

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
 S/S Hidden Trail Drive, 1,450' +/- ZONING COMMISSIONER
 E of c/l of Shaded Brook Drive (1108 Hidden Trail Drive) * OF BALTIMORE COUNTY
 3rd Election District * Case No. 89-122-A
 3rd Councilmanic District
 Charles J. Weiner, et ux
 Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit a side yard setback of 0 feet in lieu of the required 50 feet, as more particularly described in Petitioner's Exhibit 1.

The Petitioners, by Mr. Weiner, appeared and testified. Mr. & Mrs. Bernard Geher appeared as Protestants and were represented by Jay Hymer, Esquire. Also appearing in Protest was Phyllis Friedman for the People's Counsel for Baltimore County.

At the onset of the hearing, it was determined that the request outlined in the Petition filed in this matter was inaccurate. Accordingly, the Petition was amended to request a side yard setback of 0 feet on the east side of the property only. The Petitioner intends to maintain a 50-foot setback on the west side of the property. As such, the hearing addressed only the request for a side yard variance on the east side of the property; the variance requested for the west side is withdrawn.

Testimony indicated that the subject property, known as 1108 Hidden Trail Drive, is zoned R.C. 5 and is currently unimproved. Petitioner proposes constructing a new dwelling on the eastern property line as depicted in Petitioner's Exhibit 1. The Petitioner claims the lot is too narrow to build a house that conforms with the other residences in the community and a house of 100 feet in width is required by the covenants.

Further, Petitioner claims that at the time he purchased the lot, he did not know what type, size or dimension of dwelling he would select and that much time and effort was spent in deciding on the proposed two-story rancher-type dwelling with an attached garage.

The Protestants live on the adjacent property east of the subject site. The Protestants claim that they maintained the 50-foot setback requirements when they built their home and that the proposed side yard variance will reduce the value of their property and be harmful to the community overall.

Ms. Friedman testified that People's Counsel is opposed to the granting of 0-foot setbacks on an R.C. 5 lot, given the size, shape and dimensions of such R.C. 5 lots. When Ms. Friedman learned that the variance requested was only for one side, she withdrew her objections to the proposed variance.

Section 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) states that the Baltimore County Zoning Commissioner shall have the power to create variances from an area regulation where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

In reviewing the Petition, it must be kept in mind that "(t)he standard for granting a variance... is... whether strict compliance with the regulations would result in 'practical difficulty or unreasonable hardship;' and that it should be granted only if in strict harmony with the spirit and intent of the Zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare." Furthermore, an area variance may be granted where strict application of the zoning regulations would cause practical diffi-

culty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with 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.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

The question therefore is whether it was fairly debatable that the evidence shows strict compliance with the regulations would result in practical difficulty or unreasonable hardship.

Petitioner's Exhibit 1 clearly shows that the eastern property line abuts a narrow strip of land approximately 30 feet wide, at the point at which it meets the front of the house, which is extremely sloped and is primarily used as a storm water drainage area. The Petitioners were aware of this drainage area and knew of the size of the lot and the restraints of developing the property to the side yard property line at the time they purchased the property. The Petitioners were unable to demonstrate some practical difficulty or unreasonable hardship to justify the requested variance. No testimony was presented as to any hardship or practical difficulty Petitioners would experience if denied the requested variance. The testimony mainly concerned their desire to build a certain type of home and to build it in a particular location. In the opinion of the

ORDER RECEIVED FOR FILING
 Date 10/28/88
 By J. Robert Haines

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the required 50 feet, be and is hereby GRANTED, subject, however, to the following restrictions, which are conditions precedent to the relief granted herein:

- 1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- 2) Petitioner shall submit to the Zoning Commissioner's Office by no later than February 15, 1989 a new site plan prepared by a registered professional engineer and/or land surveyor, which clearly identifies the proposed dwelling, its size and area dimensions, its exact location on the subject property, its distance from all property lines, and any other information as may be required to be a certified site plan.

J. Robert Haines
 J. ROBERT HAINES
 Zoning Commissioner
 for Baltimore County

Baltimore County
 Zoning Commissioner
 Office of Planning & Zoning
 Towson, Maryland 21284
 494-3353

J. Robert Haines
 Zoning Commissioner

October 28, 1988

Mr. Charles J. Weiner
 3908 W. Strathmors Avenue
 Baltimore, Maryland 21215

RE: PETITION FOR ZONING VARIANCE
 S/S Hidden Trail Drive, 1,450' +/- E of the c/l of Shaded Brook Drive
 (1108 Hidden Trail Drive)
 3rd Election District - 3rd Councilmanic District
 Charles J. Weiner - Petitioner
 Case No. 89-122-A

Dear Mr. Weiner:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted as modified in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party 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 Ms. Charlotte Radcliffe at 494-3391.

Very truly yours,

J. Robert Haines
 J. ROBERT HAINES
 Zoning Commissioner for
 Baltimore County

JRH:bjs

cc: Jay Hymer, Esquire
 22-C Stockmill Road
 Baltimore, Maryland 21208

People's Counsel

File

ORDER RECEIVED FOR FILING
 Date 10/28/88
 By J. Robert Haines

JRH:bjs

PETITION FOR ZONING VARIANCE
 TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 89-122-A

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 180A.1.B.5. (B.C.Z.R., 1975) to permit a side yard setback of 0' in lieu of the required 50'.

- of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty) PRACTICAL DIFFICULTY
1. Due to the topography of the lot and the position of the septic area and the well it would be difficult to place our proposed house without going beyond the minimum yard requirements.
 2. In keeping with the property values of the other houses in the neighborhood, it is not practical to build a house with only a 50' width.
 3. The parcel of land on the east side of the property in question is unbuildable.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: _____
 (Type or Print Name)
 Signature: _____
 Address: _____
 City and State: _____
 Attorney for Petitioner: _____
 (Type or Print Name)
 Signature: _____
 Address: 3908 W. STRATHMORS AVE. 764-2676
 Baltimore, MD 21215
 City and State: _____
 Name, address and phone number of legal owner, contract purchaser or representative to be contacted: _____
 Name: _____
 Address: _____
 City and State: _____
 Attorney's Telephone No.: _____
 Address: _____
 City and State: _____

ORDER RECEIVED FOR FILING
 Date 10/28/88
 By J. Robert Haines

ORDERED By The Zoning Commissioner of Baltimore County, this 31st day of August, 1988, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 13th day of October, 1988, at 9 o'clock A.M.

J. Robert Haines
 Zoning Commissioner of Baltimore County.

(over)

Zoning Commissioner, the proposed dwelling could be redesigned in such a manner as to meet both the Petitioners' needs and Baltimore County's setback requirements. The subject property is not unique or unusual in that it cannot otherwise be developed. It is not too small to accommodate a house with a garage. Further, the Petitioners will be allowed to use the drainage area to their advantage in establishing adequate separation between buildings.

After due consideration of the testimony and evidence presented, there is insufficient evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variance were denied. The testimony presented by Petitioners was in support of a matter of preference rather than of the necessity for the variance. The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. Therefore, the variance requested shall be denied.

However, as stated earlier, there is a 30-foot wide drainage area between Petitioners' property and the adjacent property. A variance of 20 feet in combination with the 30-foot wide drainage area will provide the required 50-foot area separation between the proposed dwelling and the neighboring property. Accordingly, a 20-foot variance will be granted with restrictions as more particularly described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested as modified herein should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 28th day of October, 1988 that a variance to permit a side yard setback of 20 feet on the east side of the property in lieu of

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 Date 10/28/88
 By J. Robert Haines

ZONING DESCRIPTION

Beginning on the south side of Hidden Trail Drive, 50' wide, at the distance of 1450 ft east of the centerline of Shaded Brook Drive, being Lot 83, in the Subdivision of Valley Heights, Book No. 40, Folio 37. Also known as 1108 Hidden Trail Drive in the 3rd Election District.

CERTIFICATE OF POSTING
 ZONING DEPARTMENT OF BALTIMORE COUNTY
 Towson, Maryland

District: 3rd
 Posted for: Variance
 Petitioner: Charles J. Weiner, et ux
 Location of property: S/S Hidden Trail Drive, 1,450' E. of Shaded Brook Drive (1108 Hidden Trail Drive)
 Location of Sign: Front of subject property
 Remarks: _____
 Posted by: J. Robert Haines
 Date of return: September 30, 1988
 Number of Signs: 1

RE: PETITION FOR VARIANCE : BEFORE THE ZONING COMMISSIONER
 S/S Hidden Trail Dr., 1450'± E : OF BALTIMORE COUNTY
 C/L Shaded Brook Dr. (11108 :
 Hidden Trail Dr.), 3rd Election :
 Dist.; 3rd Councilmanic Dist. :
 CHARLES J. WEINER, et ux, : Case No. 89-122-A
 Petitioners :

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
 Phyllis Cole Friedman
 People's Counsel for Baltimore County

Peter Max Zimmerman
 Peter Max Zimmerman
 Deputy People's Counsel
 Room 304, County Office Building
 Towson, Maryland 21204
 494-2188

I HEREBY CERTIFY that on this 21st day of September, 1988, a copy of the foregoing Entry of Appearance was mailed to Mr. and Mrs. Charles J. Weiner, 3908 W. Strathmore Ave., Baltimore, MD 21215, Petitioners.

Peter Max Zimmerman
 Peter Max Zimmerman

CERTIFICATE OF PUBLICATION

TOWSON, MD., Sept 19 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in OWINGS MILLS TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Sept 15 1988.

\$ 35.63
 PO# 05047
 Reg# M13805. Zefe - *Orlman*
 OWINGS MILLS TIMES,
 Publisher

NOTICE OF APPEARANCE
 The Zoning Commission of Baltimore County will hold a public hearing on the proposed Petition for Zoning Variance for the property located at 1450'± E of Shaded Brook Drive, 3rd Election District, 3rd Councilmanic District, Towson, Maryland, on Thursday, October 13, 1988 at 9:00 a.m. in Room 106 of the County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204. The hearing will be held in accordance with the provisions of the Zoning Ordinance, Chapter 21, Section 10-101. The hearing will be held in accordance with the provisions of the Zoning Ordinance, Chapter 21, Section 10-101. The hearing will be held in accordance with the provisions of the Zoning Ordinance, Chapter 21, Section 10-101.

Baltimore County
 Zoning Commissioner
 Office of Planning & Zoning
 Towson, Maryland 21204
 494-3333
 J. Robert Haines
 Zoning Commissioner

Date: 9/22/88



Dennis F. Rasmussen
 County Executive

Mr. Charles J. Weiner
 3908 W. Strathmore Avenue
 Baltimore, Maryland 21215

Re: Petition for Zoning Variance
 CASE NUMBER: 89-122-A
 S/S Hidden Trail Drive, 1450'± E c/l Shaded Brook Drive
 (11108 Hidden Trail Drive)
 3rd Election District - 3rd Councilmanic
 Petitioner(s): Charles J. Weiner
 HEARING SCHEDULED: THURSDAY, OCTOBER 13, 1988 at 9:00 a.m.

Dear Mr. Weiner:

Please be advised that \$35.63 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post set(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before

BALTIMORE COUNTY, MARYLAND
 OFFICE OF FINANCE, REVENUE DIVISION
 MISCELLANEOUS CASH RECEIPT
 No. 059050
 DATE: 10/13/88 ACCOUNT: R-01-615-000
 AMOUNT: \$ 86.26
 RECEIVED FROM: Charles J. Weiner
 FOR: Posting signs 10/13/88 hearing
 B 020*****86263 51335
 89-122-A
 VALIDATION OR SIGNATURE OF CASHER

Baltimore County
 Zoning Commissioner
 Office of Planning & Zoning
 Towson, Maryland 21204
 494-3333
 J. Robert Haines
 Zoning Commissioner

September 8, 1988

NOTICE OF HEARING



Dennis F. Rasmussen
 County Executive

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Zoning Variance
 CASE NUMBER: 89-122-A
 S/S Hidden Trail Drive, 1450'± E c/l Shaded Brook Drive
 (11108 Hidden Trail Drive)
 3rd Election District - 3rd Councilmanic
 Petitioner(s): Charles J. Weiner, et ux
 HEARING SCHEDULED: THURSDAY, OCTOBER 13, 1988 at 9:00 a.m.
 Variance to permit a sideyard setback of zero feet in lieu of the required 50 feet.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
 Zoning Commissioner of
 Baltimore County
 cc: Charles J. Weiner
 File

March 13, 1989

Mr. Charles Weiner
 3908 W. Strathmore Ave.
 Baltimore, MD 21215

re: Case #89-122-A
 Petition for zoning variance
 11108 Hidden Trail Dr.

To whom it may concern:

In reference to condition #2 regarding submittal of a new site plan I offer the following:

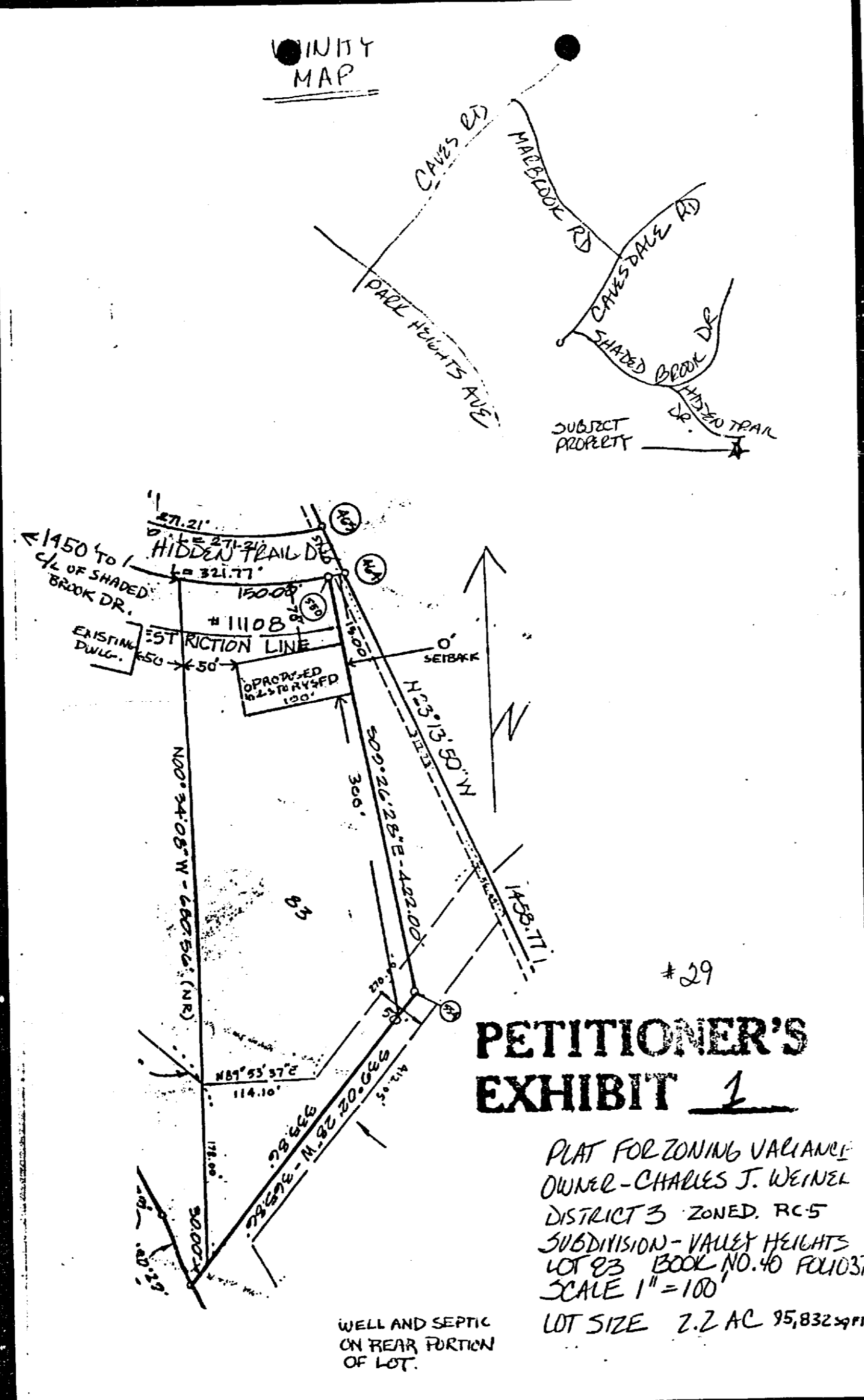
The house that I am building is a custom home and the architect took much longer than anticipated to finalize the plans.

I am currently on a deadline for the loan commitment and am hopeful that you understand the circumstances. I am sorry for this late submittal and hope that it will not cause a problem in obtaining a building permit.

Sincerely,
Charles Weiner
 Charles Weiner

RECEIVED
 MAR 14 1989
 ZONING OFFICE

OK J.R.H.
 3/22/89
 wen



89-122-A

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
 County Office Building
 111 W. Chesapeake Avenue
 Towson, Maryland 21204

Your petition has been received and accepted for filing this 3rd day of August, 1988.

J. Robert Haines
 J. ROBERT HAINES
 ZONING COMMISSIONER

Petitioner: Charles J. Weiner
 Attorney: _____
 Received by: James E. Dyer
 Chairman, Zoning Plans
 Advisory Committee

Baltimore County
 Fire Department
 Towson, Maryland 21204 2586
 494-4500

August 1, 1988

Paul H. Reinecke
 Chief
 J. Robert Haines
 Zoning Commissioner
 Office of Planning and Zoning
 Baltimore County Office Building
 Towson, MD 21204

Re: Property Owner: Charles J. Weiner
 Location: S side of Hidden Trail Drive, 1,450' ± E. from c/l of Shaded Brook Drive
 Item No.: 29 Zoning Agenda: August 2, 1988

Gentlemen:
 Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or ___ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *John F. O'Neill*
 Noted and Approved: _____
 Planning Group Fire Prevention Bureau
 Special Inspection Division

