

JOHN A. OLSZEWSKI, JR. County Executive

MAUREEN E. MURPHY
Chief Administrative Law Judge
ANDREW M. BELT
Administrative Law Judge
DEREK J. BAUMGARDNER
Administrative Law Judge

August 22, 2024

Don C. Newport, III Patricia Newport 2326 Lincoln Avenue Baltimore, MD 21219

RE:

Petition for Special Hearing

Case No. 2024-0152-SPH

Property: Lot 77 Wythe Avenue

Dear Petitioners:

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,

ANDREW M. BELT Administrative Law Judge for Baltimore County

AMB:dlm Enclosure

C: Brian Dietz - bdietz@dietzsurveying.net

| IN RE: PETITION FOR SPECIAL HEARING | * | BEFORE THE |
|--|---|-------------------------|
| (Lot 77 Wythe) 15 th Election District | | |
| 15 th Election District | * | OFFICE OF |
| 7th Council District | | |
| Don Newport, III & Patricia Newport | * | ADMINISTRATIVE HEARINGS |
| Legal Owners | | |
| | * | FOR BALTIMORE COUNTY |
| Petitioners | | |
| | * | Case No. 2024-0152-SPH |
| | | |

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for consideration of a Petition for Special Hearing filed on behalf of Don Newport III and Patricia Newport ("Petitioners") for the property located at Lot 77 Wythe (the "Property"), Sparrows Point. The Petition for Special Hearing from the Baltimore County Zoning Regulations ("BCZR") § 500.7 to approve an accessory building (garage) on a property without a principal structure.

A hearing was conducted remotely via WebEx on August 19, 2024. The Petition was advertised and posted as required by the BCZR. The Petitioner, Don Newport III was in attendance along with Brian Dietz of Dietz Surveying, Inc., a certified land surveyor who prepared the Site Plan. There were no Protestants or interested citizens at the hearing.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP"), Building Permits Review ("BPR"), State Highway Administration ("SHA") and Development Plans Review ("DPR") and these agencies did not oppose the requested relief.

The property is approximately 12,652 sq. ft., and zoned DR 5.5. Mr. Newport explained that he is retired and has owned the subject property and contiguous lots since the early 1970's. (Pet. Ex. 1) These properties constitute lots 75, 76, and 77 of the Chesapeake Terrace Record Plat which dates from 1919. (Pet. Ex. 2) He resides in the dwelling on 2326 Lincoln Avenue (Lot 75)

and is proposing the construction of a 15-foot-tall garage and accompanying driveway on Lot 77, which fronts Wythe Avenue, immediately north of Mr. Newport's dwelling. (Pet. Ex. 3) There are currently no structures built on this lot and Mr. Newport intends to store vehicles and conduct some of his many hobbies inside the garage. The garage itself will be properly set back from the neighboring property line, requiring no variance relief. Additionally, the dwelling on the neighboring lot (2336 Lincoln Avenue) fronts on a service alley adjacent to Lincoln Avenue, with its backyard being adjacent to the proposed location for the garage. (Pet. Ex. 3 & 5) Mr. Newport explained that there is no room on Lot 75 for the construction of such a garage closer to his dwelling. Mr. Newport has no plans to pave the driveway entrance to the proposed garage.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, § 500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). And, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016).

The location of the proposed garage consists of a group of lots that have long been owned by the Petitioner and well-maintained. The building of a garage on lot 78 does not overcrowd the land or infringe onto, or inconvenience neighboring property owners as evidenced by the lack of opposition to the proposed relief. The use of such a garage for the storage of vehicles and use in conjunction with the hobbies of the Petitioner is compatible with the community and generally consistent with the spirit and intent of the regulations. Consequently, the Petitioner for Special Hearing is granted.

THEREFORE, IT IS ORDERED this <u>22nd</u> day of August, 2024 by this Administrative Law Judge, that the Petition for Special Hearing from the BCZR § 500.7 to approve an accessory building (garage) on a property without a principal structure, be and is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
- 2. The accessory building (garage) shall not be used for commercial purposes.
- 3. The accessory building (garage) shall not have separate utility, gas and electric and/or water/sewerage connections or services. All services shall connect to the house.
- 4. Petitioner must comply with the DEPS comment, a copy of which are attached hereto and made a part thereof.

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

ANDREW M. BELT Administrative Law Judge for Baltimore County

AMB:dlm

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO:

Hon. Maureen E. Murphy; Chief Administrative Law Judge

Office of Administrative Hearings

FROM:

Jeff Livingston, Department of Environmental Protection and

Sustainability (EPS) - Development Coordination

DATE:

July 17, 2024

SUBJECT:

DEPS Comment for Zoning Item

2024-0152-SPH

Address:

LOT 77 WYTHE

Legal Owner: Don Newport, III

Zoning Advisory Committee Meeting of July 8, 2024.

X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

The Department of Environmental Protection and Sustainability has reviewed the subject zoning petition for compliance with the goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, we offer the following comments:

 Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

The subject property is located partially within a Limited Development Area (LDA) and is subject to Critical Area requirements. The applicant is proposing to permit an accessory structure on property without a principal structure. Any proposed development must meet all LDA requirements, including lot coverage limits and afforestation requirements. Lot coverage is limited to a maximum of 31.25% of the property. 15% afforestation (4 trees) is required on the property. If the lot coverage and afforestation requirements are met, then the relief requested by the applicant will result in minimal adverse impacts to water quality.

2. Conserve fish, plant, and wildlife habitat;

The property must meet all lot coverage and afforestation requirements. If lot coverage and afforestation requirements are met, this request will help conserve fish, plant, and wildlife habitat in the Chesapeake Bay.

3. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts;

This is a grandfathered lot. Provided that the applicants meet their lot coverage and afforestation requirements, then the relief requested will be consistent with the established land-use policies.

Reviewer: Libby Errickson

PETITION FOR ZONING HEARING(S)

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

Office of Administrative Hearings for Baltimore County for the property located at:

| 1 DO! | Currently Zoned DR-5,5 |
|---|--|
| Deed Reference 5094 / 46 | 10 Digit Tax Account # 160000 845 |
| Owner(s) Printed Name(s) Don Carlos new Po | RT PORTECIA NEWPORT |
| (SELECT THE HEARING(S) BY MARKING X AT | THE APPROPRIATE SELECTION(S) AND ADDING THE PETITION REQUEST) |
| The undersigned, who own and occupy the property situate in ereof, hereby petition for an: | Baltimore County and which is described in the plan/plat attached hereto and made a part |
| / | f the Zoning Regulations of Baltimore County, to determine whether |
| | e AN ACCESSORY STRUCTURE ON A PROPERTY |
| WITHOUT A PRINCIPAL STRUCTURE | |
| without it yours you | |
| 0 115 ti 1 1 1 7 1 1 1 1 | and the partition of Politimore County to use the horsin described property for |
| a Special Exception under the Zoning Ri | egulations of Baltimore County to use the herein described property for |
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| i i i i i i i i i i i i i i i i i i i | |
| a Variance from Section(s) | |
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| f the zoning regulations of Baltimore County, to | the zoning law of Baltimore County, for the following reasons: (Indicate |
| elow your hardship or practical difficulty of | indicate below "TO BE PRESENTED AT HEARING". If you need |
| dditional space, you may add an attachment | to this petition) |
| | To the second se |
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| Property is to be posted and advertised as prescribed by the | zoning regulations. posting, etc. and further agree to be bound by the zoning regulations and restrictions of |
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Zoning Description For Lot 77 and part of Lot 76 Wythe Avenue

Beginning on the east side of Wythe Avenue (30' wide), 189 feet northerly from the intersection of the east side of Wythe Avenue with the Northwest side of Lincoln Avenue (43' wide), being Lot 77 and the northernmost 20 feet of Lot 76 in the subdivision of Chesapeake Terrace, as recorded in Baltimore County Plat Book #5, Folio #36, containing 12, 652 sq. ft. of land. Also known as Lot 77 and part of Lot 76 Wythe Avenue and located in the 15th Election District, 7th Councilmanic District.



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: 2024 - 0152 - 8.4 * |
| Property Address: WYTHE Are LOT #77 |
| Legal Owners (Petitioners): DON Newfort |
| Contract Purchaser/Lessee: |
| |
| PLEASE FORWARD ADVERTISING BILL TO: |
| Name: Company/Firm (if applicable): |
| Address: 2326 LINGON AVENUE |
| BALTO. Md 21219 |
| |
| Telephone Number: 410-, 388-1839 |

^{*}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.

| | | | | Rev | O. I. | Date: | 6-E | 2-204 | |
|-------|------|------|----------|---------|-------|------------|---------|--------|--|
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| For: | | 20ay | -0153 | -SP4 | | | | | |

| Dietz Surveying, Inc. 8119 Oakleigh Rd Parkville, MD 21234-5319 | | 1176 |
|--|-----|-----------------------------|
| PAY TO THE ORDER OF Balterine County, Maryla | ed. | DATE 5-/6- 2024 \$ 75.00 |
| M&T Bank | | DOLLARS |
| FOR 2326 LiNCOLN AVE | | Philip a. Settor - Rig |

Security Features Included D natural and a security

CERTIFICATE OF POSTING

| | 2024-0152-SPH |
|--|--|
| | RE: Case No.: |
| | Petitioner/Developer: |
| | Don Newport, III |
| | August 19, 2024 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: Jeff Perlow: | |
| Ladies and Gentlemen: | |
| This letter is to certify under the penalties o posted conspicuously on the property locate | f perjury that the necessary sign(s) required by law were d at: |
| Lot 77 Wythe Avenue | SIGN 1A & 1B |
| The sign(s) were posted on | July 28, 2024 |
| | (Month, Day, Year) |



> Sincerely, July 28, 2024 (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)

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Maureen E. Murphy; Chief Administrative Law Judge

Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and

Sustainability (EPS) - Development Coordination

DATE: July 17, 2024

SUBJECT: DEPS Comment for Zoning Item # 2024-0152-SPH

Address: LOT 77 WYTHE Legal Owner: Don Newport, III

Zoning Advisory Committee Meeting of July 8, 2024.

 \underline{X} The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

The Department of Environmental Protection and Sustainability has reviewed the subject zoning petition for compliance with the goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, we offer the following comments:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

The subject property is located partially within a Limited Development Area (LDA) and is subject to Critical Area requirements. The applicant is proposing to permit an accessory structure on property without a principal structure. Any proposed development must meet all LDA requirements, including lot coverage limits and afforestation requirements. Lot coverage is limited to a maximum of 31.25% of the property. 15% afforestation (4 trees) is required on the property. If the lot coverage and afforestation requirements are met, then the relief requested by the applicant will result in minimal adverse impacts to water quality.

2. Conserve fish, plant, and wildlife habitat;

The property must meet all lot coverage and afforestation requirements. If lot coverage and afforestation requirements are met, this request will help conserve fish, plant, and wildlife habitat in the Chesapeake Bay.

3. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts;

This is a grandfathered lot. Provided that the applicants meet their lot coverage and afforestation requirements, then the relief requested will be consistent with the established land-use policies.

Reviewer: Libby Errickson

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Peter Gutwald, Director DATE: July 3, 2024

Department of Permits, Approvals

FROM: Vishnu Desai, Supervisor

Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting

Case 2024-0152-SPH

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

DPR: No comment.

DPW-T: No Exception taken.

Landscaping: No comment.

Recreations & Parks: No comment LOS & No Greenways affected.

BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: C. Pete Gutwald DATE: 7/2/2024

Director, Department of Permits, Approvals and Inspections

FROM: Steve Lafferty

Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS

Case Number: 2024-0152-SPH

INFORMATION:

Property Address: Wythe Avenue, Lot 77 **Petitioner:** Don C. Newport III

Zoning: DR 5.5

Requested Action: Special Hearing

The Department of Planning has reviewed the petition for the following:

Special Hearing -

1. Under Section 500.7 of the Baltimore County Zoning Regulations (BCZR) to determine whether or not the Zoning Commissioner should approve an accessory structure on a property without a principal structure.

The subject site is two parcels totaling approximately 12,652 square feet in the Sparrows Point area. There is a small, existing concrete pad on the site, but it is otherwise vacant. The Petitioner/property owner also owns the two parcels to the south of the subject site – also known as 2326 Lincoln Avenue or Lots 75 and 76. 2326 Lincoln Avenue is improved with a two-story dwelling, asphalt driveway, and an existing shed. The combination of the four parcels forms a triangle at the intersection of Wythe Avenue and Lincoln Avenue. Per the petition and site plan, the Petitioner wishes to construct a 15' tall garage on Lot 77, immediately north of the dwelling at 2326 Lincoln Avenue.

Uses surrounding the subject site are primarily single family detached residential, with the exception of west of the subject site, which is an existing church. Many of the dwellings surrounding the subject site are located on rectangular shaped lots.

The subject site is within the boundary of the Greater Dundalk-Edgemere Community Conservation Plan, adopted February 22nd, 2000. The plan provides recommendations related to economic development, education, the environment, housing, human services, land use, and public safety within the plan area boundary. While the plan provides recommendations on preserving quality housing, revitalizing housing stock, and expanding homeownership, the plan does not provide specific recommendations on accessory structures or the petition at hand.

The Department of Planning has no objections to the requested Special Hearing relief. The four parcels are all owned by the Petitioner/property owner and are irregularly shaped, creating a hardship on why the accessory structure cannot be located on the same parcel as the principal dwelling.

For further information concerning the matters stated herein, please contact Taylor Bensley at 410-887-3482.

Prepared by:

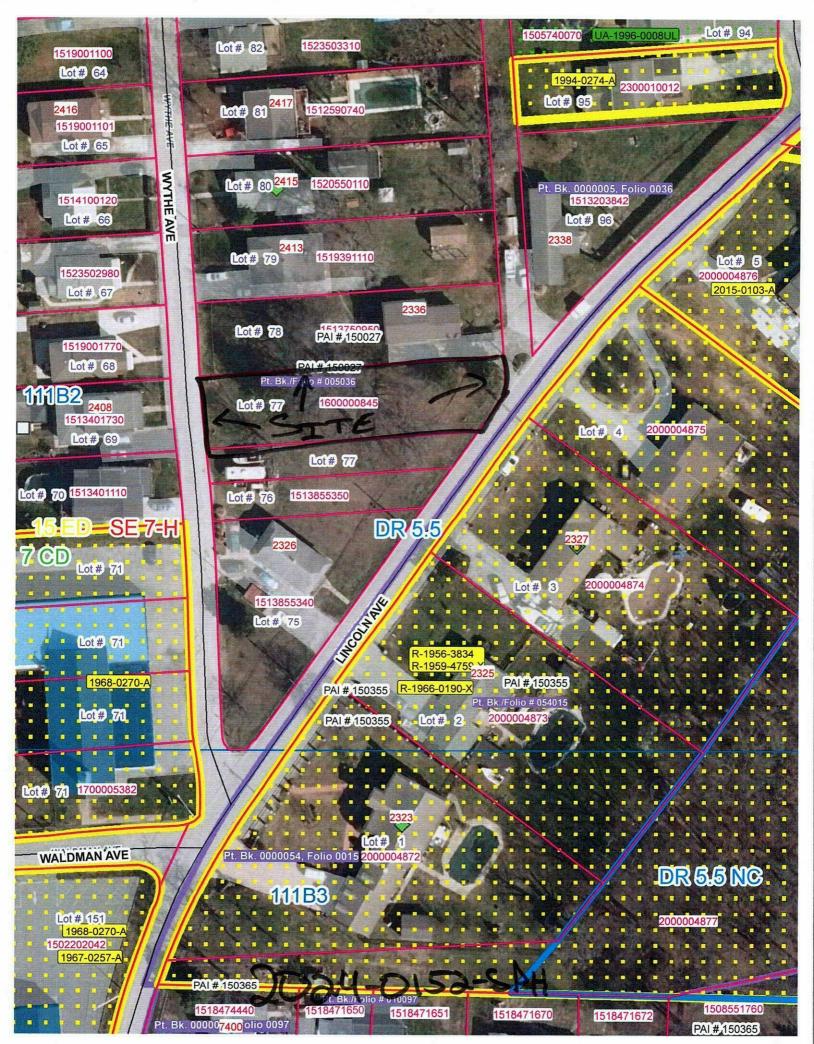
Krystle Patchak

Division Chief:

enifer G. Nugent

SL/JGN/KP

c: Brian Dietz, Dietz Surveying Maria Mougridis, Community Planner Jeff Perlow, Zoning Review Kristen Lewis, Zoning Review Office of Administrative Hearings People's Counsel for Baltimore County



Real Property Data Search () Search Result for BALTIMORE COUNTY

| View Map | View GroundRent Rec | lemption | View Grou | ndRent Registration | |
|---|--|----------------------|-------------------------|---|--|
| Special Tax Recaptur | | | \rightarrow | | |
| Account Identifier: | District - 15 Ac | ount Number - 1 | 600000845 | | |
| | Ow | ner Informati | on | | |
| Owner Name: | NEWPORT DON | CARLOS 3ROUS | se: incipal Residenc | RESIDENTIAL e:NO | |
| Mailing Address: | 2326 LINCOLN BALTIMORE MI | | ed Reference: | /05094/ 00046 | |
| | Location 8 | Structure | formation | | |
| Premises Address: | WYTHE AVE 0-0000 | Le | gal Description: | LT 77 PT 76 189 N WALDMAN AVE CHESAPEAKE TERRA | |
| | ghborhood: Subdivision | | Lot: Assessment | Year: Plat No: | |
| | 30120.04 0000 | В | 77 2024 | Plat Ref: 0005/ 003 | |
| Town: None | | | | | |
| Primary Structure Bu | ilt Above Grade Living A | area Finished Bas | ement Area Prop | erty Land Area County U | |
| Stories Basement Ty | pe Exterior Quality Fu | II/Half Bath Gara | ige Last Notice of | f Major Improvements | |
| | T | | | 8 0000 4 000 00 00 4 000 00 00 00 00 00 00 00 00 00 00 00 0 | |
| | Va | ue Informatio | on | | |
| | Base Value | Base Value Value Pha | | ase-in Assessments | |
| | | As of | As of | As of | |
| Land: | 57,100 | 01/01/2024 61,300 | 07/01/2023 | 07/01/2024 | |
| mprovements | 0 | 0 | | | |
| Total: | 57,100 | 61,300 | 57,100 | 58,500 | |
| Preferential Land: | 0 | 0 | 07,100 | 30,300 | |
| | Tran | sfer Informat | ion | | |
| Seller: MURRAY MYR | TLE C. Da | te: 05/21/1970 | | Price: \$2,500 | |
| Type: ARMS LENGTH | CANCEL CONTRACTOR CONT | ed1: /05094/ 0004 | 6 | Deed2: | |
| Seller: | Da | te: | | Price: | |
| Туре: | De | ed1: | | Deed2: | |
| Seller: | Da | te: | | Price: | |
| Туре: | De | ed1: | | Deed2: | |
| | Exem | ption Informa | ation | | |
| Partial Exempt Asses | | | /01/2023 | 07/01/2024 | |
| | 000 | 0.0 | | | |
| County: | 000 | 0.0 | 00 | | |
| | 000 | 0.00 0.00 | | | |
| County: State: | 000 | 0.0 | 00.00 | 0.00 0.00 | |
| County: | 000 | 0.0 | 00,00 | 0.00 0.00 | |
| County: State: Municipal: | 000 e: None | 0.0 Application I | | 0.00 0.00 | |
| County: State: Municipal: Special Tax Recaptur | 000 e: None | Application I | | 0.00 0.00 | |

Homeowners' Tax Credit Application Status: No Application Date:

2024-0152-574

