



THE PRINCE GEORGE'S COUNTY GOVERNMENT

BOARD OF ZONING APPEALS

BOARD OF ADMINISTRATIVE APPEALS

WAYNE K. CURRY COUNTY ADMINISTRATION BUILDING, LARGO, MARYLAND 20774
TELEPHONE (301) 952-3220

NOTICE OF FINAL DECISION

OF BOARD OF APPEALS

RE: Case No. V-26-23 Angela Mercado

Enclosed herewith is a copy of the Board Order setting forth the action taken by the Board of Appeals in your case on the following date: January 10, 2024.

CERTIFICATE OF SERVICE

This is to certify that on March 26, 2024, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

A handwritten signature in black ink, appearing to read "Barbara J. Stone", is placed over a horizontal line.

Barbara J Stone
Administrator

cc: Petitioner
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting

BEFORE THE BOARD OF APPEALS FOR PRINCE GEORGE'S COUNTY, MARYLAND
Sitting on the Board of Zoning Appeals

Petitioner: Angela Mercado

Appeal No.: V-26-23

Subject Property: Lot 2, Block A, Fleetwood Estates Subdivision, being 10902 Fleetwood Drive, Beltsville, Prince George's County, Maryland

Spanish Language Interpreter: Ruben Sotogomez; Ernesto Luna¹

Witnesses: Adeline Wilcox, Neighbor

Kenneth Harrison, Inspector, Department of Permitting, Inspection and Enforcement (DPIE)

Heard: October 11, 2023; Decided: January 10, 2024

Board Members Present and Voting: Bobbie S. Mack, Chairperson

Carl Isler, Vice Chairman

Teia Hill, Member

Board Members Absent: Renee Alston, Member

Anastasia T. Johnson, Member

RESOLUTION

This appeal is brought before the Board of Appeals, sitting as the Board of Zoning Appeals for the Maryland-Washington Regional District in Prince George's County, Maryland (the "Board"), requesting variances from the strict application of the provisions of Subtitle 27 of the Prince George's County Code (the "Zoning Ordinance").

In this appeal, a proceeding under Section 27-3303 of the Zoning Ordinance, Petitioner requests that the Board approve variances from Section 27-4202(c) prescribes that each lot shall have a minimum net lot area of 20,000 square feet. Section 27-4202(c)(1) prescribes that a lot shall have a minimum width of 80 feet at the building line and no more than 25% of the net lot area shall be covered by buildings and off-street parking. The petitioner proposes to validate existing conditions (net lot area, lot width at the building line, and net lot coverage) and obtain a building permit for the unauthorized construction of a 7' x 47' driveway extension, a 6' chain link fence and two 3.5' x 6' canopies. Variances of 9,893 square feet net lot area, 20 feet lot width at the building line, and 10% net lot coverage are requested.

Evidence Presented

The following testimony and record evidence were considered by the Board:

1. The property was subdivided in 1957, contains 10,107 square feet, is zoned RR (Residential, Rural), and is improved with a single-family dwelling, garage, driveway, patio, 6' chain link fence, and two canopies. Exhibits (Exhs.) 2, 3, 8, 9, and 10 (A) thru (F).

2. The subject lot has a unique rectangular shape with a slight decline from the house to the street. The rear of the property also has a slight decrease from the house to the side property line. Exhs. 2, 3, 8, 9, and 10 (A) thru (F).

3. Petitioner proposes to validate existing conditions (net lot area, lot width at the building line, and net lot coverage) and obtain a building permit for the unauthorized construction of a 7' x 47' driveway extension, a 6' chain link fence and two 3.5' x 6' canopies. Variances of 9,893 square feet net lot area, 20 feet lot width at the building line, and 8.9% net lot coverage are requested. Exh. 2.

¹ Spanish Interpreter: Ruben Sotogomez on October 11, 2023
Spanish Interpreter: Ernesto Luna on December 13, 2023

4. Petitioner Angela Mercado testified that she wishes to add an extension to the garage driveway (which has been constructed). She also would like to validate the patio concrete, which is 14' x 20'. In addition, she needs to validate canopies over the basement steps. She purchased the property in 2001. She explained that the main portion of the driveway existed when she purchased the property. Exhs. 2.

5. Administrator Stone noted that the variance application was only requested for the driveway extension, not the patio or the canopies. Exh. 13.

6. Board Member Isler questioned what is noted on the application. Administrator Stone read the request and asked Mr. Vasquez if there were any issues with the additional validations. Ms. Vasquez stated that when she spoke with the individual assisting Ms. Mercado, she did not need permits for the canopy. Since the patio is not part of the lot coverage calculations, she did not include these amenities. Ms. Vasquez also noted that the fence is on the back of the house; she believes that no variances are needed for the fence. The canopies are included in the lot coverage. Exh. 2.

7. Mr. Watson stated that since the canopies were not included in the hearing notice, it must be readvertised. Administrator Stone noted that even though it was included in lot coverage, it needed to be noted on the hearing notice. Exh. 13.

8. Inspector Harrison noted that his only problem is that the driveway has been extended, and Dpie stated that the patio is permissible. Regarding the fence in the rear, she will need a permit for a fence over 4 feet tall. The permit for the 6-foot fence has expired. The violation notice indicates that permits must be obtained for the driveway, patio, and canopies over the basement and rear doors. The 6-foot fence will also need a new permit.

9. Administrator Stone confirmed for Madam Chair that the driveway extension is to the right of the existing driveway, being 7 feet wide at the garage and 47 feet in length. However, the extension decreases in width as it moves down the driveway. Exh. 2

10. Madam Chair questioned why the extension decreased in width along the driveway. The petitioner stated that when it would rain, water would accumulate, and it would fall right at the corner of the basement window. As the years have passed, it is getting worse. Exh. 2

11. Madam Chair questioned if the concrete patio would cause more runoff. Petitioner stated, no, the water does not run off any longer, now it's fine.

12. Board Member Isler questioned when the concrete and the canopy were installed. Ms. Mercado replied that they were installed seven (7) years ago.

13. Board Member Isler questioned Inspector Harrison when he was made aware of this. Inspector Harrison replied that he did not have a date, but a complaint initiated it. When he investigated the complaint, he saw that the driveway was extended, and also, at the back of the property, there was concrete added to the patio. Exh. 7.

14. Ms. Mercado stated she has only added concrete to the rear of the house; the front has not been touched. Exh. 2.

15. Administrator Stone questioned both canopies. Inspector Harrison stated there are two canopies, one at the house's back door in the rear and one on the side that covers the basement steps and door. Exhs. 4 (A) thru (F).

16. Administrator Stone questioned staff member Ms. Vasquez if both canopies were included in the lot coverage. Ms. Vasquez noted that only one was counted toward lot coverage. Administrator Stone noted that lot coverage re-calculations must be done. Both canopies must be included in lot coverage. Due to the increase in lot coverage, we need to re-advertise the case. Exh. 12.

17. Mr. Isler questioned Ms. Mercado: were the canopies there when you purchased the property? Ms. Mercado noted that there were old canopies, but she has replaced them with new canopies.

18. Ms. Wilcox (10901 Fleetwood Drive, Beltsville) stated that she agrees that the concrete driveway extension and the rectangular concrete already exist per Apple and Google Maps. Ms. Wilcox continued that there are a lot of stormwater issues in this neighborhood. There is no storm drain or storm sewer on this block. There is an eroded storm drain downhill of us in Chestnut Hills Neighborhood Park which may have

factored into the decision to build a stormwater management structure called a submerged gravel wetland behind Ms. Mercado's property. This stormwater management structure was inadequate in design. In a rainstorm, stormwater runs off the soccer field around the submerged gravel wetland through the wooded area of Chestnut Neighborhood Park toward the eroded storm sewer. In very heavy rain, stormwater courses through the woods to the foot of Fleetwood Drive, joining stormwater coming down... even as moderate rainstorm water runs down the gutter of Fleetwood Drive, it passes the corner of her property where the end of the tree box is eroding. She has an erosion problem along the southwest edge of her property. She believes that Ms. Mercado needs to mitigate stormwater runoff on her property by other means than adding impervious surfaces. Exhs. 11 (A) thru (D).

19. Ms. Wilcox advised the Board where her home is located. She stated that she is located across the street and then to the right. Exhs. 11 (A) thru (D).

20. Ms. Wilcox stated that she would not say that it does not alleviate any stormwater, but it is not adequate for heavy rains. It does not carry water off the soccer fields. The stormwater from the soccer field runs around that structure through the woods and comes out. At that end of the street is where water courses from a very old asphalt trench in the woods, which joins stormwater coming down Fleetwood Drive.

21. Board Member Isler questioned Ms. Wilcox: is the water going into the street? Ms. Wilcox responded, yes. First, there is no storm sewer on this lower block on Fleetwood Drive, so water runs down driveways into the gutter and down the street. Also, in addition to the stormwater running down both sides of the street, stormwater comes out of the woods to the foot of Fleetwood Drive, where it then runs southeast along her property towards the storm sewer in the woods.

22. Administrator Stone questioned Ms. Wilcox: are you concerned that the Petitioner's extended driveway has worsened the situation? Ms. Wilcox stated that until this evening, she thought this was about an even more impervious surface; she now sees that it appears to be about an existing impervious surface. She would say that the driveway extension and the concrete pad have worsened stormwater runoff. Of course, she cannot measure this, based on her research, even though the relatively small area adds hundreds of gallons of stormwater to the previous stormwater.

23. Administrator Stone noted, for the record, that this property, because of its over lot coverage, will go for review in the Storm Water Management Section of DPIE. Exh. 12.

24. Ms. Vasquez noted for the record that lot coverage has been recalculated and does not affect the required lot coverage variance of 10%.

25. Board Member Hill questioned Ms. Wilcox: once the water reaches the end of the street, is the water collecting and stagnating, or does it always run off? Ms. Wilcox explained that the answer is yes and no. The water disappears at the end of Fleetwood Drive quickly, but in the eroded gully through the woods, there is often standing water, and there are Tiger Mosquitoes, which are constant in her backyard. I don't believe they can be eliminated, but because of the erosion and the water pooling, there is stagnant water.

26. Administrator Stone questioned Ms. Wilcox if she had contacted the County Storm Water Management. Ms. Wilcox stated that the short answer is no, and she has yet to contact them. About 20 years ago, she complained, and the County installed riprap at the end of Fleetwood Drive. Administrator Stone responded that she may want to contact them again, but she heard concerns regarding the water. We are here for the variances on the subject property, so the bottom line is that your concern is that the additional concrete is adding to the situation. Ms. Wilcox stated that is correct.

27. Madam Chair noted that Storm Water Plans must be addressed before we can move forward. Administrator Stone responded, yes.

A motion was made by Board Member Isler to reschedule and re-advertise this hearing. Seconded by Madam Chair. Motion carried 3/0. (Mack, Isler, and Hill).

On December 13, 2023, this case was heard as a new case. A motion was made by Madam Chair and seconded by Board Member Isler to incorporate the previous testimony from October 11, 2023, into this hearing. Motion carried 3/0 (Mack, Isler, and Alston).

1. Administrator Stone noted for the record, that we did hear this record on October 11, 2023. Some structures were not shown on the site plan. Staff reviewer Ms. Vasquez noted that the problem was that we did not include all the proposed work in the original hearing notice. This case has been readvertised to include all required variances.

2. Administrator Stone stated, as Ms. Vasquez noted, that the hearing notice was incorrect, so we had to readvertise, but there was an error made in lot coverage, which was originally advertised as 10%. The corrected lot coverage is now 8.9%. Exh. 19.

3. Ms. Mercado testified that she requested permission to construct the concrete driveway extension, the patio, and canopies a long time ago, but she was not aware she needed permits. The canopies were installed because of the rain, and protection from the water was coming in under the door. The driveway extension was needed to also prevent the water from coming into the basement on that particular corner. And it did work. It was very effective. The concrete was poured right next to the wall. It became a sealer. So, the water would run off toward the street instead. The water was pooling in that corner, the corner of the house toward the basement, coming from the garage. Exh. 2.

4. Administrator Stone questioned the reason for the length of the driveway extension length, coming from the garage. How does the length of the driveway extension stop the water? Ms. Mercado stated that the driveway is on an incline from the garage down to the street.

5. Madam Chair wished to clarify that the expansion of the driveway stopped the water from entering the basement. Ms. Mercado stated, yes that the water was pooling behind the house.

6. Madam Chair stated that there seems to be some concern by the neighbors with the water going downhill, causing flooding.

7. Ms. Wilcox stated that she opined that the full driveway extension may be more about parking convenience than stormwater, she does not have proof. She believes her neighbor, Ms. Mercado, when she says that something has improved her wet basement problem, but she questions the need for all the additional impervious surfaces.

8. Ms. Wilcox stated that her house is across the street and diagonal from the petitioner.

9. Madam Chair questioned Ms. Wilcox about how this variance request would affect her. Ms. Wilcox stated that she does not want any more additional stormwater if it's avoidable, and she would like to update the Board from the last hearing. She contacted Prince George's County Stormwater Management on October 13, 2023, and spoke with "Liz". She has not yet heard back from Stormwater Management. She further noted that she took a photograph of the retaining wall coming apart. The retaining wall was existing when she purchased her home in 1995. She admits that replacing it or probably her responsibility. She does plan to hire a geotechnical engineer to look at the sink hole and she will see if a larger retaining wall is needed. She believes the water is running from the Petitioner's property toward her property. Stormwater from both sides of the street runs along the foot of the street and then passes the corner of her property since she is located at the end of the street. Since the Petitioners moved in, she opined that several cubic yards of topsoil have eroded from that property.

10. Board Member Isler questioned the Petitioner, when was the canopies installed. Ms. Mercado stated that about (7) seven years ago. Board Member Isler questioned, when was the driveway extension constructed. Ms. Mercado responded it was constructed in 2022. The patio was constructed at the same time as the driveway extension. The fence was installed in 2013 by a fence company.

11. Board Member Isler questioned Ms. Wilcox: when you spoke with Prince George's County Storm Water Management, did they say when they would get back to you? Ms. Wilcox responded that they did say they would contact me, but she has not heard from them. Board Member Isler questioned Ms. Wilcox about the water coming down the street to the left of your house in the woods. Ms. Wilcox stated

that when she stands just outside her front door, the eroding storm gully is to her left. She further stated that if she walks down her sidewalk, she can see the gully.

12. Board Member Isler questioned Inspector Harrison regarding the permit. Inspector Harrison responded that there was a complaint filed and in looking into the E-permits, he visited the site, and it looked like there were several permits in the system that had expired. Exhs. 5, 6 and 7.

13. Madam Chair noted that in looking at exhibit 4(F). It looks as if the property is sloping, so the more impervious area you have, the more runoff you are going to have. As indicated before, she cannot see how the expansion of the driveway stops the water flow into your house. Ms. Mercado noted that she did it on her own considering that pouring concrete will stop the water from filtering into the house because as you can see, all that is straight from the window to the corner of the house. That's where the main problem was. Madam Chair noted that the driveway was expanded. And the Board needs to determine why. Ms. Mercado responded that maybe it was a mistake that chose to do it in that fashion but if it was my fault, I would admit it. She was trying to come up with a solution, and if that was wrong, then she accepts responsibility. She further noted that she will accept what the Board suggests.

14. Board Member Isler noted he believes that the last time the Board heard this case, this case should go to Erosion Control. Have they reviewed the site? Administrator Stone noted that it will go to Site Road, Sediment / Erosion Control. We can contact Site Roads to inquire into their review, but at this point, not having access to their system, it cannot be confirmed.

A motion was made by Madam Chair to adopt the testimony from the October 11, 2023, hearing, and a second was made by Board Member Isler. Motion carries 3/0 (Mack, Isler, and Alston)

Note for the record: the 6'foot fence does not need a Security Exemption but does need a permit.

A motion was made by Madam Chair to hold the record open to obtain the review of Dpie Site Roads, Sediment Erosion Control. The motion was seconded by Board Member Isler. Motion carried 3/0. (Mack, Isler, and Alston)

On January 10, 2024, the case was heard as a Discussion/Decision item.

1. The record was held open to obtain the review comments from Dpie Site Roads, Sediment Erosion Control.

2. Administrator Stone noted that staff did contact the Site Road Section. An approved, revised site plan was submitted demonstrating the inclusion of (2) two 100-gallon rain barrels located at both rear corners of the house and (1) one 50-gallon rain barrel at the rear right corner of the garage. Exh. 24.

Applicable Code Section and Authority

The Board is authorized to grant the requested variances if it finds that the following provisions of Section 27-3613(d) of the Prince George's County Zoning Ordinance are satisfied:

(d) General Variance Decision Standards

A variance may only be granted when the review board or official, as appropriate, finds that:

- (1) A specific parcel of land is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary conditions peculiar to the specific parcel (such as historical significance or environmentally sensitive features).

- (2) The particular uniqueness and peculiarity of the specific property causes a zoning provision to impact disproportionately upon that property, such that strict application of the provision will result in peculiar and unusual practical difficulties to the owner of the property.
- (3) Such variance is the minimum reasonably necessary to overcome the exceptional physical conditions.
- (4) Such variance can be granted without substantial impairment to the intent, purpose, and integrity of the General Plan or any Functional Master Plan, Area Master Plan, or Sector Plan affecting the subject property.
- (5) Such variance will not substantially impair the use and enjoyment of adjacent properties; and
- (6) A variance may not be granted if the practical difficulty is self-inflicted by the owner of the property.

Findings of the Board

After hearing all the testimony and reviewing the evidence of record, the Board finds that the requested variances comply with the applicable standards set forth in Section 27-3613(d), more specifically:

Due to the need to prevent stormwater from seeping into the Petitioner's basement, to validate the unauthorized construction of an extended driveway to obtain building permits, in addition, to obtain building permits for the installation of canopies over the rear and basement door also to prevent water from entering the Petitioner home and the character of the neighborhood, granting the relief requested would not substantially impair the intent, purpose, and integrity of the General Plan or Master Plan, and denying the request would result in a peculiar and unusual practical difficulty upon the owner of the property. The Board relied upon the expertise of the Department of Permitting, Inspection, and Enforcement (DPIE) Site Roads, Sediment Control Division that the installation of two (2) 100-gallon rain barrels at the corners of Petitioner's house and one (1) 50-gallon rain barrel at the rear right corner of the garage will mitigate the stormwater runoff issues indicated by the Opposition. The Board considers the Opposition's determination that granting this variance would substantially impair the use and enjoyment of adjacent properties; however, the Petitioner's property is not solely responsible for the stormwater runoff issues experienced by her. Further, the Board recognizes that the practical difficulty was self-inflicted by the owner; however, the Board determined that the stormwater runoff mitigation techniques approved by DPIE will provide a greater benefit to stormwater management on Petitioner's property that will lessen the impact on adjacent properties.

BE IT THEREFORE RESOLVED, by majority vote, Ms. Alston and Ms. Johnson absent, that variances of 9,893 square feet net lot area, 20 feet lot width at the building line, and 8.9% net lot coverage to validate existing conditions (net lot area, lot width at the building line and net lot coverage) and obtain a building permit for the unauthorized construction of a 7' x 47' driveway extension, a 6' chain link fence and two 3.5' x 6' canopies on the property located at 10902 Fleetwood Drive, Beltsville, Prince George's County, Maryland, be and are hereby APPROVED. Approval of the variances is contingent upon development in compliance with the approved revised site plan (with the addition of 3 rain barrels), Exhibit 24.

BOARD OF ZONING APPEALS

By: *Bobbie S. Mack*
Bobbie S. Mack, Chairperson

Approved for Legal Sufficiency

By: *Ellis Watson*
Ellis Watson, Esq.

NOTICE

Within thirty (30) days from the date of this decision, any person, firm, corporation, or governmental agency who was a party to the Board's proceedings and is aggrieved by its decision may file an appeal to the Circuit Court of Prince George's County.

Further, Section 27-3613 (c)(10)(B) of the Prince George's County Code states:

A decision of the Board, permitting the erection of a building or structure, shall not be valid for more than two (2) years unless a building permit for the erection is obtained within this period and the construction is started and proceeds to completion in accordance with the terms of the decision and the permit.

Signature: *Ellis F. Watson*
Ellis F. Watson (Mar 21, 2024 14:50 EDT)

Email: efwatson@co.pg.md.us

- 3% Maximum Slope Allowed On Residential Property
 - 7% Maximum Parking Pad Slope and 12.5% Maximum Driveway Slope.
 - 2.5% Minimum Slope Required On Yard or Lawn Areas. 10' in 10' Minimum Slope of Pad Away From Building is Required.

Approved for Soils, Grading and Drainage
 By: *[Signature]* 1/10/2024
 Permit #20785-2022-0

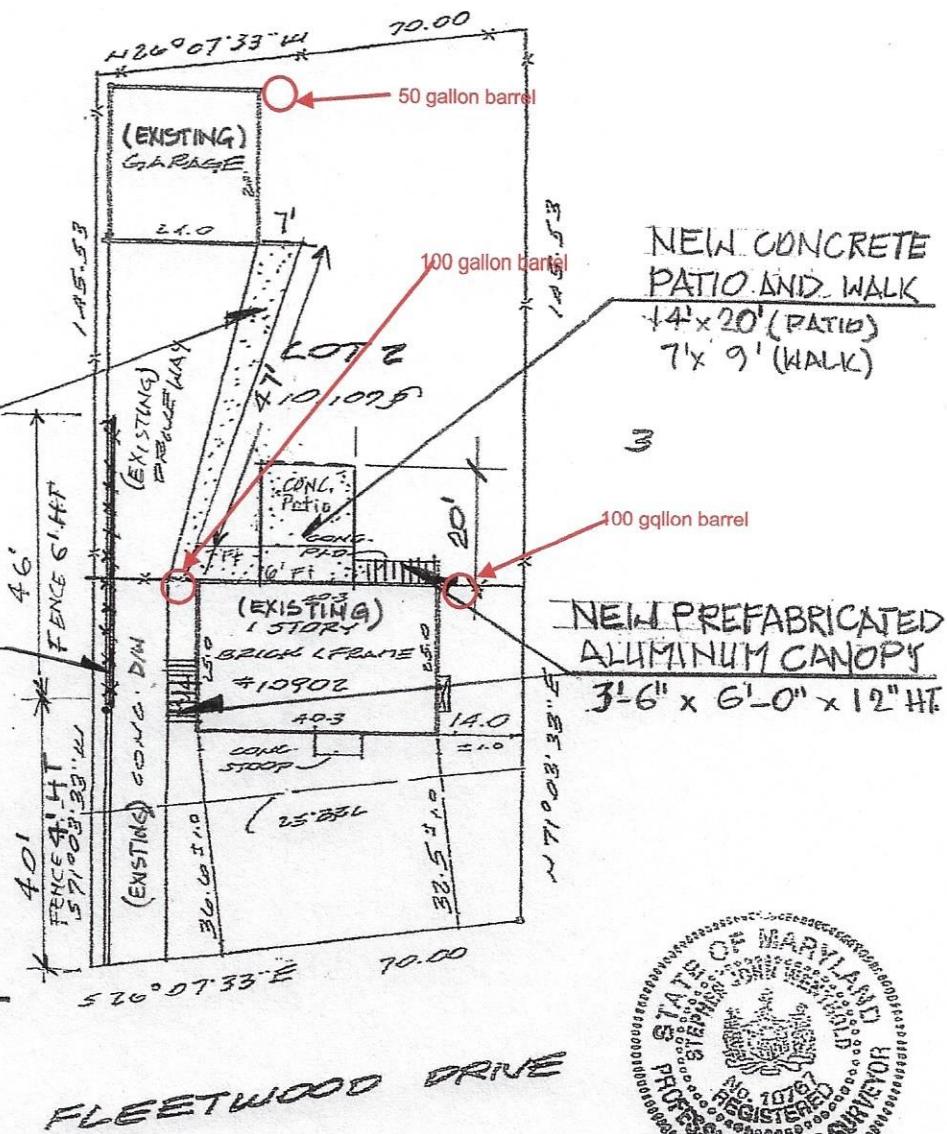
NEW DRIVEWAY
 EXTENSION
 7' x 47' L.

NEW CHAIN LINK FENCE 6' HT

BOARD OF APPEALS

APPROVED JAN 10 2024

[Signature]
ADMINISTRATOR



No evidence of property corners was found. Apparent occupation is shown.

Date: 04-04-02 Scale: 1"-=80' Dm:
 Plat Book: 29
 Plat No.: 62
 Work Order: 02-2117
 Address: 10902 FLEETWOOD DRIVE
 District: 1
 Jurisdiction: PRINCE GEORGES COUNTY, MD

LOCATION DRAWING
 LOT 2
 BLOCK A
 FLEETWOOD ESTATES

EXH. # **24**
 V-26-23

Surveyor's Certification

I hereby certify that the survey shown hereon is correct to the best of my knowledge and that, unless noted otherwise, it has been prepared utilizing description of record. This survey is not a boundary survey and the location or existence of property corners is neither guaranteed nor implied. Fence lines, if shown, are approximate in location. This property does not lie within a 100-year flood plain according to FEMA insurance maps as interpreted by the originator unless otherwise shown hereon. Building restriction lines shown are as per available information and are subject to the interpretation of the originator.

Name (Print or Type)

[Signature]
10902 Fleetwood Dr. Beltsville MD



NOTE: This plat is of benefit to a consumer only insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing or refinancing. This plat is not to be relied upon for the establishment or location of fences, garages, buildings, or other existing or future improvements. This plat does not provide for the accurate identification of property boundary lines, but such identification may not be required for the transfer of title or securing financing or refinancing.

Meridian Surveys, Inc.
 811 Russell Avenue
 Suite #303
 Gaithersburg, MD 20879
 (301) 721-9400

