

IN THE MATTER OF THE APPLICATION OF KEITH DAVID NIZER FOR VARIANCES ON PROPERTY LOCATED ON THE EAST SIDE POWDERVIEW COURT, 241' NORTH OF OAKPARK DRIVE (23 POWDERVIEW COURT) 11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CASE NO. 92 CV 11662

MEMORANDUM OPINION AND ORDER

This matter comes before this Court by way of a record appeal from the Baltimore County Board of Appeals ("Board"), pursuant to Md. Code Ann., Art. 25A, Sec. 5(u) (1957, 1987 Repl. Vol.). A hearing was held before this Court on April 27, 1993 to determine whether the Board erred in denying the Appellant's variances of the Baltimore County Zoning Regulations ("BCZR") on the rear and side setback requirements and projection of a deck and shed outside of the building envelope.

The Appellant, Keith David Nizer, resides in an end of group townhouse at 23 Powderview Court in Baltimore County. Prior to the Appellant moving into the townhouse in March of 1990, the former owner had begun construction of a deck off of the rear of the townhouse. (T. 21). Although the deck was accessed from the first floor of the dwelling, the deck was elevated due to the downward sloping ground which allowed for a rear basement entrance. (T. 22). Sometime after completing the unfinished deck, Appellant began

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construction of a second deck off the basement entrance under the existing first floor deck without a permit. (T. 23) A stop work order was issued on May 1, 1991. On May 3, 1991, the Appellant made application for a permit for the 23 feet by 21 feet deck with an end attached storage shed measuring 23 feet by 8 feet. After gaining approval of the permit, the Appellant completed construction of the ground level deck and completely enclosed it with walls. (T. 30).

On January 30, 1992, a stop work order was issued by Mr. Jim Kemp, a Baltimore County Building Inspector, that stated: "... the following violations of the laws of Baltimore County Code BOCA sec. 113.3 compliance w/ permit: revised permit required, deck is larger than what is designated on permit." (Petitioner's Exhibit #7). In response to the stop work order, Appellant spoke to an Inspector Freund who instructed Appellant to file for a variance. (T. 39).

Appellant's application for a variance was denied by Baltimore County and Appellant took an appeal to the Board which was heard on August 19, 1992. After taking testimony and examining the evidence presented, the Board held that the size walls and the attached shed did not comply with the spirit and intent of the BCZR. (Board's Opinion, p. 3).

On appeal to this Court, Appellant claims that the conclusion of the Board was not supported by the evidence put before it and that the County is estopped from denying the variance on the basis that Appellant relied on the prior issued permit. After a review of the record, exhibits, arguments of counsel and applicable law, this Court is convinced that the findings of the Baltimore County Board of Appeals must be affirmed.

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The proper standard of review for factual findings was recently set forth in Mortimer v. Howard Research, 83 Md. App. 432 (1990), which states:

... the Circuit Court's standard of review is limited to whether the Board of Appeals decision is or is not "in accordance with the law."

The Court of Appeals has stated that the Court may set aside, as "not in accordance with law" a decision of the Board of Appeals which is arbitrary, illegal or capricious. In making a determination of whether the Board of Appeals' decision is arbitrary, illegal or capricious, the reviewing court must decide whether the question before the agency was fairly debatable. An issue is fairly debatable if reasonable persons could have reached a different conclusion on the evidence and, if so, a reviewing court may not substitute its judgment for that of the administrative agency. (citations omitted).

Id. at 441.

Under all the circumstances of this case, this Court holds that the issue before the County Board of Appeals was fairly debatable. The record contains evidence over which reasonable minds could differ as to the justification of the variance and, therefore, this Court is barred from substituting its judgment for that of the Board.

This Court also holds that Appellant's second argument is without merit in light of the Board's finding that the deck was not built in compliance with the permit.

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Accordingly, the decision of the Baltimore County Board of Appeals is hereby AFFIRMED.

LEONARD S. JACOBSON, JUDGE Date signed 6/1/93

Copies sent to: Stephen C. Buckingham, Esquire Peter Max Zimmerman, Esquire

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IN THE MATTER OF THE APPLICATION OF KEITH DAVID NIZER FOR VARIANCES ON PROPERTY LOCATED ON THE EAST SIDE POWDERVIEW COURT, 241' NORTH OF OAKPARK DRIVE (23 POWDERVIEW COURT) 11TH ELECTION DISTRICT, 5TH COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CASE # 40/173/92CV 11662

NOTICE OF FILING OF RECORD

TO: Stephen C. Buckingham, Esq. Lindalee M. Kuszmaul

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on January 19, 1993

Suzanne Mash CLERK

FILED JAN 19 1993

T.M. S.J.

Per...

6-13-93 12:00 PM '93

IN THE MATTER OF THE APPLICATION OF KEITH DAVID NIZER FOR A VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE POWDERVIEW COURT, 241' NORTH OF OAKPARK DRIVE (23 POWDERVIEW COURT) 11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT KEITH DAVID NIZER, PLAINTIFF ZONING CASE NO. 92-236-A

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY Doc. No. 40 Folio No. 173 File No. 92-CV-11662

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Judson H. Lipowitz, S. Diane Levero and C. William Clark, 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. 92-236-A

- Petition for Variance filed by Keith David Nizer to allow a rear yard setback, window to property line setbacks and an amendment to the First Amended Partial Development Plan for an attached deck and shed.
December 19 Publication in newspapers.
December 26 Comments of Baltimore County Zoning Plans Advisory Committee.
December 27, 1991 Certificate of Posting of property.
January 13, 1992 Hearing held on Petition by the Zoning Commissioner.

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- Keith David Nizer, Case No. 92-236-A File No. 92-CV-11662
January 31, 1992 Order of the Zoning Commissioner DENYING Petition.
February 28 Notice of Appeal received from Keith David Nizer.
August 19 Hearing before the Board of Appeals.
October 21 Opinion and Order of the Board GRANTING deck; no windows or walls on lower deck; DENYING shed.
December 18 Order for Appeal filed in the Circuit Court for Baltimore County by Stephen C. Buckingham, Esquire on behalf of Mr. Keith David Nizer.
December 28 Petition to accompany appeal filed in the Circuit Court for Baltimore County by Mr. Gisriel.
December 21 Certificate of Notice sent to interested parties.
January 15, 1993 Transcript of testimony filed.
Petitioner's Exhibit No. 1-Application for Permit 2-Plat to accompany Petition 3-A-C-Photos 4-Correction 5-B090600 Permit 5/3/91 6-Stop Work Order 003287 7- " " 003038 8-Photo
Protestant's Exhibit No. 1-Photo 2-OPC Comment 1/6/92 to Jablon 3-Photos (group)
January 19, 1993 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court,

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Keith David Nizer, Case No. 92-236-A File No. 92-CV-11662 together with exhibits entered into evidence before the Board.

Respectfully submitted, Lindalee M. Kuszmaul, Legal Secretary County Board of Appeals, Room 49 Basement - Old Courthouse 400 Washington Avenue Towson, Maryland 21204 (301) 887-3180

cc: Stephen C. Buckingham, Esquire Mr. Keith David Nizer

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further

ORDERED that the Petition to Amend the First Amended Partial Development Plan, Plat 6, Section III, for the projection of the shed outside the building envelope is DENIED as moot because the shed is to be removed in accordance with this Order; and it is further

ORDERED that the Petition to Amend the First Amended Partial Development Plan, Plat 6, Section III, for the projection of the lower 23 ft. by 21 ft. deck outside the building envelope be and is hereby GRANTED, provided all of the requirements, terms and conditions of this Order are complied with.

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

Hudson H. Lipowitz, Acting Chairman
S. Diane Levero
C. William Clark



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

November 18, 1992

Stephen Buckingham, Esquire
575 S. Charles Street, Suite 200
Baltimore, MD 21201

RE: Case No. 92-236-A
Keith David Nizer

Dear Mr. Buckingham:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Sincerely,

Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Mr. Keith David Nizer
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration

RE: PETITION FOR VARIANCE
E/S Powdersview Ct., 241' N of
Oakpark Dr. (23 Powdersview Ct.) :
11th Election District
5th Councilmanic District
BEFORE THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
KEITH DAVID NIZER, Petitioner/
Appellant : Zoning Case No. 92-236-A

ENTRY OF APPEARANCE

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

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman

Peter Max Zimmerman
Deputy People's Counsel
Room 41, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-2188

I HEREBY CERTIFY that on this 19th day of August, 1992, a copy of the foregoing Entry of Appearance was delivered to Stephen C. Buckingham, Esquire, 575 S. Charles St., Suite 200, Baltimore, MD 21201, Attorney for Petitioner/Appellant.

Phyllis Cole Friedman

Phyllis Cole Friedman

IN RE: PETITION FOR ZONING VARIANCE
E/S Powdersview Court, 241 ft.
N of Oakpark Drive
23 Powdersview Court
11th Election District
5th Councilmanic
BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 92-236-A
Keith David Nizer
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a variance from Section 1802.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a rear yard setback of 7.5 ft. for an attached deck and shed, in lieu of the required 25 ft.; and a variance from Section V.B.6.b of the CNDP as adopted by the authority of Section 504 of the B.C.Z.R. to allow window to property line setbacks of 1 ft. and 11 ft. in lieu of the required 15 ft. each; and to amend the First Amended Partial Development Plan, Plat 6, Section III for the projection of the deck and shed outside of the building envelope, all as more particularly described on Petitioner's Exhibit No. 1.

The Petitioner/property owner, Keith David Nizer, appeared and testified. Other than Mr. Nizer, no other individuals appeared. This lack of community participation is particularly surprising in view of the extent of the relief requested.

In order to fully appreciate the construction which the Petitioner has done, one must understand the topography of the subject lot. The property is approximately 35.5 ft. wide and 91.5 ft. deep. It is improved with a single family townhouse dwelling. The subject townhouse is an "end

ORDER RECEIVED FOR FILING
Date 11/18/92
By M. Board

unit" on an existing row of townhomes. The front of the lot is level and access through the front door of the house is on the first floor. However, the lot slopes away in the rear of the property so that ground level access from the back yard is by way of the basement entrance.

The Petitioner testified that he acquired the property in March of 1990. At that time, it was improved by the construction of an existing elevated deck which was built off the rear of the house on the first floor. That deck is approximately 22 x 24 ft. in dimension and was constructed pursuant to the authority conferred by permit No. B026900, issued by Baltimore County on or about August 9, 1989.

Subsequent to his occupancy of the premises, the Petitioner testified that a friend, who has two small children, moved in with him. Because of the increased number of residents, he desired to build an additional deck in the rear lot as well as construct a shed to accommodate his storage needs. Specifically, he advised that he needed a place to store his patio furniture, lawn furniture and other garden tools. To fulfill this alleged need, the Petitioner began construction of a second rear deck on the property which is at ground level. As the photographs show, it is located under the upper deck which was constructed in 1989. This lower deck is 23 x 21 ft. in dimension and attached thereto is a shed which is 23 ft. wide and 8 ft. deep. Thus, the property is improved at ground level by the construction of a 23 x 29 ft. structure. Further, the deck features walls which connect the flooring thereof to the upper deck. The photographs of these improvements show that the construction more closely resembles an addition built onto the back of the basement level of the house, with an open air deck immediately above. Although my authority, in considering Petitions for Variance, is not to adjudge the esthetics of the

proposal, the size and scope of the structure is remarkable. As was noted by the Office of Planning and Zoning in their Zoning Advisory comment, "... the described shed appears to be more characteristic of an addition rather than a typical shed." That comment also notes "the undesirable scale" of the project. As is clear from both the photographs of the site, as well as the site plan, these improvements overwhelm this rather small residential lot and occupy more than 50% of the entire rear yard.

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 relaxation than that applied for would give substantial relief; and
3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

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

In reviewing the evidence, there is insufficient evidence to allow a finding that the Petitioner would experience practical difficulty or unreasonable hardship if the requested variances were denied. The testimony presented by the Petitioner was in support of a matter of a preference rather than of the necessity for the variances. The Petitioner has failed to show that compliance would unreasonably prevent the use of the property

ORDER RECEIVED FOR FILING
Date 11/18/92
By M. Board

or be unnecessarily burdensome. Further, the size of the variance request is substantial and I conclude that the magnitude of the construction is not warranted. Therefore, the variances requested must be denied.

In addition to addressing the requirements set forth within Section 307 of the B.C.Z.R., as set forth above, consideration must also be given to the Petitioner's claim that a permit was issued for the improvements and that the County is now estopped from denying the variance. Indeed, the Petitioner obtained a building permit for the lower deck/shed on May 3, 1991. A copy of that permit No. B090600 was produced at the hearing. However, a closer inspection of the permit reveals that it provides authority only for the construction of a ground level deck with a 23 x 8 ft. storage shed. The permit does not allow for the walls which enclose the deck and gives some the appearance of an addition. Further, the existing upper deck is not referenced in the application for the building permit. The application in and of itself is misleading. Under these circumstances, the doctrine of estoppel is not applicable and the requested relief must be denied.

Further the Petitioner is responsible for bringing the property into compliance with existing zoning regulations and policy. Unless an appeal is filed, such corrective measures must be completed within 90 days from the date of this Order.

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 denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 31st day of January, 1992 that a variance from Section 1802.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a

ORDER RECEIVED FOR FILING
Date 1/31/92
By M. Board

rear yard setback of 7.5 ft. for an attached deck and shed, in lieu of the required 25 ft., be and is hereby DENIED; and,

IT IS FURTHER ORDERED that a variance from Section V.B.6.b of the Comprehensive Manual Development Plan (CNDP) as adopted by the authority of Section 504 of the B.C.Z.R. to allow window to property line setbacks of 1 ft. and 11 ft. in lieu of the required 15 ft. each; and to amend the First Amended Partial Development Plan, Plat 6, Section III for the projection of the deck and shed outside of the building envelope, in accordance with Petitioner's Exhibit No. 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petitioner take such corrective measures as may be required to bring the property into compliance with all zoning regulations and policy within 90 days from the date of this Order.

Lawrence E. Schmidt
Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 1/31/92
By M. Board

ORDER RECEIVED FOR FILING
Date 11/18/92
By M. Board

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Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21284

(410) 887-4386

January 31, 1992

Mr. Keith David Nizer
23 Powderview Court
Baltimore, Maryland 21236

RE: Petition for Zoning Variance
Case No. 92-236-A

Dear Mr. Nizer:

Enclosed please find the decision rendered in the above captioned case. The Petition for Zoning Variance has been denied, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,
Lawrence E. Schmidt
Lawrence E. Schmidt
Zoning Commissioner

LES:mn
encl.

Petition for Variance

to the Zoning Commissioner of Baltimore County

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 1202.3.B, 504 (V86.B) to allow a rear yard setback of 7.5' for an attached deck and shed, in lieu of the required 25' and to allow window to project 12" outside of the 25' setback, in lieu of the required 12" setback and to amend the First Amended Partial Development Plan, Plat 68 Sect. III for projection of same outside the BUILDING ENVELOPE.

on the said property stipulated below, to dispense with the distance in understanding of just what I was to have built as a safety measure. My interpretation, apparently, was not quite that which was meant by the word "petition" used by the inspector for permit number B090600. Thank You.

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

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

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

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.

Legal Owner(s):

Keith David Nizer

Signature

Address

City and State

Signature

Address

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Name

Address

City and State

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Zoning Description For 23 Powderview Ct
Beginning at a point on the EAST side of Powderview Ct which is 80' wide at the distance of 241' ft North of the centerline of the nearest improved intersecting street Oak Park Dr. which is 50' wide. Being lot # 248, Block G, Section # 3 in the subdivision of Oakhurst as recorded in Baltimore County Plat Book # 52, Folio # 89 containing 3248 square feet Also known as 23 Powderview Ct and located in the 11 Election District.

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CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 11th
Date of Posting: 12/29/91

Posted for: Variance

Postman: Keith D. Nizer

Location of property: 23 Powderview Ct, 241' N of Oak Park Dr.

Location of sign: Easting, Powderview Ct, approx. 23' from road way, on property of K. Nizer

Remarks:

Posted by: [Signature]

Number of Signs: 1

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CERTIFICATE OF PUBLICATION

TOWSON, MD., 12/23, 1991

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/19, 1991.

THE JEFFERSONIAN,
S. Zeke Orlov

Publisher

\$ 79.60

MICROFILMED

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in the NORTHEAST TIMES BOOSTER and the NORTHEAST TIMES REPORTER, weekly newspapers published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/19, 1991.

NORTHEAST TIMES BOOSTER and the
NORTHEAST TIMES REPORTER

S. Zeke Orlov
Publisher

\$ 79.60

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Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21284

(410) 887-3353

DATE: 1-3-92

Keith David Nizer
23 Powderview Court
Baltimore, Maryland 21236

RE:
CASE NUMBER: 92-236-A
2/2 Powderview Court, 241' N of Oak Park Drive
23 Powderview Court
11th Election District - 5th Councilmanic
Petitioner(s): Keith David Nizer

Dear Petitioner(s):

Please be advised that \$ 104.60 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID. ALSO, THE SIGNING SIGN & POST SIGN(S) MUST BE RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SIGN(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21284. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

Call John

ARNOLD JENSEN
DIRECTOR

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21284

receipt

92-236

Account: R 001-6180
Number

MICROFILMED

Please Make Check Payable To: Baltimore County \$104.60
BA CO12:33PM01-13-92

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21284

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 11th
Date of Posting: 4/27/92

Posted for: Appeal

Postman: Keith D. Nizer

Location of property: 23 Powderview Ct, 241' N of Oak Park Dr.

Location of sign: Easting, Powderview Ct, approx. 23' from road way, on property of K. Nizer

Remarks:

Posted by: [Signature]

Number of Signs: 1

MICROFILMED

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21284

receipt

Account: R 001-6150
Number

92-236-A

MICROFILMED

Please Make Check Payable To: Baltimore County \$150.00
BA CO10:51AM03-16-92

Form CA4

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 8754
Towson, Maryland, 21285-8754
February 2, 1993

TO: STEPHEN C. ROCKENBACH, ESQ.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

OFFICE OF LAW

MR. KEITH DAVID NIZER, (PF)

23 Powderview Court
Balto., Md. 21236

RE: non July 82 CV-11662 In The Matter of Keith David Nizer vs. County Board of Appeals of Baltimore County

HEARING DATE: Tuesday, April 27, 1993 @ 9:30 A.M.

ON THE FOLLOWING: Appeal I Hour

Please see the below notation.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will constitute reason for postponement.

Subsequent to the hearing date, if any motion is filed, a postponement MUST BE MADE BY WRITING to the Assignment Office, with a copy to all counsel involved. POSTPONEMENTS MUST BE MADE BY WRITING to the Assignment Office, with a copy to all counsel involved. POSTPONEMENTS MUST BE MADE BY WRITING to the Assignment Office, with a copy to all counsel involved.

POSTPONEMENT: If a postponement is reached prior to the hearing date, the Assignment Office must be notified immediately. All postponements on the ground of no order of continuation is filed prior to trial.

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RECEIVED
COUNTY BOARD OF APPEALS
FEB 3 1993

DECEMBER 11, 1991

NOTICE OF HEARING

The Zoning Commission 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 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 92-236-A
E/S Powderview Court, 241' N of Oak Park Drive
23 Powderview Court
11th Election District - 9th Councilmanic
Petitioner(s): Keith David Nizer
HEARING: MONDAY, JANUARY 13, 1992 at 2:00 p.m.

Variance to allow a rear yard setback of 7.5 feet (for an attached deck and shed) in lieu of the required 25 feet; to allow a window to property line setbacks of 1 foot and 11 feet in lieu of the required 15 feet each; and to amend the First Amended Partial Development Plan, Plat 6, Section III, for projection of same outside the building envelope.

Lawrence E. Schmidt
Lawrence E. Schmidt

Zoning Commissioner of
Baltimore County

cc: Keith David Nizer

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
Hearing Room - Room 48, Old Courthouse (410) 887-3180
400 Washington Avenue May 11, 1992

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 92-236-A KEITH DAVID NIZER
E/S Powderview Court, 241' N of Oakpark Drive (23 Powderview Court) 11th Election District; 9th Councilmanic District
VAR-setbacks/rear deck and shed (attached/existing)
1/31/92 - Z.C.'s Order DENYING Petition.

ASSIGNED FOR: WEDNESDAY, AUGUST 19, 1992 AT 10:00 a.m.

cc: Mr. Keith David Nizer - Petitioner/Appellant

People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of Zoning Administration

LindaLee M. Kusznau
Legal Secretary

Added 7/31/92:
Stephen Buckingham, Esquire
575 S. Charles Street, Suite 200
Baltimore, MD 21201

Printed on Recycled Paper



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
Hearing Room - Room 48, Old Courthouse (410) 887-3180
400 Washington Avenue May 11, 1992

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

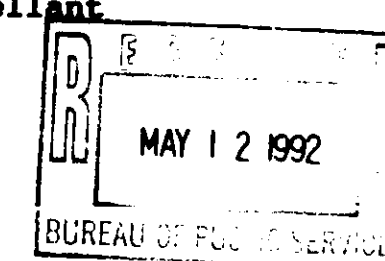
CASE NO. 92-236-A KEITH DAVID NIZER
E/S Powderview Court, 241' N of Oakpark Drive (23 Powderview Court) 11th Election District; 15th Councilmanic District
VAR-setbacks/rear deck and shed (attached/existing)
1/31/92 - Z.C.'s Order DENYING Petition.

ASSIGNED FOR: WEDNESDAY, AUGUST 19, 1992 AT 10:00 a.m.

cc: Mr. Keith David Nizer - Petitioner/Appellant

People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of Zoning Administration

LindaLee M. Kusznau
Legal Secretary



Yes - no ✓

Printed on Recycled Paper

December 26, 1991

Mr. Keith D. Nizer
23 Powderview Court
Baltimore, MD 21236

RE: Item No. 250, Case No. 92-236-A
Petitioner: Keith D. Nizer
Petition for Variance

Dear Mr. Nizer:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with above referenced petition. The attached comments from each reviewing agency are not intended to assure that that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a review by Zoning personnel.

MICROFILMED

Zoning Plans Advisory Committee Comments
Date: December 26, 1991
Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All Petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys and/or engineers who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the loss of filing fee.

Very truly yours,

James E. Dyer

JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw
Enclosures

MICROFILMED

111 West Chesapeake Avenue
Towson, MD 21204

Your petition has been received and accepted for filing
this 4th day of December, 1991.

Arnold Jablon
ARNOLD JABLON
DIRECTOR

Received By:
James E. Dyer
CHAIRMAN
ZONING PLANS ADVISORY COMMITTEE

Petitioner: Keith D. Nizer
Petitioner's Attorney:

MICROFILMED

92-236-A 113

BALTIMORE COUNTY, MARYLAND
COUNTY BOARD OF APPEALS

To: Arnold Jablon, Director DATE: December 26, 1991
Zoning Administration and Development Management

From: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
December 26, 1991

The Director of Engineering Department has reviewed the plans submitted with above referenced petition. The attached comments from each reviewing agency are not intended to assure that that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Robert W. Bowling
ROBERT W. BOWLING, P.E.
Professional Engineering Consultant

END

MICROFILMED

92-236-A 1-13

BUREAU OF TRAFFIC ENGINEERING
DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY, MARYLAND

DATE: January 7, 1992

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management

FROM: Rahee J. Famili
SUBJECT: Z.A.C. Comments

Z.A.C. MEETING DATE: December 17, 1991

This office has no comments for item numbers 233, 245, 246, 247, 248, 249, 250, 251, 252 and 253.

Rahee J. Famili
Rahee J. Famili
Traffic Engineer II

RJF/lvd

MICROFILMED

JANUARY 6, 1992

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: KEITH DAVID NIZER
Location: #23 POWDERVIEW COURT
Item No.: 250 Zoning Agenda: DECEMBER 17, 1991

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.

7. The Fire Prevention Bureau has no comments at this time.

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

JF/KEK

MICROFILMED

BALTIMORE COUNTY
ECONOMIC DEVELOPMENT COMMISSION

TO: Julia Wisniewski
Office of Zoning Administration and
Development Management
FROM: A. J. Maloy, Acting Director
Economic Development Commission
DATE: December 20, 1991
RE: Zoning Advisory Comments for Meeting of December 17, 1991

This office has no comment for items 92-1, 233, 237, 245, 246, 247, 248, 249, 251, 252 or 253.

RECEIVED
DEC 26 1991
ZONING OFFICE
MICROFILMED

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Councilman Vincent J. Gardina DATE: September 7, 1993
FROM: Arnold Jablon
RE: 23 Powderview Court
Nizer Property
11th Election District

I am in receipt of your request for comment to the letter written by the attorney for Mr. Nizer.

It should be noted that the property owner built the deck and shed at issue in contravention of the permits secured either by the previous property owner or by him, according to the Board of Appeals (Board). The permits were for two decks, not for a shed, and the Board ordered the shed, walls and windows removed.

While there are terms in the Baltimore County Zoning Regulations that are vague, or undefined, the regulations do refer to Webster's Dictionary in such cases for guidance. There is no way to define with precision every term or word. Discretion in interpretation is usually the result when attempting to apply the regulations to a specific set of circumstances. The right to go to a public hearing is available to anyone when there is a disagreement with an interpretation. Certainly, citizens have a right to know what is permitted. They expect to be told when they apply for permits. As a result of due process protections built into our law, a challenge can be taken to any decision rendered by the county.

I do not believe trying to do the impossible - providing specificity in the instant matter - would solve the primary problem. The property owner constructed something that was in contravention of the permit issued and rejected by the Zoning Commissioner and Board, on appeal.

MICROFILMED

The real issue presented is that the property owner is trying to circumvent the regulations, not clarify them. I think the best remedy is to file a Petition for Special Hearing and request the Zoning Commissioner to accept his solution to his problem. This office would provide an interpretation, and, if not acceptable, or if the property owner demands finality, then the Zoning Commissioner, after a public hearing, would issue an order allowing for or rejecting the relief requested.

AJ:ech

APPEAL

Petition for Zoning Variance
E/S Powderview Court) 241 ft. N of Oakpark Drive
(23 Powderview Court)
11th Election District - 15th Councilmanic District
KEITH DAVID NIZER - Petitioner
Case No. 92-236-A

- Petition(s) for Zoning Variance
- Description of Property
- Certificate of Posting
- Certificate of Publication
- Entry of Appearance of People's Counsel (None submitted)
- Zoning Plans Advisory Committee Comments
- Director of Planning & Zoning Comments
- Correction Notice for Alleged Zoning Violation
- Petitioner's Exhibits: 1. Plat to accompany Petition
- Unmarked Exhibits: Photographs of addition
- Zoning Commissioner's Order dated January 31, 1992 (Denied)
- Notice of Appeal received February 28, 1992 from Keith David Nizer

cc: Keith Nizer
23 Powderview Court - Baltimore, MD 21236
People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204
Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Deputy Zoning Commissioner
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, Director of Zoning Administration
and Development Management
Public Services

MICROFILMED

5/11/92 - Following parties notified of hearing set for August 19, 1992 at 10:00 a.m.:

- Mr. Keith David Nizer
- People's Counsel for Baltimore County
- P. David Fields
- Lawrence E. Schmidt
- Timothy M. Kotroco
- W. Carl Richards, Jr.
- Docket Clerk - Zoning
- Arnold Jablon

Copy 7/31/92
Deputy Buckingham Eng
Can we use for Keith

TO: Arnold Jablon, Director DATE: January 6, 1992
Zoning Administration and
Development Management
FROM: Pat Keller, Deputy Director
Office of Planning and Zoning
SUBJECT: Nizer Property, Item No. 250

In reference to the petitioner's request, staff offers the following comments:

This office views the existing improvements as inappropriate development in a townhome community. In addition, the described shed appears to be more characteristic of an addition rather than a typical shed. Therefore, due to the undesirable scale of this addition, the Office of Planning and Zoning recommends that the applicant's request be denied unless it can be demonstrated that the community supports this type of development.

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 887-3211.

PK/JL:rdn
ITEM250/TXTRO2

March 26, 1992

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

RE: Petition for Zoning Variance
E/S Powderview Court, 241 ft. N of Oakpark Drive
(23 Powderview Court)
11th Election District, 15th Councilmanic District
KEITH DAVID NIZER - Petitioner
Case No. 92-236-A

Dear Board:
Please be advised that an appeal of the above-referenced case was filed in this office on February 28, 1992 by Keith Nizer. 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,

Lawrence E. Schmidt
Zoning Commissioner

LES:cer

Enclosures

cc: Keith Nizer
23 Powderview Court - Baltimore, MD 21236

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

File

KEITH DAVID NIZER #92-236-A
E/s Powderview Ct., 241' N 11th Election District
of Oakpark Drive (23 Powderview Ct.) 5th Council District

Petition for Variance filed by Keith David Nizer to allow a rear yard setback, window to property line setbacks and an amendment to the First Amended Partial Development Plan for an attached deck and shed.

January 31, 1992 Order of the Zoning Commissioner DENYING Petition.

February 28 Notice of Appeal received from Keith David Nizer.

August 19 Hearing before the Board of Appeals.

October 21 Opinion and Order of the Board GRANTING deck; no windows or walls on lower deck; DENYING shed.

December 18 Order for Appeal filed in the Circuit Court for Baltimore County by Stephen C. Buckingham, Esquire on behalf of Mr. Keith David Nizer.

December 28 Petition to accompany appeal filed in the Circuit Court for Baltimore County by Mr. Gisriel.

December 21 Certificate of Notice sent to interested parties.

January 19, 1993 Transcript of testimony filed; Record of Proceedings filed in the Circuit Court for Baltimore County.

June 1, 1993 Order of the Circuit Court that decision of the C.B. is AFFIRMED. (Leonard S. Jacobson, Judge)

FILE COPY FILE COPY FILE COPY FILE COPY

July 31, 1992

Stephen Buckingham, Esquire
375 S. Charles Street, Suite 200
Baltimore, MD 21201

RE: Case No. 92-236-A
Keith David Nizer

Dear Mr. Buckingham:

Pursuant to your request, enclosed is a copy of the Notice of Assignment which was mailed to all interested parties on May 11, 1992. I have reviewed the Board's file and could find no indication that your appearance had been entered in this case.

Please note that this matter is scheduled for hearing on Wednesday, August 19, 1992 at 10:00 a.m. Should you have any questions, please call me at 887-3180.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

encl.

Baltimore County, Maryland

PEOPLE'S COUNSEL
Room 47, Courthouse
400 Washington Avenue
TOWSON, MARYLAND 21286
887-288-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER HANK EISENHAMMER
Deputy People's Counsel

September 8, 1992

The Honorable
Judson H. Lipowitz, Esquire
Acting Chairman
Baltimore County Board of Appeals
Room 49, Courthouse
400 Washington Avenue
Towson, Maryland 21204

RE: Keith David Nizer, Petitioner
Zoning Case No. 92-236-A

Dear Mr. Lipowitz:

The purpose of this letter is to call your attention to the recently issued Reported Decision by the Court of Special Appeals of Maryland, *United Parcel Service, Inc., et al. v. People's Counsel for Baltimore County, Maryland, et al.*, No. 315, September Term, 1991, September 2, 1992. In that decision, the issue of estoppel was discussed at length because, as in the above-referenced matter, a permit was issued incorrectly. To assist the Board with its decision in this matter, I am attaching the relevant pages 18 through 22. That portion of the decision restates the law that, "A permit thus issued without the official power to grant does not, under any principle of estoppel, prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality..."

Thank you for your consideration of this matter.

Sincerely yours,

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

Enclosure

cc: Stephen C. Buckingham, Esquire
Mr. and Mrs. Thomas W. O'Connor
Ms. Diane B. Wasowicz

PCF:sh

RECEIVED
COUNTY BOARD OF APPEALS
92 SEP - 8 PM 1:34

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
No. 315
September Term, 1991

UNITED PARCEL SERVICE, INC., et al.

v.

PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, MARYLAND, et al.

Wilner, C.J.,
Moylan,
Cathell,

JJ.

OPINION BY MOYLAN, J.
Dissenting Opinion by Cathell, J.

Filed: September 2, 1992

- 18 -

long standing interpretation of the Zoning Regulations, and in the absence of proof to the contrary, the doctrine of equitable estoppel might ultimately require that a special exception be granted. This doctrine, however, is a shield, not a sword. It must not be used to rewrite the Zoning Regulations. Equitable estoppel shields UPS from interruption until the Zoning Commissioner determines whether a special exception shall be permitted, but cannot transform a use permitted by special exception only into a use permitted as a matter of right."

Judge Murphy's reliance upon *Lipsitz v. Parr*, 164 Md. 222, 164 A. 743 (1933), is not misplaced. In *Lipsitz*, the appellant sought to restrain the Board of Zoning Appeals of Baltimore City, and others, from interfering with his utilization of a permit issued to him by a zoning official to erect a building in which he would manufacture ice. "The words of the permit unquestionably granted the plaintiff permission to erect an ice manufacturing building, and carried an endorsement that the use of the land and structure applied for was in conformity with the provisions of the zoning ordinance." 164 Md. at 224. The zoning authorities responded that "the permit...was invalid and had been issued by mistake and without authority." *Id.* at 225. The plaintiff Lipsitz claimed that the zoning authorities were equitably estopped from interfering with his utilization of the permit upon which he had relied to his detriment. In ruling against him, the Court of Appeals held, at 164 Md. 227-228:

"A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law. Paragraph 11

- 19 -

of the ordinance forbade the officials of the municipality to grant the permit which the plaintiff asked and obtained;...

"[I]t was therefore unlawful for the officers and agents of the municipality to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued without the official power to grant does not, under any principle of estoppel, prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality....[T]he doctrine of equitable estoppel cannot be here invoked to defeat the municipality in the enforcement of its ordinances, because of an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment. Everyone dealing with the officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority." (emphasis supplied).

Lipsitz v. Parr was reaffirmed and both the case law and the academic authorities dealing with equitable estoppel were thoroughly analyzed by Judge Finan in *City of Hagerstown v. Long Meadow*, 264 Md. 481, 489-496, 287 A.2d 242 (1972). The plaintiff shopping center had complained about a failure of the Hagerstown Board of Zoning Appeals to grant it a building permit to erect a motion picture theater. Relying upon the advice of a zoning official, who had told it that it was all right to proceed without a permit, the shopping center had already incurred significant demolition and construction expenses. Relying upon long-standing custom, the zoning official had "drafted and delivered to [the shopping center] a letter which stated that no

- 20 -

permit would be required by the City." 264 Md. at 487. Though an honest mistake, that was not the actual state of the law. The circuit court ultimately ruled that the Board of Zoning Appeals was equitably estopped from denying the permit. The Court of Appeals reversed the circuit court and held that equitable estoppel did not bar the municipal officials from enforcing the letter of the law notwithstanding "the hardship which will evolve on Long Meadow" and the "apparent harshness of this ruling." 264 Md. at 496.

Relying upon the ruling of the circuit court in its favor, as UPS here relied upon the ruling of the County Board of Appeals in its favor, the shopping center had continued with construction even though litigation was still in progress. Judge Finan observed that this "ameliorated" the otherwise apparent harshness of the decision:

"[T]he major portion of expense incurred by Long Meadow was the result of the construction which it undertook while the decision of the lower court was pending review on appeal. Thus, in a way, Long Meadow embarked on a calculated risk."

264 Md. at 496.

The excellent discussion of Judge McAuiliffe in *Permanent Financial Corp. v. Montgomery County*, 308 Md. 239, 247-253, 518 A.2d 123 (1986), is completely compatible with this body of case law. In that case, to be sure, involving not a land use but a height restriction, the Court of Appeals did hold, following the issuance of a building permit containing an erroneous height limit, that "Permanent having expended substantial funds in reliance upon the permit, it would be

- 21 -

inequitable to now permit the County to require the removal of the fourth floor." 308 Md. at 252-253.

Berwyn Heights v. Rogers, 228 Md. 271, 179 A.2d 712 (1962), closely parallels the case at bar. In that case, construction "was begun only after appellee had received building permits from both the appellant's and the county's building inspectors, and construction was in conformity with said permits." 228 Md. at 273-274. The Town of Berwyn Heights, however, ultimately "concluded that a mistake had been made in the issuance of said permits, and placed a stop work order on further construction." *Id.* at 274. The circuit court ruled in favor of the defendant Rogers. In reversing the circuit court, the Court of Appeals rejected the defendant's claim that the municipality was equitably estopped from proceeding against him. It held, at 228 Md. 279-280:

"Finally, the appellee claims, without the citation of authority, that the appellant is estopped from prosecuting the suit by the fact that it and the county issued him building permits, and he has expended substantial amounts of money in partially constructing the dwelling. Some authorities hold that the principle of estoppel does not apply against a city, but the majority rule is to the effect that the doctrine of estoppel in pais is applied to municipal, as well as to private, corporations and individuals, at least where the acts of its officers are within the scope of their authority and justice and right require that the public be estopped. And it has been held that municipalities may be estopped by reason of the issuance of permits. However, the cases and text-writers very generally state that a municipality is not estopped to set up the illegality of a permit. And the issuance of an illegal permit creates no 'vested rights' in the permittees. We have held above that the permits issued to the

appellee were in violation of the zoning ordinance, consequently they were unlawful and did not entitle the appellants from prosecuting this suit." (citations omitted) (emphasis supplied).

The Court of Appeals further observed, however, that the defendant was not necessarily without ultimate redress. The proper avenue for seeking such redress, however, was a request for a special exception:

"[A]s the permits were issued and appellee has made substantial improvements as a result thereof, no final injunction should issue at this time. We will, therefore, remand the case for further proceedings without prejudice to the appellee to make application, within a reasonable time to be set by the chancellor, to the proper zoning authorities for possible relief by way of a special exception, variance or otherwise."

228 Md. at 280. That was precisely the possible redress suggested by Judge Murphy here:

"Under Maryland law, equitable estoppel permits UPS to operate the center until the Zoning Commissioner determines whether a special exception should issue and may ultimately entitle UPS to a special exception. This doctrine cannot, however, convert a use permitted by special exception only into a use permitted as a matter of right. The Zoning Commissioner must determine whether UPS is entitled to a special exception. This case is therefore remanded with directions so that the essential administrative action will finally get underway."

We concur.

UPS's final contention is that the County Board of Appeals was without jurisdiction to entertain the appeal in the first instance and that Judge Murphy, therefore, was in error in not dismissing Mr. Hupfer's appeal to the circuit court on that ground. The Board

To whom it may concern,
I request to appeal the denied petition for zoning variance located E/S Powderview Ct, 241 ft. N of Oakpark Dr. 23 Powderview Ct, 11th Election District, 5th Councilmanic. Case No. is 92-236 A.

Thank You Keith Nizer (Petitioner)

RECEIVED
FEB 28 1992
ZONING OFFICE

MICROFILMED

APPLICATION FOR BUILDING PERMIT

PERMIT #: 0026900 CONTROL #: MK DIST: 11 PERM: 01

LOCATION: 23 POWDERVIEW CT
SUBDIVISION: OAKHURST
TAX ASSESSMENT #: 2099901893

OWNER INFORMATION
NAME: SIMMS, TODD
ADDR: 24 POWDERVIEW CT

APPLICANT INFORMATION
NAME: MARK KRIS
COMPANY: AMP CONTRACTING INC
ADDR: 3714 BENTON HEIGHTS AVE
ADDR2: BALTO, MD 21206
PHONE #: 425-1810 LICENSE #: 51662

NOTES
NAC

TRACT: CONSI BLOCK: DATA ELCD NO: 000001
PLANS: CONSI PLOT: R PLAT DATA ELCD NO: 000001
TERMIN: AMP CONTRACTING
ENGR: AMP CONTRACTING
SELLER:
WORK: CONSTRUCT OPEN WOOD DECK ON REAR AND SIDE OF BOTH WALLS COMPLY WITH CODE HENG 01, 22 X 24 - 3166F

PROPOSED USE: GARAGE & AMP
EXISTING USE: SPTH
B.D.C. CODE: BOCA CODE
RESIDENTIAL CATEGORY: DOWNSHIP: PRIVATELY OWNED
ESTIMATED COST OF MATERIAL AND LABOR: 7500

TYPE OF IMPRV: ADDITION
USE:
FOUNDATION: PUBLIC EXIST
SCHEM: PUBLIC EXIST
CONSTRUCTION: PUBLIC EXIST
CENTRAL AIR: PUBLIC EXIST

SINGLE FAMILY UNITS
TOTAL FAMILY BEDROOMS: 0
MULTI FAMILY UNITS
SPLIT LEVEL AND SEPARATE BEDROOMS: 0
NO. OF 2 BEDROOM OR MORE: 0
TOTAL NO. OF BEDROOMS: 0
TOTAL NO. OF APARTMENTS: 0

PERMIT #: 0026900

FOUNDATION: PUBLIC EXIST
SCHEM: PUBLIC EXIST
CONSTRUCTION: PUBLIC EXIST
CENTRAL AIR: PUBLIC EXIST

ZONING INFORMATION
DISTRICT: BLOCK: 006
SECTION: 006
DATE: LITER: 52
AMP: POLIC: 989
CLASS: 04

PLANNING INFORMATION
MASTER PLAN AREA: SUBSERVED: CRITICAL AREA:
DATE APPLIED: 02/07/92 INSPECTOR INITIALS: PH
FEE: 140.00 PAID: 140.00 NEEDART BY AGENCY
PAID BY: APPLICANT

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE CONTENTS AND TRUE AND CORRECT STATEMENT OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH UNLESS HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS

COMPANY OR OWNER: DATE:

ADDRESS: AGENT: OWNER:

SIGNATURE OF APPLICANT: PHONE:

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and
Development Management
DATE: January 6, 1992
FROM: Pat Keller, Deputy Director
Office of Planning and Zoning
SUBJECT: Nizer Property, Item No. 250

In reference to the petitioner's request, staff offers the following comments:

This office views the existing improvements as inappropriate development in a townhome community. In addition, the described shed appears to be more characteristic of an addition rather than a typical shed. Therefore, due to the undesirable scale of this addition, the office of Planning and Zoning recommends that the applicant's request be denied unless it can be demonstrated that the community supports this type of development.

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 887-3211.

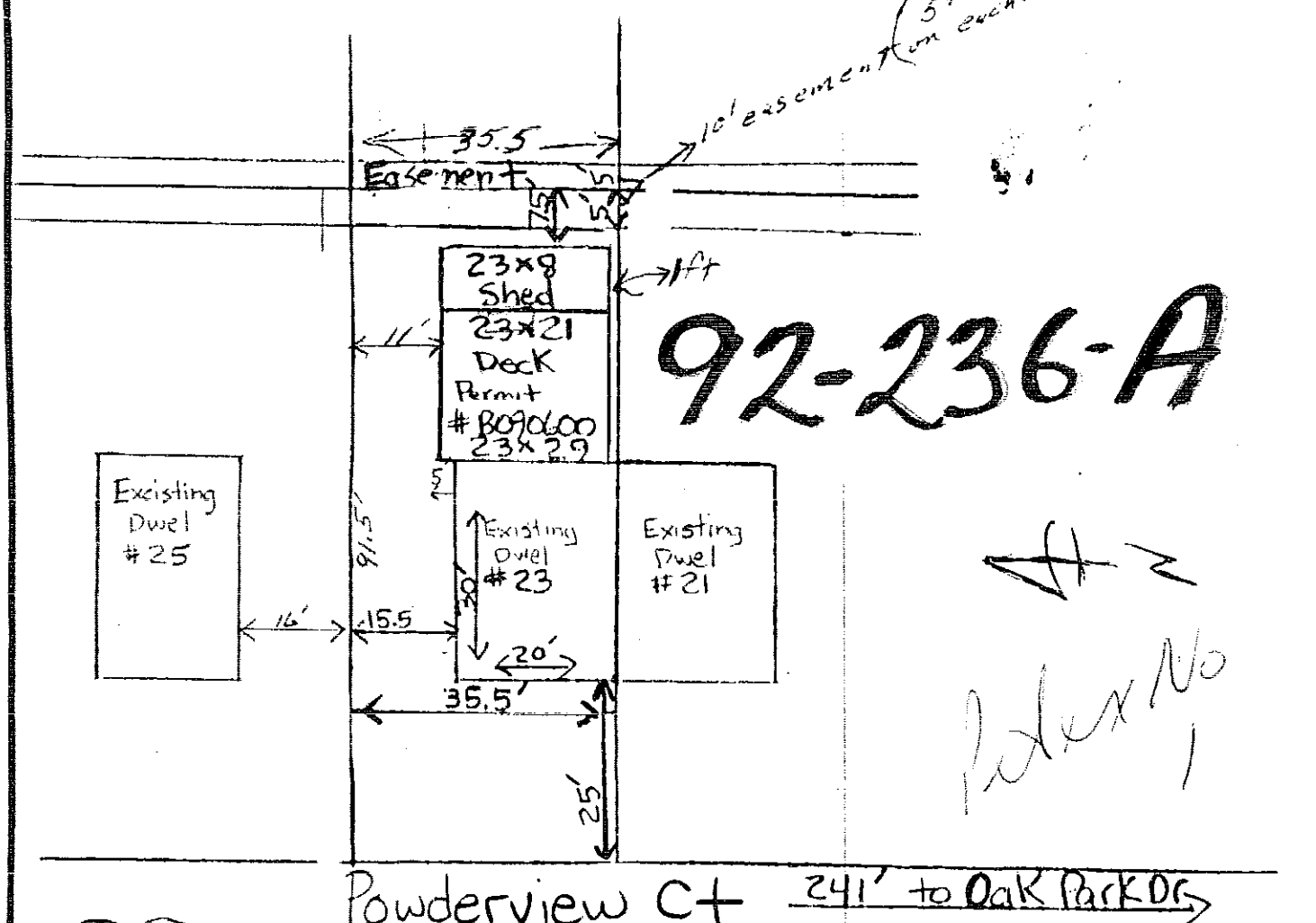
PK/JL:rdn
ITEM250/TXTROZ

People's Council Ex. # 2
8-19-92
92-236-A

Plat to accompany Petition for Zoning Variance Special Hearing

PROPERTY ADDRESS: 23 Powderview Ct
Subdivision name: Oakhurst
plat book: 32, folio: 39, lot: 248, section: 3

OWNER: Keith David Nizer



LOCATION INFORMATION

Councilmanic District: 5
Election District: 11
1"=200' scale map: N1E, 11G
Zoning: DR-5.5
Lot size: 0.145 acreage 3248 square feet
SEWER: public private
WATER: public private
Chesapeake Bay Critical Area:
Prior Zoning Hearings: NONE

Zoning Office USE ONLY

reviewed by: ITEM #: CASE#:

North
date: 1-22-91
prepared by: Keith Nizer
Scale of Drawing: 1"=25'

PLEASE PRINT CLEARLY PETITIONER(S) SIGN-IN SHEET

NAME: Keith Nizer ADDRESS: 23 Powderview Ct

MICROFILMED

ORIGINAL

1 IN THE MATTER OF * BEFORE THE
2 THE APPLICATION OF * BOARD OF APPEALS
3 KEITH DAVID NIZER *
4 FOR VARIANCES ON PROPERTY * OF BALTIMORE COUNTY
5 LOCATED ON THE EAST SIDE *
6 OF OAKPARK DRIVE * Case No. 92-236-A
7 (23 POWDERVIEW COURT) *
8 11th ELECTION DISTRICT * August 19, 1992
9 5th COUNCILMANIC DISTRICT *
10 * * * * *

11 The above-entitled matter came on for hearing
12 before the County Board of Appeals of Baltimore County at
13 Room 48, Old Courthouse, Towson, Maryland at 10:15 a.m.,
14 August 19, 1992.
15 * * * * *

16 BOARD MEMBERS:
17 JUDSON H. LIPOWITZ, Chairman
18 S. DIANE LEVERO
19 C. WILLIAM CLARK

20 Reported by:
21 Barbara A. Ely, CSR

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204

PERMIT # 809600 CONTROL # MR DIST: 11 PREC: 07
 RECEIPT # 210 TAX ACCOUNT # 200001893 CLASS: 04
 CONTROL # MIS OWNER'S INFORMATION (LAST, FIRST) 11 7
 KREF # 11 ADDRESS 23 Powder View Ct

PROPERTY ADDRESS 23 Powder View Ct
 SUBDIV: Oakhurst
 TAX ACCOUNT # 200001893 DISTRICT/PRECINCT 11 7
 OWNER'S INFORMATION (LAST, FIRST) 11 7
 NAME: Keith D. Nizer
 ADDRESS: 23 Powder View Ct

APPLICANT INFORMATION
 NAME: Keith D. Nizer
 ADDRESS: 23 Powder View Ct
 PHONE # 301-234-5377 MHC LICENSE # 11 7

APPLICANT SIGNATURE: [Signature] TRACT: 11 7 BLOCK: 11 7
 PLANS: CONST 1 PLOT 1 PLAT DATA DATA EL 2 PL 2

DESCRIBE PROPOSED WORK:
Const 23x21 deck on ground level of
with 23x8 storage shed attached.
to comply with code 1000
with 23x29-5377

TYPE OF IMPROVEMENT
 1. NEW-BLDG CONST
 2. ADDITION
 3. ALTERATION
 4. REPAIR
 5. REWORKING
 6. MOVING
 7. OTHER

TYPE OF USE
 RESIDENTIAL
 01. ONE FAMILY
 02. TWO FAMILY
 03. THREE AND FOUR FAMILY
 04. FIVE OR MORE FAMILY
 05. SWIMMING POOL
 06. GARAGE
 07. OTHER

TYPE FOUNDATION
 1. SLAB
 2. BLOCK
 3. CONCRETE

TYPE OF HEATING FUEL
 1. GAS
 2. OIL
 3. ELECTRICITY
 4. COAL
 5. PRIVATE SYSTEM
 6. SEPTIC
 7. URINARY
 8. OTHER

TYPE OF SEWAGE DISPOSAL
 1. PUBLIC SEWER
 2. PRIVATE SYSTEM
 3. SEPTIC
 4. URINARY
 5. OTHER

CENTRAL AIR: 1. YES 2. NO
 ESTIMATED COST: 1. PUBLIC SYSTEM 2. PRIVATE SYSTEM
 OF MATERIALS AND LABOR
 EXISTING USE: None
 OWNERSHIP: 1. PRIVATELY OWNED 2. PUBLICLY OWNED 3. SALE 4. RENTAL

RESIDENTIAL CATEGORY: 1. DETACHED 2. SEMI-DET. 3. GROUP 4. TOWNHOUSE 5. MIDRISE
 EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS/CONDOS: 6. MIXED
 2. FAMILY BEDROOMS
 GARAGE DISPOSAL: 1. YES 2. NO BATHROOMS: CLASS: LIBER: FOLIO: 89

APPROVAL SIGNATURES: _____ DATE: _____
 BUILDING SIZE: _____ LOT SIZE AND SETBACKS: _____
 FLOOR: _____ SIZE: _____
 WIDTH: _____ FRONT STREET: _____
 DEPTH: _____ SIDE STREET: _____
 HEIGHT: _____ FRONT SETBK: _____
 STORIES: _____ SIDE SETBK: _____
 LOT #S: _____ SIDE STR SETBK: _____
 CORNER LOT: _____ REAR SETBK: _____
 1. YES 2. NO ZONING: _____ PERMITS: _____

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND LICENSES
TOWSON, MARYLAND 21204

BUILDING PERMIT

PERMIT # 809600 CONTROL # MR DIST: 11 PREC: 07
 DATE ISSUED: 05/03/91 TAX ACCOUNT # 200001893 CLASS: 04

PLANS: CONST 1 PLOT 1 PLAT DATA DATA EL 2 PL 2
 LOCATION: 23 POWDERVIEW CT ELEC NO FLUM NO
 SUBDIVISION: OAKHURST

OWNERS INFORMATION
 NAME: NIZER, KEITH
 ADDR: 23 POWDERVIEW CT BALTO, MD 21236

TENANT:
 CONFR: OWNER
 ENGR: _____
 SELLR: _____
 WORK: CONST 23 X 21 DECK ON GROUND LEVEL OF 34TH WITH 23 X 8 STORAGE SHED ATTACHED TO REAR OF SFTH. MUST COMPLY WITH CODE MEMO #1. OVERALL 23 X 29-5375F IRREGULAR. REFER TO STOP WORK ORDER 0003287 NO FEE.

BLDG. CODE: BOCA CODE RESIDENTIAL CATEGORY: TOWNHOUSE OWNERSHIP: PRIVATELY OWNED

ESTIMATED \$ PROPOSED USE: SFTH & ADD
 1000 EXISTING USE: SFTH

TYPE OF IMPRV. ADDITION
 USE: ONE FAMILY
 FOUNDATION: _____ BASEMENT: _____
 SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS
 SIZE: 0.25 (0.5X0.5) 691
 FRONT STREET: _____
 SIDE STREET: _____
 FRONT SETBK: NC
 SIDE SETBK: 11/11
 SIDE STR SETBK: _____
 REAR SETBK: 3'

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.

ZONING ENFORCEMENT SECTION TELEPHONE: 687-3351

CORRECTION NOTICE FOR ALLEGED ZONING VIOLATION

CASE NUMBER C- 92-1063 ELECTION DISTRICT: 11
 LOCATION: 23 POWDERVIEW CT.
KEITH D. NIZER

PLEASE BE ADVISED THAT AN INSPECTION OF THE ABOVE REFERENCED LOCATION REVEALED:

THERE WAS NO VIOLATION OBSERVED AND THE CASE WILL BE CLOSED.
 THERE IS AN APPARENT VIOLATION AND THE FOLLOWING CORRECTION IS REQUIRED:
ADDITION ON REAR OF HOUSE DOES NOT MEET
REQUIRED 15' SETBACK.
REMOVE ADDITION OF PETITION FOR VARIANCE.

FAILURE TO COMPLY BY 11-11-91, WILL RESULT IN THE ISSUANCE OF A CITATION WHEREIN YOU ARE SUBJECT TO A CIVIL PENALTY OF \$200.00 FOR EACH VIOLATION, AND EACH DAY SHALL BE CONSIDERED A SEPARATE VIOLATION (CIVIL PENALTY BILL #132-85).

COMPLIANCE HAS BEEN ATTAINED AND THE CASE WILL BE CLOSED.

INSPECTOR: FREUND DATE: 10-25-91

BALTIMORE COUNTY, MARYLAND
Office of the Building Engineer

JOB LOCATED AT: 23 Powder View Ct
 DISTRICT: 11 PCT: 7
 PERMIT NO: 809600
 DATE: 11-11-91 Notice No. G- 003038

STOP WORK ORDER

I HAVE THIS DAY INSPECTED THIS STRUCTURE AND THESE PREMISES AND HAVE FOUND THE FOLLOWING VIOLATIONS OF THE LAWS OF BALTIMORE COUNTY CODE: BOCA SEC 113.3
Compliance w/ Permit
Revised Permit Required
Deck is Larger than
what is Designated in Permit
 YOU ARE HEREBY NOTIFIED THAT ALL WORK BEING PERFORMED AT THIS LOCATION SHALL IMMEDIATELY STOP, WITH THE EXCEPTION OF None

WHICH IS TO CORRECT UNSAFE CONDITIONS FAILURE TO COMPLY CONSTITUTES A VIOLATION OF COUNTY LAW. THE CORRECTIONS MUST BE COMPLETED NOT LATER THAN DATE: 11-10-91
 AN INVESTIGATION FEE WILL BE CHARGED YES NO
 DATE: 1-30-92 SIGNED INSPECTOR: [Signature]
 ALL CORRECTIONS COMPLETE AND APPROVED
 DATE: _____ SIGNED INSPECTOR: _____
 DO NOT REMOVE THIS TAG

BALTIMORE COUNTY, MARYLAND
Office of the Building Engineer

JOB LOCATED AT: 23 Powder View Ct
 DISTRICT: 11 PCT: 7
 PERMIT NO: 809600
 DATE: 11-11-91 Notice No. G- 003287

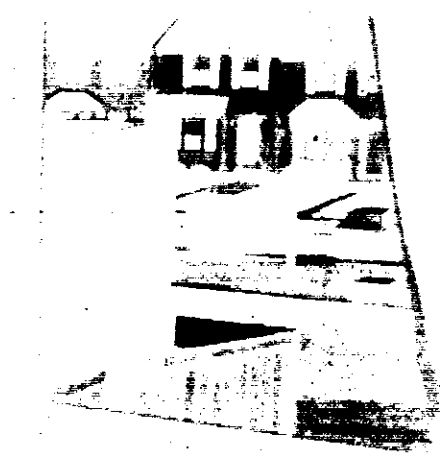
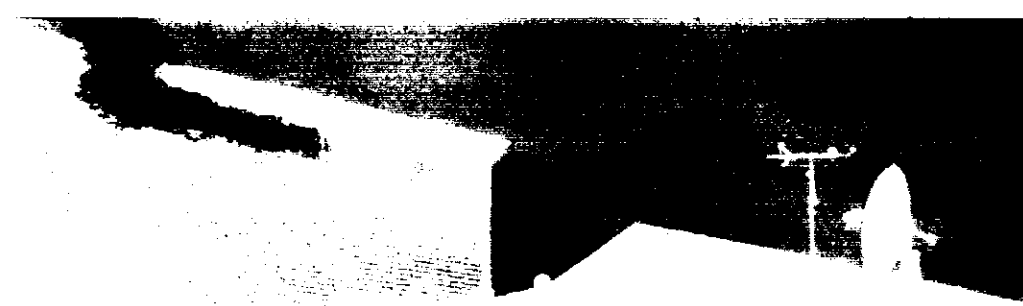
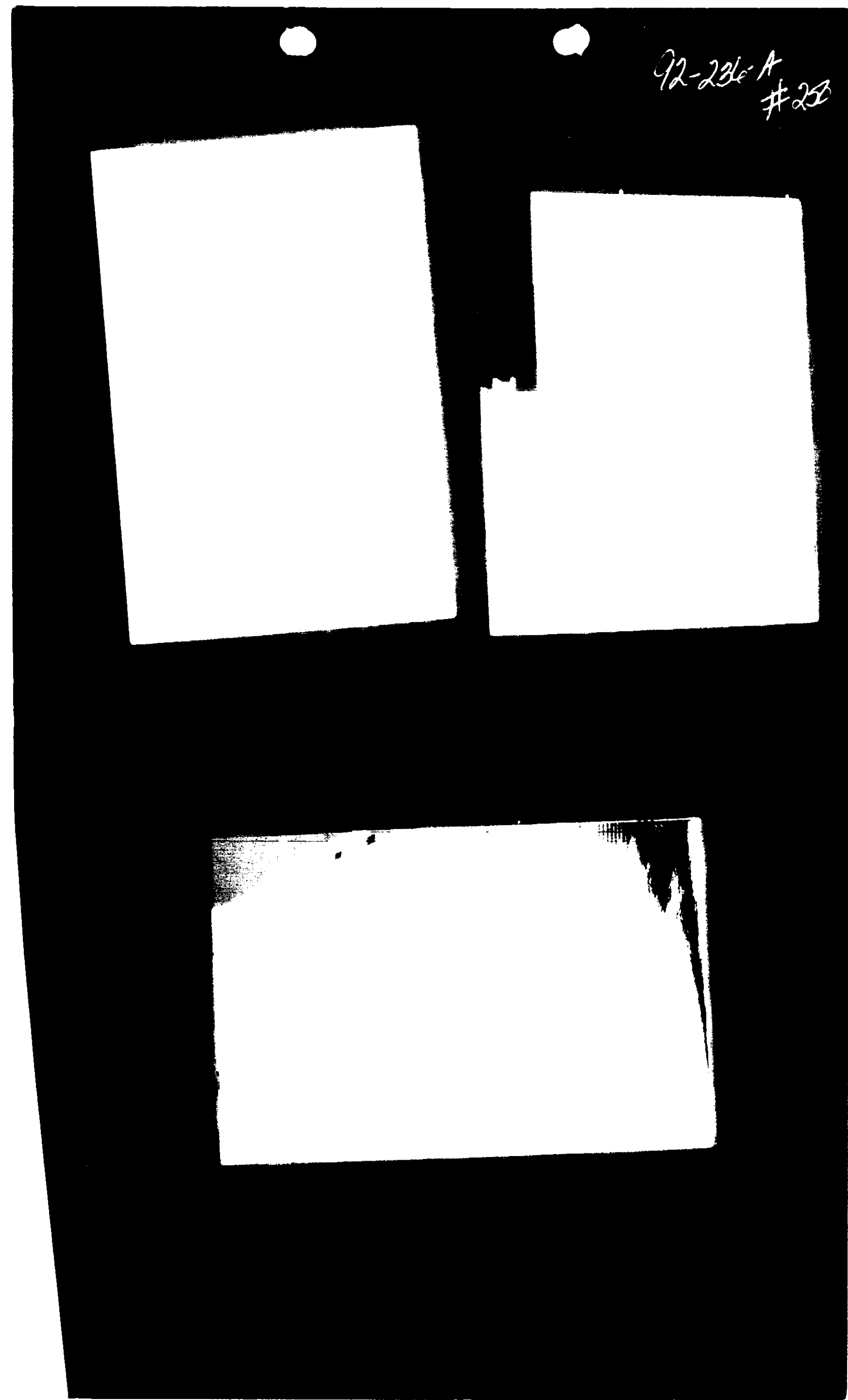
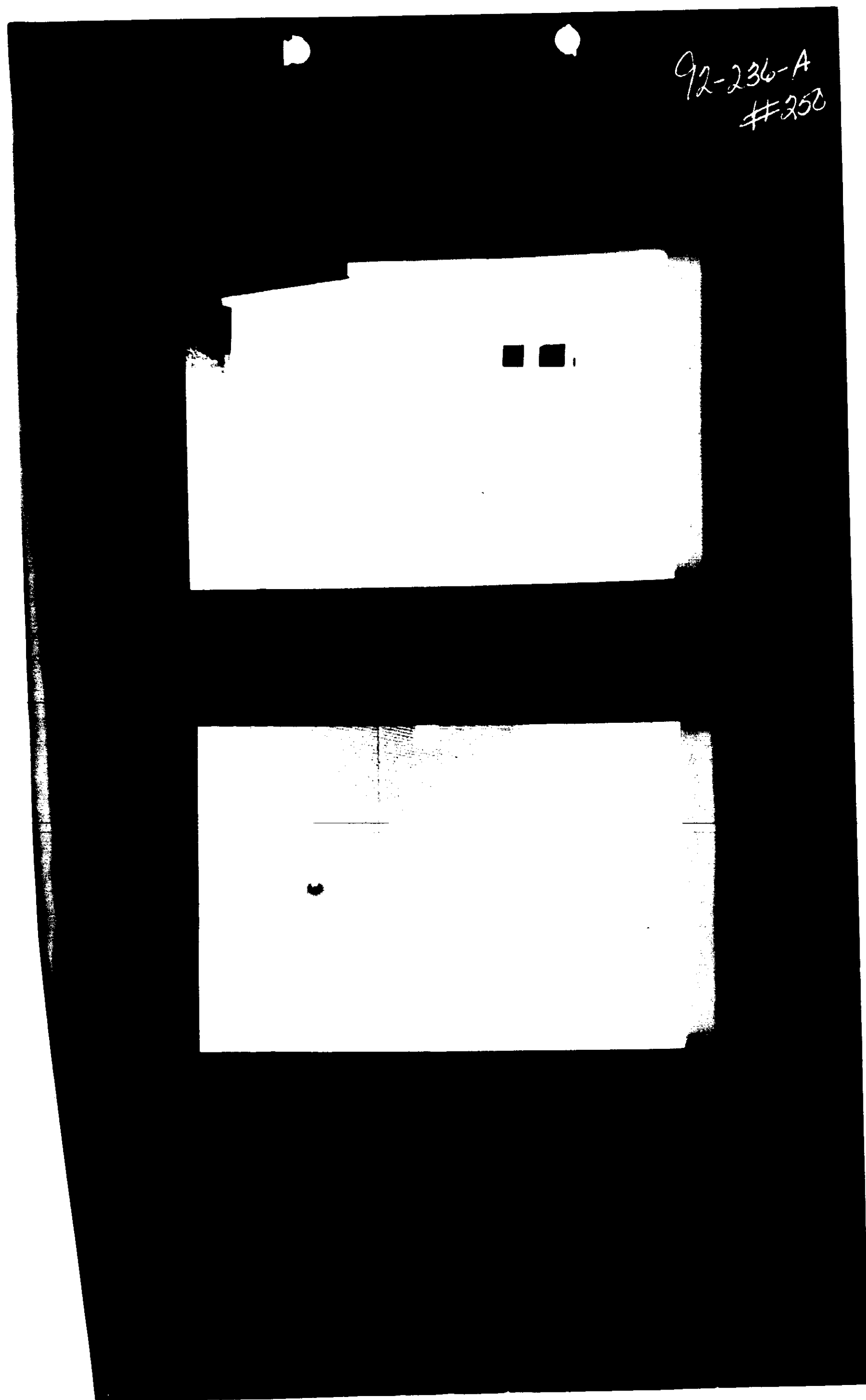
STOP WORK ORDER

I HAVE THIS DAY INSPECTED THIS STRUCTURE AND THESE PREMISES AND HAVE FOUND THE FOLLOWING VIOLATIONS OF THE LAWS OF BALTIMORE COUNTY CODE: BOCA SEC 111.1
new deck on rear
new deck on rear
new deck on rear
 YOU ARE HEREBY NOTIFIED THAT ALL WORK BEING PERFORMED AT THIS LOCATION SHALL IMMEDIATELY STOP, WITH THE EXCEPTION OF None

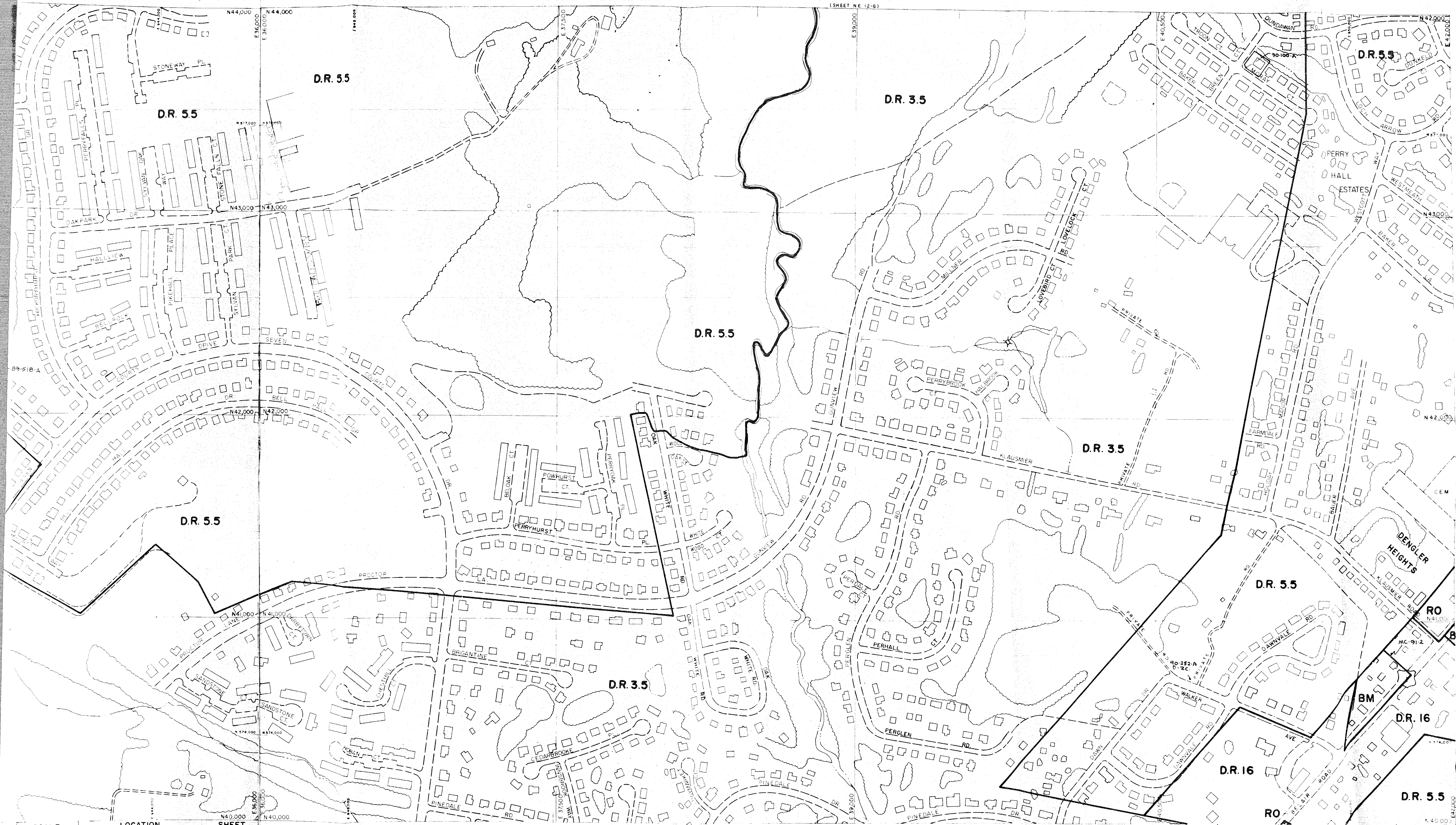
WHICH IS TO CORRECT UNSAFE CONDITIONS FAILURE TO COMPLY CONSTITUTES A VIOLATION OF COUNTY LAW. THE CORRECTIONS MUST BE COMPLETED NOT LATER THAN DATE: 11-11-91
 AN INVESTIGATION FEE WILL BE CHARGED YES NO
 DATE: 11-11-91 SIGNED INSPECTOR: [Signature]
 ALL CORRECTIONS COMPLETE AND APPROVED
 DATE: 5-6-91 SIGNED INSPECTOR: [Signature]
 DO NOT REMOVE THIS TAG

Permit # 6
92-336A

B 090600
 issued 5-3-91
 Case Closed
 [Signature]



92-236-A



SCALE
1" = 200'

LOCATION
CUB HILL
CARNEY AREA

SHEET
N.E.
11-F

Q - SW
M - NW

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

1988 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 13, 1988
Bill Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88
Dale J. Lab
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

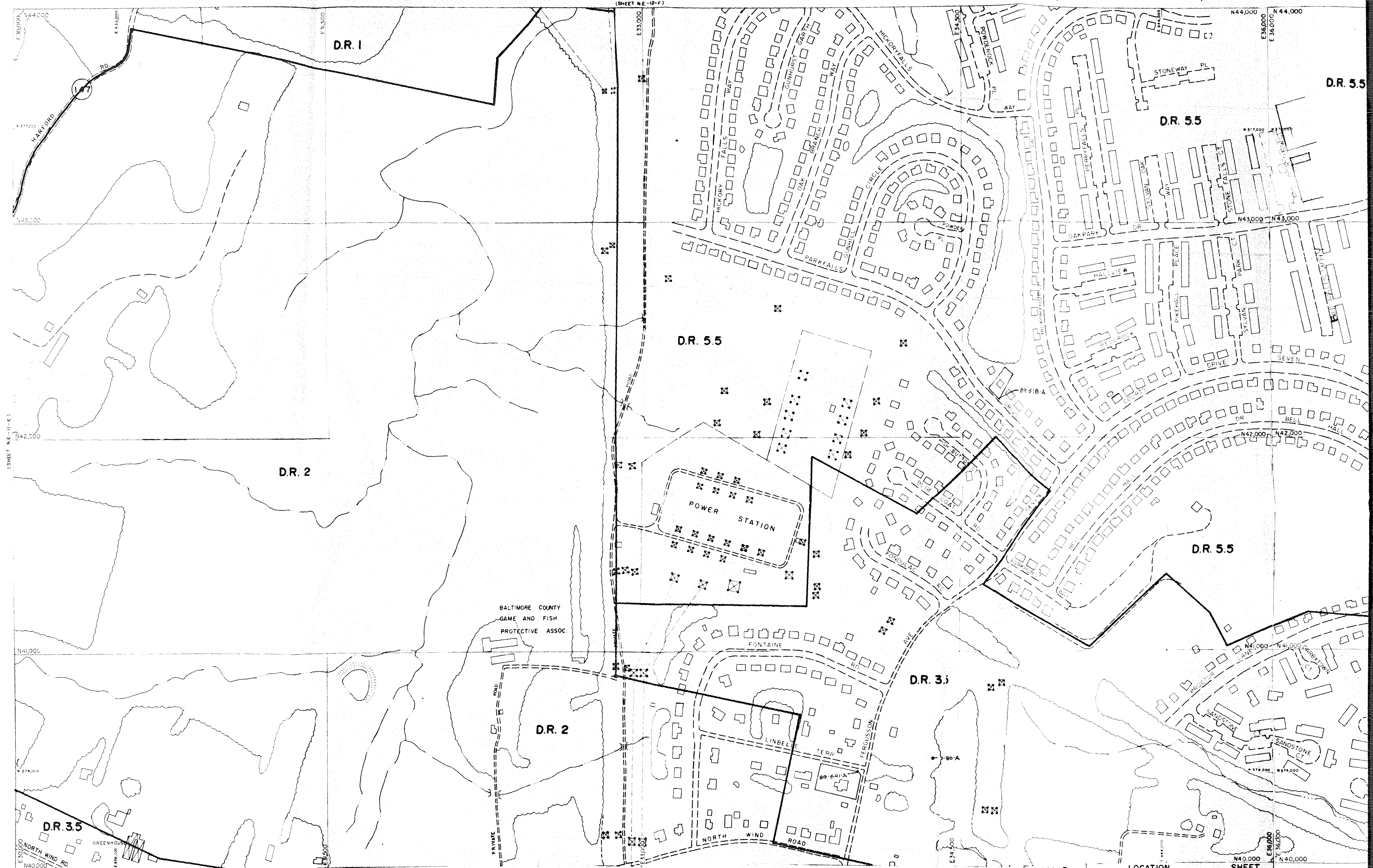
SCALE
1" = 200'

LOCATION
PERRY HALL

SHEET
N.E.
11-G

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92-236-A



R-SE Q-SW
N-NE M-NW

1988 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
OCT. 13, 1988
Bill Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88

Dale
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE
1" = 200'
DATE
OF
PHOTOGRAPHY
JANUARY
1986

LOCATION
CUB HILL
CARNEY AREA
SHEET
N.E.
II-F

Q-SW
M-NW

THIS MAP HAS BEEN REVISED
TOPOGRAPHY COMPILED BY
BY BUCHART-HORN, INC. BA

MICROFILMED



SCALE
1" = 200' ±

LOCATION
CUB HILL
CARNEY AREA

SHEET
N.E.
II-F

DATE
OF
PHOTOGRAPHY
JANUARY
1986

PHOTOGRAPHICS, INC.
25401

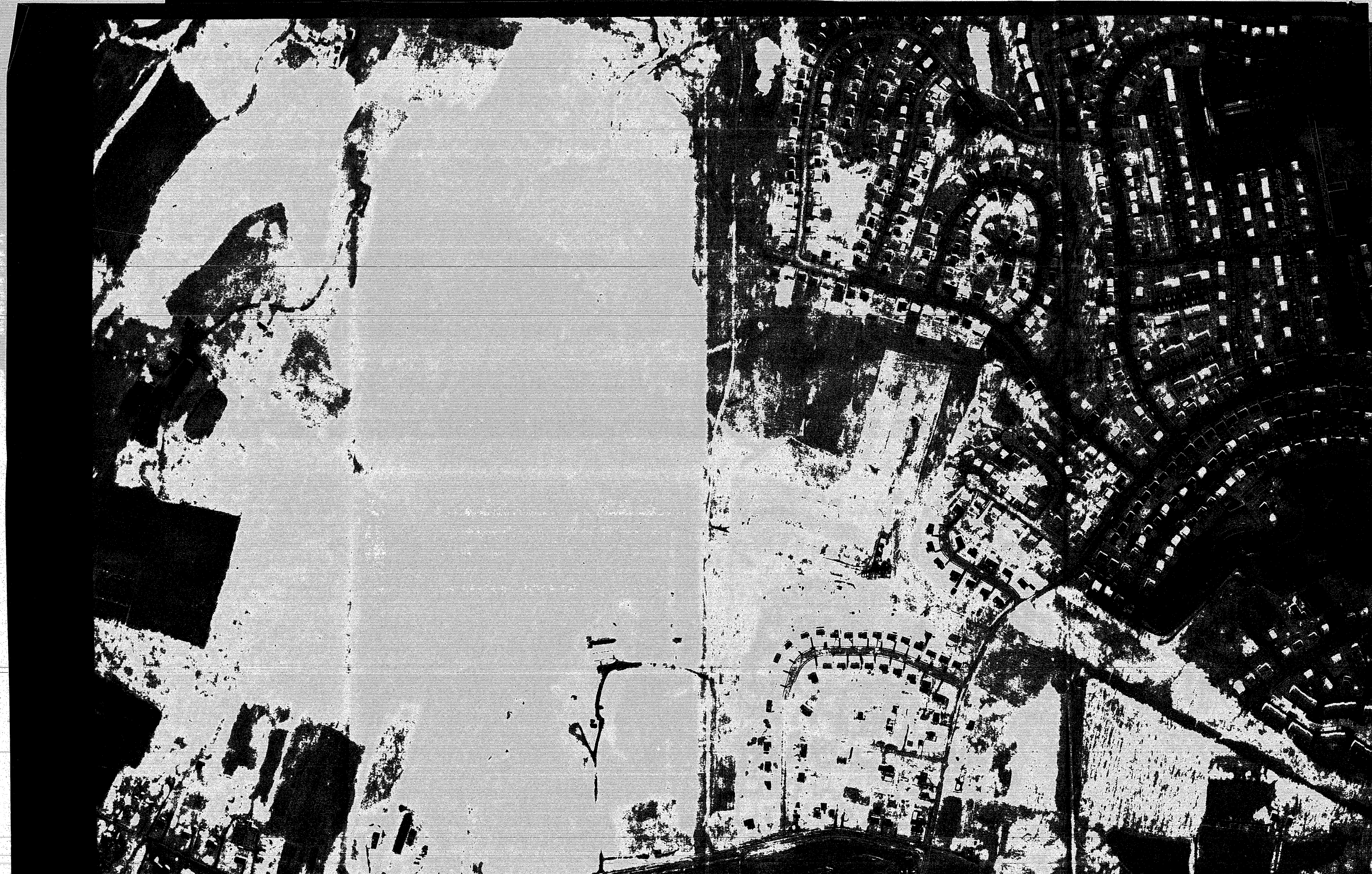
#250
BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
92-236-A PHOTOGRAPHIC MAP

SCALE
1" = 200' ±

LOCATION
PERRY HALL

SHEET
N.E.
II-G

DATE
OF
PHOTOGRAPHY
JANUARY
1986



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

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

| | | |
|----------------------|-------------------------------------|-----------------------|
| SCALE 1" = 200' ± | LOCATION CUB HILL CARNEY AREA | SHEET N.E. 11-F |
|----------------------|-------------------------------------|-----------------------|

IN THE MATTER OF THE APPLICATION OF KEITH DAVID NIZER FOR VARIANCES ON PROPERTY LOCATED ON THE EAST SIDE OF POWDERVIEW COURT, 241' NORTH OF OAKPARK DRIVE (23 POWDERVIEW COURT) 11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

PETITION OF APPELLANT

Now comes Keith David Nizer, by and through his attorney, Stephen C. Buckingham, and petitions this Honorable Court to reverse the Order of the Board of Appeals of Baltimore County dated November 18, 1992 denying variances on certain property, and in support of which says:

1. Appellant is the owner of certain improved property located on the East side of Powderview Court, 241' North of Oakpark Drive, 11th Election District, 5th Councilmanic District and known as 23 Powderview Court (hereinafter the "subject property");
2. On or about May 3, 1991, Appellant was granted Building Permit B090600 to construct on the subject property a 23' by 21' deck at ground level with a 23' by 8' storage shed attached to the deck;
3. Building Permit B090600 was issued by the County only after approval of Appellant's plans by a duly authorized inspector of the Department of Planning and Zoning;
4. While construction was underway during the summer of 1991, an inspector from the County advised Appellant to erect "partitions" for safety reasons, and Appellant complied with this direction by installing wooden enclosures with open window frames

SEARCHED INDEXED SERIALIZED FILED
OCT 30 1992
BALTIMORE COUNTY CLERK
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- on both sides of the deck.
5. On or about October 25, 1991, after construction was completed, Appellant was issued a correction notice by the County advising that the "[a]ddition on rear of house does not meet required setback" and that he must "[r]emove addition or petition for variance."
 6. As directed by the County, Appellant petitioned for a variance, and a public hearing was held before the Zoning Commissioner of Baltimore County on January 13, 1992, at which time evidence was given regarding the construction on the subject property that tended to prove that Appellant had acted in all respects at the express direction of the representatives of the Baltimore County Government;
 7. In his Order, including findings of fact and conclusions of law, dated January 31, 1992, the Zoning Commissioner specifically addressed Appellant's contention that had the County should be estopped from denying the variances sought. The Commissioner held that the doctrine of estoppel was inapplicable only because: (1) "the permit does not allow for walls which enclose the deck and gives the appearance of an addition" and (2) "the existing upper deck is not referenced in the application for the building permit. The application in and of itself is misleading."
 8. The Commissioner erred in concluding that the doctrine of estoppel was not applicable since there was no evidence that the Appellant in any way misled the County in making application for a

2 MICROFILMED

9. In fact, the only evidence relating to the application process indicated that Appellant gave full and complete information to the County's representative, including a sketch of his plans for the construction that showed a deck below the existing one with a shed attached to the rear of the deck. In addition, the testimony indicated that Appellant erected the walls in response to a direction from the County's inspector to erect "partitions";
9. On August 19, 1992, a public hearing was held before the Board of Appeals of Baltimore County, at which time ample and uncontroverted evidence was given regarding the construction on the subject property that tended to prove that Appellant had acted in all respects at the express direction of the representatives of the Baltimore County Government;
10. On November 18, 1992, the Board of Appeals issued an Order denying the requested variances, except for rear yard setbacks and projection of the deck outside the building envelope, provided the deck area not exceed its present dimensions and that the walls and shed be removed. The Order of the Board did not address Appellant's contention that the County should be estopped from denying the requested variances;
11. In its conclusions of law, the Board of Appeals held that the shed in question did not comply with Permit B090600 since the "storage shed is to be attached to the rear of the single-family townhouse." The Board erred in this conclusion since the application and the permit provide for "construction of a 23' x 21' deck on ground level of [the single-family townhouse] with 23' x 8'

3 MICROFILMED

- storage shed attached to rear of [the single-family townhouse]."
- While it is possible to interpret this language to mean that the shed must be directly attached to the house, it is more likely that the phrase "attached to the rear" was intended to refer to the deck and shed proposed for construction. While the permit language is clearly ambiguous, the Board's interpretation is directly contradicted by the evidence that the County had been fully informed by the Appellant of the proposed location of the shed at the rear end of the deck;
12. Insofar as the Board's decision to deny the requested variances was based on its erroneous conclusion regarding the location of the shed, the Order is not supported by substantial evidence and should be reversed;
 13. Since the uncontroverted evidence before the Board clearly indicates that Appellant had acted in all respects in compliance with the directives of the Baltimore County Government, the County should be estopped from denying the requested variances.
- WHEREFORE, Appellant prays that this Honorable Court:
- A. Reverse the Order of the Board of Appeals dated November 18, 1992 as unsupported by substantial evidence;
 - B. Order that the County be estopped from denying the requested variances; and
 - C. Grant such other relief as the Court may deem just and proper.

Stephen C. Buckingham
Attorney for Appellant

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I HEREBY CERTIFY, that on this 28th day of December, 1992, a copy of the foregoing PETITION OF APPELLANT, was sent by first class mail, postage prepaid, to the Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

Stephen C. Buckingham
Attorney for Appellant
102 St. Paul Street, 2nd Floor
Baltimore, Maryland 21202
(410) 625-7947

5

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IN THE MATTER OF THE APPLICATION OF KEITH DAVID NIZER FOR A VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE OF POWDERVIEW COURT, 241' NORTH OF OAKPARK DRIVE (23 POWDERVIEW COURT) 11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT KEITH DAVID NIZER, PLAINTIFF

ZONING CASE NO. 92-236-A
Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Judson H. Lipowitz, S. Diane Levero and C. William Clark, 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, Stephen C. Buckingham, Esquire, 102 St. Paul Street, 2nd Floor, Baltimore, Maryland 21202, Counsel for Plaintiff; Mr. Keith David Nizer, 23 Powderview Court, Baltimore, Maryland 21236, Plaintiff; Phyllis C. Friedman, People's Counsel for Baltimore County, Basement - Old Courthouse, 400 Washington Avenue, Room 47, Towson, Maryland 21204; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Basement - Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

LindaLee M. Kuszmaul
Legal Secretary
County Board of Appeals, Room 49,
Basement - Old Courthouse
400 Washington Avenue
Towson, Maryland 21204 (301) 887-3180

Keith David Nizer, Case No. 92-236-A
File No. 92-CV-11662

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Stephen C. Buckingham, Esquire, 102 St. Paul Street, 2nd Floor, Baltimore, Maryland 21202, Counsel for Plaintiff; Mr. Keith David Nizer, 23 Powderview Court, Baltimore, Maryland 21236, Plaintiff; Phyllis C. Friedman, People's Counsel for Baltimore County, Basement - Old Courthouse, 400 Washington Avenue, Room 47, Towson, Maryland 21204; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Basement - Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 on this 21st day of December, 1992.

LindaLee M. Kuszmaul
Legal Secretary
County Board of Appeals, Room 49,
Basement - Old Courthouse
400 Washington Avenue
Towson, Maryland 21204 (301) 887-3180

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County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

December 21, 1992

Phyllis Cole Friedman
People's Counsel for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Case No. 92-236-A (Keith David Nizer)

Dear Ms. Friedman:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: P. David Fields
Lawrence E. Schmidt
Timothy M. Kotrocco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

December 21, 1992

Stephen C. Buckingham, Esquire
102 St. Paul Street, 2nd Floor
Baltimore, Maryland 21202

Re: Case No. 92-236-A (Keith David Nizer)

Dear Mr. Buckingham:

In accordance with Rule B-7(a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in Court, in accordance with Rule B-7(a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

LindaLee M. Kuszmaul
LindaLee M. Kuszmaul
Legal Secretary

Enclosure

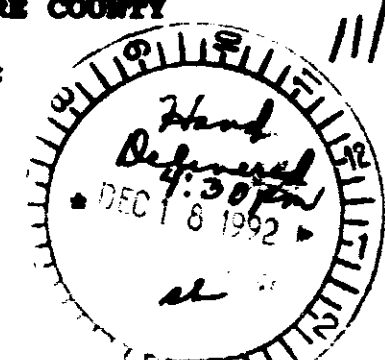
cc: Mr. Keith David Nizer

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12-17-92

IN THE MATTER OF THE APPLICATION OF KEITH DAVID NIZER FOR VARIANCES ON PROPERTY LOCATED ON THE EAST SIDE OF POWDERVIEW COURT, 241' NORTH OF OAKPARK DRIVE (23 POWDERVIEW COURT) 11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY Case Number: 40/173 11/18



ORDER FOR APPEAL

Dear Clerk:

Please enter an appeal on behalf of KEITH DAVID NIZER, Appellant, from the decision of the Board of Appeals of Baltimore County, dated November 18, 1992, denying the Appellant variances on the above property.

Stephen C. Buckingham
Stephen C. Buckingham
Attorney for Appellant
102 St. Paul Street, 2nd Floor
Baltimore, Maryland 21202
(410) 625-7947

I HEREBY CERTIFY, that on this 18th day of December, 1992, a copy of the foregoing ORDER FOR APPEAL, was hand delivered to the Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

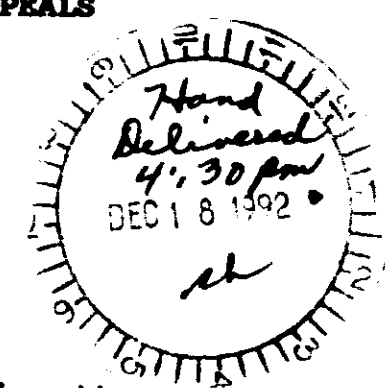
Stephen C. Buckingham
Stephen C. Buckingham

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11-11-92

IN THE MATTER OF THE APPLICATION OF KEITH DAVID NIZER FOR VARIANCES ON PROPERTY LOCATED ON THE EAST SIDE OF POWDERVIEW COURT, 241' NORTH OF OAKPARK DRIVE (23 POWDERVIEW COURT) 11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 92-236-A



MOTION TO EXTEND TIME TO COMPLY

Applicant, Keith David Nizer, by and through his attorney, Stephen C. Buckingham, hereby moves that the Board of Appeals extend the time to comply with its Order dated November 18, 1992, and in support of which says:

- The Order of the Board of Appeals in the above-captioned case dated November 18, 1992 directed that the Applicant remove the shed, walls and windows he had constructed on the deck in question within 60 days of the date of the Order;
- Applicant received a copy of the Order on or about November 23, 1992, and immediately sought professional advice on how to bring the property into compliance with the Order and satisfy the concerns of his neighbors without incurring costs beyond his means.
- Applicant has determined that the option that is most likely to satisfy all parties involved will require application for a new building permit to relocate the shed, a process that will likely delay completion beyond the 60 day period for compliance.
- Applicant has determined that the option that is most likely to satisfy all parties involved will also require some digging below grade, a difficult procedure in winter and one that

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may delay completion beyond the 60 day period for compliance. 5. Applicant has also appealed the decision of the Board of Appeals to the Circuit Court on a point of law, and the Order of the Board of Appeals may be reversed or modified by the Court.

WHEREFORE, Applicant prays that this Honorable Board:

- Extend the time for the Applicant to comply with its order until such time as the Circuit Court rules on his appeal; or
- Extend the time for the Applicant to comply with its Order for at least 90 days to enable him to have plans approved, ground dug and the shed relocated.

Stephen C. Buckingham
Stephen C. Buckingham
Attorney for Appellant
102 St. Paul Street, 2nd Floor
Baltimore, Maryland 21202
(410) 625-7947

I HEREBY CERTIFY, that on this 18th day of December, 1992, a copy of the foregoing MOTION TO EXTEND TIME TO COMPLY, was sent by first class mail, postage prepaid, to Phyllis Cole Friedman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

Stephen C. Buckingham
Stephen C. Buckingham

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IN THE MATTER OF THE APPLICATION OF KEITH DAVID NIZER FOR VARIANCES ON PROPERTY LOCATED ON THE EAST SIDE OF POWDERVIEW COURT, 241' NORTH OF OAKPARK DRIVE (23 POWDERVIEW COURT) 11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

OPINION

This matter comes to the Board on appeal from the decision of the Zoning Commissioner dated January 31, 1992 denying a Petition for Variance. The Petitioner herein requests a variance from Section 1B02.3.B and Section 504 of the Baltimore County Zoning Regulations (BCZR) to allow a rear yard setback of 7.5 ft. for an attached deck and shed in lieu of the required 25 ft. and to allow window to tract property line setbacks of 1 ft. and 11 ft. in lieu of the required 15 ft. each, and to amend the First Amended Partial Development Plan, Plat 6, Section III, for the projection of the deck and shed outside of the building envelope.

The Petitioner/Property Owner, Keith David Nizer, appeared and testified on his own behalf. Diane Wasowicz, Thomas W. O'Connor, and Robin O'Connor, neighbors of the Petitioner, testified in opposition to the relief requested. Joan Morrissey Ward, the 5th District Planner for Baltimore County's Office of Planning & Zoning, also testified. The Protestants were represented by Phyllis C. Friedman, People's Counsel for Baltimore County, and the Petitioner was represented by Stephen Buckingham, Esquire.

The subject property, located in the Oakhurst subdivision, is

Case No. 92-236-A Keith David Nizer 2

an end-of-group townhouse with a sloping rear lot. The property is approximately 31.5 ft. wide by 91.5 ft. deep. From the testimony and exhibits, we find the following facts.

The Petitioner purchased the property in March of 1990. The property's prior owner had obtained a building permit for the construction of a deck off of the first floor. The Petitioner completed the construction of the first floor deck which is an open deck approximately 20 ft. by 24 ft. in dimension, with side railings on three sides. Subsequently, the Petitioner began to construct, with a permit, a deck approximately 23 ft. by 21 ft. directly beneath the first floor deck described above, with a 23 ft. wide by 8 ft. deep shed attached to the side of the deck furthest removed from the house. A Stop Work Order was issued on May 1, 1991, and on May 3, 1991 the Petitioner made application for a permit. The permit application was supported by a sketch showing the measurements of the deck and attached shed. This sketch was not submitted into evidence since Appellant could not locate it. Both the application for permit and the building permit (#B090600) stated that the 23 ft. by 8 ft. storage shed is to be attached to the rear of the single-family townhouse. After the permit was obtained, Petitioner proceeded to complete construction of the lower deck and attached shed. The Petitioner also constructed walls with window openings on the sides of the deck between the shed and his house.

Section 307.1 of the BCZR states, in pertinent part, as follows:

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"...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations..., only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area... regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."

The Board has considered the law and all of the testimony and evidence in this case, and concludes that the Petitioner has not satisfied the requirements of Section 307.1. Specifically, the deck, shed and walls as constructed do not comply with the spirit and intent of the BCZR. However, the deck itself with a railing similar to the railing on the upper deck would comply. The walls and shed clearly do not. Petitioner has failed to prove that any special circumstances or conditions exist that are peculiar to his property and that strict compliance with the BCZR would result in practical difficulty or unreasonable hardship. Moreover, the Board finds that the granting of the requested variance would not be in strict harmony with the spirit and intent of the subject regulations and would cause injury to the general welfare of the neighboring property owners. The Board bases its conclusions on the fact that the ground dimensions of the deck and shed actually exceed the ground dimensions of the house itself, and also on the photographs which clearly show the remarkable size and scope of the structure. It is important to note that the shed was not constructed in accordance with the application for permit and

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Permit No. B090600. The shed was constructed on the rear portion of the deck and is not attached to the single-family townhouse as required. The permit also does not allow for the construction of the walls which enclose the deck. In light of the Board's conclusions, the Board will grant the variance for the requested rear yard setback of 7.5 ft. for the lower deck conditioned upon the removal of the walls and shed.

ORDER

IT IS THEREFORE this 18th day of November, 1992 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Variance to permit a rear yard setback of 7.5 ft. in lieu of the required 25 ft. for the shed be and is hereby DENIED; and it is further

ORDERED that the shed be removed within 60 days of the date of this Order; and it is further

ORDERED that a 15.5 ft. rear yard setback in lieu of the required 25 ft. for the lower deck be and is hereby GRANTED provided that the deck area not exceed 23 ft. by 21 ft. and that the walls and attached shed are removed in accordance with this Order; and it is further

ORDERED that the walls and windows on the lower deck be removed within 60 days of the date of this Order; and it is further

ORDERED that the Petition for Variance to allow window to property line setbacks of 1 ft. and 11 ft. in lieu of the required 15 ft. each be and is hereby DENIED as moot because the walls and windows are to be removed in accordance with this Order; and it is