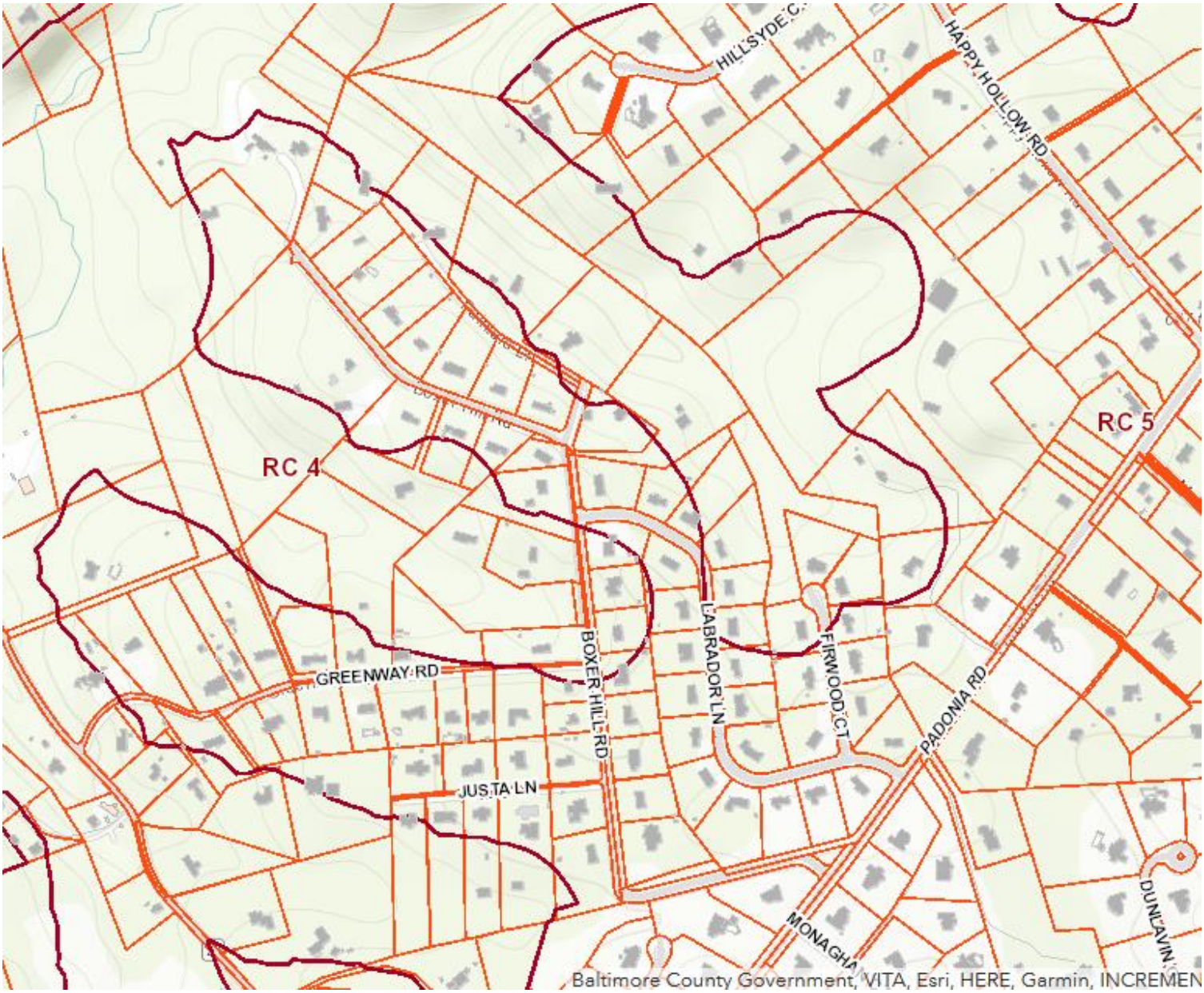




Height and Area Requirements		
A	Minimum front setback to centerline of road	Varies*
B	Minimum rear setback	50 feet
C	Minimum side setback	50 feet
D	Minimum side setback to RC-2 or RC-7 zone line	150 feet
E	Maximum building height	35 feet

* Varies according to type of road




HILLSYDE CT
HAPPY HOLLOW RD
RC 4
RC 5
GREENWAY RD
BOXER HILL RD
LABRADOR LN
FIRWOOD CT
PADONIA RD
JUSTA LN
MONAGHA
DUNCAVIN
Baltimore County Government, VITA, Esri, HERE, Garmin, INCREMEN

Tammy Zahner

From: Mike Rifkin <mrifkin1@verizon.net>
Sent: Friday, September 29, 2023 2:18 PM
To: Appeals Board
Subject: Mike Rifkin's Exhibits 1 - 4 for Case 23-053-A (Email 1 of 3)
Attachments: Exhibit 1 Petition+Affidavit+Demand for Hearing #23-053-A.pdf; Exhibit 2 Checklist # 23-053-A.pdf; Exhibit 3 Cromwell #23-053-A.pdf; Exhibit 4 Case Law Quotes+All Support #23-053-A.pdf

CAUTION: This message from mrifkin1@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Mike Rifkin's Exhibits 1 - 4 for Case 23-053-A (Email 1 of 3)
Opposition to variance for 12014 Boxer Hill Road.

Please confirm receipt of these exhibits.
Thank you,
Mike Rifkin

Tammy Zahner

From: Mike Rifkin <mrifkin1@verizon.net>
Sent: Friday, September 29, 2023 2:19 PM
To: Appeals Board
Subject: Mike Rifkin's Exhibits 5 - 6 for Case 23-053-A (Email 2 of 3)
Attachments: Exhibit 5 Topography #23-053-A.pdf; Exhibit 6 Similar Properties #23-053-A.pdf

CAUTION: This message from mrifkin1@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Mike Rifkin's Exhibits 5 - 6 for Case 23-053-A (Email 2 of 3)
Opposition to variance for 12014 Boxer Hill Road.

Please confirm receipt of these exhibits.
Thank you,
Mike Rifkin

Tammy Zahner

From: Appeals Board <appealsboard@baltimorecountymd.gov>
Sent: Friday, September 29, 2023 4:09 PM
To: Mike Rifkin
Subject: RE: Mike Rifkin's Exhibits 7 - 12 and Exhibit List with Descriptions for Case 23-053-A (Email 3 of 3)

Dear Mr. Rifkin:

The Board is in receipt of 12 Exhibits, and an Exhibit List.

Please let us know if you have any questions.

Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
appealsboard@baltimorecountymd.gov
(410) 887-3180
(410) 887-3182 Fax

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From: Mike Rifkin <mrifkin1@verizon.net>
Sent: Friday, September 29, 2023 2:22 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Subject: Mike Rifkin's Exhibits 7 - 12 and Exhibit List with Descriptions for Case 23-053-A (Email 3 of 3)

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Mike Rifkin's Exhibits 7 – 12 and Exhibit List with Descriptions for Case 23-053-A (Email 3 of 3).
Opposition to variance for 12014 Boxer Hill Road.

Please confirm receipt of these exhibits.

Thank you and have a great weekend!
Mike Rifkin

23-087 SC

ADMINISTRATIVE ZONING PETITION

FOR ADMINISTRATIVE VARIANCE – OR – ADMINISTRATIVE SPECIAL HEARING

To be filed with the Department of Permits, Approvals and Inspections
To the Office of Administrative Hearings for Baltimore County for the property located at:

Address 12014 Boxer Hill Road, Cockeysville, MD 21030 **Currently Zoned** residential

Deed Reference 33945 / 00037 **10 Digit Tax Account #** 2200001476

Owner(s) Printed Name(s) Kristopher R & Meagan S Hallengren

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION(S) AND ADDING THE PETITION REQUEST)

For Administrative Variances, the Affidavit on the reverse of this Petition form must be completed and notarized.

The undersigned, who own and occupy the property situate in Baltimore County and which is described in the plan/plat attached hereto and made a part hereof, hereby petition for an:

1. X **ADMINISTRATIVE VARIANCE** from Section(s) 400.3 TO PERMIT AN ACCESSORY STRUCTURE BUILDING HEIGHT OF 24' IN LIEU OF THE PERMITTED 15'

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County.

2. ___ **ADMINISTRATIVE SPECIAL HEARING** to approve a waiver pursuant to Section 32-4-107(b) of the Baltimore County Code: (*indicate type of work in this space: i.e., to raze, alter or construct addition to building*)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County.

Property is to be posted and advertised as prescribed by the zoning regulations.
I/ we agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Owner(s)/Petitioner(s):

Name #1 – Type or Print	Name # 2 – Type or Print
Kristopher R Hallengren	Meagan S Hallengren
Signature #1	Signature # 2
12014 Boxer Hill Road	Cockeysville MD
Mailing Address	City State
21030 (410) 340-3327	krhallengren@hotmail.com
Zip Code Telephone #'s (Cell and Home) (443) 540-6569	Email Address meghallengren@gmail.com

Attorney for Owner(s)/Petitioner(s):

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

1 DENEVSON STREET TIMONIUM, MD
Mailing Address City State

21093 410 560 1582 RICK@RICHARDSONENGINEERING.NET
Zip Code Telephone # Email Address

A PUBLIC HEARING having been formally demanded and/or found to be required, it is ordered by the Office of Administrative Hearings for Baltimore County, this _____ day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, and re-posted as required by the zoning regulations of Baltimore County.

Administrative Law Judge for Baltimore County

Case Number 2023-053-A **Filing Date** 3/13/23 **Estimated Posting Date** 3/26/23 **Reviewer** SC

Revised 8/2022

Affidavit in Support of Administrative Variance

(THIS AFFIDAVIT IS NOT REQUIRED FOR AN HISTORIC ADMINISTRATIVE SPECIAL HEARING)

The undersigned hereby affirms under the penalties of perjury and upon personal knowledge to the Administrative Law Judge for Baltimore County, that the information herein given is true and correct and that the undersigned is/are competent to testify in the event that a public hearing is scheduled in the future with regard thereto. In addition, the undersigned hereby affirms that the property is not the subject of an active Code Enforcement case and that the residential property described below is owned and occupied by the undersigned.

Address: 12014 Boxer Hill Road (Print or Type Address of Property) Cockeysville (City) MD (State) 21030 (Zip Code)

Based upon personal knowledge, the following are the facts upon which I/we base the request for an **Administrative Variance** at the above address. **(Clearly state practical difficulty or hardship here)**

Given the grade elevations and landscape of our home there is no feasible way to create an addition. We are requesting a variance to raise the garage roof to 24 feet from 15 feet & add a second floor. The addition will mostly be hidden by current trees, which we intend to keep. There will be no increase to impervious roof area. This space will not have water or septic & will be used for storage & recreation - not any type of "in law" space.

(If additional space for the petition request or the above statement is needed, label and attach it to this Form)

Signature of Owner (Affiant) — Kristopher R. Hallengren

Signature of Owner (Affiant) — Meagan S. Hallengren

Name - Print or Type — Kristopher R. Hallengren

Name - Print or Type — Meagan S. Hallengren

The following information is to be completed by a Notary Public of the State of Maryland

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 27 day of FEB, 2023, before me a Notary of Maryland, in and for the County aforesaid, personally appeared:

Print name(s) here: Kristopher & Meagan Hallengren

the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notaries Seal

Notary Public

My Commission Expires 11/7/2026

ROBIN JAMES DAVIS SR NOTARY PUBLIC BALTIMORE COUNTY, MD MY COMMISSION EXPIRES NOVEMBER 7, 2026

FORMAL DEMAND FOR HEARING
(ADMINISTRATIVE VARIANCE, USE PERMITS AND USE APPROVALS)

Case Number: 2023-0053-A

Property Address: 12014 Boxer Hill Rd

Legal Owners (Petitioners): Meagan & Kristopher Hallengren

TO THE ADMINISTRATIVE LAW JUDGE OF BALTIMORE COUNTY:

Protestant #1 Michael Riftkin 443-761-9553 410-252-0367

Protestant Name(s) - Type or Print | Telephone # (Cell) | Alternate Phone #

mrifkin1@verizon.net

Email Address

the (✓) Owner(s) **or** ( ) Occupant(s) of

12015 Boxer Hill Rd Cockeysville MD 21030

Address | City | State | Zip Code

Protestant #2 _____

Protestant Name(s) - Type or Print | Telephone # (Cell) | Alternate Phone #

_____

Email Address

the ( ) Owner(s) **or** ( ) Occupant(s) of

_____

Address | City | State | Zip Code

which is located approximately 0 feet from the property (must be within 1,000 ft. of subject property), which is the subject of the above petition, **do hereby submit a formal demand for a public hearing regarding this matter.***

I/WE HAVE SUBMITTED THE REQUIRED PROCESSING FEE FOR THIS DEMAND AND REQUEST THAT A HEARING BE SCHEDULED FOR THE SUBJECT PETITION.

*Failure to accept two proposed Hearing dates will result in the Demand request being dismissed and the Hearing will be held and/or a review by the Hearing Officer will take place without the protestants input. It is the responsibility of the protestant to verify the location, or web address, date and time of the hearing.

_____ 4/6/23

Signature | Date

_____

Signature | Date

Revised 3/2022

Exhibit 2 Case #23-053-A

Zoning Review
Department of Permits, Approvals and Inspections
Baltimore County Office Building
111 W. Chesapeake Ave, Rm 124
Towson, MD 21204

ZONING CHECKLIST

INDIVIDUAL RESIDENTIAL LOTS:

Administrative Special Hearings

- **Administrative Variances**
- **Posting and Waivers**
- **Special Hearings**
- **Variances**

Revised 5/2023

Please be aware that this checklist is for your information only and
it is not intended to offer, or to be considered, legal advice.

First and most importantly: You must understand that the relief you request is a quasi- judicial decision and you are responsible for meeting the burden of law required by the Baltimore County Zoning Regulations (BCZR). A judicial hearing is an adversary process and, therefore, there may be opposition to your request. During a judicial hearing, the parties will be permitted to testify, present evidence, and cross-examine witnesses. The Office of Administrative Law will rule on the evidence and testimony to determine whether or not the petition will be granted.

Second: You must understand that if a hearing is required, you are permitted to have representation by an attorney of your choice. You are not required to have an attorney, though it is recommended that you consider obtaining legal representation. If you are incorporated, it is considered a requirement that you be represented by an attorney.

Third: It is strongly recommended that you read and understand the requirements of the BCZR and related policies.

Fourth: No employee of the Department of Permits, Approvals and Inspections (PAI) may provide legal advice to anyone. The representations and opinions of any employee are not to be construed as definitive in any case. Only the decision of the Administrative Law Judge rendered after the statutory required public hearing is considered dispositive in matters relating to the interpretation of the BCZR. Even though there may not be opposition in a given case, your request may be denied.

When you have completed the following steps, **petitions may be submitted by using the U.S. Postal Service, private delivery service (FedEx, UPS, etc.) or in-person drop-off at the Zoning counter. Revisions will not be processed or accepted if they are just delivered or mailed. Revisions must be filed with the original intake Planner.**

AUTHORITY AND PETITIONER'S BURDEN:

INFORMATION ONLY, NOT LEGAL ADVICE

All requests for zoning residential lot variances and special hearings are handled by the Department of Permits, Approvals and Inspections (PAI). *Applications are obtained from and filed with the Zoning Review section of PAI* and all hearings are scheduled before an Office of Administrative Law Judge (**ALJ**). The enabling legislation providing the ALJ with this authority is in Sections 307 and 500 of the Baltimore County Zoning Regulations (BCZR). The Director of PAI interprets and enforces the BCZR. Any disagreement with said interpretation may be taken to the Office of Administrative Law per Section 500.7 (BCZR).

Legal representation is recommended in all cases, but in the case of a corporation, it is a requirement. The information that proceeds is provided to give the petitioner a basic understanding of the legal burden of proof that must be satisfied prior to the granting of the petition. It is not a substitute for private legal counsel nor should it be construed as legal advice.

VARIANCES

Under the authority of Section 307.1 (BCZR), the Administrative Law Judge, (ALJ) applying the two-step test set forth in Cromwell v. Ward, 100 Md. App. 691 (1995), has the authority to grant variance from the height, area, parking, and sign regulations.

A. The first step requires the petitioner to prove, to the satisfaction of the ALJ, that the property whereon structures are to be placed (or uses conducted) is unique, unusual, and different from the surrounding properties such that the uniqueness causes the zoning provision to impact more on the subject property than on the surrounding properties.

B. The second step of the test requires that the petitioner must demonstrate that strict compliance with the BCZR would result in either practical difficulty or unreasonable hardship. The Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, stated:

1. "To prove undue hardship for a use variance, the following three criteria must be met:
   (i) Applicant must be unable to secure a reasonable return or make any reasonable use of his property (mere financial hardship or opportunity for greater profit is not enough).
   (ii) The difficulties or hardship is peculiar to the subject property in contrast with other properties in the zoning district.
   (iii) Hardship was not the result of applicant's own actions.

2. To provide practical difficulty for an area variance, the following criteria must be met:

   (i) Whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome.
   (ii) Whether the grant would be substantial injustice to applicant, as well as other property owners in district, or whether a lesser realization than that applied for would give substantial relief.
   (iii) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

C. No increase in residential density beyond that allowed by the zoning regulations shall be permitted.

D. The relief requested must be in strict harmony with the spirit and intent of height, area, off-street parking, or sign regulations.

E. And only in such manner as to grant relief without substantial injury to public health, safety, and general welfare.

SPECIAL HEARINGS

Under the authority of Section 500.6 (BCZR), the Office of Administrative Law has the power, upon notice to the parties in interest, to conduct hearings involving any violation or alleged violation or noncompliance with any zoning regulations, or the proper interpretation thereof, and to pass his order regarding this matter.

Under the authority of Section 500.7 (BCZR), any person can petition the Office of Administrative Law to hold a public hearing to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such a person in any property insofar as they are effected by the BCZR.

USE PERMITS

Certain uses have singular, individual characteristics which make it necessary, in the public interest (even though other County permits may not be required), to specify regulations for each zoning classification. Under the authority of Section 500.4 (BCZR), the Director of PAI has the power to issue certain use permits (certain others are issued under the authority of the Office of Administrative Law) provided that all of the conditions for that particular use specified in the BCZR are met. Under the authority of Section 500.7 (BCZR), the Director has the right to require a public hearing whenever the Director deems it in the public interest.

GENERAL APPLICATION PROCEDURE

A zoning hearing can only address issues regulated by the BCZR. You must contact other county/state agencies (see page 5) to determine if your plan meets their requirements!

Normally before granting any relief, the Office of Administrative Law shall require advertising and posting of the property and shall require, as applicable, a public hearing. All orders of an ALJ shall contain a finding of fact specifying the reason or reasons for granting or denying each request.

The normal time period from time of filing a petition until the time of receipt of the written order is usually somewhere between 45 and 60 days. Also, in addition to filing fees, costs are incurred for posting the property and advertising the hearing in area newspapers.

At the time of petition filing, petitioners will pay the filing costs. **Be aware that fees are subject to change without notice. The posting must be arranged by the petitioner**. The property must be posted and the posting sign must remain *visible* on the property for a period of 15 days. Check with your sign poster before removing the sign.

Zoning petitions may be submitted by using the U.S. Postal Service, private delivery service (FedEx, UPS, etc.) or in-person drop-off at the Zoning counter. Applications/forms are available from Zoning Review or online**. All information on the forms must be typed or printed and they must be signed by the legal owner(s) or a corporate officer, with his/her title, the address, zip code, work and home telephone numbers and Email address provided. While the planner will assist the petitioner in interpreting those provisions of the BCZR applicable to the particular case, the final wording of the request and other information submitted, as set forth in the application, shall be the sole responsibility of the petitioner(s).

County employees requesting a hearing must have Council approval. Speak to a planner.

** http://www.baltimorecountymd.gov/Agencies/permits/pdm_zoning/zonforms.html#forms

Administrative Variances Hearing/Posting

To save the individual Baltimore County homeowner time and money, effective March 30, 1990, an administrative variance procedure for an **owner occupied residential lot** was established pursuant to **Section 32-3-303,** Baltimore County Code. This procedure may not require newspaper advertising or a public hearing and, as such, the overall time period from the date of filing to written order will diminish and possibly save costs.

If a formal hearing demand (challenge) is not filed with Zoning Review by a property owner within 1,000 feet of site during the posting period, the administrative procedure may continue. Beyond 1,000 feet, a challenge is honored at the discretion of the Administrative Law Judge. The challenge fee is $60.00 paid by the challenger.* (Call 410-887-3391 to confirm the challenge fee.) Without paying the $60.00 processing fee for a demand for a full hearing, any interested party may address their concerns or concurrence to the hearing officer in writing, well in advance of a decision, c/o Zoning Review Office, which will be forwarded to the Judge making the decision.

***Failure to accept two proposed Hearing dates will result in the Demand request being dismissed. The Hearing will be held and/or a review by the Hearing Officer without the protestants input. An additional Formal Demand can be requested at the original fee.**

Possible Full Public Hearing Required

If a hearing demand, as described above, is filed and/or if the Administrative Law Judge, decides there is a need, the application will leave the administrative process, necessitating advertising, re-posting, and a public hearing. In such cases, the petitioner will receive written notice that a standard public hearing will be scheduled under the standard time/cost framework. Petitioners will receive notification by mail. The new fees should be paid by mail upon receipt of the statements.

Who May Use The Administrative Variance Procedure

Legal owner(s) of a single family owner-occupied residential property.

The above parties must submit a notarized affidavit attesting to the fact that they do now own **and** occupy said residential property and that there are no active Code Enforcement violation cases on the subject property.

Who May Not Use The Administrative Variance Procedure

1. Contract purchaser(s) of a single family residential property.
2. Petitioners filing a residential variance in combination with a special hearing and/or special exception. (Other than an Administrative Special Hearing for Historic Properties)
3. Petitioners filing non-residential variances.
4. A builder or developer requesting variance(s) for lot(s).
5. Vacant lots for homes to be built are not eligible per **Section 32-3-303, BCC.**
6. Properties under an active zoning violation may not use this type of variance.

Administrative Special Hearing Waiver for Historic Properties

Per Section 500.7 BCZR and Title 32, Baltimore County Code, alterations to historic property may require a posting notification/or a waiver/public hearing similar to the Administrative Variance process. Contact the Landmarks Preservation Commission representative in the Office of Planning (410-887-3495). Use the following wording in the petition request:

Special Hearing to approve a waiver pursuant to Sections 32-4-107(b), 32-4-223(8), and Section 32-4-416(a)(2) to raze, alter or construct addition to building: (indicate type of work in this space).

The Petition Application Must Contain

1. Four (4) copies and one (1) PDF of the hearing plan with information as indicated on checklist. (See Example #1).

2. Three (3) copies of petition, typed or printed, with original signatures and applicable information on each copy with day time telephone numbers and Email address.

3. Three (3) copies of the property description. (See Page # 9).

4. One (1) copy of the GIS Zoning Map available from the Zoning Review Counter. (See Example # 2).

5. Photographs of the property and describe the location of the photograph. **(Administrative Petition ONLY)**

6. One (1) completed copy of the advertising and posting requirements and procedures form – To be completed at time of filing. (See last page of this checklist).

7. Filing Fees: Contact Zoning Review (410-887-3391) to confirm the fees. Variance or special hearing - $75.00 filing fee due at the time of petition filing. Newspaper will mail the bill to the party indicated on the advertising/posting form for required newspaper advertising. Posting fees vary and are billed by the sign poster you engage to post your property. An additional $75.00 (as a special hearing fee) is required for an amendment to a final development plan (required for any lot which is on an approved zoning final development plan).

Review / ZAC Agencies

Once filed, the petition information is forwarded by Zoning Review to the Zoning Advisory Committee (ZAC) agencies as necessary for their review. The Petitioner(s) should contact the following agencies prior to plan preparation to be made aware of any comments/issues for their particular case.

1. Assessments (SDAT)	410-512-4906
2. Development Plans Review (traffic issues)	410-887-3751
3. Fire Department	410-887-3998
4. State Highway Administration	410-545-5600
5. County Roads	410-887-3739
6. Planning (design, screening, landscaping, historic)	410-887-3211
7. Plans Review (construction/fire/floodplain plans)	410-887-3987
8. Department of Environmental Protection and Sustainability (DEPS) (see note)	410-887-3980
9. If *floodplain*, Maryland Department of the Environment	Kevin.Wagner@maryland.gov
10. If *critical area*, Maryland Office of Planning	410-767-4485

NOTE: For CBCA (Critical Area) sites: Without **DEPS comments** the ALJ will not write an order.
Floodplains and historic buildings should be identified and addressed as needed.
Flood Plain determination/issues call the Dept. of Public Works at 410-887-3300.
Historic issues/questions call the Office of Planning at 410-887-3480.

100-Year Floodplains and Waivers

The 100-year floodplain information and requirements (Bill 173-93, 11/17/93) may be obtained in the Development Plans Review Division (room 107) and Building Plans Review (room 110) in the Baltimore County Office Building. Flood Plain waivers require a Special Hearing. The following wording must be used:

Riverine Wording: (No New Buildings): Special Hearing for a waiver pursuant to BCZR Section 500.7; Building Code Parts 123, 124, 125; and BCC Sections 32-4-414, 32-4-107(a)(2), 32-8-301 to permit a proposed _____ (i.e., replacement or rebuilt building/structure; repair to a building/structure, etc.) in a riverine floodplain.

Tidal Wording: Special Hearing for a waiver pursuant to BCZR Section 500.7; Building Code Parts 123, 124, 125; and BCC Sections 32-4-107(a)(2), 32-8-301 to permit a proposed _____ (i.e., new building/structure; addition to a building/structure; replacement or rebuilt building/structure; repair to a building/structure, etc.) in a tidal floodplain.

Note:
DRC recommendations must accompany the petition and the State Department of Natural Resources (DNR), must also review all petition documents as part of the Zoning Advisory Committee (ZAC).

Hearing Plan Requirements

4 copies required and 1 PDF. The plans shall be legible, accurate and in no case can it be larger than 24" x 36". **Plans must be trimmed or folded to a neat 8-1/2" x 11" size**. Use of the checklist blank plan form is not required. Plans shall contain the following information:

1. **TEXT:** Election & Councilmanic districts, hearing type, subdivision information, owner's name(s), property address, plan date, (if, or not in CBCA / historic / or floodplain), zoning, GIS map copy#, and any active zoning violation# with stated reasons for citation.

2. **DRAWING SCALE:** 1"=20', 1**"**= 30**'**, 1**"**=40**'** or 1"=50'. If 40 acres or more, use 1"=100' scale.

3. **OUTLINE OF PROPERTY:** Indicated by a heavy bold line include lot lines, distances and area of the parcel(s) by square feet and acreage. (To figure acreage, divide square feet by 43,560.)

4. **VICINITY MAP:** A legible vicinity map with site outline must be included on all plans WITH SITE AND INTERSECTING ROADS CLEARLY AND ACCURATELY SHOWN AND NAMED. DO NOT PUT ON A SEPARATE SHEET; IT MUST BE ON THE SITE PLAN SHEET!

5. **PRIOR ZONING CASES:** The case #, date of the order(s), what was granted or denied, and any restrictions from prior zoning case(s), must be listed on the hearing plan.

6. **CURRENT OR OUTSTANDING ZONING VIOLATIONS:** Any correction notice # and/or citation # and the inspector's name must be listed on the hearing plan.

7. **OWNERSHIP:** On subject and adjacent properties including owner's name(s), lot numbers, subdivision name, 10 digit tax account numbers, and/or deed references. See your GIS Map copy and contact SDAT or Land Records for more complete information.

8. **LOCATION:** North Arrow, Street address and names of adjoining street(s), beginning point of description and distance from property corner to the nearest public street centerline. Measure this onsite or use record plats, SDAT records, or the utilities maps from room 206, County Office Building.) This beginning point and distance should start the written zoning description.

9. **STREETS, WIDENING, R/W, EASEMENTS:** Include all existing public boundary streets with the existing right-of-way and paving width. Include any existing or proposed easements with the stated type/purpose or any right-of-ways shown and labeled as being public or private.

10. **BUILDINGS:** Use, dimensions, height and location of all existing buildings/improvements on property with building-to-property line and building-to-building setbacks shown for each structure. Also, front orientation of any dwellings and the use, dimension and location of all proposed buildings or additions and the proposed use if changing. The general use, building and lot dimensions and all facing property line setbacks of buildings on adjoining lots.

11. **STREET SETBACKS:** If a new dwelling is proposed or the new addition or improvement is located on the street side (front) and if either adjacent side is unimproved and your property is zoned D.R.-2, D.R.-3.5 or D.R.-5.5, then you must show the front setback of all dwellings on your side of the street within a distance of 200 feet from the joint side property lines.

12. **UTILITIES:** Show location and size of all public utilities and right-of-ways both adjacent to and on-site. If no public water or sewer exist, well and septic system locations and setbacks must be indicated. (Public utilities drawings are available in Room 206, County Office Building.)

13. **FEATURES:** Location of streams, storm water management systems drainage, pipe systems on or within 50 feet of the property, and the location of the 100 year floodplain (if any). If floodplain or not, state this on the plan, including the elevation.

14. **B.O.C.A.:** Buildings must meet the building code and fire code requirements.

15. **SPECIAL REQUIREMENTS:** For special hearings on 2 apartment dwellings, floor plans detailing each floor with room square footages and uses are required. For waterfront construction (over the water), such as piers and piles, ask for a copy of the checklist for waterfront construction.

16. **SPECIAL DISTRICT OR AREA LOCATION:** For sites located in the Back River Neck or Bowleys Quarters Peninsula districts or in the Martin State Airport 3 mile proximity radius, check with Zoning Review for applicability of any special regulations as they relate to your petition request.

EXAMPLE # 1 - HEARING PLAN

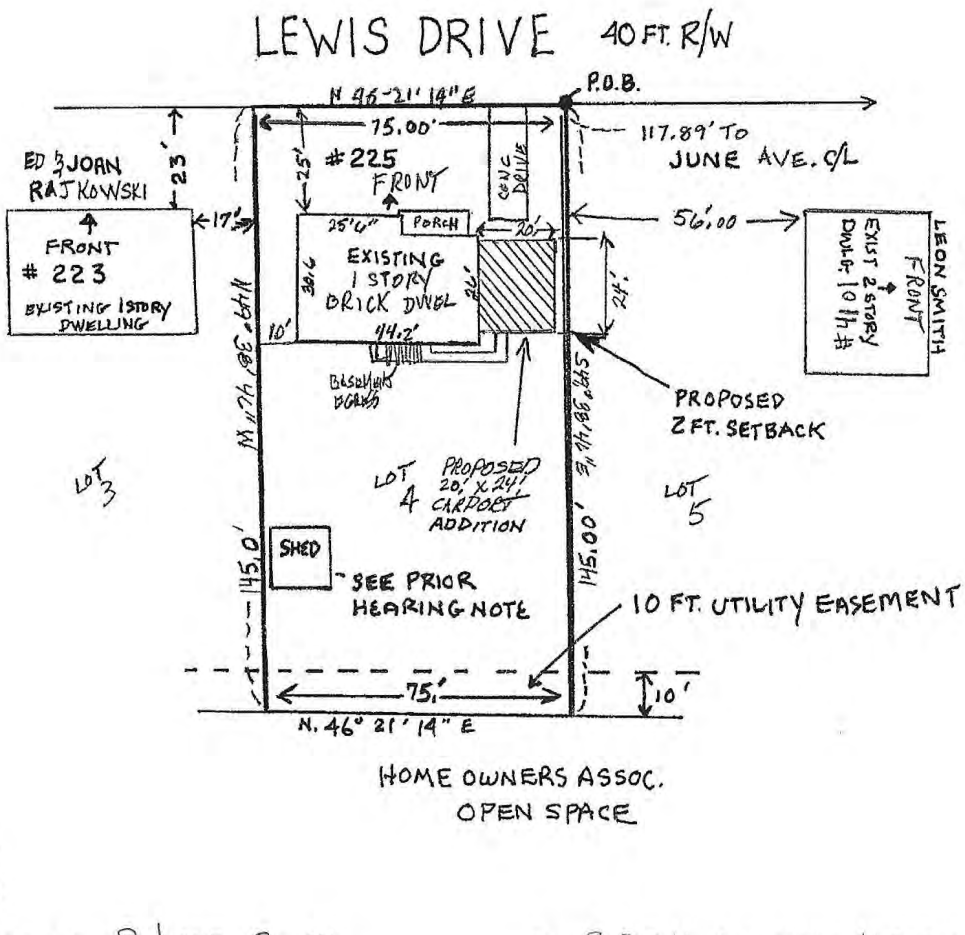
4 COPIES AND 1 PDF. DESIGN YOUR SCALED DRAWING (See Page 6, # 2) TO FIT THE PROVIDED BLANK PLAN FORM. IF A LARGER PLAN IS NEEDED, YOU MAY **ENLARGE** THE BLANK PLAN FORM ***BEFORE*** ADDING YOUR CHECKLIST DETAILS.

Zoning Hearing Plan for Variance X for Special Hearing _____ Mark Type Requested with (X)

Address 225 Lewis Drive Owners(s) Name(s) Robert & Sandra Smith

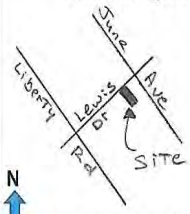
Subdivision Name Withering Heights Plat 2 Lot # 4 Block # G Section # N/A

Plat Book # 23 Folio # 178 10 Digit Tax # 2175900035 Deed Reference# 6587/100238



Plan Drawn By Robert Smith Date 3-30-11 Scale: 1 inch = 40 Feet

Site Vicinity Map



MAP IS NOT TO SCALE

Zoning Map # 108C1

Zoning DR 5.5

Election District 1 ST

Council District 13 TH

Lot Area Acreage .249

Lot Square Footage 10,875

Historic (Yes or No) NO

CBCA (Yes or No) NO

Flood Plain (Yes or No) NO

Utilities – Mark with (X)

Water is:

Public X Private ____

Sewer is:

Public X Private ____

Prior Hearing (Yes or No) Yes

If (Yes) list Case Number(s) and order result(s) below:

2009-0327-A

Variance Granted

For 1 FT Shed

Setback

Violation Case Number(s)

THE ZONING PETITION PROPERTY DESCRIPTION

Three (3) typed copies (separate pages) of the zoning description of the property is required. Standard 8-1/2" x 11" sheets are acceptable. Most property descriptions, as stated on a deed, are too wordy but some of the information must be used. (Note: Old deed information such as perches or a stone, etc. cannot be used as is.) Read your deed, your location survey and your State Assessment record to determine which of the three options you should use. DO NOT PHOTOCOPY THE DESCRIPTION IN THE DEED. The zoning property description must comply with Part A and Part B:

PART A (START DESCRIPTION WITH THE FOLLOWING):

ZONING PROPERTY DESCRIPTION FOR_____
(address or location)

*Beginning at a point on the (north, south, east or west) side of (name of street on which property fronts) which is (number of feet of right-of-way width) wide at the distance of (number of feet) (north, south, east or west) of the centerline of the nearest improved intersecting street (name of street) which is (number of feet of right-of-way width) wide.

*Be aware that the Beginning Point and the distance in feet to the street centerline intersection, as stated in the zoning property description, must be shown and labeled on the hearing plan. The lot area (total square feet or acres) on the hearing plan and the zoning description must agree.

PART B (CONTINUE DESCRIPTION WITH ONE OF THE FOLLOWING 3 OPTIONS):

OPTION 1: (Metes and Bounds Sample – lot not part of record plat or minor subdivision):

THIS IS A SAMPLE ONLY: Thence the following courses and distances: (1st Point of Call- "POC") N.87 12' 13" E. 321.1', (2nd POC) S.18 27' 03" E. 87.2', (3rd POC) S.62 19' 00" W. 318', and (4th POC) N.08 15' 22" W. 80', back to the point of beginning as recorded in Deed Liber (_), Folio (_), containing (number of total square feet or acres in lot). Located in the (_) Election District and (_) Council District.

OPTION 2: (Subdivision Lot – lot is part of record plat):

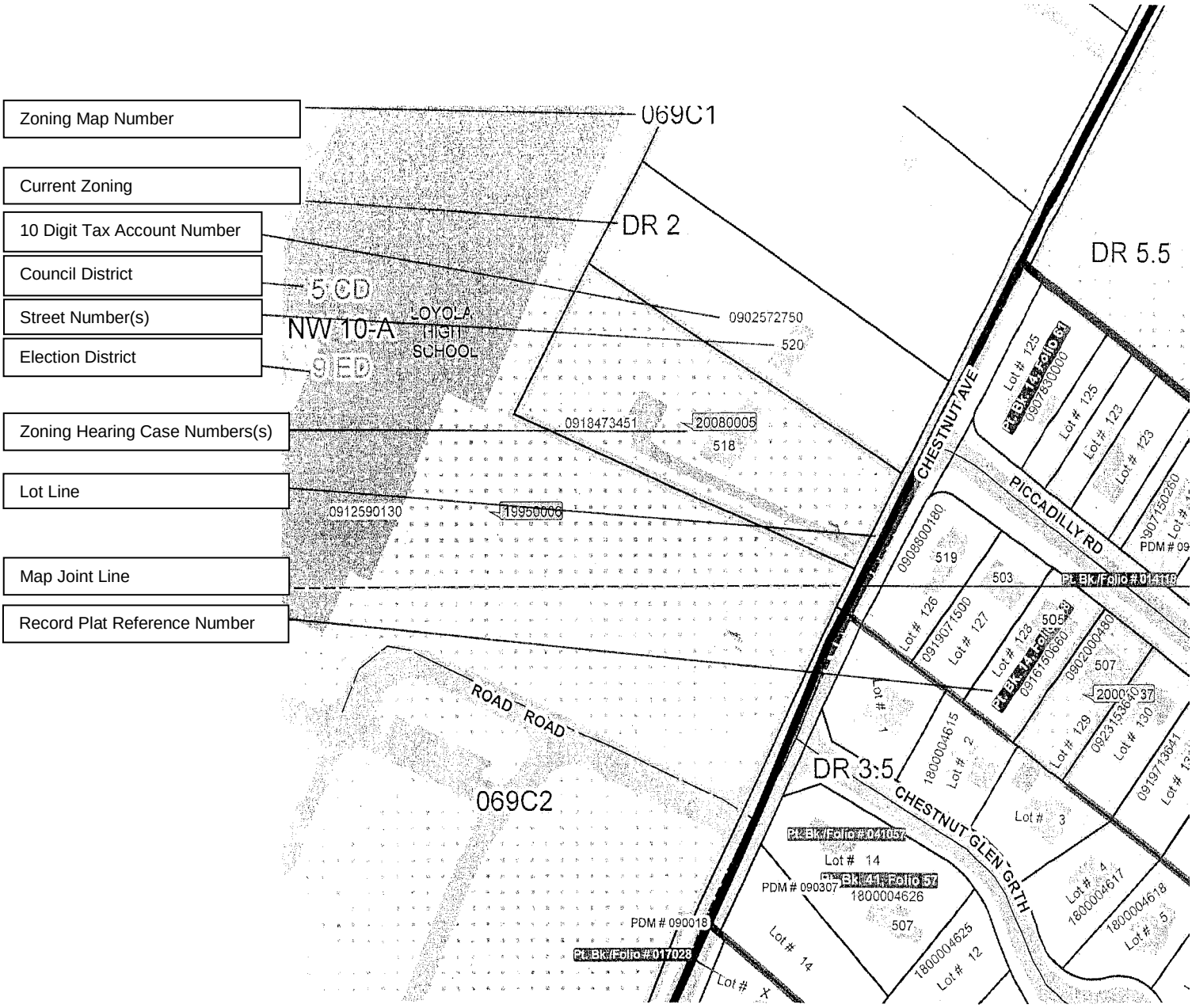
Being Lot # (_), Block (_), Section # (_) in the subdivision of (name of subdivision) as recorded in Baltimore County Plat Book # (_), Folio # (_), containing (number of total square feet or acres in lot). Located in the (_) Election District and (_).

OPTION 3: (Minor Subdivision Lot Sample):

THIS IS A SAMPLE ONLY: Thence the following courses and distances: (1st Point of Call- "POC") N.87 12' 13" E. 321.1', (2nd POC) S.18 27' 03" E. 87.2', (3rd POC) S.62 19' 00" W. 18', and (4th POC) N.08 15' 22" W. 80' back to the point of beginning, as recorded in Deed Liber (_), Folio (_), containing (number of total square feet or acres in lot). Located in the (_) Election District and (_) Council District. Also known as Lot # (_) in the minor subdivision of (name of minor subdivision), minor subdivision # (_ _ -- _ _ _ -- M), as maintained by the Development Management Division of the Department of Permits, Approvals and Inspections.

EXAMPLE # 2 - GIS MAP COPY

Available from the Zoning review counter. The color copy of this map is required for petition filing. This black and white example is keyed to the map information outlining the hearing site clearly on this map.



Zoning Hearing Plan for Variance _____ for Special Hearing _____ Mark Type Requested with (X)

Address _____ Owners(s) Name(s) _____

Subdivision Name _____ Lot # _____ Block # _____ Section # _____

Plat Book # _____ Folio # _____ 10 Digit Tax # _ _ _ _ _ _ _ _ _ _ Deed Reference# _ _ _ _ _ _ / _ _ _ _ _ _

N

Plan Drawn By _____ Date _____ Scale: 1 inch = _____ Feet

11

Site Vicinity Map

N

MAP IS NOT TO SCALE

Zoning Map # _____

Zoning _____

Election District _____

Council District _____

Lot Area Acreage _____

Lot Square Footage _____

Historic (Yes or No) _____

CBCA (Yes or No) _____

Flood Plain (Yes or No) _____

Utilities – Mark with (X)

Water is:

Public _____ Private _____

Sewer is:

Public _____ Private _____

Prior Hearing (Yes or No) _____

If (Yes) list Case Number(s)

and order result(s) below:

_____

_____

_____

_____

Violation Case Number(s)

_____

_____

BALTIMORE COUNTY DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number: - -A Address _____

Contact Person: _____ Phone Number: 410-887-3391
Planner, Please Print Your Name

Filing Date: _____ **Posting Date:** _____ **Closing Date:** _____

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 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 a neighbor (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 Administrative Law Judge. The judge may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. If all County/State agencies' comments are received, you will receive written notification as to whether the petition has been granted, denied, or will proceed to a public hearing. This decision is usually made within 10 days of the closing date. The written 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 Administrative Law Judge), 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.

Petitioner: This Part of the Form is for the Sign Poster Only (Detach Along Dotted Line)

USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT

Case Number: - -A Address _____

Petitioner's Name: _____ Telephone (Cell) _____

Posting Date: _____ Closing Date: _____

Wording for Sign: To Permit _____

_____

_____

_____

_____

Revised 1/2022

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Case Number: _____

Property Address: _____

Legal Owners (Petitioners): _____

Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: Company/Firm (if applicable): _____

Address: _____

_____

_____

Telephone Number: _____

*Failure to advertise and/or post a sign on the property within the designated time will result in the Hearing request being delayed. The delayed Hearing Case will be cycled to the end of pending case files and rescheduled in the order that it is received. Also, a $250.00 rescheduling fee may be required after two failed advertisings and/or postings.

Revised 3/2022

Exhibit 3 Case #23-053-A

David Cromwell et al. v. Arthur Thomas Ward, III,
No. 617, September Term, 1994

HEADNOTE: Zoning variances and special exceptions distinguished; variance process is a multi-step process; the first step is in regards to a determination of whether the property, for which the variance from the terms of the ordinance is sought, in and of itself possesses any unique or peculiar characteristic, *i.e.*, topography, narrowness, abnormal subsurface characteristics, historical or architectural significance, not shared generally by other similarly located properties in the area, so that the ordinance's impact on the subject property is more severe than the impact upon neighboring properties generally; if the requirements of the first step, uniqueness or peculiarity, are not met, no further steps are taken, *i.e.*, practical difficulty or unreasonable hardship and the variance must summarily be denied; self-inflicted hardship is not the type of practical difficulty or unnecessary hardship contemplated by zoning ordinance variance procedures; mistakes by governmental officials generally do not constitute practical difficulty or unnecessary hardship for the purpose of zoning variance procedures, though they may, under some circumstances, give rise to equitable actions.

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 617

SEPTEMBER TERM, 1994

DAVID CROMWELL *et al.*

v.

ARTHUR THOMAS WARD, III

Wenner,
Cathell,
Murphy,

JJ.

Opinion by Cathell, J.

Filed: January 4, 1995

#93CV7265

Appellant, David Cromwell, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas Ward, III. Appellant poses the following questions:

> I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.
>
> II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?
>
> III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of §307 of the Baltimore County Zoning Regulations?

While those questions are limited, appellant expands in his arguments supporting the questions and argues that

> [t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property*, must be the proximate cause of the hardship [Emphasis added.]

and

> Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request . . . . [Emphasis added.]

and

> Mr. Ward's property *is not unique* from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.*, it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) 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. 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. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or[1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness,

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[1] Some ordinances use the conjunctive, "and," creating a requirement that both practical difficulty "and" unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, "or," to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when "use" variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser "practical difficulty" standard when "area" variances are sought.

exists. Further consideration must then be given to the general purposes of the zoning ordinance.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice*, appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process – an inherent uniqueness of the subject property not shared by surrounding properties.

The Facts

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;"

"[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14'" and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height

elevations might have been discernable, though we are at a loss to understand why the elevations were not given in feet and why the plans contained no scale.[2]

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.[3] Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

The Law

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.

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[2] Appellee, several times in his brief, states that the plans "clearly" show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown – they are not shown at all – but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

[3] As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

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 Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

> [M]odification only of density, bulk, or area requirements in the zoning ordinance . . . where *owing to conditions peculiar to the property, and not the result of any action taken by the applicant*, a literal enforcement . . . would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, *i.e.*, height, may be granted

> 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 . . . would result in practical difficulty or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions . . . peculiar to the land . . . and . . . practical difficulty . . . ." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,[4] if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. 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).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses [5]

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[4] It is not clear that section 307, "Variances," would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of "area" variance requests.

[5] Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to "use" issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense,

(continued...)

(where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub judice*.

Special Exceptions (and Conditional Uses) and Variances — Distinguished

The treatise writers define the concept as:

> A variance is an authorization for [that] . . . which is prohibited by a zoning ordinance. . . .
>
> . . . [T]he difference between the two [variances and special exceptions] . . . is of practical significance. . . .
>
> > ". . . [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception contemplates a permitted use . . . [once] the prescribed conditions therefor are met."
>
> . . . [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."

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[5](...continued)
however, "conditional uses" refer to uses while exceptions normally apply to area, *i.e.*, yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

> . . . [T]he standards for . . . exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.
>
> "A special exception . . . is one which is controlled and . . . permissible in a given zone. It is granted . . . upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized . . . where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02-03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County*, 239 Md. 189, 193 (1965)). *See also Schultz v. Pritts*, 291 Md. 1, 11 (1981); *People's Counsel v. Mangione*, 85 Md. App. 738, 748 (1991).

> A distinction commonly is made between [special] exceptions . . . and variances . . . . An "exception" . . . is a dispensation permissible where a board . . . finds existing those facts . . . specified in the ordinance as sufficient . . . . ". . . But zoning ordinances usually provide for another kind of dispensation, . . . by which a variance . . . may be authorized . . . where a literal enforcement . . . would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

> The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances. . . . A variance should be strictly construed . . . .

Id. § 25.162 (footnotes omitted). *See also* 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* § 38.01 (4th ed. 1981); 3 E. C. Yokley, *Zoning Law and Practice* § 21-6 (4th ed. 1979); 3

Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

> There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception . . . is expressly permissible . . . . [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property . . . or by reason of exceptional topographical conditions or other extraordinary situations . . . of specific parcels of property, the strict application . . . would result in . . . unusual practical difficulties to, or exceptional or undue hardship . . . .

Stacy, 239 Md. at 193.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 288-91 (1953):

> It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area . . . the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance. . . .
>
> . . . .
>
> . . . There is a distinction between . . . the ordinance provisions . . . in those cases [Baltimore City cases] and the facts and the ordinance provision in this case . . . .

See also our case of *Martin Marietta Aggregates v. Citizens*, 41 Md. App. 26, 34-35 (1978).

> A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional[6] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met . . . . While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use . . . so long as . . . conditions are met. Therefore, conditional use grants cannot be encompassed within the . . . statutory authority to grant variances.

Eberhart v. Indiana Waste Systems, Inc., 452 N.E.2d 455, 459 (Ind. App. 3 Dist. 1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals*, 464 N.E.2d 347, 350 (Ind. App. 1 Dist. 1984), opined:

> A great deal of confusion has been generated . . . because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions . . . . A variance involves a deviation . . . from the legislated zoning classification . . . . A special exception involves a use which is permitted . . . once certain statutory criteria have been satisfied. [Citations omitted.]

See also Lindquist v. Board of Adjustment, 490 So.2d 16, 18 (Ala. Civ. App. 1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the . . . burden of proving . . . hardship"); *Wolfner v. Board of Adjustment*, 672 S.W.2d 147, 150 (Mo. App. 1984) ("an

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[6] Exceptional is used here in its generic sense.

exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes*, 431 A.2d 163, 167 (N.J. Super. A.D.), *cert. denied*, 434 A.2d 1099 (1981) (special exception and variance defined - case decided on zoning estoppel basis); *A. J. Grosek & Associates v. Zoning Hearing Bd.*, 450 A.2d 263, 265 (Pa. Commonwealth 1982); *Bell v. City Council*, 297 S.E.2d 810, 813-14 (Va. 1982).

VARIANCE - The First Step - Uniqueness or Peculiarity of the Subject Property

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 Morrow 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).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md. Code Article 66B, and it is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws – and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because

> the board of zoning appeals is in effect given the power to set aside or annul the ordinance . . . with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships" . . . . [U]nder our system of written constitutions it is essential that they accomplish those . . . objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them . . . . For such phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred . . . .

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, *appeal dismissed*, 290 U.S. 585 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church*, 164 Md. 487 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore*, 187 Md.

296, 300 (1946). By the time of its decision in *Heath*, the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances in his own discretion." 187 Md. at 301. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar*, the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible where the Board . . . finds . . . those facts . . . specified in the ordinance . . . ." *Id*. at 303.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their

respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore*, 231 Md. 280, 285 (1963) ("In Baltimore City there appears to be no distinction between the two terms . . . .").[7] We also attempted to indicate the problem in *North v. St. Mary's County*, 99 Md. App. 502, 510 (1994), in footnote 3:

> Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances. . . . [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

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[7] Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore*, 195 Md. 395, 400 (1950), where the Court noted "facts to justify an exception . . . [show] that the hardship affects the particular premises and is not common to other property in the neighborhood." This is a variance standard.

> [I]t was incumbent upon the Marinos to have shown . . . (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants' own actions.

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

> The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees. . . .

240 Md. at 554. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning*, § 48-1, and then noted:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions . . . hardship arises . . . . The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship. . . . [T]he hardship, arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief. . . ."
>
> The instant case fits squarely within the above general rule. . . . [I]f the appellees had used proper diligence . . . and then made accurate measurements . . . [the resultant

> hardship could have been avoided]. The hardship . . . was entirely self-created . . . .

Id. at 554-55 (emphasis added). Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. *See also Burns v. Mayor and City Council of Baltimore*, 251 Md. 554, 559 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore*, 233 Md. 372, 378 (1964) ("[There was] no evidence of any limitation . . . by . . . size of yards, irregularity of shape of land or buildings, topography, grade or accessibility" . . . .); *Mayor and City Council v. Sapero*, 230 Md. 291 (1962); *Frankel v. Mayor and City Council of Baltimore*, 223 Md. 97, 104 (1960) ("It was incumbent . . . to show that the hardship . . . affected his particular premises and was not . . . common to other property in the neighborhood. . . . [H]e met the burden . . . ."); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.*, 216 Md. 271, 277-78 (1958).

> Secs. 14 (b), 14 (d) and 16 . . . have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property . . . .

Mayor and City Council v. Polakoff, 233 Md. 1, 9 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore*, 247 Md. 601, 606-07 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

> Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant

> a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "*urgent necessity, hardship peculiar to the particular property* . . . ." . . . Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley*, 270 Md. 208, 210 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

> Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy . . . that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance . . . .

. . . .

> Concededly, this is a close case, but it is nevertheless sufficient . . . .

Id. at 215. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman*, 227 Md. 243 (1961), and *Frankel v. Mayor & City Council of Baltimore*, 223 Md. 97 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs*, 307 Md. 307 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances

sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question . . . that do not apply generally to other properties . . . in the . . . district." *Id.* at 340. The Court concluded:

> The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary *characteristics* of the *land itself* and therefore not the kind of hardship cognizable under the Zoning Ordinance. . . .
>
> We think the Board's decisions . . . reflect no error of law.

Id. at 340-41 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel*, 96 Md. App. 219, 224 (1993), after noting the standard of review, we said:

> In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.
>
> The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist *that are peculiar to the land* . . . and where strict compliance . . . would result in practical difficulty

. . . ." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances *of a particular location* and must be analyzed individually." *Id.* at 227-28 (emphasis added).

In *North v. St. Mary's County*, 99 Md. App. at 512, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land . . . ." We there stated that, in the zoning context, the term "unique" has a customized meaning:

> 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.
>
> . . . .
>
> In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, in *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

> Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific . . . property . . ., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of . . . property . . . the literal enforcement . . . would make it exceptionally difficult . . . to comply . . . and would cause unwarranted hardship and injustice. . . .
>
> The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.*

Id. at 514-15.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean, supra*; *Stacy, supra*; *Sapero, supra*; *Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra*. All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel, Loyola*, and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly . . . close case . . . ." *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky*, 239 Md. 611 (1965), involved one of the same issues that was presented in *Frankel, i.e.*, whether a zoning restriction so

compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance – a variance Frankel was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged that Borinsky had the "same expert witness," "he was asked the same general questions . . . and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* at 624. The Court, nevertheless, made a factual distinction and declined to apply *Frankel*. Judge Barnes opined in dissent that, based on what the Court had done in *Frankel*, the facts for variances were stronger in *Borinsky*. *Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel*, *Loyola*, and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York*, 482 N.W.2d 537 (Neb. 1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell*, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank*, the court said at 545: "[A] variance [may be granted] . . . only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of the zoning

ordinance] 'would result in peculiar and exceptional practical difficulties . . . or exceptional . . . hardships . . . .'"

In *Shafer v. Zoning Bd. of Appeals*, 511 N.E.2d 635 (Mass. App. Ct. 1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

> There was no evidence . . . regarding "soil conditions, shape or topography of [the property] . . . especially affecting [the property] but not affecting generally the zoning district in which it is located" . . . . The . . . argument that the insufficient width . . . constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

511 N.E.2d at 636-37 (citation omitted). *See also VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn. 1983) ("the plight of respondent was not due to circumstances 'unique to his property.' . . . [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware . . . .")

In *St. Clair v. Skagit County*, 715 P.2d 165 (Wash. App. 1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board,

approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings . . . ." 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist . . . peculiar to the land . . . ." *Id.* The court then noted that the applicant had done there what Ward attempts to do in the case *sub judice*:

> [The appellant] relied primarily upon the fact that the County issued a building permit . . . and that she acted in good faith . . . .

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself . . . . Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75-foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity . . . ." *Id.* at 169. In the case *sub judice*, the Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment*, 706 P.2d 899 (Okla. 1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had

expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner . . . constitutes no valid basis for a variance . . . . [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

> The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44-107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property*.

Id. at 904-05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992), but had facts similar to *Lucas*, the Supreme Court of Delaware in *Baker v. Connell*, 488 A.2d 1303 (Del. Supr. 1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0-1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight

of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the property could not conform to open space land. The appellate court affirmed, stating:

> [F]inancial return . . . alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0-1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R-2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard*, ___ U.S. ___, [62 U.S.L.W. 4576] (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment*, 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice*. The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance . . . the applicant [must] show . . . that there are special conditions with regard to the property . . . ." 685 P.2d at 1035-36. The court continued:

> What must be shown . . . is that the property itself contains some special circumstance that relates to the hardship complained of . . . .
>
> . . . The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of

> property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.
>
> . . . .
>
> Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos[es] brought their losses upon themselves. The application affirmatively alleged . . . that no dwelling existed . . . [8]

Id. at 1036-37 (footnotes omitted).

The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice*, that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice . . . in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication . . . and . . . shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id*. at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimen-

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[8] The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

sions from other schematics, they certainly were not required to do so in light of appellants' affirmative statement of compliance.

See also Chambers v. Smithfield City, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond*, 300 S.E.2d 781 (Va. 1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A-1 district." *Id.*

The court in *Richardson v. Town of Salisbury*, 455 A.2d 1059, 1061 (N.H. 1983), noted:

> We have defined unnecessary hardship as follows:
>
> > "A hardship exists only if due to special conditions *unique* to a *particular parcel of land*, the ordinance unduly restricts the use . . . . The hardship must relate to the special character of the land

> rather than to the personal circumstances of the landowner." [Emphasis added.]

See also Margate Motel, Inc. v. Gilford, 534 A.2d 717 (N.H. 1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment*, 459 A.2d 244 (N.H. 1983).

In *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

> [T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
>
> . . . .
>
> . . . [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
>
> . . . .
>
> . . . However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size. . . .
>
> . . . However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also Williams v. Salem Township, 500 A.2d 933 (Pa. Commonwealth 1985) *alloc. denied*, 531 A.2d 781 (1987); *Hersh v. Zoning Hearing Bd. of Marlborough Township*, 493 A.2d 807 (Pa. Commonwealth 1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem*, 480 A.2d 362 (Pa. Commonwealth 1984) (burden sustained); *Davis v. Zoning Bd. of Adjustment*, 468 A.2d 1183 (Pa. Commonwealth 1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment*, 456 A.2d 1110

(Pa. Commonwealth 1983); *Immordino v. Zoning Hearing Bd.*, 441 A.2d 818, 821 (Pa. Commonwealth 1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property* . . . .") (Emphasis added.)

> A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area . . . . Indialantic's zoning restrictions are common difficulties shared by all other ocean-front lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla. App. 5th Dist. 1981), *aff'd*, 419 So.2d 1041 (1982) (citation omitted). *See also Fort Lauderdale Bd. of Adjustment v. Nash*, 425 So.2d 578, 579 (Fla. App. 4th Dist. 1983); *City of Naples v. Clam Court Marina Trust*, 413 So.2d 475, 477 (Fla. App. 2d Dist. 1982); *Lakeshore Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments*, 481 So.2d 162, 168 (La. App. 4th Cir. 1985), *cert. denied*, 494 So.2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231 (D.C. App. 1979), where, due to the size of the lot, no viable economical

use of the property could be had without the variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in *U-Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord*, 451 A.2d 1315, 1317 (N.H. 1982), saying: "The location and characteristics of the property involved create greater security requirements . . . than . . . other property in the area because the parcel . . . is less central . . . less populated and . . . less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland*, 637 P.2d 1302 (Or. App. 1981), *cert. denied*, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. *See also Higgins v. Township of Radnor*, 318 A.2d 761, 763 (Pa. Commonwealth 1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

> It is *fundamental* that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *to particular property* and not general in character . . . . [I]t is not uniqueness of the plight of the owner, but

> uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides] . . . . [T]he hardship [in order to justify a variance, however,] . . . must relate to the particular property of the applicant . . . .

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

> [I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, *supra* § 14.55 (1968).

> It follows that the unnecessary hardship . . . must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance . . . .
>
> In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question. . . .
>
> . . . .
>
> Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

> The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot . . . arises from circumstances peculiar to that lot . . .; and in that case the appropriate remedy is . . . a variance . . . . In the other types of cases, the hardship . . . may arise because of conditions which are general in the neighborhood; . . . it is often held that the

> appropriate remedy is a change in the zoning . . . . [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

> The great strengthening of the criteria for granting variances, . . . has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question . . . . Moreover, the courts have again emphasized that a variance granted to take care of some hardship personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. *See also* Rathkopf, *supra* § 38.04; Yokley, *supra* § 21-6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.").

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals*, 93 N.E.2d 645, 647 (N.Y. 1950):

> [T]he record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21-6.

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.

Self-Inflicted Hardship

We have before referred to *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206. There, the Court said, "it was incumbent [on the applicant] to [show] . . . that the hardship was not the result of the applicants' own actions." *Id.* at 218. The Court of Appeals noted in *AD + Soil, Inc. v. County Comm'rs*, 307 Md. at 340:

> The essence of Ad + Soil's argument . . . is that the setback requirements . . . would cause . . . unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements. . . . The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted . . . and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals*, 438 A.2d 1186, 1190 (Conn. 1982) ("'[S]elf-inflicted or self-created hardship . . . is never considered proper grounds for a variance.' . . . '[W]here the applicant . . . creates a nonconformity, the board lacks power to grant a variance.'") (citations omitted); *Volkman v.*

City of Kirkwood, 624 S.W.2d 58 (Mo. App. 1981); *Matter of Schrader*, 660 P.2d 135 (Okl. 1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals*, 310 S.E.2d 438 (S.C. App. 1983); *McClurkan v. Board of Zoning Appeals*, 565 S.W.2d 495 (Tenn. 1977); *Steele v. Fluvanna County Bd. of Zoning Appeals*, 436 S.E.2d 453, 456 (Va. 1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements . . . was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Granting of the Permit

In *Francis v. MacGill*, 196 Md. 77 (1950), a property owner sought equitable injunctive relief. The facts were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

> "Adoption of zoning ordinance *ipso facto* revokes permit for construction . . . where no construction has begun."
>
> . . . They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro*, 187 Md. 623, 634 (1947), *overruled on other grounds in Nutter v. Non-Profit Housing Co.*, 230 Md. 6 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit . . . does not create a vested right, or estop[9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Synder*, 186 Md. 342, 347 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward*, 186 Md. 330, 340 (1946), the Court held:

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[9] The applicability of the "doctrine of zoning estoppel" has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council*, 96 Md. App. 526 (1993), *rev'd in part*, 334 Md. 499 (1994).

> The Board . . ., as an administrative body, was bound to follow the regulations it adopted, in the exercise of . . . delegated legislative power. The fact that it might have rezoned . . . does not alter its obligation to adhere to existing regulations . . . .

In the case of *Lipsitz v. Parr*, 164 Md. 222 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

> A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law. . . . [T]he ordinance forbade the officials . . . to grant the permit which the plaintiff asked and obtained . . . .
>
> . . . [I]t was therefore unlawful for the officers . . . to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued . . . does not . . . prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality. . . . *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.
>
> So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act . . . it is not estopped by the unauthorized or wrongful act of its officer . . . in issuing a permit that is forbidden by the explicit terms of an ordinance. . . . *Valentine v. Rds. Directors*, 146 Md. 199, 206 [(1924)] . . . . [Citations omitted, emphasis added.]

164 Md. at 227-28.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates*, the Court opined that "[c]onsequently, '[e]very-one dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.'" 313 Md. at 437. The Court added: "[T]he doctrine of equitable estoppel 'cannot be . . . invoked to defeat the . . . enforcement of . . . ordinances, because of an error or mistake committed by one of its officers . . . which has been relied on by the third party to his detriment.'" *Id.*

Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward.

The authorities elsewhere are in accord.

> The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land*, not to the circumstances of the *owner*.

Richardson, 455 A.2d at 1062.

> [R]elator argues the Board should be estopped from denying the height variance because a

> city building inspector visited the premises several times and observed the construction taking place but made no complaint . . . .
>
> In any case there is no authority on the part of a building inspector to grant a variance . . . .

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La. App. 4th Cir. 1970). *See also Klanke v. Zoning Bd. of Adjustment*, 477 A.2d 907, 909 (Pa. Commonwealth 1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra*.

Resolution

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 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 policy-makers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

Case Law (General information)

A variance request involves a two-step process summarized as follows:
1. **it must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness and peculiarity must necessitate variance relief; and ·**
2. **if variance relief is denied the petitioner will experience a practical difficulty or hardship**.
Cromwell v. Ward, 102 Md. App 691 (1995). Cromwell #1

"`A variance is an authorization for [that] . . . which is prohibited by a zoning ordinance. . . .'" Cromwell v. Ward, 102 Md.App. 691, 699, 651 A.2d 424 (1995) (citation omitted). Cromwell #2

In general, **"the specific need for the variance `must be substantial and urgent and not merely for the convenience of the applicant[.]'"** Chesley v. City of Annapolis, 176 Md.App. 413, 432, 933 A.2d 475 (2007) Chesley v. City of Annapolis #1

The burden is on the applicant to show facts to warrant a variance. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 400, 73 A.2d 491 (1950). Easter v. City of Baltimore #1 + #2

Unique Property

To obtain a variance, Petitioner first must prove the uniqueness of the property. The Court in Cromwell defined the term "uniqueness" and stated: 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 has an inherent characteristic not shared by other properties in the area**, i.e., it shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstruction) or other similar restrictions. Cromwell, 102 Md. App. at 703-722. Cromwell #3

Mark Tosti (1207 Providence Road) CASE NO. 2021-0272-A 12/30/2021
On the Property's side of Providence Rd., the lots have rear yards with declining slopes; some are more sloped and some are less. This fact does not make the Property unique under Cromwell, supra.
The Court in Cromwell, supra, emphasized that the 'uniqueness' element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. Mark Tosti #1

The Cromwell Court connected the variance law in Baltimore County with the law in Maryland and emphasized that: **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. Cromwell #4

The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is — in and of itself — unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. **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.**
Cromwell, 102 Md. App. at 694-695, 651 A.2d at 426. Cromwell #1

Practical Difficulty

Where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue hardship" standard. In order to justify the grant of an area variance the applicant need show only that:

"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, 787 (1973), quoting 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972).
Anderson vs Board of Appeals #1

Self-inflicted Hardship (owner and prior owner)

The general rule on self-inflicted hardship is succinctly stated in 2 Rathkopf, The Law of Zoning and Planning, 48-1:
"§ 1. Hardship Caused by Affirmative Acts of Commission. (*the decision to do something)*
"Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions of the zoning ordinance, hardship arises which is capable of being relieved through the grant of a variance. **The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship.**

If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, i.e., that the hardship be caused *solely* through the manner of operation of the ordinance upon the particular property, **is lacking.**
In such case, a variance will not be granted; the hardship, arising as a result of the act of the owner or his predecessor will be regarded as having been self-created, barring relief.
This rule is simple and of general application in the several states."

(Cromwell) In Sibley v. Inhabitants of the Town of Wells, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:
(T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
(T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
Cromwell #5

Speaking for the Court in Cromwell, supra, Judge Cathell noted:
Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also **emasculate zoning ordinances. Zoning would become meaningless.** We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. Cromwell, at 722.
Cromwell #6

Use of: Surrounding Area / Neighborhood

Yoseph Orshan and Randi Orshan (3401 Overbrook Road) CASE NO: 2021-0183-A 10/04/2021
Gregory Schaub and Karen Schaub (2203 Forest Ridge Road) CASE NO: 2021-0162-A 10/05/2021
Id. **When comparing the property at issue with other properties to determine 'uniqueness,' the terms 'area', 'neighborhood' and district have all been used interchangeably.** (Easter v. Mayor & City Council, 195 Md. 395, 400 (1950) citing Rathkopf, Zoning, 2d Ed., p. 215); Marino v. City of Baltimore, 215 Md. 206, 219 (1957); Chesley v. Annapolis, 933 A.2d 475, 176 Md. App. 413 (Md. App., 2007). Orshan #1 + Schaub #1

David Cromwell et al. v. Arthur Thomas Ward, III, No. 617, September Term, 1994
Conclusion
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 the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. Cromwell #7

(Cromwell) Another typical Baltimore City case in that regard is Easter v. Mayor and City Council of Baltimore1 195 Md. 395, 400 (1950), where the Court noted "facts to justify an exception ... [show] that the hardship affects the particular premises and is not common to **other property in the neighborhood**." This is a variance standard. Cromwell #8

(Cromwell) Id. at 169. In the case sub judice, the Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the **properties in the neighborhood.** Cromwell #9

(Cromwell) In Sibley v. Inhabitants of the Town of Wells, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:
(T]he need for a variance [must be] due to the unique circumstances of the property and not to the general **conditions in the neighborhood**;
(T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner. Cromwell #5

A. Rathkopf, 3 The Law of Zoning and Planning ' 58:11 (2004)
If the hardship is one which is common to the area the remedy is to seek a change of the **zoning for the neighborhood** rather than to seek a change through a variance for an individual owner. Thus, some exceptional and undue hardship to the individual landowner, unique to that parcel of property and not shared by property owners in the area, is an essential prerequisite to the granting of such a variance.

Opinion and Order / Use of "Neighborhood"

Mark Tosti (1207 Providence Road) CASE NO. 2021-0272-A 12/30/2021
On the Property's side of Providence Rd., the lots have rear yards with declining slopes; some are more sloped and some are less. This fact does not make the Property unique under Cromwell, supra.
The Court in Cromwell, supra, emphasized that the 'uniqueness' element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. Mark Tosti #1

Dorina Natiga and Shifra Natiga (3100 Marnat Road) CASE NO. 2021-0188-A 12/08/2021
A threshold condition precedent for variance relief is uniqueness. In this case, there was no evidence presented that the Property is unique, peculiar or different than **other properties in the neighborhood** in accordance with the standards set forth in BCZR, §307.1 as clarified in Cromwell, supra. Natiga #1

John & Elisabeth Martin (1540-1542 S. Rolling Road) CASE NO: 2021-0166-A 9/22/2021
There was no evidence presented that the Property is unique as compared to **other properties in the neighborhood.** Martin #1

Gregory Schaub and Karen Schaub (2203 Forest Ridge Road) CASE NO: 2021-0162-A 10/05/2021
The evidence presented here was overwhelmingly that the Property is similar to other **properties in the neighborhood** in that the rear yards have both slopes and trees. Schaub #1

Dr. Crystal Greene (8632 Windmill Road) CASE NO: 2020-0234-A 01/12/2021
Cromwell v. Ward, 102 Md. App. 691 (1995). In order to grant a variance, there must first be evidence of uniqueness of the physical characteristics of the property at issue as compared to **other properties in the neighborhood**. In requiring a pre-requisite finding of "uniqueness", the court in *Cromwell* defined the term as stated: Greene #1

Danielle Vaziri & Francis Bonadio, Jr. (808 Dartmoor Road) CASE NO. 2021-0215-A 11/03/2021
Moreover, it is significant that there are no other **properties in the neighborhood** which have attached garages in the side yards other than those garages which were built as part of the home.
(and…) In my view, granting such a variance will also have an adverse domino effect on this established **neighborhood of homes** with limited yard sizes. Vaziri and Bonadio #1

Bradley J. and Amy B. Murphy 7317 Bellona Avenue CASE NO. 2021-0334-A 12/21/2021
Variance relief runs with the land and the proposed pool in the side yard **would negatively impact this established neighborhood** and cannot be granted within the spirit and intent of the BCZR which requires pools to be located in the rear yard. Murphy #1

Differences in degree of property slopes

Mark Tosti (1207 Providence Road) CASE NO. 2021-0272-A 12/30/2021
On the Property's side of Providence Rd., the lots have rear yards with declining slopes; some are more sloped and some are less. This fact does not make the Property unique under Cromwell, supra.
The Court in Cromwell, supra, emphasized that the 'uniqueness' element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. Mark Tosti #1

Permitting

The ordinance was amended again in 1991 to add a "compatibility review" to the process, requiring a landowner who seeks a building permit to show that the proposed dwelling is **appropriate to the neighborhood.**

Anderson vs Board of Appeals

Summary
holding that, even though party sought an area variance, the ordinance required them to prove an unnecessary hardship

Opinion

No. 531, September Term, 1973.

Decided July 12, 1974.

ZONING — Variance — Special Exception — "Practical Difficulty" And "Unnecessary Hardship" In Owner's Reasonable Use Of Land Or Building Involved Was Not Shown Under Circumstances Of Instant Case, And Granting Of Variances From Zoning Ordinance's Requirement Relating To Minimum Horizontal Distance Between Facing Walls Of Two Buildings And Granting A Special Exception For Multiple Dwellings In A Marine Commercial Recreation District Held Arbitrary And Capricious. pp. 29-38

ZONING — Use Variance — Area Variance — "Hardship" — "Practical Difficulty" — "Fairly Debatable" — Use Variances Are Customarily Concerned With "Hardship" Cases, Where Land Cannot Yield A Reasonable Return If Used Only In Accordance With Use Restrictions Of Ordinance And A Variance Must Be Permitted To Avoid Confiscatory Operation Of Ordinance, **While Area Variances Are Customarily Concerned With "Practical Difficulty" — Mere Financial Hardship Or An Opportunity To Get An Increased Return From Use Of Property Is Not Sufficient For Granting A Variance — Difficulties Or Hardships Must Be Peculiar To Property In Question And Contrast With Other Owners In Same District, And Hardship Must Not Be Result Of Applicant's Own Actions** — Where Standard Of "Practical Difficulty" Applies, Applicant Is Relieved Of Burden Of Showing A Taking In A Constitutional Sense — In Case At Bar Where Zoning Ordinance In Question Permits Area Variances Only, And Not Only Expresses The Criteria Of Practical Difficulty And Unnecessary Hardship In Conjunctive. **But Also Independently Requires No Area Variance Be Granted Unless Strict Application Of Regulations Deprives Applicant Of Reasonable Use Of His Land, An Area Variance Can Be Granted Only Upon Proof That Strict Application Of Regulations Would Result In An Unnecessary Hardship And Deprives Owner Of Reasonable Use Of His Land — Proof Of "Practical Difficulties" Alone Is Insufficient, And One Who Shows No More Than That Granting Of A Variance Would Do No Harm And It Would Be Profitable To Him Fails To Meet Required Burden As Defined By Specific Ordinance Involved** — Based On Record Here. Question Of Whether Strict Application Of Distance Between Buildings Requirement Would Result In An Unnecessary Hardship By Depriving Applicant Of A Reasonable Use Of His Land Was Not Fairly Debatable. pp. 38-42

J.A.R.

Appeal from the Circuit Court for Calvert County (BOWEN, J.).

McRae Anderson and Carmen Anderson, his wife, filed an order of appeal in the court below from a decision of the Board of Appeals of the Town of Chesapeake Beach granting a special exception and granting a variance to Ronald W. Pickett from the town's zoning ordinance's requirement relating to

distance between facing walls and for multiple dwellings in a marine commercial recreation district. From an order affirming the decision, they appeal.

Order reversed. Costs to be paid by appellees.

The cause was argued before MOYLAN, MENCHINE and DAVIDSON, JJ.

Eugene E. Pitrof, with whom were Pitrof Starkey on the brief, for appellants.

Steny S. Hoyer, with whom were Hoyer Fannon and Allen S. Handen on the brief, for appellees.

DAVIDSON, J., delivered the opinion of the Court.

This appeal is from an order of the Circuit Court for Calvert County which affirmed a decision of the Board of Appeals of the Town of Chesapeake Beach granting variances from the town's zoning ordinance's requirement relating to minimum horizontal distance between facing walls of two buildings and granting a special exception for multiple dwellings in the MCR (Marine Commercial Recreation) district. After a careful review of the record, we find that the action of the Board of Appeals in granting the variances was arbitrary and capricious and should not be sustained. Because the special exception is conditioned on the placement of the buildings as shown on the site plan, and because that placement, absent the grant of the requested variances, is violative of the "distance between facing walls" requirement of the ordinance, the granting of the special exception should not be upheld.

On 26 May 1972 the Mayor and Town Council of Chesapeake Beach enacted a zoning ordinance for the town, which is located in Calvert County. Section 300 of the ordinance divides the town into six classes of districts, or zones, one of which was delineated as the Marine Commercial Recreation (MCR) district. Sections 401(c) and 406 provide that multiple dwellings may be permitted in the MCR district if the Board of Appeals grants a special exception and certain other specified requirements are met. One such specified requirement, contained in § 406 (5)(b) (i), relates to the minimum horizontal distance permitted between facing walls of any two buildings on one lot.

More specifically, § 406 (5)(b) (i) provides:
"[W]here two (2) facing walls both contain a window or windows the minimum horizontal distance shall be three (3) feet of horizontal distance for each foot of average height of the facing wall of the building with greatest height but in no case less than seventy-five (75) feet. . . ."

On 19 January 1973 Ronald W. Pickett, contract purchaser of the subject property and one of the appellees in this proceeding, filed an application for a zoning permit and an application for a special exception to develop 22.10 acres of land zoned MCR with 320 condominium apartment units and a 38,000 square foot convenience shopping center. A site plan was attached which indicated that in addition to the commercial facility the applicant proposed to build four apartment buildings, each nine stories high. Parking spaces were to be provided for 898 cars, with 640 spaces allocated to service the apartment dwellers and 258 to service the shopping center. An existing swimming pool, bathhouse and clubhouse were to be improved and retained for use by the residents of the proposed condominiums and four tennis courts were to be constructed for their enjoyment. All four buildings were to be positioned in a row along the edge of the Chesapeake Bay and were to be parallel to one another. The

existing swimming pool and bathhouse lies between the proposed sites of Building No. 1 and Building No. 2, which were to be separated by a distance of more than 300 feet. The distance between Buildings No. 2 and No. 3 was to be approximately 90 feet while that between Buildings No. 3 and No. 4 was to be approximately 100 feet. Section 406 (5)(b) (i) requires a minimum distance of about 250 feet between buildings of the height proposed.

The site was previously occupied by the Chesapeake Beach Amusement Park.

The record is unclear as to the precise distances involved. The minutes of a meeting of the Planning and Zoning Commission held on 7 February 1973 indicate that the proposed buildings were to be 86 feet high, which would necessitate a distance of 258 feet between buildings and that the distance between Buildings No. 2 and No. 3 was to be 90 feet, while between Buildings No. 3 and No. 4 the distance was to be 100 feet. Under this set of facts variances of 168 feet and 158 feet are required.
Although the zoning permit application indicates a building height of 81 feet, the architect testified at the public hearing held by the Board of Appeals on 12 April 1973 that the maximum height would be 80 feet. A site plan submitted to the Board of Appeals at this hearing indicates a distance of approximately 100 feet both between Buildings No. 2 and No. 3 and between Buildings No. 3 and No. 4. Under this set of facts, two variances of either 143 or 140 feet each would be required.
However, at the hearing before the Board of Appeals and here on appeal the parties agree that the ordinance requires a minimum distance of 240 feet between the buildings and that variances of 153 feet and 143 feet are necessary.

On 7 February 1973 the application for a special exception and the accompanying site plan were reviewed by the Planning and Zoning Commission. The minutes of that meeting reflect that a member of the staff of the State Planning and Zoning Commission advised the Commission not only that variances were required because of non-compliance with § 406 (5)(b) (i) but also that the inclusion of a shopping area was violative of § 406. The Planning and Zoning Commission voted to recommend to the Board of Appeals that the proposed special exception be granted, "providing that all commercial buildings be deleted and that the Board of Appeals grant a variance for the non-compliance of distances between buildings." On 13 February 1973 the Board of Appeals received the following written communication from the Chairman of the Planning and Zoning Commission:

Section 406 provides for a minimum lot area of 3,000 square feet for each unit in an MCR development. The staff member pointed out that on a tract of 22.1 acres, where 960,000 square feet would be needed to fulfill the requirements for the erection of 320 units, only 2,676 square feet would be left for the construction of the shopping area.

"The Planning and Zoning Commission accepts the plan submitted by Mr. Ron Pickett to construct four nine-story buildings on site of attached plan, providing you delete all commercial on said plan and that you grant a variance for the non-compliance of distances between buildings required in Section 406 (5)(b) (i)."

Thereafter Mr. Pickett filed an application for a variance alleging that:

"Due to the exceptional physical characteristics of the site a hardship is created by conforming to the 3' for 1' which would deprive me of the reasonable use of the land and buildings."

On 12 April 1973 a hearing was held before the Board of Appeals. The site plan submitted there deleted the proposed commercial use in its entirety, but the four proposed apartment buildings remained in approximately the same position they had occupied on the original site plan.

Two witnesses testified with respect to the need for the requested variances. Mr. Ronald W. Pickett, the contract purchaser of the property, testified that the property, bounded on the west by Route 261 and the east by the Chesapeake Bay, is "very unique." It is "almost like an L shape" with the southern portion of the property being considerably narrower than the northern portion. Building No. 1 is located on "Pool Hill," a hill which "slopes rather quickly down to the swimming pool." The location of Building No. 1 was dictated by the setback requirements of the ordinance and the slope of the hill, which together prohibited the placement of the building on any other spot. According to Mr. Pickett "there is no other way for us to locate that building. . . . We were locked in on the first building site, we virtually had no alternative if we were going to use that particular piece of property, Pool Hill. Because of the requirements of the ordinance and the dimensions of the building, that building had to go there."

Mr. Pickett further testified that the topography of the site also dictated the location of the remaining three buildings. He pointed out that the terrain generally slopes upward from Route 261, the western boundary of the property, to the center of the property, and then slopes downward, finally leveling off near the water's edge. Three alternatives were available. Buildings No. 2, No. 3 and No. 4 could have been located near the western boundary of the property at the bottom of the slope, "which would have meant that our people wouldn't even have any view of the water." They could have been located on the top of the hill, "which would have given us higher elevations and probably more water view," but which also "would have been much more obtrusive from Route 261." Finally, they could have been located on the level land on the east side of the slope near the water's edge. The latter alternative was chosen to maximize the residents' view of the water and minimize the visibility of the structures from Route 261.

Mr. Pickett testified that the possibility of replacing Buildings Nos. 2, 3 and 4 with two buildings was considered. He pointed out that in order to "use the density to maximize the value of the property" the two substitute buildings would have to be 12 or 13 stories in height. While such a mode of development would have obviated the need for a variance and would have been more economical to construct, this alternative was rejected "in order to minimize the appearance of the structures from the road." Consideration was also given to placing Building No. 3 to the rear of, rather than between, Buildings No. 2 and No. 4. This alternative was rejected for a variety of reasons. Since the balconies on the rear building would overlook the balconies on the front buildings, the arrangement would interfere with the privacy which the balconies were specifically designed to provide. Parking would have to be provided in front of Building No. 3, which would interfere with the residents' view of the natural beauty of the shoreline. Either Building No. 3 would have to be located on the crown of the hill, making the building more visible from the road, or the crown of the hill would have to be removed to make the building less visible from the road, neither of which was a desirable mode of development. Finally, the principles of sound planning would be violated by the changes in the traffic patterns which would be required and which would result in residents from all the buildings driving in front of Building No. 3. Under the proposed site plan, mobile activity is confined to the rear of all the buildings.

Mr. Herbert Fleischer, an architect, engineer and planner, who had prepared the site plan for the subject property, qualified as an expert. He testified that the subject property had "intriguing natural beauty" with distinct contours and vegetation which should not be disturbed. He opined that the buildings are located so as to preserve the shoreline and indeed to enhance the view from the bay toward the project. He stated that although it would have been possible to place Building No. 3 in a different

location, the plan as drawn maximized the permissible density while producing a "well-organized project." In his view, the four roughly parallel buildings are more in harmony with the appearance and character of Chesapeake Beach than a "staggered" layout would be. Moving the building to the west, behind Buildings No. 2 and No. 4, would mean building it in a "hole" behind the hill. In addition a parking area would be required in front of the building which would have divided the planned open park recreation area. Such a parking lot would destroy the "resort" character of the project and create traffic hazards for pedestrians attempting to use it. Mr. Fleischer concluded his testimony on direct examination by stating that the grant of the requested variances would have no adverse effect on the residents of the buildings, the abutting property owners, the surrounding properties or the neighborhood of Chesapeake Beach. Indeed, in his view, the development as planned would enhance the general area.

On recross-examination the following colloquy took place:

"Q. The only other question I would ask, can you tell the board what hardship would be suffered by your client if the variance was not granted?

"A. The only hardship would be the loss of income because you couldn't have the other buildings. You see, you have to approach it two ways. My opinion is, the density that we have is a low one, in my opinion.

"Q. If you would just try to answer the question directly, if you can, what hardship would you suffer if the variance is not granted?

"A. Maybe poor planning.

"Mr. Handen [Town Attorney for Chesapeake Beach]: I think we have batted back and forth enough, gentlemen, it's got to come to an end."

On 18 April 1973 the Board of Appeals issued a written statement and decision. With respect to the request for variances, the Board of Appeals found, among other things:

"1. That, as a matter of fact, the variance requested will not be contrary to the public interest and that practical difficulties and unnecessary hardship would result if it is not granted.

* * *

"4. That, as a matter of fact, the Petitioner met the burden of proving unique circumstances in that a strict application of the Zoning Ordinance would deprive the Petitioner of the reasonable use of his land and proposed buildings.

"5. That, as a matter of fact, Petitioner met the burden of proving unnecessary hardship as required by the Ordinance in that to disallow the variance would impose a special hardship on the subject property.

"6. That, in addition to paragraphs numbered 1 through 5 above, the Board found as a fact that the granting of the variance is necessary for the reasonable use of the land and Petitioner's buildings; that the hardship complained was not economical nor self-created; that the hardship resulted from the

application of the Ordinance and that the hardship would be specifically suffered by the property in question."

With respect to the special exception the Board of Appeals found:

"7. That, as a matter of fact, the special exception requested is consistent with the spirit, purpose and intent of the Ordinance.

"8. That, as a matter of fact, the special exception requested is suitable for the property in question and designed to be in harmony with and appropriate in appearance with the existing and intended character of the general vicinity; and that the special exception does not adversely effect street traffic and safety."

The Board of Appeals granted the variances and special exception subject to a condition, among others, "that petitioner must substantially adhere to matters of construction to the initial plans presented before the Board."

Section 1002 (c) of the zoning ordinance states that each resolution of the Board of Appeals "shall contain a statement of the grounds and any findings forming the basis of such action or decision." Despite repeated admonitions by the Court of Appeals that the findings of administrative boards are not to be limited to conclusions couched in the terms of the ordinance itself but rather are to include specific findings of facts that support their conclusions, the Board of Appeals in this case set forth its conclusions in its statement and decision in a boilerplate form employing the terms of the ordinance itself without setting forth any specific findings of fact. See, e.g., Hooper v. City of Gaithersburg, 270 Md. 628, 637, 313 A.2d 491, 496 (1974); Baker v. Board of Trustees, 269 Md. 740, 747, 309 A.2d 768, 771-72 (1973); Pistorio v. Zoning Board, 268 Md. 558, 570, 302 A.2d 614, 619 (1973); Turner v. Hammond, 270 Md. 41, 56, 310 A.2d 543, 551 (1973).

On 3 August 1973 the Circuit Court for Calvert County affirmed the grant of the variances and the special exception. With respect to the variances, the Court said:

"Finally, with respect to the granting of the Variance, the Appellant's position seems to be that because the Applicants' desire to use their land to the fullest extent, the need for the Variance is something they created and, therefore, it should not be considered. The Board, however, seemed to take the position that there was a problem created by the special topographic features and existing structures on this property, as well as its relation to the principal natural feature of the area; that is, the Chesapeake Bay, which entitled the Applicants to some consideration. Once again, this is a matter of judgment and in view of the evidence bearing on this question, the Court is satisfied that the Board had before it sufficient evidence to support the result it reached."

The appellants, McRae and Carmen Anderson, who opposed the granting of the application at the Board of Appeals hearing and appealed the Board's decision to the Circuit Court, contend that the zoning ordinance of the Town of Chesapeake Beach requires the applicant to show that a denial of the requested variance would result not only in "practical difficulty" but also in an "unnecessary hardship" depriving the owner of the reasonable use of the land or building involved. They maintain that because this dual showing was not made, the action of the Board in granting the variances was arbitrary and capricious.

The appellees, the Board of Appeals and Mr. Pickett, the applicant, contend that the variances requested in this case involve an "area variance" (a variance from area, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings) and not a "use variance" (a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses). They maintain that area variances may be allowed on proof of "practical difficulty" alone and that such variances do not require a showing of "undue hardship." They insist that more than sufficient evidence was presented to make the question of whether practical difficulties would result from the denial of the requested variances "fairly debatable." They conclude that the action of the Board in granting the requested variances and the special exception should be upheld.

The Court of Appeals has recognized a distinction between a use variance, which changes the character of the zoned district, and an area variance, which does not. Use 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 a variance must be permitted to avoid confiscatory operation of the ordinance, while area variances are customarily concerned with "practical difficulty." Loyola Loan Ass'n v. Buschman, 227 Md. 243, 248, 176 A.2d 355, 358 (1961). Where the standard of undue hardship applies, the applicant, in order to justify the grant of the variance, must meet three criteria:

1) If he complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property. Pem Co. v. Baltimore City, 233 Md. 372, 378, 196 A.2d 879, 882 (1964); Marino v. City of Baltimore, 215 Md. 206, 218, 137 A.2d 198, 202 (1957); see Salisbury Bd. v. Bounds, 240 Md. 547, 555, 214 A.2d 810, 815 (1965). Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance. Daihl v. County Board of Appeals, 258 Md. 157, 167, 265 A.2d 227, 232 (1970); Salisbury Bd. v. Bounds, supra, 240 Md. at 555, 214 A.2d at 814; Marino v. City of Baltimore, supra; Easter v. City of Baltimore, 195 Md. 395, 400, 73 A.2d 491, 492 (1950).

2) The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district. Burns v. Baltimore City, 251 Md. 554, 559, 248 A.2d 103, 106 (1968); Marino v. City of Baltimore, supra; Easter v. City of Baltimore, supra.

3) The hardship was not the result of the applicant's own actions. Salisbury Bd. v. Bounds, supra; Marino v. City of Baltimore, supra; Gleason v. Keswick Impvt. Ass'n, 197 Md. 46, 50-51, 78 A.2d 164, 165-66 (1951).

Where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue hardship" standard. In order to justify the grant of an area variance the applicant need show only that:

"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, 787 (1973), quoting 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972).

The lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance.

While a distinction between use and area variances has been recognized and clearly articulated in Maryland, the Court of Appeals has applied the "practical difficulty" standard to area variance applications in only three cases. McLean v. Soley, supra, 270 Md. at 213-14, 310 A.2d at 786-87; Zengerle v. Bd. of Co. Comm'rs, 262 Md. 1, 21, 276 A.2d 646, 656 (1971); Loyola Loan Ass'n v. Buschman, supra, 227 Md. at 248-50, 176 A.2d at 358-59. In each of them the governing local ordinance authorized the grant of an area variance when strict compliance with the regulations would result in practical difficulties or unreasonable hardship. In each of them the Court of Appeals emphasized that the grant of the requested area variance was justified on proof of "practical difficulty" alone and that proof of hardship was not required because the governing zoning ordinance, which phrased the criteria of "practical difficulty or unreasonable hardship" in the disjunctive, could be construed as requiring that only the lesser standard of proof be applied.

The zoning ordinance of the Town of Chesapeake Beach differs from those ordinances in a number of significant respects. Section 1005 (c)(2) of the ordinance prohibits the Board of Appeals from granting a use variance. Section 1005 (a) authorizes the Board to grant an area variance only where the strict application of the regulations "would result in practical difficulty and unnecessary hardship depriving the owner of the reasonable use of land or building involved. . . ." (Emphasis added.) Section 1005 (c) provides that the applicant must show that "practical difficulty and unnecessary hardship will result if [the variance] is not granted." (Emphasis added.) Section 1005 (c)(3) provides that:

"There must be proof of unique circumstances . . . and that said circumstances or conditions are such that strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building."

Finally, § 1005 (c)(5) requires an applicant to show:

"That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose. It is not sufficient proof of hardship to show that greater profit would result if the variance were awarded. Furthermore, hardship complained of cannot be self-created; it cannot be claimed by one who purchases with or without the knowledge of restrictions; it must result from the application of the Ordinance; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered."

Thus the zoning ordinance of the Town of Chesapeake Beach permits area variances only. Not only does it express the criteria of practical difficulty and unnecessary hardship in the conjunctive, but it also independently requires that no area variance be granted unless it is shown that strict application of the regulations will deprive the applicant of the reasonable use of his land and that the grant of the variance

is necessary for the reasonable use of the land. It defines the hardship which must be shown as the equivalent of a constitutional taking, and utilizes the same criteria employed by the Court of Appeals for establishing undue hardship. The words of the statute are clear and unambiguous and require no construction. Under the express terms of the ordinance, an area variance can be granted only if there is proof that the strict application of the regulations would result in an unnecessary hardship which deprives the owner of the reasonable use of his land. Proof of "practical difficulties" alone is insufficient. McLean, Zengerle and Loyola, supra, are inapposite.

Appellees do not contend that the applicant presented sufficient proof of an unnecessary hardship which deprived the owner of the reasonable use of his land. The record shows that the only hardship allegedly suffered by the applicant as a result of the strict application of the ordinance is "loss of profit" and "may be poor planning." This evidence falls far short of a showing of unnecessary hardship as defined by the specific ordinance here involved as well as by the Court of Appeals. One who shows no more than that the granting of the variance would do no harm and that it would be profitable to him fails to meet the burden. M. C.C. v. Polakoff, 233 Md. 1, 9, 194 A.2d 819, 824 (1963). Moreover, the very testimony which shows the practical difficulties encountered in attempting to develop the land at a maximum density in accordance with the distance between buildings restriction simultaneously establishes unequivocally that not only is it possible to develop the land at the maximum permitted density in accordance with the distance between buildings requirement, but also that such development could be less costly than the mode of development proposed. Given the evidence presented on behalf of the applicant, it is impossible for him to contend that the strict application of the ordinance prevents him from making a reasonable use of his land.

Based on the record before us, we find that the question of whether the strict application of the distance between buildings requirement would result in an unnecessary hardship to the applicant by depriving him of the reasonable use of his land was not fairly debatable. Baltimore v. Sapero, 230 Md. 291, 296, 186 A.2d 884, 887 (1962); Marino v. City of Baltimore, supra, 215 Md. at 222, 137 A.2d at 205. The action of the Board of Appeals in granting the variances was arbitrary and capricious and cannot be sustained. Daihl v. County Bd. of Appeals, supra, 258 Md. at 167, 265 A.2d at 232; Dampman v. M. C.C. of Baltimore, 231 Md. 280, 286-87, 189 A.2d 631, 634 (1963). Because the grant of the special exception is conditioned on adherence to a site plan in which, absent the variances, the buildings are located in a manner violative of the ordinance, it too cannot be sustained. Accordingly, the order of the lower court affirming the grant of the variances and the special exception shall be reversed. Order reversed.

In view of our decision, all of the other contentions made by appellants need not be considered.

Costs to be paid by appellees.

Court of Special Appeals of Maryland.

William F. CHESLEY, et ux. v. CITY OF ANNAPOLIS, Maryland.

No. 1104, Sept. Term, 2006.

Decided: September 27, 2007

Argued before DAVIS, JAMES R. EYLER, and ADKINS, JJ. Sager A. Williams, Jr. (Blumenthal, Delavan & Williams, PA on the brief), Annapolis, for appellant. Jonathan P. Kagan (Brassell, Baldwin, Kagan & May, PA., Shaem Spencer, City Attorney on the brief), Annapolis, for appellee.

William and Robin Chesley, appellants, challenge the denial of a front yard setback variance that would enable them to build a one car garage within three feet of the street along their Chesapeake Bay waterfront property in Annapolis. They present two questions for our review:

I. Did the Board of Appeals err in denying the Chesleys' zoning variance because the Board's conclusions are not supported by substantial evidence and because the Board failed to apply the law correctly?

II. When the City appears as a party at a public hearing before the Board of Appeals through officials who work for the City's Planning Department, and when those City officials testify in favor of a variance application, is it improper for the City in a subsequent petition for judicial review of the Board's decision to oppose the variance by taking positions contrary to the positions City officials took before the Board?

Finding no error, substantial evidence in the administrative record to support the Board's denial of this variance, and no impropriety in the City's advocacy, we shall affirm the judgment.

City Regulations

The Annapolis City Code sets minimum setbacks of six feet for side yards and 30 feet for front yards for accessory structures in an R2 zone, such as the Chesleys' proposed garage. See Annapolis City Code § 21.18.040(C)(hereafter cited as "Code"). The Chesley property is subject to other building restrictions, however, due to its location at 15 Eastern Avenue in the Eastport section of Annapolis, on the Chesapeake Bay.

First, the approximately one-third acre lot is in the Chesapeake Bay Critical Area, and therefore all buildings on this lot must be set back at least 44 feet from the shoreline. Impervious surfaces may not cover more than fifty percent of the lot. As a result, the residence, driveway, and accessory structures may not occupy more than approximately 7,870 square feet of the Chesley property.

Second, the Chesley property lies in a Residential Conservation Overlay District, which requires formal Site Design Plan Review by the City's Department of Planning and Zoning prior to issuance of all building permits for any construction that impacts the street facade. See Code § 29.69.030. The purpose of this regulation

is to preserve patterns of design and development in residential neighborhoods characterized by a diversity of styles and to ensure the preservation of a diversity of land uses, together with the protection of buildings, structures or areas the destruction or alteration of which would disrupt the existing scale and architectural character of the neighborhood. The general purpose includes . [c]ompatibility of new construction . with the existing scale and character of surrounding properties[.]

Code § 21.69.010. The RC overlay standards encourage traditional urban design, inter alia, by permitting reduced building setbacks to the extent that the proposed new construction maintains building patterns of the neighborhood. See City of Annapolis Dep't of Planning and Zoning, The Eastport Residential Conservation Overlay District: A Guide to the Process and Design Guidelines 2.

The third and final factor affecting use of the property is that the Chesley lot lies within the Eastport Residential Conservation Overlay District. See id. Eastport originated in the late 19th century, and remained an independent town until the City of Annapolis (the City) annexed it in 1951. See id. at 8. The neighborhood is located within walking distance to downtown Annapolis and the City Dock, on the Horn Point peninsula, between Spa Creek and Back Creek, where the Severn River enters the Chesapeake Bay. See id. Eastport homes reflect that community's working-class and maritime roots, characterized architecturally by "social and physical diversity, together with its small, intimate scale" and an ambiance described as "[d]elicate, unique, special, charming, historic, quiet, [and] personal [.]" See id. To preserve that character, "all new construction, including . accessory structures which may be visible from the street [must] be reviewed for compliance with the guidelines in Section 21.98.050.D [.]" Id. With respect to building setbacks from the street, these must "observe the established setbacks for the block on which [the construction] is proposed, or the setback requirement of the underlying zone, whichever is less [.]" Id. at 4.

The Annapolis City Code permits the Board to grant a variance from applicable setback requirements, see Code § 21.28.040.A, upon finding that the following conditions have been satisfied:

1. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out;

2. The conditions upon which a petition for a variation is based are unique to the property for which the variance is sought, and are not applicable, generally, to other property within the same zoning classification;

3. The purpose of the variance is not based exclusively upon a desire to increase financial gain;

4. The alleged difficulty or hardship is caused by this title and has not been created by any persons presently having an interest in the property;

5. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;

6. The proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values with [sic] the neighborhood.

Former Code § 21.80.030(A)(1996)(emphasis added). See also Code § 21.28.050 (2005)(current variance standards and conditions are substantially the same).

The Chesleys' Development Proposals

Immediately after purchasing the property in 2000, the Chesleys consulted with the City's Department of Planning and Zoning regarding their wish to replace the existing residence with new construction, including a house with attached two car garage and a pool. As a result of negotiations over 18 months, during which the Department of Planning and Zoning (the Department) pressed for a public view corridor along the southern boundary of the property and design changes to make the new home "more Eastport-like," the Chesleys amended their plans to propose a detached two car garage.[1] The Department noted that this would require side and front yard setback variances, but told the Chesleys that the Department would "support" the request. See Code § 21.28.020.B (planning staff reviews variance applications and makes reports and recommendations to the Board).

In support of their garage variance, the Chesleys advised that when Mr. Chesley's wheelchair-bound adult son Billy visits, he uses a special van with a metal lift and ramp that becomes slippery in rain, snow, or ice. In addition, waterfront lot owners along Eastern Avenue treat their front yards as their rear yards for purposes of garages. The Chesleys contend that "[n]o waterfront property along Eastern Avenue has its water view blocked by a detached garage built between the home and the water." Moreover, the lots on each side of the Chesleys have detached garages within a few feet of the street.

The City approved plans for a new 5,000 sq. ft. residence, but concluded that further review of the pool and garage proposals was necessary. In addition to those exclusions, the City's approval was subject to specific conditions. One condition was that the Chesleys enter into a "View Cone Covenant and Agreement" [2] with two neighbors across the street, in order to preserve a public view to the Chesapeake Bay. They did so. These two agreements prohibit development of an 18-20 foot wide strip along the westerly side of the lot. According to Mr. Chesley, his is the only lot that the City has required a recorded view cone agreement as a condition of approval.

The Chesleys proceeded to build their house as approved by the City, i.e., without a garage. During construction, they petitioned for approval of a variance that would allow them to build a one story, two car, detached garage, within three feet of Eastern Avenue, in the location suggested by planning authorities. As promised, the Planning Department submitted a staff report supporting this request. After a public hearing, at which neighbors opposed the Chesleys' proposal, the Board unanimously denied the application on July 17, 2002.

The Chesleys completed construction of both the house and the pool, then occupied their home for the next 18 months, during which time they had a daughter.[3] In 2005, the Chesleys filed a second application for a variance, this time to build a scaled-back one story, one car garage in the same location, also requiring a variance to allow a three foot setback, but no side setback variance. The garage would be custom-designed to accommodate the van used to transport Billy. The Department again supported the variance application.

At a June 7, 2005 hearing, counsel for the Chesleys proffered the testimonies and qualifications of an architect and a land planner, as well as Mr. Chesley's testimony.[4] Two neighbors then testified for, and two against, the proposal.

On June 29, after public deliberation, the Board issued a written 2-1 decision denying the variance. A majority of the Board quorum [5] concluded that the Chesleys failed to satisfy the six required conditions for a setback variance. Specifically, the Board found that no hardship exists, that the claimed hardship was self-created, and that the proposed garage would have a negative impact on the neighborhood.

The Chesleys petitioned for judicial review in the Circuit Court for Anne Arundel County. The City Attorney, acting as counsel for the Board, gave notice of the Board's intent to participate. Later, outside counsel appeared on behalf of the City. The circuit court affirmed the Board's decision, and the Chesleys filed this timely appeal.

DISCUSSION

I.Setback Variances

A variance authorizes the property owner " 'to use his property in a manner forbidden' " by applicable zoning restrictions. See Cromwell v. Ward, 102 Md.App. 691, 700, 651 A.2d 424 (1995) (citation omitted). In contrast to special exceptions, which " 'contemplate[] a permitted use . [once] the prescribed conditions therefor are met[,]' " a variance " 'contemplates a departure from the terms of the [zoning] ordinance in order to preclude confiscation of the property [.]' " Id. at 699-700, 651 A.2d 424 (citation omitted). Although "the purpose of a variance is to protect the landowner's rights from the unconstitutional application of zoning law[,]" variances are frequently permitted in circumstances when application of the setback requirement would not constitute a "taking." See Belvoir Farms Homeowners Ass'n, Inc. v. North, 355 Md. 259, 281, 734 A.2d 227 (1999).

There are different types of variances, including the "ordinary" front yard setback variance at issue here and the variances from the setbacks established by statute for critical areas in an effort

to regulate development of waterfront properties. Not surprisingly then, "there are different criteria that must be met for 'ordinary' or 'general' zoning variances and critical area variances." Becker v. Anne Arundel County, 174 Md.App. 114, 139, 920 A.2d 1118 (2007). The criteria for a yard setback variance are established by the City, as set forth above.

The Board's Findings

During deliberations, the two Board members in the majority articulated what amounts to a "caveat builder" perspective concerning the Chesleys' predicament. In their view, because the Chesleys knew that they would need a front yard setback variance to build a detached garage in the location recommended by planning authorities, they should have either (a) waited to construct their home and pool until they obtained a variance for the garage, or (b) "redesigned [the house] in a way that they wouldn't have this problem." Referring to how the footprint of the house sits on the lot, the other Board member in the majority observed that the Chesleys could have addressed concerns about the 30 foot setback by "modif[ying] the size of the home to allow for a detached garage next to it from the opposite [side] from the view cone and they could have changed the configuration in the house."

In its written opinion, the Board concluded that the Chesleys did not satisfy the threshold requirement in the Code that there be a hardship resulting from "the particular physical surroundings, shape or topographical conditions." Concern regarding the large size of the house in relation to the lot is evident in the Board's findings:

Through Site Design Plan Review, the applicant established a view cone covenant along the southwestern end of the property in order to preserve the views, from the public right of way, out to the Chesapeake Bay. The Board finds as it did once before that despite the view cone restriction, there was adequate room on the property to construct a reasonable size residence with a detached or an attached garage without the need for the requested variance. The applicant chose to construct a larger home, and then request a variance rather than plan for a home when it had the space and ability to construct the garage within existing restrictions. Accordingly, the Board again finds that no hardship exists. (Emphasis added.)

With respect to the second requirement that "[t]he conditions upon which a petition for a variation is based are unique to the property[,]" the Board found "that the typical constraints of waterfront development within the critical area and the view cone covenant do not in and of themselves necessitate the requested variance."

With respect to the fourth condition that "[t]he alleged difficulty or hardship is caused by this title and has not been created by" the Chesleys, the Board ruled:

Although a view cone covenant was supported by Planning and Zoning prior to the site design approval for the new residence, the applicant consented to the covenant as part of the overall redevelopment of the property and could have planned for the redevelopment with a garage and the viewcone. The Board finds that the claimed hardship has been created by the applicant.

Finally, with respect to the fifth and sixth requirements that the variance "will not," inter alia, be "injurious to other property . in the neighborhood [,]" or "substantially diminish or impair property values with[in] the neighborhood," the Board concluded:

Testimony was presented at the hearing about the location of the garage on that side of Eastern Avenue. Concerns were raised about the negative impact on the streetscape. The Board finds that adding a garage at this location will contribute to the walling off of that side of Eastern Avenue with structures and create a visually unattractive streetscape. The Board finds that this would substantially diminish or impair property values in the neighborhood. (Emphasis added.)

The circuit court ruled that the Chesleys cannot challenge the Board's 2005 findings that the Chesleys did not suffer hardship and that any hardship they claim to have suffered was self-created, because they did not challenge the Board's 2002 finding on the same questions by seeking judicial review of that decision.[6]

The Chesley Challenges

The Chesleys contend that "[t]he Board premised its negative findings on a misunderstanding of Maryland law applicable to the variance concepts of 'hardship' and 'self-created hardship.' " With respect to neighborhood impact, the Chesleys assert that the Board's negative findings are arbitrary and capricious because they are not based on any empirical data or other competent evidence that refute the undisputed evidence provided by the Chesleys' expert witnesses and the City's professional planners. The City contends that the Board's decision is legally correct and supported by the record.[7]

Satisfying Conditions For Variance

"The burden of showing facts to justify . [a] variance rests upon the applicant[.]" Easter v. Mayor of Baltimore, 195 Md. 395, 400, 73 A.2d 491 (1950). In cases involving critical area variances, it has been made clear by statute that applicants "have the burden of meeting all of the requirements" enumerated in the law governing such variances. See Md.Code (1973, 2000 Repl.Vol., 2006 Cum.Supp.), § 8-1808(d)(4)(ii) of the Natural Resources Article (NR)(to obtain a critical area variance, applicant must satisfy each one of the statutory conditions); Becker, 174 Md.App. at 130-32, 920 A.2d 1118 (reviewing legislative history of criteria for critical area variances, including recent change requiring satisfaction of all statutory conditions). Whether the applicant must satisfy all of the City's enumerated conditions for an "ordinary" front yard setback variance is less clear.

In a line of critical area variance cases that prompted legislative action, the Court of Appeals held that the "determinative factor" in granting a variance was whether there is hardship, so that all other conditions for the grant of such a variance were construed as merely providing guidance and could not be individually cited as grounds to deny the variance. In White v. North, 356 Md. 31, 50, 736 A.2d 1072 (1999), the Court explained, using language that is arguably broad enough to encompass all types of variances, that the dispositive question is whether denial of the requested variance will create hardship:

The variance provisions of the ordinance at issue include, as do most such ordinances, a list of other factors that must be considered with respect to the grant or denial of a variance. They are described as (1) a deprivation of rights commonly enjoyed by others; (2) that no special privilege will be conferred on an applicant; (3) that the need for relief not be caused by an applicant's own acts; (4) the need for a variance does not arise from conditions on adjacent property; (5) a variance will not adversely affect water quality, fish, wildlife, or plant habitat; (6) a variance will be in harmony with the general spirit of the particular zoning regulation; (7) that the variance is the minimal necessary to afford relief; (8) the variance will not alter the essential character of a neighborhood; (9) the variance will not impair an appropriate use of adjacent property; (10) the variance will not counter acceptable clearing and replanting requirements; and (11) the variance will not be detrimental to the public welfare. If total compliance with every specific requirement were necessary, relief would be nearly impossible and serious "taking" questions might arise. It is our view that these specifically stated requirements are to be considered in the context of the entire variance ordinance, to the end that, when interpreted as a whole, either they are or are not generally met.

Moreover, the essential determination is whether an unwarranted hardship exists. The specific factors that must be considered cannot be construed individually to overrule a finding of unwarranted hardship any more than they could overrule a finding of an unconstitutional taking of one's property. The individual provisions that must be considered are part of the entire matrix that defines what information is necessary to reach a finding as to the existence or nonexistence of an unwarranted hardship.

White, 356 Md. at 50-51, 736 A.2d 1072. See also Lewis v. Dep't of Natural Resources, 377 Md. 382, 413, 833 A.2d 563 (2003)("We have recently held, in White, that these criteria must be applied in total and generally, and that no individual factor is to be determinative").

In response to White, the 2002 General Assembly amended the critical area law to explicitly require compliance with all the variance conditions set by statute. See 2002 Md. Laws, ch. 431, 432; Becker, 174 Md.App. at 131-33, 920 A.2d 1118. There is no analogous certainty in cases involving other types of variances. Unlike the revised critical area statute, the City's zoning code does not specifically address whether all the enumerated variance conditions must be satisfied. Nor have we been cited to a case affirming the denial of a variance for a single reason unrelated to hardship. Cf. Stansbury v. Jones, 372 Md. 172, 204, 812 A.2d 312 (2002)(declining to decide "whether self-created hardship alone is sufficient to deny an area variance[,]" while noting that Court of Appeals has "assumed, without any extensive investigation of the matter, that it was sufficient").

Here, the City did not argue to either the Board or this Court that the denial of the Chesleys' variance application should be affirmed on the basis of non-hardship factors. Nor did the Board rest its decision solely on a negative finding regarding a single factor. For that reason, we shall address whether the Board erred in determining both that the Chesleys failed to establish a hardship that was not self-created and that the proposed garage would have a negative impact on the neighborhood.

Appellate Review Of The Board's Decision

The standard governing appellate review of variance decisions is "the same whether the agency grants or denies" the application. See Stansbury, 372 Md. at 185, 812 A.2d 312. "Our role in reviewing whether the Board, as an administrative agency, correctly reached the conclusions required by the Zoning Ordinance for . a variance . 'is precisely the same as that of the circuit court.' This means we must review the administrative decision itself." Mastandrea v. North, 361 Md. 107, 133, 760 A.2d 677 (2000) (citation omitted). Thus, we repeat the task performed by the circuit court. See Red Roof Inns, Inc. v. People's Counsel for Baltimore County, 96 Md.App. 219, 224, 624 A.2d 1281 (1993).

Because we review the Board decision, rather than the circuit court decision, our focus is on the reasons given by the Board. See Gigeous v. Eastern Corr. Inst., 363 Md. 481, 495-96, 769 A.2d 912 (2001). Consequently, this Court may consider any ground cited by the Board for its decision, even if the circuit court did not reach that issue in affirming the Board. See, e.g., Md.-Nat'l Capital Park and Planning Comm'n v. Friendship Heights, 57 Md.App. 69, 83, 468 A.2d 1353 (reviewing issue of whether there was substantial evidence to support zoning agency's decision, after ruling that circuit court erred in deciding that it lacked jurisdiction to entertain the action for judicial review), cert. denied, 300 Md. 89, 475 A.2d 1200 (1984); Wheaton Moose Lodge No. 1775 v. Montgomery County, 41 Md.App. 401, 417-18, 397 A.2d 250 (1979)(fact that circuit court affirmed zoning board's denial of rezoning petition on only one of multiple issues decided by the Board did not preclude Court of Special Appeals from reviewing the sufficiency of the evidence in the administrative record for the Board's findings on other issues).

On a legal issue, "a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law." People's Counsel for Baltimore County v. Md. Marine Mfg. Co., 316 Md. 491, 497, 560 A.2d 32 (1989). The zoning ordinance central to this appeal is former section 21.80.030 of the Annapolis City zoning ordinance, now recodified without change material to this appeal at Code § 21.28.050. We give considerable weight to the Board's interpretation and application of this ordinance, because of that administrative agency's expertise in administering it. See Marzullo v. Kahl, 366 Md. 158, 172, 783 A.2d 169 (2001).

For factual findings, "the correct test . is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions." White, 356 Md. at 44, 736 A.2d 1072 (citation omitted). If we find evidence to support the Board's finding, we may not substitute our judgment, even if the evidence also supports different factual inferences. See Mastandrea, 361 Md. at 134, 760 A.2d 677. However, when "an administrative agency's conclusions are not supported by competent and substantial evidence, or where the agency draws impermissible or unreasonable inferences and conclusions from undisputed evidence, such decisions are due no deference." Lewis, 377 Md. at 407, 833 A.2d 563. "Whether reasoning minds could reasonably reach a conclusion from facts in the record is the essential test." Stansbury, 372 Md. at 182, 812 A.2d 312.

Hardship

The Chesleys argue that the Board erred in concluding that their need for the setback variance did not result from a hardship within the meaning of established case law. We disagree.

In Belvoir Farms Homeowners Ass'n, Inc. v. North, 355 Md. 259, 734 A.2d 227 (1999), the Court of Appeals recognized that the purpose of zoning restrictions is "to prevent exceptions as far as possible," so that the specific need for the variance "must be substantial and urgent and not merely for the convenience of the applicant[.]" Id. at 276, 734 A.2d 227 (citing Carney v. City of Baltimore, 201 Md. 130, 137, 93 A.2d 74 (1952)). The Belvoir Farms Court held that a variance is warranted if the " 'applicable zoning restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership.' " Id. at 276, 734 A.2d 227 (quoting Marino v. Mayor of Baltimore, 215 Md. 206, 217, 137 A.2d 198 (1957)). Alternatively, if application of the zoning ordinance would deny the property owner "a reasonable and significant use for the property," there is also "unwarranted hardship" justifying a variance. See id. at 282, 734 A.2d 227. This hardship standard is "less restrictive than the unconstitutional taking standard." See id. "Whether a property owner has been denied a reasonable and significant use of the property is a question of fact best addressed by the expertise of the Board of Appeals, not the courts." Id.

In White v. North, 356 Md. 31, 49, 736 A.2d 1072 (1999), the Court of Appeals confirmed that "an unwarranted hardship can result from the denial of a reasonable and significant use," and that the local zoning agency is presumed to possess the "necessary expertise to decide what is reasonable and significant." In that case, the Court reversed judicial decisions that the local zoning board acted arbitrarily and capriciously in granting a buffer variance to construct a concrete swimming pool on a sloped lot. See id. at 52, 736 A.2d 1072. The White Court emphasized that determination of whether the proposed pool was a reasonable and significant use, and whether denial of a variance was an unwarranted hardship, are factual findings on which courts must give deference to the Board. See id. at 50, 736 A.2d 1072.

The Chesleys rely on Mastandrea v. North for the proposition that their circumstances constitute a hardship. In that case, the Court of Appeals affirmed the local board's grant of a critical area variance to build a brick path along the waterfront of the Mastandreas' Talbot County home, for the purpose of enabling their wheelchair-bound child to enjoy that portion of the property. See Mastandrea, 361 Md. at 143, 760 A.2d 677. The Court held that the Talbot County Board of Zoning Appeals "was required to (and did) consider whether the property owners, in light of their daughter's disability, would be denied a reasonable and significant use of the waterfront of their property without the access that the path provided." Id. at 136, 760 A.2d 677. After examining the administrative record, the Court concluded that there was substantial evidence "establishing that, without the path, a person in a wheelchair could not enjoy the waterfront portion of the property." Id. In these circumstances, the board correctly granted the variance. See id. at 143, 760 A.2d 677.

The Chesleys argue that, like the Mastandreas, they are being denied a reasonable and significant use of their property, both to accommodate Billy's disability and to enhance pickup and drop off for the Chesleys' elderly mothers and young daughter. Mastandrea, however, has been largely abrogated by statutes, enacted in 2002 and 2004. See Becker v. Anne Arundel County, 174

Md.App. 114, 131-33, 920 A.2d 1118 (2007)(reviewing the legislative enactments). The General Assembly amended the critical area law for the explicit purpose of eliminating the "reasonable use within the buffer standard" used in Mastandrea and Lewis v. Dep't of Natural Resources, 377 Md. 382, 419, 833 A.2d 563 (2003).[8] As explained in Becker, the 2002 amendment

added a requirement that in considering an application for a variance, the Board should consider the reasonable use of the entire parcel or lot for which the variance is requested. The preambles to the bills expressly stated that it was the intent of the General Assembly to overrule recent decisions of the Court of Appeals, in which the Court had ruled that . a board could grant a variance if the critical area program would deny development on a specific portion of the applicant's property rather than considering the parcel as a whole.

Becker, 174 Md.App. at 132, 920 A.2d 1118 (emphasis in original). Judge James Eyler, writing for this Court in Becker, explained the 2004 amendment to the critical area law:

The General Assembly expressly stated that its intent in amending the law was to overrule Lewis and reestablish the understanding of unwarranted hardship that existed before being "weakened by the Court of Appeals." . The amendment also created a presumption that the use for which the variance was being requested was not in conformity with the purpose and intent of the Critical Area Program. See § 8-1808(d)(2)(1).

Id. at 132-33, 920 A.2d 1118 (quoting 2004 Md. Laws, ch. 526); NR § 18-1808(d).

The Mastandrea Court cited, inter alia, the daughter's disability as a legitimate consideration by the Board. There is no question that a resident's disability could, in an appropriate case, be a non-controlling factor for the Board to consider in determining whether a hardship would exist if the variance in question is not granted.[9]

The problem here is that we cannot say that the evidentiary record is so compelling that the Board was obligated to conclude that, without a garage to accommodate Billy's disability, a hardship exists. The record shows merely that Billy visits the Chesleys, and does not reside there. It does not reveal the frequency or duration of his visits. Moreover, there was no evidence to prove a "particular physical surrounding[], shape or topographical condition of the specific property" prevents the vehicular loading for which the Chesleys seek this garage variance. See former Code § 21.80.030(a). Indeed, the testimony was that the Chesleys were successfully using the property "as is" for parking and loading, by Billy and the Chesleys.

Rather, the essence of the Chesleys' argument is that a garage would make loading more convenient, and that a variance will allow them to locate the garage where the City's Planning Department preferred. The City Code requires more than a showing of "mere inconvenience[.]" See former Code § 21.80.030(A). As the Court of Appeals has recognized, it generally is not a hardship to be without a desired convenience or amenity on one's property, because zoning restrictions are to be enforced in the absence of a "substantial and urgent" need for a variance. See Belvoir Farms Homeowners Ass'n, 355 Md. at 261, 734 A.2d 227. When a variance would be required to build within the critical area buffer, for example, the fact that a

particular improvement would enhance the owner's enjoyment of the property did not establish that it would be a hardship to continue using the property without the variance. See, e.g., Citrano v. North, 123 Md.App. 234, 717 A.2d 960 (1998)(fact that proposed deck created "pleasant amenity" did not create hardship); North v. St. Mary's County, 99 Md.App. 502, 519, 638 A.2d 1175 (owner's desire to build gazebo to read and view creek is not evidence of hardship), cert. denied sub nom. Enoch v. North, 336 Md. 224, 647 A.2d 444 (1994). The City Code's distinction between "mere inconvenience" and true hardship reflects the application of this principle to setback variances.

We conclude, therefore, that the Board drew an appropriate distinction between hardship and "mere inconvenience." Whether this particular variance is necessary to avoid hardship is a question of fact for the Board. See Mastandrea, 361 Md. at 143, 760 A.2d 677; Belvoir Farms Homeowners Ass'n, 355 Md. at 282, 734 A.2d 227. We find substantial evidence in the administrative record to support the Board's determination that the denial of a 27 ft. front yard setback variance would not be a "particular hardship" on the Chesleys, given their undisputed current use of their front yard for loading and the evidence supporting the Board's conclusion that the garage would be a "mere convenience."

"Self-Created" Hardship10

Similarly, we are not persuaded by the Chesleys' contention that City planning authorities' insistence on the view cone covenant created their need for this garage variance. The Court of Appeals examined self-inflicted hardships in Richard Roeser Prof'l Builder, Inc. v. Anne Arundel County, 368 Md. 294, 793 A.2d 545 (2002); Stansbury v. Jones, 372 Md. 172, 812 A.2d 312 (2002); and Lewis v. Dep't of Natural Resources, 377 Md. 382, 833 A.2d 563 (2003). The lessons from those cases are instructive here.

In Roeser, a developer bought a lot with knowledge that a variance from the critical area buffer would be necessary to build a house of the size that it planned. The local zoning board denied the variance on the ground that the conditions surrounding the request were " 'self-created.' " See Roeser, 368 Md. at 297, 793 A.2d 545. The circuit court reversed, holding that " '[h]ardships of this type are normally those which are created by the owners of the property and not by the property itself.' " Id. at 298, 793 A.2d 545. The court reasoned that Roeser had not created the topography and placement of the property, which were the reasons that the lot required a variance. See id.

The Court of Appeals affirmed the circuit court's decision and rationale. See id. at 320, 793 A.2d 545. Writing for the Court, Judge Cathell explained that

[t]he types of hardships that are normally considered to be self-created in cases of this type do not arise from purchase, but from those actions of the landowner, himself or herself, that create the hardship, rather than the hardship impact, if any, of the zoning ordinance on the property.

Id. at 314, 793 A.2d 545. Thus, the "typical type of self-created hardship [is] . an act of commission by the owner[.]" Id. at 317, 793 A.2d 545. Mere purchase of a property, even with knowledge that a variance will be needed in order to accomplish the purchaser's plans, does

not constitute a self-created hardship meriting denial of a variance request, because zoning law regulates the property itself, rather than the title to it. See id. at 319, 793 A.2d 545. Therefore, " '[i]t should not be within the discretion of a board of appeals to deny a variance solely because a purchaser bought with knowledge of zoning restrictions[.]' " Id. at 304, 793 A.2d 545 (quoting 3 Arden H. Rathkopf & Daren A. Rathkopf, The Law of Zoning and Planning § 58.22, 141-48 (1991)).

To illustrate this principle, the Roeser Court contrasted the mere purchase of a property in the hope of obtaining a variance with instances in which the property owner took some affirmative action that created the hardship for which the variance was sought. The cited case law included examples of buildings constructed in violation of established setbacks, height restrictions, and building permit requirements. See id. at 314-16, 793 A.2d 545. See, e.g., Ad + Soil, Inc. v. County Comm'rs of Queen Anne's County, 307 Md. 307, 316, 340, 513 A.2d 893 (1986)(construction that violated setbacks was self-inflicted condition creating need for requested variance request); Randolph Hills, Inc. v. Montgomery County, 264 Md. 78, 83, 285 A.2d 620 (1972)(subdivision that created unbuildable lot was self-inflicted condition creating variance request); Salisbury Bd. of Zoning Appeals v. Bounds, 240 Md. 547, 554-55, 214 A.2d 810 (1965)(construction without building permit was self-inflicted condition creating variance request); Wilson v. Mayor of Elkton, 35 Md.App. 417, 428, 371 A.2d 443 (1977)(addition of unit to nonconforming apartment building was self-inflicted condition creating need for setback variance).

In Stansbury, the Court considered a variance request by a property owner who, in accordance with local ordinances encouraging her to do so, combined "antiquated lots" that did not conform with current lot size requirements, then sought to re-subdivide them into "closer-to-standard" size lots. The problem was that some of the resulting lots were subject to percolation requirements that made them unbuildable without a variance. The owner attempted to obtain variances from those restrictions. See Stansbury, 372 Md. at 175, 812 A.2d 312.

The Court of Appeals held that the variance request did not result from self-inflicted conditions or self-created hardship. See id. at 198-201, 812 A.2d 312. The Court recognized that the need to obtain a variance arose from the property owner's combination of non-conforming lots, which admittedly was an act of "commission," but distinguished that action as one the legislature actively encouraged. See id. at 200-01, 812 A.2d 312. It reiterated that "[t]raditionally, self-created hardship requires an affirmative action, exclusively by a property owner or his predecessor in title, that is itself the sole reason for the need for the variance[,]" and reasoned that "subdividing property in accordance with all applicable statutes does not, generally, constitute a self-created hardship[.]" Id. at 192, 198, 812 A.2d 312.

In Lewis v. Dep't of Natural Resources, the Court of Appeals again rejected the notion that a property owner's purchase of land that cannot be developed as the owner wishes without a variance constitutes a self-created hardship. There, Lewis began to build a hunting camp for his personal use, on an island that he already used for hunting. He belatedly discovered that the critical area buffer consumed 96 percent of the property, including the camp site, then halted construction and sought a variance. The Court of Appeals vacated the local board's denial of

the variance, holding, inter alia, that the request did not result from a self-inflicted hardship. See id. at 422, 833 A.2d 563.

The Court emphasized that Lewis's premature construction did not create the hardship. "The existence of the partially constructed camp, in no way, was determinative of his need for a variance." Id. at 424, 833 A.2d 563. Lewis still would have needed a variance even if there had been no construction. See id. Thus, the presence of already constructed buildings was "a 'red herring' " because the owner "needed a variance to build any camp on the island[.]" Id. at 425, 833 A.2d 563.

The Chesleys cite Stansbury in support of their argument that they did not create the hardship they now claim. Stansbury is easily distinguished, as are Lewis and Roeser, because there was substantial evidence to support the Board's finding that the Chesleys' need for this variance resulted from their unilateral decision to build a large house before obtaining a decision on whether the garage variance would be granted.

The Chesleys' argument that the Planning Department negotiated this plan, then failed to deliver a final approval, has some superficial appeal. To be sure, correspondence from the City makes it clear that the view corridor easement was required by the City as a condition to approval of the Chesleys' house and pool plans. City planners took the site plan review criterion that scenic views "shall be preserved and protected to the maximum extent as practicable" (Code § 21.98.050.E) as justification for making the view corridor "a major factor" in approving the plans for the Chesley residence. The Planning Director insisted that preservation of the water view across the Chesley property was required by law, citing several code sections, and told the Chesleys that it "will be necessary" to execute "appropriate documents to preserve the view across your side yard." The Planning Department explicitly conditioned approval of the Chesleys' home plans and a demolition permit for the existing house on the lot upon recordation of the view cone agreements.

Given the course of dealing between the Chesleys and the Planning Department, however, the record supports the Board's determination that the view cone agreements were not a binding quid pro quo for the garage variance, but a negotiated part of the Chesleys' deal to obtain the City's permission to demolish the existing house and build a much larger one. The Board was entitled to conclude, as it apparently did, that given Mr. Chesley's extensive experience as a real estate developer and the Board's denial of the Chesley variance application in 2002, the Chesleys understood that the Board alone had the power to grant the variance they would need to build the garage in the location favored by planning authorities. See infra, part II. Although the Planning Department promised to support such a variance, there was never a binding promise that the Board would approve one.

Ultimately, the Chesleys' contention that the Board erred in finding that they could have avoided the need for a setback variance by designing their home differently rests on the flawed premise that they cannot be held accountable for choosing to build a 5,000 sq. ft. residence before obtaining the variance necessary to build the garage. In contrast to the hunting camp in Lewis, then, the Chesley garage might have been built without a variance. Moreover, in contrast to Stansbury, there is substantial evidence in this record to support the Board's determination that

the Chesleys' predicament did not result from mere compliance with applicable zoning and development laws, but from the Chesley's own actions in developing the property.

The record supports the Board's finding that the Chesleys created the need for the variance by developing the property before obtaining the garage variance. When they built their house and pool, the Chesleys eliminated the possibility of locating a garage where no variance would be required. Among the options the Chesleys chose not to pursue was designing a smaller house that would permit a detached garage on the side of the property, opposite the viewshed that City planners were seeking to protect, in a location that would not require a setback variance. Alternatively, the Chesleys could have waited for a ruling on their garage variance application before proceeding with construction of the larger house and pool. Instead of getting the Board's answer first, so that they could reconsider their development plans if the Board denied a front yard setback, the Chesleys proceeded to build the house and pool at the risk of what happened here-that the Board would not approve a front yard variance for the garage, notwithstanding support by the Planning Department for the Chesleys' applications. In these circumstances, we find no legal or factual error in the Board's conclusion that the Chesleys' claimed hardship was self-created.

Neighborhood Impact

Citing testimony and community "[c]oncerns . about the negative impact on the streetscape[,]" the Board found "that adding a garage at this location will contribute to the walling off [of] that side of Eastern Avenue with structures and create a visually unattractive streetscape." This phenomenon "would substantially diminish or impair property values in the neighborhood." The Chesleys argue that the testimony of two neighbors in opposition to the variance on the question of how the proposed garage would impact the neighborhood does not provide a reasonable basis for the Board's conclusions.

Marty Russell, the Chesleys' next door neighbor, opposed the variance, claiming that "seven out of the ten immediate neighbors across the street" also opposed the garage in letters to the City.[11] Ms. Russell complained that

the walling off of that side of Eastern with structures creates a visibly unattractive street scape for the neighbors and it could have a negative effect on property values. And it has already been mentioned, it completely blocks our house from view. And I have two realtor friends [who] . feel that it would definitely impact and lower our property values slightly which is not a really big issue but it's there. The garage also for me personally, if you are asking about neighborhood impact, and I'm the immediate neighbor, will cut out light and air coming into my kitchen and my side of the house. I've already got their house structure which totally obliterates all the southern sun that . used to come into my home . and that's gonna eliminate completely the rest of that late afternoon sun which is the only sun that I get on that side of the house anymore.

Carolyn Kantor, a neighbor whose house is situated "across the street and two houses over" and who is a named beneficiary of the view cone agreement, also opposed the Chesleys' garage at the hearing. Kantor complained, inter alia, that "overbuilding and overcrowding loom on the

horizon" due to the "rush to build the largest house possible and sell it for top dollar." She stated that she wants to enjoy the "beauty of Eastern [Avenue] from my front porch without having to look at another imposing structure across the street and find the solace that first attracted me" to the street in 1997.

During public deliberations, the Board reviewed and considered, inter alia, its July 17, 2002 ruling on the Chesleys' previous variance application for a two car garage. The Board's 2002 opinion mirrors the Board's subsequent findings regarding neighborhood impact of the 2005 proposal:

Neighborhood Impact: There was much testimony presented, both in writing and at the hearing, that neighboring property owners objected to the location of the proposed garage. A petition signed by over forty property owners was submitted objecting to any variances on the property. Some of those signatories withdrew their initial objection when the applicant agreed to withdraw his request for the side yard variance; however there remained numerous parties still objecting to any setback variance to permit a garage. The testimony was that the new residence under construction is substantially larger than the structure it replaced and the neighbors are concerned about additional bulk on the property. Concerns were also raised about the negative impact on the streetscape of the proposed garage so near to the street. Adding a garage at this location will contribute to the walling off that side of Eastern Avenue with structures and create a visually unattractive streetscape for the neighbors and could have a negative effect on property values. [F]or the reasons stated above, the Board finds that the requested variance would have a negative impact on the neighborhood. (Emphasis added.)

During deliberations, both members of the Board's majority also noted the next-door neighbor's concern about property devaluation and that the Chesley "garage would block the view of her home."

In support of their "arbitrary and capricious" challenge to the Board's negative findings regarding neighborhood impact, the Chesleys rely on the Court of Appeals' decision in Lewis v. Dep't of Natural Resources, 377 Md. 382, 407-09, 833 A.2d 563 (2003), vacating the denial of a critical area variance. Specifically, they cite the Lewis Court's ruling that "the record contains little or no empirical data to support the Board's conclusions or to refute the studies and reports of petitioner's experts." See id. at 409, 833 A.2d 563. The Chesleys posit that all evidence presented to the Board, with the exception of the testimony of the two neighbors recounted above, supported the Chesley variance. In their view, this record does not provide a reasonable basis for the Board's negative findings. We disagree.

As a threshold matter, the Chesleys' argument ignores the photographic and map evidence. These exhibits, presented by the Chesleys themselves, support the Board's finding that the proposed garage will "contribute to the walling off" of the streetscape on this waterfront side of Eastern Avenue, by adding a structure that blocks significant portions of both the Russell and Chesley lots from street view.

The Chesleys acknowledge in this Court that the garage would directly obstruct approximately 25 percent of their own facade, consuming "20 feet of the 85 feet of street frontage" when

viewed from directly in front of the Chesley home. At the Board hearing, the Chesleys' attorney conceded that the planned one-story garage "somewhat masks the Russell garage" next door, as well as "the Chesley home" itself.

The extent of the streetscape impact is shown by the plans and photographs confirming that the new structure would sit next to the Russells' detached garage in such a way as to obscure portions o f both the Russell and Chesley facades from the streetscape. For example, the Chesleys' photographic illustration of the street with the proposed garage "photo-shopped" in place demonstrates that an existing view of the front part of the Russell home, now visible from the street and Ms. Kantor's property, between the Russell garage and the Chesley home, would be entirely blocked by the proposed garage.

In addition to this evidence, the Board was entitled to consider and credit the neighbors' complaints regarding the effect of the proposed garage on the Eastern Avenue streetscape. Observations and opinions regarding the view from and to one's own property, and the effect that diminished views would have on enjoyment of one's property, are not the type of lay opinions that must be supported by empirical data or expert testimony. Cf. Anderson v. Sawyer, 23 Md.App. 612, 618-19, 329 A.2d 716 (1974)(lay witness testimony about "traffic congestion" concerns did not rebut qualified traffic expert's testimony that street was capable of absorbing traffic increase created by proposal).

Here, Russell had a reasonable basis, as the next-door neighbor who would look out her window onto the new Chesley garage rather than the Eastern Avenue streetscape, and whose own house would become completely obstructed from street view to pedestrians and vehicles traveling toward Horn Point, to complain about the elimination of her home from that streetscape, as well as the negative effect of the proposed garage on her property's views, air, and light. Similarly, Kantor had a reasonable basis, as a neighbor whose view of the Chesley and Russell properties would be affected by the proposed garage, to complain that overcrowding and "imposing structure[s]" harm her views and enjoyment of the neighborhood. Moreover, because the City is charged with preserving the "small, intimate scale" of Eastport, the City was entitled to rely on this evidence in determining that the proposed garage would damage this streetscape. See City of Annapolis Dep't of Planning and Zoning, The Eastport Residential Conservation Overlay District: A Guide to the Process and Design Guidelines 2.

II.

City's Appearance Before The Board

The Chesleys ask this Court to "either dismiss the City as a party to the petition for judicial review or bar the City from presenting any argument in the courts that is contrary to the positions it took before the Board of Appeals." They argue that,

when the City appears as a party at a public hearing before the Board, through officials who work for the City's Planning Department, and when those officials testify in favor of a variance, it is improper for the City in a petition for judicial review of the Board's decision to oppose the variance by taking positions contrary to the positions the City took before the Board.

Citing principles of judicial estoppel, the Chesleys point to the testimony of City planners Kevin Scott and Tom Smith that the Chesleys suffer a hardship caused by the three sets of zoning regulations, as well as Planning Director Jon L. Arason's written report to the same effect.

To be sure, a party may not take a position in an administrative proceeding and then take the contrary position in a subsequent court proceeding. See Abrams v. Am. Tennis Courts, Inc., 160 Md.App. 213, 224-25, 862 A.2d 1094 (2004), cert. denied, 386 Md. 181, 872 A.2d 46 (2005); Chaney Enter. Ltd. P'ship v. Windsor, 158 Md.App. 1, 45, 854 A.2d 233 (2004). But the Chesleys' argument fundamentally mischaracterizes the positions of the Planning and Zoning Director and his staff as binding decisions made by the City itself. The Board of Zoning Appeals, not the Planning Director, is the entity authorized to make the City's final decision on a variance application. See City Code § 21.08.040. The Board's decision not to accept the recommendations of the Planning Department must be permitted, or else the Planning Department would effectively become the final arbiter of every variance. Thus, the City's position on this variance was established when the Board denied the Chesleys' application, and is consistent with the City's subsequent opposition to the variance during judicial review.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

FOOTNOTES

1. The Planning Department advised that these two goals could be met, inter alia, by detaching the garage and locating it in the front yard next to the detached garage located on the Russell property next door. The Planning Director characterized this area of the Chesley property as a "dead zone" where a detached garage would not adversely impact the neighbors or streetscape. In addition, planning authorities advised that construction in this location would add an "inexact" symmetry consistent with Eastport's eclectic character.

2. A "view cone" is "a space defined by two projected lines from the centerline of a street right-of-way that is to be kept free of obstructions so as to preserve a distant view." Code § 21.72.010.

3. After the Chesleys petitioned for judicial review in 2005, Mrs. Chesley's mother moved into the home for health reasons. She resides there full-time.

4. Consideration of the Chesley variance application began at 12:30 a.m. on June 8. Responding to the perception that the Board wanted a short hearing, counsel for the Chesleys submitted most of their evidence in documentary form and by proffer.

5. The Board has five members. Four were present for the 2005 hearing, two of those having voted to deny the Chesleys' 2002 variance application. Three of the members present at the 2005 hearing, including both who were on the Board in 2002, participated in the deliberations and decision in 2005. Two of those members voted to deny the application, while one of the 2002 Board members voted to grant it.

6. In its 2002 decision, the Board found that,despite the cone view restriction, there was adequate room on the property to plan for and construct a reasonable size residence with a detached or attached garage without the need for the requested variance. The applicant chose to construct a larger home and then request this variance to build the garage in the requested location, rather than plan to construct the garage within the existing restrictions.

7. The City also argues that the Chesleys are collaterally estopped from challenging the Board's hardship findings, because they did not seek review of the Board's substantially similar hardship findings in 2002. "Under settled Maryland law, appellate review of administrative decisions is limited to those issues and concerns raised before the administrative agency." Capital Commercial Props., Inc. v. Montgomery County Planning Bd., 158 Md.App. 88, 96, 854 A.2d 283 (2004). 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." Eastern Outdoor Adver. Co. v. Mayor of Baltimore, 128 Md.App. 494, 516, 739 A.2d 854 (1999)(emphasis and citation omitted), cert. denied, 358 Md. 163, 747 A.2d 644 (2000). Moreover, "[i]t is the function of the reviewing court to review only the materials that were in the record before the agency at the time it made its final decision." Dep't of Labor v. Boardley, 164 Md.App. 404, 415 (2005). For these reasons, "[w]e do not allow issues to be raised for the first time in actions for judicial review of administrative agency orders [.]" Delmarva Power & Light Co. v. Public Serv. Comm'n of Md., 370 Md. 1, 32, 803 A.2d 460, motion for reconsideration granted on other grounds, 371 Md. 356, 809 A.2d 640 (2002). See, e.g., Cicala v. Disability Review Bd. for Prince George's County, 288 Md. 254, 261-63, 418 A.2d 205 (1980) (failure to argue at administrative hearing that the board did not have a report that it was required to obtain and consider prevented consideration of that issue on judicial review); Swoboda v. Wilder, 173 Md.App. 615, 641, 920 A.2d 518 (2007)(opponents of proposed building permit waived objection to zoning board's consideration of expert testimony by failing to object at administrative hearing); Cremins v. County Com'rs of Washington County, 164 Md.App. 426, 445, 883 A.2d 966 (2005) (property owners waived argument that unsworn testimony before zoning authority should not be considered by failing to object at administrative hearing); Capital Commercial Props., 158 Md.App. at 102, 854 A.2d 283 (declining to consider whether board's decision complied with certain statutory requirements because that issue was not presented to the board). A contrary rule "would allow the courts to resolve matters ab initio that have been committed to the jurisdiction and expertise of the agency." Delmarva Power & Light, 370 Md. at 32, 803 A.2d 460.Here, the issue of whether the Chesleys were collaterally estopped in 2005 as a result of the Board's hardship finding in 2002 was not preserved for judicial review, because (1) the City did not argue collateral estoppel to the Board; (2) the administrative record does not include the 2002 records necessary to determine whether collateral estoppel is warranted; (3) the Board did not conduct the requisite inquiry into whether the proceedings on the 2002 variance "embraced elements of adjudicatory procedure consistent with established principles of due process," see Batson v. Shiflett, 325 Md. 684, 705, 602 A.2d 1191 (1992) (citation omitted); and (4) the Board did not rest its decision to deny the variance on principles of collateral estoppel.

8. In Lewis v. Dep't of Natural Resources., 377 Md. 382, 833 A.2d 563 (2003), the Court of Appeals held that, "with respect to variances in [critical area] buffer zones, the correct standard was . whether he or she was being denied reasonable use within the buffer[.]" Becker v. Anne Arundel County, 174 Md.App. 114, 132, 920 A.2d 1118 (2007) (reviewing Lewis).

9. As in Mastandrea v. North, 361 Md. 107, 128-29, 760 A.2d 677 (2000), we do not decide whether federal disability laws can compel the granting of a variance to accommodate a disability.

10. We address this variance criteria because the Board cited it as additional reason to deny the variance.

11. The record presented to this Court does not contain any such letters.

ADKINS, J.

David Cromwell et al. v. Arthur Thomas Ward, III,
No. 617, September Term, 1994

HEADNOTE: Zoning variances and special exceptions distinguished; variance process is a multi-step process; the first step is in regards to a determination of whether the property, for which the variance from the terms of the ordinance is sought, in and of itself possesses any unique or peculiar characteristic, *i.e.*, topography, narrowness, abnormal subsurface characteristics, historical or architectural significance, not shared generally by other similarly located properties in the area, so that the ordinance's impact on the subject property is more severe than the impact upon neighboring properties generally; if the requirements of the first step, uniqueness or peculiarity, are not met, no further steps are taken, *i.e.*, practical difficulty or unreasonable hardship and the variance must summarily be denied; self-inflicted hardship is not the type of practical difficulty or unnecessary hardship contemplated by zoning ordinance variance procedures; mistakes by governmental officials generally do not constitute practical difficulty or unnecessary hardship for the purpose of zoning variance procedures, though they may, under some circumstances, give rise to equitable actions.

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 617

SEPTEMBER TERM, 1994

DAVID CROMWELL *et al.*

v.

ARTHUR THOMAS WARD, III

Wenner,
Cathell,
Murphy,

JJ.

Opinion by Cathell, J.

Filed: January 4, 1995

#93CV7265

Appellant, David Cromwell, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas Ward, III. Appellant poses the following questions:

> I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.
>
> II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?
>
> III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of §307 of the Baltimore County Zoning Regulations?

While those questions are limited, appellant expands in his arguments supporting the questions and argues that

> [t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property*, must be the proximate cause of the hardship [Emphasis added.]

and

> Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request . . . . [Emphasis added.]

and

> Mr. Ward's property *is not unique* from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.*, it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) 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. 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. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or[1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness,

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[1] Some ordinances use the conjunctive, "and," creating a requirement that both practical difficulty "and" unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, "or," to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when "use" variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser "practical difficulty" standard when "area" variances are sought.

exists. Further consideration must then be given to the general purposes of the zoning ordinance.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice*, appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process – an inherent uniqueness of the subject property not shared by surrounding properties.

The Facts

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;"

"[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14'" and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height

elevations might have been discernable, though we are at a loss to understand why the elevations were not given in feet and why the plans contained no scale.[2]

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.[3] Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

The Law

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.

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[2] Appellee, several times in his brief, states that the plans "clearly" show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown – they are not shown at all – but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

[3] As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

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 Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

> [M]odification only of density, bulk, or area requirements in the zoning ordinance . . . where *owing to conditions peculiar to the property, and not the result of any action taken by the applicant*, a literal enforcement . . . would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, *i.e.*, height, may be granted

> 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 . . . would result in practical difficulty or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions . . . peculiar to the land . . . and . . . practical difficulty . . . ." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,[4] if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. 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).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses [5]

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[4] It is not clear that section 307, "Variances," would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of "area" variance requests.

[5] Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to "use" issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense,

(continued...)

(where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub judice*.

Special Exceptions (and Conditional Uses) and Variances — Distinguished

The treatise writers define the concept as:

> A variance is an authorization for [that] . . . which is prohibited by a zoning ordinance. . . .
>
> . . . [T]he difference between the two [variances and special exceptions] . . . is of practical significance. . . .
>
> > ". . . [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception contemplates a permitted use . . . [once] the prescribed conditions therefor are met."
>
> . . . [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."

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[5](...continued)
however, "conditional uses" refer to uses while exceptions normally apply to area, *i.e.*, yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

> . . . [T]he standards for . . . exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.
>
> "A special exception . . . is one which is controlled and . . . permissible in a given zone. It is granted . . . upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized . . . where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02-03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County*, 239 Md. 189, 193 (1965)). *See also Schultz v. Pritts*, 291 Md. 1, 11 (1981); *People's Counsel v. Mangione*, 85 Md. App. 738, 748 (1991).

> A distinction commonly is made between [special] exceptions . . . and variances . . . . An "exception" . . . is a dispensation permissible where a board . . . finds existing those facts . . . specified in the ordinance as sufficient . . . . ". . . But zoning ordinances usually provide for another kind of dispensation, . . . by which a variance . . . may be authorized . . . where a literal enforcement . . . would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

> The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances. . . . A variance should be strictly construed . . . .

Id. § 25.162 (footnotes omitted). *See also* 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* § 38.01 (4th ed. 1981); 3 E. C. Yokley, *Zoning Law and Practice* § 21-6 (4th ed. 1979); 3

Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

> There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception . . . is expressly permissible . . . . [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property . . . or by reason of exceptional topographical conditions or other extraordinary situations . . . of specific parcels of property, the strict application . . . would result in . . . unusual practical difficulties to, or exceptional or undue hardship . . . .

Stacy, 239 Md. at 193.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 288-91 (1953):

> It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area . . . the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance. . . .
>
> . . . .
>
> . . . There is a distinction between . . . the ordinance provisions . . . in those cases [Baltimore City cases] and the facts and the ordinance provision in this case . . . .

See also our case of *Martin Marietta Aggregates v. Citizens*, 41 Md. App. 26, 34-35 (1978).

> A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional[6] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met . . . . While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use . . . so long as . . . conditions are met. Therefore, conditional use grants cannot be encompassed within the . . . statutory authority to grant variances.

Eberhart v. Indiana Waste Systems, Inc., 452 N.E.2d 455, 459 (Ind. App. 3 Dist. 1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals*, 464 N.E.2d 347, 350 (Ind. App. 1 Dist. 1984), opined:

> A great deal of confusion has been generated . . . because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions . . . . A variance involves a deviation . . . from the legislated zoning classification . . . . A special exception involves a use which is permitted . . . once certain statutory criteria have been satisfied. [Citations omitted.]

See also Lindquist v. Board of Adjustment, 490 So.2d 16, 18 (Ala. Civ. App. 1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the . . . burden of proving . . . hardship"); *Wolfner v. Board of Adjustment*, 672 S.W.2d 147, 150 (Mo. App. 1984) ("an

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[6] Exceptional is used here in its generic sense.

exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes*, 431 A.2d 163, 167 (N.J. Super. A.D.), *cert. denied*, 434 A.2d 1099 (1981) (special exception and variance defined - case decided on zoning estoppel basis); *A. J. Grosek & Associates v. Zoning Hearing Bd.*, 450 A.2d 263, 265 (Pa. Commonwealth 1982); *Bell v. City Council*, 297 S.E.2d 810, 813-14 (Va. 1982).

VARIANCE -
The First Step - Uniqueness or Peculiarity of the Subject Property

> 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 Morrow 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).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md. Code Article 66B, and it is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws – and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because

> the board of zoning appeals is in effect given the power to set aside or annul the ordinance . . . with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships" . . . . [U]nder our system of written constitutions it is essential that they accomplish those . . . objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them . . . . For such phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred . . . .

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, *appeal dismissed*, 290 U.S. 585 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church*, 164 Md. 487 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore*, 187 Md.

296, 300 (1946). By the time of its decision in *Heath*, the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances in his own discretion." 187 Md. at 301. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar*, the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible where the Board . . . finds . . . those facts . . . specified in the ordinance . . . ." *Id*. at 303.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their

respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore*, 231 Md. 280, 285 (1963) ("In Baltimore City there appears to be no distinction between the two terms . . . .").[7] We also attempted to indicate the problem in *North v. St. Mary's County*, 99 Md. App. 502, 510 (1994), in footnote 3:

> Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances. . . . [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

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[7] Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore*, 195 Md. 395, 400 (1950), where the Court noted "facts to justify an exception . . . [show] that the hardship affects the particular premises and is not common to other property in the neighborhood." This is a variance standard.

> [I]t was incumbent upon the Marinos to have shown . . . (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants' own actions.

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

> The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees. . . .

240 Md. at 554. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning*, § 48-1, and then noted:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions . . . hardship arises . . . . The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship. . . . [T]he hardship, arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief. . . ."
>
> The instant case fits squarely within the above general rule. . . . [I]f the appellees had used proper diligence . . . and then made accurate measurements . . . [the resultant

> hardship could have been avoided]. The hardship . . . was entirely self-created . . . .

Id. at 554-55 (emphasis added). Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. *See also Burns v. Mayor and City Council of Baltimore*, 251 Md. 554, 559 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore*, 233 Md. 372, 378 (1964) ("[There was] no evidence of any limitation . . . by . . . size of yards, irregularity of shape of land or buildings, topography, grade or accessibility" . . . .); *Mayor and City Council v. Sapero*, 230 Md. 291 (1962); *Frankel v. Mayor and City Council of Baltimore*, 223 Md. 97, 104 (1960) ("It was incumbent . . . to show that the hardship . . . affected his particular premises and was not . . . common to other property in the neighborhood. . . . [H]e met the burden . . . ."); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.*, 216 Md. 271, 277-78 (1958).

> Secs. 14 (b), 14 (d) and 16 . . . have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property . . . .

Mayor and City Council v. Polakoff, 233 Md. 1, 9 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore*, 247 Md. 601, 606-07 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

> Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant

> a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "*urgent necessity, hardship peculiar to the particular property* . . . ." . . . Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley*, 270 Md. 208, 210 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

> Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy . . . that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance . . . .

. . . .

> Concededly, this is a close case, but it is nevertheless sufficient . . . .

Id. at 215. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman*, 227 Md. 243 (1961), and *Frankel v. Mayor & City Council of Baltimore*, 223 Md. 97 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs*, 307 Md. 307 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances

sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question . . . that do not apply generally to other properties . . . in the . . . district." *Id.* at 340. The Court concluded:

> The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary *characteristics* of the *land itself* and therefore not the kind of hardship cognizable under the Zoning Ordinance. . . .
>
> We think the Board's decisions . . . reflect no error of law.

Id. at 340-41 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel*, 96 Md. App. 219, 224 (1993), after noting the standard of review, we said:

> In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.
>
> The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist *that are peculiar to the land* . . . and where strict compliance . . . would result in practical difficulty

. . . ." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances *of a particular location* and must be analyzed individually." *Id.* at 227-28 (emphasis added).

In *North v. St. Mary's County*, 99 Md. App. at 512, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land . . . ." We there stated that, in the zoning context, the term "unique" has a customized meaning:

> 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.
>
> . . . .
>
> In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, in *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

> Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific . . . property . . ., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of . . . property . . . the literal enforcement . . . would make it exceptionally difficult . . . to comply . . . and would cause unwarranted hardship and injustice. . . .
>
> The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.*

Id. at 514-15.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean, supra*; *Stacy, supra*; *Sapero, supra*; *Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra*. All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel, Loyola*, and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly . . . close case . . . ." *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky*, 239 Md. 611 (1965), involved one of the same issues that was presented in *Frankel, i.e.*, whether a zoning restriction so

compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance – a variance Frankel was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged that Borinsky had the "same expert witness," "he was asked the same general questions . . . and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* at 624. The Court, nevertheless, made a factual distinction and declined to apply *Frankel*. Judge Barnes opined in dissent that, based on what the Court had done in *Frankel*, the facts for variances were stronger in *Borinsky*. *Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel*, *Loyola*, and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York*, 482 N.W.2d 537 (Neb. 1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell*, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank*, the court said at 545: "[A] variance [may be granted] . . . only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of the zoning

ordinance] 'would result in peculiar and exceptional practical difficulties . . . or exceptional . . . hardships . . . .'"

In *Shafer v. Zoning Bd. of Appeals*, 511 N.E.2d 635 (Mass. App. Ct. 1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

> There was no evidence . . . regarding "soil conditions, shape or topography of [the property] . . . especially affecting [the property] but not affecting generally the zoning district in which it is located" . . . . The . . . argument that the insufficient width . . . constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

511 N.E.2d at 636-37 (citation omitted). *See also VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn. 1983) ("the plight of respondent was not due to circumstances 'unique to his property.' . . . [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware . . . .")

In *St. Clair v. Skagit County*, 715 P.2d 165 (Wash. App. 1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board,

approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings . . . ." 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist . . . peculiar to the land . . . ." *Id.* The court then noted that the applicant had done there what Ward attempts to do in the case *sub judice*:

> [The appellant] relied primarily upon the fact that the County issued a building permit . . . and that she acted in good faith . . . .

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself . . . . Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75-foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity . . . ." *Id.* at 169. In the case *sub judice*, the Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment*, 706 P.2d 899 (Okla. 1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had

expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner . . . constitutes no valid basis for a variance . . . . [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

> The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44-107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property*.

Id. at 904-05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992), but had facts similar to *Lucas*, the Supreme Court of Delaware in *Baker v. Connell*, 488 A.2d 1303 (Del. Supr. 1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0-1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight

of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the property could not conform to open space land. The appellate court affirmed, stating:

> [F]inancial return . . . alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0-1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R-2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard*, ___ U.S. ___, [62 U.S.L.W. 4576] (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment*, 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice*. The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance . . . the applicant [must] show . . . that there are special conditions with regard to the property . . . ." 685 P.2d at 1035-36. The court continued:

> What must be shown . . . is that the property itself contains some special circumstance that relates to the hardship complained of . . . .
>
> . . . The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of

> property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.
>
> . . . .
>
> Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos[es] brought their losses upon themselves. The application affirmatively alleged . . . that no dwelling existed . . . [8]

Id. at 1036-37 (footnotes omitted).

The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice*, that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice . . . in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication . . . and . . . shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id*. at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimen-

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[8] The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

sions from other schematics, they certainly were not required to do so in light of appellants' affirmative statement of compliance.

See also Chambers v. Smithfield City, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond*, 300 S.E.2d 781 (Va. 1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A-1 district." *Id.*

The court in *Richardson v. Town of Salisbury*, 455 A.2d 1059, 1061 (N.H. 1983), noted:

> We have defined unnecessary hardship as follows:
>
> > "A hardship exists only if due to special conditions *unique* to a *particular parcel of land*, the ordinance unduly restricts the use . . . . The hardship must relate to the special character of the land

> rather than to the personal circumstances of the landowner." [Emphasis added.]

See also Margate Motel, Inc. v. Gilford, 534 A.2d 717 (N.H. 1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment*, 459 A.2d 244 (N.H. 1983).

In *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

> [T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
>
> . . . .
>
> . . . [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
>
> . . . .
>
> . . . However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size. . . .
>
> . . . However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also Williams v. Salem Township, 500 A.2d 933 (Pa. Commonwealth 1985) *alloc. denied*, 531 A.2d 781 (1987); *Hersh v. Zoning Hearing Bd. of Marlborough Township*, 493 A.2d 807 (Pa. Commonwealth 1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem*, 480 A.2d 362 (Pa. Commonwealth 1984) (burden sustained); *Davis v. Zoning Bd. of Adjustment*, 468 A.2d 1183 (Pa. Commonwealth 1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment*, 456 A.2d 1110

(Pa. Commonwealth 1983); *Immordino v. Zoning Hearing Bd.*, 441 A.2d 818, 821 (Pa. Commonwealth 1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property* . . . .") (Emphasis added.)

> A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area . . . . Indialantic's zoning restrictions are common difficulties shared by all other ocean-front lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla. App. 5th Dist. 1981), *aff'd*, 419 So.2d 1041 (1982) (citation omitted). *See also Fort Lauderdale Bd. of Adjustment v. Nash*, 425 So.2d 578, 579 (Fla. App. 4th Dist. 1983); *City of Naples v. Clam Court Marina Trust*, 413 So.2d 475, 477 (Fla. App. 2d Dist. 1982); *Lakeshore Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments*, 481 So.2d 162, 168 (La. App. 4th Cir. 1985), *cert. denied*, 494 So.2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231 (D.C. App. 1979), where, due to the size of the lot, no viable economical

use of the property could be had without the variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in *U-Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord*, 451 A.2d 1315, 1317 (N.H. 1982), saying: "The location and characteristics of the property involved create greater security requirements . . . than . . . other property in the area because the parcel . . . is less central . . . less populated and . . . less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland*, 637 P.2d 1302 (Or. App. 1981), *cert. denied*, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. *See also Higgins v. Township of Radnor*, 318 A.2d 761, 763 (Pa. Commonwealth 1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

> It is *fundamental* that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *to particular property* and not general in character . . . . [I]t is not uniqueness of the plight of the owner, but

> uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides] . . . . [T]he hardship [in order to justify a variance, however,] . . . must relate to the particular property of the applicant . . . .

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

> [I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, *supra* § 14.55 (1968).

> It follows that the unnecessary hardship . . . must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance . . . .
>
> In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question. . . .
>
> . . . .
>
> Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

> The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot . . . arises from circumstances peculiar to that lot . . .; and in that case the appropriate remedy is . . . a variance . . . . In the other types of cases, the hardship . . . may arise because of conditions which are general in the neighborhood; . . . it is often held that the

> appropriate remedy is a change in the zoning . . . . [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

> The great strengthening of the criteria for granting variances, . . . has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question . . . . Moreover, the courts have again emphasized that a variance granted to take care of some hardship personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. *See also* Rathkopf, *supra* § 38.04; Yokley, *supra* § 21-6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.").

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals*, 93 N.E.2d 645, 647 (N.Y. 1950):

> [T]he record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21-6.

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.

Self-Inflicted Hardship

We have before referred to *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206. There, the Court said, "it was incumbent [on the applicant] to [show] . . . that the hardship was not the result of the applicants' own actions." *Id.* at 218. The Court of Appeals noted in *AD + Soil, Inc. v. County Comm'rs*, 307 Md. at 340:

> The essence of Ad + Soil's argument . . . is that the setback requirements . . . would cause . . . unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements. . . . The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted . . . and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals*, 438 A.2d 1186, 1190 (Conn. 1982) ("'[S]elf-inflicted or self-created hardship . . . is never considered proper grounds for a variance.' . . . '[W]here the applicant . . . creates a nonconformity, the board lacks power to grant a variance.'") (citations omitted); *Volkman v.*

City of Kirkwood, 624 S.W.2d 58 (Mo. App. 1981); *Matter of Schrader*, 660 P.2d 135 (Okl. 1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals*, 310 S.E.2d 438 (S.C. App. 1983); *McClurkan v. Board of Zoning Appeals*, 565 S.W.2d 495 (Tenn. 1977); *Steele v. Fluvanna County Bd. of Zoning Appeals*, 436 S.E.2d 453, 456 (Va. 1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements . . . was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Granting of the Permit

In *Francis v. MacGill*, 196 Md. 77 (1950), a property owner sought equitable injunctive relief. The facts were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

> "Adoption of zoning ordinance *ipso facto* revokes permit for construction . . . where no construction has begun."
>
> . . . They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro*, 187 Md. 623, 634 (1947), *overruled on other grounds in Nutter v. Non-Profit Housing Co.*, 230 Md. 6 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit . . . does not create a vested right, or estop[9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Synder*, 186 Md. 342, 347 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward*, 186 Md. 330, 340 (1946), the Court held:

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[9] The applicability of the "doctrine of zoning estoppel" has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council*, 96 Md. App. 526 (1993), *rev'd in part*, 334 Md. 499 (1994).

> The Board . . ., as an administrative body, was bound to follow the regulations it adopted, in the exercise of . . . delegated legislative power. The fact that it might have rezoned . . . does not alter its obligation to adhere to existing regulations . . . .

In the case of *Lipsitz v. Parr*, 164 Md. 222 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

> A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law. . . . [T]he ordinance forbade the officials . . . to grant the permit which the plaintiff asked and obtained . . . .
>
> . . . [I]t was therefore unlawful for the officers . . . to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued . . . does not . . . prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality. . . . *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.
>
> So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act . . . it is not estopped by the unauthorized or wrongful act of its officer . . . in issuing a permit that is forbidden by the explicit terms of an ordinance. . . . *Valentine v. Rds. Directors*, 146 Md. 199, 206 [(1924)] . . . . [Citations omitted, emphasis added.]

164 Md. at 227-28.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates*, the Court opined that "[c]onsequently, '[e]very-one dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.'" 313 Md. at 437. The Court added: "[T]he doctrine of equitable estoppel 'cannot be . . . invoked to defeat the . . . enforcement of . . . ordinances, because of an error or mistake committed by one of its officers . . . which has been relied on by the third party to his detriment.'" *Id.*

Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward.

The authorities elsewhere are in accord.

> The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land*, not to the circumstances of the *owner*.

Richardson, 455 A.2d at 1062.

> [R]elator argues the Board should be estopped from denying the height variance because a

> city building inspector visited the premises several times and observed the construction taking place but made no complaint . . . .
>
> In any case there is no authority on the part of a building inspector to grant a variance . . . .

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La. App. 4th Cir. 1970). *See also Klanke v. Zoning Bd. of Adjustment*, 477 A.2d 907, 909 (Pa. Commonwealth 1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra*.

Resolution

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 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 policy-makers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

Easter vs City of Baltimore

Summary

In Easter v. The Mayor and City Council of Baltimore, 195 Md. 395, 400, 73 A.2d 491 (1950) we said: "The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements.

Opinion

[No. 176, October Term, 1949.]

Decided May 12, 1950.

Zoning — Special Exceptions or Variances — In Granting, Board of Municipal and Zoning Appeals Must Consider Factors Set Out in Zoning Ordinance — Action Must Be Reasonable in Light of These and Other Pertinent Facts — Power of Board to Grant Exceptions Must Be Strictly Construed — Burden of Showing Facts to Justify Exceptions or Variances Rests upon Applicant — Must Show That Hardship Affects Particular Premises — Not Common to Other Property in Neighborhood — Fact That Granting of Variance Would Make Property More Profitable — Not Sufficient — Prior Exceptions — In Themselves Not Controlling — Ill-Advised or Illegal Variances Furnish No Grounds for Repetition of Wrong — Annulment of Zoning — Legislative Function — Beyond Domain of Zoning Board — Non-Conforming Uses — Zoning Ordinance Tolerates Their Continuance — Looks Towards Their Ultimate Elimination — Same Principle Applies to Special Exceptions — Similar Extensions in Other Cases — Approval of, Raises No Estoppel Against Board — Area and Setback Rules — Facts Did Not Justify Exception to.

The Board of Municipal and Zoning Appeals must consider the factors set out in Baltimore City Ordinance No. 1247 (1930-1931), par. 32 (j), in granting an exception or variance, and its action must be reasonable in the light of these and all other pertinent facts. p. 399

The power of the Board of Municipal and Zoning Appeals to grant exceptions under Baltimore City Ordinance No. 1247 (1930-1931), par. 33 (c), must be strictly construed. pp. 399-400

The burden of showing facts to justify an exception or variance under the Zoning Ordinance, Baltimore City Ordinance No. 1247 (1930-1931), par. 33(c), rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood. p. 400

The mere fact that the granting of a variance under the Zoning Ordinance, Baltimore City Ordinance No. 1247 (1930-1931), par. 33(c), would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. p. 400

Prior exceptions to zoning requirements are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. The annulment of zoning is a legislative function that is beyond the domain of the zoning board. p. 400

In the case of non-conforming uses the Zoning Ordinance, Baltimore City Ordinance No. 1247 (1930-1931), tolerates their continuance, but looks towards their ultimate elimination. The same principle applies to special exceptions. p. 401

No estoppel can be raised against the Board of Municipal and the Zoning Appeals, Baltimore City Ordinance No. 1247 (1930-1931), par. 33(c), by an applicant for an exception or variance from the Ordinance, because of the Board's approval of similar extensions in other cases. p. 401

In the case at bar an appeal was taken from a judgment of the Baltimore City Court affirming the action of the Board of Municipal and Zoning Appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling. Although the permit allowed the store front to be brought out to the building line in contravention of the Zoning Ordinance, Baltimore City Ordinance No. 1247 (1930-1931), par. 24, and of the percentage of occupancy requirements under par. 21, the permit was granted under par. 33(c), on the ground that due to the peculiar location and surroundings the case was one of practical difficulty and hardship, because a tavern located next to the store and dwelling obstructed the view of the store where the addition was proposed. In reversing the judgment of the lower court, the Court of Appeals *held* that the facts did not justify an exception to the area and set-back rules. The fact that the lot was irregular had no bearing on the question, nor was it material that three buildings, some distance away, extended to the building line. The existence of an exception on the adjoining lot, where the tavern was located, although detrimental to the applicant, did not justify the action of the Board in granting the permit. pp. 398-401

J.E.B.

Decided May 12, 1950.

Appeal from the Baltimore City Court (NILES, J.).

Petition by Andrew J. Easter for appeal from the action of the Board of Municipal and Zoning Appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling owned by John P. Easter and Annie C. Easter, his wife. From a judgment affirming the action of the Board, petitioner appeals.

Judgment reversed.

The cause was argued before MARBURY, C.J., DELAPLAINE, COLLINS, GRASON, HENDERSON and MARKELL, JJ.

John F. Heath for the appellant. *Benjamin Kann* and *Malcolm J. Coan* for the appellees, John P. Easter and Annie C. Easter, his wife.

Submitted on brief by *Thomas N. Biddison, City Solicitor of Baltimore, Edwin Harlan, Deputy City Solicitor,* and *Hamilton O'Dunne, Assistant City Solicitor,* for the appellee, the Mayor and City Council of Baltimore.

HENDERSON, J., delivered the opinion of the Court.

This appeal is from a judgment of the Baltimore City Court affirming the action of the Board of Municipal and Zoning appeals in granting a permit for the construction of a one-story and basement addition on the front of a store and dwelling at 6418 Belair Road, owned by John P. Easter. The only protestant, Andrew J. Easter, is a brother of the permittee, residing at 6420 Belair Road, where he conducts a tavern.

As stated by the trial Court, "The property is in a First Commercial Use, C. Area District, and the permit would allow the store front to be brought out to the building line, in contravention of paragraph 24 of the Zoning Ordinance, which requires a 10-foot minimum depth of front yard in the area in question, and of the percentage of occupancy requirements under paragraph 21, bringing the percentage of occupancy to 85% as opposed to 60%, as provided in the Ordinance. The Board of Municipal and Zoning Appeals granted the permit under the provision of Paragraph 33(c) on the ground that `* * * due to its peculiar location and surroundings it is a case of practical difficulty and unnecessary hardship, since the Tavern already obstructs the view of the store where the addition is now proposed'". The court thought there was "evidence sufficient to support the legal definition of a hardship and * * * in fact, it would be a hardship to allow one brother to have a tavern all the way out to the street, and to deny the other brother the right to build his store out to the same line as the tavern."

The Board found that the store was "on the west side of Belair Road, 105 feet south of Easter Terrace. * * * Adjacent to the premises under appeal is a building containing a tavern which is built out to the front line of the lot. To the north between Easter Avenue and Kenwood Avenue there are several buildings constructed to the front lines of the lot and the proposed addition would not affect access of light and air to any neighboring properties, nor would it even cut off the view up and down the street. The lot in question is of very shallow depth and irregular in shape * * *." The store and tavern were built as semi-detached buildings. In 1935 Andrew J. Easter obtained a permit to build a sort of covered entrance-way out to the building line. John P. Easter did not object, and there were no protests. In his present application John P. Easter states that since his brother "has built out in front of us it has hid our store making it difficult to rent." There is a small triangular vacant lot to the south of 6418, and a church property adjoining to the south, across an alley laid out but apparently not opened. The church is set back the required distance. Andrew J. Easter has applied for a permit, and obtained the approval of the Board, to develop the land to the north, comprising about six acres, as a shopping center with off-street parking facilities and the required set-back. If this project is carried out, he states that he proposes to remove the entrance in front of his tavern.

We may assume here, as we have assumed in previous cases, that the delegation to the Board of Zoning Appeals of the power to make special exceptions or variances is valid, and that the

standards set up in Section 32(j) are adequate. *Colati v. Jirout,* 186 Md. 652, 656, 47 A.2d 613; *Heath v. Mayor and City Council of Baltimore,* 187 Md. 296, 49 A.2d 799; *Heath v. Mayor and City Council of Baltimore,* 190 Md. 478, 483, 58 A.2d 896, 898. The Board must consider the factors set out in that section and "its action must be reasonable in the light of these and all other pertinent facts." *Heath v. Mayor and City Council of Baltimore, supra,* (187 Md. 305, 49 A.2d 804). The power to grant exceptions must be strictly construed. *Colati v. Jirout, supra,* 186 Md. page 659, 47 A.2d 613.

The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood. Rathkopf, Zoning, (2d Ed.), p. 215; *Levy v. Board of Standards and Appeals,* 267 N.Y. 347, 196 N.E. 284. The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. *Garden View Homes v. Board of Adjustment,* 137 N.J.L. 44, 57 A.2d 677.

In the instant case there is no suggestion that the Board failed to "act as a fact finding body" or to "give consideration to the rules, regulations, restrictions, guides and standards set forth" in the Ordinance (paragraph 33(c)). The question is whether the undisputed facts support the Board's action. The fact that the lot is irregular has no bearing on the question, nor is it material that three buildings, some distance to the north, extend to the building line. These may have been built before the passage of the Ordinance or they may have been built under permit or without permit. As was said in *Potts v. Board of Adjustment,* 133 N.J.L. 230, 43 A.2d 850, 854: "Prior exceptions granted by the adjustment board 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." See also the cases collected in a note, 168 A.L.R. 13, 41-44. The same principle was announced and applied in *Heath v. Mayor and City Council of Baltimore, supra,* 190 Md. 478, 483-484, 58 A.2d 896, 898; *Mayor and City Council of Baltimore v. Byrd,* 191 Md. 632, 638, 62 A.2d 588, 591; and *Cassell v. Mayor and City Council of Baltimore,* 195 Md. 348, 73 A.2d 486.

The principal fact relied upon to justify an exception to the area and set-back rules, adopted in the general interest under the police power, is the existence of an exception on the adjoining lot. Undoubtedly this is detrimental to the applicant, although his case is somewhat weakened by his tacit acceptance of the situation over a period of years. But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. "It is by these gradual encroachments, individually of relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *." *Dubin v. Wich,* 120 N.J.L. 469, 200 A. 751, 754. In the case of non-conforming uses, the ordinance tolerates their continuance, but looks towards their ultimate elimination. *Colati v. Jirout, supra*. The same principle applies to special exceptions. *Heath v. Mayor and City Council of Baltimore, supra,* (190 Md. 478, 58 A.2d 896). Use variances are doubtless more serious than dimensional changes, but that is only a matter of degree.

In *People ex rel. Fordham Manor Reformed Church v. Walsh,* 244 N.Y. 280, 286, 155 N.E. 575, 577, it was contended that the existence of a garage immediately adjoining the proposed garage

was sufficient justification for the grant of an exception on the ground of unnecessary hardship. But the Court, speaking through Chief Judge Cardozo, said: "We think the reasons assigned are insufficient to supply a basis for a departure from the map. They amount to nothing more than this, that a garage may be built because there is another one next door." See also *Ventresca v. Exley,* 358 Pa. 98, 56 A.2d 210, 212. No estoppel can be raised against the Board by reason of its approval of similar extensions in other cases. *Appeal of Valicenti,* 298 Pa. 276, 148 A. 308; note, 119 A.L.R. 1509, 1517.

Under the circumstances we think the action of the Board cannot be sustained.

IN RE: PETITION FOR VARIANCE **(8632 Windmill Road)** 2nd Election District 4th Council District Dr. Crystal Greene Legal Owner Petitioner	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2020-0234-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by Dr. Crystal Greene (the "Petitioner") for property located at 8632 Windmill Rd. (the "Property"). The Petitioner is requesting variance relief from Baltimore County Zoning Regulations ("BCZR") § 427.1 to permit a 6 ft. high fence to be erected in the side and rear yard which abuts the front yard of a neighboring property, in lieu of the maximum allowed fence height of 42 inches.

Although this case was filed as an Administrative Variance, under Baltimore County Code ("BCC"), §32-3-303(b), the owner of 4129 Windmill Circle, Lauretta Holliday, filed a request for a public hearing. Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan was marked and accepted into evidence. (Pet. Ex. 7). Dr. Crystal Greene appeared at the hearing. Derrick Burnett, President of Owings Mills Overlook Community Association (the "Association") and Lauretta Holliday both appeared in opposition to the Petition.

There was one Zoning Advisory Committee ("ZAC") comment submitted by Department of Environment Protection and Sustainability ("DEPS") which agency did not oppose the requested relief.

According to the SDAT record in the County file, the Property is approximately 6,969 sq. ft. and is zoned DR 3.5. Dr. Greene testified in regard to the photographs she submitted of her Property. (Pet. Ex. 1-5). The photographs show that a 42 inch tall wood fence exists around one-half of the rear yard which faces the front yard of 4129 Windmill Circle (Lauretta Holliday's house) and which continues along the western side yard facing the sidewalk along Windmill Circle. (See Pet. Ex. 7). This shorter fence is the portion she wishes to replace with a taller one. The remaining one-half of the rear yard and eastern side yard have a 6 ft. +/- high fence.

Dr. Greene and her husband, Michael Ogunbamwo, live with Dr. Greene's two sons whom she described as having special needs. Her oldest son, Kevin Thomas is 28 years old and has an 'impulsive' behavioral disorder which is described in a document entitled "Tier 2 Support Plan". (Pet. Ex. 6). Her younger son, London Greene, is 10 years old, and has Attention Deficit Hyperactivity Disorder (ADHD). Prior to COVID, Dr. Greene testified that Kevin attended a vocational program and London was in school. In the summer, her sons went away to camps. Because of COVID, both Kevin and London are at home all day. In addition, Dr. Greene works out of her home. She testified that her sons often play basketball in the driveway in the front of the home but she feels it is not safe due to the traffic. She also stated that if it were not for the COVID restrictions keeping her sons at home, she would not be requesting to replace the shorter fence here with a taller one. Specifically, she is concerned that her sons will jump the shorter fence if she does not replace it with a taller one. As a result, she emphasized that the basis for the variance request is out of concern for the safety of her children.

Derrick Burnett testified on behalf of the Association. The Association includes 80 homes in Owings Mills Overlook community and is opposed to the Petition because the Association's Bylaws prohibit property owners from erecting 6 ft. tall fences on corner lots. Mr. Burnett gave a copy of the Bylaws to Dr. Greene. Mr. Burnett also testified that he is familiar with Dr. Greene's sons, that they play basketball in the driveway and he does not believe that the boys will jump the

shorter fence. In addition, he highlighted that, because the boys play basketball, Dr. Greene would need to install a concrete basketball court in the rear yard. Mr. Burnett believes that granting this Petition will set a precedent for other owners in the neighborhood to request the same.

Lauretta Holliday testified that she has lived in her home for 30 years. She is opposed to the Petition because replacing the shorter fence with a 6 ft. privacy fence will block the view of cars exiting her driveway. Ms. Holliday presented photographs of the view from her driveway. (Prot. Ex. 1-4). Ms. Holliday acknowledged that Dr. Greene did come to her to discuss the Petition and, at that time, Ms. Holliday requested that Dr. Greene show transparent fencing options.

While I am sympathetic to Dr. Greene's concern regarding the safety of her sons and the difficulty of caring for them while she is working at home during a pandemic, based on the evidence presented and the law governing variances, I am not able to grant this variance. A variance request involves a two-step process, summarized as follows:

> (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
>
> (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995). In order to grant a variance, there must first be evidence of uniqueness of the physical characteristics of the property at issue as compared to other properties in the neighborhood. In requiring a pre-requisite finding of "uniqueness", the Court in Cromwell defined the term and stated:

> 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 has 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 in bearing or parting walls....

Id. at 710. The Cromwell Court held that if no evidence is presented as to uniqueness, there is no analysis of the 'practical difficulty' factor. Id. at 698. Because there was no evidence presented here of this Property's uniqueness, the Petition for Variance must be denied.

THEREFORE, IT IS ORDERED, this 12th day of January 2021, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §427.1 to permit a 6 ft. high fence to be erected in the side and rear yard which abuts the front yard of a neighboring property, in lieu of the maximum allowed fence height of 42 inches is hereby DENIED.

_____Signed_____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County
MEM/dlm

IN RE: PETITION FOR VARIANCE **(1207 Providence Road)** 9th Election District 3rd Council District Mark Tosti Legal Owner	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS OF BALTIMORE COUNTY
Petitioner	*	**CASE NO. 2021-0272-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by the Petitioner, Mark Tosti ("Petitioner") for the property located at 1207 Providence Rd. (the "Property"). Petitioner is requesting variance relief from the Baltimore County Zoning Regulations ("BCZR"), §1B02.3 (§ 202.3 of the 1955 Regulations) to permit a proposed dwelling addition (garage) with a side yard setback of 4 ft., in lieu of the required 20 ft. and a sum of side yard setbacks of 16 ft. in lieu of the required 50 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. Petitioner Mark A. Tosti did not appear at the hearing. Bruce E Doak of Bruce E. Doak Consulting, LLC appeared with a site plan which he prepared and sealed (the "Site Plan"). (Pet. Ex. 1). Pete Beyrodt, the builder of the proposed garage, also appeared. Adjacent property owner, John Bathon, 1205 Providence Rd. appeared and testified in opposition.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP"), Department of Environmental Protection and Sustainability ("DEPS") and Development Plans Review ("DPR") which agencies did not oppose the requested relief.

The Property is 0.575 acres +/- (25, 047 sf) and is improved with a 2-story dwelling built in or about 1957. (Pet. Ex. 2). A 1-car garage was built into the ground floor of the home. The Property was created as Lot 4 on the Plat of "Providence Acres' (PB 22, 40) in or about 1956. (Pet. Ex. 1). The neighborhood of Providence Acres consists of ½ acre rectangle lots with split level homes. It is zoned Density Residential (DR 1).

Mr. Doak explained that the Petitioner, who currently resides at another property, intends to move to the Property along with his 91-year old father to live in it. As a result, Petitioner desires to build an attached 1-story, 528 sf, 2-car garage on the western side of the Property where the existing attached garage is located. Mr. Doak added that it would be difficult for Petitioner's father to maneuver a vehicle into the existing garage due to the limited turning radius. The Site Plan indicates that paving in the driveway area will be added. However, as noted by DOP and the street view photographs submitted, the paving and a retaining wall have already been added. (Pet. Exs. 4B-4D). The paved driveway extends nearly to the Property line. (Pet. Ex. 4D). Petitioner also constructed a retaining wall along the driveway. (Pet. Ex. 4B).

Mr. Doak opined the Property is unique due to its severe slope in the rear which makes construction of a detached garage in that area not an option. Additionally, Mr. Doak indicated that if a garage was constructed in the rear yard, there is not sufficient room at the south western corner of the home and the Property line to enter or exit it. While acknowledging that other properties in the neighborhood have rear sloping yards, Mr. Doak opined that this Property has a more severe slope. The proposed attached garage in the side yard here would extend within 4 ft. of the western Property line.

Mr. Beyrodt testified that if a 1 ½ car garage was constructed, rather than a 2-car garage, it would be 16 ft. wide and would be 10 ft. from the Property line.

John Bathon testified that he is opposed to the construction of a garage in the side yard facing his home. Mr. Bathon confirmed that his home and the Petitioner's home have identical layouts; both are 4-bedroom, split level homes with 4 steps up and 4 steps down to a walkout basement. He stated that the Petitioner has rented the home since his purchase in 1998 which rental has resulted code violations. At one point, he said that the Petitioner put the Property on the market for sale. Mr. Bathon objects to construction of a garage because the setback is not great enough between the homes. From his viewpoint, his home sits downhill and he would be staring up at a wall of the garage.(Pet. Exs. 4I, 4J, 4K). Mr. Bathon testified that the Property has a flat area in the rear yard next to the home for a garage. (Pet. 4L). He said that there is a concrete patio in that area. He added that the Petitioner had recently removed trees from the side and rear of his Property.

DOP ZAC Comment indicated that DOP did not support the Petition absent a demonstration of an unreasonable hardship and requested explanation of the requested setback distance.

A variance request involves a two-step process, summarized as follows:

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

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

The Property is rectangular in shape as are the other lots in Providence Acres. On the lots On the Property's side of Providence Rd., the lots have rear yards with declining slopes; some are more sloped and some are less. This fact does not make the Property unique under *Cromwell*, *supra*. The Court in *Cromwell*, *supra*, emphasized that the 'uniqueness' element of a property in

Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. Accordingly, in this case, I find that the Property is not 'unique' for zoning purposes, based on the evidence presented.

In the event that the Property is found to be unique, I find that neither the Petitioner nor the Property will suffer a practical difficulty or unreasonable hardship if the variance request is denied. First, an attached garage already exists in the home and therefore it can be used for its intended purpose. Second, the Property is being rented by tenants. Third, the rear yard photograph reflects, and Mr. Bathon's testimony corroborates, that there is a flat area in the rear yard next to the house for an attached garage. (Pet. Ex. 4L). Fourth, the requested area variance is driven by the Petitioner's desire to construct a 2-car garage on a Lot created in 1956 with limited side yard setbacks. *McLean v. Soley*, 270 Md. 208 (1973); *Trinity Assembly of God v. People's Counsel*, 407 Md. 53 (2008). To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

> 1. Whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
>
> 2. Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Mclean at 214-215.

The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722. As applied here, the desire to construct another garage, much less a 2-car garage up to the Property line, is a self-imposed hardship created by the Petitioner.

I also find, based on Mr. Bathon's testimony that the requested variance relief cannot be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare of Mr. Bathon and his Property. There is not sufficient space between the properties to construct an additional structure (even an attached one) in the proposed side yard. Mr. Bathon would be staring up a hill at a wall of the proposed garage. The required zoning setbacks for the DR 1 zone are designated to provide for the minimum amount of separation between homes and this request falls well short of the required setbacks.

THEREFORE, IT IS ORDERED, this **30th** day of **December, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §1B02.3, (§ 202.3 of the 1955 Regulations) to permit a proposed dwelling addition (garage) with a side yard setback of 4 ft., in lieu of the required 20 ft. and a sum of side yard setbacks of 16 ft. in lieu of the required 50 ft. is hereby **DENIED**.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

IN RE: PETITION FOR VARIANCE (1540-1542 S. Rolling Road)	*	BEFORE THE
13th Election District 1st Council District	*	OFFICE OF ADMINISTRATIVE
John & Elisabeth Martin	*	HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO: 2021-0166-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by John Martin and Elisabeth Martin, Petitioners (the "Petitioners") for property located at 1540 – 1542 S. Rolling Road, Relay (the "Property"). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations ("BCZR") §100.6 to approve fowl or poultry on 0.939 acres of land in lieu of the required minimum 1 acre of land.

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. The Petitioners appeared at the hearing along with Mrs. Martin's son, Arthur Wheeler, and his wife Adrienne Wheeler (the "Wheelers"). Adjacent property owner Sharyn Herman, 1538 S. Rolling Rd. appeared in opposition.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP") and Department of Environmental Protection and Sustainability ("DEPS") which agencies did not oppose the requested relief.

The Property is approximately 40,920 sq. ft., is zoned Density Residential (DR2) and is located in the Relay Historic District. It is improved with a duplex dwelling addressed as 1540 and 1542. The portion addressed as 1540 is rented by Kathy and/or Jane Parks and the other

portion is rented by the Wheelers. (Pet. Exs. 10). Notwithstanding the separate rental of these units, the Wheelers apparently use the entire rear yard, part of which is being used to raise, grow and house chickens, geese and ducks. Photographs of the rear yard were provided. (Pet. Exs. 12-14).

According to the Wheelers, they have 7 chickens, 5 geese and 6 ducks. The chickens are housed in a chicken coop; the ducks and geese are housed in a separate, movable facility called a tractor. All of the poultry roam together in an outdoor pen which is connected to a solar-powered electric fence. The movable pen allows the poultry to eat different areas of the grass. The Wheelers stated that they have owned chickens for 12 years, geese for 3 years and ducks for 3-4 years. Admittedly, they readily adopt baby chicks. At one point, the Wheelers owned at least two (2) roosters but have since disposed of them. The Wheelers testified that they have personally observed foxes, coyote and hawks in their yard and surrounding neighborhood. They acknowledged that foxes, coyote and hawks are attracted to the Property because of the poultry but believe that having the geese provides a deterrent.

The owners of 1544 S. Rolling Rd. (Muecio/Sheets) also have animals including a rooster(s). However, they have one (1) single family home (not a duplex) which sits on a larger property (1.34 acres). The Muecio/Sheets have a chicken coop for 10 chickens and 2 roosters.

After unsuccessful attempts to resolve the noise and other nuisance problems stemming from the Wheelers' poultry as experienced by Sharyn Herman, the owner of 1538 S. Rolling Rd., a Code Violation Complaint was filed. Ms. Herman provided a copy of an email string with the Wheelers dated February 7, 2021 – April 2, 2021 outlining her complaints about the poultry. (Prot. Ex. 2). The emails reflect that as of February of 2021, the Wheelers owned 2 roosters which were only put down after Ms. Herman voiced her complaints. Like the units at 1540/1542 S. Rolling

Rd., Ms. Herman's home is one-half of a duplex and sits adjacent to 1540/1542. There is no fence to separate 1536/1538 from 1540/1542.

Ms. Herman testified that the squawking noise from the Wheelers' poultry is constant and intolerable particularly, the noise from the rooster and geese. It can be heard at all hours of the day and night. It keeps her awake and disturbs her ability to work from home. She testified that the poultry are not always contained within the pen and often freely wander into her yard, even up to her rear porch. She added that the Wheelers initially set up the pen onto Ms. Herman's property and removed trees belonging to her without her permission. At Ms. Herman's request, the pen was moved from its initial location near the homes to the rear of the Property. While moving the poultry farther away from the homes reduced the noise, the problem still occurs all day. The ducks quacking and the geese squawking is a constant disruption of Ms. Herman's enjoyment of her home. The noise is amplified by the area between the homes at 1536/1538 and 1540/1542 which acts as a wind tunnel.

In the spring of 2021, Ms. Herman put her house on the market for sale. A buyer who was initially interested in buying the Property, declined to make an offer due to the Wheelers' poultry farm. Due to the constant noise disturbance and nuisance of the poultry, and the negative effect it is having on her ability to sell her home, Ms. Herman is opposed to having poultry at the Property located at 1540-1542.

A variance request involves a two-step process, summarized as follows:

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

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

There was no evidence presented that the Property is unique as compared to other properties in the neighborhood. Indeed, the existence of a duplex home, on a rectangular shaped lot with a wooded area in the rear is similar to the property at 1536/1538 S. Rolling Rd. Thus, I do not find that it meets the uniqueness test. In the alternative, even if the Property was found to be unique, I find that such uniqueness would not cause an unreasonable hardship or practical difficulty for the Petitioners in not being able to have poultry on land which is less than 1 acre.

While the metes and bounds description for the Property contains the area for both 1540 and 1542 which together is 2,640 sq. ft. shy of the required 1 acre under BCZR, §100.6, in this case, the Wheelers are the owners of the poultry but not the owners of the Property. Of significance here is that the portion of the Property that they rent is actually ½ of the total 40,920 sq. ft. Because the Wheelers are tenants and not owners of 1542, granting a variance to permit poultry in perpetuity as one that will run with the land, is not within the spirit and intent of the BCZR. In short, the Property is not a farm; it is a duplex house with a narrow yard, surrounded by other residences. Ms. Herman and her home are directly affected by the presence of the poultry adjacent to her home. It been demonstrated that Ms. Herman is being deprived of the use and enjoyment of her home due to the noise and uninvited poultry which enter her yard. It was only after Ms. Herman exhausted her pleas to the Wheelers to remove the poultry that the Wheelers put the roosters down and moved the pen away from her home. The evidence supports the conclusion that the noise will continue if the poultry remains, particularly because the adult geese, who, according to the Wheelers must be present to protect the chicken from the foxes, coyote and hawks, must remain.

Because the Wheelers clearly desire to have a farm, they should find property which is suitably zoned for their needs. The fact that they were able to obtain signatures from other

neighbors stating that they are not opposed to the poultry does not mean that the presence of the same is in the interest of health, safety or general welfare of the neighborhood. Indeed, it is not surprising that Kathy/Jane Parks, who are also renting 1540 from the Petitioners, would sign such a Petition.

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

I find that the variance here cannot be granted within the strict harmony of the BCZR which specifies that 1 acre minimum lot size for a chicken coop is required. I further find that this Petition is at the request of the Wheelers who are not the legal owners of the Property and a variance, if granted, would run with the land. This Petition is for the mere convenience and personal desire of the Wheelers to have chickens, ducks and geese; it is not a necessity. The Wheelers can still make reasonable use of the 1542 property without having poultry. Indeed, a self-imposed hardship is not a legal justification for granting a variance. The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but

> we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Cromwell, at 722.

Because this area is not farmland but DR 2 zoned land, I find that having a chicken coop on this undersized lot will be detrimental to this neighborhood of homes which are close together. It is undisputed that having poultry on this Property has already attracted foxes, coyotes and hawks which creates increased danger to this residential neighborhood.

THEREFORE, IT IS ORDERED, this **22nd** day of **September 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR § 100.6 to approve fowl or poultry on 0.939 acres of land in lieu of the required minimum 1 acre of land is hereby **DENIED**.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

IN RE: PETITION FOR ADMIN. VARIANCE (7317 Bellona Avenue)	*	BEFORE THE
9th Election District 2nd Council District	*	OFFICE OF ADMINISTRATIVE
Bradley J. and Amy B. Murphy	*	HEARINGS FOR
Petitioners	*	BALTIMORE COUNTY
	*	**CASE NO. 2021-0334-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for Baltimore County for consideration of a Petition for Administrative Variance filed by the legal owners, Bradley J. and Amy B. Murphy ("Petitioners") for the property located at 7317 Bellona Avenue, Baltimore, MD 21212 (the "Property"). Petitioners are requesting Variance relief pursuant to the Baltimore County Zoning Regulations ("BCZR"), §400.1 to permit a proposed in-ground pool (accessory structure) to be located in the side yard in lieu of the required rear yard. The Property and requested relief is more fully depicted on the site plan (the "Site Plan") that was marked and accepted into evidence as Petitioners' Exhibit 1.

The Zoning Advisory Committee ("ZAC") comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Environmental Protection and Sustainability (DEPS") dated December 10, 2021, indicating that development must comply with the Forest Conservation Regulations.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on November 28, 2021, 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 Baltimore County Code ("BCC"), §32-3-303.

A variance request involves a two-step process, summarized as follows:

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

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

First, the Site Plan is misleading because it states that there are no previous zoning cases for this Property. Indeed, there are two (2) prior zoning cases namely: Case No.: 2005-0656-SPH and 1981-0169-A. In the 1981 Case, the Property was found to be unique. As such, in comparing the 1981 Site Plan with the Site Plan filed in this case (Pet. Ex. 1), I find that the Property has not changed. The doctrine of collateral estoppel bars relitigation of an issue of fact or law that was "actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment." *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 368 (2016). Accordingly, the previous finding of uniqueness will apply here under the doctrine of collateral estoppel. Second, the Site Plan indicates that the proposed pool would not only be located in the side yard but also in the front yard as the pool deck extends beyond the front foundation line of the home. As a result, the requested relief should have included a variance for a pool partly located in the front yard.

Based upon the information available, the requested Administrative Variance must be denied. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted are not sufficient to provide facts to comply with the requirements of §307.1 of the BCZR. *Montgomery County v. Rotwein*, 169 Md. App. 716, 906 A.2d 959 (2006). *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). The practical difficulty alleged by the Petitioners (i.e. 'that the side yard is the only option for best management practice') is not the

type of practical difficulty required by case law. Specifically, this Property is 5 acres. The photographs and Site Plan reveal that there are no structures or other obstacles which would prevent the construction of a pool in the rear yard. (Pet. Exs. 1, 3A-3G). In fact, the 1981 Site Plan describes the rear yard as a "slope." The topographical site plan confirms a gentle slope from the front yard to the farthest part of the rear yard; declining in 10 ft. increments. (Pet. Ex. 4). This 'slope' does make construction of a pool in the rear yard impossible; it may cost the Petitioners more money to build a rear yard pool. (Pet. Ex. 4). Furthermore, the topographical Site Plan shows that the proposed side/front yard where the pool would be located has the same degree of slope as the rear yard. Moreover, the photographs of the rear yard and the Site Plan reveal that trees would not have to be cleared to construct a pool in the rear, whereas the Site Plan shows the removal of trees in the side yard. There is no evidence about the condition of those trees other than a bald characterization on the Site Plan that those trees are dead. Thus, there is no more hardship in the construction of a rear yard than with a side yard pool.

Even if a rear yard pool would cost more money, the law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722. The Court of Special Appeals in *Montgomery County v. Rotwein*, 176 Md. 716, 732-33 (2006) citing *Cromwell*, held that economic loss alone does not satisfy the 'practical difficulties' test:

> Economic loss alone does not necessarily satisfy the 'practical difficulties' test because, as we have previously observed, 'every person requesting a variance can indicate some economic loss.' *Cromwell* at 715…..Indeed, to grant a variance application any time economic loss is asserted, we have warned, 'would make a mockery of the zoning program.

As applied here, there is no evidence that not having a pool in the side yard would unreasonably prevent the Petitioners' use of the Property as a home. While a pool in the side yard might be a more convenient place to build, and a pool might be a nice feature, I cannot find that not having a pool in the side yard would deprive the Petitioners use of their Property as a 'home.' Indeed, the fact that the Property is improved with a garage per the 1981 Site Plan (now labeled as existing building on the Site Plan), and with both rear and side yard decks, confirms that the Petitioners are maximizing the use of the Property. Variance relief runs with the land and the proposed pool in the side yard would negatively impact this established neighborhood and cannot be granted within the spirit and intent of the BCZR which requires pools to be located in the rear yard.

Pursuant to the posting of the property and the provisions of both the BCC and the BCZR, and for the reasons given above, the requested variance will be **DENIED**.

THEREFORE, IT IS ORDERED, this **21th** day of **December, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from BCZR, §400.1 to permit a proposed in ground pool (accessory structure) to be located in the side yard and the front yard in lieu of the required rear yard, be and is hereby **DENIED**.

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

Signed

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlw

IN RE: PETITION FOR VARIANCE **(3100 Marnat Road)** 3rd Election District 2nd Council District Dorina Natiga and Shifra Natiga *Legal Owners* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2021-0188-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by Dorina Natiga and Shifra Natiga ("Petitioners") for property located at 3100 Marnat Rd., Pikesville (the "Property"). The Petitioners are requesting variance relief from Baltimore County Zoning Regulations ("BCZR"), §1B02.3.B (Section III.C.3, 1953 Zoning Regulations) to permit an existing dwelling addition (carport) to remain with a zero (0) ft. setback in lieu of the minimum required 7 ft. setback.

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. Petitioner, Dorina Natiga appeared, *pro se*, at the hearing in support of the Petition. Behnam Barkhorder, 3102 Marnat Rd. testify in opposition. Avraham Feldman, 3028 Marnat Rd. provided a letter of support.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP") which opposed the requested relief. Department of Environmental Protection Sustainability ("DEPS") did not have a substantive comment. People's Counsel provided

FACTS AND EVIDENCE

The Property is a 9,180 sf +/- and is improved with a 1-story home built in or around 1955. It is zoned Density Residential (DR 5.5). The My Neighborhood map attached to People's Counsel's October 5, 2021 letter reflects mid-century style homes along Marnat Rd. setback evenly

along Marnat Rd with spacious front yards. The homes have very little side yards and as such, sit very close together. Many homes do not have driveways although the testimony was that some homeowners applied for access permits to install driveways as shown on My Neighborhood map. Given the narrow spacing of the homes along Marnat Rd., the homes do not have either garages or carports.

The Property here was not constructed with either a driveway, garage or a carport. Petitioners obtained a building permit (B967308) to construct a 1-story addition attached to the rear of the home. On January 20, 2020, a Residential Access Permit was issued by the Bureau of Highways to the Petitioners for a proposed driveway. (Pet. Ex. 2). On June 9, 2020 and on June 25, 2020, a Baltimore County Building Inspector approved a foundation and concrete slab under Permit B967308. (Pet. Ex. 6). In or about October, 2020, a complaint was filed with Code Enforcement that a carport, front driveway and 2-story addition were being constructed at the Property without a permit. Petitioner acknowledged service of the Code Enforcement Citation on October 22, 2020. (Pet. Ex. 2), see email from Pet. dated 10/22/2020). Street view photographs reveal that construction of the carport is nearly complete. (Pet. Ex. 12).

Between the end of October, 2020 through January of 2021, Petitioner, through email, was in contact with the Code Enforcement Inspector who informed him that Permit B967308 was only issued for the addition and not the carport. (Pet. Ex. 2). Petitioner told the Inspector that he believed he had approval to build the carport based on the Building Inspector's approval of a foundation and a concrete slab. (Pet. Ex. 6). The email chain makes clear that the Petitioner was seeking advice from the Inspector about whether he needed to obtain a new permit, or whether he could have Permit B967308 amended to include the carport. (Pet. Ex. 2). On that issue, the Inspector referred the Petitioner to Building Permit Office. (*Id.*). By email dated December 7,

2020, Petitioner was informed by the Building Permit Office that the application for the Permit B967308 did not state that a carport would be built. The architect plans showed a long hatched area, part of which is where the carport now stands, and part of which is the new driveway, but it was not labeled as a 'carport' and the request to build a carport was also missing from the application. (Pet. Ex. 7). Petitioner had intended to apply for the carport permit on or around December 7, 2020 but had to suddenly leave the country due to his father's cancer diagnosis.

On January 19, 2021, Petitioner's architect revised the plans, correctly labeled the carport, and filed for a permit. (Pet. Ex. 2). In March of 2021, Permit B979036 was attributed to the carport but was not signed because the carport as-built has zero foot setbacks. (Pet. Exs. 3, 4). As a result, Petitioner was required to apply for the instant variance relief before the permit can be authorized. There are two (2) pending Code Violations cases (CB 2100325 and CB2012855) in regard to the improvements constructed without permits and/or without zoning relief. (See File). On April 7, 2021, a Code Enforcement hearing was held and it appears that the case(s) may have been stayed pending the outcome of this case.

Street view photographs of the constructed carport show that it is located on the side of the home next to Mr. Barkhordar's home. In fact, Mr. Barkhordar testified that he, his wife, and 3 children reside in his home located at 3102 Marnat Rd. Mr. Barkhordar opposes the carport as it is too close to his home, and because it is next to a bedroom, which interferes with his family's use and enjoyment of their home. Because the carport is so close to his home, Mr. Barkhordar is also concerned that it is a fire hazard.

The file does reflect that Avraham Feldman, 3028 Marnat Rd., the neighbor who owns the property on the opposite side of Petitioners' home where the carport is located, provided a letter which stated that he did not have any concerns about the carport. (Pet. Ex. 9). While Mr. Feldman

did not testify or appear for the hearing, Hadassah Gholian, identified herself as a future resident of Mr. Feldman's house, and stated that she had no problem with the carport.

DECISION

A variance request involves a two-step process, summarized as follows:

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

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

A threshold condition precedent for variance relief is uniqueness. In this case, there was no evidence presented that the Property is unique, peculiar or different than other properties in the neighborhood in accordance with the standards set forth in BCZR, §307.1 as clarified in *Cromwell*, *supra*. Indeed, the My Neighborhood maps attached to People's Counsel's letter of October 5, 2021 shows that the Property is a rectangle as are all other lots set forth on the plat. The Property and each property along Marnat Rd., and within the neighborhood, are also similarly sized with nearly identical mid-century modern homes set back at the same distance from the streets on which they front. The lots were not designed with driveways, carports or garages. Vehicles are parked on the street unless a property owner has been granted an access permit for a driveway.

The practical difficulty alleged by the Petitioners (i.e. health issues of a family member) is not the type of practical difficulty required by case law. To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

1. That compliance with the strict letter of the restriction would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such

> restrictions unnecessarily burdensome;
>
> 2. Whether the grant of the variance applied for would do substantial justice to applicant as well as 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; and
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 39 (1974).

As applied here, I find that the requested relief is a self-imposed hardship and was caused by construction of the carport with a zero foot setback, without prior relief being granted, which generated the Code Enforcement cases. Assuming *arguendo* that the Property was somehow determined to be unique, no showing of practical difficulty has been established here. *Montgomery County v. Rotwein*, 169 Md. App. 716, 906 A.2d 959 (2006). Without the granting of the zero foot setback, Petitioners can still make reasonable use of the Property as their home. While a carport may be a nice convenience to have, the Property does not become useless as a home because it does not have a carport. Indeed, the Petitioners were granted an access permit for the driveway which does not need variance relief and therefore can remain.

While I recognize that this result may be harsh as it requires the removal of the unauthorized carport, the law is clear that self-inflicted hardship cannot form the basis of a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Cromwell, at 722.

Additionally, the Variance relief here cannot be granted within the spirit and intent of the BCZR and without harming and negatively impacting the Barkhordars' health, safety, and general welfare and that of the neighborhood. The carport is literally at Barkhordars' bedroom wall. If Petitioners had requested the carport addition on the application for Permit B967308, they would have received the same instruction from the Office of Zoning Review to apply for a variance before a permit can be issued. While I can sympathize with the Petitioners who did not appear to be misleading the County and believed that they had the permit to construct the carport, unfortunately, the impact to the Barkhordars and to the neighborhood is substantial. As mentioned by DOP, the lack of any setback from the property line will cause problems with maintenance. In regard to the spirit and intent of the BCZR, I find that granting a zero foot setback for a carport or garage in this neighborhood of homes situated so compactly upon one another that they are already devoid of side yards, will have an adverse domino effect, and if granted, will generate other requests in this neighborhood for the same types of structures.

THEREFORE, IT IS ORDERED, this **8th** day of **December 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §1B02.3.B (Section III.C.3, 1953 Zoning Regulations) to permit an existing dwelling addition (carport) to remain with a zero (0) ft. setback in lieu of the minimum required 7 ft. setback is hereby **DENIED**.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(3401 Overbrook Road)		
3rd Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
Yoseph Orshan and Randi Orshan	*	HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO: 2021-0183-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by the Petitioners, Yoseph Orshan and Randi Orshan ("Petitioners") for property located at 3401 Overbrook Road, Dumbarton the "Property"). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations ("BCZR"), §400.1 to approve an accessory structure (pool) in the right side yard in lieu of the required rear yard only.

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. Petitioners appeared at the hearing in support of the Petition. Adjacent neighbor, David Gichtin, MD, 3403 Overbrook Rd. appeared and testified in opposition and was represented by Michael McCann, Esquire.

A Zoning Advisory Comment was received from the Department of Environmental Protection and Sustainability ("DEPS") which indicated that the file had been reviewed but there was no substantive comment on the Petition.

The Property is approximately 28,350 sq. ft. and is improved with a 2-story brick home built in or around 1933. The Property is part of the Dumbarton neighborhood which is listed on the National Register of Historic Places (BA-3237). (Prot. Rosen Ex. 1). It is zoned Density-Residential (DR 2). The Property is surrounded on 3 sides by Seven Mile Lane, Southvale Rd.

and Overbrook Rd. The Petitioners described the Property as a rectangle with equal front and rear yards. They purchased it in August of 2020.

Through the Petitioners' photographs of the Property, Mr. Orshan explained that he and his wife reside in the home with their 4 children. The photographs show that there is a 3-car detached garage (600 sf.) which can be accessed via Seven Mile Lane and Southvale Rd. (Pet. Ex. 4). In front of the detached garage, an in ground basketball net has been installed near Southvale Rd. The Petitioners are creating a basketball court in that area. (*Id*.). A stone fish pond is partly in the left side yard and partly in the rear yard near to Southvale Rd. A stone patio area (168 sf.) and various stone walkways are located in the rear yard. (*Id*.). There is an old Magnolia tree which is in the rear yard. (*Id*.). In the right side yard is a trampoline and swing set. Trees line the right side yard along a perimeter fence between the Property and Dr. Gichtin's property.

Petitioners desire to build the in-ground pool and pool deck in the right side yard. A site plan prepared by a pool company shows the proposed in-ground pool measuring 16 ft. by 34 ft. along with a pool deck. (Pet. Ex. 2). Petitioners explained that they did not want to remove the improvements and things in rear yard.

It was undisputed that the Dumbarton Development Corporation ("DDC") is the existing neighborhood organization which approves plans for alterations and additions to properties. The DDC is charged with enforcing restrictive covenants applicable to this neighborhood. Indeed, the Petitioners received approval from the DDC for their proposed pool in the right side yard. (Pet. Ex. 3).

Petitioners contend that they will suffer a practical difficulty if the pool is not able to be constructed in the right side yard as proposed because (1) they want a pool for their children; and (2) they believe that the rear yard will be destroyed if they have to construct a pool there. Petitioners

assert that Dr. Gichtin does not reside in this home year round, that the Gichtin's have a pool in their rear yard which is 5 ft. from the Property line, and that the proposed pool will be 30 ft. from the Property line. (Pet. Ex. 6). Petitioners also highlight that they received letters of support from neighbors/friends about their Petition. (Pet. Ex. 7). A list of pools located in the rear yards of properties in the neighborhood was submitted. (Pet. Ex. 8).

On cross examination, Mr. Orshan, an attorney, agreed that the Property was rectangular in shape and that it was similar to other lots in Dumbarton. Mr. Orshan further agreed that his Property was not the only corner lot in Dumbarton. Additionally, he acknowledged that other lots have large, mature trees as well as sheds and garages. Mr. Orshan agreed that the proposed pool could fit in the rear yard, especially without a pool deck surrounding it, but that to do so would "destroy the backyard" and the "expenses would be double." However, the Petitioners concede that they did not obtain estimate(s) for constructing the pool in the rear yard. On cross, Mr. Orshan also agreed that there were no pools in the side yards of any of the properties in the neighborhood.

Dr. Gichtin testified that he is opposed to the location of the pool in the right side yard which is adjacent to his house, even with the fence proposed along the perimeter. Dr. Gichtin stated that when he had his pool installed 20 years ago, it was done at great expense, where trees had to be removed, a new driveway had to be installed, and his garage had to be rebuilt and reconfigured. Dr. Gichtin believes that the proposed pool can fit in the Petitioners' rear yard and demonstrated the same on a copy of the Petitioners' site plan. (Prot. Gichtin Ex. 2). He contends that a pool located in a side yard in this neighborhood will set a precedent for other owners to request the same and it will negatively affect property values.

A variance request involves a two-step process, summarized as follows:

(1) It must be shown the property is unique in a manner which makes it unlike

surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and

(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995). In requiring a finding of "uniqueness", the Court of Special Appeals in *Cromwell* referred to the definition of "uniqueness" provided in *North v. St. Mary's County*, 99 Md. App. 502, 514 (1993):

> 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 has 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 in bearing or parting walls.

Cromwell at 710. The *Cromwell* Court connected the variance law in Baltimore County with the law in Maryland and emphasized that:

> 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.

Id. When comparing the property at issue with other properties to determine 'uniqueness,' the terms 'area', 'neighborhood' and district have all been used interchangeably. (*Easter v. Mayor & City Council*, 195 Md. 395, 400 (1950) citing *Rathkopf, Zoning, 2d Ed*., p. 215); *Marino v. City of Baltimore*, 215 Md. 206, 219 (1957); Chesley *v. Annapolis*, 933 A.2d 475, 176 Md. App. 413 (Md. App., 2007). The Court in *Cromwell*, *supra*, emphasized that the 'uniqueness' element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance

relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. As admitted during cross examination, within this neighborhood, the Property is similar to other rectangular lots, to other corner lots, to lots with mature trees, sheds and garages. It is neither large nor small; rather it is similar in size to other lots in the neighborhood. Accordingly, in this case, I find that the Property is not 'unique' for zoning purposes, based on the evidence presented.

If the Property is determined to be "unique," then the issue of practical difficulty or unreasonable hardship must be decided. Toward this end, a variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973); *Trinity Assembly of God v. People's Counsel*, 407 Md. 53 (2008). To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

> 1. Whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
>
> 2. Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Mclean at 214-215.

As applied here, the law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty

> or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722. The Court of Special Appeals in *Montgomery County v. Rotwein*, 176 Md. 716, 732-33 (2006) citing *Cromwell*, held that economic loss alone does not satisfy the 'practical difficulties' test:

> Economic loss alone does not necessarily satisfy the 'practical difficulties' test because, as we have previously observed, 'every person requesting a variance can indicate some economic loss.' *Cromwell* at 715…..Indeed, to grant a variance application any time economic loss is asserted, we have warned, 'would make a mockery of the zoning program.

As applied here, in the event that an appellate court would find that the Property is 'unique', I find that the facts here do not satisfy the 'practical difficulties' test to justify approval of the variance. Indeed, as demonstrated by Mr. McCann, the proposed pool can be located in the rear yard. The Petitioners need to make choices about whether they desire a pool or the existing arrangement of items in the rear yard. First, applying the 3-part test in *McLean*, there was no evidence that not having a pool in the right side yard would unreasonably prevent the Petitioners' use of the Property as a home. While a pool in the side yard might be a nice feature, I cannot find that not having a pool would deprive the Petitioners 'use' of their Property. Indeed, the fact that the Property is improved with a variety of recreational amenities such as a 3-car garage, basketball court, stone patio, fish pond and stone pathways confirm that the Petitioners are maximizing the use of the Property. Accordingly, approving a pool in the side yard would be for the convenience of the Petitioners only which is contrary to the variance case law. I find that the Petitioners' alleged practical difficulty is the result of a self-imposed hardship created by the choice of recreational amenities in the rear yard.

Second, I cannot find that denying a pool in the side yard would cause 'substantial injustice' to the Petitioners. At worst, the size of the pool would be reduced, the pool could be moved to the rear yard, and/or constructing a pool in the rear yard may (or may not) cost more money. Conversely, I find that granting this variance would cause injustice to Dr. Gichtin and subsequent owners of his property, particularly in light of the fact that there are no pools located in the side yards of homes in the Dumbarton neighborhood. Variance relief runs with the land and the proposed relief here would negatively impact this established neighborhood.

THEREFORE, IT IS ORDERED, this **4th** day of **October 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §400.1 to approve an accessory structure (pool) in the right side yard in lieu of the required rear yard only is hereby **DENIED**.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

IN RE: PETITION FOR VARIANCE **(2203 Forest Ridge Road)** 8th Election District 3rd Council District Gregory Schaub and Karen Schaub	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO: 2021-0162-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by the Petitioners, Gregory and Karen Schaub ("Petitioners") for property located 2203 Forest Ridge Road, Timonium (the "Property"). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations ("BCZR"), §400.1 to approve an accessory structure (above-ground pool) in the side yard in lieu of the required rear yard only.

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. Petitioners appeared, pro se, at the hearing in support of their Petition. Many neighbors were present and testified in opposition to this Variance request. A Zoning Advisory Committee ("ZAC") comment was received from Department of Public Works & Transportation ("DPWT") which agency noted that the proposed above-ground pool is located in the existing drainage and utility easement and must be moved.

The Property is approximately 41,304 sf. and is improved with a 2-story home built in 1971 which fronts on Forest Ridge Rd. The Property is zoned Density Residential (DR 2). Mr. Schaub explained the site plan and the need for the variance relief. (Pet. Exs. 1 and 2). The Property is shaped wider in the rear than in the front. (Pet. Ex. 2). Outside of the western boundary line of the

Property is the drainage and utility easement noted by DPWT. The request for Variance relief here arose out of a Code Enforcement citation for the installation of an above-ground pool located on the western side yard. The above-ground pool measures 12 ft. x 24 ft. (288 sf). (Pet. Ex. 2). It is proposed to be located 5 ft. from the western Property line, an area where the Petitioners previously graded and leveled. (Pet. Ex. 2). The Petitioners propose to screen the pool with landscaping.

Photographs of the Property were submitted showing that the rear of the Property has a concrete patio on a level area surrounded by a retaining wall. (Pet. Ex. 4). The topography in the rear gradually rises in slope and is lined with trees on the northern boundary. (Id.). Photographs of the side yard show the proposed location of the pool. Petitioners emphasized that the pool is seasonal. Petitioners assert that they will suffer a practical difficulty and unreasonable hardship if the above-ground pool had to be located in the rear yard due to the grading required. Additionally, if the pool were located on the rear patio, Petitioners would not be able to use the patio.

There were many Protestants/neighbors who testified in opposition. Each person in attendance was also permitted to ask questions of the Petitioners and the Petitioners were permitted to ask questions of the Protestants. The Protestants were as follows:

1. Frank Hodgetts - 2202 Forest Ridge Rd.
2. Julie Hubbard, President Pine Valley Valleywood Comm. Assoc., PO Box 434, Timonium, 21094
3. Kathy Langan – 2105 Forest Ridge Rd.
4. Mark McCoy – 309 Jody Way
5. Jennifer Stick – 313 Gail Ridge Rd.
6. Joan Mahan – 2114 Old Pine Rd.
7. Kim Walz – 315 Presway
8. Chris Richardson – 2137 Pine Valley Dr.
9. Rebekah Richardson – 2137 Pine Valley Dr.
10. Susan Hyde – 220 Burning Tree Rd.
11. David Alexander – 2104 Forest Ridge Rd.

In support of his position that the pool location will have a negative impact on adjacent and nearby properties, Frank Hodgett used My Neighborhood map and measured the distance from the pool location to 2205 Forest Ridge Rd. as 120.3 ft., and the distance to 2204 Forest Ridge Rd. as 172.5 ft. (Prot. Hodgett, Exs. A1, A2). Mr. Hodgett's home is directly across the street from the pool and he provided a photograph of his view of the pool when it has installed. (Prot. Hodgett, Ex. C). Mr. Hodgett argued that the pool can be located in the rear yard and provided an exhibit showing that there is a 779.4 sf. area in the location of the rear patio where a 288 sf. pool could be located. (Prot. Hodgett, Ex. B). Mr. Hodgett also testified that the Property is not unique as 95% of the rear yards in the neighborhood have sloping yards and trees. He believes there are no special circumstances or conditions which would create an undue burden on the Petitioners to install the above-ground pool in the rear yard. In reviewing the topography, Mr. Hodgett indicated that the slope is not as severe as alleged by the Petitioners. Mr. Hodgett testified that the cost to level an area in the rear yard would be comparable to the cost that the Petitioners spent renting equipment to level and grade the side yard.

Kathy Langan testified in opposition and also submitted exhibits. A rendering of the type of above-ground pool was provided. (Prot. Langan, Ex. B). Several photographs of the pool location from different angles were also provided. (Prot. Langan, Ex. A, H). In Exhibit C, Ms. Langan testified that the property line from My Neighborhood shows the Petitioners' western boundary line crossing through their front walkway. As such, Ms. Langan agrees with DPWT that the location of the pool is in the Utility and Drainage Easement. (Prot. Langan, Ex. C-1). She also highlighted a discrepancy between the proposed 5 ft. setback indicated on the site plan and the proposed 10 ft. setback in the Petitioners' narrative as in Pet. Ex. 1. (Prot. Langan, Ex. C-2). Ms. Langan provided signatures of property owners who are opposed to the Petition. (Prot. Langan,

Ex. E).

Jennifer Stick, who is licensed appraiser with 44 years of experience, who has previously been admitted as an expert witness, was admitted here as an expert appraiser. It was her opinion that the above-ground pool in the side yard is a safety hazard for neighborhood children and would be an attractive nuisance. She opined that property values will decrease in the neighborhood and houses will be less marketable if the Petition is granted. She indicated that above-ground pools negatively impacts property values. She agreed that the rear yard is large enough to accommodate this pool.

Kim Walz reiterated that the neighborhood has steep areas but that it is not overly burdensome for property owners who wish to have pools in their rear yards. Because there will be a 3-sided view of this pool in this side yard, she noted that shrubs will not be tall enough to adequately screen the pool; the 24 ft. length of the pool which will remain visible. She highlighted that it would be a very tight space to plant a tree in a 5 ft. setback. Ms. Walz foresees that while the Petitioners indicated that they would put the ladder to the pool away when not using it, there will be situations, whether emergency or not, when the ladder will be left on the pool and will be used by unattended children.

Julie Hubbard, President of Pine Valley Valleywood Community Association acknowledged that Restrictive Covenants which apply to the Property in this neighborhood would need to be separately enforced in a court proceeding and are not evidence here. Ms. Hubbard testified that of the 460 homes within the Community Association area, only a small fraction have pools. She reiterated that the Community Association's official position is against this above-ground pool as it is an eye sore and visible from the Forest Ridge Rd.

Mark McCoy emphasized that properties on Forest Ridge Rd. and Jody Way have hills and trees in the rear. While it may be difficult to put construct a pool, the slope does not make the Property unique.

Both Chris Richardson and Rebekah Richardson brought a different perspective. Mr. Richardson testified that property values are about supply and demand and not someone's perception of what is an eye sore. He indicated that the neighborhood has other eye sores such as sheds and fences in need of repair. Ms. Richardson testified that most of the properties in the neighborhood are flat and that the Petition should be granted if there is an economic hardship.

Susan Hyde testified that she has lived in the neighborhood since 2002 and is concerned about the above ground pool in this side yard. She stated that most properties do not have pools but if they do, the pools are in the rear yard. She pointed out that the Petitioners have not suffered an economic hardship simply because grading the rear yard may cost more money.

A variance request involves a two-step process, summarized as follows:

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

Cromwell v. Ward, 102 Md. App. 691 (1995). In requiring a finding of "uniqueness", the Court of Special Appeals in *Cromwell* referred to the definition of "uniqueness" provided in *North v. St. Mary's County*, 99 Md. App. 502, 514 (1993):

> 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 has 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 in bearing or parting walls.

Cromwell at 710. The *Cromwell* Court connected the variance law in Baltimore County with the law in Maryland and emphasized that:

> 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.

Id. When comparing the property at issue with other properties to determine 'uniqueness,' the terms 'area', 'neighborhood' and district have all been used interchangeably. (*Easter v. Mayor & City Council*, 195 Md. 395, 400 (1950) citing *Rathkopf, Zoning, 2d Ed*., p. 215); *Marino v. City of Baltimore*, 215 Md. 206, 219 (1957); Chesley *v. Annapolis*, 933 A.2d 475, 176 Md. App. 413 (Md. App., 2007). The Court in *Cromwell*, *supra*, emphasized that the 'uniqueness' element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. The evidence presented here was overwhelmingly that the Property is similar to other properties in the neighborhood in that the rear yards have both slopes and trees. Indeed, the rear yard is a larger area than the side yard. Accordingly, in this case, I find that the Property is not 'unique' for zoning purposes, based on the evidence presented.

If the Property is determined to be "unique," then the issue of practical difficulty or unreasonable hardship must be decided. Toward this end, a variance may be granted where strict application of the zoning regulations would cause practical difficulty to a petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973); *Trinity Assembly of God v. People's Counsel*, 407 Md. 53

(2008). To prove practical difficulty for an area variance, a petitioner must produce evidence to allow the following questions to be answered affirmatively:

> 1. Whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
>
> 2. Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Mclean at 214-215.

The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722. The Court of Special Appeals in *Montgomery County v. Rotwein*, 176 Md. 716, 732-33 (2006) citing *Cromwell*, held that economic loss alone does not satisfy the 'practical difficulties' test:

> Economic loss alone does not necessarily satisfy the 'practical difficulties' test because, as we have previously observed, 'every person requesting a variance can indicate some economic loss.' *Cromwell* at 715…..Indeed, to grant a variance application any time economic loss is asserted, we have warned, 'would make a mockery of the zoning program.

As applied here, in the event that an appellate court would find that the Property is 'unique', I find that the facts here do not satisfy the 'practical difficulties' test to justify approval of the

variance. First, because this is an above-ground pool, it is seasonally set up and dismantled. Indeed, as demonstrated by the photographs and the site plan provided by Mr. Hodgett, the proposed aboveground pool can be located in the rear yard. It may take grading an area to make it flat or using the patio area while the pool is seasonably used. Thus, I find that the Petitioners' alleged practical difficulty is the result of a self-imposed hardship created by the choice of recreational amenities in the rear yard.

Applying the 3-part test in *McLean*, there was no evidence that not having a pool in the proposed side yard would unreasonably prevent the Petitioners' use of the Property as a 'home.' While a pool in the side yard might be a nice feature, and a more convenient place for the Petitioners, the Petitioners are not deprived of the 'use' of their Property if they cannot erect this above-ground pool. Indeed, the fact that the Property is improved with a concrete patio, retaining wall, grass area and garden, confirm that the Petitioners are maximizing the use of their Property. However, approving a pool in the side yard would be for the convenience of the Petitioners only and contrary to the variance case law.

Second, I cannot find that denying a pool in the side yard would cause 'substantial injustice' to the Petitioners. At worst, the Petitioners would need to level an area in the rear yard as they did in the size yard, or use the patio area for their seasonal use of this pool, dismantling it when not in season. The evidence was inconclusive at best that grading an area in the rear yard would be cost prohibitive. Even if there is a cost to grade, the case law is clear that economic hardship cannot form the basis for approving a variance request.

Conversely, I find that granting this variance would cause substantial injustice to this established neighborhood, in that variance relief runs with the land. In particular, I make this finding in light of the fact that very few homes have pools, much less above-ground pools, and that to the

extent they exist, the pools are located in the rear yards. Given the open space surrounding this side yard, I find that this above-ground pool, in this particular side yard, will be visible from 3 sides, even if landscaping is added to screen it. I find both the size and location of this pool will present an open and obvious danger to neighborhood children and even to children who do not reside in the neighborhood; it is an attraction sitting in plain view. On the other hand, if this above-ground pool is set up in the Petitioners' rear yard, it would substantially reduce the risk of a child drowning as it is blocked from view and contained within the rear property lines behind the house. Thus, I agree with the Protestants that the proposed relief here would negatively impact this established neighborhood.

THEREFORE, IT IS ORDERED, this **5th** day of **October 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §400.1 to approve an accessory structure (pool) in the side yard in lieu of the required rear yard only is hereby **DENIED**.

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

Signed
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

IN RE: PETITION FOR VARIANCE **(808 Dartmoor Road)**	*	BEFORE THE
8th Election District 3rd Council District	*	OFFICE OF ADMINISTRATIVE
Danielle Vaziri & Francis Bonadio, Jr.	*	HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO. 2021-0215-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by Danielle Vaziri and Francis Bonadio, Jr., (the "Petitioners") for property located at 808 Dartmoor Road (the "Property"). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations ("BCZR"), §1B02.3.C.1 to permit a proposed dwelling addition (attached garage) with a side setback of 5 ft. in lieu of the required 10 ft.

This matter was originally filed as an Administrative Variance, with a closing date of August 16, 2021. On August 16, 2021, David Satterfield, 808 Dartmoor Rd. filed a formal demand for a hearing. 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, with the public notice on the sign posting indicating that the hearing would be conducted virtually. The Petitioners appeared at the hearing. David M. Satterfield did not appear.

A Zoning Advisory Committee ("ZAC") comment was received from the Department of Environmental Protection and Sustainability ("DEPS") which agency did not oppose the requested relief.

The Property is approximately 13,554 sf and is improved with a split-level home built in or about 1965. The Property was created on *Plat Two Meadowland* in or around June of 1964

which Plat includes other similarly sized yards and homes. (Pet. Ex. 11). The Property is enclosed with a wooden fence. (Pet. Exs. 1, 2, 6, 7, 8). It zoned DR 3.5. (Pet. Exs. 12A, 12B). Street view photographs of the Property were submitted. (Pet. Exs. 1-9).

Petitioners stated that they desire to construct an attached garage measuring 12x28 on the side of the house as shown on a site plan (the "Site Plan"). (Pet. Ex. 10). The garage is attached by only 8 ft. (*Id*.). They reasoned that, as shown in the photographs of the rear yard, they do not want to construct the detached garage in the rear yard because there is a tree which they believe would be negatively impacted and in particular the critical root zone of that tree. The photographs of the rear yard show a tree with a round, mulched area at its base, in which sits a table and chairs as well as a children's play area. The photograph of the side yard where Petitioner proposes to construct the garage shows a decline in grade next to Mr. Satterfield's property. (Pet. Ex. 6). No evidence was submitted in regard to whether the tree was a specimen tree and no expert testimony was provided in regard to a critical root zone.

It is the location of the proposed attached garage on the side yard that requires variance relief from the side setback next to Mr. Satterfield's property. While the Site Plan and Affidavit filed for the Administrative Variance indicate that the Variance needed in one area is 0.3 ft., and in another 4.9 ft., the Petition requests a side yard setback of 5 ft. in lieu of the required 10 ft. Petitioners also argued that the other side of the house is next to a Forest Buffer so a garage cannot be constructed there. Upon inquiry, Petitioners indicate that no other properties in the neighborhood have side yard garages.

A variance request involves a two-step process, summarized as follows:

(1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and

(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

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

As shown on the 1964 Plat and My Neighborhood Zoning Maps, I find that the Property is unique due to its irregular shape. (Pet. Exs. 11, 12). However, the practical difficulty alleged by the Petitioners (that the critical root zone of a tree is disturbed) was only speculation. The location of the attached garage is for the convenience of the Petitioners as moving the garage to the rear yard (such that it would become detached) would be closer to the mulched area which has a table, chairs and children's play area. The hardship is therefore self-imposed. BCZR, §307.1. *Montgomery County v. Rotwein*, 169 Md. App. 716, 906 A.2d 959 (2006). *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). There was no evidence that the tree is a specimen tree which would require the approval of a Forest Conservation Variance prior to removal. There was no expert testimony in regard to the alleged critical root zone.

Petitioners can still make reasonable use of their Property without the granting of the requested variance and they can still construct a detached garage in their rear yard without a variance provided they meet the area setback and height regulations. The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Cromwell, at 722.

While the requested setback may seem inconsequential in terms of the amount, the consequences to the peace and enjoyment of the Satterfield property, including the increased water

run-off from the garage down the slope and closer to his home, are not. There was no evidence provided of storm water management being installed, or the control of water flow away from the Satterfield property. As such, I find that the requested variance relief cannot be granted in strict harmony with the spirit and intent of the BCZR, without injury to the health, safety or general welfare of Mr. Satterfield's property. Moreover, it is significant that there are no other properties in the neighborhood which have attached garages in the side yards other than those garages which were built as part of the home. The reason for the lack of side yard garages is that this is an older subdivision which does not have sufficient areas of separation between the homes as required under the current BCZR. In my view, granting such a variance will also have an adverse domino effect on this established neighborhood of homes with limited yard sizes.

THEREFORE, IT IS ORDERED, this **3rd** day of **November, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §1B02.3.C.1 to permit a proposed dwelling addition (attached garage) with a side setback of 5 ft. in lieu of the required 10 ft. is hereby **DENIED**.

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

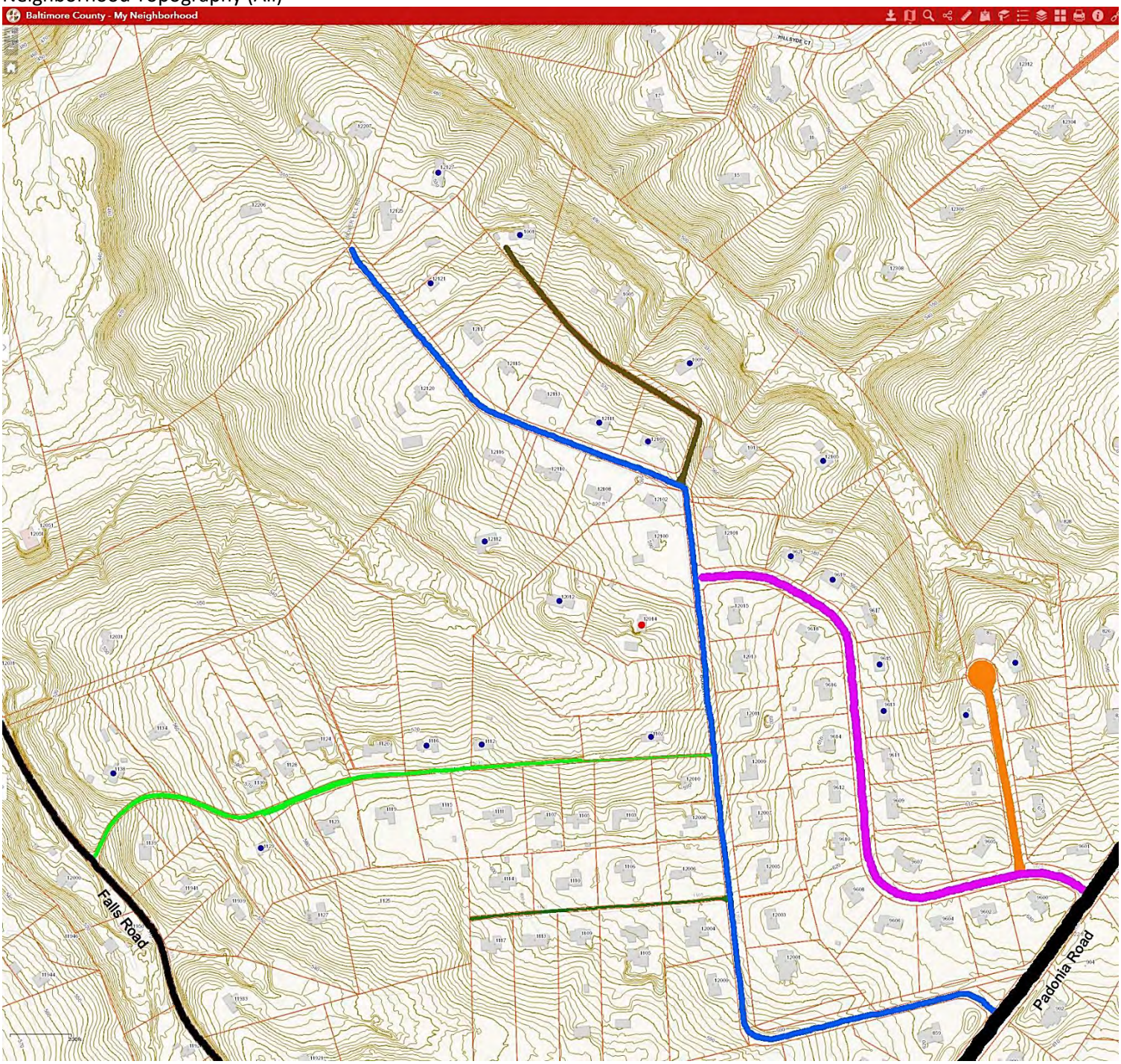
Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

Exhibit 5 Case #23-053-A

Neighborhood Topography (All)



Neighborhood Streets

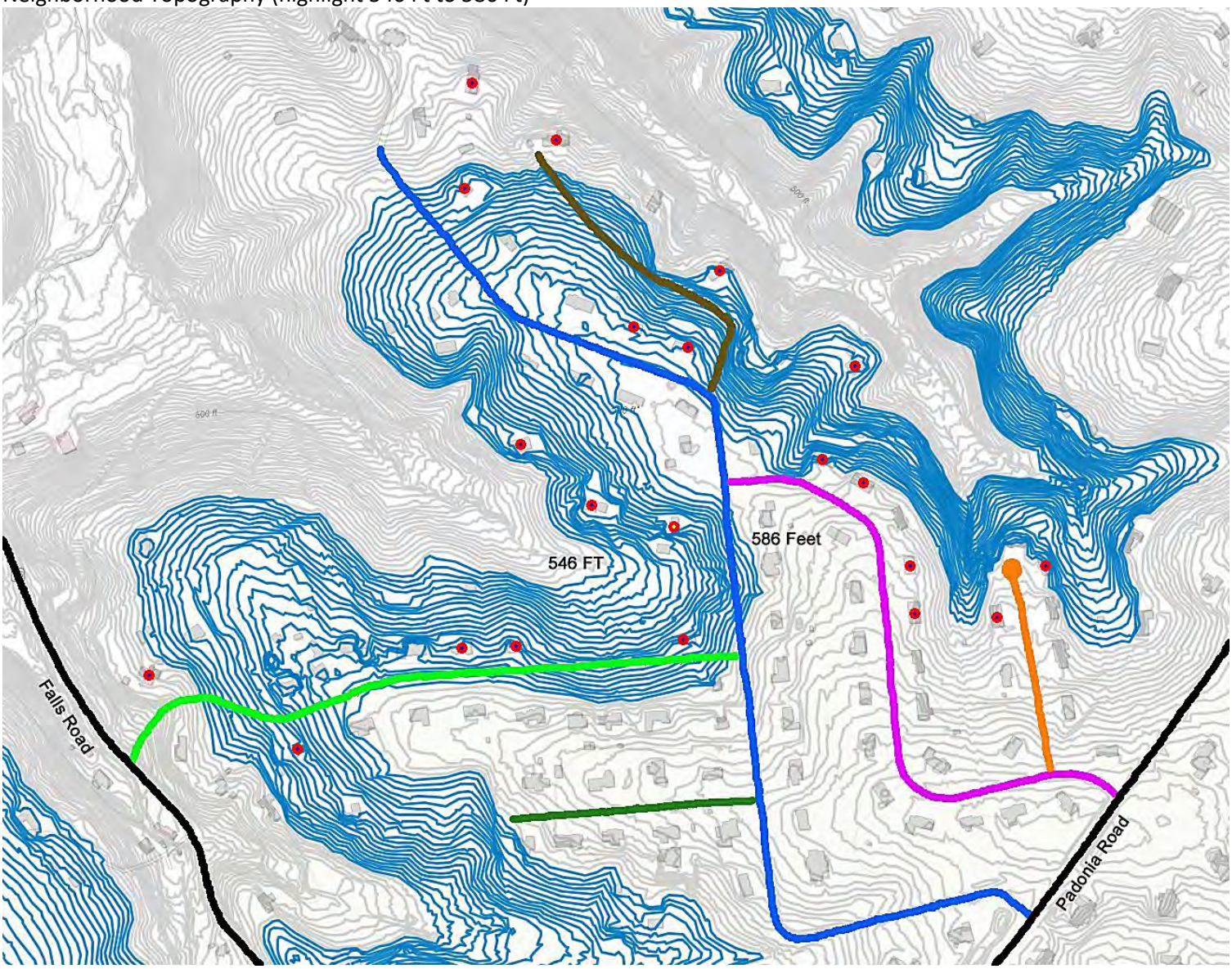
Boxer Hill Rd, Greenway Rd, Labrador Ln, Painter Ln, Justa Ln, Firwood Ct

= 12014 Boxer Hill Rd (Hallengren Residence)

= Other properties with similar characteristics to the Hallengren's property
(Shown in Exhibit 6)

Exhibit 5 Case #23-053-A

Neighborhood Topography (highlight 546 Ft to 586 Ft)



Neighborhood Streets

Boxer Hill Rd, Greenway Rd, Labrador Ln, Painter Ln, Justa Ln, Firwood Ct

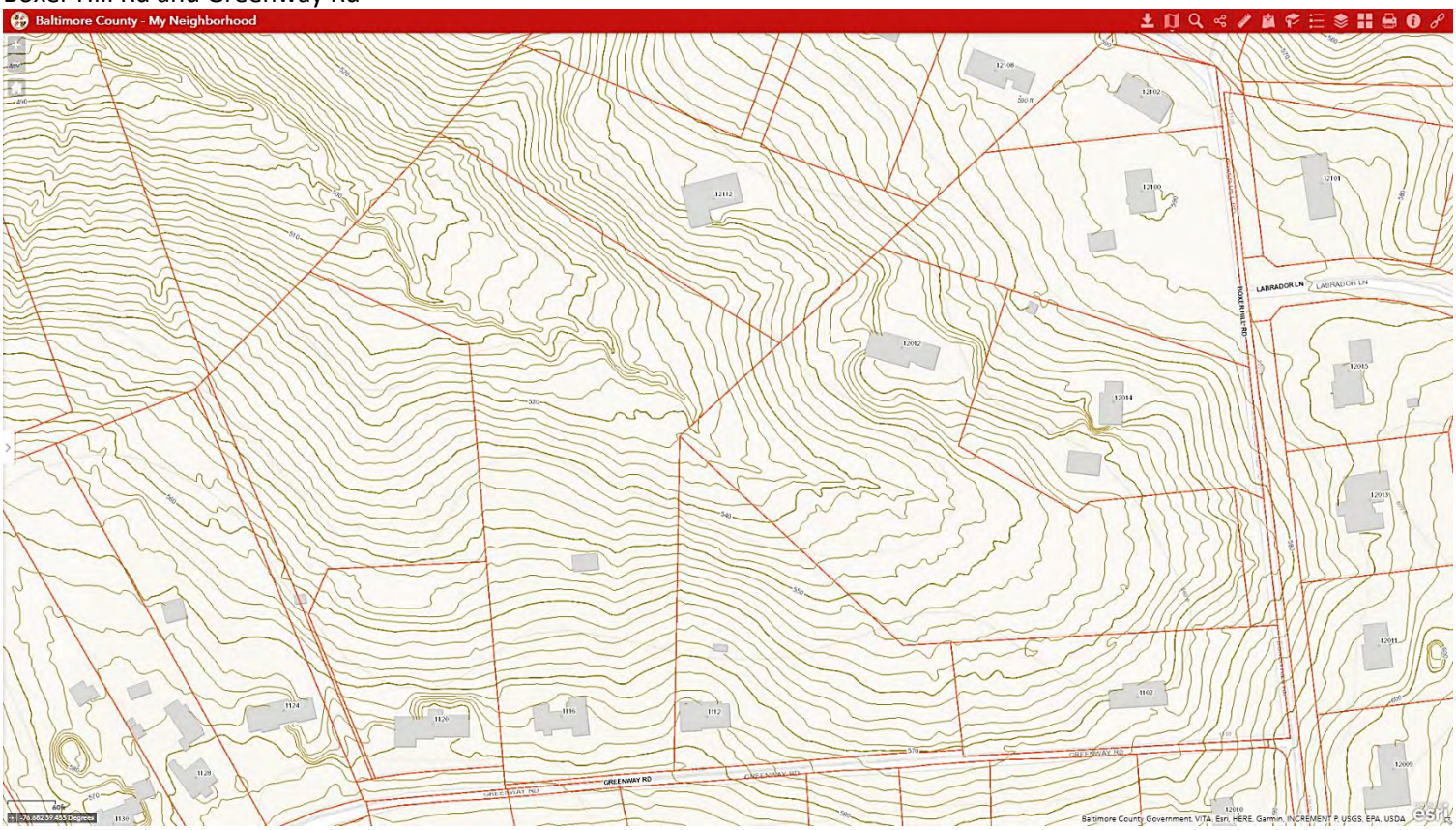
= 12014 Boxer Hill Rd (Hallengren Residence)

= Other properties with similar characteristics to the Hallengren's property
(Shown in Exhibit 6)

Exhibit 5 Case #23-053-A

Neighborhood Topography

Boxer Hill Rd and Greenway Rd



Greenway Rd

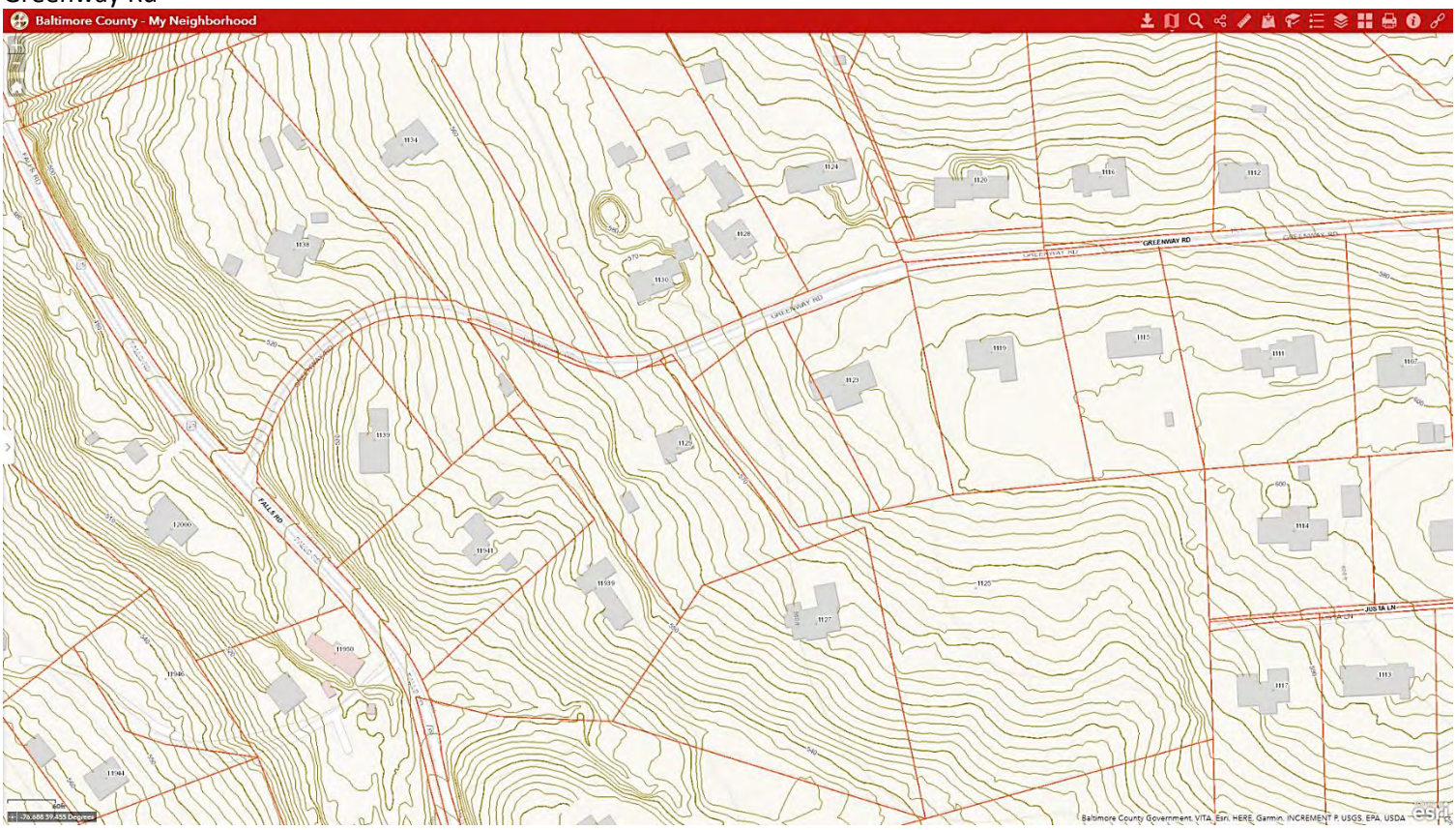
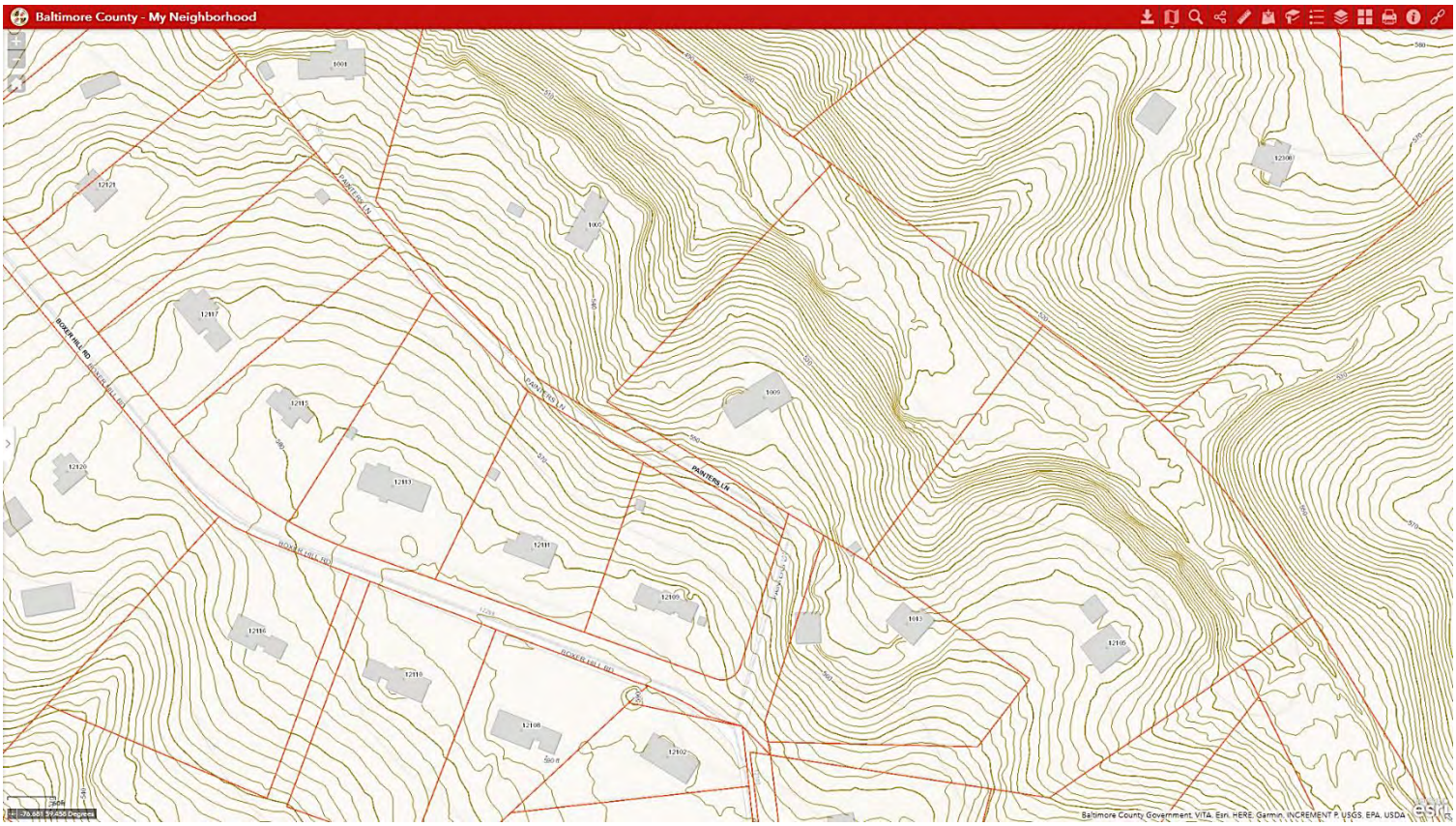


Exhibit 5 Case #23-053-A

Neighborhood Topography

Boxer Hill Rd and Painters Ln



Boxer Hill Rd and Painters Ln

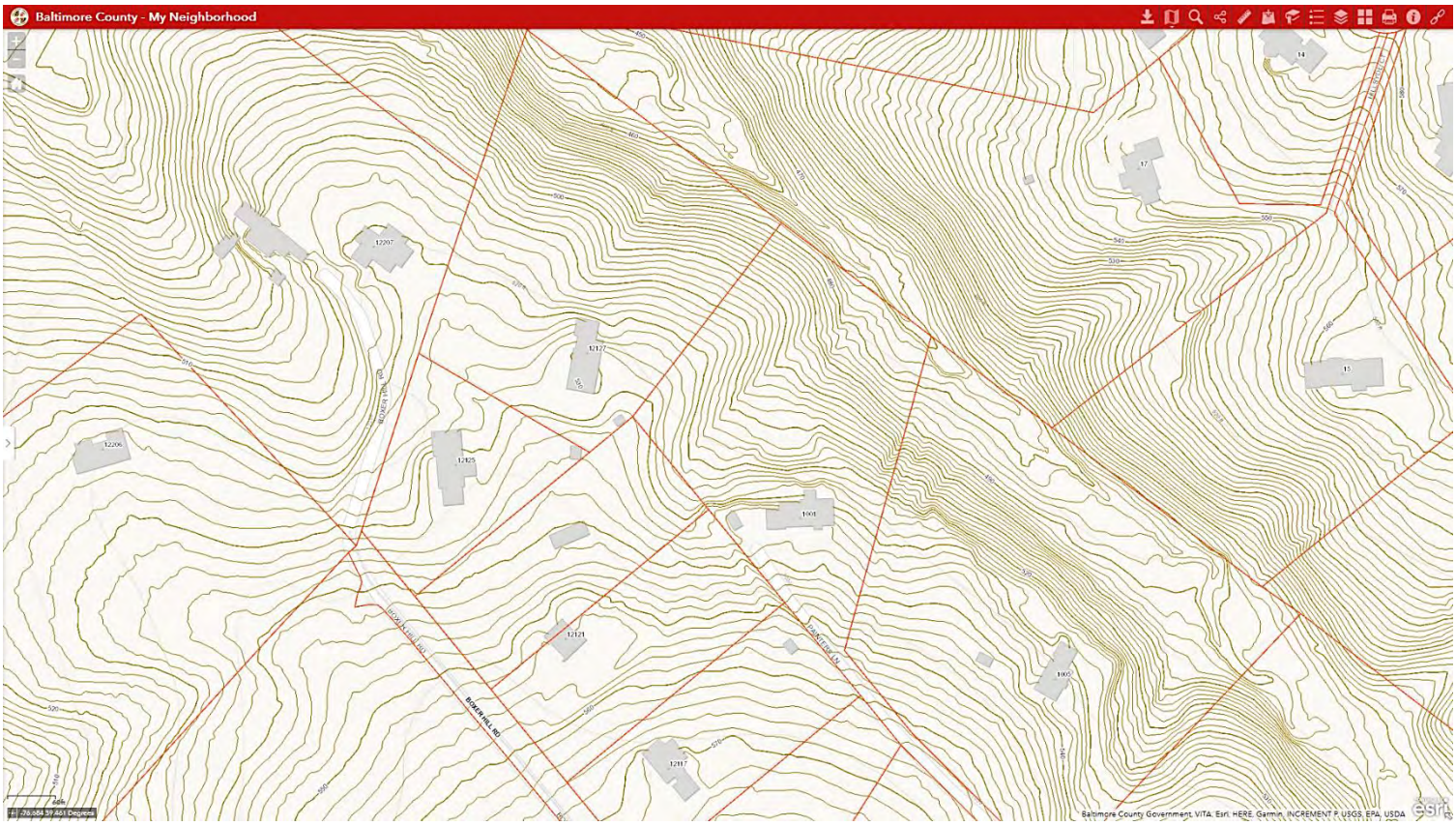
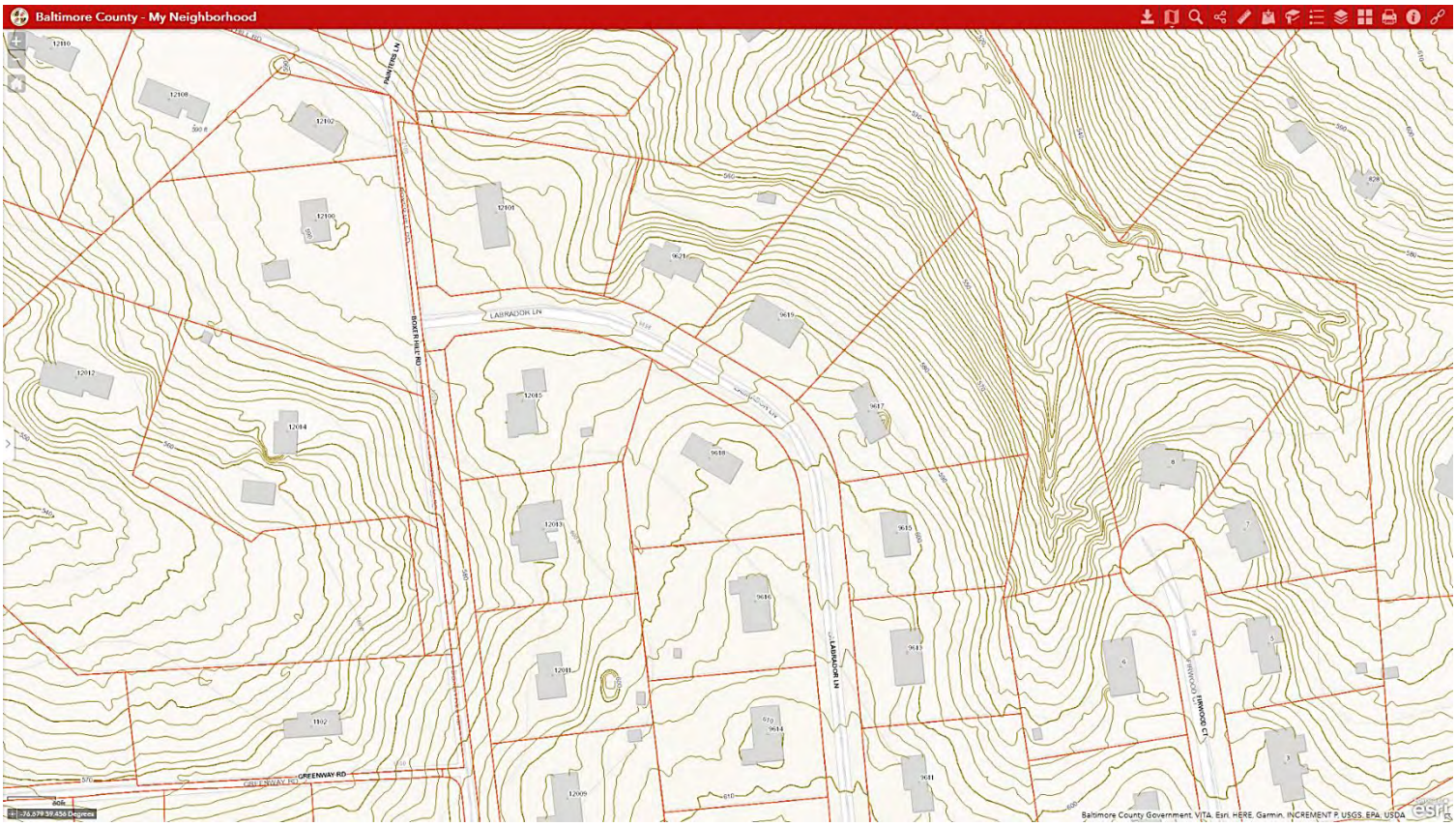


Exhibit 5 Case #23-053-A

Neighborhood Topography

Labrador Ln and Firwood Ct



Labrador Ln and Firwood Ct

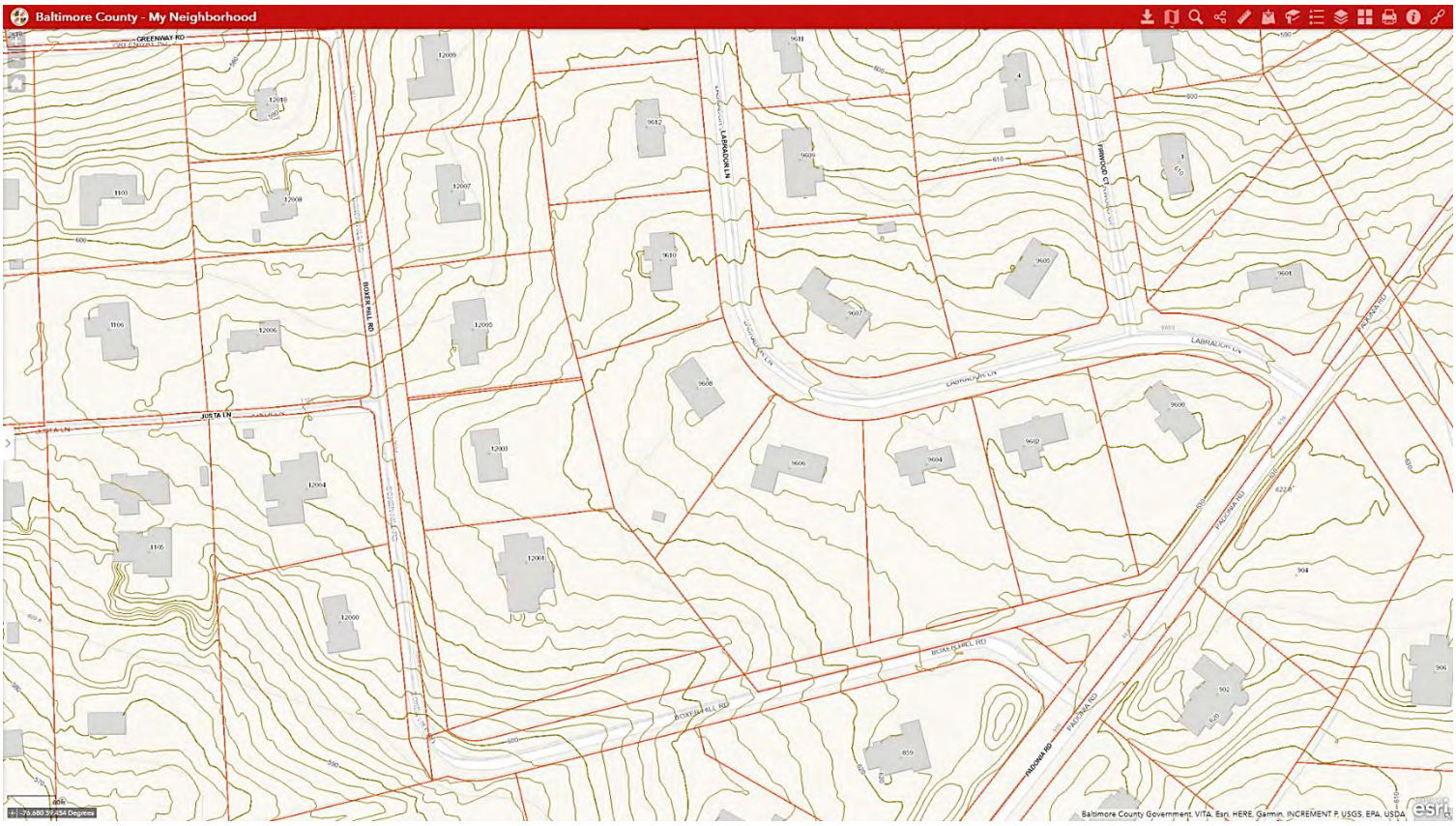
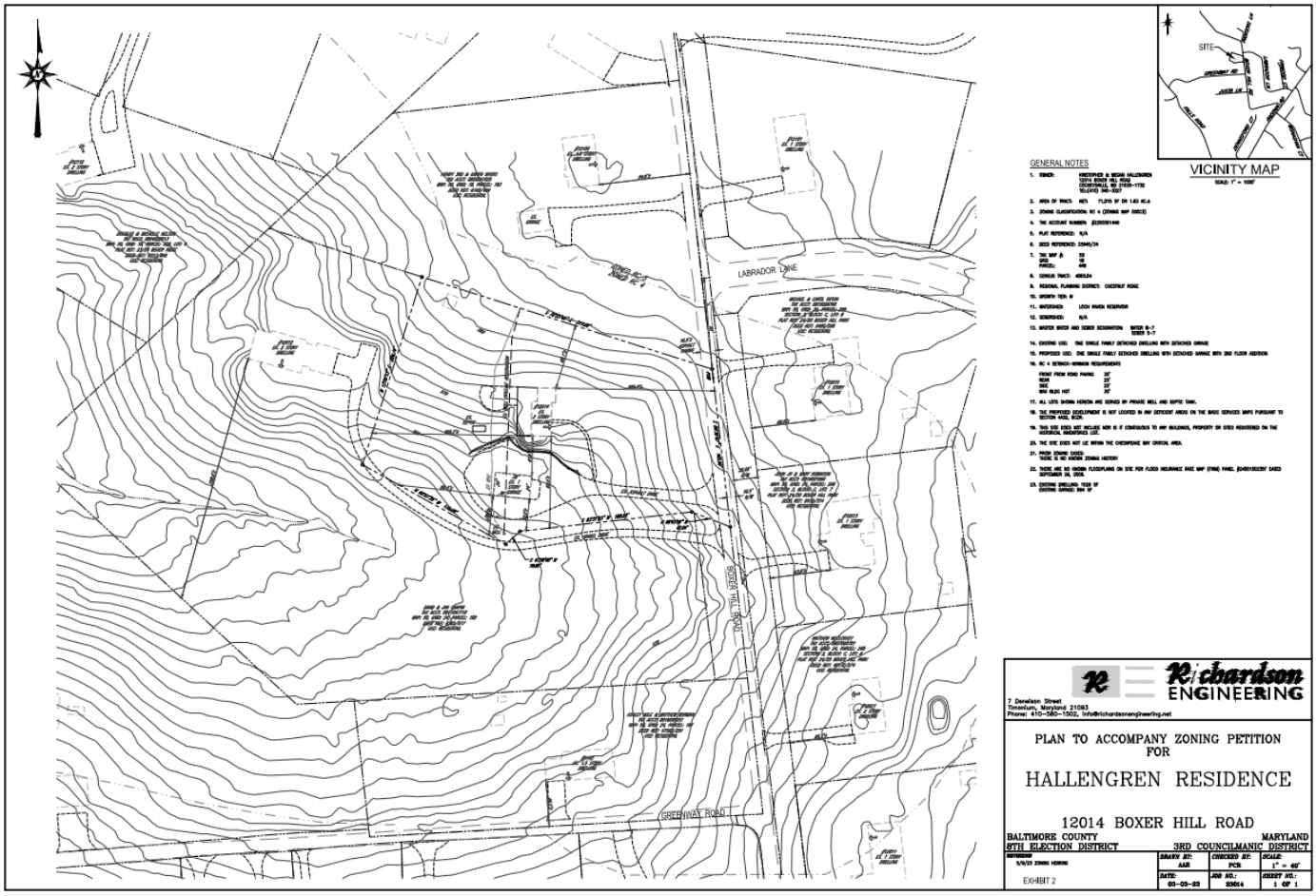


Exhibit 5 Case #23-053-A

Neighborhood Topography



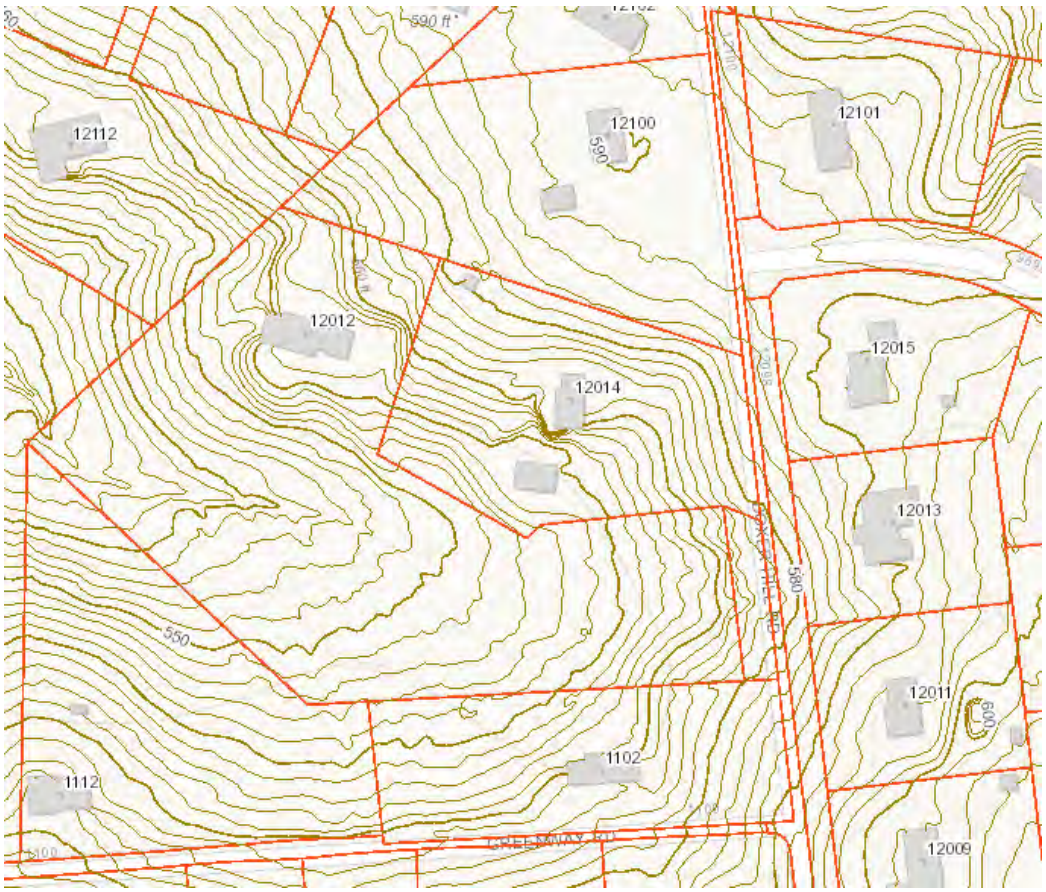
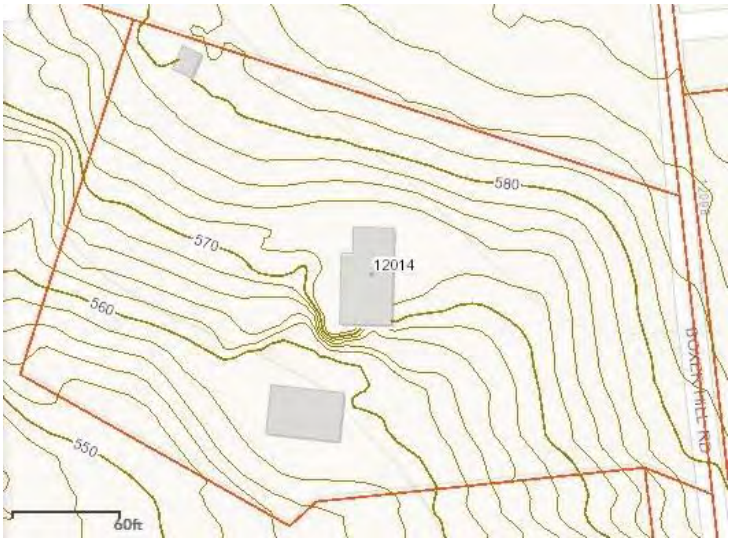


Exhibit 6 12014 Boxer Hill Rd Case #23-053-A

1.63 Acres Zone RC-4



Left Front (view from Rifkin residence)



Right Front



Right Side



Back Right

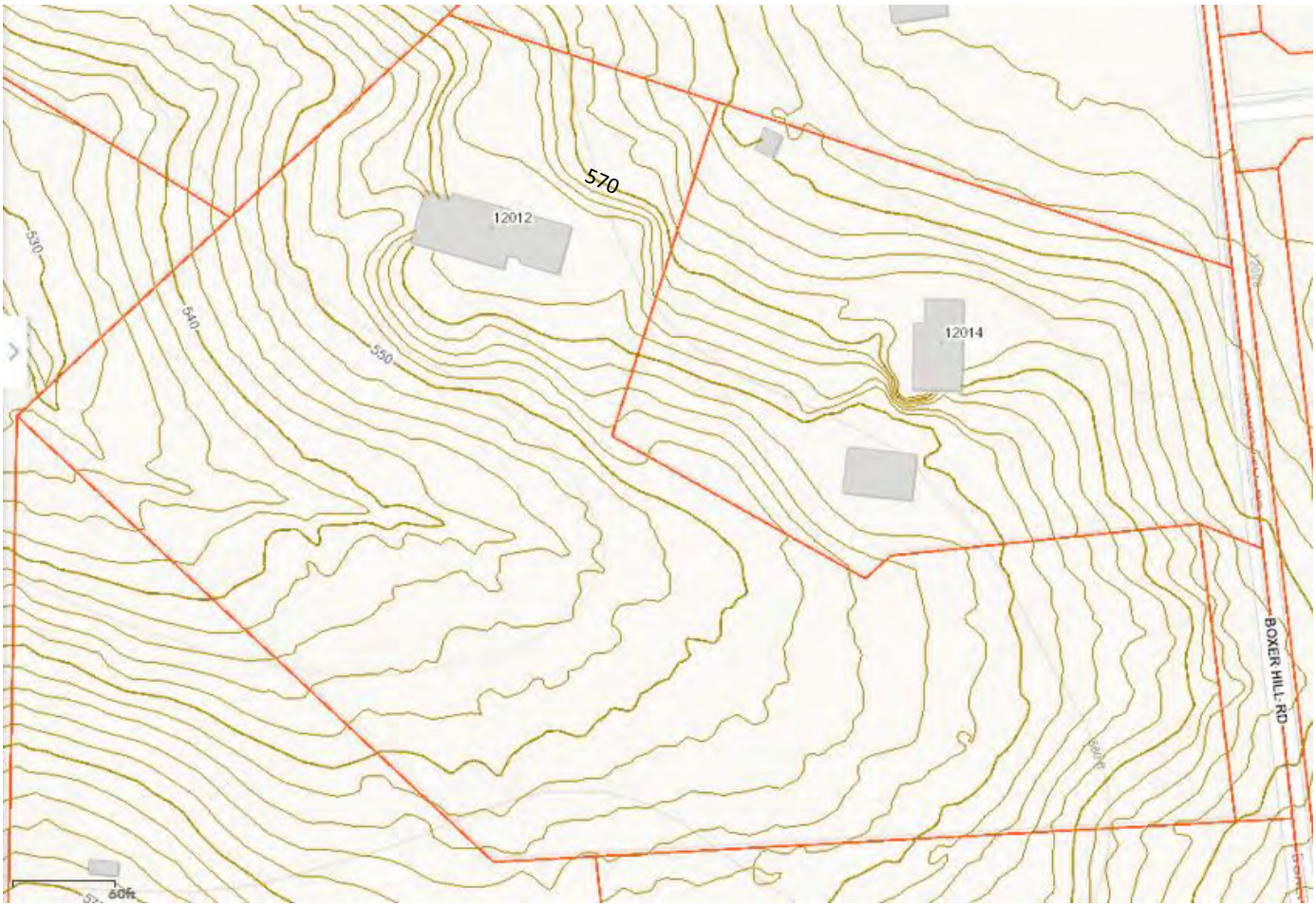


Back Left



Exhibit 6 12012 Boxer Hill Rd Case #23-053-A

4.06 Acres Zone RC-4



Back Left



Back Right





Home to Home Approx. 210 Feet / Property to Property 0 Feet

Exhibit 6 12112 Boxer Hill Rd Case #23-053-A

2.73 Acres Zone RC-4 / RC-5



Front



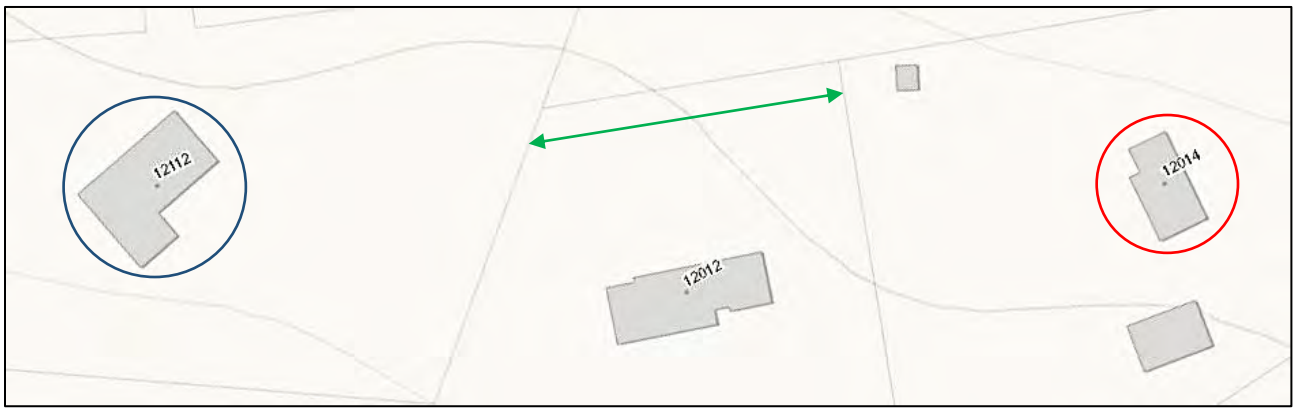


Left Side



Back

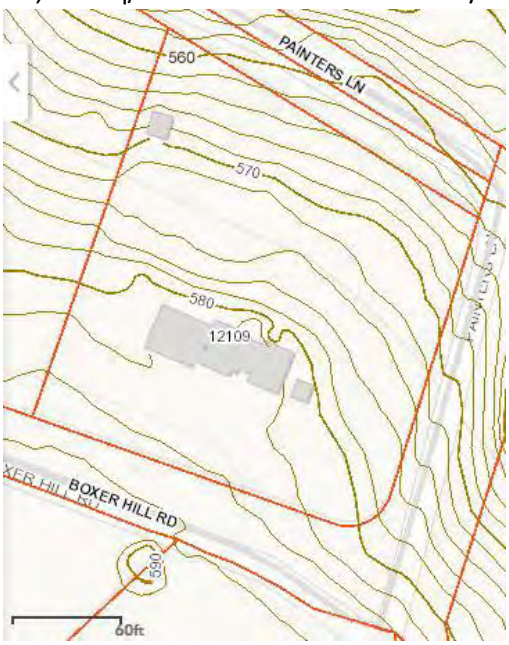




Home to Home Approx. 507 Feet / Property to Property Approx. 176 Feet (See Letter: Last Page)

Exhibit 6 12109 Boxer Hill Rd Case #23-053-A

40,075 Sq/Ft = 0.92 Acre Zone RC-4 / RC-5



Right Side

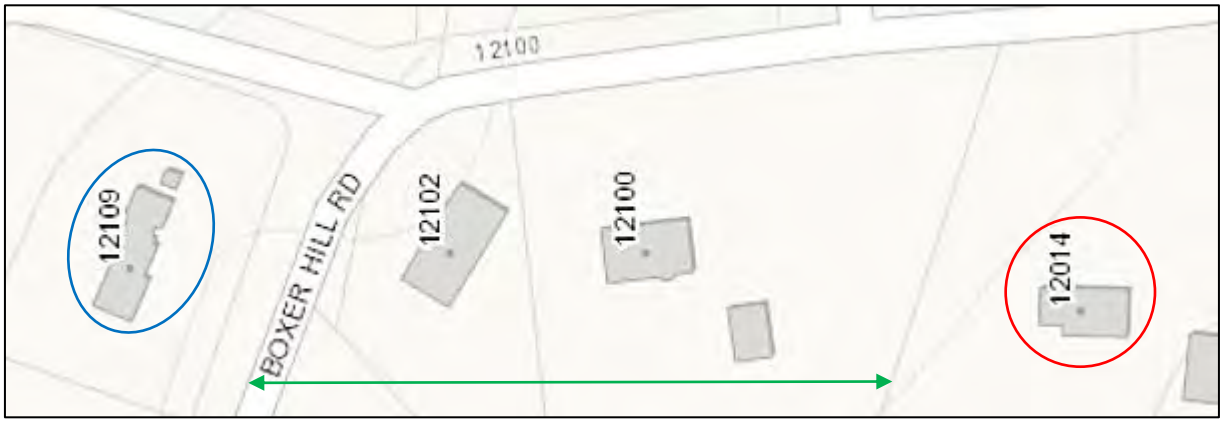


Back Left



Back Right

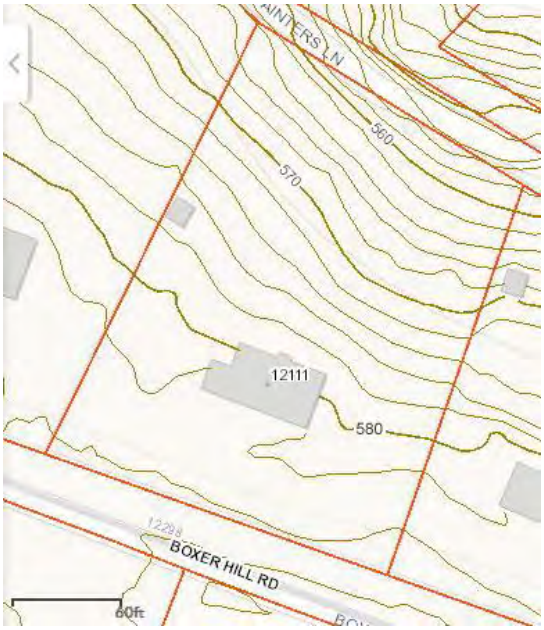




Home to Home Approx. 525 Feet / Property to Property Approx. 366 Feet

Exhibit 6 12111 Boxer Hill Rd Case #23-053-A

1.02 Acres Zone RC-5



Front Right Side

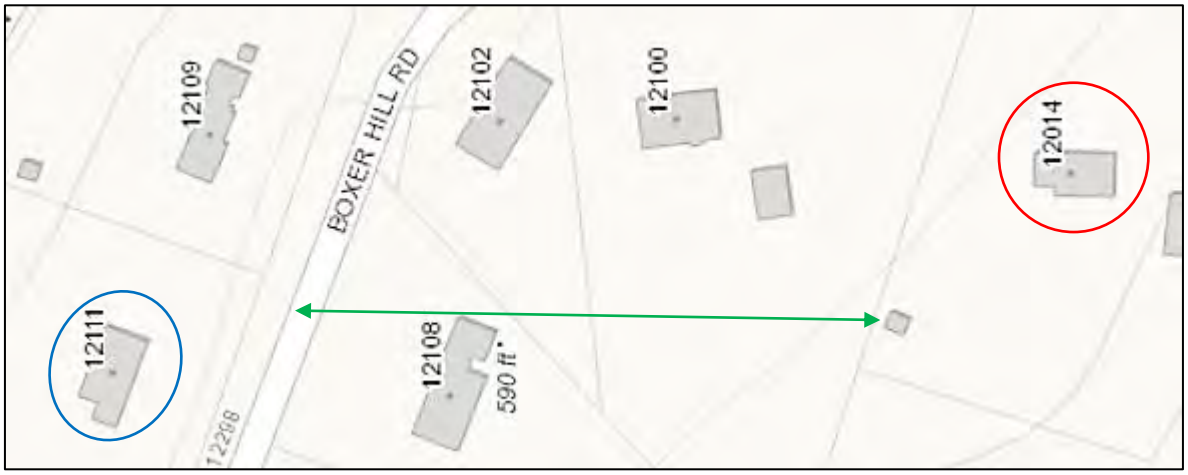


Back Left



Back Right

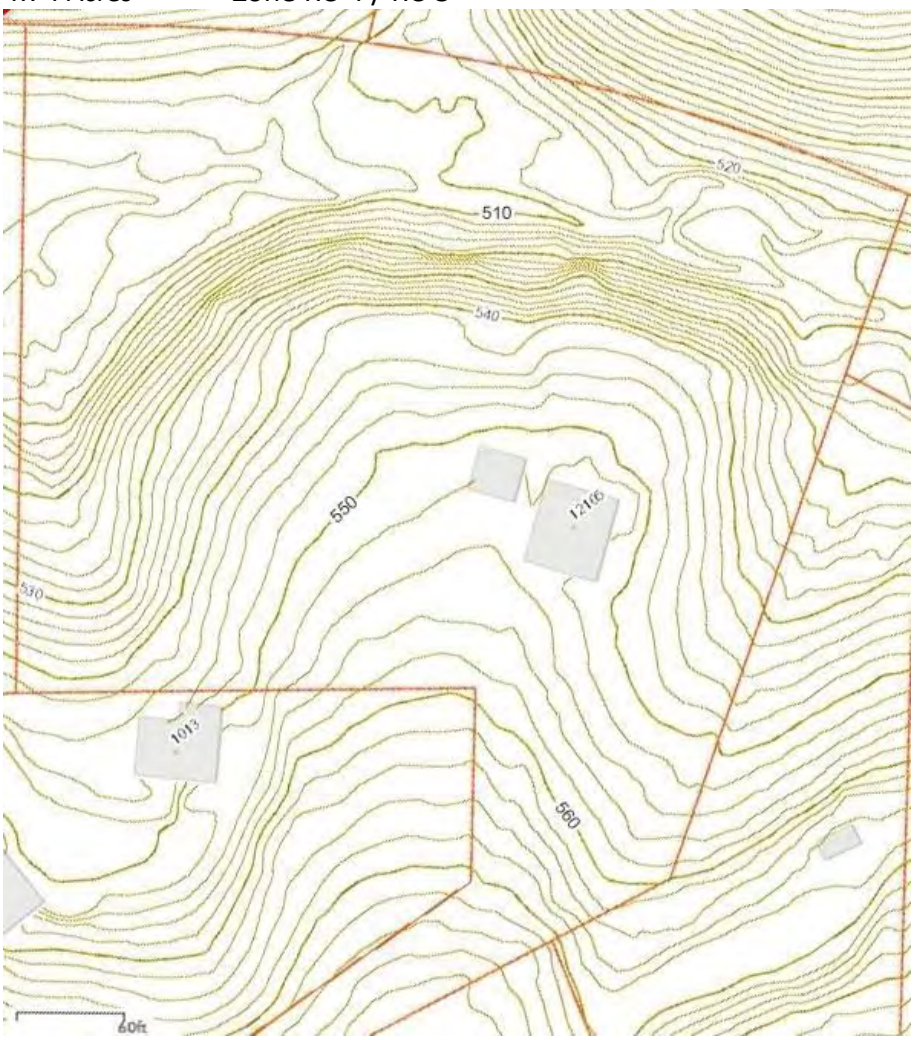




Home to Home Approx. 598 Feet / Property to Property Approx. 383 Feet

Exhibit 6 12105 Boxer Hill Rd Case #23-053-A

4.74 Acres Zone RC-4 / RC-5



Front



Right Side

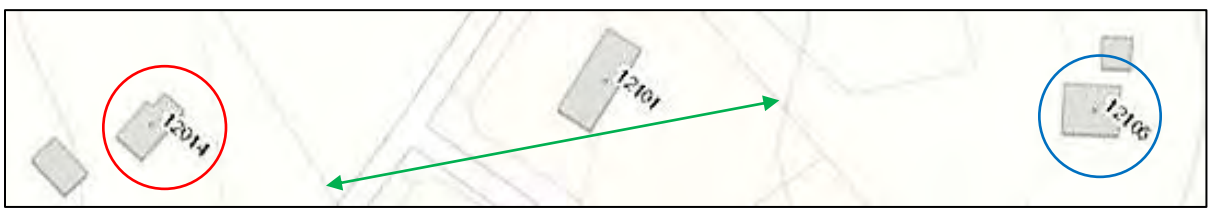


Back Right



Back Left

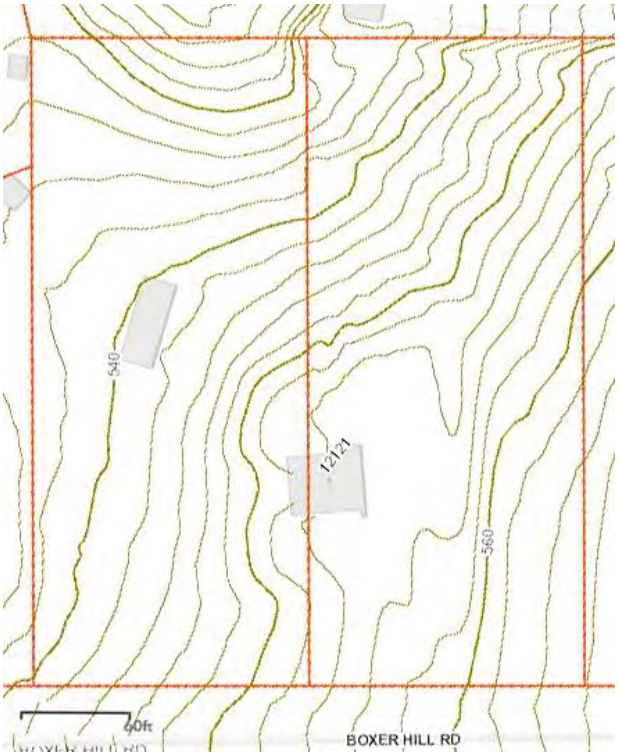




Home to Home Approx. 727 Feet / Property to Property Approx. 384 Feet

Exhibit 6 12121 Boxer Hill Rd Case #23-053-A

2.44 Acres Zone RC-5



Left Side

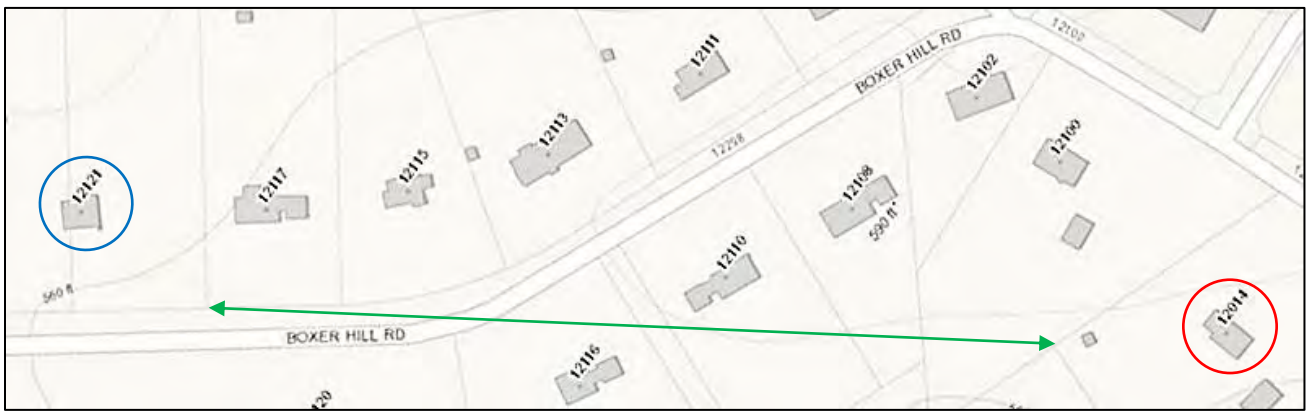


Back Left



Back Right

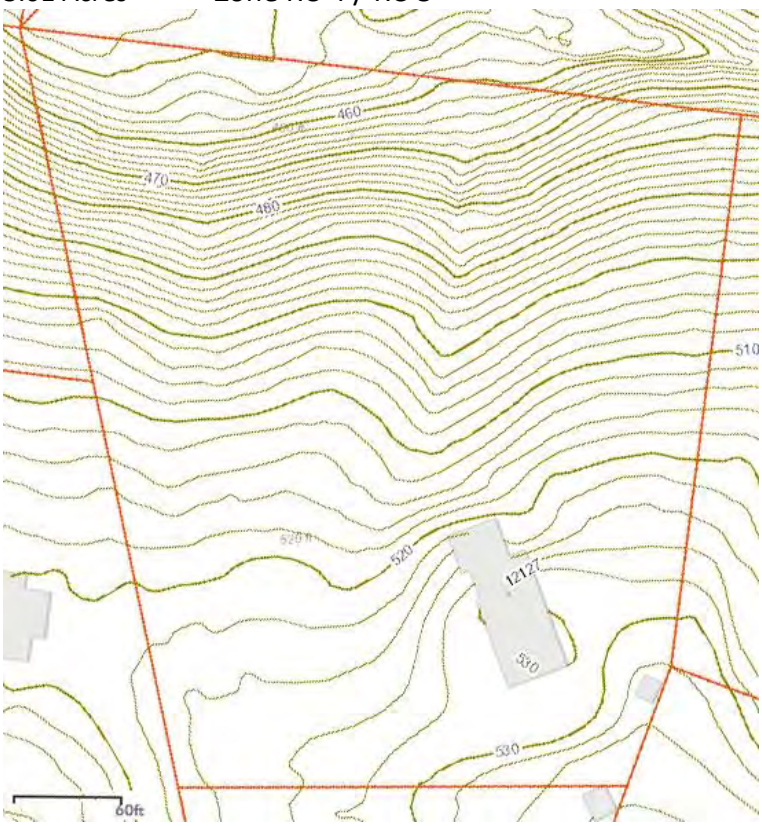




Home to Home Approx. 1,231 Feet / Property to Property Approx. 940 Feet

Exhibit 6 12127 Boxer Hill Rd Case #23-053-A

3.01 Acres Zone RC-4 / RC-5



Front



Left Side



Back

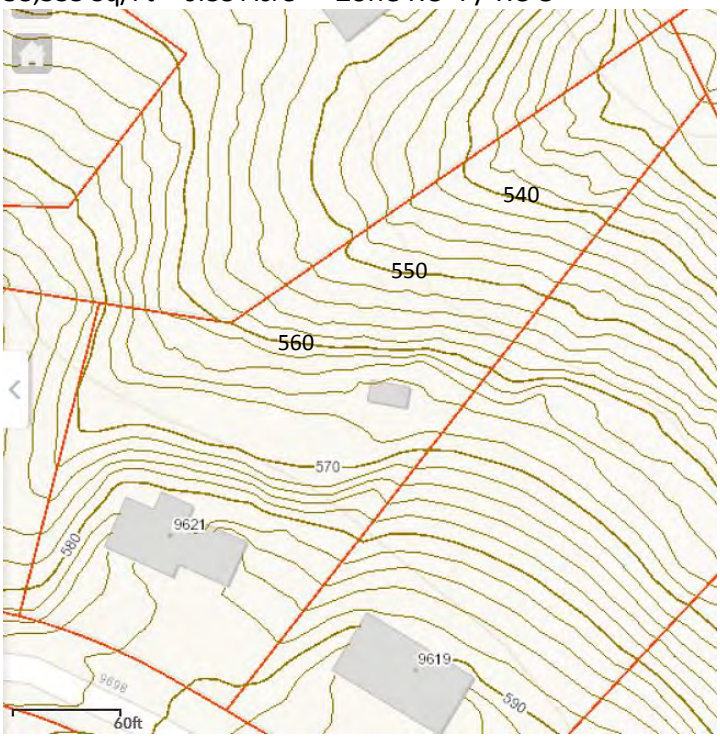




Home to Home Approx. 1,505 Feet / Property to Property Approx. 1,291 Feet

Exhibit 6 9621 Labrador Lane Case #23-053-A

38,333 Sq/Ft = 0.88 Acre Zone RC-4 / RC-5



Front Left Side

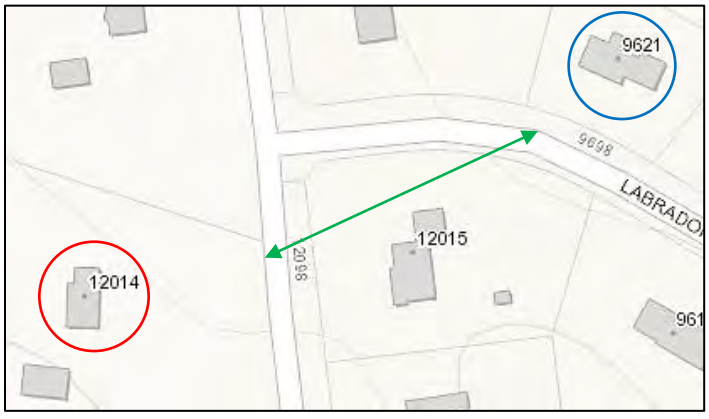


Right Side



Back

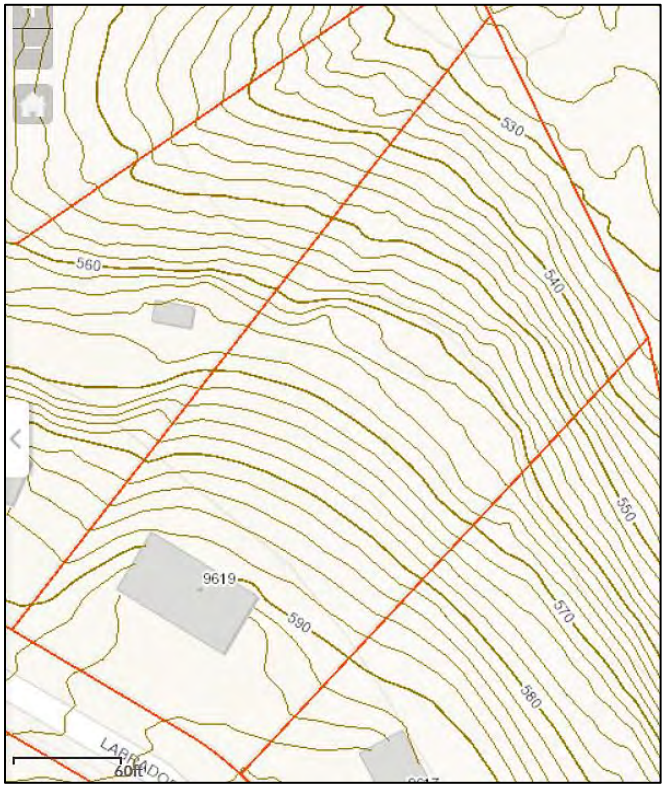




Home to Home Approx. 325 Feet / Property to Property Approx. 265 Feet

Exhibit 6 9619 Labrador Rd Case #23-053-A

1.15 Acres Zone RC-4 / RC-5



Right Side

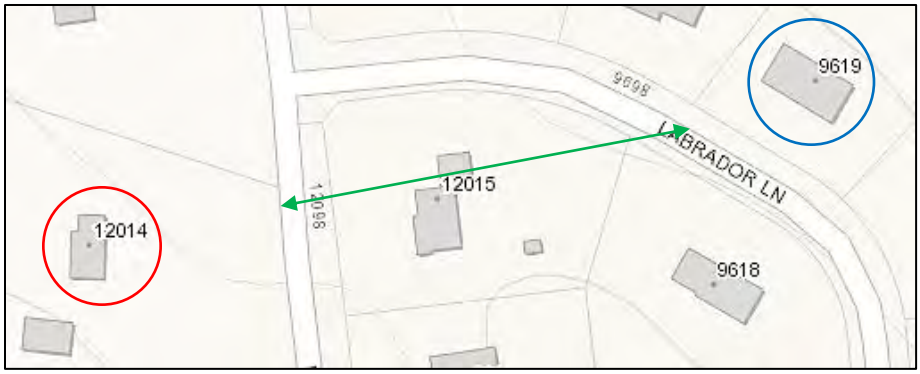


Left Side



Back

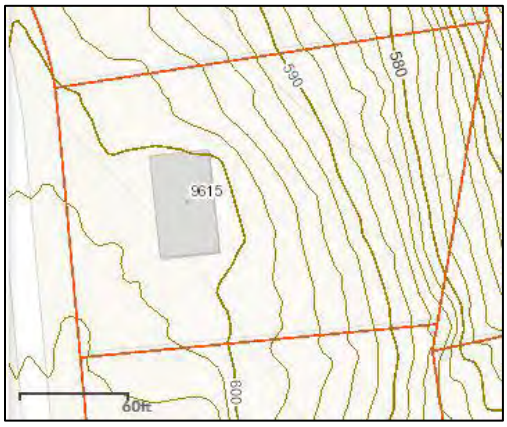




Home to Home Approx. 527 Feet / Property to Property Approx. 350 Feet

Exhibit 6 9615 Labrador Ln Case #23-053-A

0.77 Acre (33,541 SQ/FT) Zone RC-4



Left Side

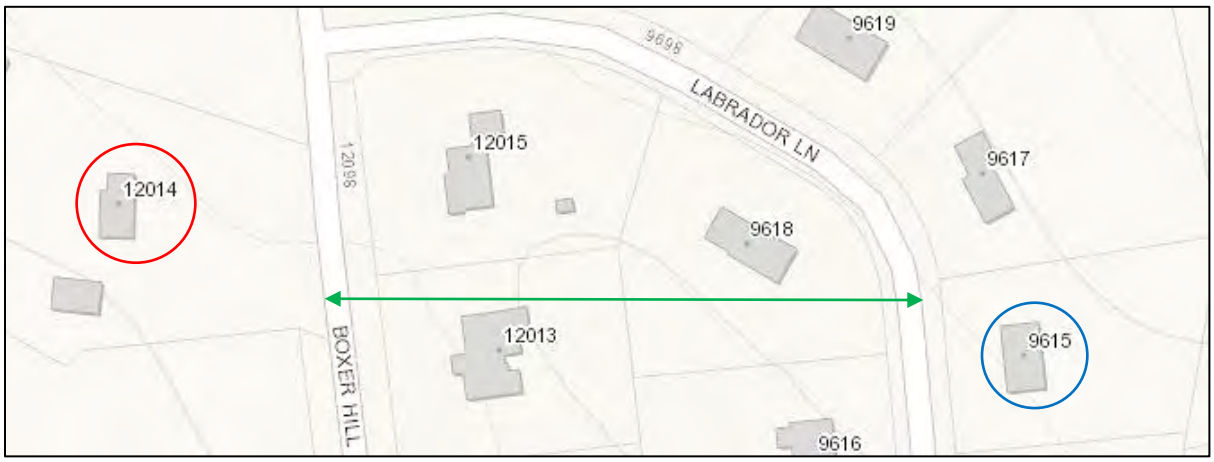


Right Side



Back





Home to Home Approx. 735 Feet / Property to Property Approx. 504 Feet

Exhibit 6 9613 Labrador Ln Case #23-053-A

0.72 Acre (31,363SQ/FT) Zone RC-4 / RC-5

Left Side



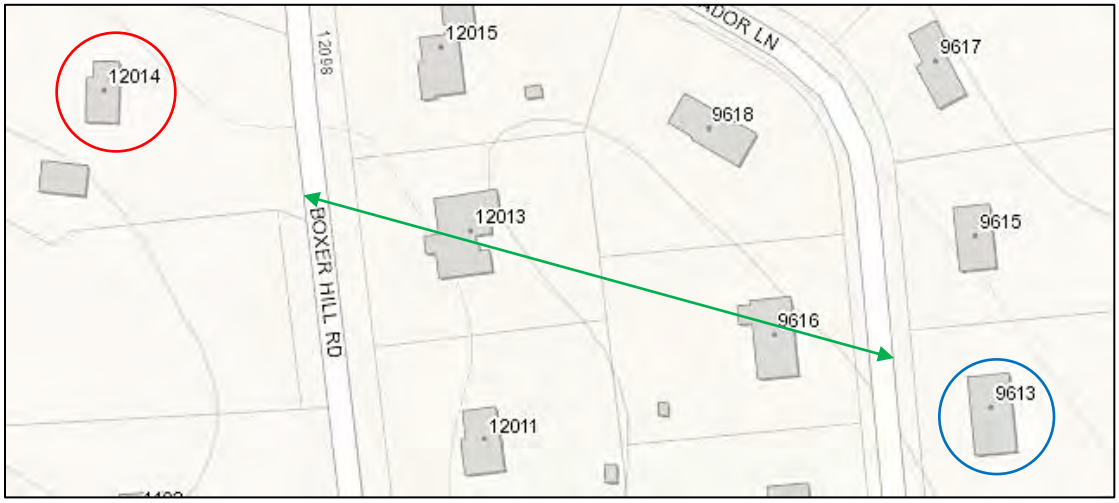


Right Side



Back

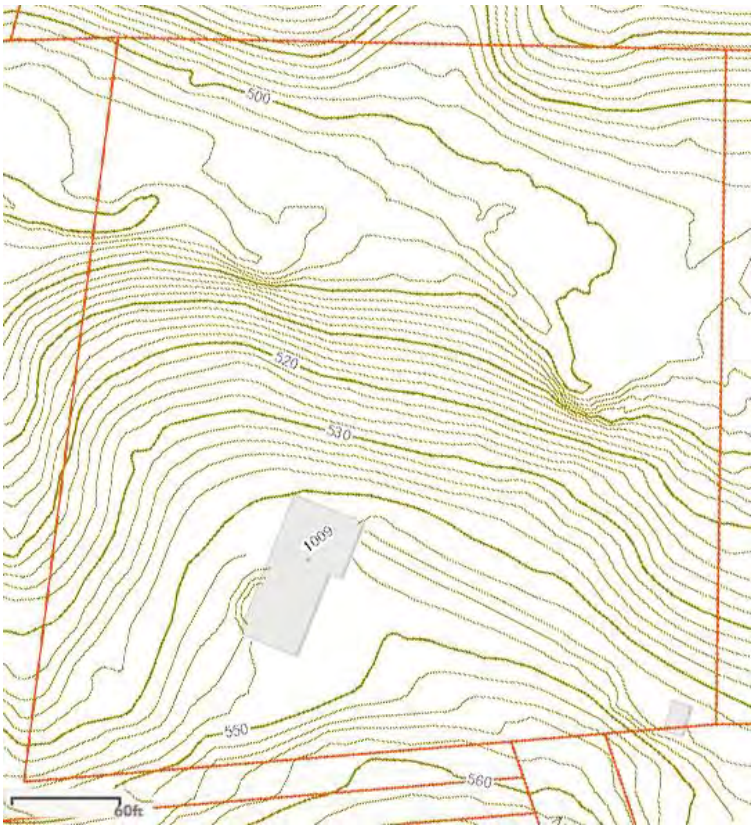




Home to Home Approx. 775 Feet / Property to Property Approx. 514 Feet

Exhibit 6 1009 Painters Ln Case #23-053-A

2.63 Acres Zone RC-4 / RC-5



Front

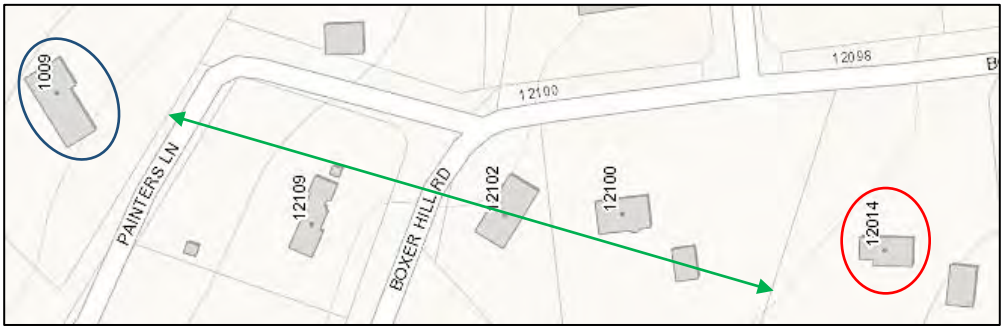


Left Side



Back

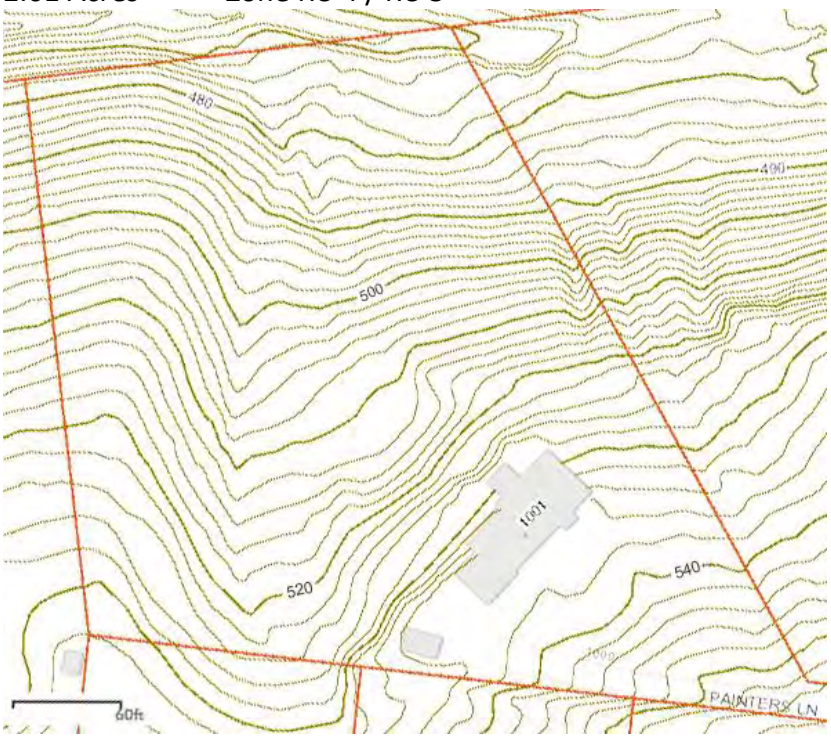




Home to Home Approx. 772 Feet / Property to Property Approx. 620 Feet

Exhibit 6 1001 Painters Ln Case #23-053-A

2.61 Acres Zone RC-4 / RC-5



Front

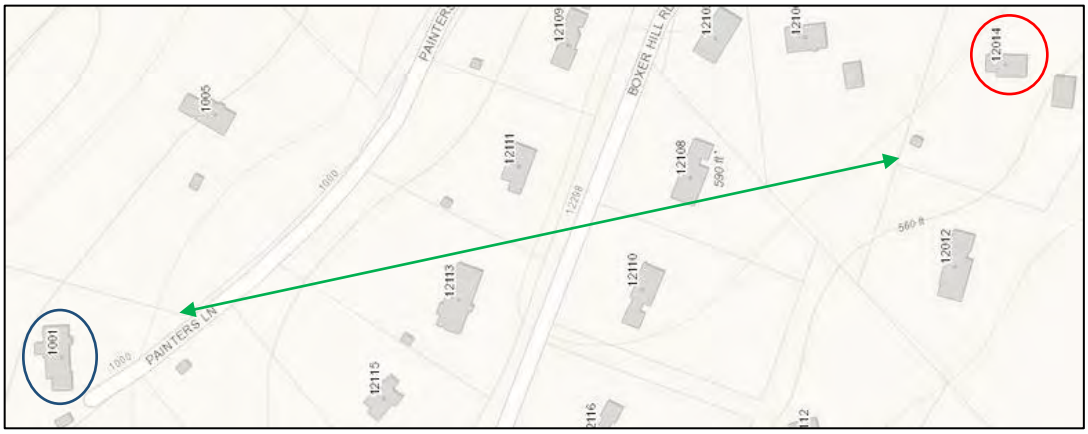


Right Side



Back

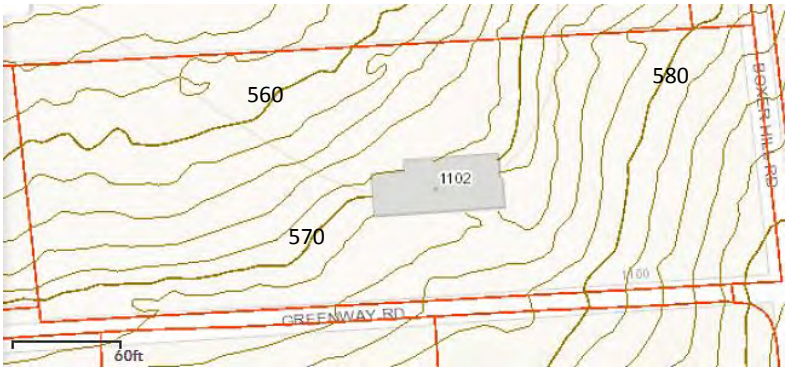




Home to Home Approx. 1,247 Feet / Property to Property Approx. 961 Feet

Exhibit 6 1102 Greenway Road Case #23-053-A

1.33 Acres Zone RC-4 / RC-5



Right Side

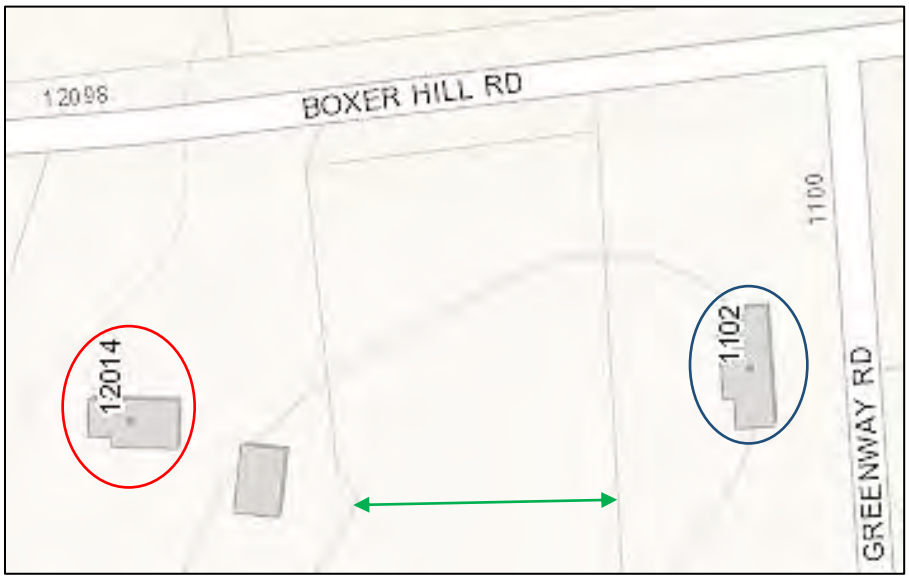


Left Side



Back

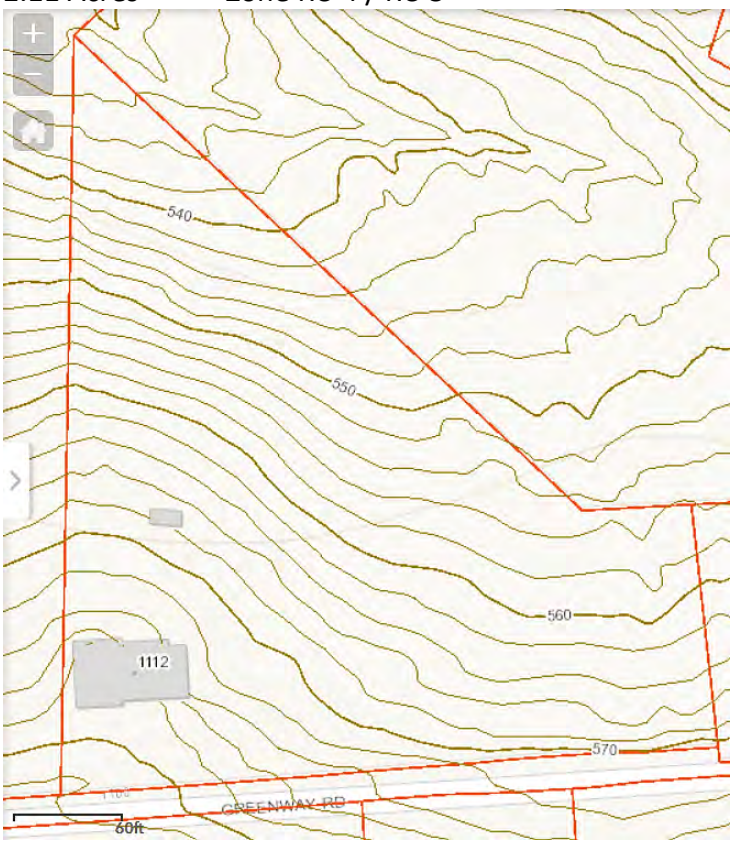




Home to Home Approx. 322 Feet / Property to Property Approx. 156 Feet

Exhibit 6 1112 Greenway Rd Case #23-053-A

2.11 Acres Zone RC-4 / RC-5



Right Front

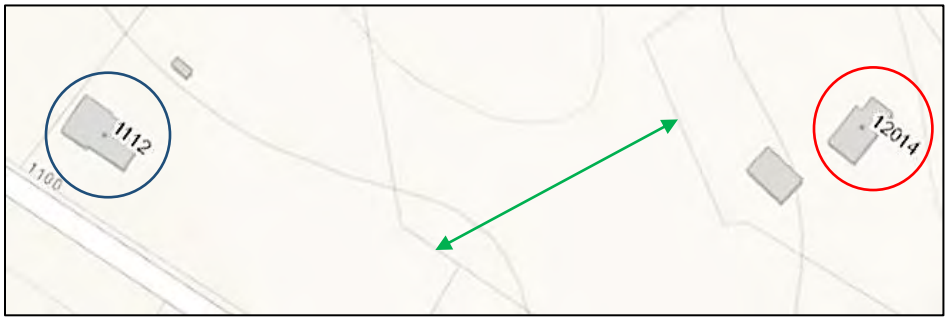


Right Side



Back





Home to Home Approx. 582 Feet / Property to Property Approx. 230 Feet

Exhibit 6 1116 Greenway Rd Case #23-053-A

4.80 Acres Zone RC-4 / RC-5

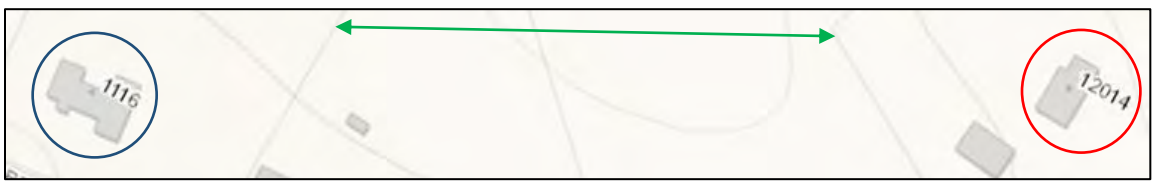


Right Side



Back

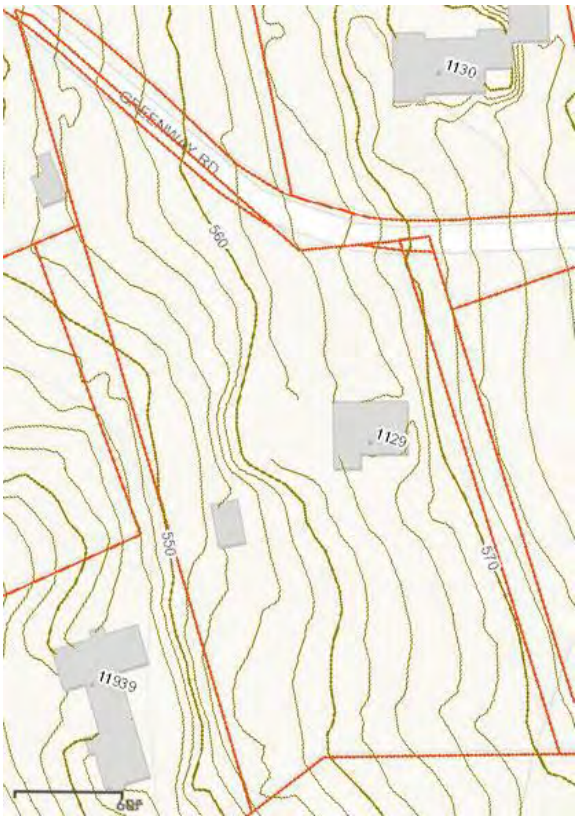




Home to Home Approx. 729 Feet / Property to Property Approx. 412 Feet

Exhibit 6 1129 Greenway Rd Case #23-053-A

1.34 Acres Zone RC-5



Front

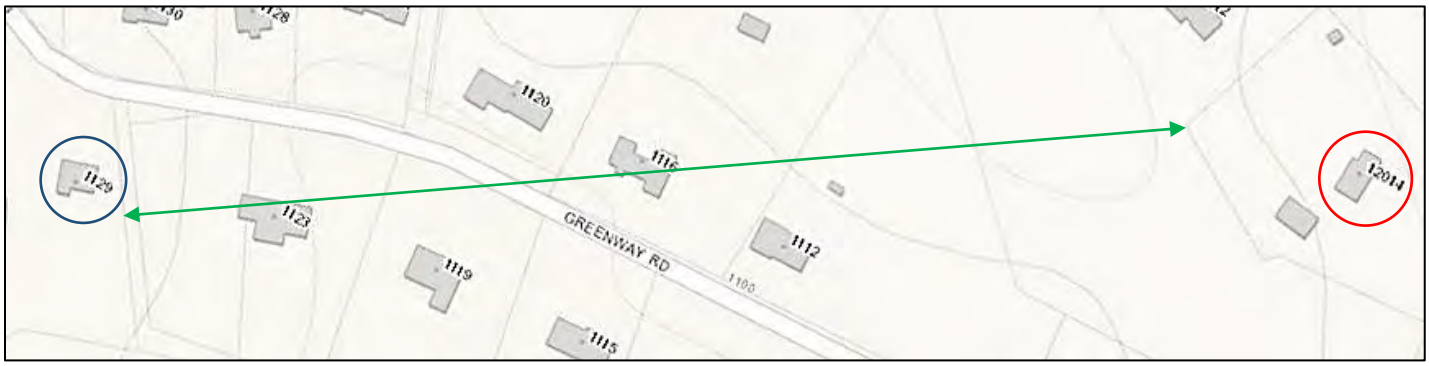


Left Side



Right Side





Home to Home Approx. 1,370 Feet / Property to Property Approx. 1,180 Feet

Exhibit 6 1138 Greenway Rd Case #23-053-A

3.37 Acres Zone RC-4 / RC-5



Left Side

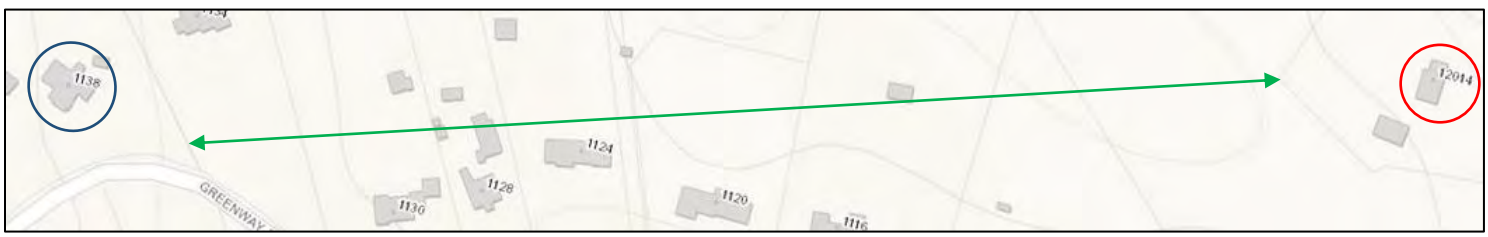


Back Left



Back





Home to Home Approx. 1,709 Feet / Property to Property Approx. 1,410 Feet

Exhibit 6 6 Firwood Ct Case #23-053-A

0.87 Acre (37,897 SQ/FT) Zone RC-4 / RC-5



Front Right

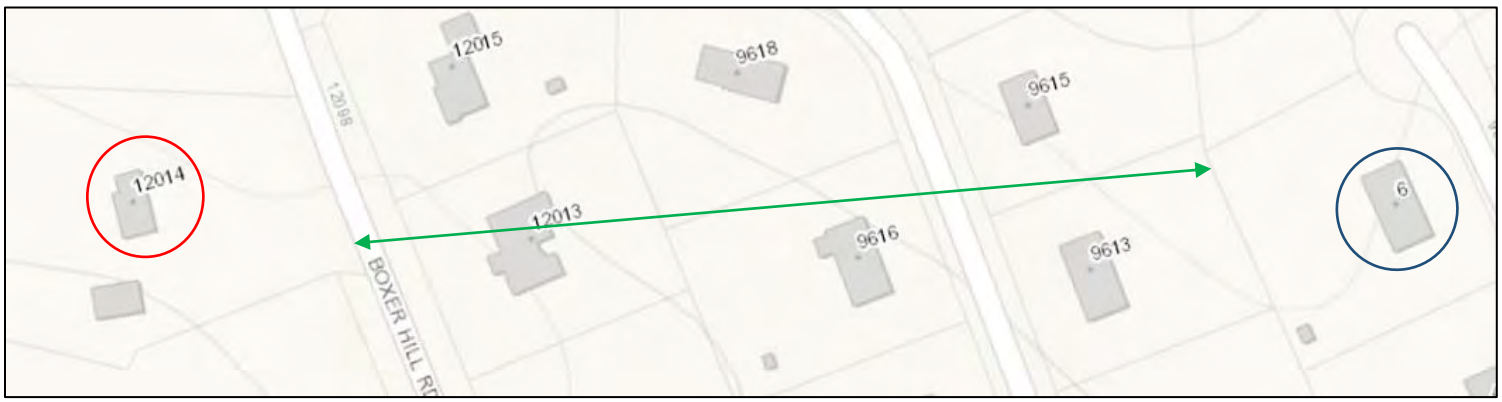


Right Side



Back



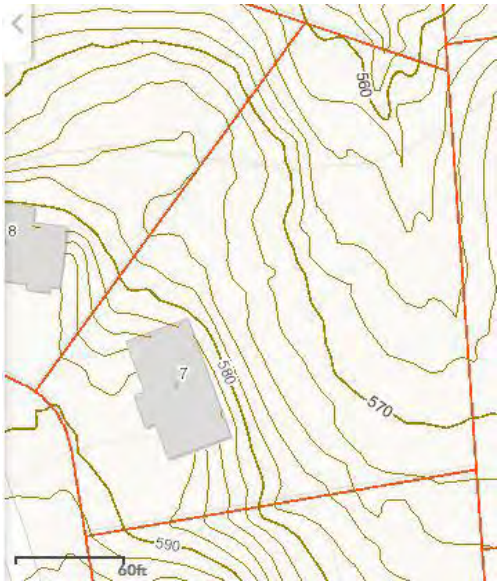


Home to Home Approx. 1,035 Feet / Property to Property Approx. 739 Feet

Exhibit 6 7 Firwood Ct Case #23-053-A

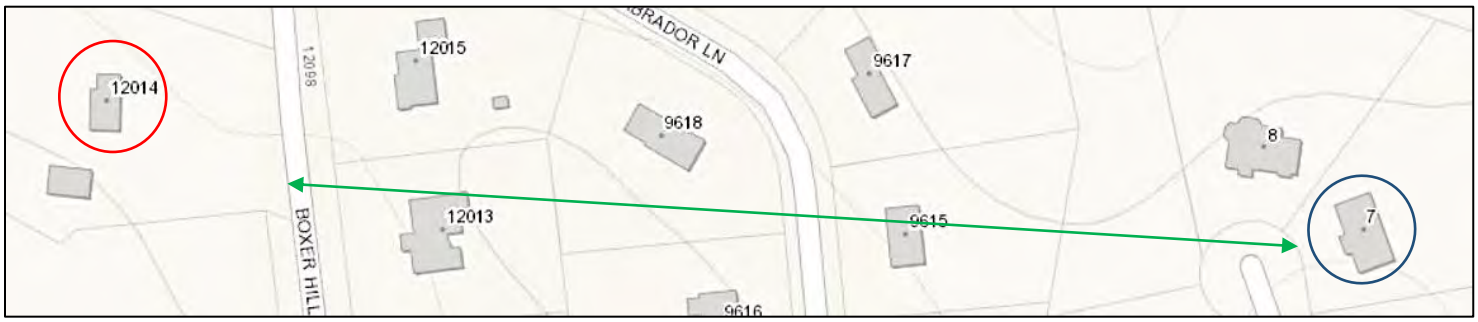
7 Firwood Ct

1 Acre Zone RC-4



Right Side





7 Firwood Ct Home to Home Approx. 1,163 Feet / Property to Property Approx. 956 Feet

Exhibit 6 Letter from Neighbor (12112 Boxer Hill Rd) Case #23-053-A

To whom it may concern,

We are writing in support of the Hallengren's application for modification of an existing garage, case number #2023-0053. We are neighbors of the Hallengren's at 12112 Boxer Hill Rd and have a similar house and property set up. Both of our houses sit below the street and have lots over 2 acres. The proposed addition of adding 9 feet up on an existing structure will not be seen from the road as it sits behind a stand of Leland Cypress trees that are easily over 30 feet tall. As this existing structure sits at the edge of woods, the views would not be impacted with the addition of 9 feet height to the project while using the existing footprint. We believe there will be minimal to no lasting environmental impact as they are not adding any water or septic to this existing structure. Additionally, all neighbors enjoy and benefit when existing properties are enhanced in the neighborhood. Thank you in advance for your time.

Frances Michelle Nelson

Frances Michelle Nelson

Douglas Gordon Nelson

D.G. Nelson

Baltimore County - My Neighborhood https://bcgis.baltimorecountymd.gov/myneighborhood/

12014 Boxer Hill Rd

ENVIRONMENTAL

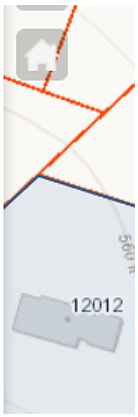
Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenelg loam, 8 to 15 percent slopes
Soil Name	Glenville silt loam, 3 to 8 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes
Soil Name	Glenelg loam, 0 to 3 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes



12012 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 8 to 15 percent slopes
Soil Name	Glenville silt loam, 3 to 8 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes



12112 Boxer Hill Rd

ENVIRONMENTAL

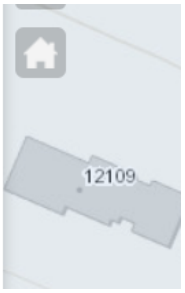
Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenelg loam, 3 to 8 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes
Soil Name	Glenelg loam, 0 to 3 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes



12109 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 0 to 3 percent slopes



12111 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 0 to 3 percent slopes



12105 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes



12121 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes



12127 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes



9621 Labrador Ln

ENVIRONMENTAL

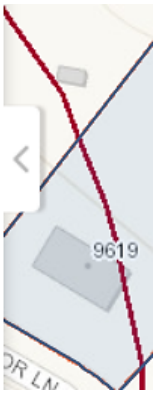
Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 0 to 3 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes



9619 Labrador Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes



9615 Labrador Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenelg loam, 3 to 8 percent slopes



9613 Labrador Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenelg loam, 3 to 8 percent slopes



1009 Painters Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes



1001 Painters Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes



1102 Greenway Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 8 to 15 percent slopes



1112 Greenway Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenville silt loam, 3 to 8 percent slopes



1116 Greenway Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenville silt loam, 3 to 8 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes



1129 Greenway Rd

ENVIRONMENTAL

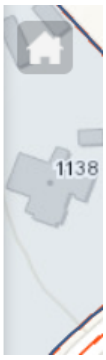
Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenelg loam, 8 to 15 percent slopes



1138 Greenway Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenelg loam, 8 to 15 percent slopes
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor loam, 15 to 25 percent slopes



6 Firwood Ct

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenelg loam, 3 to 8 percent slopes



7 Firwood Ct

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes



12014 Boxer Hill Rd







2017 Baltimore County – My Neighborhood



2023 Google Maps

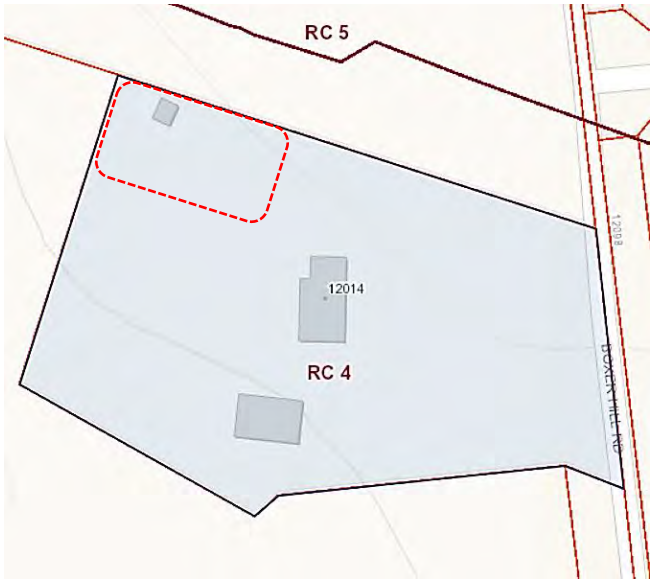
Additional Flat Area






1


2


RC 5
12014
RC 4
BOXER HILL RD


2
1
12014
Boxer Hill Rd

BOXER HILL ESTATE DIRECTORY - 2023

Exhibit 10 23-053-A

Proposed Garage vs Existing Home Size

House #	Homeowner	Year Built	Above Grade Living Area SF	Land Area	Proposed Garage
12014	**Kris and Meg Hallengren**	1967	1936	1.63 A	**1824**

The proposed 2-story garage would be larger than 41% of the homes on Boxer Hill Road
The proposed 2-story garage would be larger than 37% of the homes within the neighborhood*
*Neighborhood = Boxer Hill Rd, Labrador Ln, Greenway Rd, Painters Ln, Justa Ln, Firwood Ct

House #	Homeowner	Year Built	Above Grade Living Area SF	Land Area	Number of Homes
Boxer Hill Rd.					
12000	Kevin Sabolcik	1964	2508	1.37 A	1
12001	Howard and Jodene Weitzman	1958	3263	1.61 A	2
12003	Charlie and Sally Zipp	1958	**1715**	37897 SF	3
12004	Justin and Kate Elfrey	1952	5464	1.02 A	4
12005	Linda Stutz	1959	**1631**	33977 SF	5
12006	Harry and Carol Kakel	1949	2144	41382 SF	6
12007	Ward and Leigh Bank	1959	2583	30928 SF	7
12008	Bill and Mary Hamlin-Spencer	1951	**1443**	26571 SF	8
12009	John and Charlotte Guntner	1962	2142	33541 SF	9
12010	Betty Patrick	1951	**1443**	30492 SF	10
12011	Matt McCloskey and Mandy Burton	1959	2085	33541 SF	11
12012	David Chapin	1993	2968	4.06 A	12
12013	John and Mary Robinson	1965	2376	33541 SF	13
12014	**Kris and Meg Hallengren**	1967	1936	1.63 A	14
12015	Mike and Carol Rifkin	1968	**1491**	35719 SF	15
12100	Hudson and Karen Myers	1949	1913	1.85 A	16
12101	Drew and Jennifer Carlino	1967	**1464**	1.07 A	17
12102	Vi Clements	1953	**1040**	23086 SF	18
12105	Jerry and Barbara Loughlin	1948	2824	4.78 A	19
12108	Mohammad Sajadi and Carolyn Case	1956	**1456**	40075 SF	20
12109	Todd and Heidi Mozoki	1955	**1000**	40075 SF	21
12110	Glenn and Pat Lieske	1957	**1278**	39640 SF	22
12111	Drew and Lindsey Delis	1956	**1456**	1.02 A	23
12112	Doug and Michelle Nelson	1963	2652	2.73 A	24
12113	Jeff and Karen Wilson	1953	2556	1.25 A	25
12115	Nicole Huebler	1953	**1512**	1.05 A	26
12116	Paul Oliver	1956	**1628**	1.46 A	27
12117	Liz Kelly	1956	2656	1.21 A	28
12120	Mike Bohli	1947	**1244**	12.18 A	29
12121	Susie Mays	1955	2030	2.44 A	30
12125	Dave and Donna Diaz	1989	1952	1.00 A	31
12127	Valerie Ballard	1991	2940	3.01 A	32
12206	Marvin Tenberg	1989	1941	19.51 A	33
12207	Bill and Bee Peck	1912	3269	33.16 A	34
			14/34 Smaller Homes = 41%	Boxer Hill Only	

BOXER HILL ESTATE DIRECTORY - 2023

Exhibit 10 23-053-A

House #	Homeowner	Year Built	Above Grade Living Area SF	Land Area	Number of Homes
Labrador Lane					
9600	Reverend Mark and Jean Smiley	1969	2440	35719 SF	1
9601	Ginger James	1969	1960	42689 SF	2
9602	Rob and Adriana Pfaff	1970	1953	40475 SF	3
9604	Chris and Lisa Wilson	1963	2064	1.04 A	4
9605	Ed and Millie Book	1970	**1499**	1.00 A	5
9606	Meg Truchon	1970	3094	1.32 A	6
9607	Michelle and Brandon Arnold	1971	2916	37026 SF	7
9608	Emily and Jamie Bateman	1972	2693	43124 SF	8
9609	Wendy Hallam	1971	2096	31363 SF	9
9610	Chris and Nicole Lauer	1963	2104	34848 SF	10
9611	Bill Zorella	1971	2104	30492 SF	11
9612	Speros and Lisa Morekas	1972	**1350**	33541 SF	12
9613	John and Brenda Koch	1971	**1636**	31363 SF	13
9614	Leo and Anita Charpentier	1972	2322	33977 SF	14
9615	Steve and Molly LaChance	1972	2046	33541 SF	15
9616	Harold Rojas	1972	**1707**	34848 SF	16
9617	Scott and Michelle Livingston	1969	2104	1.40 A	17
9618	Dale and Jolene Campbell	1972	**1350**	36155 SF	18
9619	Chris and Anna Wong	1971	**1596**	1.51 A	19
9621	Des and Jen Arrup	1972	2104	38333 SF	20
			6/20 Smaller Homes = 30%		
Justa Lane					
House #	**Homeowner**				
1105	Scott and Bonnie Tarantino	2010	3792	2.59 A	1
1106	Mark and Stephanie Gross	1964	**1446**	36154 SF	2
1109	Gary and Barbara Mueller	1957	3111	1.78 A	3
1110	Jess Sheldon	1964	2292	39204 SF	4
1113	Skip Darrell	1967	**1738**	1.85 A	5
1114	Rich and Lenore Koors	1979	2270	39640 SF	6
1117	Patrick and Kim Dasch	1960	3424	1.92 A	7
			2/7 Smaller Homes = 29%		
Painters Lane					
1001	Charles and Suzanne Huebler	1983	2840	2.61 A	1
1005	David and Kelly Huebler	1964	**1524**	4.64 A	2
1009	Mark and Melissa Kodenski	1965	**1819**	2.63 A	3
1013	Jack and Erica Dunn	2003	2850	1.08 A	4
			2/4 Smaller Homes = 50%		

BOXER HILL ESTATE DIRECTORY - 2023

Exhibit 10 23-053-A

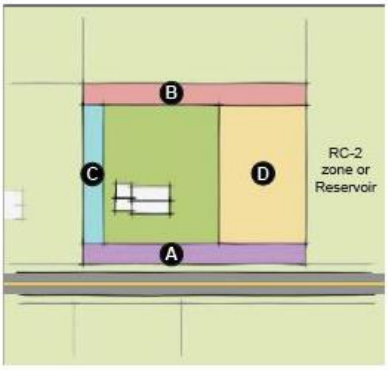
House #	Homeowner	Year Built	Above Grade Living Area SF	Land Area	Number of Homes
Greenway Road					
1102	Matt and Ashley Worman	1958	**1040**	1.33 A	1
1103	Kay Mellor	1955	2201	1.29 A	2
1105	Jeremy and Lisa Doehnert	1957	**1656**	31798 SF	3
1107	William T. and Linda Light	1956	**1379**	31363 SF	4
1111	Meg Truchon	1957	2538	1.44 A	5
1112	Georgeanna Harvey	1948	**1341**	2.11 A	6
1115	Naomi Burroughs	1956	**1410**	40946 SF	7
1116	Mary Virginia King	1948	1920	4.80 A	8
1119	Josh and Linda Ludwig	1962	**1678**	1.19 A	9
1120	Esther Coffin Miller	1954	2430	1.18 A	10
1123	Temple and Nicole Moore	1965	2282	39240 SF	11
1124	Shaun and Rebecca Brown	1945	3184	2.20 A	12
1125	Phil and Shelly Hack	2019	2527	3.52 A	13
1127	Matt and Lauren Falcao	1988	2889	1.80 A	14
1128	John Debaugh	1955	**1216**	1.03 A	15
1129	George and Annette Zubritsky	1968	2196	1.34 A	16
1130	Michael Myronuk	1950	6502	2.23 A	17
1134	Jeff and Michelle Mon	1953	**1424**	1.90 A	18
1138	Tim and Lori Fitch	1966	3167	3.37 A	19
1139	Al and Jackie Fabian	1954	2170	41382 SF	20
			8/20 Smaller Homes = 40%		
Firwood Court					
1	Ken Snow and Vicki Disbrow	1971	**1320**	39640 SF	1
3	Jane Suter	1971	1960	30492 SF	2
4	Jeff and Sue Caldwell	1971	3288	40946 SF	3
5	Stephen Hiegel & Michelle Brennan	1971	2104	31363 SF	4
6	David and Karen Schaefer	1971	**1596**	37897 SF	5
7	Aaron and Marna Burch	1971	2016	1.00 A	6
8	Valerie Eisman	1971	3626	1.32 A	7
			2/7 Smaller Homes = 29%		

TOTAL	34/92 Smaller Homes = 37%	Neighborhood

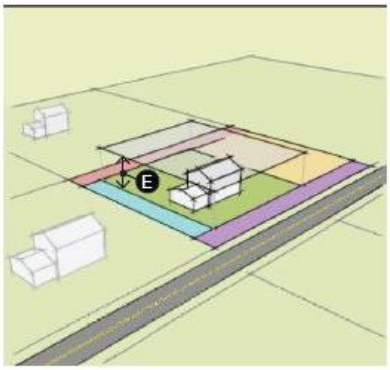
RC-4
Watershed Protection

Height and Area Requirements		
A	Minimum front setback from public road right-of-way[1]	25 feet
B	Minimum rear setback	25 feet
C	Minimum side setback	25 feet
D	Minimum setback from RC-2 or reservoir property [2]	100 feet
E	Maximum building height	35 feet

[1] 35 feet from the edge of a private road
[2] 50 feet from a Conservancy Area in agricultural use







Intent: To protect metropolitan Baltimore's public water supply by preventing contamination through unsuitable types or levels of development in the reservoir watersheds.

Typical Uses Permitted by Right: Single-family detached dwelling, farm.

Typical Uses Permitted by Special Exception: Antique shop, church, golf course/country club, landscape operation.

Notes:

- The RC-4 zone has explicit criteria that must be met to apply for a reclassification, including proximity of the parcel to a reservoir or contributing stream.
- Residential development in the RC-4 zone requires clustering of the dwelling units to allow a conservancy area of at least 70% of the tract. The conservancy area includes the site's sensitive environmental features and may contain one single family dwelling. Overall permitted density is 0.20 dwellings per acre, with a minimum lot size of 1 acre.
- An alternative, non-clustering development option is available at a permitted density of 0.10 dwellings per acre, with a minimum lot size of 3 acres. The development plan must be approved by the Planning Board.

RC-5
Rural Residential

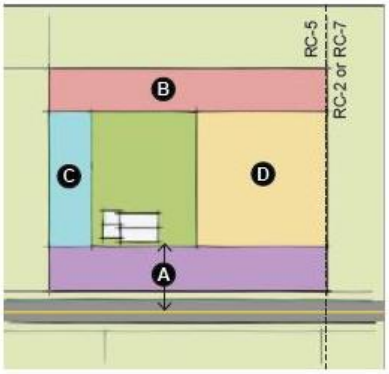
Intent: To provide for rural residential development in areas of Baltimore County where public water and sewer are not anticipated. It is intended that the placement of the zone will help eliminate encroachment onto productive agricultural and watershed areas.

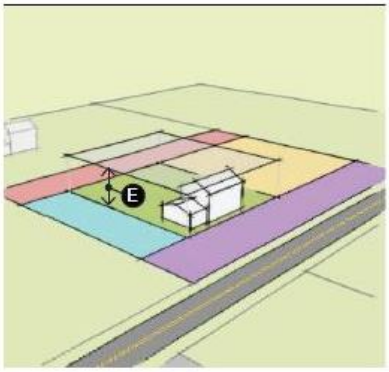
Typical Uses Permitted by Right: Single-family dwelling, farm, school.

Typical Uses Permitted by Special Exception: Antique shop, golf course/country club.

Notes:

- Subject to performance standards that include site plan and architectural review for quality of design and reflection of rural character. (The Back River Neck District is excluded from this RC-5 requirement.)
- The minimum lot size is 1 1/2 acre.

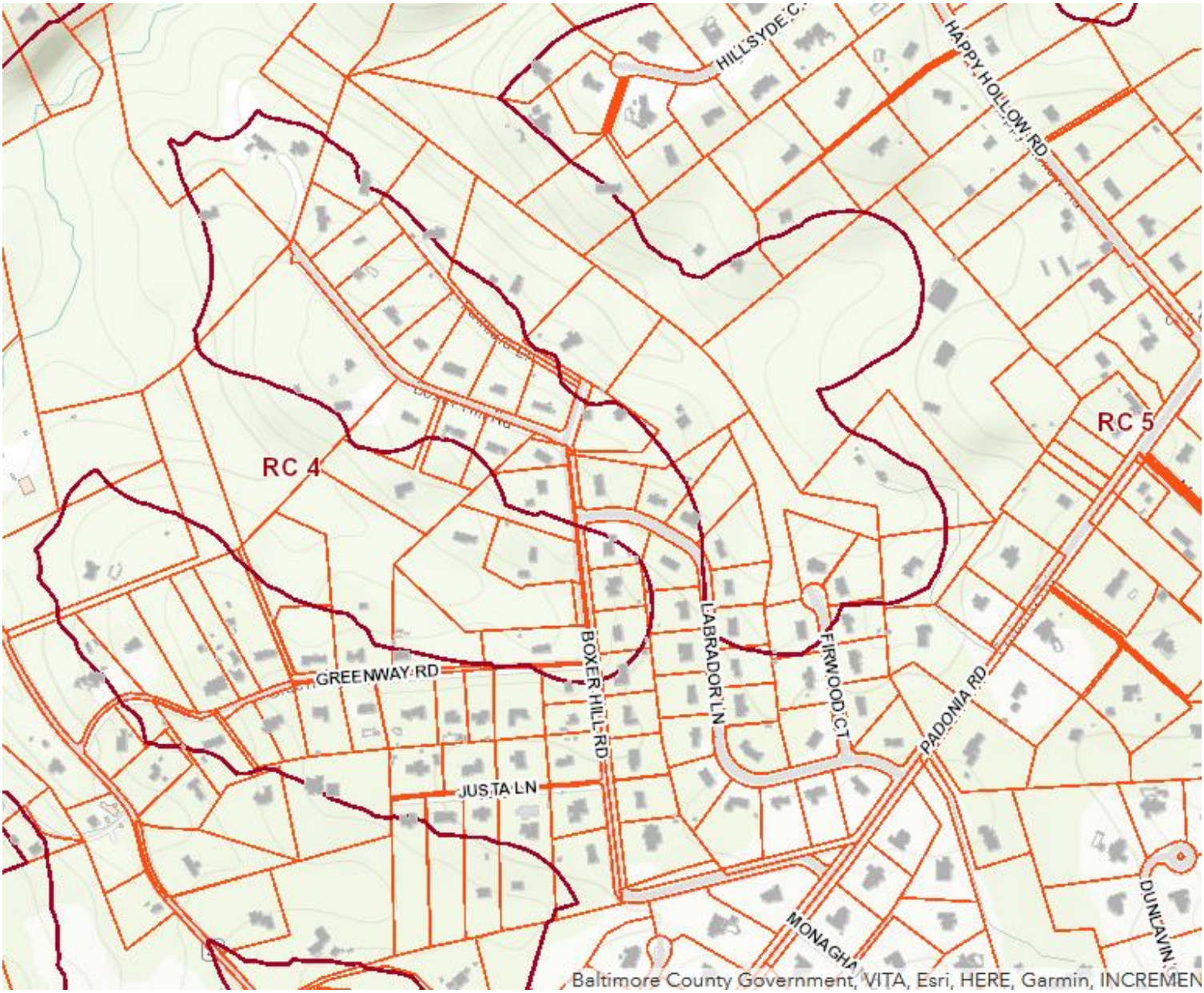




Height and Area Requirements		
A	Minimum front setback to centerline of road	Varies*
B	Minimum rear setback	50 feet
C	Minimum side setback	50 feet
D	Minimum side setback to RC-2 or RC-7 zone line	150 feet
E	Maximum building height	35 feet

* Varies according to type of road




HILLSYDE CT
HAPPY HOLLOW RD
RC 4
RC 5
GREENWAY RD
BOXER HILL RD
LABRADOR LN
FIRWOOD CT
PADONIA RD
JUSTA LN
MONAGHA
DUNCAVIN
Baltimore County Government, VITA, Esri, HERE, Garmin, INCREMEN

May 9, 2023

Kristopher & Meagan Hallengren
12014 Boxer Hill Road
Cockeysville, MD 21030

RE: Case Number: 2023-0053-A, 12014 Boxer Hill Road

To Whom It May Concern:

The above referenced petition was accepted for processing ONLY by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on March 13, 2023. 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. There have not been any comments submitted from these agencies. If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

Jeffrey Perlow

Jeff Perlow
Supervisor
Department of Zoning

Kl

CC: Richardson Engineering, 7 Deneison Street, Timonium 21093

RECEIVED MAR 30 2023

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Paul M. Mayhew; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: March 27, 2023

SUBJECT: DEPS Comment for Zoning Item # 2023-0053-A
Address: 12014 Boxer Hill Rd.
Legal Owner: Kristopher and Meagan Hallengren

Zoning Advisory Committee Meeting of March 27, 2023.

X The Department of Environmental Protection and Sustainability has no comment on the above-referenced zoning item.

Additional Comments:

Reviewer: Earl D. Wrenn

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JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

June 21, 2023

RECEIVED
JUN 21 2023
BALTIMORE COUNTY
BOARD OF APPEALS

Lawrence E. Schmidt, Esquire – lschmidt@sgs-law.com
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204

RE: **APPEAL TO BOARD OF APPEALS**
Petition for Variance
Case No. 2023-0053-A
Property: 12014 Boxer Hill Road

Dear Mr. Schmidt:

Please be advised that an appeal of the above-referenced case was filed in this Office on June 20, 2023. 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:dlm
Attachment
c: *See Next Page -*

Board of Appeals
People's Counsel
Kristopher and Meagan Hallengren -krhallengren@hotmail.com & meghallengren@gmail.com
Patrick Richardson – rick@richardsonengineering.net
Michael and Carol Rifkin – mrifkin1@verizon.net
Hudson and Karen Myers – huddyman@verizon.net; ksm999@msn.com
Barbara Loughlin – bloughli@live.com
Bill – warutko@hotmail.com

Tammy Zahner

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Tuesday, June 20, 2023 2:21 PM
To: Paul Mayhew; Peter Max Zimmerman; Appeals Board; 'mrifkin1@verizon.net'; 'huddyman@verizon.net'; 'ksm999@msn.com'; 'bloughli@live.com'; 'warutko@hotmail.com'
Cc: Lawrence Schmidt; Kris Hallengren; Richardson, Patrick
Subject: Hallengren/12014 Boxer Hill Road (Case No. 2023-0053-A)
Attachments: Notice of Appeal to BOA (date stamped).PDF

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

Please see the attached appeal filed in the above referenced matter today.

RECEIVED
JUN 20 2023
BALTIMORE COUNTY
BOARD OF APPEALS

SGS SMITH GILDEA & SCHMIDT LLC
Alyssa F. Moyers
SENIOR PARALEGAL

Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Baltimore, MD 21204
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(410) 821-0070 (Office)
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amoyers@sgs-law.com
http://secure-web.cisco.com/177Dh462kc9HjDaYktRomxCnOxtKY3CYapql-_S9-W1jxJYYMt3kAwoZGGHv6eQ2n2A5aOuC9jyKCvmmQvPcEo0CQJh-IMAKI8mtbqlL87khQRNR4eCJtGNoNL1_lKIrXt24NDypIpQuO5JrbKPAlGZoqBMIC2Qz1v3FWoXhYWIJjtv-YaJ8i4vta24yq5fWFE8KasZIB6Cvtxt3vqpSvVfFnmPib_R6qyStR61S98E_2YqOLKEqo--ZwY7wmjS3rS0jGOtsFCqdydJHMkE6qTe5LmMQFwCM3K_B32F-QUq63AeN3ROoVy34loqqtdOUdrqVrDHoVWTrPDlZLWHGOIw81psJQsRqP4WQsddhjmOJEWcRVMAaVI5PKfRWlBY0chfYWG6zt7iduPt_roxAJZSjAHbuUYX_WnEvEQftNA-k6owbkMvAfkCR4-PaO30-pmGkHu7zI9YjRMnHH5Q/http%3A%2F%2Fwww.sgs-law.com

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Please consider the environment before printing this email.

IN RE: **PETITION FOR ADMINISTRATIVE VARIANCE** **12014 Boxer Hill Road** 8th Election District 3rd Councilmanic District Kristopher & Meagan Hallengren, *Legal Owners* Appellants	* BEFORE THE * BOARD OF APPEALS * OF * BALTIMORE COUNTY * **Case No.: 2023-0053-A** *	RECEIVED JUN 20 2023 OFFICE OF ADMINISTRATIVE HEARINGS

* *

NOTICE OF APPEAL

The Appellants, Kristopher & Meagan Hallengren, by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea, and Schmidt, LLC, feeling aggrieved by the decision of the Administrative Law Judge for Baltimore County from the Opinion and Order dated May 22, 2023 in the above-captioned matter, hereby note this appeal to the County Board of Appeals for Baltimore County in accordance with Baltimore County Code §32-3-401 by filing this Notice of Appeal with the Director of the Baltimore County Department of Permits, Approvals & Inspections.

Respectfully submitted,

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **20th** day of **June, 2023,** a copy of the foregoing Notice of Appeal was electronically mailed to the following:

Paul M. Mayhew
Managing Administrative Law Judge
Baltimore County Office of Administrative Hearings
pmayhew@baltimorecountymd.gov

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
pzimmerman@baltimorecountymd.gov

Board of Appeals for Baltimore County
appealsboard@baltimorecountymd.gov

Michael and Carol Rifkin
Mrifkin1@verizon.net

Hudson and Karen Myers
Huddyman@verizon.net; ksm999@msn.com

Barbara Loughlin
Bloughli@live.com

Bill
warutko@hotmail.com

LAWRENCE E. SCHMIDT

IN RE: **PETITION FOR ADMINISTRATIVE VARIANCE** **12014 Boxer Hill Road**	*	BEFORE THE
	*	BOARD OF APPEALS
	*	OF
8th Election District 3rd Councilmanic District	*	BALTIMORE COUNTY
Kristopher & Meagan Hallengren, *Legal Owners* Appellants	*	**Case No.: 2023-0053-A**
	*	

RECEIVED
JUN 20 2023
OFFICE OF
ADMINISTRATIVE HEARINGS

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BALTIMORE COUNTY
BOARD OF APPEALS

* *

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Michael and Carol Rifkin
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Hudson and Karen Myers
Huddyman@verizon.net; ksm999@msn.com

Barbara Loughlin
Bloughli@live.com

Bill
warutko@hotmail.com



LAWRENCE E. SCHMIDT

APPEAL

Petition for Administrative Variance
Case No. 2023-0053-A
12014 Boxer Hill Road
8th Election District, 3rd Council District

Petition for Administrative Variance – 3/13/23

Zoning Description of Property – 1 sheet

Formal Demand for Hearing filed on April 6, 2023 by Michael Rifkin

Notice of Zoning Hearing (WebEx) – April 10, 2023

Certification of Publication – (Daily Record) – April 25, 2023

Certification of Posting by SSG Robert Black on April 25, 2023 and May 14, 2023

Entry of Appearance by People's Counsel – N/A

Attendance Report – 4 sheets

Zoning Advisory Committee ("ZAC") Comments – DEPS

Petitioner's Exhibits:

Exhibit 1 Site Plan
Exhibit 2 Site Plan with Topography
Exhibit 3 Aerial Photographs
Exhibit 4 Hallengren Garage Plans
Exhibit 5 Photographs of area
Exhibit 6 Letters of Support
Exhibit 7 Well Variance

Protestant's Exhibits:

Exhibit 1 – Zoning Petition and Affidavit
Exhibit 2 – Residential Zoning Checklist for Baltimore County (Two-Step Test for a Zoning Variance)
Exhibit 3 – Cromwell vs Ward (This document is referenced on the "Residential Zoning Checklist for Baltimore County")
Exhibit 4 – Images and information regarding the property characteristics of 12014 Boxer Hill Rd
Exhibit 5 – Images and information for other area homes with similar property characteristics to 12014 Boxer Hill Rd
Exhibit 6 – Images and information for other area homes with landscaping retaining walls (similar to 12014 Boxer Hill Rd)

Exhibit 7 – Images and information for other area homes (with addition added to home) with similar property characteristics to 12014 Boxer Hill Rd
Exhibit 8 – Environmental Details for properties shown in photos
Exhibit 9 – Possible alternate locations for an auxiliary building (15 ft. high max) on the property of 12014 Boxer Hill Rd
Exhibit 10 – Proximity of properties for 12014 Boxer Hill Rd and 12015 Boxer Hill Rd
Exhibit 11 – Similar property search area from 12014 Boxer Hill Rd
Exhibit 12 – Baltimore County Zoning Regulations Section 307.1 (peculiar conditions) and 400.3 (maximum auxiliary building height)

Miscellaneous: SDAT, My Neighborhood Pic, ZAC Agenda, WebEx Info., Correspondence, Sign Posting & Photos for Admin. Var.

Cover Letter and Administrative Law Judge Mayhew's Opinion and Order – May 22, 2023 – **DENIED**

Notice of Appeal – Received on June 20, 2023 from Lawrence E. Schmidt, Esquire – Check No. 2902 in the amount of $300.00.

Cash Receipt No. 223605

Electronic Exhibits Sent to BOA Folder on June 20, 2023

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. 223605

Date: 6-20-23

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				350.00
						Total:		350.00

Rec From: Smith, Gildea + Schmidt, LLC

For: OAH - Appeal + Recording Link
Case No. 2023-0053
12014 Boxer Hill Rd.
Hearing Date - 5-15-23
Check Nos. 2900 (50) + 2902 (300)

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

PAID RECEIPT
BUSINESS ACTUAL TIME DRW
6/22/2023 6/21/2023 11:49:17 3
REG TRUS WALKIN CAM
>>RECEIPT # 044676 6/21/2023 OFLN
Dept 5 528 ZONING VERIFICATION
CK No 223605
Receipt Tot $ 350.00
350.00 CK .00 CA
Baltimore County, Maryland

OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

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Received

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Hearing Date - 5-15-23
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CASHIER'S VALIDATION

2902

SMITH, GILDEA & SCHMIDT, LLC
600 WASHINGTON AVENUE
SUITE 200
TOWSON, MD 21204

First National Bank
60-1809/433

Jun 20, 2023

PAY TO THE ORDER OF Baltimore County, Maryland $ 300.00

Appeal Fee

*** Three Hundred ********** 00/100 DOLLARS

Baltimore County, Maryland
Office of Budget & Finance
400 Washington Avenue, Room 152
Towson, MD 21204

MEMO

AUTHORIZED SIGNATURE

2900

SMITH, GILDEA & SCHMIDT, LLC
600 WASHINGTON AVENUE
SUITE 200
TOWSON, MD 21204

First National Bank
60-1809/433

Jun 20, 2023

PAY TO THE ORDER OF Baltimore County, Maryland $ 50.00

Recording Link Fee

*** Fifty ********** 00/100 DOLLARS

Baltimore County, Maryland

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

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Hearing Date - 5-15-23
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TOWSON, MD 21204

First National Bank
60-1809/433

Jun 20, 2023

PAY TO THE ORDER OF Baltimore County, Maryland $ 50.00

Recording Link Fee

*** Fifty ********** 00/100 DOLLARS

Baltimore County, Maryland

Donna Mignon

From:	Administrative Hearings
Sent:	Monday, May 22, 2023 1:14 PM
To:	'krhallengren@hotmail.com'; meghallengren@gmail.com
Cc:	Richardson, Patrick; 'Mike Rifkin'; 'huddyman@verizon.net'; 'ksm999@msn.com'; 'bloughli@live.com'; 'warutko@hotmail.com'; Debra Wiley; County Council (countycouncil@baltimorecountymd.gov); Henry Ayakwah; PAI; Peoples Counsel; Peter Max Zimmerman (pzimmerman@baltimorecountymd.gov); Rebecca Wheatley (rwheatley@baltimorecountymd.gov); Vishnubhai K Desai (vdesai@baltimorecountymd.gov)
Subject:	Case No: 2023-0053-A 12014 Boxer Hill Road
Attachments:	2023-0053-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.

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

JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

May 22, 2023

Kristopher and Meagan Hallengren
krhallengren@hotmail.com & meghallengren@gmail.com
12014 Boxer Hill Road
Cockeysville, MD 21030

RE: Petition for Administrative Variance – Formal Demand filed
Case No. 2023-0053-A
Property: 12014 Boxer Hill Road

Dear Mr. and Mrs. Hallengren:

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: Patrick Richardson – rick@richardsonengineering.net
Michael and Carol Rifkin – mrifkin1@verizon.net
Hudson and Karen Myers – huddyman@verizon.net; ksm999@msn.com
Barbara Loughlin – bloughli@live.com
Bill – warutko@hotmail.com

IN RE: PETITION FOR ADMIN. VARIANCE (12014 Boxer Hill Road) 8th Election District 3rd Council District Kristopher & Meagan Hallengren	*	BEFORE THE
	*	OFFICE OF ADMINISTRATIVE
	*	HEARINGS FOR
	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO. 2023-0053-A**

* * * * * * * * *

OPINION AND ORDER

This matter initially came before the Office of Administrative Hearings ("OAH") for Baltimore County for consideration of a Petition for Administrative Variance filed by the legal owners of the subject property, Kristopher and Meagan Hallengren ("Petitioners"). The Petitioners are requesting Variance relief pursuant to the Baltimore County Zoning Regulations ("BCZR") § 400.3: To permit an accessory building with a height of 24 ft. in lieu of the permitted 15 ft.

The property was properly posted with a Notice setting forth the requested variance relief and a Formal Hearing Demand was filed by a neighbor, Michael Rifkin. On May 15, 2023 a public WebEx hearing was held in lieu of an in-person hearing. The Petitioners, Kristopher and Meagan Hallengren appeared at the hearing. Patrick "Rick" Richardson of Richardson Engineering also appeared and assisted the Petitioners. Also in attendance at the hearing were the following neighborhood residents: Michael and Carol Rifkin (who had requested the hearing), Hudson and Karen Myers, and Barbara Loughlin.

The site plan Mr. Richardson prepared and sealed was marked and accepted into evidence as Petitioners' Exhibit 1. Mr. Richardson proffered the following facts. The property is approximately 1.63 acres ± and is zoned RC 4. Mr. Hallengren explained that they have limited storage space in their basement because the basement ceiling is only 7 feet. He further explained

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Date 5/22/23
By DMugnon

that they wish to add a level to the existing garage to add storage, a home office, and a home gym. He noted that there is an existing deck and patio that preclude expanding the dwelling to create these additional features. He submitted a collection of letters of support written by numerous neighbors. These letters were admitted, collectively, as Petitioners' Exhibit 6(a) thru 6(i).

Mr. Richardson explained that in his opinion the property is unique in a zoning sense because it is irregularly shaped and has relatively steep topography, such that the dwelling and existing garage are approximately 30 feet below the grade of Boxer Hill Road. In addition, there is an easement across the subject lot to allow well access for Petitioners' neighbor, Mr. Myers. This easement runs close to the existing garage structure and therefore prevents Petitioners from expanding the footprint of the garage in that direction. He explained that in order to avoid increasing the impervious surface on the lot that the most practical way to add the additional storage, office, and gym space is to construct a second level on the existing 38ft. x 24ft. garage. He noted that there are several existing mature trees that create a visual buffer on the street side of the garage.

Mr. Rifkin then presented his case opposing the requested height variance. He explained that he and his wife have lived across the street from the subject lot for 33 years. He said that the bucolic feel of the neighborhood is what originally attracted them, and that this proposed large two-story garage is not compatible with the neighborhood. The legal substance of his argument is that the property is not actually unique because there are numerous other steeply sloped lots in the neighborhood. He submitted numerous photos showing other sloping lots. These photos were admitted as Protestants' Exhibits 5, 6, and 7. He further argued that the existing garage is already 912 square feet and that with the proposed second story addition it will look like there are two dwellings on the property. He questioned why the Hallengrens could not add the additional storage

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Date 5/22/23
By DMugnon

and living space by constructing an addition on their dwelling rather than adding a second story to the large existing garage. He urged that the case law does not support the requested variance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under Maryland common law "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 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. Further, "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. Finally, under Maryland law variance relief is properly denied when an owner can still make "reasonable use of his property" without the variance. *Montgomery County v. Rotwein,* 176 Md. App. 716, 732-33 (2006).

ORDER RECEIVED FOR FILING
Date 5/22/23
By DMugnon

Although the subject property is irregularly shaped and sloping, I do not believe it is unique in those respects because, as Mr. Rifkin documented, there are numerous other lots in the neighborhood with these characteristics. Further, the shape and topography of the lot are not what necessitates the requested variance. If anything, does it is the existing deck and patio, which together take up most of what could otherwise be area that could be used to construct an addition on the dwelling that could provide the extra storage and living spaces. Although Mr. Hallengren noted that these features were existing when they purchased the property that does not necessarily mean that they make the property unique in a zoning sense.

Further, even if the property were considered unique, I do not believe that the need for the additional storage, office and gym is "substantial and urgent," rather, they are "merely for the convenience of the applicant." *Mueller, supra,* 177 Md. App. at 70. And although most of their neighbors do not object to the requested variance the Rifkins *do* and they live right across the street. I do find that the Rifkins would be substantially impacted by the proposed second story addition on the garage. As Mr. Rifkin noted, the two-story garage would be nearly as large as the Hallengren's dwelling and would not be compatible with the other properties on the street. In the final analysis I am bound by the controlling case law to deny the variance because "citizens [like the Rifkins] are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds, supra.* And, the Hallengrens can still make "reasonable use of [their] property" without the variance. *Montgomery County v. Rotwein, supra.*

THEREFORE, IT IS ORDERED, this **22nd** day of **May, 2023**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("BCZR") § 400.3: To permit an accessory building with a height of 24 ft. in lieu of the permitted 15 ft., be and is hereby **DENIED**.

ORDER RECEIVED FOR FILING
Date 5/22/23
By DMugnai

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/dlw

ORDER RECEIVED FOR FILING
Date 5/22/23
By

JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

May 22, 2023

Kristopher and Meagan Hallengren
krhallengren@hotmail.com & meghallengren@gmail.com
12014 Boxer Hill Road
Cockeysville, MD 21030

RE: Petition for Administrative Variance – Formal Demand filed
Case No. 2023-0053-A
Property: 12014 Boxer Hill Road

Dear Mr. and Mrs. Hallengren:

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: Patrick Richardson – rick@richardsonengineering.net
Michael and Carol Rifkin – mrifkin1@verizon.net
Hudson and Karen Myers – huddyman@verizon.net; ksm999@msn.com
Barbara Loughlin – bloughli@live.com
Bill – warutko@hotmail.com

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	*	OFFICE OF ADMINISTRATIVE
	*	HEARINGS FOR
	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO. 2023-0053-A**

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(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, supra. Further, "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. Finally, under Maryland law variance relief is properly denied when an owner can still make "reasonable use of his property" without the variance. *Montgomery County v. Rotwein,* 176 Md. App. 716, 732-33 (2006).

Although the subject property is irregularly shaped and sloping, I do not believe it is unique in those respects because, as Mr. Rifkin documented, there are numerous other lots in the neighborhood with these characteristics. Further, the shape and topography of the lot are not what necessitates the requested variance. If anything, does it is the existing deck and patio, which together take up most of what could otherwise be area that could be used to construct an addition on the dwelling that could provide the extra storage and living spaces. Although Mr. Hallengren noted that these features were existing when they purchased the property that does not necessarily mean that they make the property unique in a zoning sense.

Further, even if the property were considered unique, I do not believe that the need for the additional storage, office and gym is "substantial and urgent," rather, they are "merely for the convenience of the applicant." *Mueller, supra,* 177 Md. App. at 70. And although most of their neighbors do not object to the requested variance the Rifkins *do* and they live right across the street. I do find that the Rifkins would be substantially impacted by the proposed second story addition on the garage. As Mr. Rifkin noted, the two-story garage would be nearly as large as the Hallengren's dwelling and would not be compatible with the other properties on the street. In the final analysis I am bound by the controlling case law to deny the variance because "citizens [like the Rifkins] are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds, supra.* And, the Hallengrens can still make "reasonable use of [their] property" without the variance. *Montgomery County v. Rotwein, supra.*

THEREFORE, IT IS ORDERED, this **22nd** day of **May, 2023**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("BCZR") § 400.3: To permit an accessory building with a height of 24 ft. in lieu of the permitted 15 ft., be and is hereby **DENIED**.

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

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlw

IN RE: PETITION FOR ADMIN. VARIANCE (12014 Boxer Hill Road) 8th Election District 3rd Council District Kristopher & Meagan Hallengren	*	BEFORE THE
	*	OFFICE OF ADMINISTRATIVE
	*	HEARINGS FOR
	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO. 2023-0053-A**

* * * * * * * * *

OPINION AND ORDER

This matter initially came before the Office of Administrative Hearings ("OAH") for Baltimore County for consideration of a Petition for Administrative Variance filed by the legal owners of the subject property, Kristopher and Meagan Hallengren ("Petitioners"). The Petitioners are requesting Variance relief pursuant to the Baltimore County Zoning Regulations ("BCZR") § 400.3: To permit an accessory building with a height of 24 ft. in lieu of the permitted 15 ft.

The property was properly posted with a Notice setting forth the requested variance relief and a Formal Hearing Demand was filed by a neighbor, Michael Rifkin. On May 15, 2023 a public WebEx hearing was held in lieu of an in-person hearing. The Petitioners, Kristopher and Meagan Hallengren appeared at the hearing. Patrick "Rick" Richardson of Richardson Engineering also appeared and assisted the Petitioners. Also in attendance at the hearing were the following neighborhood residents: Michael and Carol Rifkin (who had requested the hearing), Hudson and Karen Myers, and Barbara Loughlin.

The site plan Mr. Richardson prepared and sealed was marked and accepted into evidence as Petitioners' Exhibit 1. Mr. Richardson proffered the following facts. The property is approximately 1.63 acres ± and is zoned RC 4. Mr. Hallengren explained that they have limited storage space in their basement because the basement ceiling is only 7 feet. He further explained

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Date 5/22/23
By DMugnon

that they wish to add a level to the existing garage to add storage, a home office, and a home gym. He noted that there is an existing deck and patio that preclude expanding the dwelling to create these additional features. He submitted a collection of letters of support written by numerous neighbors. These letters were admitted, collectively, as Petitioners' Exhibit 6(a) thru 6(i).

Mr. Richardson explained that in his opinion the property is unique in a zoning sense because it is irregularly shaped and has relatively steep topography, such that the dwelling and existing garage are approximately 30 feet below the grade of Boxer Hill Road. In addition, there is an easement across the subject lot to allow well access for Petitioners' neighbor, Mr. Myers. This easement runs close to the existing garage structure and therefore prevents Petitioners from expanding the footprint of the garage in that direction. He explained that in order to avoid increasing the impervious surface on the lot that the most practical way to add the additional storage, office, and gym space is to construct a second level on the existing 38ft. x 24ft. garage. He noted that there are several existing mature trees that create a visual buffer on the street side of the garage.

Mr. Rifkin then presented his case opposing the requested height variance. He explained that he and his wife have lived across the street from the subject lot for 33 years. He said that the bucolic feel of the neighborhood is what originally attracted them, and that this proposed large two-story garage is not compatible with the neighborhood. The legal substance of his argument is that the property is not actually unique because there are numerous other steeply sloped lots in the neighborhood. He submitted numerous photos showing other sloping lots. These photos were admitted as Protestants' Exhibits 5, 6, and 7. He further argued that the existing garage is already 912 square feet and that with the proposed second story addition it will look like there are two dwellings on the property. He questioned why the Hallengrens could not add the additional storage

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Date 5/22/23
By DMugnon

and living space by constructing an addition on their dwelling rather than adding a second story to the large existing garage. He urged that the case law does not support the requested variance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under Maryland common law "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 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. Further, "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. Finally, under Maryland law variance relief is properly denied when an owner can still make "reasonable use of his property" without the variance. *Montgomery County v. Rotwein,* 176 Md. App. 716, 732-33 (2006).

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Date 5/22/23
By DMugnon

Although the subject property is irregularly shaped and sloping, I do not believe it is unique in those respects because, as Mr. Rifkin documented, there are numerous other lots in the neighborhood with these characteristics. Further, the shape and topography of the lot are not what necessitates the requested variance. If anything, does it is the existing deck and patio, which together take up most of what could otherwise be area that could be used to construct an addition on the dwelling that could provide the extra storage and living spaces. Although Mr. Hallengren noted that these features were existing when they purchased the property that does not necessarily mean that they make the property unique in a zoning sense.

Further, even if the property were considered unique, I do not believe that the need for the additional storage, office and gym is "substantial and urgent," rather, they are "merely for the convenience of the applicant." *Mueller, supra,* 177 Md. App. at 70. And although most of their neighbors do not object to the requested variance the Rifkins *do* and they live right across the street. I do find that the Rifkins would be substantially impacted by the proposed second story addition on the garage. As Mr. Rifkin noted, the two-story garage would be nearly as large as the Hallengren's dwelling and would not be compatible with the other properties on the street. In the final analysis I am bound by the controlling case law to deny the variance because "citizens [like the Rifkins] are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds, supra.* And, the Hallengrens can still make "reasonable use of [their] property" without the variance. *Montgomery County v. Rotwein, supra.*

THEREFORE, IT IS ORDERED, this **22nd** day of **May, 2023**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("BCZR") § 400.3: To permit an accessory building with a height of 24 ft. in lieu of the permitted 15 ft., be and is hereby **DENIED**.

ORDER RECEIVED FOR FILING
Date 5/22/23
By DMugnai

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/dlw

ORDER RECEIVED FOR FILING
Date 5/22/23
By

JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

May 22, 2023

Kristopher and Meagan Hallengren
krhallengren@hotmail.com & meghallengren@gmail.com
12014 Boxer Hill Road
Cockeysville, MD 21030

RE: Petition for Administrative Variance – Formal Demand filed
Case No. 2023-0053-A
Property: 12014 Boxer Hill Road

Dear Mr. and Mrs. Hallengren:

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: Patrick Richardson – rick@richardsonengineering.net
Michael and Carol Rifkin – mrifkin1@verizon.net
Hudson and Karen Myers – huddyman@verizon.net; ksm999@msn.com
Barbara Loughlin – bloughli@live.com
Bill – warutko@hotmail.com

Webinar Name	Webinar Start Time
Zoning Hearing - Case No: 2023-0053-A - 12014 Boxer Hill Road - Owners: Kristopher & Meagan Hallengren	2023-05-15 13:15:46
Zoning Hearing - Case No: 2023-0053-A - 12014 Boxer Hill Road - Owners: Kristopher & Meagan Hallengren	2023-05-15 13:15:46
Zoning Hearing - Case No: 2023-0053-A - 12014 Boxer Hill Road - Owners: Kristopher & Meagan Hallengren	2023-05-15 13:15:46
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Zoning Hearing - Case No: 2023-0053-A - 12014 Boxer Hill Road - Owners: Kristopher & Meagan Hallengren	2023-05-15 13:15:46

Webinar End Time	Name	First Name	Last Name	Role	Attendee Email
2023-05-15 14:41:00	Call-in User_2 (410252****)	N/A	N/A	panelist	
2023-05-15 14:41:00	Debra Wiley	Debra	Wiley	host	dwiley@baltimorecountymd.gov
2023-05-15 14:41:00	Hudso Myers	N/A	N/A	panelist	huddyman@verizon.net
2023-05-15 14:41:00	Mike Rifkin	N/A	N/A	panelist	mrifkin1@verizon.net
2023-05-15 14:41:00	Mike Rifkin	N/A	N/A	panelist	mrifkin1@verizon.net
2023-05-15 14:41:00	Paul Mayhew	Paul	Mayhew	coHost	pmayhew@baltimorecountymd.gov
2023-05-15 14:41:00	barbara loughlin	N/A	N/A	panelist	bloughli@live.com
2023-05-15 14:41:00	bill	N/A	N/A	attendee	warutko@hotmail.com
2023-05-15 14:41:00	prichardson	N/A	N/A	panelist	rick@richardsonengineering.net
2023-05-15 14:41:00	prichardson	N/A	N/A	panelist	rick@richardsonengineering.net

Join Time	Leave Time	Attendance Duration	Connection Type	Source ID
2023-05-15 13:23:43	2023-05-15 14:41:00	78 mins	Other app	N/A
2023-05-15 13:17:50	2023-05-15 14:41:05	84 mins	Desktop app	N/A
2023-05-15 13:31:03	2023-05-15 14:41:05	71 mins	Desktop app	N/A
2023-05-15 13:23:24	2023-05-15 14:41:05	78 mins	Other app	N/A
2023-05-15 13:23:24	2023-05-15 14:41:05	78 mins	Desktop app	N/A
2023-05-15 13:30:47	2023-05-15 14:40:58	71 mins	Desktop app	N/A
2023-05-15 13:33:56	2023-05-15 14:40:52	67 mins	Mobile app	N/A
2023-05-15 13:43:23	2023-05-15 14:41:05	58 mins	Desktop app	N/A
2023-05-15 13:18:01	2023-05-15 14:37:19	80 mins	Desktop app	N/A
2023-05-15 13:15:46	2023-05-15 13:17:31	2 mins	Desktop app	N/A

Session Name

Zoning Hearing - Case No: 2023-0053-A - 12014 Boxer Hill Road - Owners: Kristopher & Meagan Hallengren
Zoning Hearing - Case No: 2023-0053-A - 12014 Boxer Hill Road - Owners: Kristopher & Meagan Hallengren
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Zoning Hearing - Case No: 2023-0053-A - 12014 Boxer Hill Road - Owners: Kristopher & Meagan Hallengren

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For

Join a meeting or search for a meeting, recording, or transcript

English | Donna

< Back to List

Zoning Hearing - Case No: 2023-0053-A - 12014 Boxer Hill Road - Owners: Kristopher & Meagan Hallengren

Webinar

Donna Mignon 1:30 PM - 2:30 PM | Monday, May 15, 2023

(UTC-04:00) Eastern Time (US & Canada)

Save as template

Start Webinar

Webinar information

Join information

Panelist | Attendee | Host

Copy attendee invitation

WT
WE
WS

Donna Mignon

Subject:	Zoning Hearing - Case No: 2023-0053-A - 12014 Boxer Hill Road - Owners: Kristopher & Meagan Hallengren
Location:	https://baltimorecountymd.webex.com/baltimorecountymd/j.php?MTID=m4f55f712fdf8bc251d59e8347a814e65
Start:	Mon 5/15/2023 1:30 PM
End:	Mon 5/15/2023 2:30 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Cisco 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.

Zoning Hearing
Case No: 2023-0053-A
Address: 12014 Boxer Hill Road
Owners: Kristopher and Meagan Hallengren
_~_

You are the host for this Webex webinar.

When it's time, start your webinar.

Monday, May 15, 2023
1:30 PM | (UTC-04:00) Eastern Time (US & Canada) | 1 hr

Start webinar

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Panelist password: 1234 (1234 from phones and video systems)

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+1-415-655-0001,,23163486397#4321# US Toll

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Debra Wiley

From: SGT ROBERT BLACK <1opie@comcast.net>
Sent: Monday, May 15, 2023 9:00 AM
To: Rick Richardson; Administrative Hearings
Subject: Recertification's For UA-2023-0032-UL AND 2023-0053-A
Attachments: Re-Cert 1 2023-0053-A REPOST - Copy.doc; Re-Cert 2 2023-0053-A REPOST - Copy.doc; Re-Cert 1 UA-2023-0032-UL REPOST.doc; Re-Cert 2 UA-2023-0032-UL REPOST.doc

CAUTION: This message from 1opie@comcast.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Recertification's for 3601 Landbeck Road and 12014 Boxer Hill Road. I was sick all weekend, sorry for the delay. Also, UA-2023-0032-UL, one of the signs was TORN out of the ground so I put it back up. May not survive.

CERTIFICATE OF POSTING

2023-0053-A

RE: Case No.: _____

Petitioner/Developer: _____

Kristopher & Meagan Hallengren

May 15, 2023

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:

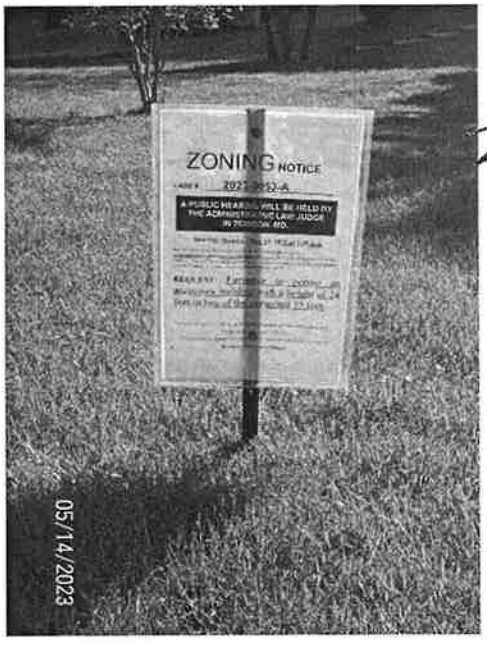
Ladies and Gentlemen:

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: _____

12014 Boxer Hill Road *SIGN 1 Recertification*

April 25, 2023

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



Sincerely,

May 14, 2023

(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

2023-0053-A

RE: Case No.: _____

Petitioner/Developer: _____

Kristopher & Meagan Hallengren

May 15, 2023

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: _____

12014 Boxer Hill Road *SIGN 2 Recertification*

April 25, 2023

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



Sincerely,

May 14, 2023

(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

2023-0053-A

RE: Case No.: _____

Petitioner/Developer: _____

Kristopher & Meagan Hallengren

May 15, 2023

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:

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12014 Boxer Hill Road *SIGN 1*

April 25, 2023

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



Sincerely,

April 25, 2023

(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

2023-0053-A

RE: Case No.: _____

Petitioner/Developer: _____

Kristopher & Meagan Hallengren

May 15, 2023

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: _____

12014 Boxer Hill Road *SIGN 2*

April 25, 2023

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



Sincerely,

April 25, 2023

(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)

Maryland The Daily Record
200 St. Paul Place
Baltimore, MD, 21202
Phone: 4435248100

MARYLAND
THE DAILY RECORD

Affidavit of Publication

To: Richardson Engineering, LLC - Rick Richardson
7 Deneison Street
Timonium, MD, 21093

Re: Legal Notice 2497070,

CASE NUMBER: 2023-0053-A

We hereby certify that the annexed advertisement was published in Maryland The Daily Record, a Daily newspaper published
in the State of Maryland 1 time(s) on the following date(s):
04/25/2023

By Darlene Miller

Darlene Miller
Authorized Designee of the Publisher

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: 2023-0053-A
12014 Boxer Hill Road
East side of Boxer Hill Road, 95 feet south of Labrador Lane
8th Election District - 3rd Councilmanic District
Legal Owners: Kristopher & Meagan Hallengren
Variance to permit an accessory building with a height of 24 feet in lieu of the permitted 15 feet.

Hearing: Monday, May 15, 2023 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.

Pete Gutwald
Director of Permits, Approvals and Inspections for Baltimore County

ap25 2597070

TO: THE DAILY RECORD
Tuesday, April 25, 2023 - Issue

Please forward billing to:
Rick Richardson
Richardson Engineering
7 Deneison Street
Timonium, MD 21093

410-560-1502

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: 2023-0053-A
12014 Boxer Hill Road
East side of Boxer Hill Road, 95 feet south of Labrador Lane
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Pete Gutwald
Director of Permits, Approvals and Inspections for Baltimore County

JOHN A. OLSZEWSKI, JR.
County Executive

C. PETE GUTWALD, AICP
Director, Department of Permits, Approvals and Inspections

April 10, 2023

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: 2023-0053-A
12014 Boxer Hill Road
East side of Boxer Hill Road, 95 feet south of Labrador Lane
8th Election District – 3rd Councilmanic District
Legal Owners: Kristopher & Meagan Hallengren

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C Pete R

Pete Gutwald
Director

PW/kl

C: Richardson Engineering, LLC, 7 Deneison Street, Timonium 21093
Mr. & Mrs. Hallengren, 12014 Boxer Hill Road, Cockeysville 21093
Michael Rifkin, 12015 Boxer Hill Road, Cockeysville 21093
Hudson Myers, 12100 Boxer Hill Road, Cockeysville 21093

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUES., APRIL 25, 2023**

Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Thursday, May 11, 2023 11:35 AM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Barbara
Last Name	Loughlin
Email	Bloughli@live.com
Phone	4102947038
Address	12105 boxer hill road
City	Cockeysville
State	Maryland
ZIP Code	21030
Case Number	2023-0053-A
Scheduled Hearing Date	May 15,2023

✓ Invited 5-11-23

May 9, 2023

Kristopher & Meagan Hallengren
12014 Boxer Hill Road
Cockeysville, MD 21030

RE: Case Number: 2023-0053-A, 12014 Boxer Hill Road

To Whom It May Concern:

The above referenced petition was accepted for processing ONLY by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on March 13, 2023. 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. There have not been any comments submitted from these agencies. If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

Jeffrey Perlow

Jeff Perlow
Supervisor
Department of Zoning

Kl

CC: Richardson Engineering, 7 Deneison Street, Timonium 21093

RECEIVED MAR 30 2023

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Paul M. Mayhew; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: March 27, 2023

SUBJECT: DEPS Comment for Zoning Item # 2023-0053-A
Address: 12014 Boxer Hill Rd.
Legal Owner: Kristopher and Meagan Hallengren

Zoning Advisory Committee Meeting of March 27, 2023.

X The Department of Environmental Protection and Sustainability has no comment on the above-referenced zoning item.

Additional Comments:

Reviewer: Earl D. Wrenn

C:\Users\LWhitaker\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\ZQVYZAT7\2023-0053-A 12014 Boxer Hill Rd.doc

Donna Mignon

From: Administrative Hearings
Sent: Tuesday, May 9, 2023 2:59 PM
To: Mike Rifkin; Administrative Hearings
Subject: RE: Exhibits from Michael Rifkin Case #2023-0053-A

Follow Up Flag: Follow up
Flag Status: Completed

Rec'd 5-10-23 DW

Good Afternoon,
Received.
Please drop off a hard copy to our office.
You can drop directly off at our office, hours are 7:30 -3:30 or we have a drop off box in our lobby.

Thank you. Have a great day.

From: Mike Rifkin <mrifkin1@verizon.net>
Sent: Tuesday, May 9, 2023 2:49 PM
To: Administrative Hearings <administrativehearings@baltimorecountymd.gov>
Subject: Exhibits from Michael Rifkin Case #2023-0053-A
Importance: High

CAUTION: This message from mrifkin1@verizon.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Exhibits from Michael Rifkin
Case #2023-0053-A

Property address requesting Zoning Variance
12014 Boxer Hill Road, Cockeysville, MD 21030

Hearing Date 5/15/23 at 1:30pm

neighbor who filed for mail Demand

Donna Mignon

From: Administrative Hearings
Sent: Monday, May 8, 2023 8:33 AM
To: Rick Richardson
Cc: 'krhallengren@hotmail.com'; 'meghallengren@gmail.com'
Subject: Case No: 2023-0053-A - 12014 Boxer Hill Road

Good Morning Mr. Richardson:

As you are aware, a virtual Webex hearing has been scheduled for May 15, 2023 at 1:30 p.m. You should have received an invitation in an email which invited you to this hearing when the event was created on or about April 10, 2023

Please email any and all hearing exhibits, documents, site plans, photographs or evidence of any kind that you wish to present at the hearing to our office . The documents must be submitted in PDF format at **least two full business days** in advance of the hearing to : 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.

These exhibits will be displayed on a computer screen as you explain at the hearing what you are seeking in your case. Please note that these documents are in addition to any paperwork submitted when you originally filed your petition with the Office of Zoning Review. Our Office is separate from the Office of Zoning. If our office does not receive this information, your case may not be able to be heard on this day. Thank you.

You can find more information on our website
at: https://www.baltimorecountymd.gov/departments/adminhearings/devzoninghearings.html

Please bring a hard copy of all exhibits and drop off in our lobby (address below) at least two full business days before the hearing date.

Thank you. Have a great day.

Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, MD 21204
410-887-3868

Donna Mignon

From: webmaster@baltimorecountymd.gov
Sent: Wednesday, May 3, 2023 2:24 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Carol
Last Name	Rifkin
Email	clrifkin@verizon.net
Phone	410-252-0367
Address	12015 Boxer Hill Rd.
City	Cockeysville
State	Maryland
ZIP Code	21030
Case Number	2023-0053-A
Scheduled Hearing Date	May 15, 2023

Invited
5-3

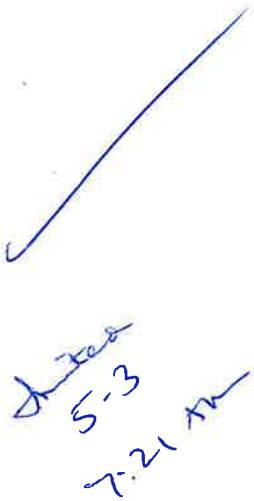
Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Tuesday, May 2, 2023 7:23 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Karen
Last Name	Myers
Email	ksm999@msn.com
Phone	4439809078
Address	12100 Boxer Hill Rd
City	Cockeysville
State	Maryland
ZIP Code	21020
Case Number	2023-0053-A
Scheduled Hearing Date	Monday, May 15, 2023 at 1:30pm



5-3
7:21 PM

Debra Wiley

From: webmaster@baltimorecountymd.gov
Sent: Tuesday, May 2, 2023 7:19 PM
To: Administrative Hearings
Subject: Request to Testify

Results of Form Submission

Request to Testify

Label	Value
First Name	Hudson
Last Name	Myers III
Email	huddyman@verizon.net
Phone	4102525653
Address	12100 Boxer Hill Rd
City	Cockeysville
State	Maryland
ZIP Code	21030
Case Number	2023-0053-A
Scheduled Hearing Date	5/15/2023

Donna Mignon

From: Donna Mignon <messenger@webex.com>
Sent: Monday, April 10, 2023 12:28 PM
To: Donna Mignon
Subject: (Forward to attendee) Webex webinar invitation: Zoning Hearing - Case No: 2023-0053-A - 12014 Boxer Hill Road - Owners: Kristopher & Meagan Hallengren
Attachments: Webex_webinar.ics

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.

Zoning Hearing
Case No: 2023-0053-A
Address: 12014 Boxer Hill Road
Owners: Kristopher and Meagan Hallengren



Donna Mignon is inviting you to a scheduled Webex webinar.

Monday, May 15, 2023
1:30 PM | (UTC-04:00) Eastern Time (US & Canada) | 1 hr

Add to calendar Google · O365

Join webinar

More ways to join:

Join from the webinar link

https://baltimorecountymd.webex.com/baltimorecountymd/j.php?MTID=m7005848ffc1891bb573639a7bac99238

Join by the webinar number

Webinar number (access code): 2316 348 6397

Webinar password: 4321 (4321 from phones and video systems)

Tap to join from a mobile device (attendees only)

+1-415-655-0001,,23163486397#4321# US Toll

Some mobile devices may ask attendees to enter a numeric password.

Join by phone

+1-415-655-0001 US Toll

Global call-in numbers

Need help? Go to https://help.webex.com

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Donna Mignon

From: Donna Mignon
Sent: Monday, April 10, 2023 12:28 PM
To: Kristen L Lewis
Cc: Debra Wiley
Subject: LINK - RE: Webex 2023-0053-A

Webinar topic:
Zoning Hearing - Case No: 2023-0053-A - 12014 Boxer Hill Road - Owners: Kristopher & Meagan Hallengren

Date and time:
Monday, May 15, 2023 1:30 PM | (UTC-04:00) Eastern Time (US & Canada)

Join link:
https://baltimorecountymd.webex.com/baltimorecountymd/j.php?MTID=m4f55f712fdf8bc251d59e8347a814e65

Webinar number:
2316 348 6397

Webinar password:
4321 (4321 from phones and video systems)

Join by phone
+1-415-655-0001 US Toll

Access code: 231 634 86397

From: Kristen L Lewis <klewis@baltimorecountymd.gov>
Sent: Monday, April 10, 2023 12:25 PM
To: Donna Mignon <dmignon@baltimorecountymd.gov>
Cc: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: RE: Webex 2023-0053-A

You're welcome.

Kristen Lewis-Coles
Legal Secretary
PAI – Zoning Review

From: Donna Mignon <dmignon@baltimorecountymd.gov>
Sent: Monday, April 10, 2023 12:24 PM
To: Kristen L Lewis <klewis@baltimorecountymd.gov>
Cc: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: RE: Webex 2023-0053-A

No problem. Thank you.

From: Kristen L Lewis <klewis@baltimorecountymd.gov>
Sent: Monday, April 10, 2023 12:24 PM
To: Donna Mignon <dmignon@baltimorecountymd.gov>
Subject: RE: Webex 2023-0053-A

I'm sorry that was a typo, its 5/15.

Kristen Lewis-Coles
Legal Secretary
PAI – Zoning Review

From: Donna Mignon <dmignon@baltimorecountymd.gov>
Sent: Monday, April 10, 2023 12:22 PM
To: Kristen L Lewis <klewis@baltimorecountymd.gov>
Subject: Webex 2023-0053-A

Hi Kristen,
I just tried to call you, 5/13/23 is a Saturday – did you mean 5/12/23 ?

From: Kristen L Lewis <klewis@baltimorecountymd.gov>
Sent: Monday, April 10, 2023 12:13 PM
To: Donna Mignon <dmignon@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Webex 2023-0053-A

Good afternoon,

Below is a new case needing a webex link created. Thank you.

2023-0053-A
12014 Boxer Hill Road
Owners: Kristopher & Meagan Hallengren – krhallengren@hotmail.com & meghallengren@gmail.com
Rick Richardson – rick@richardsonengineering.net
Michael Rifkin – mrifkin1@verizon.net
Hudson Myers – huddyman@verizon.net
~~5/13/~~23 at 1:30 p.m.
5/15/23
Kristen Lewis-Coles
Legal Secretary
PAI – Zoning Review

Donna Mignon

From: Kristen L Lewis
Sent: Monday, April 10, 2023 12:24 PM
To: Donna Mignon
Subject: RE: Webex 2023-0053-A

I'm sorry that was a typo, its 5/15.

Kristen Lewis-Coles
Legal Secretary
PAI – Zoning Review

From: Donna Mignon <dmignon@baltimorecountymd.gov>
Sent: Monday, April 10, 2023 12:22 PM
To: Kristen L Lewis <klewis@baltimorecountymd.gov>
Subject: Webex 2023-0053-A

Hi Kristen,
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From: Kristen L Lewis <klewis@baltimorecountymd.gov>
Sent: Monday, April 10, 2023 12:13 PM
To: Donna Mignon <dmignon@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Webex 2023-0053-A

Good afternoon,

Below is a new case needing a webex link created. Thank you.

2023-0053-A
12014 Boxer Hill Road
Owners: Kristopher & Meagan Hallengren – krhallengren@hotmail.com & meghallengren@gmail.com
Rick Richardson – rick@richardsonengineering.net
Michael Rifkin – mrifkin1@verizon.net
Hudson Myers – huddyman@verizon.net
5/13/23 at 1:30 p.m.

Kristen Lewis-Coles
Legal Secretary
PAI – Zoning Review

Donna Mignon

From: Donna Mignon
Sent: Monday, April 10, 2023 12:22 PM
To: Kristen L Lewis
Subject: Webex 2023-0053-A

Hi Kristen,
I just tried to call you, 5/13/23 is a Saturday – did you mean 5/12/23 ?

From: Kristen L Lewis <klewis@baltimorecountymd.gov>
Sent: Monday, April 10, 2023 12:13 PM
To: Donna Mignon <dmignon@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Webex 2023-0053-A

Good afternoon,

Below is a new case needing a webex link created. Thank you.

2023-0053-A
12014 Boxer Hill Road
Owners: Kristopher & Meagan Hallengren – krhallengren@hotmail.com & meghallengren@gmail.com
Rick Richardson – rick@richardsonengineering.net
Michael Rifkin – mrifkin1@verizon.net
Hudson Myers – huddyman@verizon.net
5/13/23 at 1:30 p.m.

Kristen Lewis-Coles
Legal Secretary
PAI – Zoning Review

Donna Mignon

From: Kristen L Lewis
Sent: Monday, April 10, 2023 12:17 PM
To: Donna Mignon
Cc: Debra Wiley
Subject: RE: Webex 2023-0053-A

Yes.

Kristen Lewis-Coles
Legal Secretary
PAI – Zoning Review

From: Donna Mignon <dmignon@baltimorecountymd.gov>
Sent: Monday, April 10, 2023 12:17 PM
To: Kristen L Lewis <klewis@baltimorecountymd.gov>
Cc: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: RE: Webex 2023-0053-A

Hi There again,
I am assuming a formal demand was filed. Just so I can let Deb know.
Thx.

From: Kristen L Lewis <klewis@baltimorecountymd.gov>
Sent: Monday, April 10, 2023 12:13 PM
To: Donna Mignon <dmignon@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Webex 2023-0053-A

Good afternoon,

Below is a new case needing a webex link created. Thank you.

2023-0053-A
12014 Boxer Hill Road
Owners: Kristopher & Meagan Hallengren – krhallengren@hotmail.com & meghallengren@gmail.com
Rick Richardson – rick@richardsonengineering.net
Michael Rifkin – mrifkin1@verizon.net
Hudson Myers – huddyman@verizon.net
5/13/23 at 1:30 p.m.

Kristen Lewis-Coles
Legal Secretary
PAI – Zoning Review

Donna Mignon

From: Kristen L Lewis
Sent: Monday, April 10, 2023 12:13 PM
To: Donna Mignon; Debra Wiley
Subject: Webex 2023-0053-A

Good afternoon,

Below is a new case needing a webex link created. Thank you.

2023-0053-A
12014 Boxer Hill Road
Owners: Kristopher & Meagan Hallengren – krhallengren@hotmail.com & meghallengren@gmail.com
Rick Richardson – rick@richardsonengineering.net
Michael Rifkin – mrifkin1@verizon.net
Hudson Myers – huddyman@verizon.net
5/13/23 at 1:30 p.m.

Kristen Lewis-Coles
Legal Secretary
PAI – Zoning Review

FORMAL DEMAND FOR HEARING
(ADMINISTRATIVE VARIANCE, USE PERMITS AND USE APPROVALS)

Case Number: 2023-0053-A

Property Address: 12014 Boxer Hill Rd

Legal Owners (Petitioners): Meagan & Kristopher Hallengren

TO THE ADMINISTRATIVE LAW JUDGE OF BALTIMORE COUNTY:

Protestant #1 Michael Rifkin 443-761-9553 410-252-0367
Protestant Name(s) - Type or Print | Telephone # (Cell) | Alternate Phone #

mrifkin1@verizon.net
Email Address

the (✓) Owner(s) **or** ( ) Occupant(s) of

12015 Boxer Hill Rd Cockeysville MD 21030
Address | City | State | Zip Code

Protestant #2 _____
Protestant Name(s) - Type or Print | Telephone # (Cell) | Alternate Phone #

_____
Email Address

the ( ) Owner(s) **or** ( ) Occupant(s) of

_____
Address | City | State | Zip Code

which is located approximately 0 feet from the property (must be within 1,000 ft. of subject property), which is the subject of the above petition, **do hereby submit a formal demand for a public hearing regarding this matter.***

I/WE HAVE SUBMITTED THE REQUIRED PROCESSING FEE FOR THIS DEMAND AND REQUEST THAT A HEARING BE SCHEDULED FOR THE SUBJECT PETITION.

*Failure to accept two proposed Hearing dates will result in the Demand request being dismissed and the Hearing will be held and/or a review by the Hearing Officer will take place without the protestants input. It is the responsibility of the protestant to verify the location, or web address, date and time of the hearing.

Signature 4/6/23
Signature | Date

Signature | Date

Revised 3/2022



Permits, Approvals and Inspections
111 W CHESAPEAKE AVE
TOWSON, MD 21204
4108873353
https://www.baltimorecountymd.gov

Cashier: Jason S.
06-Apr-2023 1:35:50P

Transaction **101693**

1	Zoning Counter Form Approvals	$100.00

Total **$100.00**

CREDIT CARD SALE $100.00
VISA 1182

Retain this copy for statement validation

Station: Permit Processing - Mini

06-Apr-2023 1:36:00P
$100.00 | Method: EMV
VISA CREDIT
XXXXXXXXXXXX1182
MICHAEL S RIFKIN
Reference ID: 309600539233
Auth ID: 006395
MID: ********2995
AID: A0000000031010
AthNtwkNm: VISA
SIGNATURE VERIFIED

Clover ID: 72SN8AC541PHP
Payment BHXP2KWSBSGEW

Clover Privacy Policy
https://clover.com/privacy

CASE # 2023-0053A

Baltimore County Review Boards.

I am requesting that a Public Hearing be held on the above referenced case number.

Sincerely,

Hudson Myers, III
12100 Box Hill Rd
Cockeysville, MD 21030
huddyman@verizon.net
410-458-0414

CERTIFICATE OF POSTING

2023-0053-A

RE: Case No.: _____

Petitioner/Developer: _____

Kristopher & Megan Hallengren

April 10, 2023

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: _____

12014 Boxer Hill Road ***SIGN 1 Recertification***

March 26, 2023

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



Sincerely,

April 9, 2023

(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

2023-0053-A

RE: Case No.: _____

Petitioner/Developer: _____

Kristopher & Megan Hallengren

April 10, 2023

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: _____

12014 Boxer Hill Road ***SIGN 2 Recertification***

March 26, 2023

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



Sincerely,

April 9, 2023

(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

2023-0053-A

RE: Case No.: _____

Petitioner/Developer: _____

Kristopher & Megan Hallengren

_____

April 10, 2023

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:

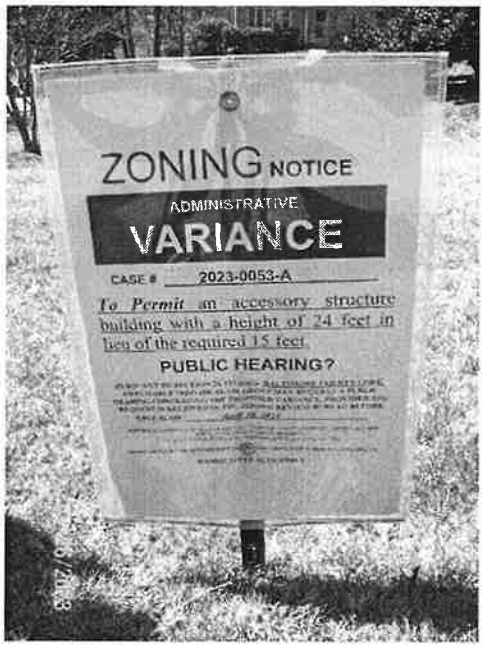
This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

12014 Boxer Hill Road ***SIGN 2***

_____

March 26, 2023

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



Sincerely,

March 26, 2023

(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)

FOR AV

Donna Mignon

From: SGT ROBERT BLACK <1opie@comcast.net>
Sent: Sunday, April 9, 2023 11:52 PM
To: Rick Richardson; Administrative Hearings
Subject: Recertifications For 2023-0053-A
Attachments: Re-Cert 1 2023-0053-A.doc; Re-Cert 2 2023-0053-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.

Recertifications for 12014 Boxer Hill Road. Thanks.

ZONING ADVISORY COMMITTEE AGENDA
ROOM 123, COUNTY OFFICE BUILDING
DISTRIBUTION MEETING March 20, 2023
FORMAL OR INFORMAL RESPONSE DUE AT March 27, 2023 Meeting

* Agenda Only
\+ Agenda and Petition
& Agenda and Plat
\# Agenda, Petition and Plat

Distribution:

* Administrative Law Judge, Commissioner (Paul M. Mayhew), MS #4103, dwiley@baltimorecountymd.gov; dmignon@baltimorecountymd.gov
* PAI, Zoning Review H.O. Hearing File (Kristen Lewis), klewis@baltimorecountymd.gov
* PAI, Zoning Review DRC/ZAC Meeting File (Jeff Perlow), JPerlow@baltimorecountymd.gov
* PAI, Development Management (Lloyd Moxley), MS # 1105, lmoxley@baltimorecountymd.gov
* PAI, Code Enforcement (Lisa Henson), MS # 1105, lhenson@baltimorecountymd.go
* PAI, Building Inspection (Matt Gawel), mg@baltimorecountymd.gov
* Economic Development Commission, Business Develop. (Stanley Jacobs), MS # 4300, sjacobs@baltimorecountymd.gov
* Highways (Tom Hargis), MS #1003 thargis@baltimorecountymd.gov
* Neighborhood Improvements (Marcia Williams), MS #4201, myneighborhoodimprovment@baltimorecountymd.gov
* County Council, District 3, (Tom Bostwick), MS #2201, council1@baltimorecountymd.gov tbostwick@baltimorecountymd.gov
* Mike Ruby (Newspaper), mildmanneredcomm@aol.com
\+ People's Counsel, rwheatley@baltimorecountymd.gov
\+ IF CRITICAL AREA, Maryland Office of Planning (Joseph Griffiths), joseph.griffiths@maryland.gov
\+ Kathy Are, kare@baltimorecountymd.gov
& State Highway Administration, Access Permits Division (Steven Autry), SAutry@mdot.maryland.gov
& Fire Department (Inspector Muddiman), MS # 1102F, dmuddiman@baltimorecountymd.gov
& PAI, Development Plans Review (Vishnu Desai), vdesai@baltimorecountymd.gov; Jesse Krout, jkrout@baltimorecountymd.gov
\# People's Counsel (Peter Zimmerman), MS #4204 pzimmerman@baltimorecountymd.gov
\# Planning Office (Jenifer Nugent), MS # 4101, jnugent@baltimorecountymd.gov; Henry Ayakwah hayakwah@baltimorecountymd.gov; Taylor Bensley tbensley@baltimorecountymd.gov
\# DEPS (Jeff Livingston) – 2 copies of each, MS # 1319, jlivingston@baltimorecountymd.gov; Earl Wrenn, EWrenn@baltimorecountymd.gov
\# IF FLOODPLAIN, Maryland Department of the Environment, kevin.wagner@maryland.gov
\# Public Works (Terry Curtis), MS #1315, tcurtis@baltimorecountymd.gov
* IF ELDERLY HOUSING, Community Development, MS #1102M
* IF TOWER, Tower Coordinator, c/o OIT, MS #2007
\# IF HELICOPTER, Police Department, Aviation Unit (Officer Taylor or Sgt. Wines)
\# IF PAWN SHOP, Police Department, Burglary/Pawn Unit (Det. Kropfelder), MS #1102E

The attached information is being forwarded to you for comment. Your comments should reflect any conflicts with the codes, standards, or regulations of your office or department. Development representatives that attend the meeting should be prepared to submit their agency's response as either "no comment", "written comment" or "more review time required" within one week at the next meeting. If no written response is received within two weeks, it is assumed that your agency has "no comment". All written comments must reference the ZAC item number. All comments received will be compiled and included in the zoning/development file for review and consideration by the hearing officer during the course of the upcoming zoning/development hearing.

If your agency or section is not represented at the meeting, you should return your written comments to the Department of Permits and Development Management (PDM), Room 111, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204 (Mail Stop #1105), Attention: Kristen Lewis

If you have any questions regarding a particular zoning petition, please contact the Zoning Review Planner (see initials after item number) at 410-887-3391.

ZAC AGENDA

Case Number: 2023-0053-A Reviewer: Shaun Crawford
Existng Use: RESIDENTIAL **Proposed Use:** RESIDENTIAL
Type: ADMINISTRATIVE VARIANCE
Legal Owner: Kristopher and Meagan Hallengren
Contract Purchaser: No Contract Purchaser was set.

Critical Area: No **Flood Plain:** No **Historic:** No **Election Dist:** 8 **Council Dist:** 3

Property Address: 12014 BOXER HILL RD
Location: Property located beginning at the East side of Boxer Hill Rd. at a distance 95 feet South of Labrador Lane.

Existing Zoning: RC 4 Area: 1.63 ACRES
Proposed Zoning:
ADMINISTRATIVE VARIANCE:
BCZR 400.3: To permit an accessory building with a height of 24 feet in lieu of the permitted 15 feet.
Attorney: Not Available
Prior Zoning Cases: None
Concurrent Cases: None
Violation Cases: None
Closing Date: 04/10/2023

Miscellaneous Notes:

Case Number: 2023-0054-A Reviewer: Christina Frink
Existng Use: RESIDENTIAL **Proposed Use:** RESIDENTIAL
Type: ADMINISTRATIVE VARIANCE
Legal Owner: Tyler and Karli Geschwilm
Contract Purchaser: No Contract Purchaser was set.

Critical Area: No **Flood Plain:** No **Historic:** No **Election Dist:** 11 **Council Dist:** 3

Property Address: 5212 PATTERSON FARM RD
Location: Property located at the intersection of Patterson Rd. and Patterson Farm Rd.

Existing Zoning: RC 2 Area: 1,500 SQ FT.
Proposed Zoning:
ADMINISTRATIVE VARIANCE:
BCZR 400.1 and 400.3: To approve an accessory building (garage) with a height of 27 feet in lieu of the maximum height of 15 feet and to approve an accessory building (garage) located in the 1/3 area of the yard closest to the side street in lieu of the 1/3 furthest removed from the side street.
Attorney: Not Available
Prior Zoning Cases: None
Concurrent Cases: None
Violation Cases: None
Closing Date: 04/10/2023

Miscellaneous Notes:

ZAC AGENDA

Case Number: 2023-0053-A Reviewer: Shaun Crawford
Existng Use: RESIDENTIAL Proposed Use: RESIDENTIAL
Type: ADMINISTRATIVE VARIANCE
Legal Owner: Kristopher and Meagan Hallengren
Contract Purchaser: No Contract Purchaser was set.

Critical Area: No **Flood Plain:** No **Historic:** No **Election Dist:** 8 **Council Dist:** 3

Property Address: 12014 BOXER HILL RD
Location: Property located beginning at the East side of Boxer Hill Rd. at a distance 95 feet South of Labrador Lane.

Existing Zoning: RC 4 Area: 1.63 ACRES
Proposed Zoning:
ADMINISTRATIVE VARIANCE:
BCZR 400.3: To permit an accessory building with a height of 24 feet in lieu of the permitted 15 feet.
Attorney: Not Available
Prior Zoning Cases: None
Concurrent Cases: None
Violation Cases: None
Closing Date: 04/10/2023

Miscellaneous Notes:

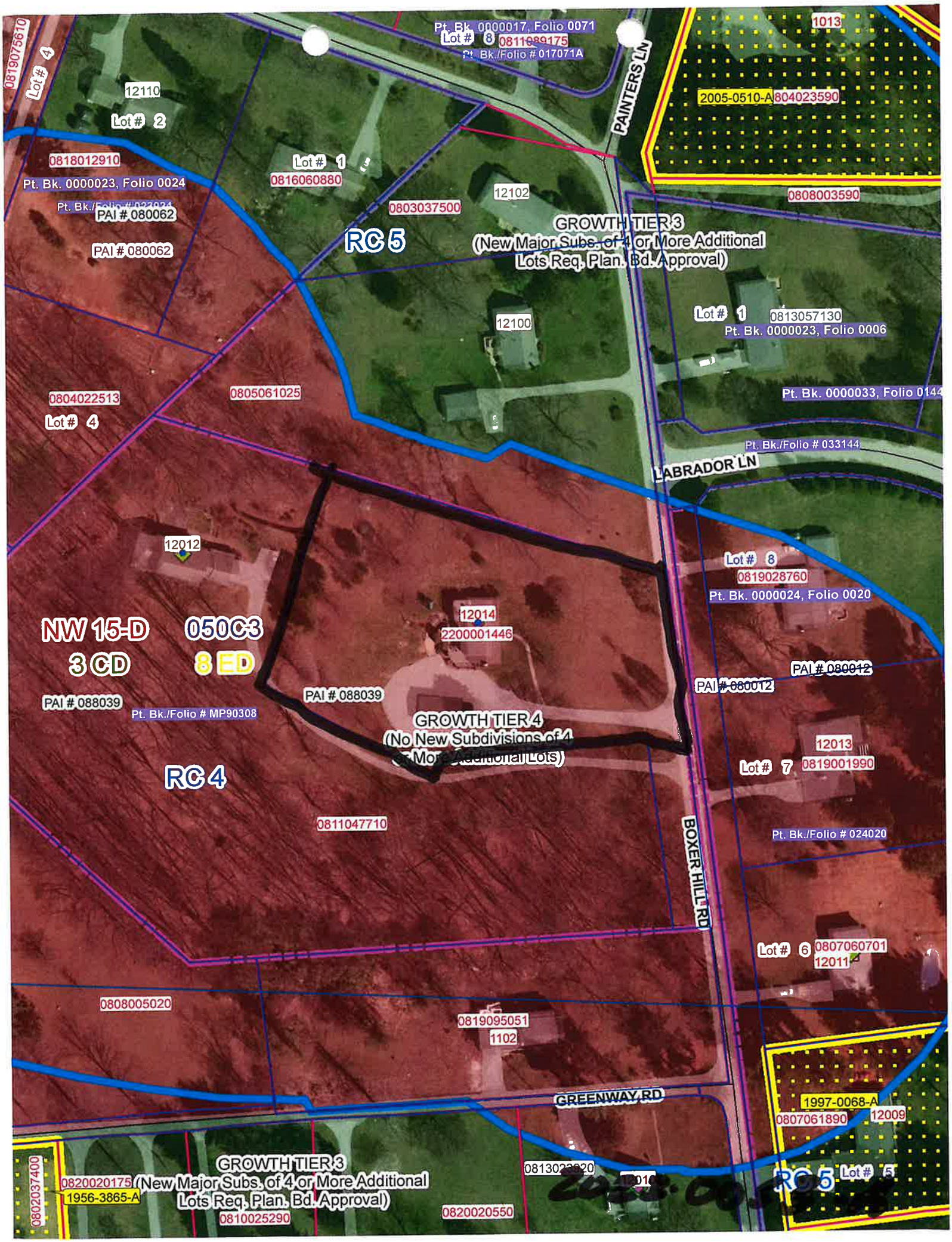
Case Number: 2023-0054-A Reviewer: Christina Fink
Existng Use: RESIDENTIAL Proposed Use: RESIDENTIAL
Type: ADMINISTRATIVE VARIANCE
Legal Owner: Tyler and Karli Geschwilm
Contract Purchaser: No Contract Purchaser was set.

Critical Area: No **Flood Plain:** No **Historic:** No **Election Dist:** 11 **Council Dist:** 3

Property Address: 5212 PATTERSON FARM RD
Location: Property located at the intersection of Patterson Rd. and Patterson Farm Rd.

Existing Zoning: RC 2 Area: 1,500 SQ FT.
Proposed Zoning:
ADMINISTRATIVE VARIANCE:
BCZR 400.1 and 400.3: To approve an accessory building (garage) with a height of 27 feet in lieu of the maximum height of 15 feet and to approve an accessory building (garage) located in the 1/3 area of the yard closest to the side street in lieu of the 1/3 furthest removed from the side street.
Attorney: Not Available
Prior Zoning Cases: None
Concurrent Cases: None
Violation Cases: None
Closing Date: 04/10/2023

Miscellaneous Notes:


Pt. Bk. 0000017, Folio 0071
Lot # 8
0811089175
Pt. Bk./Folio # 017071A
1013
PAINTERS LN
2005-0510-A
804023590
0819075610
Lot # 4
12110
Lot # 2
0818012910
Pt. Bk. 0000023, Folio 0024
Lot # 1
0816060880
12102
0808003590
0803037500
PAI # 080062
PAI # 080062
RC 5
GROWTH TIER 3
(New Major Subs. of 4 or More Additional
Lots Req. Plan. Bd. Approval)
Lot # 1
0813057130
Pt. Bk. 0000023, Folio 0006
12100
0804022513
Lot # 4
0805061025
Pt. Bk. 0000033, Folio 0144
Pt. Bk./Folio # 033144
LABRADOR LN
12012
Lot # 8
0819028760
Pt. Bk. 0000024, Folio 0020
12014
2200001446
NW 15-D
3 CD
050C3
8 ED
PAI # 088039
Pt. Bk./Folio # MP90308
PAI # 088039
PAI # 080012
PAI # 080012
GROWTH TIER 4
(No New Subdivisions of 4
More Additional Lots)
12013
Lot # 7
0819001990
RC 4
0811047710
BOXER HILL RD
Pt. Bk./Folio # 024020
Lot # 6
0807060701
12011
0808005020
0819095051
1102
GREENWAY RD
1997-0068-A
0807061890
12009
GROWTH TIER 3
(New Major Subs. of 4 or More Additional
Lots Req. Plan. Bd. Approval)
0820020175
1956-3865-A
0810025290
0820020550
0813023920
RC 5
Lot # 5
0802037400

Real Property Data Search ( )
Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Special Tax Recapture: None

Account Identifier: **District** - 08 **Account Number** - 2200001446

Owner Information

Owner Name:	HALLENGREN KRISTOPHER R HALLENGREN MEAGAN S	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	12014 BOXER HILL RD COCKEYSVILLE MD 21030-1732	**Deed Reference:**	/33945/ 00034

Location & Structure Information

Premises Address:	12014 BOXER HILL RD COCKEYSVILLE 21030-1732	**Legal Description:**	1.63 AC WS 12014 BOXER HILL RD 450 N GREENWAY RD

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0050	0018	0448	8080150.04	0000				2023	Plat Ref:

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1967	1,936 SF		1.6300 AC	04

Stories	Basement	Type	Exterior	Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	YES	STANDARD UNIT	SIDING/4		2 full/ 1 half	1 Detached	

Value Information

	Base Value	Value As of 01/01/2023	Phase-in Assessments As of 07/01/2022	Phase-in Assessments As of 07/01/2023
Land:	186,000	186,000		
Improvements	328,800	373,200		
Total:	514,800	559,200	514,800	529,600
Preferential Land:	0	0		

Transfer Information

Seller: HALLENGREN KRISTOPHER R	**Date:** 07/16/2013	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /33945/ 00034	**Deed2:**
Seller: STELLMANN EDWARD B,3RD	**Date:** 06/01/2010	**Price:** $540,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /29520/ 00140	**Deed2:**
Seller: KLAUNBERG F H,JR	**Date:** 03/16/1990	**Price:** $191,500
Type: ARMS LENGTH IMPROVED	**Deed1:** /08429/ 00616	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2022	07/01/2023
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 11/08/2011

Homeowners' Tax Credit Application Information

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

2023.0053.A

ADMINISTRATIVE ZONING PETITION

FOR ADMINISTRATIVE VARIANCE – OR – ADMINISTRATIVE SPECIAL HEARING

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

To the Office of Administrative Hearings for Baltimore County for the property located at:

Address 12014 Boxer Hill Road Cockeysville, MD 21030 **Currently Zoned** RC 4

Deed Reference 33945 / 00034 **10 Digit Tax Account #** 2200001446

Owner(s) Printed Name(s) Kristopher R & Meagan S Hallengren

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION(S) AND ADDING THE PETITION REQUEST)

For Administrative Variances, the Affidavit on the reverse of this Petition form must be completed and notarized.

The undersigned, who own and occupy the property situate in Baltimore County and which is described in the plan/plat attached hereto and made a part hereof, hereby petition for an:

1. X **ADMINISTRATIVE VARIANCE** from Section(s) 400.3 TO PERMIT AN ACCESSORY STRUCTURE BUILDING HEIGHT OF 24' IN LIEU OF THE PERMITTED 15'

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County.

2. ____ **ADMINISTRATIVE SPECIAL HEARING** to approve a waiver pursuant to Section 32-4-107(b) of the Baltimore County Code: (*indicate type of work in this space: i.e., to raze, alter or construct addition to building*)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County.

Property is to be posted and advertised as prescribed by the zoning regulations.
I/ we agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Owner(s)/Petitioner(s):

Kristopher R Hallengren / Meagan S. Hallengren
Name #1 – Type or Print / Name # 2 – Type or Print

Kristopher R Hallengren / Meagan S Hallengren
Signature #1 / Signature # 2

12014 Boxer Hill Road Cockeysville MD
Mailing Address City State

21030 / (410) 340-3327 (443) 540-6569 / krhallengren@hotmail.com meghallengren@gmail.com
Zip Code Telephone #'s (Cell and Home) Email Address

Attorney for Owner(s)/Petitioner(s):

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

7 DENGISON ST TIMONIUM MD
Mailing Address City State

21093 / 410 560-1502 / RICK@RICHARDSONENGINEERING.NET
Zip Code Telephone # Email Address

A PUBLIC HEARING having been formally demanded and/or found to be required, it is ordered by the Office of Administrative Hearings for Baltimore County, this _____ day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, and re-posted as required by the zoning regulations of Baltimore County.

Administrative Law Judge for Baltimore County

ORDER RECEIVED FOR FILING
Date 5/22/23
By DMGnon

Case Number 2023-0255-A **Filing Date** 3/13/23 **Estimated Posting Date** 3/26/23 **Reviewer** SC

Revised 8/2022

4/10

Affidavit in Support of Administrative Variance

(THIS AFFIDAVIT IS NOT REQUIRED FOR AN HISTORIC ADMINISTRATIVE SPECIAL HEARING)

The undersigned hereby affirms under the penalties of perjury and upon personal knowledge to the Administrative Law Judge for Baltimore County, that the information herein given is true and correct and that the undersigned is/are competent to testify in the event that a public hearing is scheduled in the future with regard thereto. In addition, the undersigned hereby affirms that the property is not the subject of an active Code Enforcement case and that the residential property described below is owned and occupied by the undersigned.

Address: 12014 Boxer Hill Road (Print or Type Address of Property) | Cockeysville (City) | MD (State) | 21030 (Zip Code)

Based upon personal knowledge, the following are the facts upon which I/we base the request for an **Administrative Variance** at the above address. **(Clearly state practical difficulty or hardship here)**

Given the grade elevations and landscape of our home, there is no feasible way to create an addition. We are requesting a variance to raise the garage roof to 24 feet from 15 feet and add a second floor. The addition will mostly be hidden by current trees which we intend to keep. There will be no increase to impervious roof area. This space will not have water or septic and will be used for storage and recreation - not any type of "in law space."

(If additional space for the petition request or the above statement is needed, label and attach it to this Form)

Kristopher R. Hallengren
Signature of Owner (Affiant)

Kristopher R. Hallengren
Name - Print or Type

Meagan S Hallengren
Signature of Owner (Affiant)

Meagan S. Hallengren
Name - Print or Type

The following information is to be completed by a Notary Public of the State of Maryland

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 25 day of FEB, 2023, before me a Notary of Maryland, in and for the County aforesaid, personally appeared:

Print name(s) here: ✓ Kristopher & Meagan Hallengren

the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notaries Seal

Robin James Davis Sr
Notary Public

11/7/2026
My Commission Expires

ROBIN JAMES DAVIS SR
MY COMMISSION EXPIRES
NOTARY
PUBLIC
NOVEMBER 7, 2026
BALTIMORE COUNTY, MD

Richardson ENGINEERING

CIVIL | COMMERCIAL
RESIDENTIAL
INDUSTRIAL

RICHARDSON ENGINEERING, LLC.
7 DENEISON ST. | TIMONIUM, MD 21093
410-560-1502 | RICHARDSONENGINEERING.NET

ZONING DESCRIPTION
12014 BOXER HILL ROAD
8 TH ELECTION DISTRICT
3RD Councilmanic District
BALTIMORE COUNTY, MARYLAND

BEGINNING FOR THE SAME at a point on the East side of a 16.50 foot road, Boxer Hill Road at a distance of 95 feet (more or less) South from the centerline of Labrador Lane (50' right-of-way), thence running and binding on the East side of Boxer Hill Road (1) South 06 degrees 30 minutes 47 seconds East 165.00 feet, (2) North 68 degrees 43 minutes 06 seconds West 42.94 feet (3) South 83 degrees 31 minutes 23 seconds West 180.00 feet, (4) South 47 degrees 28 minutes 40 seconds West 19.95 feet, (5) North 60 degrees 57 minutes 35 seconds West 170.68 feet, (6) North 17 degrees 36 minutes 13 seconds East 204.74 feet, (7) South 72 degrees 23 minutes 49 seconds East 317.00 feet, to the point of beginning;

Containing a net area of 71,015 square feet or 1.63 acres of land, more or less.



PROFESSIONAL CERTIFICATION:
I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NUMBER 16597, EXPIRATION DATE: 08-15-2023

2023-0053-A

BALTIMORE COUNTY DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number: 2023 -0053 -A Address 12014 Boxer Hill Road

Contact Person: Shaun Crawford Phone Number: 410-887-3391
Planner, Please Print Your Name

Filing Date: 3/13/23 **Posting Date:** 3/26/23 **Closing Date:** 4/10/23

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 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 a neighbor (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 Administrative Law Judge. The judge may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. If all County/State agencies' comments are received, you will receive written notification as to whether the petition has been granted, denied, or will proceed to a public hearing. This decision is usually made within 10 days of the closing date. The written 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 Administrative Law Judge), 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.

Petitioner: This Part of the Form is for the Sign Poster Only (Detach Along Dotted Line)

USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT

Case Number: 2023 -0053 -A Address 12014 Boxer Hill Road

Petitioner's Name: Kristopher & Megan Hallenstein Telephone (Cell) 410-340-3327

Posting Date: 3/26/23 **Closing Date:** 4/10/23

Wording for Sign: To Permit an accessory building with a height of 24' in lieu of the required 15'

Revised 3/2022



From Boxer Hill Road to the garage



Existing front of garage or the north side



Existing rear of garage or south side with house in rear



Garage from rear looking back toward Boxer Hill Road

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. 216100

Date: 3/13/23

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		G150				$ 75

Total: $75

Rec From: Kristopher Hallengren

For: Variance # 2023-0053-A

12014 Boxer Hill

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

SC

Kristopher R. Hallengren
12014 Boxer Hill Rd
Cockeysville, MD 21030

MARVEL HEROES

1402
7-11/520

2/27/2023

Pay to the Order of Baltimore County

$ 75.00

Seventy-five dollars and 00/100 cents Dollars

Security features are included. Details on back.

M&T Bank

For Zoning Variance petition

Case UA - 2023-0053-A, 12014 Boxer Hill Road

Exhibit 1	Site Plan
Exhibit 2	Site Plan with Topography
Exhibit 3	Aerial Photographs
Exhibit 4	Hallengren Garage Plans
Exhibit 5	Photographs of area
Exhibit 6	Letters of Support
Exhibit 7	Well Variance



Hallengren Public Hearing
12014 Boxer Hill Road
May 15, 2023 1:30 pm
Case Number 2023-0053-A

12014 Boxer Hill- Street View



12014 Boxer Hill- Street View





12014 Boxer Hill- North Side



12014 Boxer Hill- North Side Property Line



12014 Boxer Hill- West Side



12014 Boxer Hill- West Side



12014 Boxer Hill- South Side





12014 Boxer Hill- South Side





12014 Boxer Hill- East Side



12014 Boxer Hill- North Side Property Line



12014 Boxer Hill- View from Upper Deck



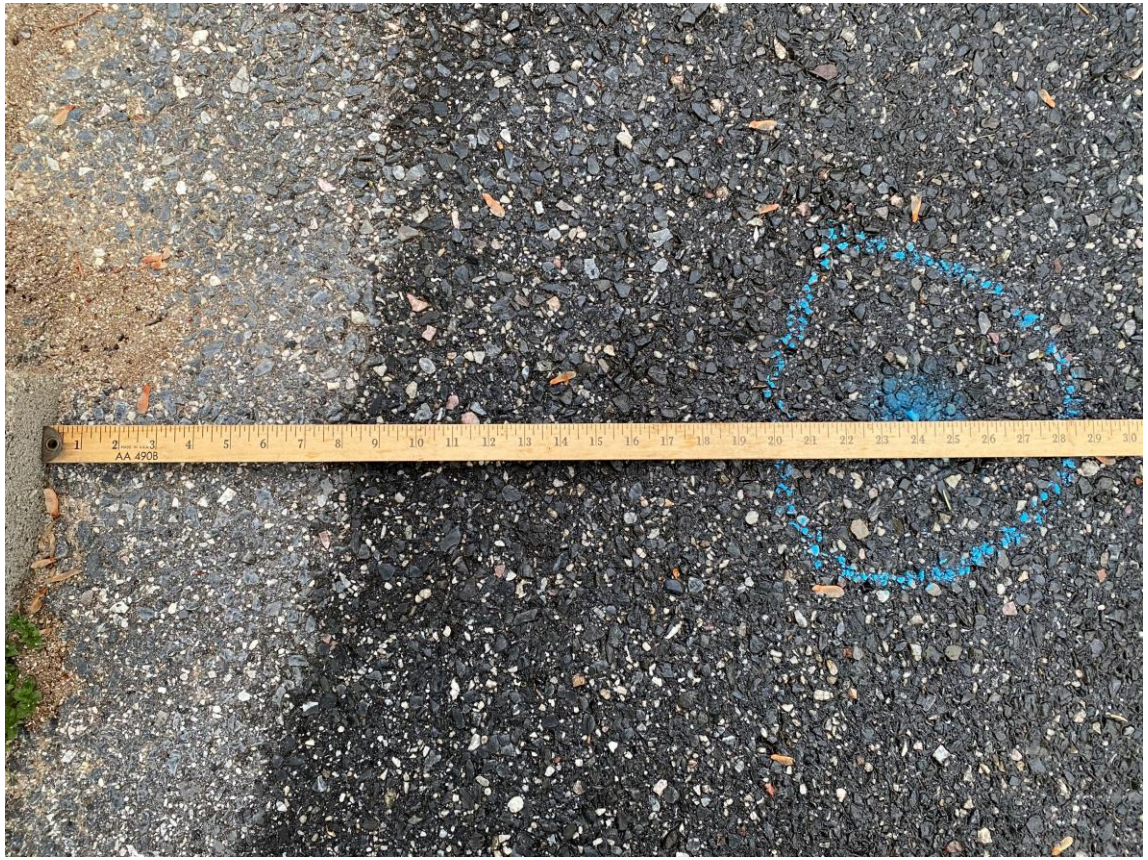
12014 Boxer Hill- View from Upper Deck



12014 Boxer Hill- View from Lower Deck



12014 Boxer Hill- Myer's Well Line
24-30" from Garage





12014 Boxer Hill-Myer's Well Line in Blue





12014 Boxer Hill – Garage is behind these trees, which will remain. There are no windows in the plans behind the trees.



Other Homes on Boxer Hill Rd. / Labrador Lane



Elfrey- 12004 Boxer Hill Road



Bank - 12007 Boxer Hill Road

Other Homes on Boxer Hill Rd. / Labrador Lane



12010 Boxer Hill Road



Gunter - 12009 Boxer Hill Road

Other Homes on Boxer Hill Rd. / Labrador Lane



Burton 12011 Boxer Hill Road



Robinson - 12013 Boxer Hill Road

Other Homes on Boxer Hill Rd. / Labrador Lane



Rifkin 12015 Boxer Hill Road



Carlino - 12101 Boxer Hill Road

Other Homes on Boxer Hill Rd. / Labrador Lane



Clements 12102 Boxer Hill Road



Sajadi - 12100 Boxer Hill Road

Other Homes on Boxer Hill Rd. / Labrador Lane



Myers 12100 Boxer Hill Road



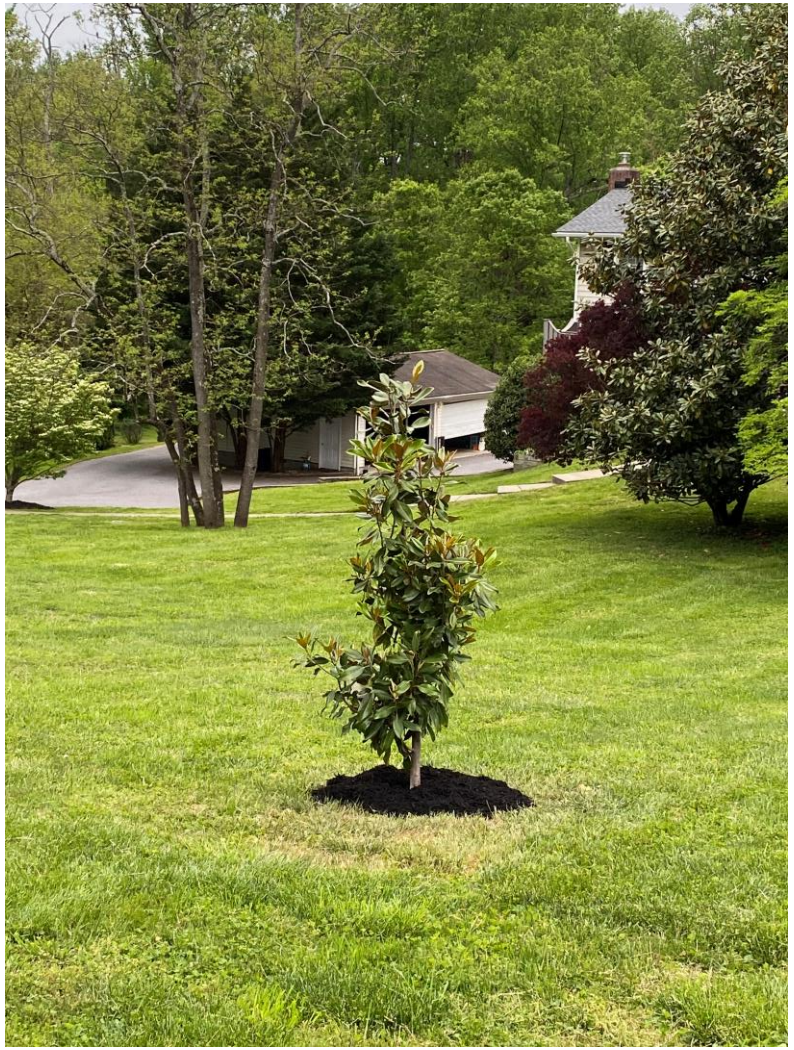
Arrup – 9621 Labrador Lane

Rifkin’s Home and View



The Rifkin’s Home





This Magnolia Tree will grow to be 20’ high and 12’ wide in 10 years. The growth rate is unsurpassed.

EXHIBIT 6A

To whom it may concern,

We are writing in support of the Hallengren's application for modification of an existing garage, case number #2023-0053. We are neighbors of the Hallengren's at 12112 Boxer Hill Rd and have a similar house and property set up. Both of our houses sit below the street and have lots over 2 acres. The proposed addition of adding 9 feet up on an existing structure will not be seen from the road as it sits behind a stand of Leland Cypress trees that are easily over 30 feet tall. As this existing structure sits at the edge of woods, the views would not be impacted with the addition of 9 feet height to the project while using the existing footprint. We believe there will be minimal to no lasting environmental impact as they are not adding any water or septic to this existing structure. Additionally, all neighbors enjoy and benefit when existing properties are enhanced in the neighborhood. Thank you in advance for your time.

Frances Michelle Nelson

Frances Michelle Nelson

Douglas Gordon Nelson

D.G. Nelson

May 7, 2023

To Whom It May Concern,

RE: Mr. & Mrs. Hallengren's Zoning Hearing

I am a current neighbor of Mr. and Mrs. Hallengren and reside at 1102 Greenway Road, Cockeysville, MD 21030.

The back of my home looks directly into the Hallengren's yard. It is my understanding that the Hallengren's would like to update their current garage structure and I am in favor of their plans. I have personally reviewed all of the detailed drawings and have no issue with the proposed construction.

Please let me know if you have any questions or concerns.

Sincerely,

DocuSigned by:
Ashley Adle
AD8CA944DF3B40E

Ashley Adle

1102 Greenway Road

Cockeysville, MD 21030

(443) 415 – 6814

Amadle17@gmail.com

May 8, 2023

To Whom It May Concern,

I am writing in support of case number #2023-0053-A. I have seen Meg and Kris Hallengren's plans for their garage and am in support of these plans. The improved structure will be visually attractive and address the needs of their family. I fully support their project.

Sincerely,

Leigh Bank
Ward Bank

Leigh and Ward Bank
12007 Boxer Hill Road, Cockeysville, MD 21030

May 4, 2023

Baltimore County Department of Permits

County Office Building

111 West Chesapeake Avenue

Towson, MD 21204

To Whom it May Concern,

I am writing a letter in support of case #2023-0053-A. I have lived in this neighborhood for nearly 9 years and have been privileged to get to know Meg and Kris Hallengren and their children since that time. Our properties are only about 360 feet apart in distance, and I pass by their house nearly every single day.

I have seen the plans for their project and I believe that the improved structure will be visually attractive, add value to the neighborhood, and will help to address the needs of their family. I fully support their project and would be happy to discuss it further with anyone.

Thank you for your attention,

Anna Wong

A. Wong

410-917-1203, abwong@gmail.com

9619 Labrador Lane

Cockeysville, MD 21030

May 1, 2023

Baltimore County Department of Permits

County Office Building

111 West Chesapeake Avenue

Towson, Maryland 21204

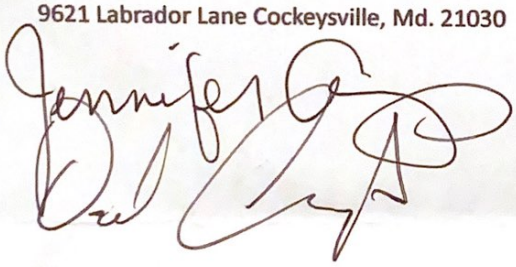
To Whom it may Concern,

I am writing a letter of support for case # 2023-0053-A. As a resident as a resident of the Boxer Hill community since 1999 we would like to support the Hallengrens in any effort to improve their property. We have discussed their current garage project and feel it will only improve the aesthetic of our neighborhood. In addition, it is located at the base of the driveway behind a large, beautiful tree. We live 3 houses away from Meg and Chris and look forward to seeing the new, improved garage space.

Sincerely,

Jennifer Arrup and Des Arrup

9621 Labrador Lane Cockeysville, Md. 21030



To Baltimore County Zoning Board, 4/30/2023

My Name is Suzanne Mays-Hornung and I live at 12121 Boxer Hill Rd.

I want to tell you I am so pleased with the property at 12014 Boxer Hill Rd. The owners have not only made their house and their property stunning, it has been an example to others in the neighborhood and they too have followed suit.

I do understand they want to further their building upwards and correct a few problems and I am all for the addition at the property stated above.
I honestly do Not Believe this will harm the land, burden others, be wrong for the wildlife, surrounding properties or the airway. I do think it will increase the value of the homes around us as well.

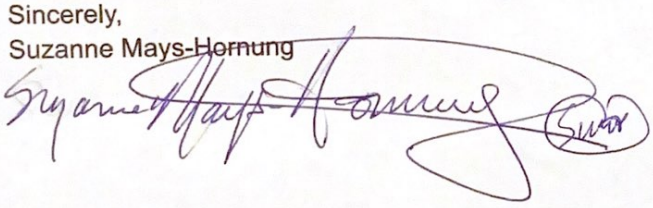
I am for the residents at the property 12014 Boxer Hill Rd. It would be a grave error to not allow this to go forward, as this family is a big part of our community and a fine example of a good neighbor should be - as it states in the Bible.

I believe the family has established a positive appearance and will continue to do so. It is also an addition to the necessity for some to work at home since Covid.

I am asking the Zoning Board to Please consider all that has been said and to allow the residents and fellow neighbors at 12014 Boxer Hill Rd,To continue with their property addition.

Thank you,

Sincerely,
Suzanne Mays-Hornung



Hi, my name is Mandy Burton, 5/9/2023
My address is- 12014 Boxer Hill Road
Cockeysville, MD 21030

I have seen the plans, I am happy they are improving the property and making the garage look better than It does now.
I have NO objection and support the plan.

Sincerely,
Mandy L Burton

6H

To Whom It May Concern,

I am writing in support of case number #2023-0053-A. I have seen Meg and Kris Hallengren's plans for their garage and am in support of these plans. The improved structure will be visually attractive and will address the needs of their family. I fully support their project.

Sincerely,

Chris Lauer

Digitally signed by Chris Lauer
DN: cn=Chris Lauer, o, ou, email=cjlauer22@yahoo.com, c=US
Date: 2023.05.09 20:40:59 -04'00'

Chris Lauer

9610 Labrador Lane

Cockeysville, MD 21030

Hi, my name is Sara A. Thompson, 5/9/2023
My address is- 12003 Boxer Hill Rd.
Cockeysville, MD 21030

I have seen the plans, I am happy they are improving the property and making the garage look better than It does now.
I have NO objection and support the plan.

Sincerely,
Sara A. Thompson

Hi, my name is Sara A. Thompson, 5/9/2023
My address is- 12003 Boxer Hill Rd.
Cockeysville, MD 21030

I have seen the plans, I am happy they are improving the property and making the garage look better than It does now.
I have NO objection and support the plan.

Sincerely,
Sara A. Thompson



EXHIBIT 7

File Memo

OK to file _____
Follow-up date _____

Inspection
Telephone X

ACTION REPORT

Baltimore County Department of Environmental Protection and Resource Management

Date 6/15/92
Time 9:20 AM

Dist. 8

FILE LOCATION: 12014 Boxer Hill Rd
Cockeysville 21030

PERSON CONTACTED: Ned Stellman Owner
(name and title)

ADDRESS: _____ Phone # 235 9905

REASON FOR INSPECTION: Call. request variance to build 24 ½ ft from well.

RECORD OF ACTION Mr. Stellman is proposing to build a pole barn/garage on top of an existing concrete pad, which will be 24 ½ ft from the well. The pole barn will be constructed of pressure treated 6 X 6's and concrete

RECOMMENDATIONS: OK to approve variance & issue permit

DATE: 6/15/92 SANITARIAN S Farmer

REFERRED TO: _____ FOR _____

DATE: _____ BY _____

COPY TO _____

Exhibit List and Descriptions for Case #2023-0053-A

Exhibit 1 – Zoning Petition and Affidavit

Exhibit 2 – Residential Zoning Checklist for Baltimore County (Two-Step Test for a Zoning Variance)

Exhibit 3 – Cromwell vs Ward (This document is referenced on the "Residential Zoning Checklist for Baltimore County")

Exhibit 4 – Images and information regarding the property characteristics of 12014 Boxer Hill Rd

Exhibit 5 – Images and information for other area homes with similar property characteristics to 12014 Boxer Hill Rd

Exhibit 6 - Images and information for other area homes with landscaping retaining walls (similar to 12014 Boxer Hill Rd)

Exhibit 7 - Images and information for other area homes (with addition added to home) with similar property characteristics to 12014 Boxer Hill Rd

Exhibit 8 – Environmental Details for properties shown in photos

Exhibit 9 – Possible alternate locations for an auxiliary building (15ft high max) on the property of 12014 Boxer Hill Rd

Exhibit 10 – Proximity of properties for 12014 Boxer Hill Rd and 12015 Boxer Hill Rd

Exhibit 11 – Similar property search area from 12014 Boxer Hill Rd

Exhibit 12 - Baltimore County Zoning Regulations Section 307.1. (peculiar conditions) and 400.3. (maximum auxiliary building height)

23-087 SC

ADMINISTRATIVE ZONING PETITION

FOR ADMINISTRATIVE VARIANCE – OR – ADMINISTRATIVE SPECIAL HEARING

To be filed with the Department of Permits, Approvals and Inspections
To the Office of Administrative Hearings for Baltimore County for the property located at:

Address 12014 Boxer Hill Road, Cockeysville, MD 21030 **Currently Zoned** residential

Deed Reference 33945 / 00037 **10 Digit Tax Account #** 2200001476

Owner(s) Printed Name(s) Kristopher R & Meagan S Hallengren

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION(S) AND ADDING THE PETITION REQUEST)

For Administrative Variances, the Affidavit on the reverse of this Petition form must be completed and notarized.

The undersigned, who own and occupy the property situate in Baltimore County and which is described in the plan/plat attached hereto and made a part hereof, hereby petition for an:

1. X **ADMINISTRATIVE VARIANCE** from Section(s) 400.3 TO PERMIT AN ACCESSORY STRUCTURE BUILDING HEIGHT OF 24' IN LIEU OF THE PERMITTED 15'

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County.

2. ____ **ADMINISTRATIVE SPECIAL HEARING** to approve a waiver pursuant to Section 32-4-107(b) of the Baltimore County Code: (*indicate type of work in this space: i.e., to raze, alter or construct addition to building*)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County.

Property is to be posted and advertised as prescribed by the zoning regulations.
I/ we agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Owner(s)/Petitioner(s):

Name #1 – Type or Print	Name # 2 – Type or Print
Kristopher R Hallengren	Meagan S Hallengren
Signature #1	Signature # 2
12014 Boxer Hill Road	Cockeysville MD
Mailing Address	City State
21030 (410) 340-3327	krhallengren@hotmail.com
Zip Code Telephone #'s (Cell and Home)	Email Address
(443) 840-6569	meghallengren@gmail.com

Attorney for Owner(s)/Petitioner(s):

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

1 DENEISON STREET TIMONIUM, MD
Mailing Address City State

21093 410 560 1582 RICK@RICHARDSONENGINEERING.NET
Zip Code Telephone # Email Address

A PUBLIC HEARING having been formally demanded and/or found to be required, it is ordered by the Office of Administrative Hearings for Baltimore County, this _____ day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, and re-posted as required by the zoning regulations of Baltimore County.

Administrative Law Judge for Baltimore County

Case Number 2023-0053-A **Filing Date** 3/13/23 **Estimated Posting Date** 3/26/23 **Reviewer** SC

Revised 8/2022

Affidavit in Support of Administrative Variance

(THIS AFFIDAVIT IS NOT REQUIRED FOR AN HISTORIC ADMINISTRATIVE SPECIAL HEARING)

The undersigned hereby affirms under the penalties of perjury and upon personal knowledge to the Administrative Law Judge for Baltimore County, that the information herein given is true and correct and that the undersigned is/are competent to testify in the event that a public hearing is scheduled in the future with regard thereto. In addition, the undersigned hereby affirms that the property is not the subject of an active Code Enforcement case and that the residential property described below is owned and occupied by the undersigned.

Address: 12014 Boxer Hill Road (Print or Type Address of Property) Cockeysville (City) MD (State) 21030 (Zip Code)

Based upon personal knowledge, the following are the facts upon which I/we base the request for an **Administrative Variance** at the above address. **(Clearly state practical difficulty or hardship here)**

Given the grade elevations and landscape of our home there is no feasible way to create an addition. We are requesting a variance to raise the garage roof to 24 feet from 15 feet & add a second floor. The addition will mostly be hidden by current trees, which we intend to keep. There will be no increase to impervious roof area. This space will not have water or septic & will be used for storage & recreation - not any type of "in law" space.

(If additional space for the petition request or the above statement is needed, label and attach it to this Form)

Kristopher R. Hallengren
Signature of Owner (Affiant)

Kristopher R. Hallengren
Name - Print or Type

Meagan Hallengren
Signature of Owner (Affiant)

Meagan S. Hallengren
Name - Print or Type

The following information is to be completed by a Notary Public of the State of Maryland

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 7 day of FEB, 2023, before me a Notary of Maryland, in and for the County aforesaid, personally appeared:

Print name(s) here: Kristopher & Meagan Hallengren

the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notaries Seal

Notary Public

11/7/2026
My Commission Expires

ROBIN JAMES DAVIS SR
NOTARY PUBLIC
BALTIMORE COUNTY, MD
MY COMMISSION EXPIRES NOVEMBER 7, 2026

Exhibit 2 Case #2023-0053-A

Zoning Review
Department of Permits, Approvals and Inspections
Baltimore County Office Building
111 W. Chesapeake Ave, Rm 124
Towson, MD 21204

ZONING CHECKLIST

INDIVIDUAL RESIDENTIAL LOTS:

Administrative Special Hearings

- **Administrative Variances**
- **Posting and Waivers**
- **Special Hearings**
- **Variances**

Revised 5/2023

Please be aware that this checklist is for your information only and
it is not intended to offer, or to be considered, legal advice.

First and most importantly: You must understand that the relief you request is a quasi- judicial decision and you are responsible for meeting the burden of law required by the Baltimore County Zoning Regulations (BCZR). A judicial hearing is an adversary process and, therefore, there may be opposition to your request. During a judicial hearing, the parties will be permitted to testify, present evidence, and cross-examine witnesses. The Office of Administrative Law will rule on the evidence and testimony to determine whether or not the petition will be granted.

Second: You must understand that if a hearing is required, you are permitted to have representation by an attorney of your choice. You are not required to have an attorney, though it is recommended that you consider obtaining legal representation. If you are incorporated, it is considered a requirement that you be represented by an attorney.

Third: It is strongly recommended that you read and understand the requirements of the BCZR and related policies.

Fourth: No employee of the Department of Permits, Approvals and Inspections (PAI) may provide legal advice to anyone. The representations and opinions of any employee are not to be construed as definitive in any case. Only the decision of the Administrative Law Judge rendered after the statutory required public hearing is considered dispositive in matters relating to the interpretation of the BCZR. Even though there may not be opposition in a given case, your request may be denied.

When you have completed the following steps, **petitions may be submitted by using the U.S. Postal Service, private delivery service (FedEx, UPS, etc.) or in-person drop-off at the Zoning counter. Revisions will not be processed or accepted if they are just delivered or mailed. Revisions must be filed with the original intake Planner.**

AUTHORITY AND PETITIONER'S BURDEN:

INFORMATION ONLY, NOT LEGAL ADVICE

All requests for zoning residential lot variances and special hearings are handled by the Department of Permits, Approvals and Inspections (PAI). *Applications are obtained from and filed with the Zoning Review section of PAI* and all hearings are scheduled before an Office of Administrative Law Judge (**ALJ**). The enabling legislation providing the ALJ with this authority is in Sections 307 and 500 of the Baltimore County Zoning Regulations (BCZR). The Director of PAI interprets and enforces the BCZR. Any disagreement with said interpretation may be taken to the Office of Administrative Law per Section 500.7 (BCZR).

Legal representation is recommended in all cases, but in the case of a corporation, it is a requirement. The information that proceeds is provided to give the petitioner a basic understanding of the legal burden of proof that must be satisfied prior to the granting of the petition. It is not a substitute for private legal counsel nor should it be construed as legal advice.

VARIANCES

Under the authority of Section 307.1 (BCZR), the Administrative Law Judge, (ALJ) applying the two-step test set forth in Cromwell v. Ward, 100 Md. App. 691 (1995), has the authority to grant variance from the height, area, parking, and sign regulations.

A. The first step requires the petitioner to prove, to the satisfaction of the ALJ, that the property whereon structures are to be placed (or uses conducted) is unique, unusual, and different from the surrounding properties such that the uniqueness causes the zoning provision to impact more on the subject property than on the surrounding properties.

B. The second step of the test requires that the petitioner must demonstrate that strict compliance with the BCZR would result in either practical difficulty or unreasonable hardship. The Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, stated:

1. "To prove undue hardship for a use variance, the following three criteria must be met:
   (i) Applicant must be unable to secure a reasonable return or make any reasonable use of his property (mere financial hardship or opportunity for greater profit is not enough).
   (ii) The difficulties or hardship is peculiar to the subject property in contrast with other properties in the zoning district.
   (iii) Hardship was not the result of applicant's own actions.

2. To provide <u>practical difficulty</u> for an area variance, the following criteria must be met:

   (i) Whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome.
   (ii) Whether the grant would be substantial injustice to applicant, as well as other property owners in district, or whether a lesser realization than that applied for would give substantial relief.
   (iii) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

C. No increase in residential density beyond that allowed by the zoning regulations shall be permitted.

D. The relief requested must be in strict harmony with the spirit and intent of height, area, off-street parking, or sign regulations.

E. And only in such manner as to grant relief without substantial injury to public health, safety, and general welfare.

SPECIAL HEARINGS

Under the authority of Section 500.6 (BCZR), the Office of Administrative Law has the power, upon notice to the parties in interest, to conduct hearings involving any violation or alleged violation or noncompliance with any zoning regulations, or the proper interpretation thereof, and to pass his order regarding this matter.

Under the authority of Section 500.7 (BCZR), any person can petition the Office of Administrative Law to hold a public hearing to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such a person in any property insofar as they are effected by the BCZR.

USE PERMITS

Certain uses have singular, individual characteristics which make it necessary, in the public interest (even though other County permits may not be required), to specify regulations for each zoning classification. Under the authority of Section 500.4 (BCZR), the Director of PAI has the power to issue certain use permits (certain others are issued under the authority of the Office of Administrative Law) provided that all of the conditions for that particular use specified in the BCZR are met. Under the authority of Section 500.7 (BCZR), the Director has the right to require a public hearing whenever the Director deems it in the public interest.

GENERAL APPLICATION PROCEDURE

A zoning hearing can only address issues regulated by the BCZR. You must contact other county/state agencies (see page 5) to determine if your plan meets their requirements!

Normally before granting any relief, the Office of Administrative Law shall require advertising and posting of the property and shall require, as applicable, a public hearing. All orders of an ALJ shall contain a finding of fact specifying the reason or reasons for granting or denying each request.

The normal time period from time of filing a petition until the time of receipt of the written order is usually somewhere between 45 and 60 days. Also, in addition to filing fees, costs are incurred for posting the property and advertising the hearing in area newspapers.

At the time of petition filing, petitioners will pay the filing costs. **Be aware that fees are subject to change without notice. The posting must be arranged by the petitioner**. The property must be posted and the posting sign must remain *visible* on the property for a period of 15 days. Check with your sign poster before removing the sign.

Zoning petitions may be submitted by using the U.S. Postal Service, private delivery service (FedEx, UPS, etc.) or in-person drop-off at the Zoning counter. Applications/forms are available from Zoning Review or online**. All information on the forms must be typed or printed and they must be signed by the legal owner(s) or a corporate officer, with his/her title, the address, zip code, work and home telephone numbers and Email address provided. While the planner will assist the petitioner in interpreting those provisions of the BCZR applicable to the particular case, the final wording of the request and other information submitted, as set forth in the application, shall be the sole responsibility of the petitioner(s).

County employees requesting a hearing must have Council approval. Speak to a planner.

** http://www.baltimorecountymd.gov/Agencies/permits/pdm_zoning/zonforms.html#forms

Administrative Variances Hearing/Posting

To save the individual Baltimore County homeowner time and money, effective March 30, 1990, an administrative variance procedure for an **owner occupied residential lot** was established pursuant to **Section 32-3-303,** Baltimore County Code. This procedure may not require newspaper advertising or a public hearing and, as such, the overall time period from the date of filing to written order will diminish and possibly save costs.

If a formal hearing demand (challenge) is not filed with Zoning Review by a property owner within 1,000 feet of site during the posting period, the administrative procedure may continue. Beyond 1,000 feet, a challenge is honored at the discretion of the Administrative Law Judge. The challenge fee is $60.00 paid by the challenger.* (Call 410-887-3391 to confirm the challenge fee.) Without paying the $60.00 processing fee for a demand for a full hearing, any interested party may address their concerns or concurrence to the hearing officer in writing, well in advance of a decision, c/o Zoning Review Office, which will be forwarded to the Judge making the decision.

***Failure to accept two proposed Hearing dates will result in the Demand request being dismissed. The Hearing will be held and/or a review by the Hearing Officer without the protestants input. An additional Formal Demand can be requested at the original fee.**

Possible Full Public Hearing Required

If a hearing demand, as described above, is filed and/or if the Administrative Law Judge, decides there is a need, the application will leave the administrative process, necessitating advertising, re-posting, and a public hearing. In such cases, the petitioner will receive written notice that a standard public hearing will be scheduled under the standard time/cost framework. Petitioners will receive notification by mail. The new fees should be paid by mail upon receipt of the statements.

Who May Use The Administrative Variance Procedure

Legal owner(s) of a single family owner-occupied residential property.

The above parties must submit a notarized affidavit attesting to the fact that they do now own **and** occupy said residential property and that there are no active Code Enforcement violation cases on the subject property.

Who May Not Use The Administrative Variance Procedure

1. Contract purchaser(s) of a single family residential property.
2. Petitioners filing a residential variance in combination with a special hearing and/or special exception. (Other than an Administrative Special Hearing for Historic Properties)
3. Petitioners filing non-residential variances.
4. A builder or developer requesting variance(s) for lot(s).
5. Vacant lots for homes to be built are not eligible per **Section 32-3-303, BCC.**
6. Properties under an active zoning violation may not use this type of variance.

Administrative Special Hearing Waiver for Historic Properties

Per Section 500.7 BCZR and Title 32, Baltimore County Code, alterations to historic property may require a posting notification/or a waiver/public hearing similar to the Administrative Variance process. Contact the Landmarks Preservation Commission representative in the Office of Planning (410-887-3495). Use the following wording in the petition request:

Special Hearing to approve a waiver pursuant to Sections 32-4-107(b), 32-4-223(8), and Section 32-4-416(a)(2) to raze, alter or construct addition to building: (indicate type of work in this space).

The Petition Application Must Contain

1. Four (4) copies and one (1) PDF of the hearing plan with information as indicated on checklist. (See Example #1).

2. Three (3) copies of petition, typed or printed, with original signatures and applicable information on each copy with day time telephone numbers and Email address.

3. Three (3) copies of the property description. (See Page # 9).

4. One (1) copy of the GIS Zoning Map available from the Zoning Review Counter. (See Example # 2).

5. Photographs of the property and describe the location of the photograph. **(Administrative Petition ONLY)**

6. One (1) completed copy of the advertising and posting requirements and procedures form – To be completed at time of filing. (See last page of this checklist).

7. Filing Fees: Contact Zoning Review (410-887-3391) to confirm the fees. Variance or special hearing - $75.00 filing fee due at the time of petition filing. Newspaper will mail the bill to the party indicated on the advertising/posting form for required newspaper advertising. Posting fees vary and are billed by the sign poster you engage to post your property. An additional $75.00 (as a special hearing fee) is required for an amendment to a final development plan (required for any lot which is on an approved zoning final development plan).

Review / ZAC Agencies

Once filed, the petition information is forwarded by Zoning Review to the Zoning Advisory Committee (ZAC) agencies as necessary for their review. The Petitioner(s) should contact the following agencies prior to plan preparation to be made aware of any comments/issues for their particular case.

1. Assessments (SDAT)	410-512-4906
2. Development Plans Review (traffic issues)	410-887-3751
3. Fire Department	410-887-3998
4. State Highway Administration	410-545-5600
5. County Roads	410-887-3739
6. Planning (design, screening, landscaping, historic)	410-887-3211
7. Plans Review (construction/fire/floodplain plans)	410-887-3987
8. Department of Environmental Protection and Sustainability (DEPS) (see note)	410-887-3980
9. If *floodplain*, Maryland Department of the Environment	Kevin.Wagner@maryland.gov
10. If *critical area*, Maryland Office of Planning	410-767-4485

NOTE: For CBCA (Critical Area) sites: Without **DEPS comments** the ALJ will not write an order.
Floodplains and historic buildings should be identified and addressed as needed.
Flood Plain determination/issues call the Dept. of Public Works at 410-887-3300.
Historic issues/questions call the Office of Planning at 410-887-3480.

100-Year Floodplains and Waivers

The 100-year floodplain information and requirements (Bill 173-93, 11/17/93) may be obtained in the Development Plans Review Division (room 107) and Building Plans Review (room 110) in the Baltimore County Office Building. Flood Plain waivers require a Special Hearing. The following wording must be used:

Riverine Wording: (No New Buildings): Special Hearing for a waiver pursuant to BCZR Section 500.7; Building Code Parts 123, 124, 125; and BCC Sections 32-4-414, 32-4-107(a)(2), 32-8-301 to permit a proposed _____ (i.e., replacement or rebuilt building/structure; repair to a building/structure, etc.) in a riverine floodplain.

Tidal Wording: Special Hearing for a waiver pursuant to BCZR Section 500.7; Building Code Parts 123, 124, 125; and BCC Sections 32-4-107(a)(2), 32-8-301 to permit a proposed _____ (i.e., new building/structure; addition to a building/structure; replacement or rebuilt building/structure; repair to a building/structure, etc.) in a tidal floodplain.

Note:
DRC recommendations must accompany the petition and the State Department of Natural Resources (DNR), must also review all petition documents as part of the Zoning Advisory Committee (ZAC).

Hearing Plan Requirements

4 copies required and 1 PDF. The plans shall be legible, accurate and in no case can it be larger than 24" x 36". **Plans must be trimmed or folded to a neat 8-1/2" x 11" size**. Use of the checklist blank plan form is not required. Plans shall contain the following information:

1. **TEXT:** Election & Councilmanic districts, hearing type, subdivision information, owner's name(s), property address, plan date, (if, or not in CBCA / historic / or floodplain), zoning, GIS map copy#, and any active zoning violation# with stated reasons for citation.

2. **DRAWING SCALE:** 1"=20', 1**"**= 30**'**, 1**"**=40**'** or 1"=50'. If 40 acres or more, use 1"=100' scale.

3. **OUTLINE OF PROPERTY:** Indicated by a heavy bold line include lot lines, distances and area of the parcel(s) by square feet and acreage. (To figure acreage, divide square feet by 43,560.)

4. **VICINITY MAP:** A legible vicinity map with site outline must be included on all plans WITH SITE AND INTERSECTING ROADS CLEARLY AND ACCURATELY SHOWN AND NAMED. DO NOT PUT ON A SEPARATE SHEET; IT MUST BE ON THE SITE PLAN SHEET!

5. **PRIOR ZONING CASES:** The case #, date of the order(s), what was granted or denied, and any restrictions from prior zoning case(s), must be listed on the hearing plan.

6. **CURRENT OR OUTSTANDING ZONING VIOLATIONS:** Any correction notice # and/or citation # and the inspector's name must be listed on the hearing plan.

7. **OWNERSHIP:** On subject and adjacent properties including owner's name(s), lot numbers, subdivision name, 10 digit tax account numbers, and/or deed references. See your GIS Map copy and contact SDAT or Land Records for more complete information.

8. **LOCATION:** North Arrow, Street address and names of adjoining street(s), beginning point of description and distance from property corner to the nearest public street centerline. Measure this onsite or use record plats, SDAT records, or the utilities maps from room 206, County Office Building.) This beginning point and distance should start the written zoning description.

9. **STREETS, WIDENING, R/W, EASEMENTS:** Include all existing public boundary streets with the existing right-of-way and paving width. Include any existing or proposed easements with the stated type/purpose or any right-of-ways shown and labeled as being public or private.

10. **BUILDINGS:** Use, dimensions, height and location of all existing buildings/improvements on property with building-to-property line and building-to-building setbacks shown for each structure. Also, front orientation of any dwellings and the use, dimension and location of all proposed buildings or additions and the proposed use if changing. The general use, building and lot dimensions and all facing property line setbacks of buildings on adjoining lots.

11. **STREET SETBACKS:** If a new dwelling is proposed or the new addition or improvement is located on the street side (front) and if either adjacent side is unimproved and your property is zoned D.R.-2, D.R.-3.5 or D.R.-5.5, then you must show the front setback of all dwellings on your side of the street within a distance of 200 feet from the joint side property lines.

12. **UTILITIES:** Show location and size of all public utilities and right-of-ways both adjacent to and on-site. If no public water or sewer exist, well and septic system locations and setbacks must be indicated. (Public utilities drawings are available in Room 206, County Office Building.)

13. **FEATURES:** Location of streams, storm water management systems drainage, pipe systems on or within 50 feet of the property, and the location of the 100 year floodplain (if any). If floodplain or not, state this on the plan, including the elevation.

14. **B.O.C.A.:** Buildings must meet the building code and fire code requirements.

15. **SPECIAL REQUIREMENTS:** For special hearings on 2 apartment dwellings, floor plans detailing each floor with room square footages and uses are required. For waterfront construction (over the water), such as piers and piles, ask for a copy of the checklist for waterfront construction.

16. **SPECIAL DISTRICT OR AREA LOCATION:** For sites located in the Back River Neck or Bowleys Quarters Peninsula districts or in the Martin State Airport 3 mile proximity radius, check with Zoning Review for applicability of any special regulations as they relate to your petition request.

EXAMPLE # 1 - HEARING PLAN

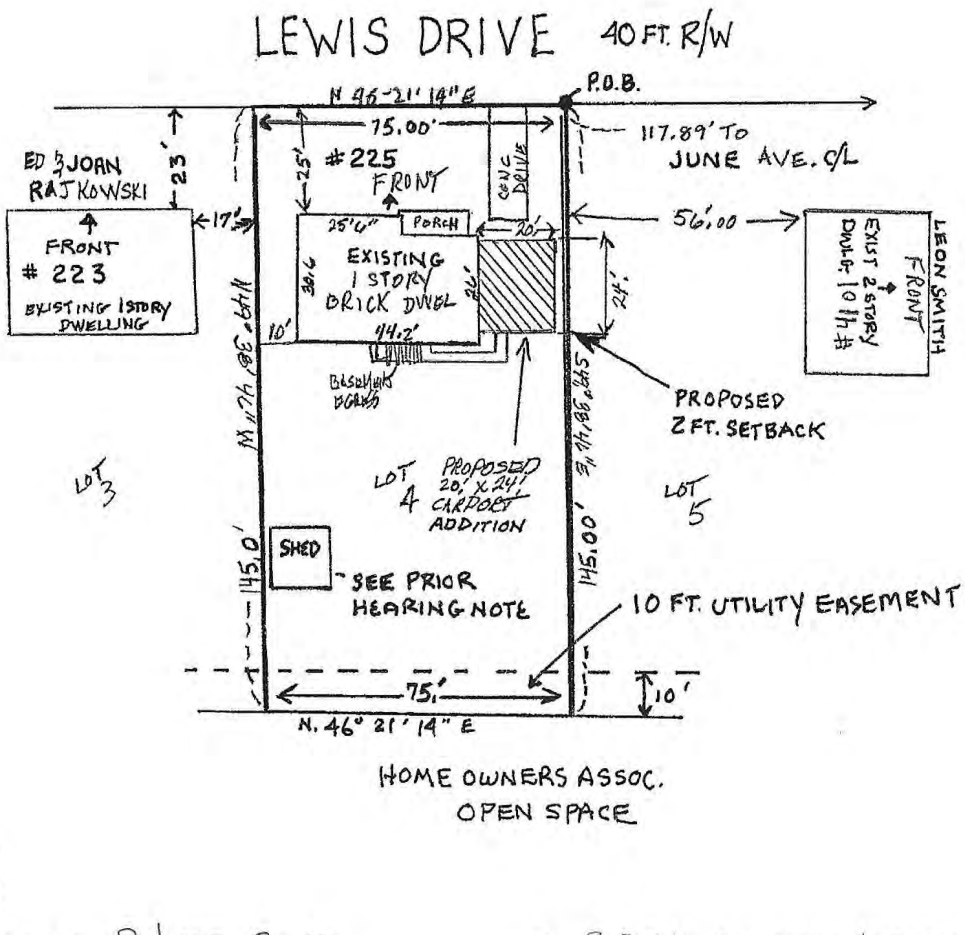
4 COPIES AND 1 PDF. DESIGN YOUR SCALED DRAWING (See Page 6, # 2) TO FIT THE PROVIDED BLANK PLAN FORM. IF A LARGER PLAN IS NEEDED, YOU MAY **ENLARGE** THE BLANK PLAN FORM ***BEFORE*** ADDING YOUR CHECKLIST DETAILS.

Zoning Hearing Plan for Variance X for Special Hearing _____ Mark Type Requested with (X)

Address 225 Lewis Drive Owners(s) Name(s) Robert & Sandra Smith

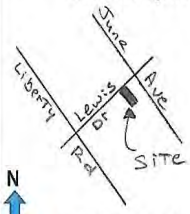
Subdivision Name Withering Heights Plat 2 Lot # 4 Block # G Section # N/A

Plat Book # 23 Folio # 178 10 Digit Tax # 2175900035 Deed Reference# 6587/100238



Plan Drawn By Robert Smith Date 3-30-11 Scale: 1 inch = 40 Feet

Site Vicinity Map



MAP IS NOT TO SCALE

Zoning Map # 108C1

Zoning DR 5.5

Election District 1 ST

Council District 13 TH

Lot Area Acreage .249

Lot Square Footage 10,875

Historic (Yes or No) NO

CBCA (Yes or No) NO

Flood Plain (Yes or No) NO

Utilities – Mark with (X)

Water is:

Public X Private ____

Sewer is:

Public X Private ____

Prior Hearing (Yes or No) Yes

If (Yes) list Case Number(s) and order result(s) below:

2009-0327-A

Variance Granted

For 1 FT Shed

Setback

Violation Case Number(s)

THE ZONING PETITION PROPERTY DESCRIPTION

Three (3) typed copies (separate pages) of the zoning description of the property is required. Standard 8-1/2" x 11" sheets are acceptable. Most property descriptions, as stated on a deed, are too wordy but some of the information must be used. (Note: Old deed information such as perches or a stone, etc. cannot be used as is.) Read your deed, your location survey and your State Assessment record to determine which of the three options you should use. DO NOT PHOTOCOPY THE DESCRIPTION IN THE DEED. The zoning property description must comply with Part A and Part B:

PART A (START DESCRIPTION WITH THE FOLLOWING):

ZONING PROPERTY DESCRIPTION FOR_____
(address or location)

*Beginning at a point on the (north, south, east or west) side of (name of street on which property fronts) which is (number of feet of right-of-way width) wide at the distance of (number of feet) (north, south, east or west) of the centerline of the nearest improved intersecting street (name of street) which is (number of feet of right-of-way width) wide.

*Be aware that the Beginning Point and the distance in feet to the street centerline intersection, as stated in the zoning property description, must be shown and labeled on the hearing plan. The lot area (total square feet or acres) on the hearing plan and the zoning description must agree.

PART B (CONTINUE DESCRIPTION WITH ONE OF THE FOLLOWING 3 OPTIONS):

OPTION 1: (Metes and Bounds Sample – lot not part of record plat or minor subdivision):

THIS IS A SAMPLE ONLY: Thence the following courses and distances: (1st Point of Call- "POC") N.87 12' 13" E. 321.1', (2nd POC) S.18 27' 03" E. 87.2', (3rd POC) S.62 19' 00" W. 318', and (4th POC) N.08 15' 22" W. 80', back to the point of beginning as recorded in Deed Liber (_), Folio (_), containing (number of total square feet or acres in lot). Located in the (_) Election District and (_) Council District.

OPTION 2: (Subdivision Lot – lot is part of record plat):

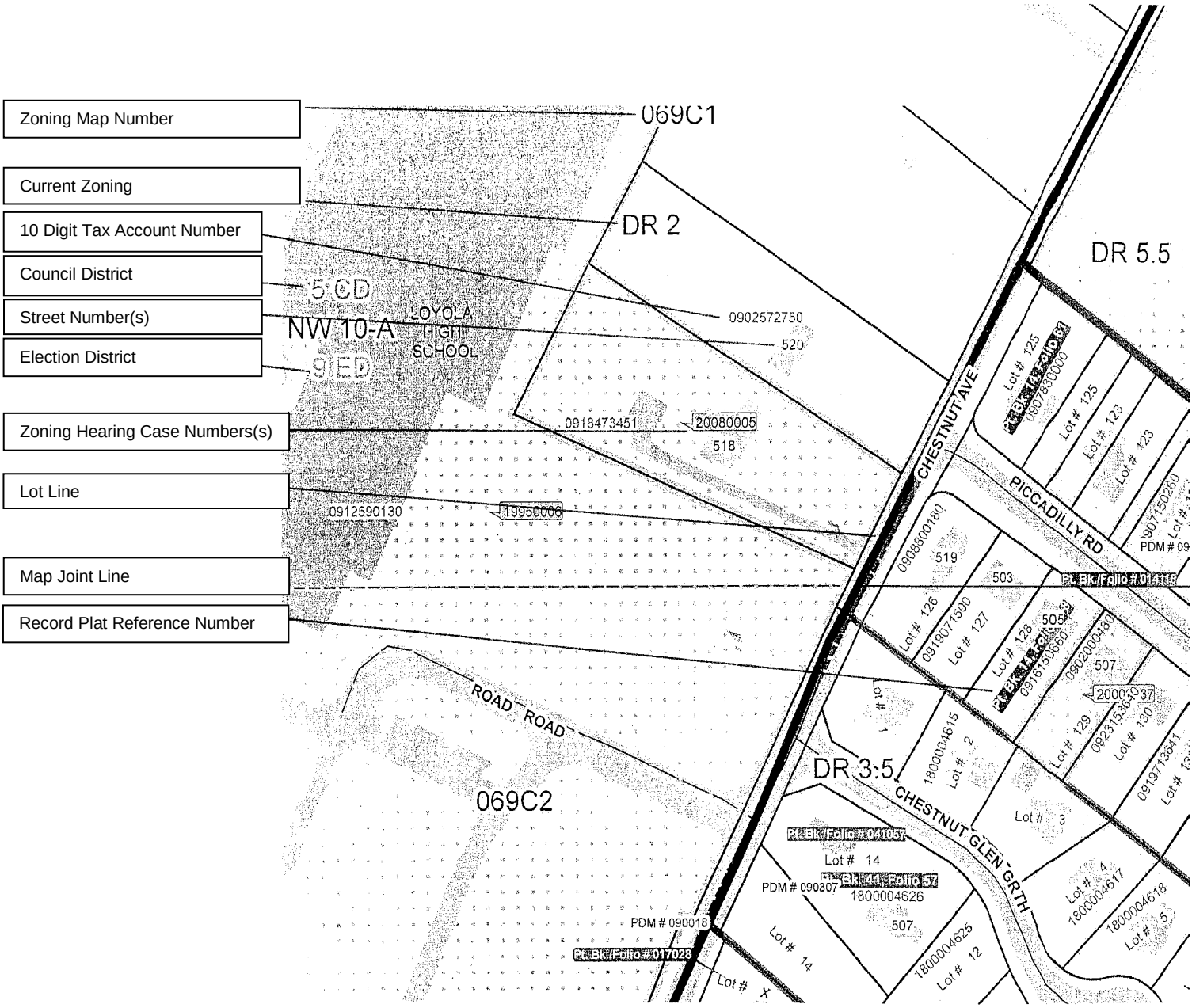
Being Lot # (_), Block (_), Section # (_) in the subdivision of (name of subdivision) as recorded in Baltimore County Plat Book # (_), Folio # (_), containing (number of total square feet or acres in lot). Located in the (_) Election District and (_).

OPTION 3: (Minor Subdivision Lot Sample):

THIS IS A SAMPLE ONLY: Thence the following courses and distances: (1st Point of Call- "POC") N.87 12' 13" E. 321.1', (2nd POC) S.18 27' 03" E. 87.2', (3rd POC) S.62 19' 00" W. 18', and (4th POC) N.08 15' 22" W. 80' back to the point of beginning, as recorded in Deed Liber (_), Folio (_), containing (number of total square feet or acres in lot). Located in the (_) Election District and (_) Council District. Also known as Lot # (_) in the minor subdivision of (name of minor subdivision), minor subdivision # (_ _ -- _ _ _ -- M), as maintained by the Development Management Division of the Department of Permits, Approvals and Inspections.

EXAMPLE # 2 - GIS MAP COPY

Available from the Zoning review counter. The color copy of this map is required for petition filing. This black and white example is keyed to the map information outlining the hearing site clearly on this map.



Zoning Hearing Plan for Variance _____ for Special Hearing _____ Mark Type Requested with (X)

Address _____ Owners(s) Name(s) _____

Subdivision Name _____ Lot # _____ Block # _____ Section # _____

Plat Book # _____ Folio # _____ 10 Digit Tax # _ _ _ _ _ _ _ _ _ _ Deed Reference# _ _ _ _ _ _ / _ _ _ _ _ _

N

Plan Drawn By _____ Date _____ Scale: 1 inch = _____ Feet

11

Site Vicinity Map

N

MAP IS NOT TO SCALE

Zoning Map # _____

Zoning _____

Election District _____

Council District _____

Lot Area Acreage _____

Lot Square Footage _____

Historic (Yes or No) _____

CBCA (Yes or No) _____

Flood Plain (Yes or No) _____

Utilities – Mark with (X)

Water is:

Public _____ Private _____

Sewer is:

Public _____ Private _____

Prior Hearing (Yes or No) _____

If (Yes) list Case Number(s)

and order result(s) below:

_____

_____

_____

_____

Violation Case Number(s)

_____

_____

BALTIMORE COUNTY DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number: - -A Address _____

Contact Person: _____ Phone Number: 410-887-3391
Planner, Please Print Your Name

Filing Date: _____ **Posting Date:** _____ **Closing Date:** _____

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 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 a neighbor (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 Administrative Law Judge. The judge may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. If all County/State agencies' comments are received, you will receive written notification as to whether the petition has been granted, denied, or will proceed to a public hearing. This decision is usually made within 10 days of the closing date. The written 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 Administrative Law Judge), 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.

Petitioner: This Part of the Form is for the Sign Poster Only (Detach Along Dotted Line)

USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT

Case Number: - -A Address _____

Petitioner's Name: _____ Telephone (Cell) _____

Posting Date: _____ Closing Date: _____

Wording for Sign: To Permit _____

_____

_____

_____

_____

Revised 1/2022

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Case Number: _____

Property Address: _____

Legal Owners (Petitioners): _____

Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: Company/Firm (if applicable): _____

Address: _____

_____

_____

Telephone Number: _____

*Failure to advertise and/or post a sign on the property within the designated time will result in the Hearing request being delayed. The delayed Hearing Case will be cycled to the end of pending case files and rescheduled in the order that it is received. Also, a $250.00 rescheduling fee may be required after two failed advertisings and/or postings.

Revised 3/2022

Exhibit 3 Case #2023-0053-A

David Cromwell et al. v. Arthur Thomas Ward, III,
No. 617, September Term, 1994

HEADNOTE: Zoning variances and special exceptions distinguished; variance process is a multi-step process; the first step is in regards to a determination of whether the property, for which the variance from the terms of the ordinance is sought, in and of itself possesses any unique or peculiar characteristic, *i.e.*, topography, narrowness, abnormal subsurface characteristics, historical or architectural significance, not shared generally by other similarly located properties in the area, so that the ordinance's impact on the subject property is more severe than the impact upon neighboring properties generally; if the requirements of the first step, uniqueness or peculiarity, are not met, no further steps are taken, *i.e.*, practical difficulty or unreasonable hardship and the variance must summarily be denied; self-inflicted hardship is not the type of practical difficulty or unnecessary hardship contemplated by zoning ordinance variance procedures; mistakes by governmental officials generally do not constitute practical difficulty or unnecessary hardship for the purpose of zoning variance procedures, though they may, under some circumstances, give rise to equitable actions.

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 617

SEPTEMBER TERM, 1994

DAVID CROMWELL *et al.*

v.

ARTHUR THOMAS WARD, III

Wenner,
Cathell,
Murphy,

JJ.

Opinion by Cathell, J.

Filed: January 4, 1995

#93CV7265

Appellant, David Cromwell, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas Ward, III. Appellant poses the following questions:

> I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.
>
> II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?
>
> III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of §307 of the Baltimore County Zoning Regulations?

While those questions are limited, appellant expands in his arguments supporting the questions and argues that

> [t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property*, must be the proximate cause of the hardship [Emphasis added.]

and

> Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request . . . . [Emphasis added.]

and

> Mr. Ward's property *is not unique* from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.*, it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) 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. 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. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or[1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness,

---

[1] Some ordinances use the conjunctive, "and," creating a requirement that both practical difficulty "and" unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, "or," to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when "use" variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser "practical difficulty" standard when "area" variances are sought.

exists. Further consideration must then be given to the general purposes of the zoning ordinance.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice*, appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process – an inherent uniqueness of the subject property not shared by surrounding properties.

The Facts

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;"

"[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14'" and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height

elevations might have been discernable, though we are at a loss to understand why the elevations were not given in feet and why the plans contained no scale.[2]

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.[3] Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

The Law

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.

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[2] Appellee, several times in his brief, states that the plans "clearly" show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown – they are not shown at all – but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

[3] As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

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 Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

> [M]odification only of density, bulk, or area requirements in the zoning ordinance . . . where *owing to conditions peculiar to the property, and not the result of any action taken by the applicant*, a literal enforcement . . . would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, *i.e.*, height, may be granted

> 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 . . . would result in practical difficulty or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions . . . peculiar to the land . . . and . . . practical difficulty . . . ." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,[4] if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. 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).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses [5]

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[4] It is not clear that section 307, "Variances," would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of "area" variance requests.

[5] Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to "use" issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense,

(continued...)

(where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub judice*.

Special Exceptions (and Conditional Uses) and Variances — Distinguished

The treatise writers define the concept as:

> A variance is an authorization for [that] . . . which is prohibited by a zoning ordinance. . . .
>
> . . . [T]he difference between the two [variances and special exceptions] . . . is of practical significance. . . .
>
> > ". . . [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception contemplates a permitted use . . . [once] the prescribed conditions therefor are met."
>
> . . . [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."

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[5](...continued)
however, "conditional uses" refer to uses while exceptions normally apply to area, *i.e.*, yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

> . . . [T]he standards for . . . exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.
>
> "A special exception . . . is one which is controlled and . . . permissible in a given zone. It is granted . . . upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized . . . where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02-03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County*, 239 Md. 189, 193 (1965)). *See also Schultz v. Pritts*, 291 Md. 1, 11 (1981); *People's Counsel v. Mangione*, 85 Md. App. 738, 748 (1991).

> A distinction commonly is made between [special] exceptions . . . and variances . . . . An "exception" . . . is a dispensation permissible where a board . . . finds existing those facts . . . specified in the ordinance as sufficient . . . . ". . . But zoning ordinances usually provide for another kind of dispensation, . . . by which a variance . . . may be authorized . . . where a literal enforcement . . . would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

> The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances. . . . A variance should be strictly construed . . . .

Id. § 25.162 (footnotes omitted). *See also* 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* § 38.01 (4th ed. 1981); 3 E. C. Yokley, *Zoning Law and Practice* § 21-6 (4th ed. 1979); 3

Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

> There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception . . . is expressly permissible . . . . [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property . . . or by reason of exceptional topographical conditions or other extraordinary situations . . . of specific parcels of property, the strict application . . . would result in . . . unusual practical difficulties to, or exceptional or undue hardship . . . .

Stacy, 239 Md. at 193.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 288-91 (1953):

> It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area . . . the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance. . . .
>
> . . . .
>
> . . . There is a distinction between . . . the ordinance provisions . . . in those cases [Baltimore City cases] and the facts and the ordinance provision in this case . . . .

See also our case of *Martin Marietta Aggregates v. Citizens*, 41 Md. App. 26, 34-35 (1978).

> A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional[6] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met . . . . While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use . . . so long as . . . conditions are met. Therefore, conditional use grants cannot be encompassed within the . . . statutory authority to grant variances.

Eberhart v. Indiana Waste Systems, Inc., 452 N.E.2d 455, 459 (Ind. App. 3 Dist. 1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals*, 464 N.E.2d 347, 350 (Ind. App. 1 Dist. 1984), opined:

> A great deal of confusion has been generated . . . because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions . . . . A variance involves a deviation . . . from the legislated zoning classification . . . . A special exception involves a use which is permitted . . . once certain statutory criteria have been satisfied. [Citations omitted.]

See also Lindquist v. Board of Adjustment, 490 So.2d 16, 18 (Ala. Civ. App. 1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the . . . burden of proving . . . hardship"); *Wolfner v. Board of Adjustment*, 672 S.W.2d 147, 150 (Mo. App. 1984) ("an

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[6] Exceptional is used here in its generic sense.

exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes*, 431 A.2d 163, 167 (N.J. Super. A.D.), *cert. denied*, 434 A.2d 1099 (1981) (special exception and variance defined - case decided on zoning estoppel basis); *A. J. Grosek & Associates v. Zoning Hearing Bd.*, 450 A.2d 263, 265 (Pa. Commonwealth 1982); *Bell v. City Council*, 297 S.E.2d 810, 813-14 (Va. 1982).

VARIANCE - The First Step - Uniqueness or Peculiarity of the Subject Property

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 Morrow 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).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md. Code Article 66B, and it is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws – and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because

> the board of zoning appeals is in effect given the power to set aside or annul the ordinance . . . with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships" . . . . [U]nder our system of written constitutions it is essential that they accomplish those . . . objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them . . . . For such phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred . . . .

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, *appeal dismissed*, 290 U.S. 585 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church*, 164 Md. 487 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore*, 187 Md.

296, 300 (1946). By the time of its decision in *Heath*, the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances in his own discretion." 187 Md. at 301. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar*, the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible where the Board . . . finds . . . those facts . . . specified in the ordinance . . . ." *Id*. at 303.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their

respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore*, 231 Md. 280, 285 (1963) ("In Baltimore City there appears to be no distinction between the two terms . . . .").[7] We also attempted to indicate the problem in *North v. St. Mary's County*, 99 Md. App. 502, 510 (1994), in footnote 3:

> Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances. . . . [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

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[7] Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore*, 195 Md. 395, 400 (1950), where the Court noted "facts to justify an exception . . . [show] that the hardship affects the particular premises and is not common to other property in the neighborhood." This is a variance standard.

> [I]t was incumbent upon the Marinos to have shown . . . (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants' own actions.

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

> The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees. . . .

240 Md. at 554. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning*, § 48-1, and then noted:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions . . . hardship arises . . . . The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship. . . . [T]he hardship, arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief. . . ."
>
> The instant case fits squarely within the above general rule. . . . [I]f the appellees had used proper diligence . . . and then made accurate measurements . . . [the resultant

> hardship could have been avoided]. The hardship . . . was entirely self-created . . . .

Id. at 554-55 (emphasis added). Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. *See also Burns v. Mayor and City Council of Baltimore*, 251 Md. 554, 559 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore*, 233 Md. 372, 378 (1964) ("[There was] no evidence of any limitation . . . by . . . size of yards, irregularity of shape of land or buildings, topography, grade or accessibility" . . . .); *Mayor and City Council v. Sapero*, 230 Md. 291 (1962); *Frankel v. Mayor and City Council of Baltimore*, 223 Md. 97, 104 (1960) ("It was incumbent . . . to show that the hardship . . . affected his particular premises and was not . . . common to other property in the neighborhood. . . . [H]e met the burden . . . ."); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.*, 216 Md. 271, 277-78 (1958).

> Secs. 14 (b), 14 (d) and 16 . . . have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property . . . .

Mayor and City Council v. Polakoff, 233 Md. 1, 9 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore*, 247 Md. 601, 606-07 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

> Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant

> a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "*urgent necessity, hardship peculiar to the particular property* . . . ." . . . Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley*, 270 Md. 208, 210 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

> Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy . . . that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance . . . .

. . . .

> Concededly, this is a close case, but it is nevertheless sufficient . . . .

Id. at 215. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman*, 227 Md. 243 (1961), and *Frankel v. Mayor & City Council of Baltimore*, 223 Md. 97 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs*, 307 Md. 307 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances

sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question . . . that do not apply generally to other properties . . . in the . . . district." *Id.* at 340. The Court concluded:

> The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary *characteristics* of the *land itself* and therefore not the kind of hardship cognizable under the Zoning Ordinance. . . .
>
> We think the Board's decisions . . . reflect no error of law.

Id. at 340-41 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel*, 96 Md. App. 219, 224 (1993), after noting the standard of review, we said:

> In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.
>
> The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist *that are peculiar to the land* . . . and where strict compliance . . . would result in practical difficulty

. . . ." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances *of a particular location* and must be analyzed individually." *Id.* at 227-28 (emphasis added).

In *North v. St. Mary's County*, 99 Md. App. at 512, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land . . . ." We there stated that, in the zoning context, the term "unique" has a customized meaning:

> 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.
>
> . . . .
>
> In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, in *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

> Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific . . . property . . ., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of . . . property . . . the literal enforcement . . . would make it exceptionally difficult . . . to comply . . . and would cause unwarranted hardship and injustice. . . .
>
> The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.*

Id. at 514-15.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean, supra*; *Stacy, supra*; *Sapero, supra*; *Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra*. All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel, Loyola*, and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly . . . close case . . . ." *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky*, 239 Md. 611 (1965), involved one of the same issues that was presented in *Frankel, i.e.*, whether a zoning restriction so

compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance – a variance Frankel was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged that Borinsky had the "same expert witness," "he was asked the same general questions . . . and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* at 624. The Court, nevertheless, made a factual distinction and declined to apply *Frankel*. Judge Barnes opined in dissent that, based on what the Court had done in *Frankel*, the facts for variances were stronger in *Borinsky*. *Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel*, *Loyola*, and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York*, 482 N.W.2d 537 (Neb. 1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell*, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank*, the court said at 545: "[A] variance [may be granted] . . . only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of the zoning

ordinance] 'would result in peculiar and exceptional practical difficulties . . . or exceptional . . . hardships . . . .'"

In *Shafer v. Zoning Bd. of Appeals*, 511 N.E.2d 635 (Mass. App. Ct. 1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

> There was no evidence . . . regarding "soil conditions, shape or topography of [the property] . . . especially affecting [the property] but not affecting generally the zoning district in which it is located" . . . . The . . . argument that the insufficient width . . . constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

511 N.E.2d at 636-37 (citation omitted). *See also VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn. 1983) ("the plight of respondent was not due to circumstances 'unique to his property.' . . . [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware . . . .")

In *St. Clair v. Skagit County*, 715 P.2d 165 (Wash. App. 1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board,

approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings . . . ." 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist . . . peculiar to the land . . . ." *Id.* The court then noted that the applicant had done there what Ward attempts to do in the case *sub judice*:

> [The appellant] relied primarily upon the fact that the County issued a building permit . . . and that she acted in good faith . . . .

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself . . . . Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75-foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity . . . ." *Id.* at 169. In the case *sub judice*, the Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment*, 706 P.2d 899 (Okla. 1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had

expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner . . . constitutes no valid basis for a variance . . . . [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

> The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44-107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property*.

Id. at 904-05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992), but had facts similar to *Lucas*, the Supreme Court of Delaware in *Baker v. Connell*, 488 A.2d 1303 (Del. Supr. 1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0-1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight

of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the property could not conform to open space land. The appellate court affirmed, stating:

> [F]inancial return . . . alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0-1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R-2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard*, ___ U.S. ___, [62 U.S.L.W. 4576] (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment*, 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice*. The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance . . . the applicant [must] show . . . that there are special conditions with regard to the property . . . ." 685 P.2d at 1035-36. The court continued:

> What must be shown . . . is that the property itself contains some special circumstance that relates to the hardship complained of . . . .
>
> . . . The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of

> property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.
>
> . . . .
>
> Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos[es] brought their losses upon themselves. The application affirmatively alleged . . . that no dwelling existed . . . [8]

Id. at 1036-37 (footnotes omitted).

The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice*, that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice . . . in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication . . . and . . . shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id*. at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimen-

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[8] The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

sions from other schematics, they certainly were not required to do so in light of appellants' affirmative statement of compliance.

See also Chambers v. Smithfield City, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond*, 300 S.E.2d 781 (Va. 1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A-1 district." *Id.*

The court in *Richardson v. Town of Salisbury*, 455 A.2d 1059, 1061 (N.H. 1983), noted:

> We have defined unnecessary hardship as follows:
>
> > "A hardship exists only if due to special conditions *unique* to a *particular parcel of land*, the ordinance unduly restricts the use . . . . The hardship must relate to the special character of the land

> rather than to the personal circumstances of the landowner." [Emphasis added.]

See also Margate Motel, Inc. v. Gilford, 534 A.2d 717 (N.H. 1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment*, 459 A.2d 244 (N.H. 1983).

In *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

> [T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
>
> . . . .
>
> . . . [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
>
> . . . .
>
> . . . However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size. . . .
>
> . . . However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also Williams v. Salem Township, 500 A.2d 933 (Pa. Commonwealth 1985) *alloc. denied*, 531 A.2d 781 (1987); *Hersh v. Zoning Hearing Bd. of Marlborough Township*, 493 A.2d 807 (Pa. Commonwealth 1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem*, 480 A.2d 362 (Pa. Commonwealth 1984) (burden sustained); *Davis v. Zoning Bd. of Adjustment*, 468 A.2d 1183 (Pa. Commonwealth 1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment*, 456 A.2d 1110

(Pa. Commonwealth 1983); *Immordino v. Zoning Hearing Bd.*, 441 A.2d 818, 821 (Pa. Commonwealth 1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property* . . . .") (Emphasis added.)

> A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area . . . . Indialantic's zoning restrictions are common difficulties shared by all other ocean-front lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla. App. 5th Dist. 1981), *aff'd*, 419 So.2d 1041 (1982) (citation omitted). *See also Fort Lauderdale Bd. of Adjustment v. Nash*, 425 So.2d 578, 579 (Fla. App. 4th Dist. 1983); *City of Naples v. Clam Court Marina Trust*, 413 So.2d 475, 477 (Fla. App. 2d Dist. 1982); *Lakeshore Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments*, 481 So.2d 162, 168 (La. App. 4th Cir. 1985), *cert. denied*, 494 So.2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231 (D.C. App. 1979), where, due to the size of the lot, no viable economical

use of the property could be had without the variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in *U-Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord*, 451 A.2d 1315, 1317 (N.H. 1982), saying: "The location and characteristics of the property involved create greater security requirements . . . than . . . other property in the area because the parcel . . . is less central . . . less populated and . . . less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland*, 637 P.2d 1302 (Or. App. 1981), *cert. denied*, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. *See also Higgins v. Township of Radnor*, 318 A.2d 761, 763 (Pa. Commonwealth 1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

> It is *fundamental* that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *to particular property* and not general in character . . . . [I]t is not uniqueness of the plight of the owner, but

> uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides] . . . . [T]he hardship [in order to justify a variance, however,] . . . must relate to the particular property of the applicant . . . .

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

> [I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, *supra* § 14.55 (1968).

> It follows that the unnecessary hardship . . . must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance . . . .
>
> In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question. . . .
>
> . . . .
>
> Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

> The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot . . . arises from circumstances peculiar to that lot . . .; and in that case the appropriate remedy is . . . a variance . . . . In the other types of cases, the hardship . . . may arise because of conditions which are general in the neighborhood; . . . it is often held that the

> appropriate remedy is a change in the zoning . . . . [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

> The great strengthening of the criteria for granting variances, . . . has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question . . . . Moreover, the courts have again emphasized that a variance granted to take care of some hardship personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. *See also* Rathkopf, *supra* § 38.04; Yokley, *supra* § 21-6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.").

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals*, 93 N.E.2d 645, 647 (N.Y. 1950):

> [T]he record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21-6.

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.

Self-Inflicted Hardship

We have before referred to *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206. There, the Court said, "it was incumbent [on the applicant] to [show] . . . that the hardship was not the result of the applicants' own actions." *Id.* at 218. The Court of Appeals noted in *AD + Soil, Inc. v. County Comm'rs*, 307 Md. at 340:

> The essence of Ad + Soil's argument . . . is that the setback requirements . . . would cause . . . unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements. . . . The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted . . . and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals*, 438 A.2d 1186, 1190 (Conn. 1982) ("'[S]elf-inflicted or self-created hardship . . . is never considered proper grounds for a variance.' . . . '[W]here the applicant . . . creates a nonconformity, the board lacks power to grant a variance.'") (citations omitted); *Volkman v.*

City of Kirkwood, 624 S.W.2d 58 (Mo. App. 1981); *Matter of Schrader*, 660 P.2d 135 (Okl. 1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals*, 310 S.E.2d 438 (S.C. App. 1983); *McClurkan v. Board of Zoning Appeals*, 565 S.W.2d 495 (Tenn. 1977); *Steele v. Fluvanna County Bd. of Zoning Appeals*, 436 S.E.2d 453, 456 (Va. 1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements . . . was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Granting of the Permit

In *Francis v. MacGill*, 196 Md. 77 (1950), a property owner sought equitable injunctive relief. The facts were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

> "Adoption of zoning ordinance *ipso facto* revokes permit for construction . . . where no construction has begun."
>
> . . . They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro*, 187 Md. 623, 634 (1947), *overruled on other grounds in Nutter v. Non-Profit Housing Co.*, 230 Md. 6 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit . . . does not create a vested right, or estop[9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Synder*, 186 Md. 342, 347 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward*, 186 Md. 330, 340 (1946), the Court held:

---

[9] The applicability of the "doctrine of zoning estoppel" has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council*, 96 Md. App. 526 (1993), *rev'd in part*, 334 Md. 499 (1994).

> The Board . . ., as an administrative body, was bound to follow the regulations it adopted, in the exercise of . . . delegated legislative power. The fact that it might have rezoned . . . does not alter its obligation to adhere to existing regulations . . . .

In the case of *Lipsitz v. Parr*, 164 Md. 222 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

> A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law. . . . [T]he ordinance forbade the officials . . . to grant the permit which the plaintiff asked and obtained . . . .
>
> . . . [I]t was therefore unlawful for the officers . . . to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued . . . does not . . . prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality. . . . *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.
>
> So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act . . . it is not estopped by the unauthorized or wrongful act of its officer . . . in issuing a permit that is forbidden by the explicit terms of an ordinance. . . . *Valentine v. Rds. Directors*, 146 Md. 199, 206 [(1924)] . . . . [Citations omitted, emphasis added.]

164 Md. at 227-28.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates*, the Court opined that "[c]onsequently, '[e]very-one dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.'" 313 Md. at 437. The Court added: "[T]he doctrine of equitable estoppel 'cannot be . . . invoked to defeat the . . . enforcement of . . . ordinances, because of an error or mistake committed by one of its officers . . . which has been relied on by the third party to his detriment.'" *Id.*

Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward.

The authorities elsewhere are in accord.

> The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land*, not to the circumstances of the *owner*.

Richardson, 455 A.2d at 1062.

> [R]elator argues the Board should be estopped from denying the height variance because a

> city building inspector visited the premises several times and observed the construction taking place but made no complaint . . . .
>
> In any case there is no authority on the part of a building inspector to grant a variance . . . .

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La. App. 4th Cir. 1970). *See also Klanke v. Zoning Bd. of Adjustment*, 477 A.2d 907, 909 (Pa. Commonwealth 1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra*.

Resolution

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 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 policy-makers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

Exhibit 4 Case #2023-0053-A

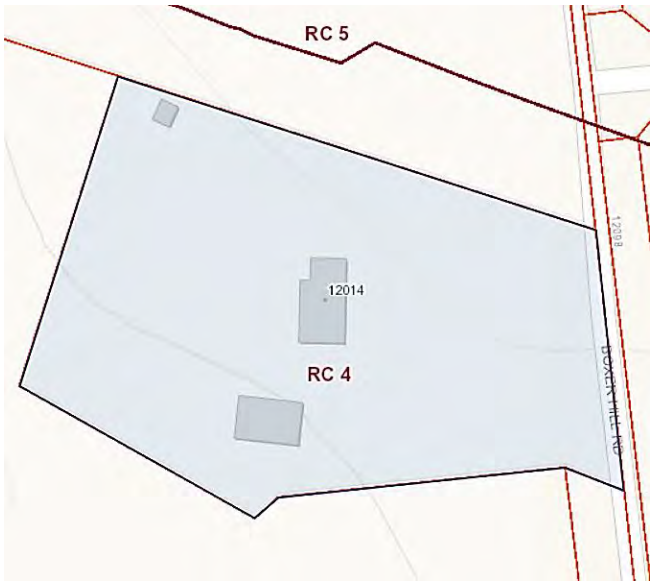
12014 Boxer Hill Rd











GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	1.63
AREA_CODE	ACRES
Year Built	1967
Total Value	468,100
PREMISE ADDRESS	12014 BOXER HILL RD
OWNER NAME	HALLENGREN KRISTOPHER R HALLENGREN MEAGAN S

Exhibit 5 Case #2023-0053-A Page 1

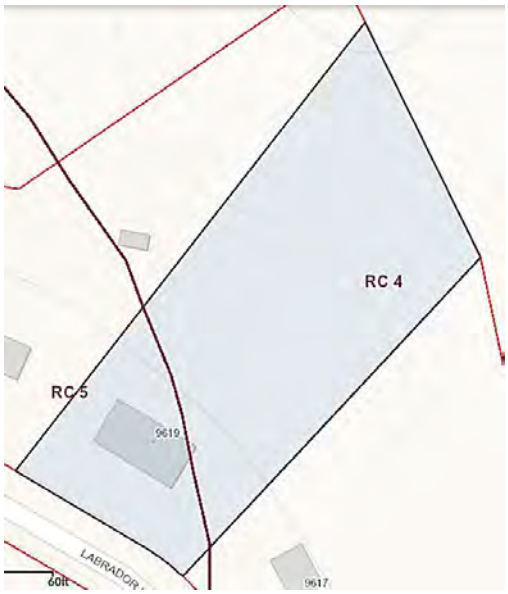
9619 Labrador Rd











GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	1.51
AREA_CODE	ACRES
Year Built	1971
Total Value	186,800
PREMISE ADDRESS	9619 LABRADOR LN

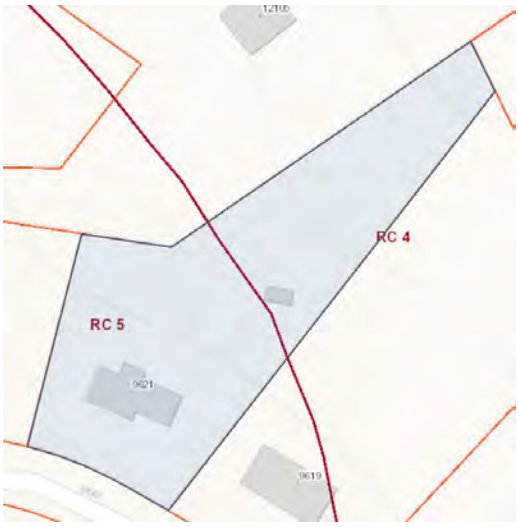
9621 Labrador Lane











GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	38,333.00
AREA_CODE	SQUARE FEET
Year Built	1972
Total Value	231,580
PREMISE ADDRESS	9621 LABRADOR LN

38,333 Sq/Ft = 0.88 Acre

1009 Painters Ln











GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	2.63
AREA_CODE	ACRES
Year Built	1965
Total Value	441,600
PREMISE ADDRESS	1009 PAINTERS LN

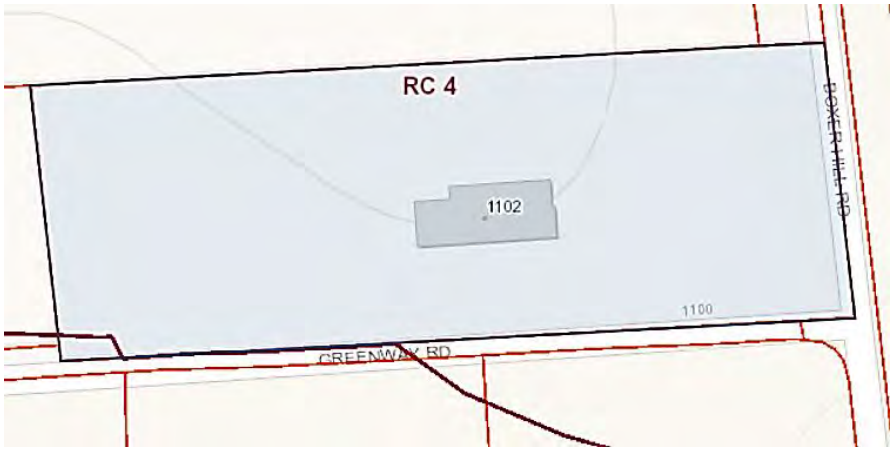
1102 Greenway Road











GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	1.33
AREA_CODE	ACRES
Year Built	1958
Total Value	376,500
PREMISE ADDRESS	1102 GREENWAY RD

1124 Greenway Road





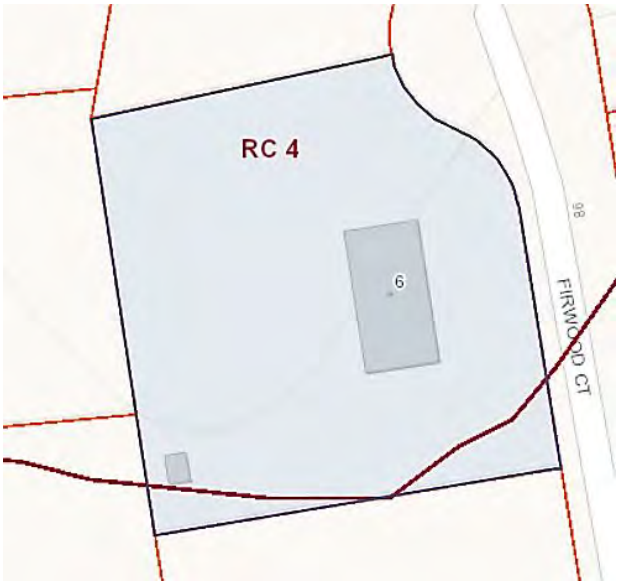




GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	1.33
AREA_CODE	ACRES
Year Built	1958
Total Value	376,500
PREMISE ADDRESS	1102 GREENWAY RD

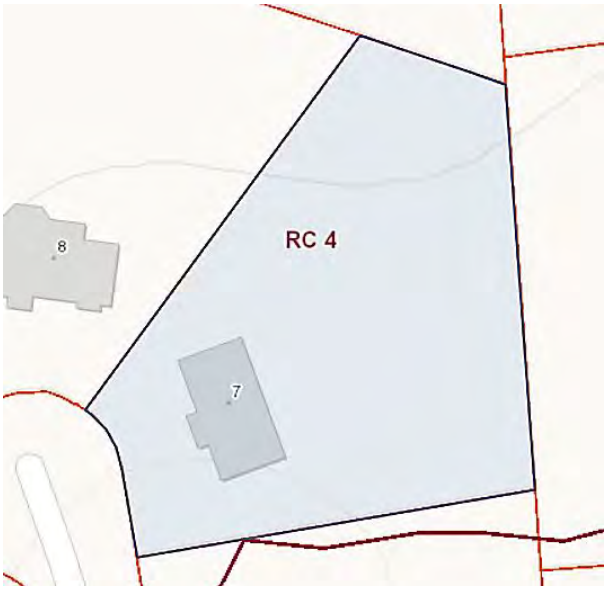
6 Firwood Ct





7 Firwood Ct





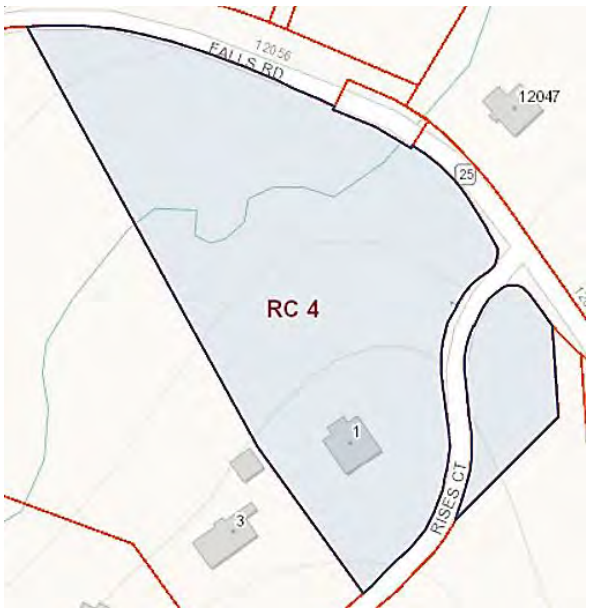
GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	37,897.00
AREA_CODE	SQUARE FEET
Year Built	1971
Total Value	189,260
PREMISE ADDRESS	6 FIRWOOD CT

GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	1.00
AREA_CODE	ACRES
Year Built	1971
Total Value	378,600
PREMISE ADDRESS	7 FIRWOOD CT

NOTE: 37897 Sq/Ft = 0.87 Acre

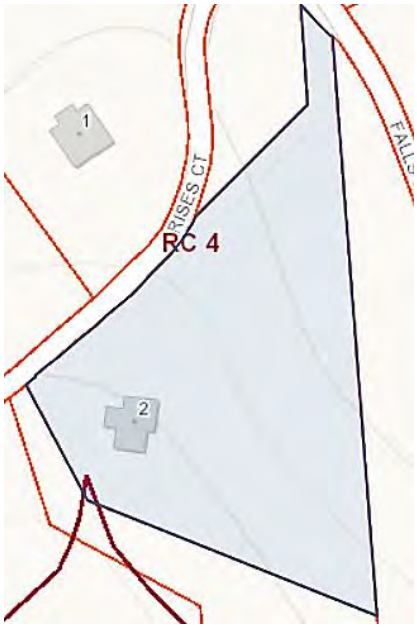
1 Rises Ct





2 Rises Ct



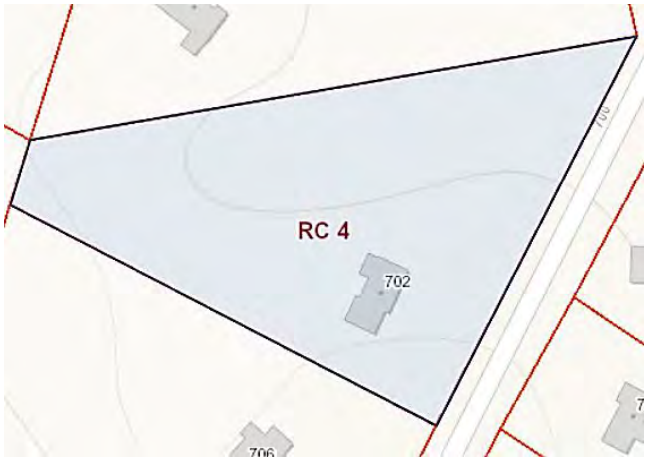


GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	4.02
AREA_CODE	ACRES
Year Built	1995
Total Value	130,250
PREMISE ADDRESS	1 RISES CT

GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	2.27
AREA_CODE	ACRES
Year Built	1978
Total Value	410,700
PREMISE ADDRESS	2 RISES CT

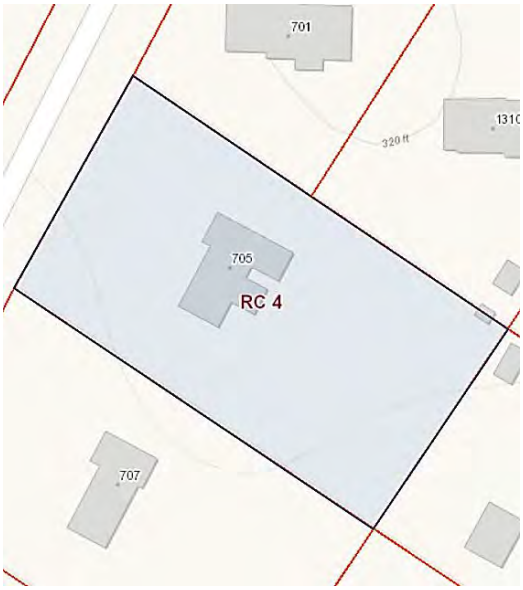
702 Ivy Hill Rd





705 Ivy Hill Rd

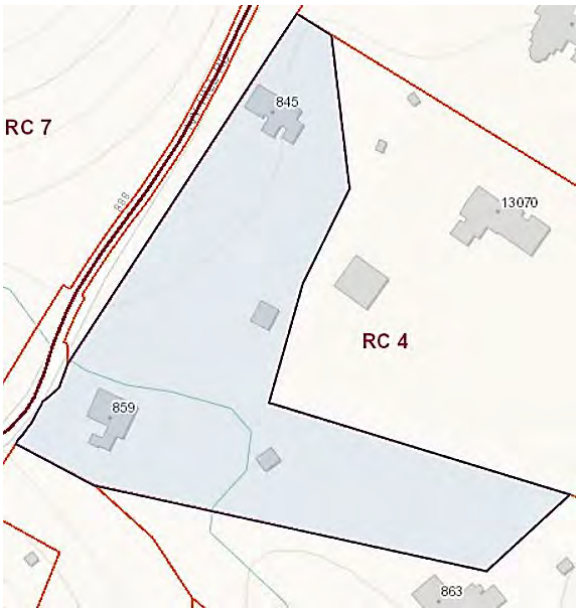




GIS_LU_CODE	RURAL RESIDENTIAL SFD	GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	3.23	LAND_AREA	1.07
AREA_CODE	ACRES	AREA_CODE	ACRES
Year Built	1988	Year Built	1976
Total Value	0	Total Value	466,700
PREMISE ADDRESS	702 IVY HILL RD	PREMISE ADDRESS	705 IVY HILL RD

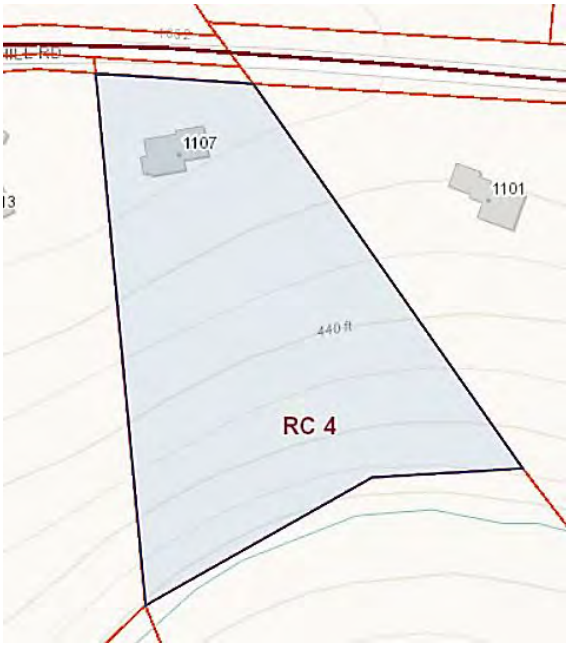
845 Ivy Hill Rd





1107 Ivy Hill Rd





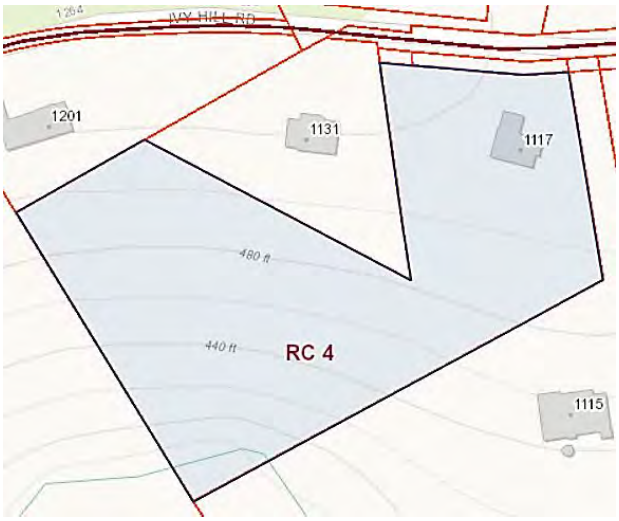
GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	2.09
AREA_CODE	ACRES
Year Built	1956
Total Value	214,110
PREMISE ADDRESS	859 IVY HILL RD

GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	3.11
AREA_CODE	ACRES
Year Built	1986
Total Value	293,130
PREMISE ADDRESS	1107 IVY HILL RD

Property Report for 845 Ivy Hill Rd

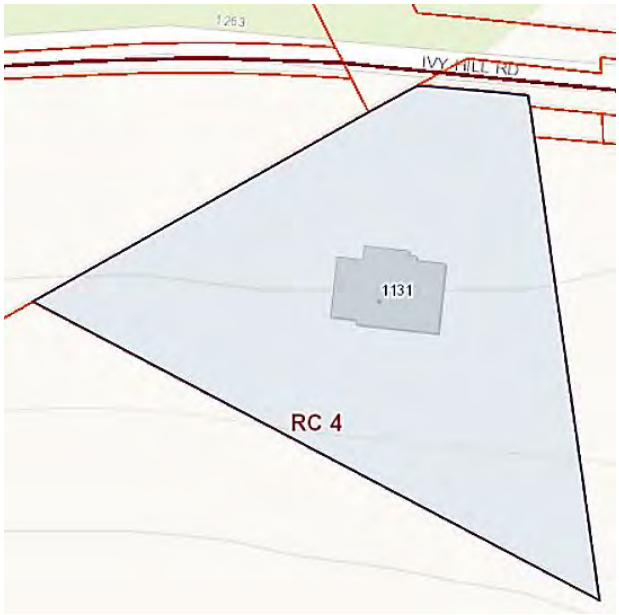
1117 Ivy Hill Rd





1131 Ivy Hill Rd



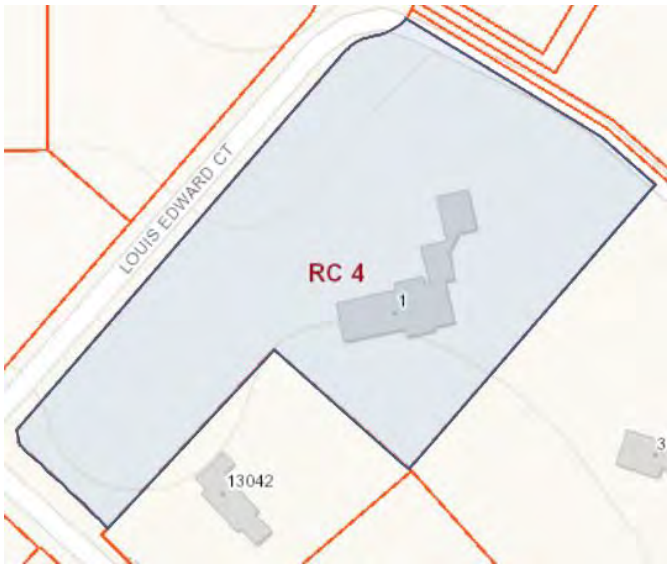


GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	4.09
AREA_CODE	ACRES
Year Built	1977
Total Value	403,800
PREMISE ADDRESS	1117 IVY HILL RD

GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	1,150.00
AREA_CODE	SQUARE FEET
Year Built	0000
Total Value	230
PREMISE ADDRESS	IVY HILL RD

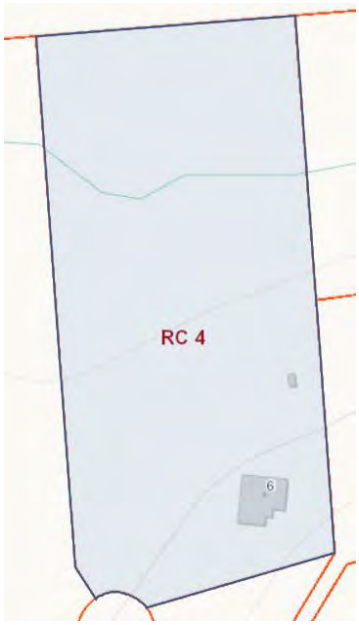
1 Louis Edward Ct





6 Louis Edward Ct





GIS_LU_CODE	RURAL RESIDENTIAL SFD	GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	3.21	LAND_AREA	5.10
AREA_CODE	ACRES	AREA_CODE	ACRES
Year Built	1989	Year Built	1987
Total Value	418,060	Total Value	627,670
PREMISE ADDRESS	1 LOUIS EDWARD CT	PREMISE ADDRESS	6 LOUIS EDWARD CT

Exhibit 6 Case #2023-0053-A

12010 Boxer Hill Rd



GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	30,492.00
AREA_CODE	SQUARE FEET
Year Built	1951
Total Value	294,700
PREMISE ADDRESS	12010 BOXER HILL RD

1103 Greenway Road



GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	1.29
AREA_CODE	ACRES
Year Built	1955
Total Value	469,940
PREMISE ADDRESS	1103 GREENWAY RD

1138 Greenway Road



GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	3.37
AREA_CODE	ACRES
Year Built	1966
Total Value	520,760
PREMISE ADDRESS	1138 GREENWAY RD

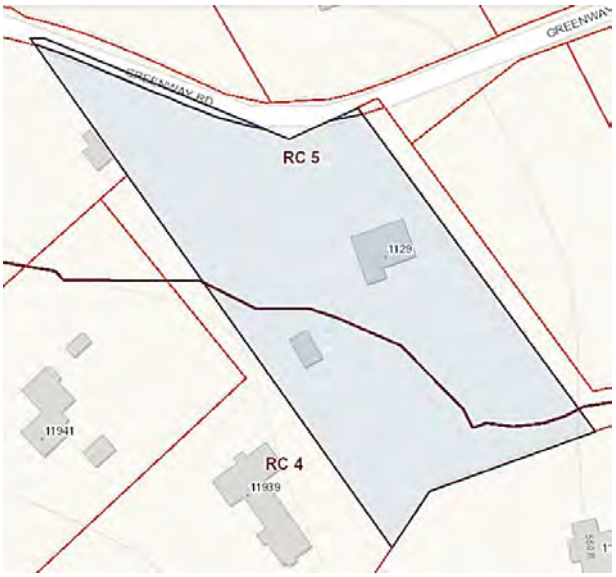
Exhibit 7 Case #2023-0053-A Page 1

1129 Greenway Road









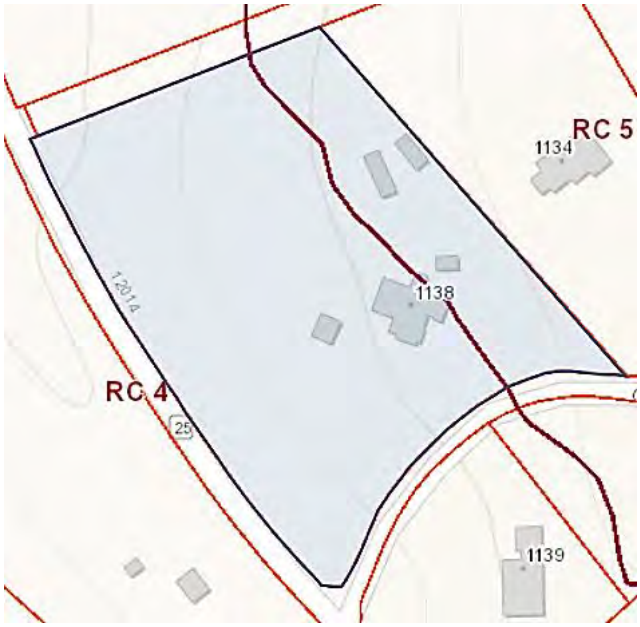
GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	1.34
AREA_CODE	ACRES
Year Built	1968
Total Value	172,160
PREMISE ADDRESS	1129 GREENWAY RD

1138 Greenway Road









GIS_LU_CODE	RURAL RESIDENTIAL SFD
LAND_AREA	3.37
AREA_CODE	ACRES
Year Built	1966
Total Value	520,760
PREMISE ADDRESS	1138 GREENWAY RD

Baltimore County - My Neighborhood

https://bcgis.baltimorecountymd.gov/myneighborhood/

12014 Boxer Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenelg loam, 8 to 15 percent slopes
Soil Name	Glenville silt loam, 3 to 8 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes
Soil Name	Glenelg loam, 0 to 3 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes



9619 Labrador Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes



9621 Labrador Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 0 to 3 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes



1102 Greenway Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 8 to 15 percent slopes



1124 Greenway Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenelg loam, 3 to 8 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes



6 Firwood Ct

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenelg loam, 3 to 8 percent slopes



7 Firwood Ct

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes



1 Rises Ct

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Hatboro silt loams, 0 to 3 percent slopes
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Manor channery loam, 15 to 25 percent slopes
Soil Name	Glenville silt loam, 8 to 15 percent slopes



2 Rises Ct

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Manor channery loam, 15 to 25 percent slopes
Soil Name	Glenville silt loam, 8 to 15 percent slopes



705 Ivy Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Oregon Run
Soil Name	Baltimore gravelly loam, 8 to 15 percent slopes
Soil Name	Wiltshire silt loam, 0 to 3 percent slopes
Soil Name	Benevola silt loam, 8 to 15 percent slopes



845 Ivy Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Subshed Name	Baisman Run
Soil Name	Codorus silt loams, 0 to 3 percent slopes
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Baltimore gravelly loam, 3 to 8 percent slopes



1107 Ivy Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Codorus silt loams, 0 to 3 percent slopes
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Manor-Brinklow complex, 45 to 65 percent slopes
Soil Name	Manor loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes



1117 Ivy Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 45 to 65 percent slopes
Soil Name	Codorus silt loams, 0 to 3 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Manor loam, 15 to 25 percent slopes



1131 Ivy Hill Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenelg loam, 3 to 8 percent slopes
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Manor loam, 15 to 25 percent slopes



1 Louis Edward Ct

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Oregon Run
Soil Name	Benevola silt loam, 8 to 15 percent slopes
Soil Name	Hollinger and Linganore channery silt loams, 15 to 25 percent slopes, rocky
Soil Name	Baltimore gravelly loam, 3 to 8 percent slopes
Soil Name	Baltimore gravelly loam, 0 to 3 percent slopes



6 Louis Edward Ct

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Oregon Run
Soil Name	Benevola silt loam, 8 to 15 percent slopes
Soil Name	Hollinger and Linganore channery silt loams, 15 to 25 percent slopes, rocky
Soil Name	Codorus silt loams, 0 to 3 percent slopes



1103 Greenway Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 8 to 15 percent slopes
Soil Name	Elioak silt loam, 3 to 8 percent slopes



1138 Greenway Rd

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Glenelg loam, 8 to 15 percent slopes
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor loam, 15 to 25 percent slopes



1009 Painters Ln

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Beaver Dam Run
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 8 to 15 percent slopes
Soil Name	Manor channery loam, 15 to 25 percent slopes



Exhibit 9 Case #2023-0053-A

12014 Boxer Hill Rd









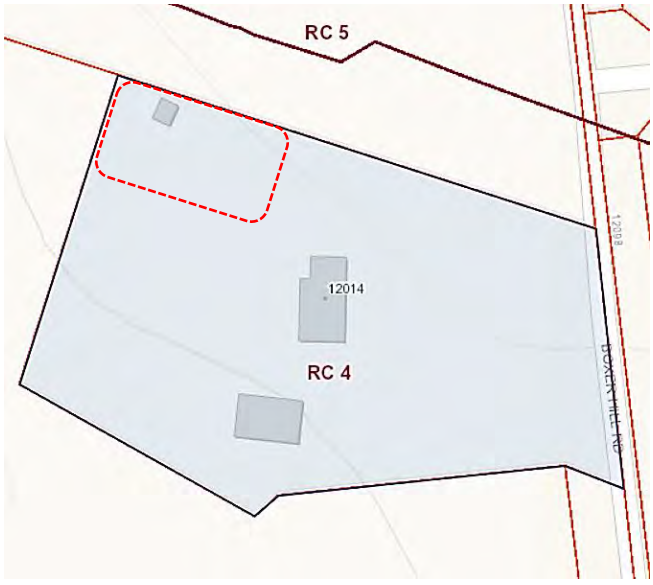




Exhibit 10 Case #2023-0053-A

12014 Boxer Hill Rd and 12015 Boxer Hill Rd





Exhibit 11 Case #2023-0053-A

Baltimore County - My Neighborhood

12014 Boxer Hill Rd (Red Arrow) - Property Search Area



Exhibit 12 Case #2023-0053-A

https://library.municode.com/md/baltimore_county/codes/zoning_regulations?nodeId=ZONING_CODE_ART1GEPR

Baltimore County Zoning Regulations

Section 307.1

§ 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.[1]

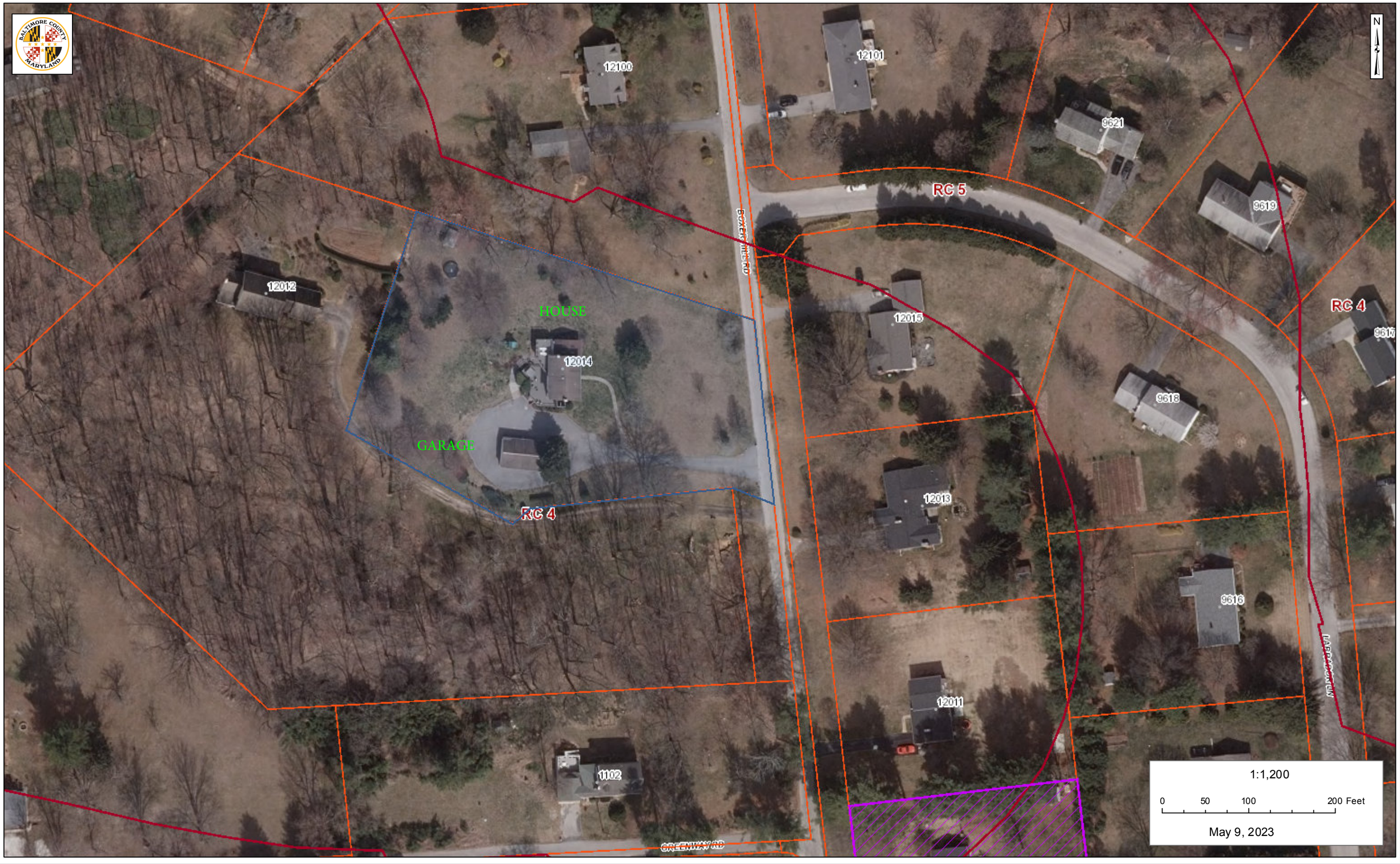
§ 400.3. – Height.

The height of accessory buildings, except as noted in Section 300, **shall not exceed 15 feet.**

[1]1. **Editor's Note—**Apparently conflicts with certain provisions found in the Baltimore County Code, 2003, as revised, which prescribe requirements with respect to notice and hearing regarding conventional reclassification petitions that differ from those which it prescribes regarding variance petitions. See the Appendices of this volume for excerpts from the Baltimore County Code, 2003. See § 32-3-301 for authority of the Zoning Commissioner to grant variances, and § 32-3-103 for provision regarding conflicts between Article 32, Title 3 of the Baltimore County Code, 2003 and the Zoning Regulations. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

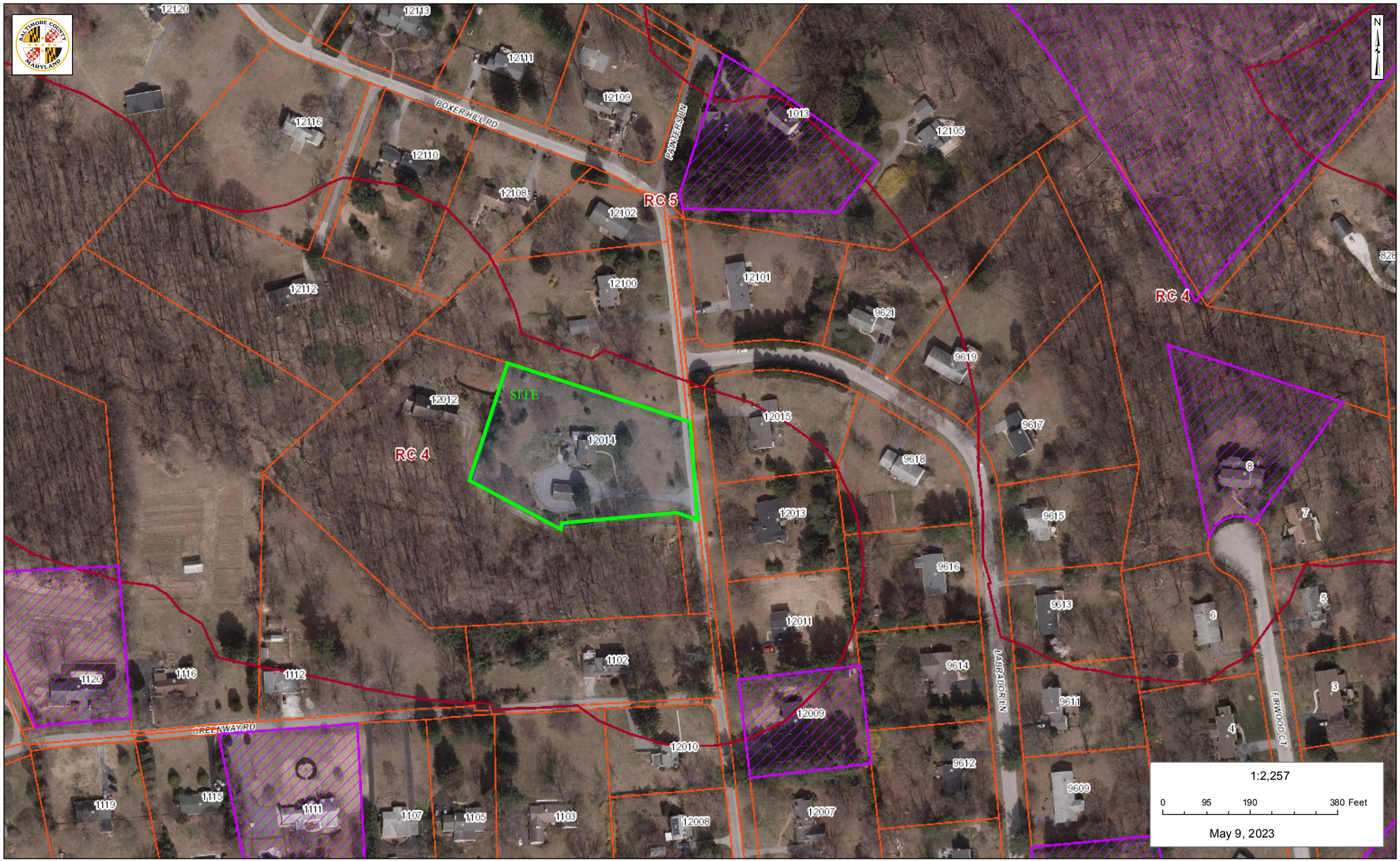
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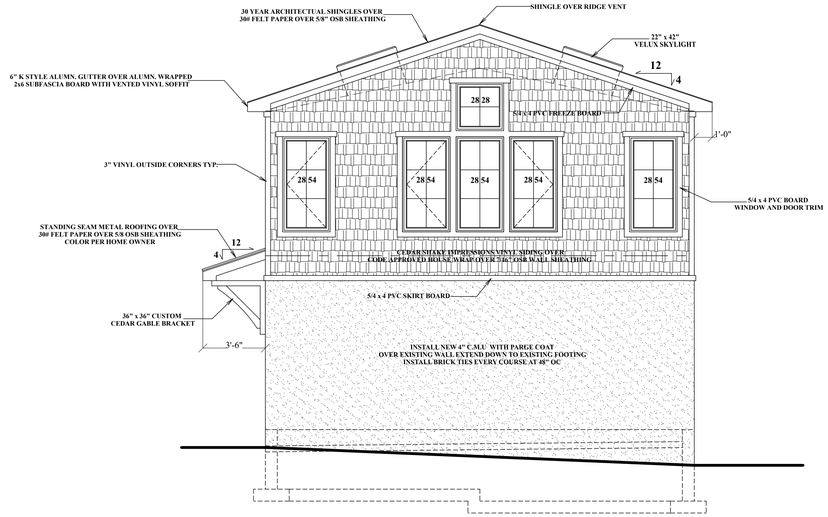
Baltimore County - My Neighborhood



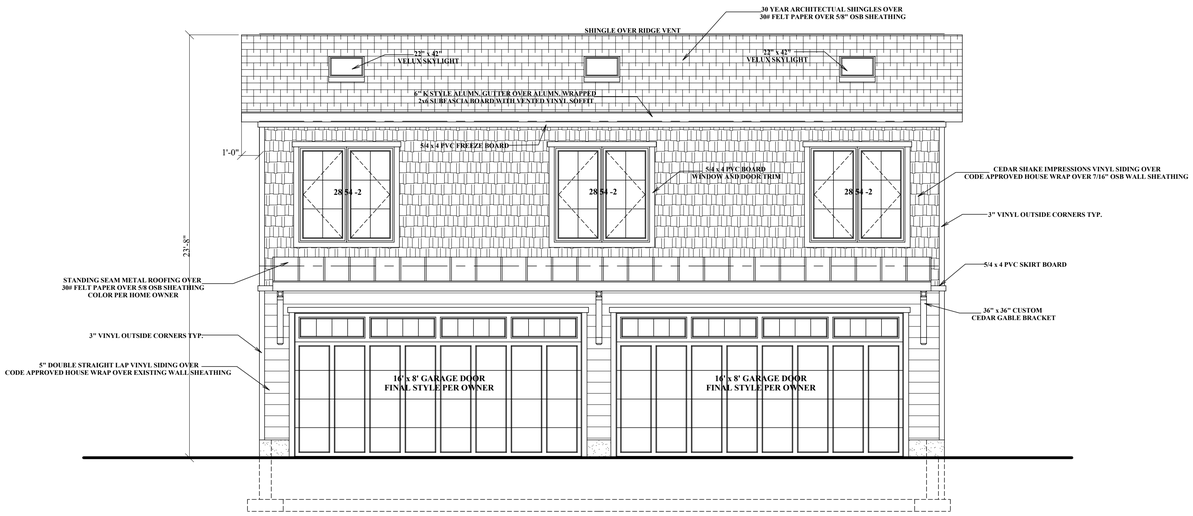
Baltimore County - My Neighborhood

EXHIBIT 3B

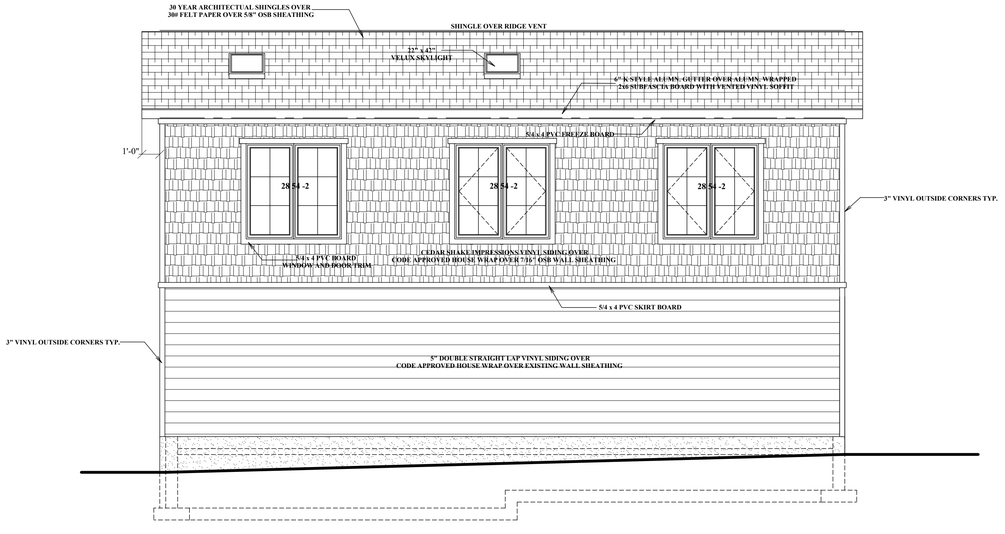




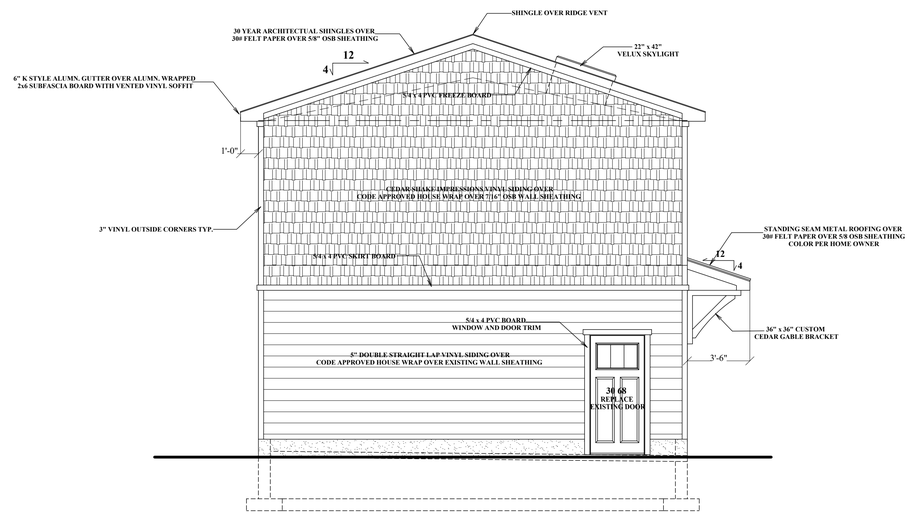
RIGHT ELEVATION



FRONT ELEVATION



REAR ELEVATION



LEFT ELEVATION

EXHIBIT 4A

12/16/22	RB
12/26/22	RB
1/27/23	RB

RB Home Design
2061 D MOUNT HOREB RD STREET MD 21154
RBHOMEDESIGN@HOTMAIL.COM
443-613-5115

HALLENGREN RESIDENCE
GARAGE ADDITION PLANS
12014 BOXER HILL RD
COCKEYSVILLE MD 21030

THE CONTRACTOR IS RESPONSIBLE FOR DIMENSIONS TO BE CONFIRMED AND CORRELATED AT SITE FOR INFORMATION THAT PERTAINS SOLELY TO THE FABRICATION PROCESSES OR TO THE MEANS, METHODS, TECHNIQUES, SEQUENCES, AND PROCEDURES OF CONSTRUCTION OF THE WORK OF ALL TRADES

RB HOME DESIGN

DATE: 12/26/22

SCALE: 1/4" = 1'

DRAWN BY: RB

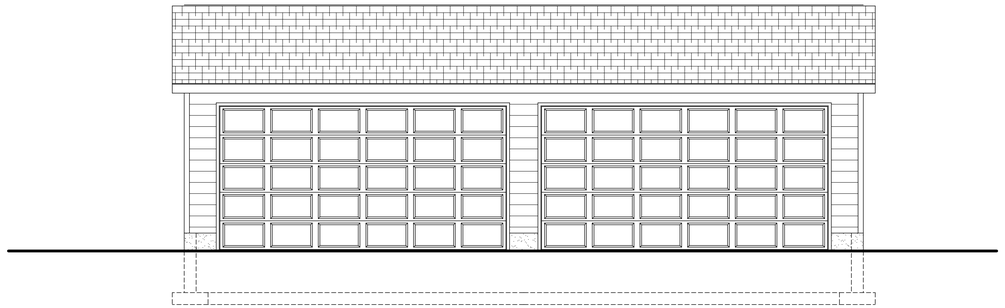
EXTERIOR ELEVATIONS

SHEET NO.

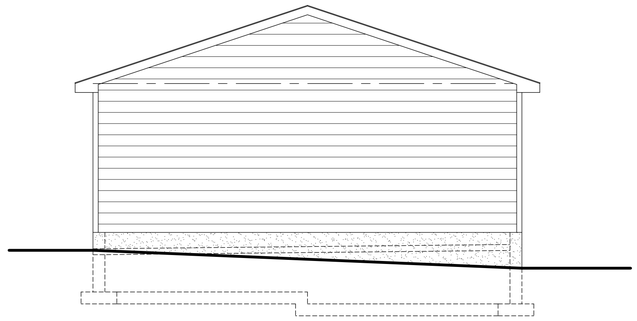
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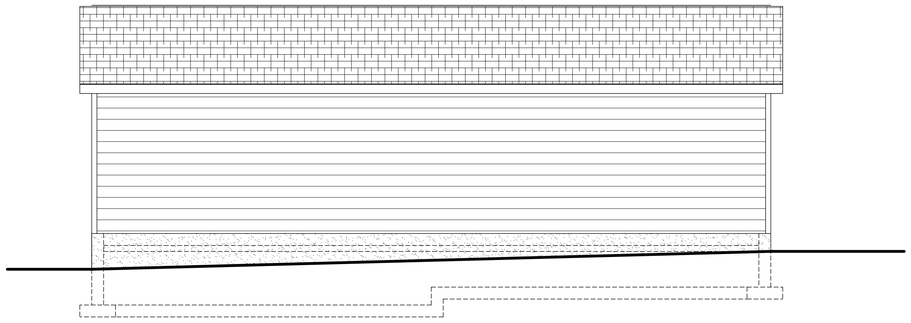
LEFT ELEVATION
EXISTING PLAN



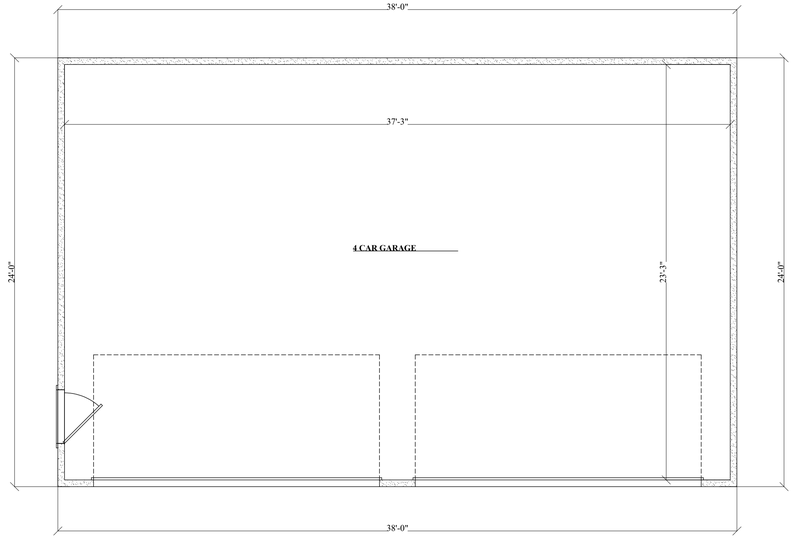
FRONT ELEVATION
EXISTING PLAN



RIGHT ELEVATION
EXISTING PLAN



REAR ELEVATION
EXISTING PLAN



GARAGE PLAN
EXISTING PLAN

EXHIBIT 4B

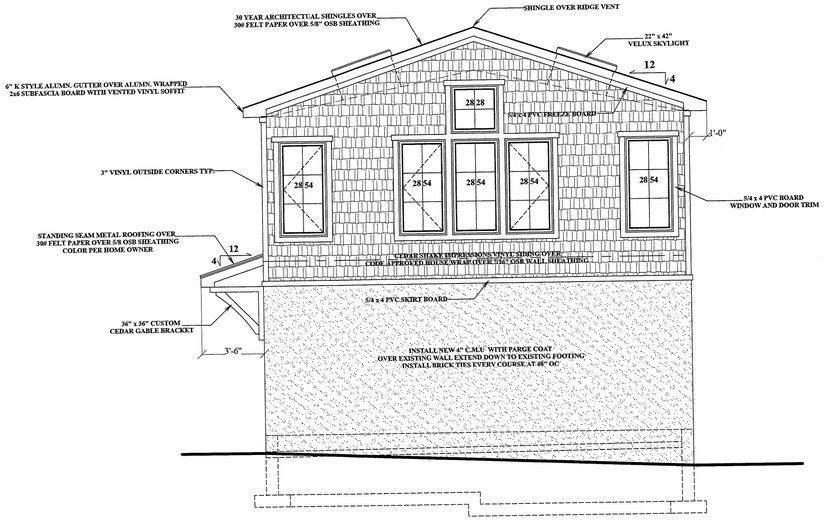
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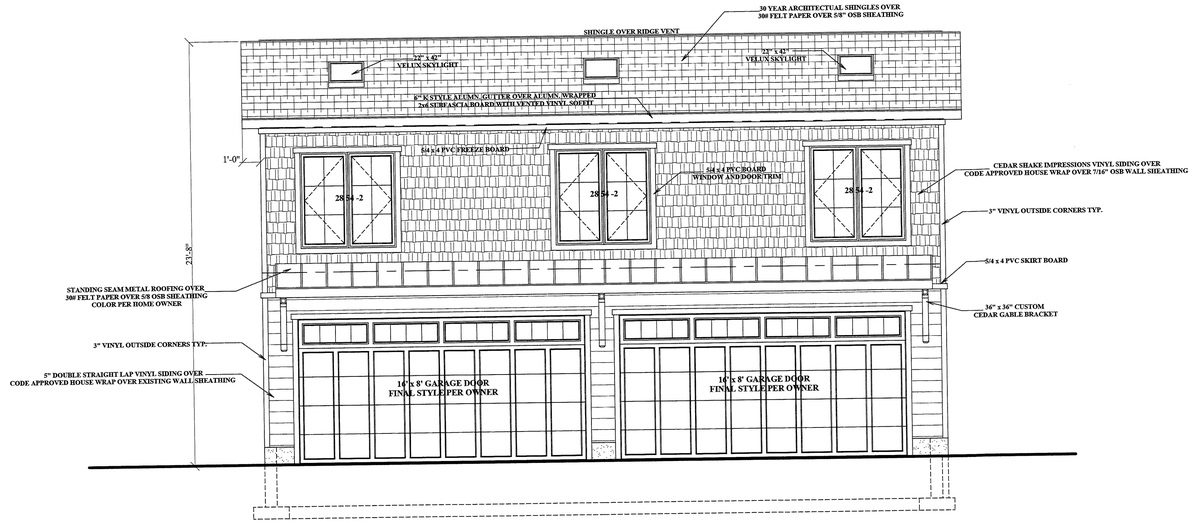
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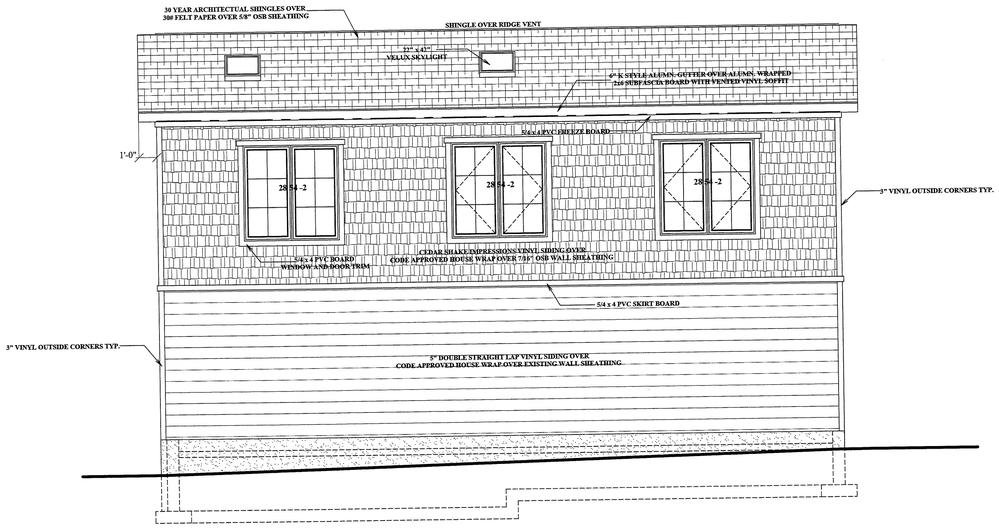
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SCALE:	1/4" = 1'
DRAWN BY:	RB
EXISTING PLANS	
SHEET NO.	A-3



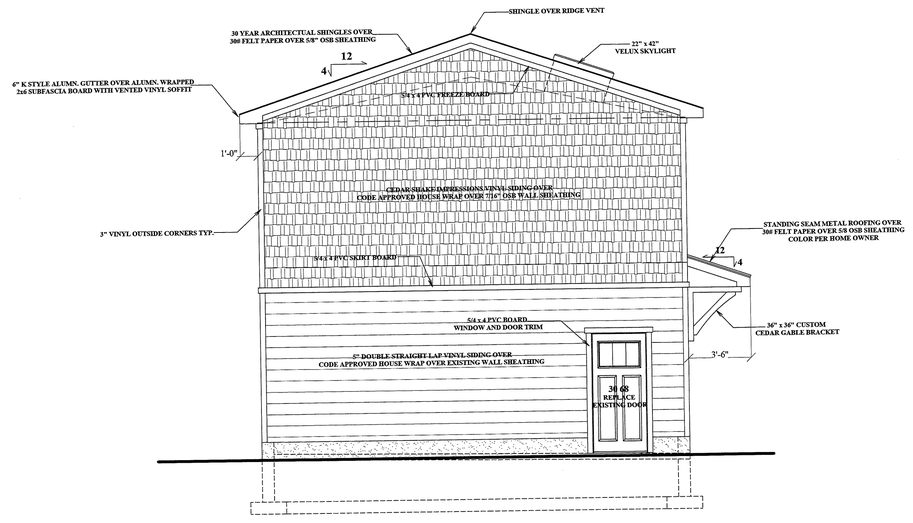
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FRONT ELEVATION



REAR ELEVATION



LEFT ELEVATION

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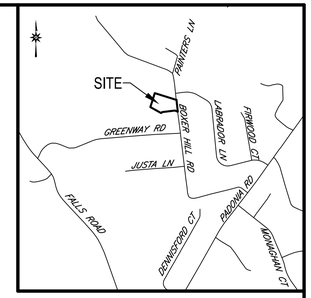
EXTERIOR ELEVATIONS

SHEET NO.

A-1

2023·0053·A





VICINITY MAP

SCALE: 1" = 1000'

GENERAL NOTES

1. OWNER: KRISTOPHER & MEGAN HALLENGREN
   12014 BOXER HILL ROAD
   COCKEYSVILLE, MD 21030-1732
   TEL:(410) 340-3327
2. AREA OF TRACT: NET: 71,015 SF OR 1.63 AC.±
3. ZONING CLASSIFICATION: RC 4 (ZONING MAP 050C3)
4. TAX ACCOUNT NUMBER: #2200001446
5. PLAT REFERENCE: N/A
6. DEED REFERENCE: 33945/34
7. TAX MAP #: 50
   GRID 18
   PARCEL: 448
8. CENSUS TRACT: 4083.04
9. REGIONAL PLANNING DISTRICT: CHESTNUT RIDGE
10. GROWTH TIER: IV
11. WATERSHED: LOCH RAVEN RESERVOIR
12. SEWERSHED: N/A
13. MASTER WATER AND SEWER DESIGNATION: WATER W-7
    SEWER S-7
14. EXISTING USE: ONE SINGLE FAMILY DETACHED DWELLING WITH DETACHED GARAGE
15. PROPOSED USE: ONE SINGLE FAMILY DETACHED DWELLING WITH DETACHED GARAGE WITH 2ND FLOOR ADDITION
16. RC 4 SETBACK-MINIMUM REQUIREMENTS

FRONT FROM ROAD PAVING	35'
REAR	25'
SIDE	25'
MAX BLDG HGT	35'

17. ALL LOTS SHOWN HEREON ARE SERVED BY PRIVATE WELL AND SEPTIC TANK.
18. THE PROPOSED DEVELOPMENT IS NOT LOCATED IN ANY DEFICIENT AREAS ON THE BASIC SERVICES MAPS PURSUANT TO SECTION 4A02, BCZR.
19. THIS SITE DOES NOT INCLUDE NOR IS IT CONTIGUOUS TO ANY BUILDINGS, PROPERTY OR SITES REGISTERED ON THE HISTORICAL INVENTORIES LIST.
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21. PRIOR ZONING CASES:
    THERE IS NO KNOWN ZONING HISTORY
22. THERE ARE NO KNOWN FLOODPLAINS ON SITE PER FLOOD INSURANCE RATE MAP (FIRM) PANEL #2400100235F DATED SEPTEMBER 26, 2008.
23. EXISTING DWELLING: 1026 SF
    EXISTING GARAGE: 864 SF

Richardson ENGINEERING
7 Deneison Street
Timonium, Maryland 21093
Phone: 410-560-1502, info@richardsonengineering.net

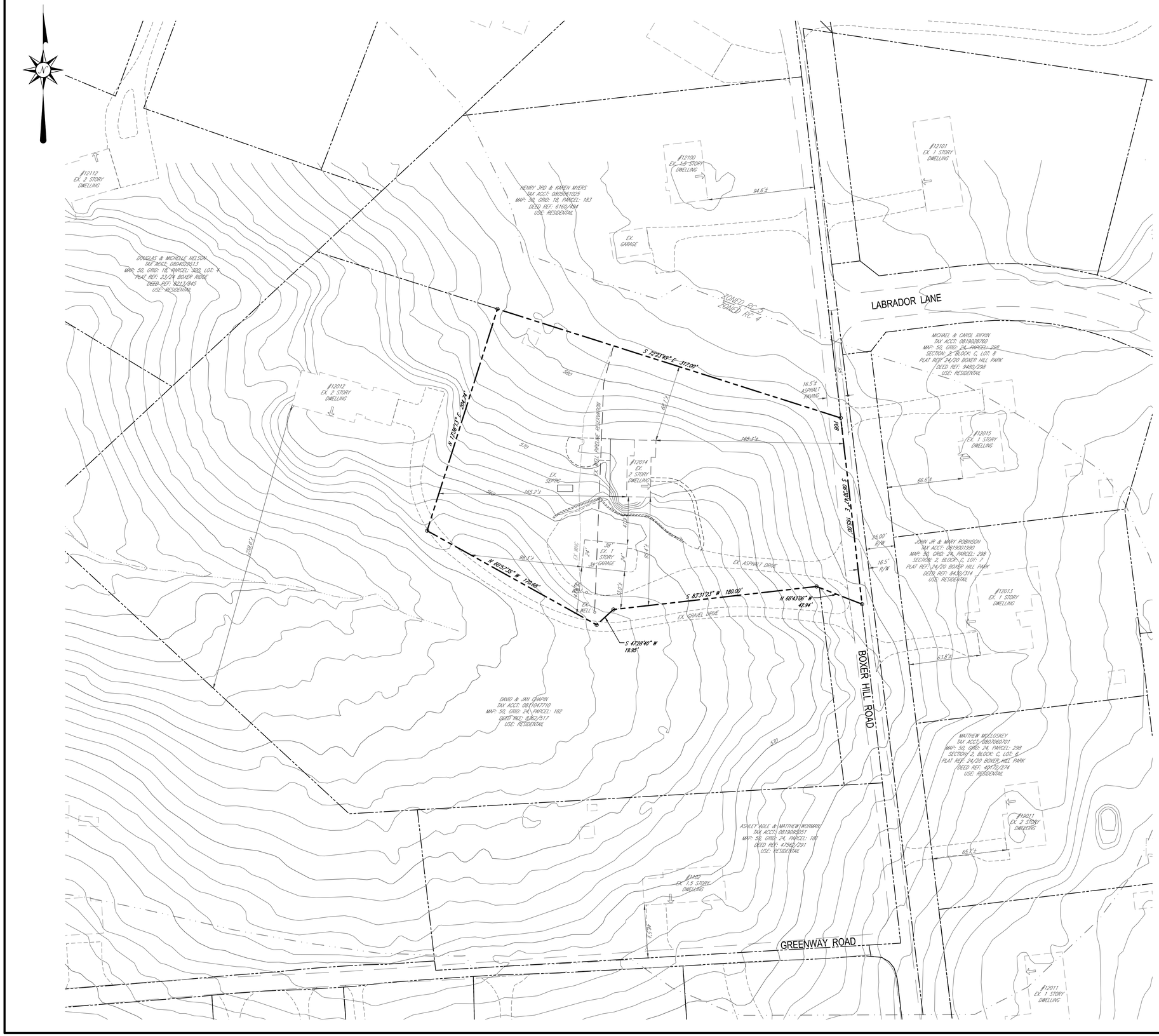
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FOR

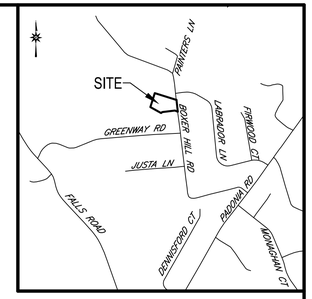
HALLENGREN RESIDENCE

12014 BOXER HILL ROAD

BALTIMORE COUNTY MARYLAND
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

REVISIONS	DRAWN BY:	CHECKED BY:	SCALE:
5/9/23 ZONING HEARING	AAR	PCR	1" = 40'
EXHIBIT 1	DATE: 03-03-23	JOB NO.: 23014	SHEET NO.: 1 OF 1





VICINITY MAP

SCALE: 1" = 1000'

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PLAN TO ACCOMPANY ZONING PETITION
FOR

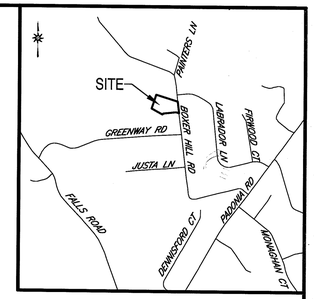
HALLENGREN RESIDENCE

12014 BOXER HILL ROAD

BALTIMORE COUNTY MARYLAND
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

REVISIONS	DRAWN BY:	CHECKED BY:	SCALE:
5/9/23 ZONING HEARING	AAR	PCR	1" = 40'
EXHIBIT 2	DATE: 03-03-23	JOB NO.: 23014	SHEET NO.: 1 OF 1





VICINITY MAP

SCALE: 1" = 1000'

GENERAL NOTES

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   12014 BOXER HILL ROAD
   COCKEYSVILLE, MD 21030-1732
   TEL:(410) 340-3327
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Phone: 410-560-1502, info@richardsonengineering.net

PLAN TO ACCOMPANY ZONING PETITION
FOR

HALLENGREN RESIDENCE

12014 BOXER HILL ROAD

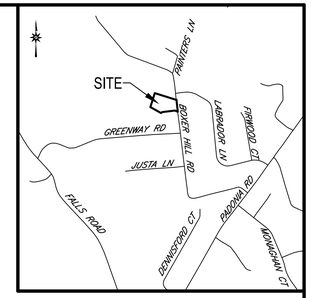
BALTIMORE COUNTY
8TH ELECTION DISTRICT

MARYLAND
3RD COUNCILMANIC DISTRICT

REVISIONS	DRAWN BY:	CHECKED BY:	SCALE:
	AAR	PCR	1" = 40'
	DATE: 03-03-23	JOB NO.: 23014	SHEET NO.: 1 OF 1

2023-0053-A





VICINITY MAP

SCALE: 1" = 1000'

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   COCKEYSVILLE, MD 21030-1732
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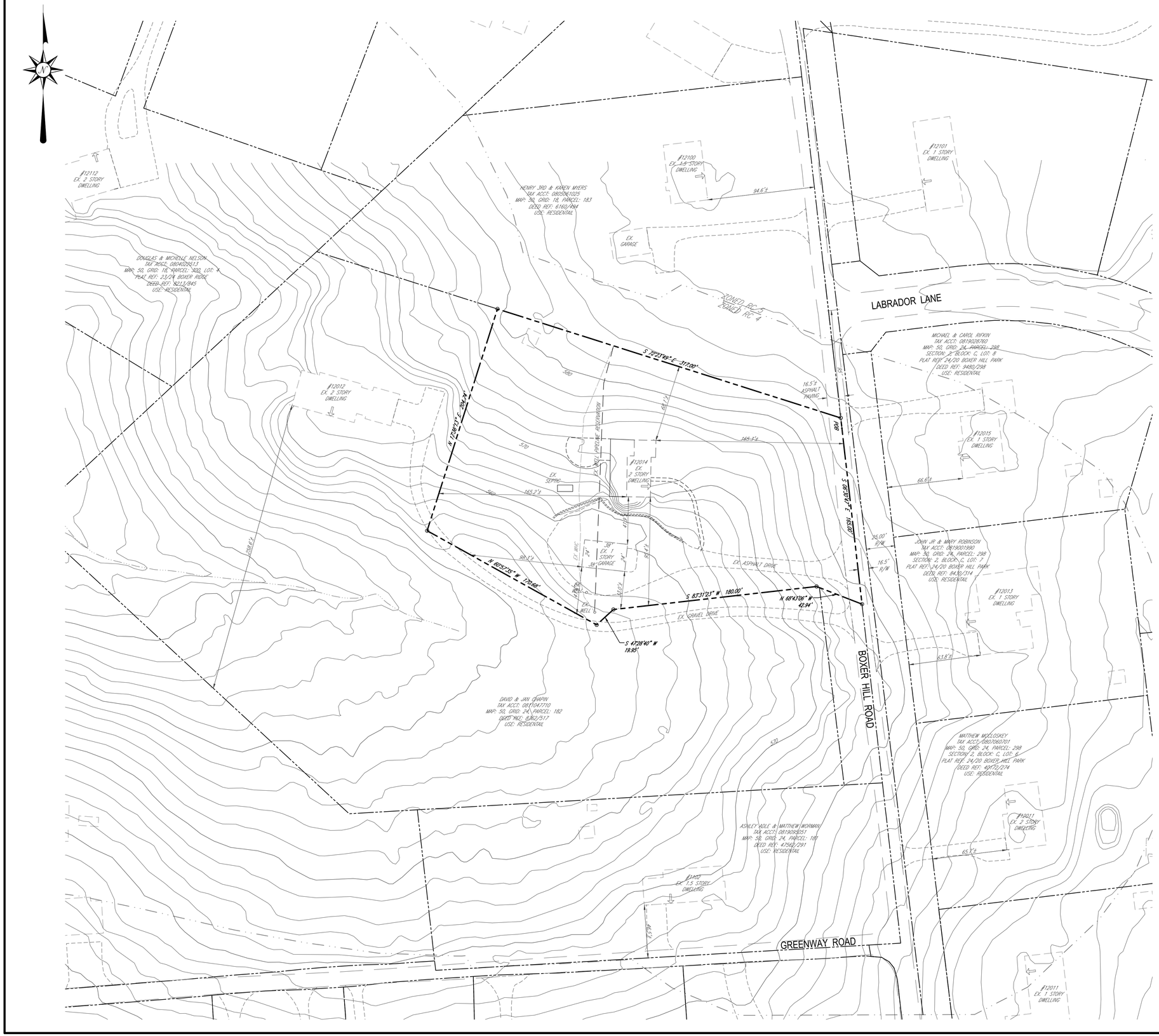
PLAN TO ACCOMPANY ZONING PETITION
FOR

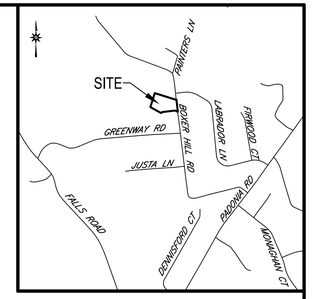
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EXHIBIT 1	DATE: 03-03-23	JOB NO.: 23014	SHEET NO.: 1 OF 1





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8. CENSUS TRACT: 4083.04
9. REGIONAL PLANNING DISTRICT: CHESTNUT RIDGE
10. GROWTH TIER: IV
11. WATERSHED: LOCH RAVEN RESERVOIR
12. SEWERSHED: N/A
13. MASTER WATER AND SEWER DESIGNATION: WATER W-7
    SEWER S-7
14. EXISTING USE: ONE SINGLE FAMILY DETACHED DWELLING WITH DETACHED GARAGE
15. PROPOSED USE: ONE SINGLE FAMILY DETACHED DWELLING WITH DETACHED GARAGE WITH 2ND FLOOR ADDITION
16. RC 4 SETBACK-MINIMUM REQUIREMENTS

FRONT FROM ROAD PAVING	35'
REAR	25'
SIDE	25'
MAX BLDG HGT	35'

17. ALL LOTS SHOWN HEREON ARE SERVED BY PRIVATE WELL AND SEPTIC TANK.
18. THE PROPOSED DEVELOPMENT IS NOT LOCATED IN ANY DEFICIENT AREAS ON THE BASIC SERVICES MAPS PURSUANT TO SECTION 4A02, BCZR.
19. THIS SITE DOES NOT INCLUDE NOR IS IT CONTIGUOUS TO ANY BUILDINGS, PROPERTY OR SITES REGISTERED ON THE HISTORICAL INVENTORIES LIST.
20. THE SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
21. PRIOR ZONING CASES:
    THERE IS NO KNOWN ZONING HISTORY
22. THERE ARE NO KNOWN FLOODPLAINS ON SITE PER FLOOD INSURANCE RATE MAP (FIRM) PANEL #2400100235F DATED SEPTEMBER 26, 2008.
23. EXISTING DWELLING: 1026 SF
    EXISTING GARAGE: 864 SF

Richardson ENGINEERING
7 Deneison Street
Timonium, Maryland 21093
Phone: 410-560-1502, info@richardsonengineering.net

PLAN TO ACCOMPANY ZONING PETITION
FOR

HALLENGREN RESIDENCE

12014 BOXER HILL ROAD

BALTIMORE COUNTY MARYLAND
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

REVISIONS	DRAWN BY:	CHECKED BY:	SCALE:
5/9/23 ZONING HEARING	AAR	PCR	1" = 40'
EXHIBIT 2	DATE: 03-03-23	JOB NO.: 23014	SHEET NO.: 1 OF 1