

IN RE \* BEFORE THE BOARD OF APPEALS  
ANTHONY J. MIERZWICKI, ET UX \* FOR BALTIMORE COUNTY  
Lot #1, N/S Hampton Lane  
164' +/- W of Providence Road \*  
Lot #2, N/S Hampton Lane \*  
248' +/- of Providence Road \*  
9th Election District \* Case No. 90-6-A  
4th Councilmanic District \*  
VAR - Setbacks \*

PROTESTANTS' POST-HEARING MEMORANDUM

NOW COMES, Hampton Improvement Association, Inc. and all individual Protestants, by their attorney, Michael P. Tanczyn, Esq., which submits its Post-Hearing Memorandum and request for a denial of the Variances requested by the Petitioner.

STATEMENT OF THE CASE

Petitioner, Anthony J. Mierzwicki, et ux, filed a Petition with the Zoning Commissioner for Baltimore County requesting specific variances which, after hearing, by Order of October 10, 1989 was granted by J. Robert Haines, Esq., Zoning Commissioner for Baltimore County. On timely Appeal taken, November 3, 1989, the matter was referred to the Board of Appeals for Baltimore County which conducted hearings on June 1, 1990 and July 25, 1990.

STATEMENT OF FACTS

Petitioners, Anthony J. and Ruth Mierzwicki, purchased the property which is the subject of this Petition located on the

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North side of Hampton Lane, West of Providence Road, zoned DR-2 and being irregularly shaped, the topography generally running downhill from Providence Road paralleling toward Hampton Lane to Providence Road and paralleling the decline on Hampton Lane toward its western and northern boundaries. The land is presently unimproved at present and was purchased by the Petitioners from the School Sisters of Notre Dame by deed dated May 4, 1987.

In their request for variance from front yard, side yard setbacks essentially requesting a larger building envelope than that permitted under the regulations, the Petitioners' reasons which they contend create practical difficulty or unreasonable hardship are.

1. The conveyance by their predecessor in title, the School Sisters of Notre Dame of land to Baltimore County for the creation and extension of Hampton Lane immediately in front of the property by deed dated December 26, 1959.

2. The existence of a stormwater drainage swale on the property which they allege Baltimore County will not let them remove.

3. The insistence by Baltimore County on a 10,000 square foot septic drainage field per lot as required by the regulations in an area not presently served by public sewer.

4. The refusal by Baltimore County to sell them an adjacent tract located on the northwest corner of Hampton Lane and Providence Road, which Baltimore County will retain for use if

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public water is extended to properties along Providence Road north of Cowpens Road, which currently have private well supplies (letter May 4, 1988 from Shirley Murphy to Michael E. Marino, Esq., attorney for the Petitioners).

The property is located in the community of Hampton, which surrounds the property on three sides, although the subject property is not subject to the recorded covenants of Hampton imposing restrictions above those required by law. The community of Cowpens lies to the east of the subject property across Providence Road, which is the nearest intersecting street. Hampton Lane, as well as Providence Road, are improved public roads with single lanes in each direction, with no shoulder on Hampton Lane on either side.

The Petitioners' witnesses, James W. McKee, accepted as a registered surveyor and as a developer; Keith Randlett, a realtor and business partner of the Petitioner, Anthony J. Mierzwicki; and the Petitioner, Anthony J. Mierzwicki, testified as to the foregoing and to the creation by the Petitioners of a small lot subdivision by deed of March 3, 1989, created after the filing of their Petition with the Zoning Commissioner for Baltimore County in the instant case.

Mr. Mierzwicki, the Petitioner, acknowledged on cross examination that the swale advanced to Baltimore County of land for Hampton Lane in 1959 and the area requirements for septic tanks and drainage areas were in existence prior to his purchase

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of the land; that, prior to submitting his request for subdivision after receiving approval of his lot subdivision in May of 1988 he was aware that Baltimore County would not sell him the portion of property on Providence Road and Hampton Lane adjacent to his property; that his approval of subdivision was done under the small lot regulations. He testified that he and his wife had paid \$110,000.00 for the property in May of 1987 and that there were no guarantees contained in the deed as to the availability of more than one building lot for the property.

Mr. McKee, Petitioners' expert surveyor, testified that the Petitioners could put one house on the lot, which would comply with the restrictions, but that what was allowed for two lots was not suitable to the neighborhood in his opinion. Mr. McKee calculated that by gross density alone but not considering any setback requirements, it would permit six dwelling units for the acreage owned by the Petitioners, and that the Petitioners' property was not served by metropolitan sewer and would require a septic system.

The Protestants, through the Hampton Improvement Association, Inc. and the individual Protestants, who attended both hearing dates and who testified, including Richard Tarallo and Langdon Carico, are from the Hampton development and were testifying as individuals and, in the case of Mr. Tarallo, as a spokesman for the Hampton Improvement Association. They were opposed to the Petitioners' request for variances because of

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traffic congestion on Hampton Lane and large traffic volumes on Providence Road, an intersection not controlled by any traffic lights, and on the effect that Petitioners' proposed development at one of the gateways to Hampton would have on the adjacent property values and on public safety because of the lack of adequate parking for residents or visitors to these residences and the proximity of the Petitioners' property to a large private school, Notre Dame Preparatory School, located across Hampton Lane to the south, extending from Providence Road to a point far west of the Petitioners' western boundary as shown on Protestants' aeriels and topographical maps. They also produced plats showing the density as built on adjacent Hampton lots which are generally developed at a density of one unit per acre or greater, which was the case in the properties adjacent to the Petitioners' proposed lots.

The Petitioners produced through Mr. McKee an exhibit showing a type of house which it said could be built if the variances were approved but would not commit to building the style of house shown and on cross examination admitted that the drawings shown would have to be modified by the areas cut off by Mr. McKee with his blue ink pen drawings on page 65 of the illustration to show what was requested by the Petitioners' variances. He also agreed that the home as illustrated, if it were to face Hampton Lane, would have to reverse the garage to show the driveway facing Hampton Lane as shown on the Petitioners' Exhibits 2 and 3.

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ISSUES  
HAS THE PETITIONER MET ITS BURDEN TO SHOW PRACTICAL DIFFICULTY OR UNREASONABLE HARDSHIP IN COMPLIANCE WITH THE ZONING REGULATIONS FROM WHICH VARIANCES ARE REQUESTED UNDER SECTION 307 OF THE BALTIMORE COUNTY ZONING REGULATIONS?  
Protestants view the Petitioners' application as an attempt to maximize profit by building a much larger structure than that permitted by the regulations and thus overcrowd the land to the detriment of the neighbors, and subjecting all travelers to untoward risk who utilize Providence Road and Hampton Lane to get to a destination.  
Petitioners' stated reasons for requesting the variances which they claim present practical difficulty or unreasonable hardship by development of this land, only apply to this Petitioner's blatant attempt to utilize the regulations for small lot subdivisions to obtain approval heretofore for two lots and then to avoid those same regulations contained in Baltimore County Zoning Regulation Section 1B02.3.C.1. now to maximize profit claiming that they do not apply to this subdivision by reading only Section 1B02.3.A.1. A careful reading of that section and in particular 1B02.3.A.4. discloses that the regulations require where any lot regardless of the density calculations allowing six or more is less than one-half acre, as is Petitioners' Lot #1 comprising .4449 acres, or 19,380 square feet. Petitioners' problem is that if the small lot subdivision regulations apply, which it claimed

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in order to get original approval for this lot plus Parcel A subdivision, then the provisions of Section 1B02.3.C.1. applicable to land zoned DR-2, are not met for minimum net lot area, minimum lot width, front yard depth, minimum sum of side yard widths, for one or more of the lots proposed.

Further the Petitioner has not requested variances for all of those shortcomings and relies in support of its Petition on the revised comment by the Office of Planning and Zoning dated September 7, 1989 following the original comment of July 19, 1989 from the Office of Planning and Zoning to the Zoning Commissioner. The proponent of those two comments, when called before the Board of Appeals, after reviewing the regulations mentioned, admitted that it would appear to him that, since Lot 1 is less than one-half acre, the other regulations would therefore apply to the instant Petition.

The Petitioners produced a letter from their engineer, Mr. McKee, to the Deputy Zoning Commissioner claiming the property was not subject to small lot development regulations because more than six units were allowed when computing all density calculations. There was no mention in that letter addressing the requirements of Subsection 1B02.3.A.4. nor in the revised comment of the Office of Planning and Zoning which followed that letter.

A need which will justify an exception to a zoning ordinance on practical difficulty or unnecessary hardship must be substantial and urgent and not merely for the convenience of the

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applicant. Carney vs City of Baltimore, 201 Md 130, 93 A 2d 74, (1953). Gleason vs Keswick Improvement Association, 197 Md 46, 78 A 2d 164 (1951).

The financial hardship is not sufficient. Marino vs City of Baltimore, 215 Md 206, 137 A 2d 193 (1958).

The fact that an exception or variance will make realty more profitable is not sufficient ground to justify the exception or variance, although financial advantage is not entirely irrelevant. Further, where one purchases realty with the intention to apply for a variance from the restrictions imposed by a zoning ordinance he cannot contend that such restrictions cause him peculiar hardships that entitle him to the special privileges which he seeks. Gleason vs Keswick Improvement Association (Supra).

Of the factors alleged as reasons creating practical difficulty or unreasonable hardship, the extension of Hampton Lane to Providence Road, the existence of the drainage swale and the regulations of Baltimore County prescribing a drainage septic field of 10,000 square feet, were in existence prior to the Petitioners' contract for or purchase of the property. Further, prior to the presentation of his Petition to the Zoning Commissioner by almost one year he was aware that Baltimore County, as of May of 1988, was unwilling to sell him additional adjacent land on the corner of Providence Road and Hampton Lane.

With knowledge of those facts the Petitioner sought

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approval for a subdivision under the small lot regulations of Baltimore County to avoid the more formal and, presumably, more expensive regular subdivision process. Having been allowed to proceed in that way, he now claims that those same regulations do not apply to this subdivision for purposes of the variance. His attempt to avoid the requirements of the small unit regulations having to do with lots less than one-half acre torture not only the spirit but the letter of the zoning regulations and, because of the condition and status of the improved roads servicing his lot, which he seeks to develop, would impose a threat to public safety in the form of increased dangers to traffic traveling westbound or eastbound on Hampton Lane due to the poor sight distance on Providence Road to the driveways as shown on Petitioners' lots.

Petitioners have not met the burden they must meet under Section 307 of the Baltimore County Zoning Regulations despite their reliance on McLean vs Soley, 270 Md 208, 310 A 2d 783 (1973), which the Court of Appeals called a close case at page 787, and which case is factually dissimilar and is distinguishable from the Petition under present consideration. The factual issue in McLean vs Soley dealt with the Petitioner Soley's attempt to save existing trees on the site by designing parking lots which would save the trees if approved. In that case the Protestant, Mr. McLean lived in a house 28 feet from its property line and 48 feet from the closest building proposed on the Soley property,

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which would exceed the County's requirement for a 40 foot window-to-window relationship at page 785.

In the instant case the Petitioners are not deprived of a reasonable use of their property by the denial of these variances. The Petitioners' testimony from Mr. Mierzwicki as well as Mr. Randlett, his business associate, were not that two units could be built on the property, but that the demand was not present for a 2,000 square foot that would be there for a 3,000 square foot house.

The Petitioner can today apply for and be granted a building permit for a 3,000 square foot house on his holdings. He cannot, however, overburden the land unless his variance petitions are granted.

The denial of these variances would be in keeping with the decision in Ad + Soil, Inc. vs County Commissioners of Queen Anne's County, 307 Md 307, 513 A 2d 893 (1986). Although that Petition in Queen Anne's County involved a use variance for a sewage sludge storage and distribution facility, the Court on appeal found that the denial by the public authorities of a conditional use permit and variances was proper in the facts of since the ordinance required it to consider in all conditional use cases factors as the probable affect on the use of property values and the peaceful enjoyment of people in their homes and the probable affects of any odors on the surrounding property and further that the ordinance in that case required denial of permits

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if the use would adversely affect the public health, safety, security, morals or welfare or would jeopardize the lives or property of people living in the neighborhood at page 897.

The Baltimore County Zoning Regulations, Section 307, give authority to the Zoning Commissioner or County Board of Appeals to grant variances only where strict compliance would result in practical difficulty or unreasonable hardship and only if in strict harmony with the spirit and intent of said height, area, offstreet parking, or sign regulations, and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare. (emphasis supplied)

In this case the danger, not only to the community but to the ultimate owners of the residences, through traffic and overcrowding of land as well as the absence of practical difficulty or unreasonable hardship because of the remaining available uses to the Petitioner of these lots and their development in accordance with approvals previously obtained; it would be a manifest error to allow the Petitioner to claim the benefit of the small unit development regulations and then disavow their application as applied to the zoning variance case on the testimony presented to the Board.

Other cases cited by the Zoning Commissioner; namely, McLean vs Soley (Supra) and Anderson vs Board of Appeals, Town of Chesapeake Beach, 22 Md App 28, 322 A 2d 220 (1974), are clearly factually distinguishable from the case at bar which does

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not present either practical difficulty or unreasonable hardship but a petition to allow greed to prevail. If granted, the Zoning Regulations are effectively gutted and the citizenry of Baltimore County can take little comfort in the existence of regulations which are neither followed nor enforced.

In the Anderson case citing the case of Loyola Federal Savings and Loan Association vs Buschman, 227 Md 243 at 248, 176 A 2d 355 at 226 (1962) cited three criteria summarized as - if the Petitioner complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property, the difficulties or hardships were peculiar to the property in question in contrast with those of other property owners in the same district, the hardship was not the result of the applicant's own actions. Further, where the standard of practical difficulty applies, the applicant would have to show whether compliance with the strict letter of the restrictions would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome, or whether the grant of the variance would do substantial justice not only to the applicant but to other property owners in the district and whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Finally, in the case of Salisbury Board of Zoning Appeals vs Bounds, 240 Md 547, 214 A 2d 810 (1965) the Court found

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that the Petitioner had built a four apartment dwelling and was properly denied variances because the hardship created by the construction of four apartments was self-inflicted; and of equal importance because the Board of Zoning Appeals was not empowered to overlook clear and unambiguous language of ordinances.

The ordinance in question, Section 1B02.3.A.4. in indisputably clear terms must be read together with Subsection A.3. immediately above it to understand that in small lot subdivision the County Council in passing Bill No. 100 in 1970 creating that regulation intended that in small unit subdivisions no lot less than one-half acre would be built which did not meet the standards described thereafter in 1B02.3.C.1. unless variances were granted.

In this case not only has the Petitioner failed to meet its burden of showing either practical difficulty or unreasonable hardship, but has even failed to request variances for minimum lot area, minimum lot width, minimum sum of side yard widths and feet as contained in those regulations.

#### CONCLUSION

For these reasons the Protestants respectfully request this Honorable Board to deny the Petition for variances in this case.

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Respectfully Submitted,

*Michael P. Tanczyn*  
MICHAEL P. TANCZYN, ESQ.  
Attorney for the Protestants  
Suite 106, 606 Baltimore Avenue  
Towson, Maryland 21204  
Telephone (301) 296-8823

I HEREBY CERTIFY that on this 3rd day of August, 1990, a copy of the foregoing was mailed, postage prepaid, to Michael E. Marino, Esq., Suite 1212, 10 East Baltimore Street, Baltimore, Maryland, 21202, attorney for the Petitioner.

*Michael P. Tanczyn*  
MICHAEL P. TANCZYN, ESQ.

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IN THE MATTER OF  
THE APPLICATION OF  
ANTHONY J. MIERZWICKI, ET AL  
FOR A VARIANCE ON PROPERTY  
LOCATED ON THE NORTH SIDE OF  
HAMPTON LANE, 164' ± WEST OF  
PROVIDENCE RD. (LOT 1), NORTH  
SIDE OF HAMPTON LANE, 248 ±  
WEST OF PROVIDENCE ROAD  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT

BEFORE  
COUNTY BOARD OF APPEALS  
OF  
BALTIMORE COUNTY  
CASE NO. 90-6-A

#### OPINION

This matter comes before the Board as an appeal from the Zoning Commissioner's granting of a variance to Anthony and Ruth Mierzwicki for Lots 1 and 2 on the north side of Hampton Lane, west of Providence Road in the Ninth Election District, Fourth Councilmanic District of Baltimore County. This appeal was brought on behalf of numerous Protestants both individually and by local improvement associations. Hearings were held on June 1, 1990 and July 25, 1990 and Post-Hearing Memorandums were submitted by Counsels.

Testimony was received from Mr. Anthony M. Mierzwicki who said that the parcels were purchased from the School Sisters of Notre Dame on May 4, 1987. He testified as to the traffic situation from his view as a long-time resident of the area and indicated no traffic problems. Efforts made by him to conform to the setback requirements were detailed. He was unable to purchase from Baltimore County the adjacent tract located on the northwest corner of Hampton Lane and Providence Road. He was unable to receive permission from Baltimore County to remove a drainage swale and the

Anthony J. Mierzwicki, et ux, Case No. 90-6-A

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10,000 square foot septic drainage field per lot must remain per County regulations. According to Mr. Mierzwicki smaller modular homes on the lots would not be feasible.

Mr. James W. McKee testified on behalf of the Mierzwickis as an expert surveyor and developer. Mr. McKee described the plats and pointed out their irregular shapes and how they front on Hampton Lane. He described the area as a well-established community with homes of substantial value. The creation of this area from 1959 to the present was described by Mr. McKee and the creation of this parcel of land, subject of this hearing, was particularly reviewed. The particular nuances of these lots were detailed. Mr. McKee described the drainage swale and that this drainage swale is unable to be removed, therefore, placing the building envelopes closer to Hampton Lane. In his opinion, the property would not be usable as a residential building lot without the granting of the variance. Mr. McKee further testified about the Petitioners' attempts to repurchase the adjacent tract owned by Baltimore County. However, the County was unwilling to sell the property and they are retaining same for a future water pumping station. In Mr. McKee's emphatic expert opinion, there would be practical difficulty and no practical use for these lots should these variances not be granted. Although Mr. McKee acknowledged that one house could be placed upon the lots which would comply with all setback requirements, that use would be an unreasonable requirement to place on these particular lots.

The testimony of Keith Randlett, a realtor/developer, indicated that the homes being sought in this area are approximately ones consisting of an area of 3,000 square feet and in the price range of \$300,000. In his opinion, a smaller home would not be consistent with the neighborhood or marketable.

The Protestants took a position that the addition of more homes to the location would be a danger to those who already travel the overburdened streets in that area. Photographs of the adjacent intersection and testimony of Officer Henry Hess of the Baltimore County Police Department vividly described the intersection of Hampton Lane and Providence Road. The records of the Baltimore County Police Department indicate that over a three year period from 1987 to 1989 there were 13 reportable accidents in this location.

Mr. Michael Flanigan, of the Baltimore County Department of Traffic Engineering, testified as to the 1989 traffic counts for the intersections of Providence Road, north of Cowpens Avenue; and Providence Road, south of Cowpens Avenue. Mr. Flanigan indicated he saw no serious or significant sight distance problems. He indicated he examined the site himself but made no formal calculations. He indicated further that the two lots, subject of this hearing, would be no problem and their access to Hampton Lane must be permitted. Pat Keller, Deputy Director of the Office of Planning and Zoning, described the lots in question and indicated

that the requirements of the Baltimore County Zoning Regulations (BCZR) were not met in a D.R.2 zone.

The Protestants next presented Richard Tarello, a 35 year resident and member of the Hampton Improvement Association, who described in detail the boundaries of the Hampton area and that most of the residences in the area have a D.R.2 designation. The description of the area indicated houses located on lots from one-half to 10 acres in size with front, side, and rear setbacks from 50 feet to 75 feet. The houses in the Hampton community are subject to covenants which were part of the original plan of the community. However, Mr. Tarello did acknowledge that the two lots, subject of this hearing, are not within the confines of the lands restricted by these covenants. The concerns he voiced were those of traffic safety and of homes being built which would front too close to Hampton Lane and therefore not conform to the community. If these variances were granted, Mr. Tarello feels property values would be decreased. Upon cross-examination, he did acknowledge these lots cannot be seen by any of the homeowners in the Hampton Association.

Mr. Langden Carico, a resident of the area for more than 38 years, was in opposition to the granting of the variances because of the busy intersection of Providence Road and Hampton Lane and feels that a traffic hazard would be added to by this additional building of two homes. He further felt that property values would be decreased.

RECORDED

The Board feels it is abundantly clear from the testimony presented that these lots are quite unusual in their make-up. The swale, the septic field, the irregular shape, and the adjacent land owned by Baltimore County reserved for a water pumping station makes these lots as situated unusable should the strict requirements of the BCZR be imposed. The Board finds practical difficulty and undue hardship would result should the variances not be granted. The Board further finds, as a matter of fact, that the variances requested will not be detrimental to the public health, safety and welfare.

ORDER

IT IS THEREFORE this 10th day of October, 1990 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Variance from Section 1B01.2.C.2.a. of the Baltimore County Zoning Regulations for a window to track boundary line of 15' in lieu of the required 35' be and the same is hereby GRANTED; and

IT IS FURTHER ORDERED that the variance from Section 1B02.C.6. (CMDP, V.B.6.a.) to allow a window to street right-of-way of 15' in lieu of the required 25' be and the same is hereby GRANTED; and

IT IS FURTHER ORDERED that the variance from Section 1B01.2.C.3. to allow setback from existing street to allow a 40' building setback from centerline of street in lieu of the required 50' be and the same is hereby GRANTED; and

RECORDED

IT IS FURTHER ORDERED that the variance from Section 1B02.C.6. (CMDP, V.B.8.) to allow a garage setback from street right-of-way of 15' in lieu of the required 22' be and the same is hereby GRANTED.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Arnold G. Foreman, Acting Chairman  
Lynn B. Moreland  
Harry E. Buchheiser, Jr.

IN RE: PETITION FOR ZONING VARIANCE  
Lot #1, N/S Hampton Lane, 164' +/- W of Providence Road  
Lot #2, N/S Hampton Lane, 248' +/- W of Providence Road  
9th Election District  
4th Councilmanic District  
Anthony J. Mierzwicki, et ux  
Petitioners

BEFORE THE  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
Case No. 90-6-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance from Section 1B01.2.C.2.a. of the Baltimore County Zoning Regulations (B.C.Z.R.) for a window to track boundary line of 15' in lieu of the required 35'; a variance from Section 1B02.C.6. (CMDP, V.B.6.a.) to allow a window to street right of way of 15' in lieu of the required 25'; a variance from Section 1B01.2.C.3. to allow setback from existing street to allow a 40' building setback from center line of street in lieu of the required 50'; a variance from Section 1B02.C.6. (CMDP, V.B.8.) to allow a garage setback from street right of way of 15' in lieu of the required 22', as more particularly described on Petitioner's Exhibit 1.

The Petitioner, Anthony J. Mierzwicki, appeared, testified and was represented by Michael E. Marino, Esquire. Appearing on behalf of the Petitioner was Leonard T. Bohager, a Registered Land Surveyor and Keith A. Randlett, Real Estate Developer. Appearing as Protestants were Howard E. Schick and Langden G. Carico.

Testimony and evidence indicate that the subject adjoining lots 1 and 2 are located on the northern side of Hampton Lane, lot 1 being approximately 164 feet +/- from the northwest corner of Providence Road, containing .4449 acres +/- and, lot 2 containing .6371 acres +/- respectively, both zoned D.R.2. Testimony indicated that the Petitioners are desirous

of constructing two homes on the subject lots which will be harmonious with the surrounding community.

Mr. Bohager a Registered Land Surveyor, testified that in view of the layout and configuration of the subject lots, the requested variances are necessary to build homes which are compatible with the surrounding community. He also testified that, in his opinion, should the requested variances be denied, the Petitioner would suffer an undue hardship and practical difficulty.

Mr. Pandlett, a Real Estate Developer, testified that the proposed homes are harmonious with the surrounding community and agreed with Mr. Bohager that, in his opinion, should the requested variances be denied, the Petitioner would suffer undue hardship and practical difficulty.

Mr. Schick, President of Centurian Real Estate Appraisers, testified that the Petitioner's proposal would adversely impact on the neighborhood, and that the proposed homes will overcrowd the lots.

Mr. Carico, representing the Hampton Real Estate Association, testified that he objects to the proposed homes being located in such close proximity to Hampton Lane and also agreed with Mr. Schick that the Petitioner's proposal would adversely impact on the community.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty 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 relaxa-

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Date 10/10/90  
By M. Schick

RECORDED

tion 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).

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public good.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if the variances were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variances requested will not be detrimental to the public health, safety and general welfare.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 10th day of Oct., 1989 that the Petition for a Zoning Variance from Section 1B01.2.C.2.a. of the Baltimore County Zoning Regulations (B.C.Z.R.) for a window to track boundary line of 15' in lieu of the required 35'; a variance from Section 1B02.C.6. (CMDP, V.B.6.a.) to allow a window to street right of way of 15' in lieu of the required 25'; a variance from Section 1B01.2.C.3. to allow setback from existing street to allow a 40' building setback from center line of street in lieu of

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Date 10/10/90  
By M. Schick

RECORDED

required 50'; a variance from Section 1B02.C.6. (CMDP, V.B.8.) to allow a garage setback from street right of way of 15' in lieu of the required 22', in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

J. Robert Haines  
Zoning Commissioner  
for Baltimore County

JRH/mmm  
cc: Peoples Counsel  
Michael E. Marino, Esquire, Hall, Levy and Marino, Suite 1212, 10 E. Baltimore Street, Baltimore, Maryland 21202  
Mr. Anthony J. Mierzwicki, 16 Oakridge Court, Lutherville, Md. 21093  
Mr. Leonard T. Bohager, 5 Shawan Road, Hunt Valley, Maryland 21030  
Mr. Keith A. Randlett, 6539 Corkley Road, Baltimore, Maryland 21237  
Mr. Howard E. Schick, 1315 Milldam Road, Hampton, Maryland 21204  
Mr. Langden G. Carico, 600 St. Francis Road, Towson, Md. 21204

RECORDED

ORDER RECEIVED FOR FILING  
Date 10/10/90  
By M. Schick

ORDER RECEIVED FOR FILING  
Date 10/10/90  
By M. Schick

RECORDED

PETITION FOR ZONING VARIANCE

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TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 70-6-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 (SEE ATTACHED SHEET)

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)
1. As a result of the configuration of the lot, a previous taking by Baltimore County for the widening of Hampton Lane, and mandatory compliance with the 10,000 sq. ft. septic area requirement imposed by the Department of Environmental Protection and Resource Management, strict application of the zoning regulations regarding setbacks imposes practical difficulty and prevents the owners from being able to construct a single family house on said lot in conformity with those in the area and thus deprives them of reasonable use of the land.
2. The granting of this variance will not result in injury to the public health, safety, or property to be posted and advertised as prescribed by Zoning Regulations or welfare.

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 L. 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: Legal Owner(s): MAP # E 11 B
Anthony J. Mierzwicki
Ruth Mierzwicki
Michael E. Marino
700 Fairmont Avenue 823-1500

ORDERED By The Zoning Commissioner of Baltimore County, this 10 day of May, 1989, 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 106, County Office Building in Towson, Baltimore County, on the 20 day of July, 1989, at 2 o'clock P.M.

ESTIMATED LENGTH OF HEARING - 1/2HR.
REVIEWED BY: DATE 4/27/89

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- Lot No. 1
1. B. O. 1. 2. C. 2. C. (B. C. 2. C.)
a) V.B.5.a : Window to Fract Boundary Line of 15' in lieu of the required 35'
b) V.B.6.a : Window to Street Right of Way of 15' in lieu of the required 25'
c) V.B.9 : Setback from Existing Street to allow a 40' building setback from center line of street in lieu of the required 50'
d) V.B.8 : Garage Setback to allow a garage setback from street right of way of 15' in lieu of the required 22'

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland
District: 9th Date of Posting: 4/20/89
Posted for: Anthony J. Mierzwicki et al.
Location of property: 10 E. Baltimore Street, Baltimore, MD 21202
Location of Sign: 10 E. Baltimore Street, Baltimore, MD 21202
Remarks:
Posted by: J. Robert Haines
Number of Signs: 1

463

- Lot No. 2
e) V.B.6.a : Window to Street Right of Way of 15' in lieu of the required 25'
f) V.B.8 : Garage Setback to allow a garage setback from street right of way of 15' in lieu of the required 22'
g) V.B.9 : Setback from Existing Street to allow a 40' building setback from the center line of the street in lieu of the required 50'

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 086065
DATE 4/27/89 ACCOUNT R-01-615
AMOUNT \$ 70.00
RECEIVED FROM MICHAEL E. MARINO
FOR 2RV FEE FOR 263

463

MCKEE & ASSOCIATES, INC.
Engineering - Surveying - Real Estate Development
SHAWAN PLACE, 5 SHAWAN ROAD HUNT VALLEY, MARYLAND 21030
Telephone: (301) 252-5820
March 8, 1989

DESCRIPTION TO ACCOMPANY VARIANCE PETITION FOR LOT ONE, MIERZICKI PROPERTY NORTH SIDE OF HAMPTON LANE NINTH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND
Beginning for the same at a point on the northeastern right-of-way line of Hampton Lane, 50.00 feet wide, at a point located 154 feet northwest of the centerline of Providence Road and running thence and binding on said right-of-way line; 1) thence by a line curving to the left having a radius of 825.00 feet, an arc length of 84.00 feet and a long chord bearing and distance of North 44° 55' 48" West 83.97 feet to a point; thence leaving Hampton Lane and running,
2) North 42° 09' 11" East 40.00 feet to a point;
3) North 17° 37' 03" East 42.00 feet to a point;
4) North 28° 19' 11" East 67.00 feet to a point;
5) South 79° 40' 49" East 113.00 feet to an iron pipe;
6) South 10° 19' 11" West 73.21 feet;
7) South 48° 57' 35" West 145.97 feet to the point of beginning. Containing 19,382 square feet or 0.4449 of an acre of land, more or less.

CERTIFICATE OF PUBLICATION
TOWSON, MD., June 25, 1989.
THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on June 22, 1989.
THE JEFFERSONIAN TOWSON TIMES, S. Zebe - Orleans, Publisher

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 10th day of May, 1989.

Baltimore County Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3333
J. Robert Haines
Zoning Commissioner
Date: 6/27/89

MCKEE & ASSOCIATES, INC.
Engineering - Surveying - Real Estate Development
SHAWAN PLACE, 5 SHAWAN ROAD HUNT VALLEY, MARYLAND 21030
Telephone: (301) 252-5820
March 8, 1989

DESCRIPTION TO ACCOMPANY VARIANCE PETITION FOR LOT TWO, MIERZICKI PROPERTY NORTH SIDE OF HAMPTON LANE NINTH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND
Beginning for the same on the northeastern right-of-way line of Hampton Lane, 50.00 feet wide at a point located 248 feet northwest of the centerline of Providence Road and running thence and binding on said right-of-way line;
1) thence by a line curving to the left having a radius of 825.00 feet, an arc length of 457.90 feet and a long chord bearing and distance of North 63° 44' 30" West 452.04 feet to the end thereof; thence leaving Hampton Lane and running,
2) North 10° 19' 11" East 15.27 feet to a point;
3) South 79° 40' 49" East 481.82 feet to a point;
4) South 28° 19' 11" West 67.00 feet to a point;
5) South 17° 37' 03" West 42.00 feet to a point;
6) South 42° 09' 11" West 40.00 feet to the point of beginning. Containing 27,752 square feet or 0.6371 of an acre of land, more or less.

NOTICE OF HEARING
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 "New" Building, located at 111 W. Chesapeake Avenue in Towson, Maryland at 2:00 p.m. on Thursday, July 20, 1989 at 2:00 p.m.
Petition for Zoning Variance Case Number: 90-6-A Lot #1, N/5 Hampton Lane, 154' x W of Providence Road Lot #2, N/5 Hampton Lane, 248' x W of Providence Road.
9th Election District 4th Councilman: Anthony J. Mierzwicki, et al. Hearing Date: Thursday, July 20, 1989 at 2:00 p.m.
Variance: (a) To allow window to street right-of-way of 15 ft. in lieu of the required 25 ft.; to allow a garage setback from street right-of-way of 15 ft. in lieu of the required 22 ft.; and to allow a 40 ft. building setback from centerline of street in lieu of the required 50 ft. and to allow a garage setback from street right-of-way of 15 ft. in lieu of the required 22 ft.
(b) To allow window to street right-of-way of 15 ft. in lieu of the required 25 ft.; to allow a garage setback from street right-of-way of 15 ft. in lieu of the required 22 ft.; and to allow a 40 ft. building setback from centerline of street in lieu of the required 50 ft. and to allow a garage setback from street right-of-way of 15 ft. in lieu of the required 22 ft.
In the event that this Petition is granted, the Building Permit may be issued within the forty (40) day period. The Zoning Commissioner will, however, announce 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 presented to the Board by the date of the hearing and shown at the hearing.
J. ROBERT HAINES
Zoning Commissioner of Baltimore County

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 10th day of May, 1989.
Petitioner: Anthony J. Mierzwicki
Petitioner's Attorney: Mike Marino
Received by: James E. Dyer
Chairman, Zoning Plans Advisory Committee

Receipt
Account: R0016150
Number: No 207
Please make checks payable to Baltimore County, Maryland. Bring the check and the sign and post fee(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.
Please note that should you fail to return the sign and post fee(s), there will be an additional \$50.00 added to the above fee for each set not returned.
Very truly yours,
J. Robert Haines
Zoning Commissioner

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Townson, Maryland 21204  
(301) 887-3253  
J. Robert Haines  
Zoning Commissioner

July 30, 1989

NOTICE OF CONTINUANCE



Dennis F. Rasmussen  
County Executive

CASE NUMBER: 90-6-A  
PETITIONER: Anthony J. Mierzwicki, et ux  
LOCATION: Lot #1 & Lot #2, N/S Hampton Lane, 164' & 248'  
West of Providence Road

HEARING OF THE ABOVE MATTER, WHICH BEGAN ON July 20, 1989, WILL CONTINUE  
ON THURSDAY, SEPTEMBER 7, 1989 at 2:00 p.m.  
THIS CONTINUED HEARING WILL TAKE PLACE IN ROOM 106 OF THE COUNTY  
OFFICE BUILDING, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Baltimore County Zoning Office

Copies to:  
Michael E. Marino, Esq.  
Anthony J. Mierzwicki, et ux  
D. R. Tarallo  
Langdon G. Carico  
Howard E. Schick  
File

Baltimore County  
Fire Department  
800 York Road  
Towson, Maryland 21204-2586  
(301) 887-4500  
Paul H. Reincke  
Chief

May 2, 1989



Dennis F. Rasmussen  
County Executive

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

RE: Property Owner: Anthony J. Mierzwicki  
Location: N/S Hampton Lane, 165' (+ or -) W of Providence Rd.  
Item No.: 463 Zoning Agenda: May 9, 1989

Gentlemen:  
Pursuant to your request, the referenced property has been surveyed by  
this Bureau and the comments below are applicable and required to be  
corrected or incorporated into the final plans for the property.  
The buildings and structures existing or proposed on the site shall  
comply with all applicable requirements of the National Fire Pro-  
tection Association Standard No. 101 "Life Safety Code", 1988  
edition prior to occupancy.

REVIEWER: *CAH* Noted and Approved  
Planning Group Fire Prevention Bureau  
Special Inspection Division

JK/ker

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines DATE: July 19, 1989  
Zoning Commissioner  
FROM: Pat Keller, Deputy Director  
Office of Planning and Zoning  
SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS

Case No. 90-6-A  
Item No. 463  
Re: Anthony J. Mierzwicki, et ux.

The petitioners request a variance to permit various building setbacks  
for dwellings proposed on two lots created by the minor subdivision  
procedure. In reference to this request, staff offers the following  
comments:

The subject property is zoned D.R.2. The subdivision which occurred in  
February, 1989, should have created lots based on the development  
standards found in Section 1802.3.C.1 of the Baltimore County Zoning  
Regulations. The variances requested here are to regulations based on  
the Comprehensive Manual of Development Policies. In fact, lot 1 was  
created with a lot area less than the minimum requirement of 26,000  
square feet.

This office feels that a front yard setback of 15 feet is inappropriate  
and a distance of more than 10 feet between buildings should be  
maintained.

A:72039.L:K PG.3

Baltimore County  
Department of Public Works  
Bureau of Traffic Engineering  
Courts Building, Suite 405  
Towson, Maryland 21204  
(301) 887-3554

June 6, 1989



Dennis F. Rasmussen  
County Executive

Mr. J. Robert Haines  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for item  
numbers 185, 355, 460, 461, 463, 464, and 465.

Very truly yours,  
*Michael S. Flanigan*  
Michael S. Flanigan  
Traffic Engineer Assoc. II

MSF/lvw

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: Zoning Advisory Committee DATE: May 17, 1989  
FROM: Robert W. Bowling, P.E.  
RE: Zoning Advisory Committee Meeting  
for May 9, 1989

The Developers Engineering Division has reviewed  
the zoning items for the subject meeting and we have  
no comments for items 185, 460, 461, 463, 464 and 465.  
Comments for Item 355 (County Review Group) are attached and  
remain valid.

*Robert W. Bowling*  
ROBERT W. BOWLING, P.E., Chief  
Developers Engineering Division

RWB:s  
Encls.

RECORDED  
MAY 1 9 1989

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines DATE: September 7, 1989  
Zoning Commissioner  
FROM: Pat Keller, Deputy Director  
Office of Planning and Zoning  
SUBJECT: Anthony J. Mierzwicki, et ux, Item 463  
Zoning Petition No. 90-6-A - REVISED COMMENTS

Based upon recent discussions with the petitioner, staff is  
revising its comments as follows:

1. The subject property does appear to meet minimum lot  
size requirements based upon area included in the road.
2. The locational constraints of providing the septic system  
has dictated the location of the homes. The well and  
septic areas cannot be moved as dictated by the County.
3. The petitioner is proposing that two garages be located  
within 16 feet. The homes will be approximately 60 feet  
apart.

Staff recommends that the following conditions be attached to  
the site plan:

- All variances should be conditioned to the site plan  
as shown.
- Building elevations should be conditioned as part of the  
site plan approval.
- A limit of disturbance should be shown on the site plan.  
If there should be any further questions or if this office can  
provide additional information, please contact Jeffrey Long in the  
Office of Planning at 887-3480.

PK/JL/sf

Baltimore County  
Department of Public Works  
Towson, Maryland 21204

Gene L. Neff, P.E.  
Director

Shirley M. Murphy, Acting Chief  
Bureau of Land Acquisition

May 4, 1988



Dennis F. Rasmussen  
County Executive

Michael E. Marino, Esquire  
Law Offices  
HALL, LEVY, & MARINO, P.A.  
Suite 1212  
10 E. Baltimore Street  
Baltimore, Maryland 21202

Subject: Providence Road Water Booster Station Site  
Northwest Corner of Hampton Lane & Providence Road  
Your Clients: Mr. and Mrs. Anthony J. Mierzwicki  
Our File: SP 9-164

Dear Mr. Marino:

We have circulated a description of the subject property to our Bureau  
of Engineering, Water Main Design Section, to ascertain if the subject  
property could be declared as surplus and have been advised by the Assistant  
Chief of that Bureau that: "the subject property site should be retained by  
Baltimore County to ensure its availability should public water be extended  
to properties along Providence Road, north of Cowpens Avenue, that currently  
have private well supplies. The booster station would be required to  
provide satisfactory pressure."

We regret that we are unable to be of more assistance to you in this  
matter.

Sincerely,

*Shirley M. Murphy*  
Shirley M. Murphy  
Acting Chief  
Bureau of Land Acquisition

SMM:SJB:dms

PETITIONER'S  
EXHIBIT 3

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3253  
J. Robert Haines  
Zoning Commissioner

November 7, 1989



Dennis F. Rasmussen  
County Executive

Baltimore County Board of Appeals  
County Office Building, Room 315  
Towson, Maryland 21204

RE: Petition for Zoning Variance  
Lot #1, N/S Hampton Lane, 164' +/- W of Providence Road  
Lot #2, N/S Hampton Lane, 248' +/- W of Providence Road  
9th Election District, 4th Councilmanic District  
ANTHONY J. MIERZWICKI, ET UX - Petitioners  
Case No. 90-6-A

Dear Board:

Please be advised that an appeal of the above-referenced case was  
filed in this office on November 3, 1989 by Michael P. Tanczyn,  
Attorney on behalf of Protestants. All materials relative to the case  
are being forwarded herewith.

Please notify all parties to the case of the date and time of the  
appeal hearing when it has been scheduled. If you have any questions  
concerning this matter, please do not hesitate to contact this office.

Very truly yours,  
*J. Robert Haines*  
J. ROBERT HAINES  
Zoning Commissioner

JRH:cer

Enclosures

cc: Anthony J. Mierzwicki, 700 Fairmont Avenue, Towson, MD 21204  
Michael E. Marino, Esquire  
10 E. Baltimore Street, Baltimore, MD 21202  
Leonard T. Bohager, 5 Shawan Road, Hunt Valley, MD 21031  
Keith A. Randlett, 6539 Corkley Road, Baltimore, MD 21237

COUNTY RECEIVED  
NOV - 7 1989

RECORDED

Michael P. Tanczyn, Esquire  
Suite 106, 606 Baltimore Avenue, Towson, MD 21204  
Howard E. Schick, 1315 Milldam Road, Hampton, MD 21204  
Langdon & Frances Carico, 600 St. Francis Road, Towson, MD 21204  
Joseph & Maxine Ingolia - Hampton Improvement Association  
905 Stagshead Road, Towson, Maryland 21204  
Richard & Helen Torello - Hampton Improvement Association  
729 Hickory Lot Road, Towson, MD 21204  
Lester & Aleda Jackson - Compens Improvement Association  
1006 Compens Road, Towson, MD 21204  
Eugene Waters & Rachael Waters - Chatterleigh Improvement Assoc.  
1001 Concordia Drive, Towson MD 21204  
Joseph & Dolores Orlando, 903 Huntsman Road, Towson, MD 21204  
Charles & Audrey Brownley, 911 Huntsman Road, Towson, MD 21204  
Kerry Heemann, M.D., 909 Huntsman Road, Towson, MD 21204  
George & Marion Brecht, 905 Huntsman Road, Towson, MD 21204  
James & Lynn Little, 901 Huntsman Road, Towson, MD 21204  
George & Lesley Mulcahey, 1110 Providence Road, Towson, MD 21204  
Charles & Louise Warren, 1201 Providence Road, Towson, MD 21204  
Chester & Lillian Mason, 1119 Providence Road, Towson, MD 21204  
Michael & Bonnie Furman, 1111 Providence Road, Towson, MD 21204  
John R. Young, 1116 Providence Road, Towson, MD 21204  
William and Louise Anderson, 1200 Providence Rd, Towson, MD 21204  
People's Counsel of Baltimore County  
Rm. 304, County Office Bldg., Towson, Md. 21204  
File



County Board of Appeals of Baltimore County  
COUNTY OFFICE BUILDING, ROOM 315  
111 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
(301) 887-3180

November 14, 1990

Michael E. Marino, Esquire  
Suite 1212, 10 E. Baltimore Street  
Baltimore, MD 21202

RE: Case No. 90-6-A  
Anthony J. Mierzwicki, et ux

Dear Mr. Marino:

Earlier today a letter was sent to you from this office advising you of the appeal taken by Mr. Tanczyn to the Circuit Court in the subject matter. Also enclosed with that letter was a copy of the Certificate of Notice filed in the Circuit Court this date.

Please change the date as shown on the above-referenced letter to November 14, 1990, since an incorrect date was left on the letter when it was printed. The Certificate of Notice was filed in Circuit Court on November 14, 1990.

Should you have any questions, please call me at 887-3180.

Very truly yours,

*Kathleen C. Weidenhammar*  
Kathleen C. Weidenhammar  
Administrative Assistant

Enclosure

cc: Mr. & Mrs. Anthony J. Mierzwicki  
People's Counsel for Baltimore County

ANTHONY J. MIERZWICKI, ET AL  
N/s Hampton Lane, 164' +/- W of  
Providence Road (Lot 1), N/s of  
of Hampton Lane, 248' +/- W of  
Providence Road  
90-6-A  
9th Election District  
4th Councilmanic District

VAR - setbacks

May 10, 1989 Petition filed by Michael Marino, Esquire on behalf of Mr. & Mrs. Mierzwicki for a Variances for setbacks and for a window to Tract Boundary Line of 15' in lieu of required 35' and to allow a window to street right-of-way of 15' in lieu of required 25'.  
October 10 Z.C.'s Order GRANTING Petition with restrictions.  
November 3 Order for Appeal filed by Michael P. Tanczyn, Esquire on behalf of the Protestants.  
June 1, 1990 Hearing before the Board of Appeals; continued to Day #2.  
July 25 Day #2; hearing completed before the Board of Appeals.  
October 10 Opinion and Order of the Board GRANTING the Petition for Variances.  
November 9  $\checkmark$  Order for Appeal filed in the Circuit Court for Baltimore County by Michael P. Tanczyn, Esquire, on behalf of Hampton Improvement Association and Joseph Orlando, Protestants.  
November 16  $\checkmark$  Petition to accompany appeal filed in the Circuit Court by Mr. Tanczyn.  
November 14 Certificate of Notice sent to interested parties.  
December 7  $\checkmark$  Transcript of testimony filed.  
December 10  $\checkmark$  Record of Proceedings filed in the Circuit Court for Baltimore County.  
May 9, 1991  $\checkmark$  Order of the Ct. Bd. AFFIRMING C.B. of A. (Hon. J. Norris Byrnes).

90-6-A Anthony J. Mierzwicki, et ux  
5/9/91 - Circuit Court AFFIRMED C.B. of A.  
(Hon. J. Norris Byrnes)

IN THE MATTER OF THE APPLICATION \*  
OF ANTHONY J. MIERZWICKI, ET UX \* IN THE  
FOR A VARIANCE ON PROPERTY \* CIRCUIT COURT FOR  
LOCATED ON THE NORTH SIDE OF \*  
HAMPTON LANE, 164' +/- WEST OF \* BALTIMORE COUNTY  
PROVIDENCE ROAD (LOT 1), NORTH \* 87/171/90CG-4571  
SIDE OF HAMPTON LANE, 248' +/- \*  
WEST OF PROVIDENCE ROAD \*  
9TH ELECTION DISTRICT \*  
4TH COUNCILMANIC DISTRICT \*

OPINION AND ORDER

This is really two Appeals on one record filed by Hampton Improvement Association and Joseph Orlando, a member of that Association, as a result of the granting of several variances to Anthony J. Mierzwicki et al on property located on the north side of Hampton Lane west of Providence Road.

Both the Zoning Commissioner and the Board of Appeals granted the applicant's request for the following variances:

- 1) A window to track boundary line of fifteen feet in lieu of the required thirty-five feet; and
- 2) A window to street right of way of fifteen feet in lieu of the required twenty-five feet; and
- 3) A set back from the existing street to allow a forty foot building setback in lieu of the required fifty feet; and
- 4) A garage setback from street right-of-way of fifteen feet in lieu of the required twenty-two feet.

FILED MAY 9 - 1991

The Appellants allege that the decision by the Board of Appeals was not supported by the evidence, was based on an error of law in construing the standard for the grant of the variances, and was arbitrary, capricious and illegal in that the Petitioner has avoided complying with the development regulations of Baltimore County by first obtaining a small unit subdivision and then complaining that compliance with the regulations of Baltimore County would constitute an unreasonable hardship for them under the circumstances which it is alleged they created. Finally, Appellants complain that the granting of the variances would create traffic problems because of poor sight distance and additional traffic.

The property in question is an irregularly shaped parcel containing 1.082 acres of land and has been divided into two lots, one lot approximately .4449 acres and the second .6371 acres. The fact of this subdivision in the Court's view is not a subject of review on appeal.

The real issue facing the Court is whether the evidence supports a finding by the Board of Appeals that the Appellees have met their burden of proving practical difficulty in the development of the property, thus supporting the finding by the Board that the variances should be granted.

Section 307 of the Baltimore County Zoning Regulations authorizes the Zoning Commissioner and the County Board of Appeals to grant variances from area regulations in cases where strict compliance with the regulation would result in "practical difficulty." In granting an area variance the Commissioner and

the Board must take care that the variance is in strict harmony with the spirit and intent of the particular regulation and further that it does not do substantial injury to the public health, safety and general welfare.

In the Court's view, this case comes down to a question of whether there was competent testimony before the Board to demonstrate "practical difficulty." There was testimony from the property owner regarding the odd shape of the lot, the impossibility of purchasing or using adjacent property and the strict requirements of Baltimore County regarding septic fields. In addition, Appellee called James McKee, a registered land surveyor and engineer who provides services for developers and builders. It was his testimony that it would be very difficult to develop the property absent the variances. He discussed at some length the topography of the land, the restrictions caused by the inability of Mr. Mierzwicki to purchase adjoining property and his inability to avail himself of property already owned because of the septic system requirements. These "limitations" are peculiar to this property. See Gleason v. Keswick Improvement Association 197 Md. 46 (1951). Appellees also called Keith Randlett, a realtor/developer who testified to the character of the neighborhood in which the property is located and gave the opinion that smaller homes on the lots would be inconsistent with the development and character of the neighborhood.<sup>1</sup>

The protestants did not put on any testimony that contradicted the testimony of these witnesses, indeed, they

<sup>1</sup> The Court cannot help but be struck by the thought that it would be more consistent with the neighborhood if it were complaining that the houses were too small, not that the houses would be too large.

MICROFILMED

agreed with the "limitations" of the property if not with the conclusions reached by the witnesses for the Appellee and the Board.

Appellants also complain that the size of one of the lots is inadequate. The Board, however, found that the size of the lots are adequate and there was testimony from Pat Keller, Deputy Director of the Office of Planning and Zoning, to support this conclusion.

Finally, Appellants contend that Appellees are seeking a change merely to gain a financial advantage. If, indeed, this were the only reason advanced by Appellees for the grant of the variances, then they would properly be denied. This is not, however, the case here. While it may be that Appellees will realize additional profits as a result of the granting of the variances, it surely is not the only reason advanced by them to support their claim of "practical difficulty." Indeed, they do not advance it as a reason at all. "Mere financial hardship or an opportunity to gain an increased return from the property is not sufficient reason for granting an exception. (cite omitted.) However, financial advantage, although not controlling, is not entirely irrelevant." Marino v. City of Baltimore 215 Md. 206, 218 (1957).

The Court went on to say that the "plight of the owner must be due to unique circumstances and not to general conditions in the neighborhood." The hardship must affect the particular premises. Marino supra at 219. The Board clearly found that to be the situation in this case.

MICROFILMED

It is axiomatic that this Court may not substitute its judgment for the judgment of the Board. It is not the Court's role to second guess or re-evaluate the testimony even if it believes it would come to a different conclusion than that of the Board. McLean v. Soley 270 Md. 208, 215 (1973) The Board weighed the testimony of the various witnesses and believed that Appellee met his burden in demonstrating practical difficulty. This Court cannot say that this finding is clearly erroneous.

Accordingly, it is this 10th day of May 1991, by the Circuit Court for Baltimore County,

ORDERED, that the decision of the Board of Appeals dated October 10, 1990, be and it is hereby AFFIRMED.

*Waris Byrnes*  
JUDGE

IN THE MATTER OF THE APPLICATION OF ANTHONY J. MIERZWICKI, ET AL, FOR A VARIANCE ON PROPERTY LOCATED ON THE NORTH SIDE OF HAMPTON LANE, 164' WEST OF PROVIDENCE ROAD (LOT 1), NORTH SIDE OF HAMPTON LANE, 248' WEST OF PROVIDENCE ROAD \* 9th ELECTION DISTRICT \* 4th COUNCILMANIC DISTRICT \* IN RE: CASE NO. 90-6-A \* Case No. 87/171/90CG-4571

PETITION TO FOLLOW ORDER FOR APPEAL

NOW COMES, Hampton Improvement Association and Joseph Orlando, Appellants, by their counsel, Michael P. Tanczyn, Esq., jointly and individually and pursuant to Maryland Rule B2(e) respectfully represents:

1. Action Appealed From:

This Appeal is taken from the Order of the County Board of Appeals of Baltimore County dated October 10, 1990 granting the Petition for four (4) variances of Anthony J. Mierzwicki, known as County Board of Appeals Case 90-6-A.

The Petitioner was the landowner of two lots located on the north side of Hampton Lane near Providence Road. The Appellants are the Hampton Improvement Association, representing the landowners to the north, west and south of the Petitioner's property, and an individual resident of that community. The Board's decision followed a de novo hearing of an Appeal from the Zoning Commissioner's grant of the same variances.

MICROFILMED

2. Errors Committed by the Agency: The Protestants aver that the Board of Appeals' Decision which accompanied its Order:

- A. was not supported by the evidence;
B. was based on error of law in construing the standard for grant of a variance;
C. was arbitrary, capricious and/or illegal in that the Petitioner's evidence showed that they had avoided complying with the development regulations of Baltimore County by applying for a small unit subdivision which was previously granted.

The community adduced substantial evidence of the poor sight distance and traffic activity and accidents at the corner of Hampton Lane and Providence Road as well as the proximity of substantial traffic generators, such as the Notre Dame Preparatory School immediately opposite the Petitioners' site.

MICROFILMED

parking on the individual sites. That the Petitioners sought only to maximize their dollar return by seeking these variances rather than building within the approved envelope they had earlier sought for the small unit subdivision when they sought and were granted a dispensation from complying with the development regulations of Baltimore County.

The Petitioners' lots do not meet the applicable sections of the Baltimore County Zoning Regulations for minimum net lot area, minimum lot width, front yard depth, minimum sum of side yard widths for one or more of the lots proposed.

3. Relief Requested:

WHEREFORE, the Protestants request this Honorable Court:

- A. Reverse the Decision of the County Board of Appeals' for Baltimore County after hearing;
B. Remand this matter to the County Board of Appeals for Baltimore County for reconsideration in the alternative;
C. Grant such other and further relief as the nature of the Protestants' cause may require.

MICHAEL P. TANCZYN, ESQ. Attorney for the Appellants Suite 106, 606 Baltimore Avenue Towson, Maryland 21204 Telephone: (301) 296-8823

MICROFILMED

I HEREBY CERTIFY that, on this 16th day of November, 1990, a copy of this Petition to Follow Order for Appeal was mailed, postage prepaid, to Michael E. Marino, Esq., Suite 1212, 10 East Baltimore Street, Baltimore, Maryland, 21202, attorney for the Appellees; to the County Board of Appeals for Baltimore County, 111 West Chesapeake Avenue, Towson, Maryland, 21204; and to Phyllis Cole Friedman, Esq., Baltimore County People's Counsel, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

MICHAEL P. TANCZYN, ESQ.

MICROFILMED

IN THE MATTER OF THE APPLICATION OF ANTHONY J. MIERZWICKI, ET UX FOR A VARIANCE ON PROPERTY LOCATED ON THE NORTH SIDE OF HAMPTON LANE, 164' +/- WEST OF PROVIDENCE ROAD (LOT 1), NORTH SIDE OF HAMPTON LANE, 248' +/- WEST OF PROVIDENCE ROAD \* 9TH ELECTION DISTRICT \* 4TH COUNCILMANIC DISTRICT \* HAMPTON IMPROVEMENT ASSN. AND JOSEPH ORLANDO, PLAINTIFFS \* IN THE CIRCUIT COURT FOR BALTIMORE COUNTY FOR BALTIMORE COUNTY \* CG Doc. No. 87 \* Folio No. 171 \* File No. 90-CG-4571

CERTIFICATE OF NOTICE

Madam Clerk: Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Arnold G. Foreman, Lynn B. Moreland, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204, Counsel for Plaintiffs; Hampton Improvement Association and Joseph Orlando, 903 Huntsman Road, Towson, MD 21204, Plaintiffs; Michael E. Marino, Esquire, Suite 1212, 10 E. Baltimore Street, Baltimore, MD 21202, Counsel for Defendants; Mr. and Mrs. Anthony J. Mierzwicki, 16 Oakridge Court, Lutherville, MD 21093, Defendants; Phyllis C. Friedman, Esquire, Room 304, County Office Building, Towson, MD 21204, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, MD 21204, a copy

Anthony J. Mierzwicki, et ux, File No. 90-CG-4571 Case No. 90-6-A

of which Notice is attached hereto and prayed that it may be made a part hereof.

Kathleen C. Weidenhammer Administrative Assistant County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Ave., Towson, Maryland 21204 (301) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204, Counsel for Plaintiffs; Hampton Improvement Association and Joseph Orlando, 903 Huntsman Road, Towson, MD 21204, Plaintiffs; Michael E. Marino, Esquire, Suite 1212, 10 E. Baltimore Street, Baltimore, MD 21202, Counsel for Defendants; Mr. and Mrs. Anthony J. Mierzwicki, 16 Oakridge Court, Lutherville, MD 21093, Defendants; Phyllis C. Friedman, Esquire, Room 304, County Office Building, Towson, MD 21204, People's Counsel for Baltimore County; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, MD 21204 on this 14th day of November, 1990.

Kathleen C. Weidenhammer Administrative Assistant County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Ave., Towson, Maryland 21204 (301) 887-3180

IN THE MATTER OF THE APPLICATION OF ANTHONY J. MIERZWICKI, ET AL, FOR A VARIANCE ON PROPERTY LOCATED ON THE NORTH SIDE OF HAMPTON LANE, 164' WEST OF PROVIDENCE ROAD (LOT 1), NORTH SIDE OF HAMPTON LANE, 248' WEST OF PROVIDENCE ROAD \* 9th ELECTION DISTRICT \* 4th COUNCILMANIC DISTRICT \* IN RE: CASE NO. 90-6-A \* Case No.

ORDER FOR APPEAL

NOW COMES, Hampton Improvement Association and Joseph Orlando of 903 Huntsman Road, Towson, Maryland, 21204, Appellants, by their counsel, Michael P. Tanczyn, Esq., jointly and individually, and respectfully request the Court enter an Appeal from the decision of the Board of Appeals of Baltimore County dated October 10, 1990 to the Circuit Court for Baltimore County.

MICHAEL P. TANCZYN, ESQ. Attorney for the Appellants Suite 106, 606 Baltimore Avenue Towson, Maryland 21204 Telephone: (301) 296-8823

I HEREBY ADMIT receipt of a copy of the Order for Appeal in Case No. 90-6-A.

SECRETARY, Board of Appeals of Baltimore County, Maryland

COPIES TO FILE 2-47

MICROFILMED

I HEREBY CERTIFY that, on this 9th day of November, 1990, a copy of this Order for Appeal was mailed, postage prepaid, to Michael E. Marino, Esq., Suite 1212, 10 East Baltimore Street, Baltimore, Maryland, 21202, attorney for the Appellees; to Board of Appeals for Baltimore County, 111 West Chesapeake Avenue, Towson, Maryland, 21204; and to Phyllis Cole Friedman, Esq., Baltimore County People's Counsel, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

MICHAEL P. TANCZYN, ESQ.

MICROFILMED

**CIRCUIT COURT FOR BALTIMORE COUNTY  
CIVIL GENERAL**

DOCKET 87 PAGE 171 CASE NO. 90CG4571 CATEGORY APPEAL

<p>HAMPTON IMPROVEMENT ASSOCIATION JOSEPH ORLANDO</p> <p>IN THE MATTER OF THE APPLICATION OF ANTHONY J. MIERZOWICKI, ET AL, FOR A VARIANCE ON PROPERTY LOCATED ON THE NORTH SIDE OF HAMPTON LANE, 164' +/- WEST OF PROVIDENCE ROAD (LOT 1), NORTH SIDE OF HAMPTON LANE, 248' +/- WEST OF PROVIDENCE ROAD 9TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT</p> <p>ANTHONY MIERZOWICKI RUTH MIERZOWICKI</p>	<p style="text-align: center;">ATTORNEYS</p> <p>MICHAEL P. TANCZYN, ESQ. Suite 106, 606 Baltimore Avenue TOWSON, MD (04) 296-8823</p> <p>Michael E. Marino Hall, Levy &amp; Marino, P.A. Ten East Baltimore Street Suite 1212 Baltimore, MD (02) 685-4400</p>
--	---

# 11145

<p>(1) Nov. 9, 1990 - Appellants' Order for Appeal from the Decision/Order of the Board of Appeals of Baltimore County fd.</p> <p>(2) Nov. 14, 1990 - Certificate of Notice, fd.</p> <p>(3) Nov 16, 1990 - Appellants' HAMPTON IMPROVEMENT ASSOCIATION and JOSEPH ORLANDO Petition to Follow Order for Appeal fd.</p> <p>(4) Dec 10, 1990 - Transcript of Record fd.</p> <p>(5) Dec 10, 1990 - Notice of Filing of Record fd. Copies sent.</p> <p>(6) Jan 14, 1991 - Pltiff's Memorandum fd.</p> <p>(7) Mar. 7, 1991 - App. of Michael E. Marino and Hall, Levy &amp; Marino, P.A., as Attys' for ANTHONY MIERZOWICKI &amp; RUTH MIERZOWICKI and Same Day Answer to Appeal Petition and Memorandum fd.</p> <p>March 15, 1991 - Hon. J. Norris Byrnes. Hearing had. Ruling held sub curia. Opinion to be filed.</p> <p>May 3, 1991 - Opinion and order of Court that the decision of the Board of Appeals dated 2/10, 1990, be and is hereby affirmed.</p>	<p>CV GEN COSTS 76457</p> <p>CV CLK 80.0</p> <p>B LIBRY 10.0</p> <p>PGST 2.0</p> <p>CHECK 72.0</p> <p>MISCOS COPI 102 115</p> <p>11/89</p> <p>196</p> <p>166</p> <p>2.0</p>
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87 171 90CG4571

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Arnold G. Foreman, Lynn B. Moreland, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Office of the Zoning Commissioner and the Board of Appeals of Baltimore County:

No. 90-6-A

May 10, 1989 Petition filed by Michael Marino, Esquire, on behalf of Mr. & Mrs. Mierzowicki for a variance for setbacks and for a window to tract boundary line of 15' in lieu of required 35' and to allow a window to street right-of-way of 15' in lieu of required 25'.

June 23 Publication in newspaper.

August 18 Certificate of Posting of property.

July 11 Comments of Baltimore County Zoning Plans Advisory Committee.

2

Anthony J. Mierzowicki, et ux, Case 90-CG-4571  
Zoning Case No. 90-6-A

July 20, 1989 Hearing held on Petition by the Zoning Commissioner.

October 10 Order of the Zoning Commissioner GRANTING Petition with restrictions.

November 3 Notice of Appeal received from Michael P. Tanczyn, Esquire, Counsel for Petitioners.

June 1, 1990 Hearing before the Board of Appeals; continued to Day #2.

July 25 Day #2; hearing completed before the Board of Appeals.

October 10 Opinion and Order of the Board GRANTING the Petition with restrictions.

November 9 Order for Appeal filed in the Circuit Court for Baltimore County by Michael P. Tanczyn, Esquire, on behalf of Hampton Improvement Association and Joseph Orlando, Protestants.

November 16 Petition to accompany appeal filed in the Circuit Court by Mr. Tanczyn.

November 14 Certificate of Notice sent to interested parties.

December 7 Transcript of testimony filed.

Petitioners' Exhibit No. 1 - Plat as submitted to Zoning Commissioner - uncolored.

" " No. 2 - Plat as submitted to Zoning Commissioner - colored.

" " No. 3 - Copy of Deed -12/26/59.

" " No. 4 - Copy of Deed -03/07/77.

" " No. 5 - Ltr 05/04/88 Shirley R. Murphy to Michael Marino.

" " No. 6 - Photocopy - picture of residence & floor plan - 2 pgs, marked by Witness McKee.

" " No. 7 - Deed -03/03/89.

3

Anthony J. Mierzowicki, et ux, File No. 90-CG-4571  
Case No. 90-6-A

Petitioners' Exhibit No. 8 - Inter-office correspondence from Pat Keller to J. Robert Haines 09/07/89.

Protestants' Exhibit No. 1 - List of Protestants present.

" " No. 2 - 2 maps - aerial photogrametric.

" " No. 3 - 2 Photos: (1) long shot of road to intersection and (2) road, path, wooded area.

" " No. 4 - 2 Photos: (1) Intersection Hampton & Providence and (2) Eldrs' sign.

" " No. 5 - Cover letter, subpoena, records "Accident Details and Highway Location Listing.

" " No. 6 - Hampton Improvement Assoc Rule 8 material, Richard Torallo.

" " No. 7 - Photogrametric maps & aerials (a) Hampton; (b) Lime Kiln Hollow.

" " No. 8 - Photographs 5/29/90 Corner Providence & Hampton, looking W Hampton looking E; Hampton looking W.

" " No. 9 - Hampton & Providence photos w/cars (2).

" " No. 10 - Hampton Lane photos, curves (2).

December 10, 1990 Record of Proceedings filed in the Circuit Court for Baltimore County.

Anthony J. Mierzowicki, et ux, File No. 90-CG-4571  
Case No. 90-6-A

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Respectfully submitted,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant  
County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 (301) 887-3180

cc: Michael P. Tanczyn, Esquire  
Joseph Orlando / Hampton Improvement Assn.  
Michael E. Marino, Esquire  
Mr. & Mrs. Anthony J. Mierzowicki  
People's Counsel for Baltimore County

HAMPTON IMPROVEMENT ASSOCIATION  
518 HAMPTON LANE  
TOWSON, MD. 21204

JULY 17, 1989

MR. J. ROBERT HAINES, ZONING COMMISSIONER  
OFFICE OF PLANNING AND ZONING  
TOWSON, MARYLAND 21204

Dear Mr. Haines:

In reference to the Petition for Zoning Variance, Case Number 90-6-A for lots #1 and #2, W/S Hampton Lane - W of Providence Road, Petitioner Anthony J. Mierzowicki, the residents of Hampton strongly object to the granting of the requested variance on the grounds that it will not be in keeping with the current layout of the Hampton properties and could negatively affect the value of the homes in the immediate area surrounding the parcel in question.

The plan is to build two homes facing Hampton Lane that will be 15 ft. from the right of way or 30 ft. from the hard road surface. In addition, the homes would be 8 ft. from the side dimension or 16 ft. apart.

While it is understood that this particular parcel of land is not covered by the Hampton covenants, the property is within the general Hampton boundaries. Hampton's Covenants state that homes must be 75 ft. back from the front roadway and 25 ft. from side boundaries. Thus the variance would not be compatible with area properties.

A poll of the neighborhood resulted in a unanimous negative reaction to the granting of a Variance to this property.

In view of the community's wishes, the Hampton Improvement Association recommends a denial of the Variance and suggests the Developer consider the erection of one single family home on the parcel that would meet the requirements of the Hampton Covenants.

Very truly yours,  
*D. R. Torallo*  
D. R. Torallo  
Chairman, Real Estate Committee

825-1786

For the Officers and Residents of Hampton

hamptvar-pw

LAW OFFICES  
HALL, LEVY & MARINO, P.A.  
SUITE 1212  
TEN EAST BALTIMORE STREET  
BALTIMORE, MARYLAND 21202  
(301) 685-4400  
TELECOPIER: (301) 752-0761

August 13, 1990

Board of Appeals for Baltimore County  
County Office Building  
111 W. Chesapeake Avenue  
Towson, MD 21204

Re: Case No. 90-6-A  
Anthony J. Mierzowicki, et al

Dear Members of the Board:

This letter will serve as a brief reply to the Protestants' Post-hearing Memorandum for the above captioned matter. Petitioners have asserted that the need for the applied for variances are as a result of practical difficulty. The Petitioners also assert that pursuant to Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.), and without contradiction that such application will not increase the residential density beyond that otherwise allowable by the zoning regulations should the requested variances be granted. The Petitioners finally assert that the granting of such variances could be done without substantial injury to the public health, safety and general welfare. The "practical difficulty" which exists and inhibits the developability of both Lot 1 and Lot 2 in the above captioned matter, comes directly as a result of a previous granting by the Petitioner's predecessor and title of a portion of the property to Baltimore County; a non-functioning swale which the Petitioners have been forbidden to fill or disturb by Baltimore County; the requirement of a 10,000 foot septic drainage field for Lot 1 and Lot 2 (which cannot be varied); and the inability of Petitioners to obtain from Baltimore County a triangular parcel of land which is adjacent to the east of Lot 1. Any of these items has an impact on the developability of both Lot 1 and Lot 2 and taken as a whole they have a substantial material impact upon both Lot 1 and Lot 2. There is direct testimony from Anthony J. Mierzowicki that he attempted by way of utilization of soils technicians to fill the non-functioning swale, but those attempts were rejected by Baltimore County. Mr. Mierzowicki also testified that he made several attempts

COUNTY FILED  
AUG 13 1990

to obtain the triangular parcel adjacent to Lot 1, but was rejected by Baltimore County. Only after exhausting all other alternatives available did he seek the variances which were subsequently granted by the Zoning Commissioner of Baltimore County.

The only creditable testimony before the Board confirms such practical difficulty exists and the granting of the variances will not substantially injure the public health, safety and general welfare. Needless to say, the expert (all of whom were called by the Protestant) testimonies confirm this position. Moreover, even the Protestants' witnesses confirm the Petitioner's case. For example, the Protestants called Michael Flannagan, from the Baltimore County Bureau of Traffic Engineering, who confirmed that there were no sight distance problems nor were there any adverse comments from his department regarding its review of the requested variances. Mr. Pat Keller, Deputy Director of the Office of Planning and Zoning testified that his office does not review specific zoning issues and that upon reconsideration of the Department's comment of July 19, 1989, revised said comment withdrawing the objections to the variances.

Mr. Richard Torallo, of the Hampton Improvement Association, testified that his primary objection was the closeness of the proposed houses for Lot 1 and Lot 2 to Hampton Lane, but acknowledged that the septic field requirement and the other conditions necessitated pushing the houses forward. He confirmed that he did not oppose a 3,000 square foot house and agreed that such a house would be more desirable and reasonable than a 2,000 square foot house on each of the lots. Mr. Langdon Carico also appeared on behalf of the Hampton Association and complained that traffic had increased on Hampton Lane since the early 60's and that Providence Road was a dangerous road. On cross-examination, Mr. Carico admitted that Providence Road would be no less dangerous given the construction of the homes on Lot 1 and Lot 2 of the property in question. Both Mr. Torallo and Mr. Carico admitted that neither one of them see either Lot 1 or Lot 2 from their respective properties and further admitted that the exception of the three properties which back-up to the rear of both Lot 1 and Lot 2, no one else in the Hampton Improvement Association could see the homes to be constructed on Lot 1 or Lot 2 from their respective properties.

Mr. McKee, an admitted expert, testified that the zoning density permitted the erection of single family dwellings on each of Lot 1 and Lot 2, however, various setbacks requirements prohibited such construction. He testified that given the development constraints imposed by the State Roads taking, the mandatory compliance with the 10,000 square foot septic field for each lot, the



prohibition on filling the swale, the inability to obtain the triangular parcel owned by Baltimore County, and the composition of the surrounding area, without the granting of the requested variance, there was no reasonable residential use left to the owners for Lot 1 and Lot 2. Furthermore, he testified that the granting of the requested variances would not result in substantial injury to the public health, safety and general welfare. To the contrary, he asserted that the 10,000 foot septic field has been preserved for each of the lots and that the swale in question was not being filled in accordance with the Department of Environmental Protection and Resource Management.

The Protestants assert in their Memorandum that the Petitioners should be barred asserting "practical difficulty" because they were charged with knowledge of the conditions and setback requirements when they purchased the property. The case of *McLean vs. Soley*, 270 Md. 208 (1973) squarely deals with this fundamental zoning concept at page 215. In *McLean* the court correctly points out and adopts the majority position that in the case of area variances (as distinguished from use variances) knowledge of the side yard requirements and site conditions are less consequential. The B.C.Z.R. confirms this concept by requiring that no area variance can be granted which increases the density beyond that allowable by such regulations.

The Protestants also attempt to create an economic standard by alleging that the Petitioners are alleging to "maximize profit" by seeking such variances. Again, in the context of area variances, as was argued before the Board, such a maximization of profit argument is irrelevant. Use variances rather than area variances are concerned with "hardship cases" and hence deal with the reasonable return standard. *Anderson vs. Board of Appeals*, 22 Md.App. 28 at page 38.

Finally, Protestants' council at the hearing attempted, without the benefit of an expert, to assert some flaw in the application process for the original variances sought. The argument is that the zoning technician and each and every department in Baltimore County which is charged with reviewing the application for the requested variances has somehow applied the wrong subdivision standard in their connection and therefore the variances should fail. This unsponsored proffer is utterly defective. Pat Keller of the Office of Planning and Zoning testified that it is the practice of his office to allow, for density purposes, to calculate acreage to the center line of an adjoining street. In connection with the request from Ann M. Nastarowicz, Deputy Zoning Commissioner, McKee and Associates did in fact perform such a calculation which resulted in a density conclusion of 6.41 units allowed. Under this calculation which was not refuted by any credible evidence (expert or non-expert) subdivision should not be subject to the

requirement under 1B02.3A.4. as the Protestants assert. Rather, the density calculation exceeds six units and pursuant to 1B02.3A.3. is not subject to these regulations.

Finally, in their Memorandum the protestants claim that the confirmation of the variances will cause "danger not only to the community, but to the ultimate owners of the residences, through traffic and overcrowding of land..." however the Board does not have one shred of creditable evidence before it which substantiates this assertion. Mr. McKee testified without contradiction that Baltimore County parking requirements would be met and the Protestants traffic witness testimony did not engender any substantial negative impact upon traffic arising out of either lot.

For the reasons set forth above, the Petitioners, respectfully request that the decision of the Zoning Commissioner granting the requested variances be affirmed.

Respectfully submitted,

*Michael E. Marino*  
Michael E. Marino

MEM/lrb  
1103lrb

Law Offices  
Michael P. Tanczyn, P.A.  
Suite 105, 605 Baltimore Avenue  
Towson, Maryland 21204  
(301) 296-8823 (301) 296-8824  
FAX (301) 296-8827

November 3, 1989

RECEIVED  
NOV 3 1989 O.K.-CW  
ZONING OFFICE

J. Robert Haines, Zoning Commissioner  
Office of Planning & Zoning  
111 West Chesapeake Avenue  
Towson, MD 21204

Re Petition for Zoning Variances  
Anthony J. Mierzwicki, et ux  
Case Number 90-6-A

Dear Mr. Haines

On behalf of the Protestants, whose names and addresses are shown on the attached list, who have retained me, I am wish to note an Appeal from your Order in the above case of October 10, 1989 to the Board of Appeals for Baltimore County.

Enclosed herewith please find my check in the amount of \$150.00 in payment of the Appeal costs.

Very truly yours,

*Michael P. Tanczyn*  
Michael P. Tanczyn

MPT/ed

cc Protestants

List of Protestants Case 90-6-A

Joseph & Maxine Ingolia  
Pres., Hampton Improvement Assoc.  
905 Stagshead Road  
Towson, Md. 21204

Richard & Helen Torello  
Architectural Committee, Hampton Improvement Assoc.  
729 Hickory Lot Road  
Towson, Md. 21204

Lester & Aleda Jackson  
Pres., Cowpens Improvement Assoc.  
1006 Cowpens Road  
Towson, Md. 21204

Eugene Waters & Rachael Waters  
Past Pres., Chatterleigh Improvement Association  
1001 Concordia Drive  
Towson, Md. 21204

Joseph & Dolores Orlando  
903 Huntsman Road  
Towson, Md. 21204

Charles & Audrey Brownley  
911 Huntsman Road  
Towson, Md. 21204

Kerry Heemann, M.D.  
909 Huntsman Road  
Towson, Md. 21204

George & Marion Brecht  
905 Huntsman Road  
Towson, Md. 21204

PROTESTANTS

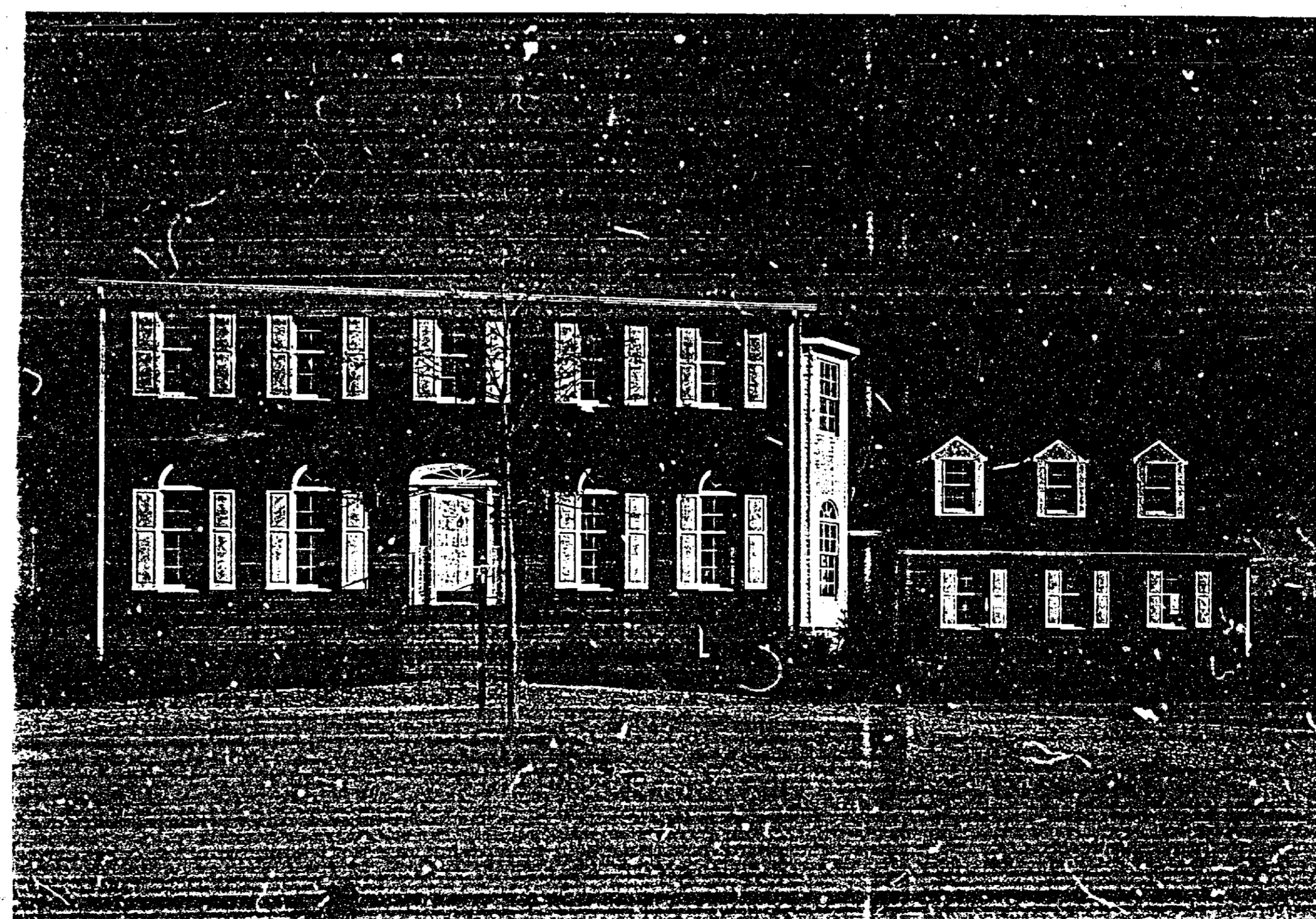
PLEASE PRINT CLEARLY PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
HOWARD E. SACHICK	1215 MILWOOD RD, HAMPTON
LANGDON G. CARICO	600 ST. FRANCIS RD, TOWSON MD 21204

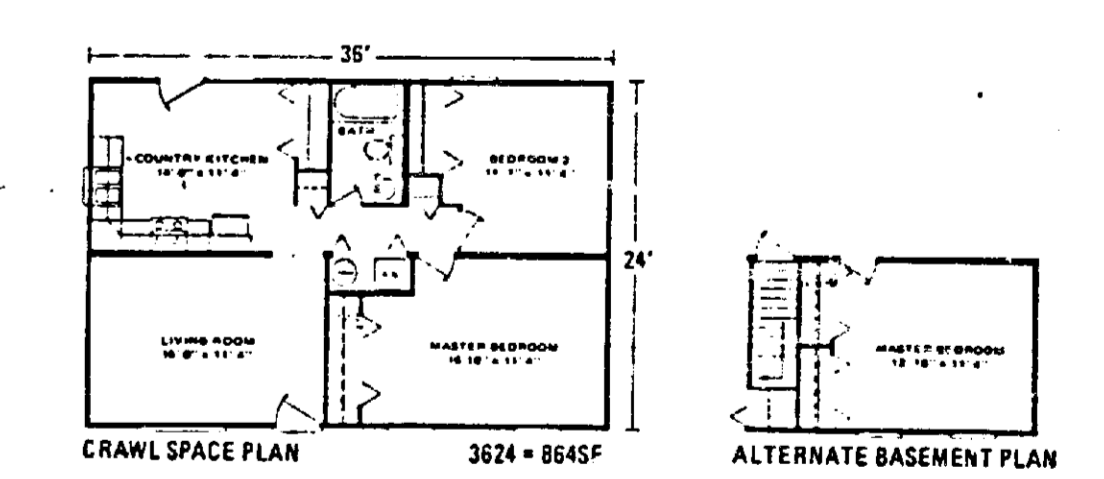
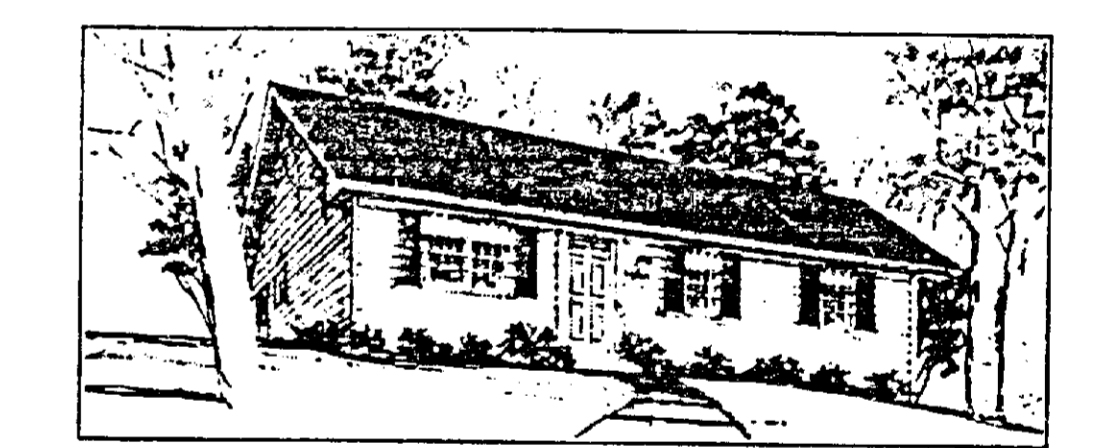
PLEASE PRINT CLEARLY PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
LEONARD T. BOVA	3400 WOOD RD HUNTSMAN
ANTHONY J. MIERZWIcki	16 DAKOTA CT LUTHERTON MD
KEITH A. RANDALL	6539 CORKLET RD BALTO. MD 21037

90-6A



NORTH AMERICAN HOUSING WINCHESTER  
RAMBLER 3624



ALL FLOOR PLANS AND ROOM SIZES ARE APPROXIMATE  
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HAMPTON IMPROVEMENT ASSOCIATION

RESOLVED: That the position of the HAMPTON IMPROVEMENT Association as adopted by the [redacted] (Zoning Committee)

on the zoning matter known as:

Variance Case 90-6-A

is that:

It is strongly opposed.

AS WITNESS OUR HANDS AND SEAL THIS 13th DAY OF January

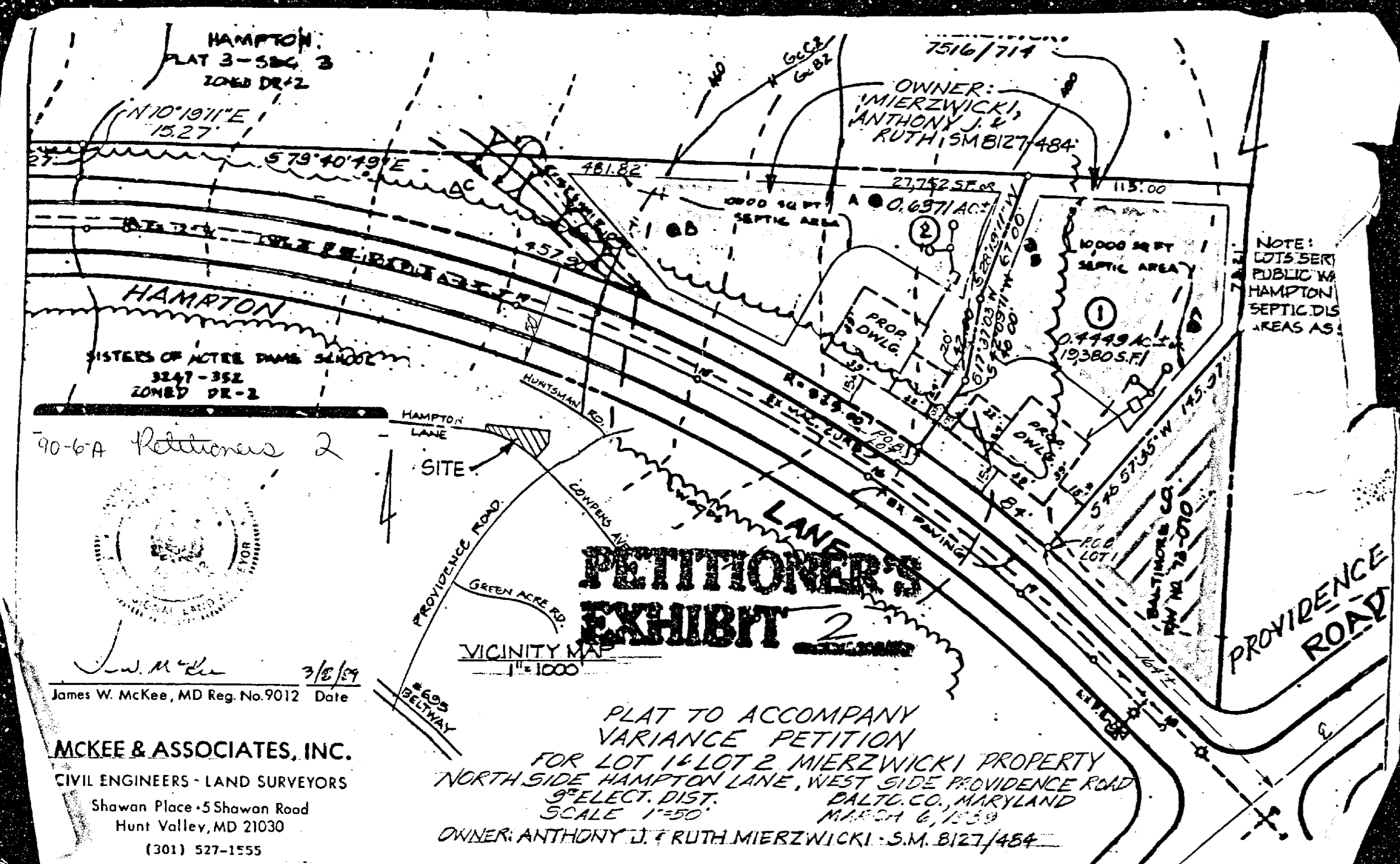
1990.

ATTEST: HAMPTON IMPROVEMENT ASSOCIATION

Eggy Nottingham Secretary Joseph N. Ingolia President







MCKEE & ASSOCIATES, INC.  
CIVIL ENGINEERS - LAND SURVEYORS  
Shawhan Place 5 Shawhan Road  
Hunt Valley, MD 21030  
(301) 527-1555

90-6-A Petitioner 3

LIBER 3660 PAGE 395

THIS DEED, made this 26th day of December, in the year Nineteen Hundred and Fifty-nine, by THE SCHOOL SISTERS OF NOTRE DAME IN THE CITY OF BALTIMORE, a body corporate of the State of Maryland, Grantor.

WITNESSETH, that in consideration of the sum of Five Dollars (\$5.00), and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does grant and convey unto BALTIMORE COUNTY, MARYLAND, a municipal corporation, its successors and assigns, in fee simple, for public highway purposes, all that lot of ground, situate, lying and being in the Ninth Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

IN AND TO the bed of HAMPTON LANE, 50 feet wide, as shown shaded on the Baltimore County Bureau of Land Acquisition Drawings Nos. HM 30-222-1 and HM 30-222-2, which are attached hereto and made a part hereof.

TOGETHER with a slope easement area of irregular dimensions, as shown hatched on the above mentioned Drawings Nos. HM 30-222-1 and HM 30-222-2, which are attached hereto and made a part hereof, which easement area shall be maintained by Baltimore County, Maryland, to the extent it deems advisable, without liability on the School Sisters of Notre Dame in the City of Baltimore for any maintenance.

BEING a portion of the property which by Deed dated October 9, 1937, and recorded among the Land Records of Baltimore County in Liber G.L.R. No. 2247, folio 352, was granted and conveyed by Rand Building Company, et al, to the School Sisters of Notre Dame in the City of Baltimore.

TOGETHER with the appurtenances and advantages to the same belonging, or in anywise appertaining, especially said easement as hereinbefore set forth.

TO HAVE AND TO HOLD the above granted property unto Baltimore County, Maryland, a municipal corporation, its successors and assigns, in fee simple, for public highway purposes.

AND the said Grantor hereby covenants that it has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that it will warrant specially property granted; and that it will execute such further Assurances as the same as may be requisite.

90-6-A Petitioner 4

LIBER 5734 PAGE 664

CODE: Item 1  
03-RM 73-070  
J.O. 3-6-15  
District No. 9  
Account No.

THIS DEED, made this 7th day of March, in the year Nineteen Hundred and Seventy-seven, by and between SCHOOL SISTERS OF NOTRE DAME IN THE CITY OF BALTIMORE, a body corporate of the State of Maryland, Party of the First Part, and BALTIMORE COUNTY, MARYLAND, a body corporate and politic, Party of the Second Part.

WITNESSETH, that in consideration of the sum of Five Dollars (\$5.00), and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Party of the First Part does grant and convey unto the said Baltimore County, Maryland, a body corporate and politic, its successors and assigns, in fee simple, all that lot and parcel of ground situate, lying and being in the Ninth Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

BEING a parcel of land of irregular dimensions across the property of the Party of the First Part, said parcel of land containing 0.175 acre, more or less, (7,631 sq. ft., more or less), as shown shaded and indicated "SEE SHADING AREA" on Baltimore County Bureau of Land Acquisition Drawing No. RM 73-070, which is attached hereto and made a part hereof.

BEING a portion of the property which by a Deed dated October 9, 1937, and recorded among the Land Records of Baltimore County in Liber G.L.R. No. 2247, folio 352, was granted and conveyed by Rand Building Company, Pierce Homes, Inc., Dean Building Company, Randall Homes, Inc. and Wade Building Company, et al, to School Sisters of Notre Dame in the City of Baltimore.

TOGETHER with the buildings and improvements thereupon erected, made or being, and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said lot of ground and premises above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said Baltimore County, Maryland, a body corporate and politic, its successors and assigns, in fee simple.

AS WITNESS the due execution hereof by the aforementioned Party of the First Part.

Part: School Sisters of Notre Dame in the City of Baltimore  
BY: Sister Ruth Marie Perry, President

LIBER 8127 PAGE 484

90-6-A Petitioner 7

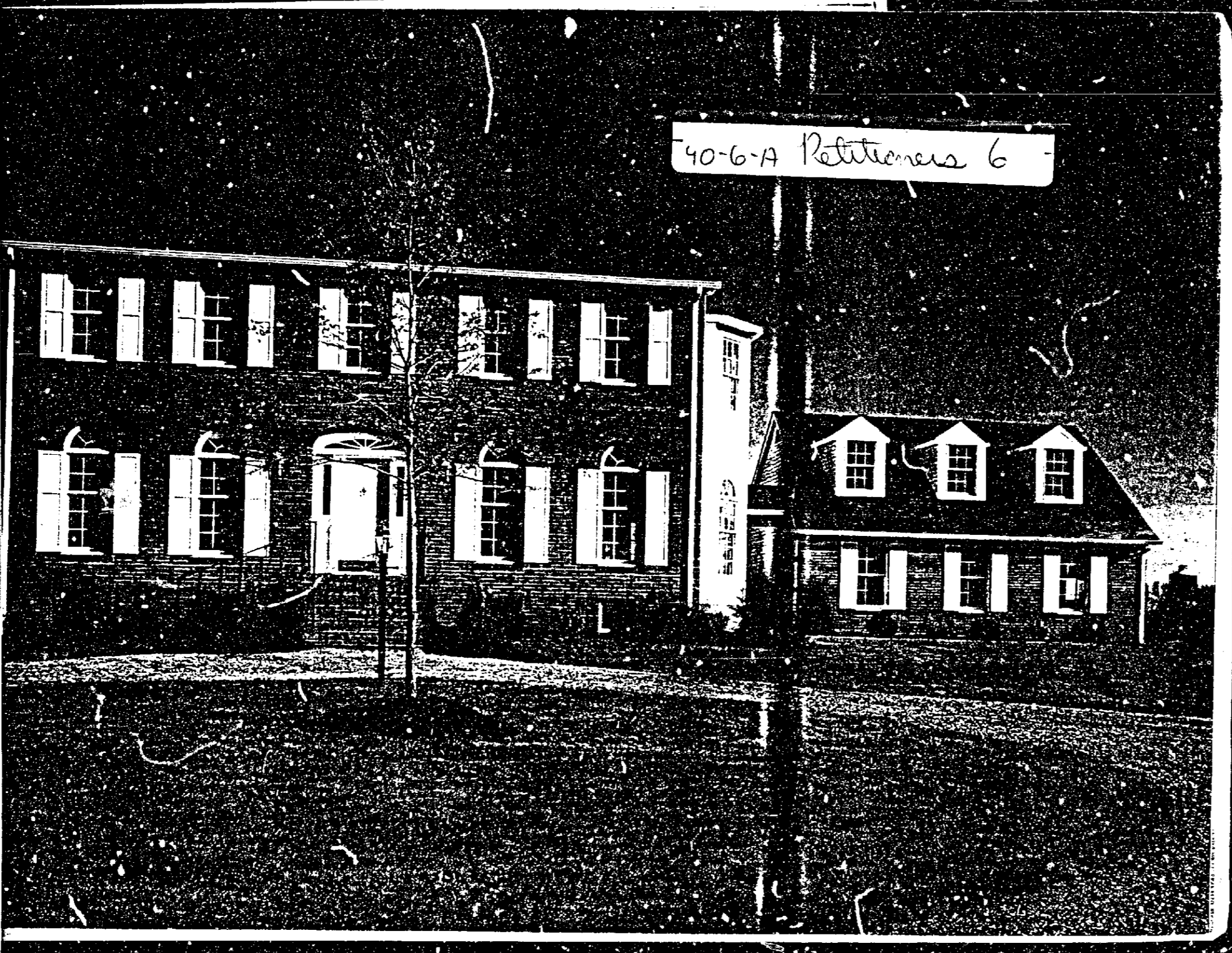
This Deed, MADE THIS 5th day of March, in the year one thousand nine hundred and eighty-nine, by and between ANTHONY J. MIERZWICKI and RUTH MIERZWICKI, his wife, of the first part, and ANTHONY J. MIERZWICKI and RUTH MIERZWICKI, his wife, of the second part.

WITNESSETH, That in consideration of the sum of NO ACTUAL MONETARY CONSIDERATION, but for other good and valuable considerations, receipt of which is hereby acknowledged, the said Parties of the first part do grant and convey to the said Parties of the second part, as tenants by the entireties, their assigns, the survivor of them, the survivor's personal representatives, successors and assigns, in fee simple, all those lots of ground situate in Baltimore County, Maryland, and described as follows, that is to say:

See Exhibit A attached hereto and made a part hereof.

TRANSFER TAX NOT REQUIRED  
Director of Finance  
BALTIMORE COUNTY MARYLAND  
Per: [Signature]  
Date: 3-20-89

AGRICULTURAL TRANSFER TAX NOT APPLICABLE  
SIGNATURE: [Signature] DATE: 3-20-89  
RECEIVED FOR TRANSFER State Department of Assessments & Taxation for Baltimore County  
DATE: 3-20-89



90-6-A Petitioner 8

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines, Zoning Commissioner DATE: September 7, 1989

FROM: Pat Keller, Deputy Director, Office of Planning and Zoning

SUBJECT: Anthony J. Mierzwicki, et ux, Item 463 Zoning Petition No. 90-6-A - REVISED COMMENTS

Based upon recent discussions with the petitioner, staff is revising its comments as follows:

- The subject property does appear to meet minimum lot size requirements based upon area included in the road.
- The locational constraints of providing the septic system has dictated the location of the homes. The well and septic areas cannot be moved as dictated by the County.
- The petitioner is proposing that two garages be located within 16 feet. The homes will be approximately 60 feet apart.

Staff recommends that the following conditions be attached to the site plan:

- All variances should be conditioned to the site plan as shown.
- Building elevations should be conditioned as part of the site plan approval.
- A limit of disturbance should be shown on the site plan. If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the office of Planning at 887-3480.

PK/JL/sf

90-6-A Petitioner 5

Baltimore County  
Department of Public Works  
Towson, Maryland 21204

Gene L. Neff, P.E.  
Director

Shirley M. Murphy, Acting Chief  
Bureau of Land Acquisition

May 4, 1988

Michael E. Marino, Esquire  
Law Offices  
HALL, LEVY, & MARINO, P.A.  
Suite 1212  
10 E. Baltimore Street  
Baltimore, Maryland 21202

Subject: Providence Road Water Booster Station Site  
Northwest Corner of Hampton Lane & Providence Road  
Your Clients: Mr. and Mrs. Anthony J. Mierzwicki  
Our File: SP 9-164

Dear Mr. Marino:

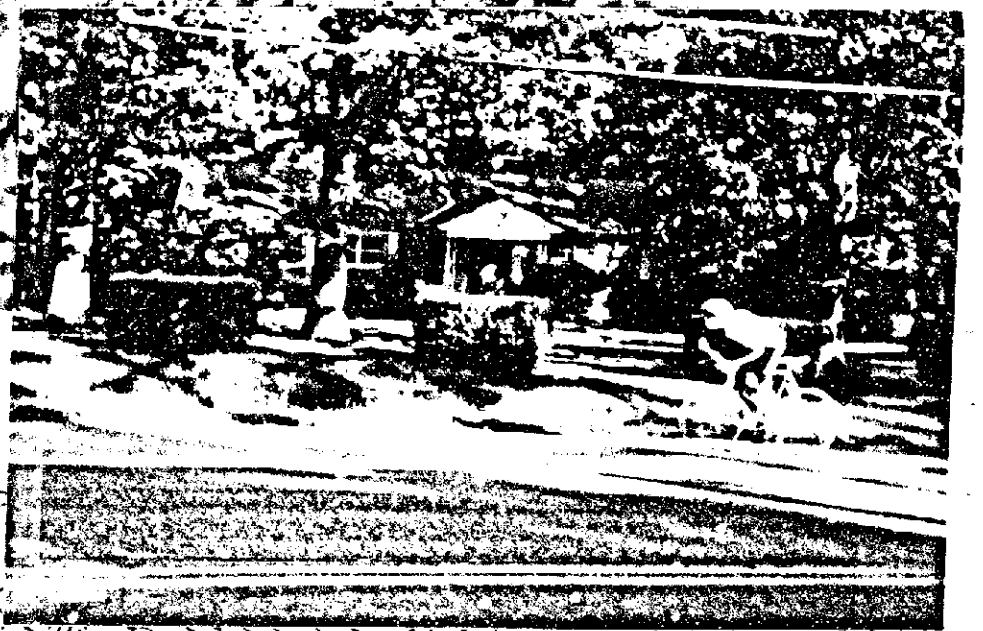
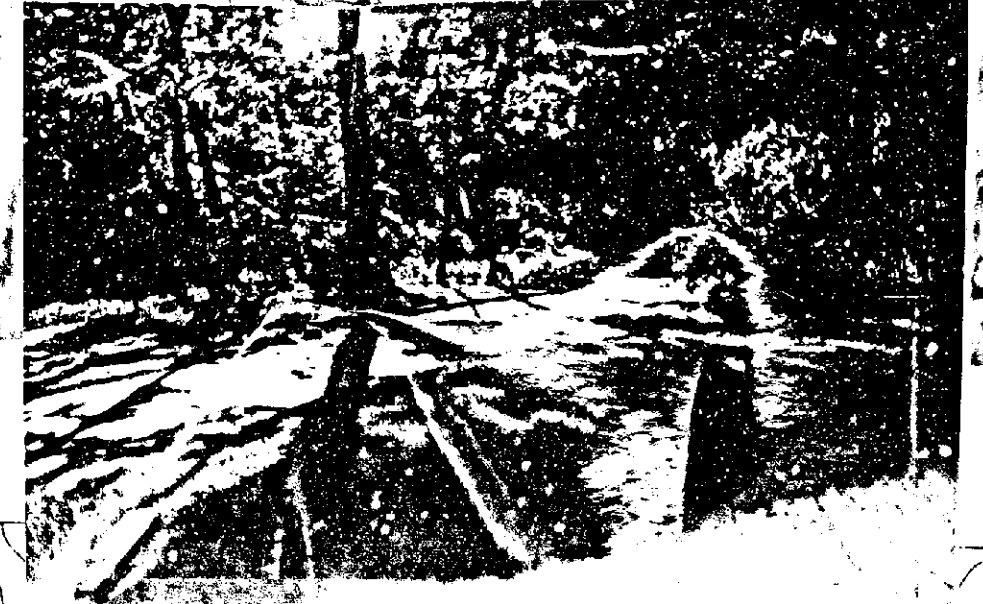
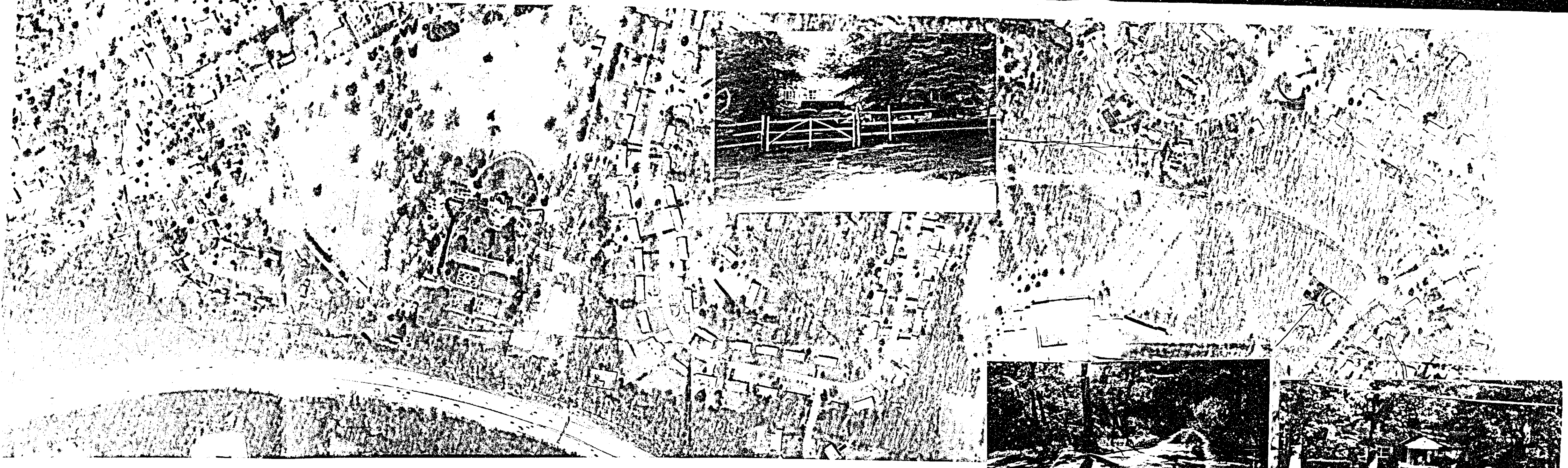
We have circulated a description of the subject property to our Bureau of Engineering, Water Main Design Section, to ascertain if the subject property could be declared as surplus and have been advised by the Assistant Chief of that Bureau that "the subject property site should be retained by Baltimore County to ensure its availability should public water be extended to properties along Providence Road, north of Copens Avenue, that currently have private well supplies. The booster station would be required to provide satisfactory pressure."

We regret that we are unable to be of more assistance to you in this matter.

Sincerely,  
Shirley M. Murphy  
Shirley M. Murphy  
Acting Chief  
Bureau of Land Acquisition

SPM:SJB:dms

PETITIONER'S EXHIBIT 3



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R - SW  
N - NW

PHOTOGRAMMERIC MAP OF  
BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS		SCALE	LOCATION	SHEET
BY	DATE	1" = 200'	HAMPTON	N.E. 11-B
Topographic	APR 11-70			
BY	DATE	1" = 200'	HAMPTON	N.E. 11-B
Topographic	APR 11-70			
DATE OF PHOTOGRAPHY				
APR 1963				

This map was prepared by the Photogrammetric Branch, U.S. Army Corps of Engineers, Washington, D.C. under contract to the U.S. Army Corps of Engineers, Baltimore, Maryland.



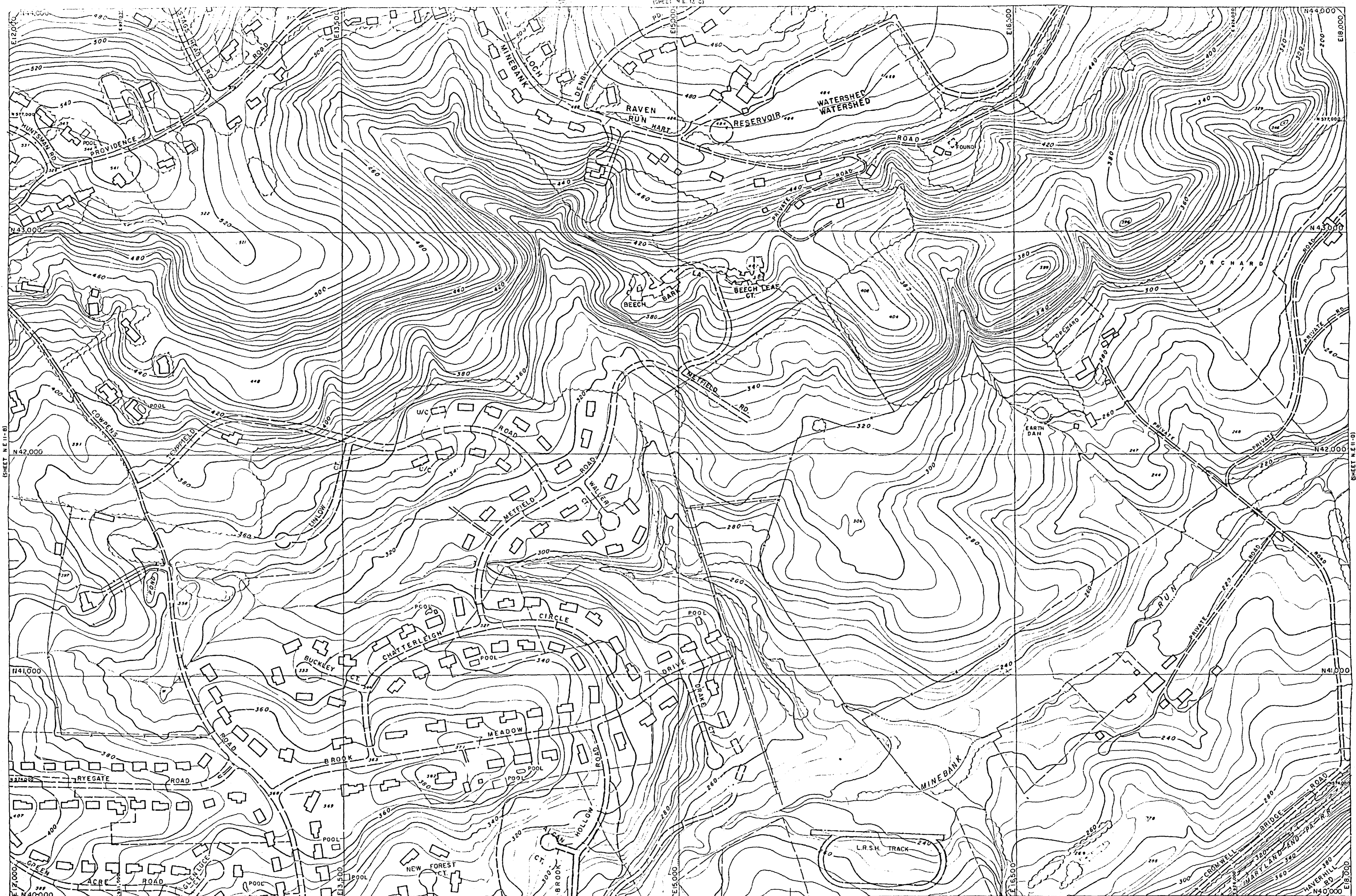
R - SW  
N - NW

PHOTOGRAMMETRIC MAP OF  
BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS		SCALE	LOCATION	SHEET
Topographic	BY MAPS, INC.	DATE 4-11-70	HAMPTON	N.E. 11-B
		DATE OF PHOTOGRAPHY APRIL 1953		
Topography Compiled By Photogrammetric Methods AERO SERVICE CORPORATION PHILADELPHIA, PA.				

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22"



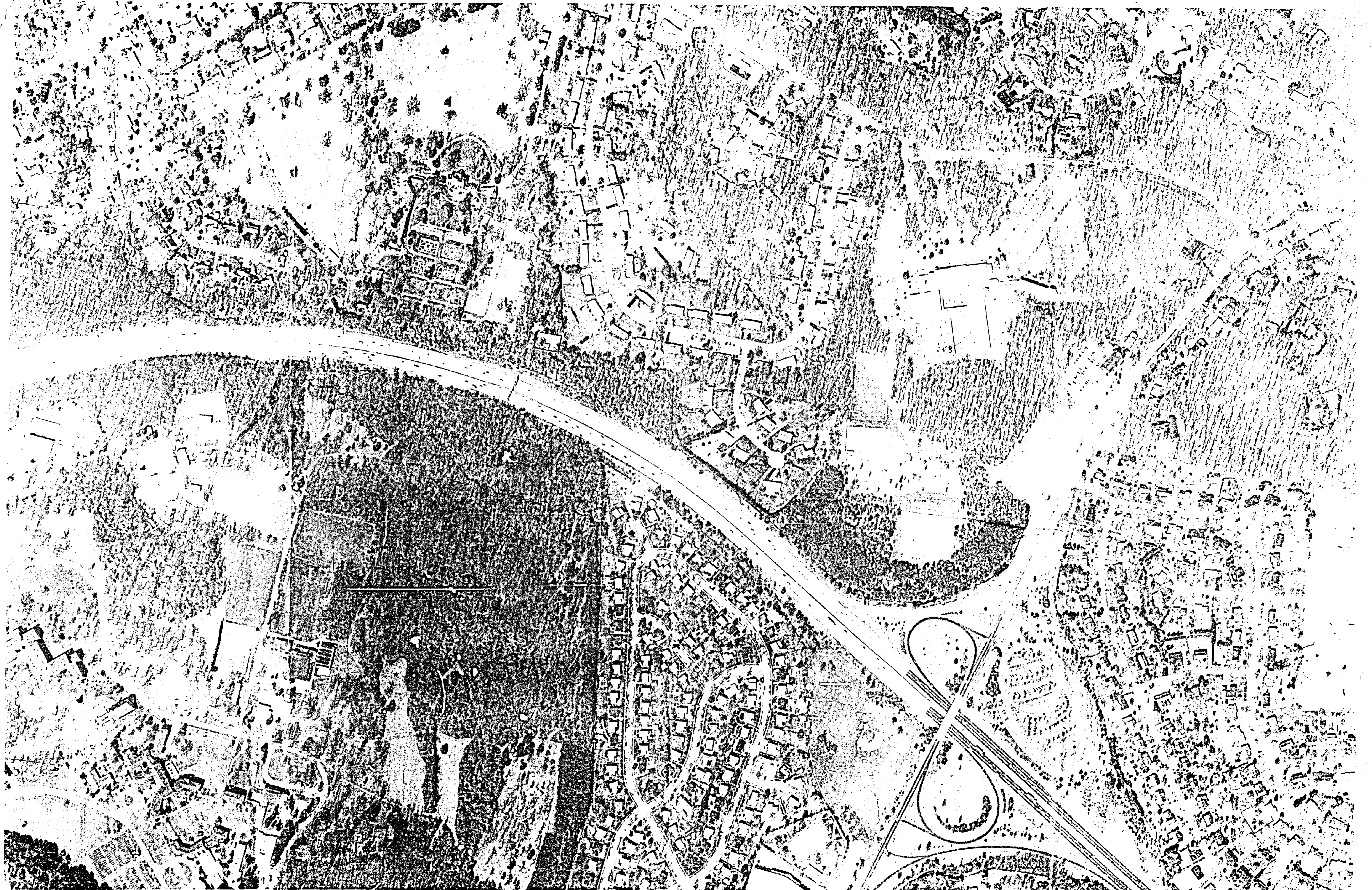
R-SW R-SE  
N-NW N-NE

PHOTOGRAMMETRIC MAP OF  
BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS			SCALE 1" = 200'	LOCATION LIMEKILN HOLLOW	SHEET N.E. II-C
BY	DATE	DATE OF PHOTOGRAPHY			
Topographic	MAPS, INC.	4-11-70	APRIL 1953		
		3/30 10-6-53			

Topography Compiled By Photogrammetric Methods  
AERO SERVICE CORPORATION - PHILADELPHIA, PA.

4/11/78



BALTIMORE COUNTY  
OFFICE OF PLANNING AND ZONING  
PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC.  
MARTINSBURG, W. V. 25401

SCALE  
1" = 200' ±

DATE  
OF  
PHOTOGRAPHY  
JANUARY  
1986

LOCATION  
  
HAMPTON

SHEET  
  
N. E.  
II-B





BALTIMORE COUNTY  
OFFICE OF PLANNING AND ZONING  
PHOTOGRAPHIC MAP

PREPARED BY A R PHOTOGRAPHICS, INC.  
MARTINSBURG, W.V. 25401

SCALE	LOCATION	SHEET
1" = 200' ±	LIMEKILN HOLLOW	N.E. 11-C
DATE OF PHOTOGRAPHY JANUARY 1986		