



## Board of Appeals of Baltimore County

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March 8, 2016

Nancy C. West, Assistant County Attorney  
Baltimore County Office of Law  
400 Washington Avenue  
Towson, Maryland 21204

Kevin Bielat  
13825 Burntwoods Road  
Glenelg, Maryland 21737

RE: *In the Matter of: Kevin Bielat*  
Case No.: CBA-15-017

Dear Ms. West and Mr. Bielat:

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,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington  
Administrator

KLC/tam  
Enclosure  
Duplicate Original Cover Letter

c: Office of People's Counsel  
Andrea Van Arsdale, Director/Department of Planning  
David Lykens/DEPS  
Vincent Gardina, Director/DEPS  
Jan Cook, Development Manager/PAI  
Arnold Jablon, Deputy Administrative Officer, and Director/PAI  
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF:	*	BEFORE THE
KEVIN BIELAT	*	BOARD OF APPEALS
320 East Pennsylvania Avenue	*	OF
Towson, MD 21286	*	BALTIMORE COUNTY
(DRP # 566)	*	CBA-15-017
9 <sup>th</sup> Election District, 5 <sup>th</sup> Councilmanic District	*	

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**OPINION**

This case comes before the Baltimore County Board of Appeals on a *de novo* appeal of a May 26, 2015<sup>1</sup> letter from Arnold Jablon, Director of the Department of Permits, Approvals and Inspections (“PAI”) to Petitioner Kevin Bielat (the “Petitioner”). Mr. Jablon’s May 26 letter advised the Petitioner of PAI’s approval, per Baltimore County Code §32-4-203, of the Design Review Panel’s recommendation for the subject property located at 320 East Pennsylvania Avenue in Towson (the “Property”). PAI’s approval was a condition precedent for the issuance of a permit for the Property. The May 26, 2015 letter also incorporated in its entirety a separate Memorandum dated May 26, 2015 from the Department of Planning (the “DOP”). The DOP’s Memorandum advised Mr. Jablon of the Design Review Panel’s recommended approval, with conditions, of the Petitioner’s construction of a single family dwelling on the Property per elevation drawings the Petitioner submitted on May 21, 2015. The Petitioner filed a timely appeal on June 19, 2015.

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<sup>1</sup> There are two copies of the approval letter from Mr. Jablon in the file with different dates. One letter is dated 26 May 2015 and the other 27 May 2015. The County entered a copy dated 27 May 2015 as County Exhibit 26. Mr. Bielat filed his appeal to the letter dated 26 May 2015, (County Exhibit 27). The issue of the date was not brought into question at the hearing.

The Petitioner appeared *pro se*. Assistant County Attorney, Nancy West, Esquire appeared on behalf of Baltimore County. This Board held hearings on September, 16, 2015, September 30, 2015, and December 9, 2015, and publically deliberated on January 20, 2016.

### BACKGROUND AND EVIDENCE

The Property is located in East Towson, one of the oldest African-American communities in Baltimore County. This historic area is one of the County's "design review areas;" it is thus subject to certain design standards that were established to ensure that any new development is compatible with the neighborhood's historic and residential character. (*See County Ex. 6.*) The standards for this particular area are set forth in a document known as the East Towson Design Standards ("ETDS").<sup>2</sup> (*County Ex. 5.*) The County's Design Review Panel ("DRP"), under the auspices of DOP, uses such standards and guidelines to encourage design excellence in certain designated areas. (*See Baltimore County Code ("B.C.C.") §32-4-203(b).*) For any proposed residential construction in one of these design review areas, the DRP is required to "apply the design standards in sections 260.2 through 260.6 of the Baltimore County Zoning Regulations and any standards identified in a community plan that has been adopted by the County Council as part of the Master Plan." (*B.C.C. §32-4-203(c)(2).*)

The house that previously existed on the Property burnt down years ago. The Petitioner testified that he entered into a contract to purchase the Property with the intent to build a family home on the land. To this end, the Petitioner, as the contract purchaser, and Leon Benner, as the property's legal owner, filed a Petition in November, 2014 for a Special Hearing to approve an

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<sup>2</sup> The cover page of the ETDS admitted as County Ex. 5 is labelled "Draft October 2, 2003." DOP representative Jennifer Nugent explained that although the word 'Draft' was never deleted from the cover, the proffered ETDS has long been administratively adopted, and continues to be used by the DOP and the Administrative Law Judges as the appropriate standards for development in the East Towson area. *See also County Ex. 25.*

undersized, non-conforming lot. They also sought a Variance to permit a single family dwelling with setbacks of 15 feet for the front yard, and 0 feet and 6 feet for the side-yards of this 40-foot wide lot. (*County Ex. 1*).

Prior to the hearing before the Administrative Law Judge (“ALJ”), the DOP submitted its Recommendations on the variance request to the ALJ. (*County Ex. 3*). These Recommendations included a 3 foot minimum side setback on both sides of the proposed dwelling and that “compatibility of the proposed windows and door treatments be conditioned upon review and approval through the Design Review Panel process.” (*Id.*)

By Opinion and Order dated January 27, 2015 in Case No.: 2015-117-SPHA, the ALJ dismissed as moot the request for a special hearing to confirm the non-conforming, undersized lot. The ALJ approved the requested variances for the front and side yards. (*See County Ex. 2*.) However, the ALJ’s approval was conditional in that the Petitioner was first required to submit elevation drawings of the proposed structure to the DOP for approval. Consistent with the DOP Recommendations, the ALJ further ordered that prior to the issuance of permits:

Petitioners must obtain approval (i.e., indicating compliance with the [ETDS]) from the Northeast Towson Improvement Association and the chairman of the Design Review Panel, or the Design Review Panel following a public meeting, as the case may be pursuant to County Code, §32-204(d)(2).

(*Id. at 3.*)

Testimony before this Board revealed that on or about January 28, 2015, the Petitioner submitted his first set of elevation and grading plans to the DOP. (*See County Ex. 4.*) The following day, he met with DOP representatives Jennifer Nugent and Krystle Patchak to review his submissions. Ms. Nugent, a DOP Planner who is charged with reviewing variance applications and development in the County (including East Towson), has been part of the DRP staff for approximately 12 years and also is Executive Secretary of the DRP. Ms. Nugent testified that she

became involved with the Property on the DRP's behalf to ensure that the ALJ's Order was carried out. She also testified that after reviewing the Petitioner's first set of submissions, she told him that the elevations were incomplete and that some of the architectural features did not comply with the ETDS.

According to Ms. Nugent, she also explained to the Petitioner the approval process for properties such as his that are located in an area covered by the DRP and must meet particular standards. This process includes a choice between "limited" and "full" reviews: in a limited review, the applicant only needs approval from the area community association and the DRP Chair; the full review involves a public hearing with more members of the DRP.<sup>4</sup> The Petitioner initially opted for a limited review.

On February 2, 2015, *prior to submission of his revised elevations for the limited review*, the Petitioner applied for a permit to construct the proposed dwelling. (*See County Ex. 17*). According to Ms. Nugent, the DOP responded to the application with a document known as an "OK to File Building Permit Review." (*Id.*) That OK-to-File document states that the applicant is required to undergo DRP review. It also states that submitted "elevations must be exactly as contracted by the purchaser. Any and all options must be included and specifically indicated on the elevations so a proper determination can be made for compliance...." Ms. Nugent's handwritten notation also states that the elevation drawings "must meet East Towson Design Stds." (Emphasis in original). (*Id.*) Until this condition was met, Ms. Nugent testified, there was a hold on the permit and construction could not begin.

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<sup>2</sup>The ALJ's Opinion contained a similar reference to the Petitioner's options with respect to the process before the DRP. (*See County Ex. 2 at 3.*)

Having chosen the limited review, on or about March 17, 2015, Mr. Bielat submitted to Ms. Nugent a second set of elevation drawings, as well as a project approval letter from the North East Towson Improvement Association. (*See County Ex. 8 A-I.*)<sup>5</sup> Ms. Nugent stated she then met with DRP Chairman John DiMenna and DOP Chief of Development Lynn Lanham regarding this second set of submissions. Mr. DiMenna reviewed the second set of elevations for compliance “in the context of the East Towson Design Standards dated October 2003.” (*County Ex. 9.*) Mr. DiMenna concluded that revisions were needed in order to satisfy the ETDS requirements. (*Id.*) These included such items as removal of a parking pad, and other changes to better reflect Victorian features, including:

- Porch roof is too steep with no trim at eave.
- Railing is required for porch.
- Front facade proportions need to be improved. Windows are too wide and need to be narrower than shown. Window design should be 1/1 or 2/2 panes. The windows are too close to outside corners which makes building expression more horizontal than vertical indicated as part of the East Towson Design Standards.
- Window in roof gable is too wide.
- Window trim needs to be provided at all windows.
- Front door should be single door.
- Stone should not extend above first floor line.

(*County Ex. 9.*) Ms. Nugent promptly sent a letter and email relaying these comments to the Petitioner. (*See County Ex. 10, 11.*) The correspondence stated, and Ms. Nugent testified, that the Petitioner’s plans were approved subject to the identified comments, and conditioned upon the Petitioner submitting revised architectural elevations, floor plans, site and landscape plans to the DOP for review and approval. (*See County Ex. 10.*)

A series of emails between Ms. Nugent and the Petitioner followed. On March 24, 2015, Ms. Nugent told the Petitioner that the comments from the limited design review stand, and that

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<sup>5</sup> The Petitioner became the property owner on February 19, 2015.

no further limited meetings would be held. (*See County Ex. 12.*) She also told him that if he wanted the full review, April 23 was the submission deadline for the upcoming May DRP meeting. (*Id.*) The emails confirm that the Petitioner asked to be heard sooner, during the DRP's April public meeting; Ms. Nugent responded that the submission deadline for agenda items for that meeting already had passed. (*Id.*)

During this same period, the Petitioner was in contact with other representatives of the County, including Donald Brand, the County Building Engineer, and Arnold Jablon, Director of PAI, in an attempt to override the DRP and DOP. In this communication, the Petitioner took issue with the DRP comments and noted that although the DRP determined that his planned windows were too wide, many of the existing homes in the area have windows as wide as or wider than those in his designs. The Petitioner also complained that many existing windows in the area have grid patterns similar to that proposed by him but rejected by the DRP. (*See County Ex. 13.*)

In response to the Petitioner's complaints to Donald Brand and Arnold Jablon, on April 7, 2015, the Director of DOP, Andrea Van Arsdale, sent the Petitioner an email that the DOP was aware of Petitioner's disagreement with the ETDS conditions. (*County Ex. 23.*) She further explained that his permit would not be approved because he refused to comply with the ETDS conditions. Lastly, she requested that he direct all future communication to her and not to the DOP staff. (*Id.*)

On cross examination, the Petitioner initially denied receipt of Ms. Van Arsdale's email. In response to a request by this Board to check his emails, he could not deny that, in fact, he had received it.

On or about April 22, 2015, the Petitioner submitted his third set of elevation drawings to the DOP for full review by the DRP. The minutes of the May 13, 2015 DRP public hearing indicate that the Petitioner presented this third set of elevations to five members of the DRP who had

questions and comments for Petitioner regarding the project. (*See County Ex. 14.*) Chairman DiMenna apparently “commented on the design of the home overall and its adherence to the East Towson Design Standards.” (*Id. at 4.*) The meeting minutes also state that Mr. DiMenna “stressed the importance of the guidelines and their purpose to improve the quality of architecture in the neighborhood.” (*Id.*) Ultimately, the DRP again gave conditional approval to the third set of elevations. The conditions included:

1. Remove parking pad at front of home.
2. Provide grading permit documentation to Planning Department staff.
3. Revise the window in the gable (front elevation) - provide a narrower window as per guidelines.
4. Revise the window pattern on second floor (front elevation) – move the windows closer together away from outside edge to give more verticality to elevation.
5. Provide a window trim on all windows.
6. Provide a railing for the front porch.
7. Remove the stone on front elevation or stop at the floor line.

(*Id. at 4-5.*) Petitioner was to submit the revised plans to the DOP for final review and approval. The minutes further note that the DRP members in attendance agreed unanimously that “[i]f the revisions do not satisfy the conditions set forth above, the applicant would need to return to the [DRP] for further review.” (*County Ex. 14 at 5.*)

On May 21, 2015, the Petitioner finally revised the elevations to meet the DRP’s concerns and submitted his fourth set of plans to the DOP. (*County Ex. 15.*) This fourth set of elevations was attached to correspondence from the Petitioner which stated that he was following up on the DRP’s meeting and minutes, and indicated he had removed the front parking pad from the plat. Consistent with the DRP’s previously enumerated list of conditions, the Petitioner stated that, with this fourth set of elevations, he had also:

- Revised the window in gable (front elevation) – provide a narrower window as per guidelines.
- Revised the window pattern on second floor (front elevation) – move the windows closer together away from outside edge to give more verticality to elevation

- Showing window trim on all windows
- Showing a railing for the front porch
- Removed the stone on front elevation or stop at the floor line.

*(Id.)*

Ms. Nugent testified that the DRP approved Petitioner's fourth set of elevations as submitted. On May 26, 2015, Ms. Nugent, on behalf of the DOP, sent a Memorandum transmitting that decision to Arnold Jablon, Director of PAI. *(See County Ex. 16.)* That Memorandum, which was copied to the Petitioner, *reiterated the conditions of the DRP's approval and noted that failure to meet the conditions would require another review by the DRP.* *(Id.)* Ms. Nugent also amended her department's OK-to-File to read "Final" *per the attached May 26<sup>th</sup> letter.* *(See County Ex. 17.)*

By letter dated May 26, 2015, Mr. Jablon notified the Petitioner that PAI accepted and approved the DRP's recommendation as contained in the DOP May 26<sup>th</sup> Memorandum (which Memorandum was incorporated as part of Mr. Jablon's letter). *(County Ex. 26.)* Mr. Jablon also repeated that such DRP approval was "a condition precedent for the issuance of a permit" for the Property. *(Id.)* Ms. Nugent testified that based on the Petitioner's fourth set of elevations, the hold on the building permit was then lifted and construction was allowed to begin.

On the same day that he submitted the fourth set of elevations with the DOP, the Petitioner filed with the Zoning Department of Baltimore County a Petition for Special Hearing 'to allow the building to be used as a Class A office building in lieu of the required 5 year wait time' as defined in BCZR §202.5. *(County Ex. 21).* That filing was assigned Case No.: 2015-0264-SPH by the Zoning Department. On that Petition, the reviewer for the Zoning Department, Jason Seidelman, filled in 'May 21, 2015' as the 'filing date'. That Petition also contains a stamp from the DOP indicating that they received the Petition on June 2, 2015.

On cross examination, the Petitioner was remarkably hesitant to admit that he completed or signed that Petition. After further questioning, he finally admitted to completing and signing it

but was adamant that he did not consider the Petition as having been 'filed' because he never paid the \$500.00 filing fee. He also insisted he never intended to use the Property as an office, notwithstanding the words on the Petition. Mr. Seidelman testified on behalf of the County that although the Petitioner repeatedly requested that the filing fee be reduced, the County would not reduce the fee. In response to multiple questions by the County on rebuttal, the Petitioner ultimately conceded that if the fee had been reduced, he would have used the Property as an office.

On June 9, 2015, the Petitioner filed a Notice of Appeal of Mr. Jablon's approval letter with this Board. In August 2015, Ms. Nugent conducted a field inspection of the Property. She testified that she observed that construction was underway. Ms. Nugent also noticed that some of the window openings already cut did not in fact conform to the fourth set of plans that the DRP had approved in County Exs. 15 and 19 – that is, the plans that were the basis of the permit approval. The spacing of the windows appeared different than the approved elevation, and no window had been cut in the gable area. She was unable to tell if there existed other non-conforming features of the house under construction, but testified that what she did observe adhered more closely to the earlier, NON-approved elevations. She contacted the County building inspections department regarding these concerns and a stop work notice was issued on or about August 26, 2015.

During his testimony, the Petitioner made clear his disapproval of the review process, and that, in his view, the ETDS were both subjective and ambiguous. He also questioned whether the ETDS applied to his Property. He provided an extensive array of photos of many homes in the design review area which he believed did not conform to the ETDS. The Petitioner testified that he believes the County representatives misled him. He does not think the DRP gave him adequate time to present his case at the DRP meeting on May 13, 2015, and contends that the DRP did not properly consider his plans. He maintained that the entire process was flawed and that his plans

fully comply with every building code and the ETDS, and highlighted the fact that his plans were approved by the community association. (*See Bielat Ex. 9.*)

The Petitioner also argued that the ETDS were never adopted by the County Council. Toward that end, he submitted an email from Thomas J. Peddicord, Jr, Legislative Council/Secretary to the County Council dated September 23, 2015 which read that there was no record that the County Council adopted the ETDS. (*Bielat Ex. 2.*)

Notably, the Petitioner also testified he never intended to construct the proposed dwelling in accordance with his fourth set of elevations as submitted to the DRP on May 21, 2015 - the plans that resulted in the DRP's final approval (and found in *County Exs. 15, 19*). He stated, rather, that he sent the fourth set of elevations - and agreed to the DRP's terms - simply to get the permit. According to Petitioner, he knew that he would not get his final permit unless he presented elevations that showed compliance with the DRP's conditions.

The Petitioner also indicated that he planned to proceed on what he described as "parallel tracks;" that is, to start building the house "his" way, while at the same time appealing to this Board the DRP conditions that he disliked. He acknowledged that he understood and accepted the risk of not complying with the DRP's conditions, but did so after weighing the odds and "calculating [his] chances" that on appeal, this Board would approve what he had already built.<sup>8</sup>

### DECISION

This matter comes before the Board in a somewhat unusual posture. The Petitioner seeks relief from a letter *granting* him approval for the building permit he sought based on the fourth set

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<sup>8</sup> In this regard, he testified that he would be willing to modify or fix the construction if necessary after this Board's decision.

of plans that he submitted. The problem lies in the fact that the Petitioner never intended, and does not now want, to adhere to his fourth set of plans - the plans on which the permit approval is based.

From the beginning of this process, and at every step along the way, the evidence revealed that the County made the Petitioner aware that the Property was in a design review area and that the DRP's approval of his elevation drawings was thus a condition precedent to permit approval. Initially, the ALJ's January 27, 2015, Order granted the Petitioner's request for a variance, but conditioned this grant upon the DRP/DOP's approval of elevation drawings and specified that this approval was based upon compliance with the ETDS. (*County Ex. 2 at 3.*)

It is clear to this Board that when the Petitioner submitted his first set of elevation drawings to the DOP in January 2015, the agency representatives with whom he conferred advised him that the plans did not comply, as required, with the ETDS in a variety of respects. Notwithstanding this advice, two months later, the Petitioner not only purchased the Property knowing the conditions imposed but then submitted nearly identical elevation drawings (second set of elevations) as part of his submission for a "limited review" of this project by DRP chairman John DiMenna. (*See County Exs. 8 A-I.*)<sup>9</sup>

Similar to the DOP's comments in January, Mr. DiMenna's March review also identified a number of problems with Petitioner's second set of elevations, including its failure to adhere to certain of the design requirements found in the ETDS. The DOP's March 20<sup>th</sup> Memorandum sent to the Petitioner outlined the specific revisions Mr. DiMenna deemed necessary for approval, and made clear that the proposed construction was:

Approved, *subject to the recommendations above and with the following condition:* Submit revised architectural elevations . . . to the Department of Planning for review and approval.

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<sup>9</sup> The front elevation drawing Petitioner submitted in March does not appear appreciably different, if at all, from that the DOP advised against in January. (*Cf. County Ex. 4 and County Ex. 8E.*)

(*County Ex. 10* (emphasis supplied).)

Following a full review on May 13, 2015, we note that the full DRP approved the project *subject to* the Petitioner making changes that were similar to, but not as extensive as those detailed by chairman DiMenna in March. (*See County Ex. 14.*) We find that the minutes of this meeting reflect that Petitioner was again made aware of the conditional nature of this approval: he was told that his revisions were to be submitted to the DOP for final review and approval; further, “[i]f the revisions do not satisfy the conditions set forth above, the applicant must return to the Design Review Panel for further review.” (*Id.* at 5) (Emphasis supplied).

At this point, we find that the Petitioner apparently came to the realization that although he did not agree with the aesthetics of the conditions imposed, he was not going to get his permit unless he complied with the DRP’s demands - or at least appeared to do so. Of significance in our review of the facts was that on May 21, 2015, the Petitioner sent to Ms. Nugent a fourth submission in which he advised he was “[f]ollowing up to your May 13, 2015 meeting and minutes.” (*County Ex. 15.*) Virtually parroting the DRP’s revision requirements, the Petitioner stated that this fourth set of elevation drawings showed a revised, narrower gable window, revised the window pattern on the second floor, moved the windows closer together and away from the outside edge, showed window trim for all windows, included a front porch railing and removed stone on the front. (*Id.*) Based on this signed submission, and the particular elevation he thus agreed to build, the Petitioner obtained his permit. However, we find from the testimony and evidence that Petitioner then proceeded to build a house that did not, in fact, conform to his fourth set of elevations.

During the hearing, it became clear to this Board (and Petitioner admitted) that he never intended to use the fourth set of plans that he submitted to the DRP on May 21. He conceded he took a calculated risk, weighing the odds that on appeal, this Board would allow him to build the house he wanted (which the DRP repeatedly rejected), rather than the one that the DRP approved.

In now seeking the Board's affirmation of his actions, the Petitioner maintains that the ETDS are relatively vague and do not provide objective standards. We do not agree with his contention that the DRP's conditions imposed on this Property are not derived from the ETDS. We are not convinced by his photos that other homes in the East Towson design review area contain design elements that the DRP rejected for *his* home, or lack others the DRP required him to add. The Board finds that the Petitioner was well aware that the DRP's approval was a condition of obtaining the permit. But, rather than continuing to proceed administratively in a forthright manner, he made a conscious decision to deceive and "play" the system. He obtained his permit by submitting and agreeing to plans he knew the DRP would approve, all the while knowing that he never intended to actually use those plans. Petitioner then began riding on his theory of "parallel tracks"; he filed an appeal of the permit letter based on plans that *were* approved, and also started construction based on plans he knew the DRP *never* approved.

Regardless of his views of the process, the Board finds that on May 21, 2015, the Petitioner knowingly agreed to adhere to certain ETDS conditions as imposed by the DRP and the DOP. As he intended, his agreement resulted in the DRP's approval of the plans found in County Ex. 19, and ultimately to PAI's May 26, 2015 letter approving the issuance of his permit. As the Board finds no legal or factual error with regard to Mr. Jablon's letter or the conditions outlined therein, Mr. Bielat will be held to that to which he agreed.

This Board further finds that the Petitioner lacked credibility through his own testimony and actions in several ways. First, while filing the fourth set of elevations for a residence with the DOP, on the same day he filed - with a separate department of the County - a Petition to use the Property for a commercial purpose. (*County Ex. 21*). At the hearing, he consumed the Board's time by trying to be clever with his testimony that he never intended to convert the Property to an

office. On rebuttal, he finally admitted to this intention, and that only the amount of the fee prevented the processing of this Petition to completion.

It was obvious to this Board that the purpose of filing the Petition for office conversion was to avoid condition '3' contained within the ALJ Order (p.3) (i.e. that he needed to obtain approval from the DRP under BCC §32-4-204(d)(2) which Section covers '*residential plans*'). Notwithstanding the Petitioner's insistence that the proposed home would be his residence, it was not lost on this Board that the Petitioner resides in Howard County. (*County Ex. 33*).

Second, we find that the Petitioner was disingenuous in his testimony that he did not receive or read Ms. Van Arsdale's email dated April 7, 2015. We find that this email clearly told the Petitioner that he would not be granted a permit because he refused to comply with the ETDS conditions. As of the date of that email, the Petitioner had already submitted 3 sets of non-compliant elevations. It is obvious to this Board that he was trying to get around the DRP and DOP by going to other County officials. When that was not successful, we believe that he had run out of other options to get the permit outside of the DRP process and decided to submit the fourth set of elevations.

Third, and worse yet, we find that the Petitioner was untruthful with this Board when he submitted an email from Thomas J. Peddicord, Jr., Legislative Counsel/Secretary to the County Council, which stated that there was no record that the ETDS were adopted by the County Council. (*Bielat Ex. 2*). In the County's case on rebuttal, we learned that the Petitioner failed to disclose the entire thread of emails from Mr. Peddicord sent to the Petitioner on the same date (only 2 hours later) that in fact, the ETDS may have been administratively adopted. (*County Ex. 25*). Indeed, the evidence presented by the County proved to the satisfaction of this Board that the County Council did administratively adopt the ETDS. (*County Ex. 29 – 32*).

When we consider the Petitioner's lack of credibility on those 3 issues in combination with his *agreement* to build the proposed dwelling as required by the DRP (*County Ex. 15*), as well as the continuous notice to the Petitioner by the County of the ETDS conditions with each of his first 3 sets of elevations, and the ALJ's Order requiring conditional approval by the DRP, we find that the Petitioner's proposed dwelling must comply with the approved ETDS conditions as set forth in the DOP's May 26, 2015 Memorandum entitled "Design Review Comments" (*County Ex. 16*) and as incorporated in PAI's May 26, 2015 approval letter from which this case originated.

**ORDER**

THEREFORE, IT IS THIS 8<sup>th</sup> day of March, 2016 by the Board of Appeals of Baltimore County,

**ORDERED** that the proposed dwelling at the Property must be constructed to comply with the approved ETDS conditions as set forth in DOP's May 26, 2015 Memorandum entitled "Design Review Comments"(County Ex. 16) and as incorporated into PAI's May 26, 2015 approval letter from which this case originated.

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 of Procedure.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
Maureen E. Murphy, Chairman

  
Meryl W. Rosen

  
Jane M. Hanley