

IN THE MATTER OF  
Ellen McBarron Burger and Kirsten Burger,  
Trustees of the Ellen McBarron Burger  
Revocable Trust, Legal Owner/Petitioner  
13607 Brookline Road  
Baldwin, MD 21013

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. 16-158-SPHA

Re: Petition for Variance pursuant to  
BCZR §1A04.3B.2.b and Petition for  
Special Hearing BCZR §1A04.3B.1

\* \* \* \* \*

**RULING ON JOINT MOTION FOR REVISORY ORDER**

This case comes to the Board on a Joint Motion to Revise this Board’s Opinion and Order dated October 24, 2016 (the “Opinion”) granting the Petition of Special Hearing filed pursuant to BCZR §1A04.3B.1 to allow a property area less than 1 ½ acres (1.04 acres), and a density less than 0.5 for existing lots that were created prior to 1979 and a Petition for Variance filed pursuant to BCZR §1A04.3B.2.b to allow a setback of 30 feet in lieu of the required 50 feet from any lot line other than a street, and our subsequent Amended Opinion correcting the setback distance (the “Amended Opinion”).

A Settlement Agreement with an attached red-lined site plan were incorporated into the Board’s Opinion and Amended Opinion at the request of the Parties. The Settlement Agreement and Red-lined Site Plan refer to stone walls and indicate that the “stone walls, remains of barn foundation to be removed.” A Joint Motion for Revisory Order was filed by the parties on November 16, 2016. A public deliberation on the Joint Motion to Revise was held on December 15, 2016.

The Joint Motion for Revisory Order states that an error was made by this Board in allowing the language regarding the stone wall removal to remain in our Opinion and Order. The Parties are now requesting, pursuant to Rule 11, that the language regarding the removal of the stone wall be changed and/or deleted by this Board. The Rules of Practice and Procedure of the

County Board of Appeals, located in Appendix B of the *Baltimore County Code*, provide the Board with revisory powers of our decisions. Rule 11 states:

Within thirty (30) days after the entry of an order, the board shall have revisory power and control over the order in the event of fraud, mistake or irregularity.

In reviewing the Joint Motion under Rule 11, this Board finds that the error on the Red-Lined Site Plan was the error of the parties and not the error of the Board. The Board is not authorized by the *Baltimore County Code* or otherwise to change evidence which has already been accepted by the Board after a hearing and after the record is closed. Further, the Settlement Agreement and Red Lined Site Plan were agreed to, and submitted by, the Parties.

However, prior to entering an Order on the Joint Motion to Revise, the Board will treat the Joint Motion to Revise as a Motion for Reconsideration pursuant to Rule 10 of our Rules of Practice and Procedure which state in pertinent part:

A party may file a motion for reconsideration of an order of the board of appeals. The motion shall be filed within thirty (30) days after the date of the original order...After public deliberation and in its discretion, the board may convene a hearing to receive testimony or argument or both on the motion. Each party participating in the hearing on the motion shall be limited to testimony or argument only with respect to the motion; the board may not receive additional testimony with respect to the substantive matter of the case...

Accordingly, an additional hearing will be scheduled to allow the parties to submit a revised Settlement Agreement and/or Red-Lined Site Plan, the contents of which they shall agree.

**THEREFORE**, it is this 12<sup>th</sup> day of January, 2017 by the Board of Appeals for Baltimore County,


**ORDERED**, that the Joint Motion for Revisory Order shall be considered as a Motion for Reconsideration; and it is further,

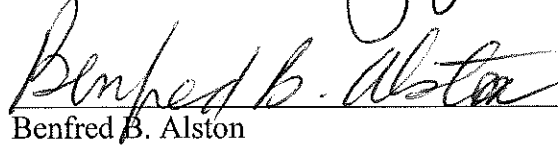
Ruling on Joint Motion to Revise  
In the matter of: Ellen McBaron Burger and Kirsten Burger  
Case number 16-158-SPHA

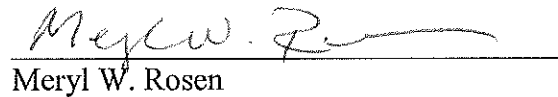
**ORDERED**, that the Motion for Reconsideration is GRANTED upon the condition that the Parties submit to the Board a revised Settlement Agreement and/or Red-Lined Site Plan at a hearing to be scheduled; and it is further

**ORDERED**, that a final Opinion will be issued by this Board with no further action to be taken on this Ruling until such time as the Board's final Opinion and Order are issued.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
Maureen E. Murphy, Chairman

  
Benfred B. Alston

  
Meryl W. Rosen



## Board of Appeals of Baltimore County

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January 12, 2017

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David F. Mister, Esquire  
13604 Brookline Road  
Baldwin, Maryland 21013

RE: *In the Matter of: Ellen McBarron Burger and Kirsten Burger, Trustees of the  
Ellen McBarron Burger Revocable Trust – Legal Owners*  
Case No.: 16-158-SPHA

Dear Counsel:

Enclosed please find a copy of the Ruling on Joint Motion for Revisory Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review 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 Board's original Opinion and Order issued October 24, 2016, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington  
Administrator

KLC/tam  
Enclosure  
Duplicate Original Cover Letter

c: Ellen McBarron Burger  
Kirsten Burger  
Bruce E. Doak/Bruce E. Doak Consulting, LLC  
Lawrence M. Stahl, Managing Administrative Law Judge  
Andrea Van Arsdale, Director/Department of Planning  
Arnold Jablon, Deputy Administrative Officer, and Director/PAI  
Nancy C. West, Assistant County Attorney/Office of Law  
Michael E. Field, County Attorney/Office of Law

John and Maria Pycha  
Judith Wilson  
Richard Edmunds  
Office of People's Counsel