

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

*JUNE 14, 2001 **

TO: Arnold Jablon, Director DATE: December 20, 1999
Permits & Development Management
ATTN: DAVE DUVAL
FROM: Charlotte E. Radcliffe *CR*
County Board of Appeals
SUBJECT: Closed File:
Case No. 93-16-A /Arthur Thomas Ward, III

Since the above captioned case has been concluded in the upper courts, we are hereby closing and returning the Board's case file to you herewith. The original file and exhibits were previously returned to your office by John Almond, Records Manager /Circuit Court

Attachments: Case No. 93-16-A

*X NOT COMPLETELY CLOSED
IN DEC '99 -- HAD 12
ADMIN OCT DECISION (FROM
BENCH)
WHICH IS INDICATED IN
THE TRANSCRIPT OF 1-4-99
OCT HEARING.*

5
And were I to find that was the issue in this matter, an honest guy or not, Mr. Ward would end up having to knock down part of his house or take an appeal from this case.

I am making my finding on what I believe, based on the zoning regulations here, and that's the only basis for it.

Again, quite honestly, the argument, with regard to the estopple on the part of Baltimore County, is not overly persuasive with me for a number of reasons.

First of all, those four inspections, they are by people who aren't familiar with the requirement for the 15 foot maximum height. An electrician doesn't know about that. Electricians know about wires.

The person that goes in and does the U and O is looking for a finished building with appropriate plumbing. They don't know about the 15 foot height requirements, and quite frankly, actually, you are in good company, because Richard Karceski made the same sort of argument with regard to gambling machines.

In fact, the County does accept permits for draw poker machines, and his argument was, well, if they accept the permit, then obviously this cannot be an illegal gambling device, and the Court respectively found that, in fact, the draw poker machine was an illegal

gambling device. So that's not what persuades the Court.

What persuades the Court is, it seems there is practical difficulty with meeting the regulation, regulation 307, and I believe you are right, that the regulations are there to give general guidance, but that in fact, there is a procedure for granting variances, and this is a case in which a variance should have been, and in all likelihood, would have been granted had it been requested prior to the erection of the building.

So again, gentlemen, it was a pure pleasure to have you all in my court today.

MR. WILLIAMS: Thank you, Your Honor.

MR. SMITH: Thank you, Your Honor.

MR. BODIE: Thank you, Your Honor.

(Proceedings concluded.)

REPORTER'S CERTIFICATE

I, A. M. Greaver, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that I stenographically recorded the proceedings in the matter of the Petition of David Cromwell and Jenkins Cromwell, Case No. 93CV7265, in the Circuit Court for Baltimore County, on January 4, 1994, before the Honorable Lawrence R. Daniels, Judge.

I further certify that the page numbers one through seven constitute the official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this *17th* day of January, 1994.

A. M. Greaver
A. M. Greaver
Official Court Reporter

Sandra Sanidas—887-2660

Civil Assignment Commissioner

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE

COUNTY COURTS BUILDING

401 Bosley Avenue

P.O. Box 6754

Towson, Maryland, 21285-6754

October 20, 1993

Joyce Grimm—887-3497

Director of Central Assignment

THOMAS G. BODIE, ESQ.
MICHAEL PAUL SMITH, ESQ.

NEWTON A. WILLIAMS, ESQ.

OFFICE OF LAW

COUNTY BOARD OF APPEALS

RECEIVED
COUNTY BOARD OF APPEALS

93 OCT 22 AM 9:32

93-16-A

Kathy Rushion—887-2660

Jury Assignments—Civil

Jan Dockman—887-2661

Non-Jury Assignments—Civil

RE: Non-Jury 93 CV 7265 – THE MATTER OF ARTHUR THOMAS WARD, III

SETTLEMENT CONFERENCE DATE: N/AConference Room # 507 before the Honorable

All counsel and their clients **MUST** attend this Settlement Conference in person. All Insurance Representatives or, in domestic cases, a corroborating witness **MUST** attend this Settlement Conference in person. Failure of attendance in person of all parties listed above can result in sanctions being imposed, unless prior approval of the Court is obtained. THERE WILL BE NO EXCEPTIONS.

HEARING DATE: Appeal: $\frac{1}{2}$ Hour

Tuesday, January 4, 1994, @ 9:30 a.m.

WITH THE EXCEPTION OF DOMESTIC CASES, COURT COSTS MUST BE PAID ON THE DATE OF SETTLEMENT CONFERENCE OR TRIAL, UPON SETTLEMENT OF THE CASE.

POSTPONEMENT POLICIES:

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other to conform calendars for the above date(s). Claim of not receiving notice will not constitute reason for postponement.

A request for postponement **MUST BE MADE IN WRITING** to the Assignment Office with a copy to all counsel involved.

COUNSEL MUST NOTIFY THE CIVIL ASSIGNMENT OFFICE **WITHIN 15 DAYS OF RECEIPT OF THIS NOTICE** AS TO ANY CONFLICTS THAT MAY EXIST WITH THE ABOVE REFERENCED DATES. OTHERWISE, IT WILL BE ASSUMED THAT THESE DATES ARE VALID AND **NO POSTPONEMENT WILL BE GRANTED.**

INDIVIDUALS WITH DISABILITIES, WHO MAY NEED ACCOMMODATIONS PRIOR TO COURT DATES, SHOULD CONTACT THE COURT ADMINISTRATOR'S OFFICE (887-2687) OR USE THE COURT'S TDD LINE (887-3018) OR THE VOICE/TDD MD. RELAY SERVICE 1-800-735-2258.

PETITION OF: DAVID CROMWELL, ET AL

CIVIL ACTION # 93-CV-07265/59/147

IN THE MATTER OF ARTHUR THOMAS WARD, III

RECEIVED FROM THE COUNTY BOARD OF
APPEALS EXHIBITS, BOARD'S RECORD
EXTRACT & TRANSCRIPT FILED IN THE
ABOVE-ENTITLED CASE, AND ZONING
COMMISSIONER'S FILE AND EXHIBITS

Mary Ross
Clerk's Office

Date: 9/3/93

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF DAVID CROMWELL, ET AL
1932 Old Court Road
Baltimore, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Courthouse, 400 Washington
Towson, MD 21204

CIVIL
ACTION
No. 93-CV-07265
/59/147

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF ARTHUR THOMAS
WARD, III FOR A ZONING VARIANCE

Case No. 93-16-A

* * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Harry E. Buchheister, Jr. and
C. William Clark, constituting the County Board of Appeals of
Baltimore County, and in answer to the Petition for Judicial Review
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 Zoning
Commissioner's Office and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS
AND THE OFFICE OF THE ZONING COMMISSIONER

No. 93-16-A

July 24, 1992

Petition for Variance filed by Newton A.
Williams, Esquire, on behalf of Arthur Thomas
Ward, III, Petitioner, to permit 21.2 feet in
height in lieu of the permitted 15 feet. (For
a garage and wine storage facility).

RECEIVED AND FILED
93 SEP -3 PM 12:25

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

August 6	Publication in newspapers.
August 14	Certificate of Posting of property.
August 28	Comments of Baltimore County Zoning Plans Advisory Committee.
September 1	Hearing held on Petition by the Zoning Commissioner.
September 30	Order of the Zoning Commissioner GRANTING Petition for Variance with restrictions.
October 23	Notice of Appeal received from G. Matthew Immler, Attorney on behalf of Dr. & Mrs. David Cromwell, protestants
June 16, 1993	Hearing before the Board of Appeals.
July 16	Opinion and Order of the Board GRANTING the Petition for Variance, and Ordered that the plant screening shall be Mr. Ward's responsibility.
July 16	Dissenting Opinion issued by C. William Clark, member of the Board.
August 12	Order for Appeal (Petition for Judicial Review) filed in the Circuit Court for Baltimore County by Thomas G. Bodie, Esquire, on behalf of David Cromwell, et al, Appellants (Petitioner).
August 16	Copy of Appeal (Petition for Judicial Review) received by the Board of Appeals from the Circuit Court for Baltimore County.
August 17	Certificate of Notice sent to interested parties.
September 3	Transcript of testimony filed.

Petitioner's Exhibit No.

- 1-Plat of property
- 2-Aerial Photo of 1986
(Brooklandville)
- 3-Drawing of Garage by Huber 8/90
- 4-Site Plan by McKee & Assoc. 8/90

- 5-A-Q -Photos of Ward Property
- 6-(I.D. only) Letter from Williams to Schmidt
- 7-(I.D. only) Landscape Drawing
- 8-Resume of Fred Klaus

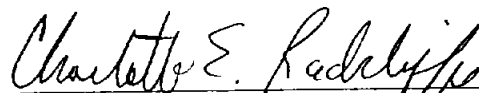
Protestant's Exhibit No.

- 1-Permit Application of Arthur Ward
- 2-Building Permit (3 pages)
- 3-Photo of Carriage House from Cromwell
- 4-Plan from Development Potential of Cromwell

September 3, 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, together with exhibits entered into evidence before the Board.

Respectfully submitted,



Charlotte E. Radcliffe
Legal Secretary
County Board of Appeals, Room 49
Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: Thomas G. Bodie, Esquire
David Cromwell
Jenkins Cromwell
Newton A. Williams, Esquire
Arthur Thomas Ward, III
People's Counsel for Baltimore County



County Board of Appeals of Baltimore County

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

August 17, 1993

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-5340

RE: Civil Action No. 93-CV-07265
ARTHUR THOMAS WARD, III /93-16-A

Dear Mr. Williams:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on August 12, 1993 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B) of the Maryland Rules.

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

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Arthur Thomas Ward, III
Thomas G. Bodie, Esquire
David Cromwell and Jenkins Cromwell
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards
Docket Clerk /ZADM
Arnold Jablon /ZADM



County Board of Appeals of Baltimore County

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

August 17, 1993

Thomas G. Bodie, Esquire
POWER AND MOSNER
21 W. Susquehanna Avenue
Towson, MD 21204

RE: Civil Action No. 93-CV-07265
ARTHUR THOMAS WARD, III /93-16-A

Dear Mr. Bodie:

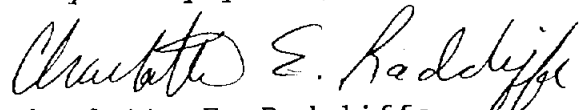
In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

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 within sixty days, in accordance with Rule 7-206(c).

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

Very truly yours,


Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: David Cromwell and Jenkins Cromwell

Arthur Thomas Ward

#93-16-A

S/S Candlewick Road, 500 ft.
W of c/l of West Joppa Road
(2003 W. Joppa Road)

9th Election District
4th Councilmanic District

No. 93-16-A

July 24, 1992 Petition for Variance filed by Newton A. Williams, Esquire, on behalf of Arthur Thomas Ward, III, Petitioner, to permit 21.2 feet in height in lieu of the permitted 15 feet. (For a garage and wine storage facility).

September 1 Hearing held on Petition by the Zoning Commissioner

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January 4, 1994 ✓E Order issued by the CCT for Balto. County wherein the decision of the CBA was AFFIRMED (Hon. Lawrence R. Daniels).

January 4, 1995 ✓E Order issued by the CSA wherein the decision of the CCT was REVERSED (Wenner, Cathell, Murpny)

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF DAVID CROMWELL , ET AL
1932 Old Court Road
Baltimore, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Courthouse, 400 Washington
Towson, MD 21204

CIVIL
ACTION

No. 93-CV-07265
/59/147

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF ARTHUR THOMAS
WARD, III FOR A ZONING VARIANCE

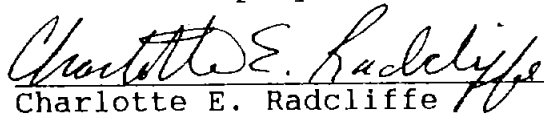
Case No. 93-16-A

* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett, Harry E. Buchheister, Jr. and C. William Clark, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Thomas G. Bodie, Esquire, POWER AND MOSNER, 21 W. Susquehanna Avenue, Towson, Maryland 21204, Counsel for Petitioners; David Cromwell and Jenkins Cromwell, 1932 Old Court Road, Baltimore, MD 21204, Petitioners; Arthur Thomas Ward, III, P.O. Box 432, Riderwood, MD 21139, Newton A. Williams, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., 700 Court Towers, Towson, MD 21204, Counsel for Mr. Ward; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49 - Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.


Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

FILED AUG 17 1993

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Thomas G. Bodie, Esquire, POWER AND MOSNER, 21 W. Susquehanna Avenue, Towson, Maryland 21204, Counsel for Petitioners; David Cromwell and Jenkins Cromwell, 1932 Old Court Road, Baltimore, MD 21204, Petitioners; Arthur Thomas Ward, III, P.O. Box 432, Riderwood, MD 21139; Newton A. Williams, Esquire, NOLAN, PLUMHOFF AND WILLIAMS, CHTD., 700 Court Towers, Towson, MD 21204, Counsel for Mr. Ward; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49 - Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, on this 17th day of August, 1993.



Charlotte E. Radcliffe
Legal Secretary, County Board
Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

Copy Board of Appeals

IN THE MATTER OF
THE APPLICATION OF
ARTHUR THOMAS WARD, III
FOR A VARIANCE ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CANDLEWICK ROAD, 500' WEST OF
CENTERLINE WEST JOPPA ROAD
(2003 W. JOPPA ROAD)
9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO: 59/147/93CV 1265

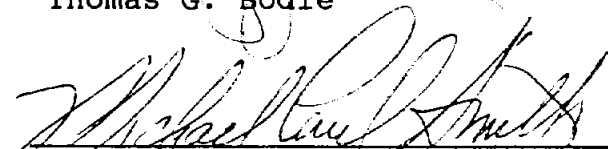
* * * * *

ORDER FOR APPEAL

David Cromwell and Jenkins Cromwell, Appellants, through their counsel, Thomas G. Bodie and Michael Paul Smith, appeal the decision in the above captioned case before the County Board of Appeals of Baltimore County, Case No. 93-16-A which was rendered on July 16, 1993.

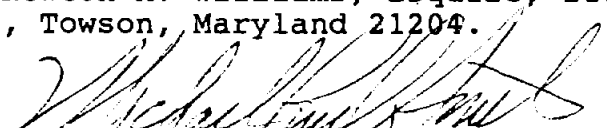
BODIE, NAGLE, DOLINA, SMITH & HOBBS


Thomas G. Bodie


Michael Paul Smith
143 Main Street
Reisterstown, Maryland 21136
833-1221
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 1993, a copy of the foregoing Order for Appeal was personally served upon an authorized agent of the County Board of Appeals and was mailed first class, postage prepaid, to Newton A. Williams, Esquire, 210 W. Pennsylvania Avenue, Suite 700, Towson, Maryland 21204.


Michael Paul Smith

RECEIVED
COUNTY BOARD OF APPEALS
93 AUG 16 PM 12:10

FILE

AUG 18 1993

IN THE MATTER OF
THE APPLICATION OF
ARTHUR THOMAS WARD, III
FOR A VARIANCE ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CANDLEWICK ROAD, 500' WEST OF
CENTERLINE WEST JOPPA ROAD
(2003 W. JOPPA ROAD)
9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* CASE NO:

* * * * *

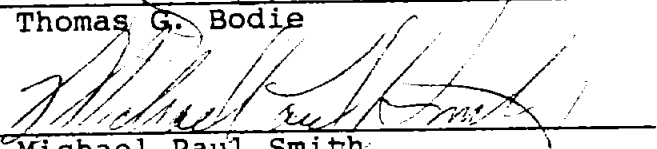
PETITION

Appellants, David Cromwell and Jenkins Cromwell, appeal from the decision dated July 16, 1993 before the County Board of Appeals of Baltimore County, Case No. 93-16-A. In said decision the Board in a divided opinion granted a variance to Arthur Thomas Ward, III to allow an accessory building to exceed the 15' height limitation. The Board erred in its decision in that the basis for the granting of the variance is a self-imposed hardship which cannot support the granting of a variance.

WHEREFORE, Appellants respectfully request this Honorable Court reverse the decision of the Board of Appeals and thereby deny the application of Arthur Thomas Ward, III for a variance on property located on the south side of Candlewick Road, 500' West of Centerline West Joppa Road (2003 W. Joppa Road) 9th Election District, 4th Councilmanic District.

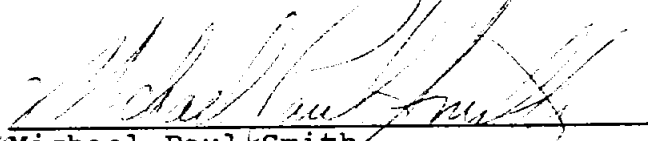
BODIE, NAGLE, DOLINA, SMITH & HOBBS


Thomas G. Bodie


Michael Paul Smith
143 Main Street
Reisterstown, Maryland 21136
833-1221

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August, 1993,
a copy of the foregoing Petition was personally served upon an
authorized agent of the County Board of Appeals and was mailed
first class, postage prepaid, to Newton A. Williams, Esquire, 210
W. Pennsylvania Avenue, Suite 700, Towson, Maryland 21204.



Michael Paul Smith

CARL R. GOLD
ATTORNEY AT LAW
406 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204
(410) 337-5545

MEMBER MARYLAND
AND DISTRICT OF
COLUMBIA BAR

October 23, 1992

Baltimore County Board of Appeals
Mr. Arnold Jablon
111 W. Chesapeake Ave.
Towson, Maryland 21204

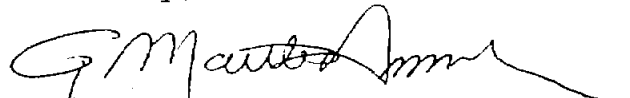
Re: Request for Appellate Review, In the Matter of Arthur Thomas Ward, III, Petition for Zoning Variance, Case No. 93-16-A.

Dear Mr. Jablon,

This office represents Dr. and Mrs. David Cromwell who opposed the Petition for Zoning Variance in the above captioned case. Zoning Commissioner Lawrence E. Schmidt granted the Variance in an opinion dated September 30, 1992.

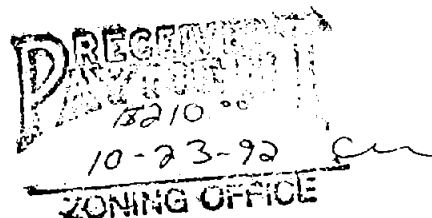
We are now requesting an appeal of Commissioner Schmidt's decision and ask that the matter be heard by the Baltimore County Board of Appeals. Enclosed is a check in the amount of \$210.00 to cover the filing and sign fees.

Sincerely,


G. Matthew Immler, Esquire

Copy to: Newton A. Williams, Esquire
Nolan, Williams and Plumhoff
Court Towers, Suite 700
210 W. Pennsylvania Ave.
Towson, Maryland 21204

Copy to: Dr. David Cromwell



93-16-17

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District Hut

Date of Posting APR 26/93

Posted for: Appeal

Petitioner: Arthur T. Ward, III

Location of property: S/S Conde Wick Rd, 300' w/ W. Joppa Rd.
2003 W. Joppa Rd

Location of Signs: Facing roadway at beginning of driveway leading
to property

Remarks: _____

Posted by M. J. Bradley
Signature

Date of return: 3/3/93

Number of Signs: 1

en removed. Newton
ine) requesting that
nd /scheduled for

WARD, III
Joppa Rd.)

25-11/3
5/20/93
copy letter
sent to
Hut



APPEAL

Petition for Zoning Variance
S/S Candlewick Road, 500 ft.
W of c/l of West Joppa Road
2003 W. Joppa Road
9th Election District - 4th Councilmanic District
ARTHUR THOMAS WARD, III - Petitioner
Case No. 93-16-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 (Included with ZAC Comments)

✓ Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: ✓ 1. Plat to accompany Petition
✓ 2. Nine photographs of site
✓ 3. Eighteen photographs of site
✓ 4. Copy of Building Permit (B072950)
✓ 5. Topographic Map

Protestant's Exhibits: ✓ 1. Red Line Tax Map

✓ Zoning Commissioner's Order dated September 30, 1992 (Granted)

✓ Notice of Appeal received October 23, 1992 from G. Matthey Immler

cc: Arthur Thomas Ward, III *Kiderwood*
2003 W. Joppa Road, P.O. Box 432, Lutherville, MD 21139

Newton Williams, Esquire, 700 Court Towers, Towson, MD 21204

*G. Matthew Immler, Esquire, 406 Allegheny Avenue, Towson, MD 21204

People's Counsel of Baltimore County *not per SH 2/12/93*
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 ZADM
Public Services

Thomas G. Bodie, Esquire *233-1250*
OWER AND MOSNER
1 W. Susquehanna Avenue
Towson, MD 21204

Rec'd copy 3/23/93

JE
cc
✓ E

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

*JUNE 14, 2001 **

TO: Arnold Jablon, Director DATE: December 20, 1999
Permits & Development Management
ATTN: DAVE DUVAL

FROM: Charlotte E. Radcliffe *CR*
County Board of Appeals

SUBJECT: Closed File:
Case No. 93-16-A /Arthur Thomas Ward, III

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Attachments: Case No. 93-16-A

*X NOT COMPLETELY CLOSED
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BENCH)
WHICH IS INDICATED IN
THE TRANSCRIPT OF 1-4-99
OCT HEARING.*

Arthur Thomas Ward

#93-16-A

S/S Candlewick Road, 500 ft.
W of c/l of West Joppa Road
(2003 W. Joppa Road)

9th Election District
4th Councilmanic District

No. 93-16-A

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January 4, 1995 ✓E Order issued by the CSA wherein the decision of the CCT was REVERSED (Wenner, Cathell, Murpny)

10/29/92 - Following parties notified of hearing set for February 18, 1993 at 10:00 a.m.:

G. Matthew Immler, Esquire
Arthur Thomas Ward, III
Newton A. Williams, Esquire
People's Counsel for Baltimore County *out*
P. David Fields
Public Services
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon

11/09/92 -T/C from Mr. Ward; did not receive copy of Notice of Assignment (had been advised of hearing date through his counsel, N. Williams). Changed address in file pursuant to Mr. Ward's request for same; sent copy of Notice.

12/07/92 -Request for Postponement from N. Williams, Esquire, Counsel for Petitioner; conflict w/Circuit Court schedule on 2/18/93.

12/8/92 - Above parties notified of POSTPONEMENT AND REASSIGNMENT to March 31, 1993 at 10:00 a.m. at request of Counsel for Petitioner.

3/05/93 -Letter from N. Williams, Esquire, requesting postponement /key witness will be out of country 3/27 through 6/04 (approx dates); requests date after April 15, 1993.

3/15/93 -Postponement GRANTED; case rescheduled for hearing on Wednesday, June 16, 1993 at 10:00 a.m. and notices sent this date.

10/29/92 - Following parties notified of hearing set for February 18, 1993 at 10:00 a.m.:

G. Matthew Immler, Esquire
Arthur Thomas Ward, III
Newton A. Williams, Esquire
People's Counsel for Baltimore County *out*
P. David Fields
Public Services
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon

11/09/92 -T/C from Mr. Ward; did not receive copy of Notice of Assignment (had been advised of hearing date through his counsel, N. Williams). Changed address in file pursuant to Mr. Ward's request for same; sent copy of Notice.

12/07/92 -Request for Postponement from N. Williams, Esquire, Counsel for Petitioner; conflict w/Circuit Court schedule on 2/18/93.

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3/15/93 -Postponement GRANTED; case rescheduled for hearing on Wednesday, June 16, 1993 at 10:00 a.m. and notices sent this date.

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL CATEGORY JUDICIAL REVIEW 59/147/93CV7265

ATTORNEYS

PETITION OF DAVID CROMWELL AND JENKINS CROMWELL

IN THE MATTER OF THE APPLICATION OF
 ARTHUR THOMAS WARD, III FOR A VARIANCE
 ON PROPERTY LOCATED ON THE SOUTH SIDE
 OF CANDLEWICK ROAD, 500' WEST OF CENTERLINE
 WEST JOPPA ROAD (2003 W. Joppa Road)
 9th ELECTION DISTRICT
 4th COUNCILMANIC DISTRICT

Thomas G. Bodie
 Michael Paul Smith
 143 Main Street
 Reisterstown, MD 21136
 833-1221

Newton A. Williams
 210 W. Penn Ave.
 Towson, Maryland 21204
 (410)823-7856
 (Attny for Ward)

TRANSCRIPT IN BASEMENT

LOCATION: TRANSCRIPTS & EXHIBITS
Box 153

WCC# 93-16-A

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

FILED - MAILED 1/1/94

COSTS

ps (1) August 12, 1993 Appellants David Cromwell and Jenkins Cromwell's
 Petition for Judicial Review from the decision of the County Board of
 Appeals of Baltimore County, fd.

CIVIL 937265

CV CLK 80.00

B LBRY 10.00

CHECK TL 90.00

#50807 0002 R01 T15:5
08/12/93

lb(2) Aug. 27, 1993 (rec'd 8/17/93) Certificate fo notice, fd.

tg(3) Sept. 16, 1993, Answer of Arthur Thomas Ward, III to
 petition on appeal, fd. (**rec'd 9/2/93**)

al*(4) September 20, 1993 Proceedings before the zoning commissioner
 and the Board of Appeals of Baltimore County, fd. (recv'd 7-3-93)

al*(5) September 20, 1993 Notice of filing of record, fd. Copies
 sent.

CIVIL 937265

CV CLK 80.00

CHECK TL 80.00

#52256 0002 R01 T10:5
02/03/94

tg(6) Oct. 6, 1993, Pltffs' memorandum, fd. (rec'd 10/1/93)

s(7) Nov. 5, 1993 Appellee ARTHUR THOMAS WARD, III's Memorandum fd. (rec'd 11-1-93)

Jan. 4, 1994 Honorable Lawrence R. Daniels. Hearing had. The decision of the County Board
 of Appeals of Baltimore County is affirmed.

ts(8) Feb. 3, 1994 Pltff's Notice of Appeal to the Court of Special Appeals of
 Maryland fd. (6/256)

eam (9) Apr 5, 1994 Order of Court from the Court of Special Appeals of
 Maryland for a prehearing conference, fd. Judge Paul E. Alpert
 Rec.'d 3/11/94.

OVER

CASE NO. _____

*df (10) April 19, 1994 - Order to the Court of Special Appeals Directing the Preparation of the Transcript fd. (P.E.A.). (6/256).

JUNE 16, 1994 - ORIGINAL RECORD AND PROCEEDINGS SENT TO THE COURT OF SPECIAL APPEALS OF MARYLAND BY CERTIFIED MAIL.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

IN THE MATTER OF THE
PETITION OF DAVID CROMWELL
AND JENKINS CROMWELL

Case No. 93CV7265

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(EXCERPT)

January 4, 1994
Towson, Maryland

BEFORE:

THE HONORABLE LAWRENCE R. DANIELS, Judge

APPEARANCES:

On behalf of the Appellants:

MICHAEL PAUL SMITH, ESQ.
THOMAS G. BODIE, ESQ.

On behalf of the Appellee:

NEWTON A. WILLIAMS, ESQ.

Reported by:

A. M. Greaver
Official Court Reporter
401 Bosley Avenue
Towson, Maryland 21204

93-16-A- CROMWELL (VS WARD)
COT AFFIDAVIT CBA
1-4-94- JUDGE DANIELS

P R O C E E D I N G S(E X C E R P T)

THE COURT: Well, I believe, and perhaps I am mistaken, that I could attempt to research this matter and educate myself with regard to zoning law and really be in no better position to make a decision in this case than I am right now, sitting on the bench here this afternoon.

I could attempt to make it look as if my decision would be more appropriate and well-thought out by simply holding this matter sub curia and perhaps doing some more research and issuing an opinion a month later, but again, in all honesty, I don't believe that there is anything that I would be able to find by way of research that would put me in any better position to make a decision than I am here today, and I have always been of the belief that the role of a nisi prius judge is to rule, so that if there is an aggrieved party, that party can take an appeal on the most expeditious basis.

The Court will rule here today that there is a substantial basis for this Court affirming the action of the Board of Appeals. The Court finds that, in looking at the pictures, that are submitted of the building in question, the Court has to agree with Mr. Williams that there really would have been no way to

build this house or this structure, this accessory structure, with a 15 foot high roof, short of changing the pitch of the roof, so that the roof of the main house would have been pitched at a much more acute angle than the roof of the accessory building.

And I would think that that is due in part to the topography of the building site, because again, I am advised by Mr. Williams, and without controversy or without contradiction from appellant, that in fact the bath house or pool house is, in fact, at a height equal to the height of the accessory building, even though it does meet the zoning requirements.

So I will rule here today that the decision of the Board of Appeals should be affirmed on that basis, that there would be a practical hardship in attempting to build this accessory building in any other way or any other fashion, the hardship being that it would be aesthetically unsound to have two roofs on adjacent and abutting buildings at a different pitch.

I certainly can't say I should substitute my predilection and tastes for that of the Cromwells, but I believe the Cromwells would be much more affronted by seeing two roofs pitched at different angles and having to look at that on a day-in and day-out basis, than having to look at perhaps the extra six feet of roof

4
involved in the accessory building in this case.

So without any further ado, the Court does find in favor of the appellee.

MR. WILLIAMS: Your Honor, my client, very honestly, wants me to state that the pool house may be slightly lower or somewhat lower.

THE COURT: I understand that we are not talking about an exact perpendicular.

MR. WILLIAMS: My client is whispering to me, and of course, my duty as an attorney would be to stand up and immediately tell you this, but my client, this is indicative of his nature, that he has, that regardless of what Your Honor might do as a consequence, he wanted me to tell you that, and I like to think I would stand up and do it also.

THE COURT: I know you would.

The fact of the matter is, I am not ruling here today because Mr. Ward is an honest fellow. I'm sure he is an honest fellow, but there are a lot of honest people that go out and make mistakes in life.

Every honest person, who runs a stop sign or goes a little too fast down a hill and runs into someone is probably not a scofflaw. They are all good people, but they make mistakes. They make a negligent act, and then they have to pay for it.

5
And were I to find that was the issue in this matter, an honest guy or not, Mr. Ward would end up having to knock down part of his house or take an appeal from this case.

I am making my finding on what I believe, based on the zoning regulations here, and that's the only basis for it.

Again, quite honestly, the argument, with regard to the estopple on the part of Baltimore County, is not overly persuasive with me for a number of reasons.

First of all, those four inspections, they are by people who aren't familiar with the requirement for the 15 foot maximum height. An electrician doesn't know about that. Electricians know about wires.

The person that goes in and does the U and O is looking for a finished building with appropriate plumbing. They don't know about the 15 foot height requirements, and quite frankly, actually, you are in good company, because Richard Karceski made the same sort of argument with regard to gambling machines.

In fact, the County does accept permits for draw poker machines, and his argument was, well, if they accept the permit, then obviously this cannot be an illegal gambling device, and the Court respectively found that, in fact, the draw poker machine was an illegal

gambling device. So that's not what persuades the Court.

What persuades the Court is, it seems there is practical difficulty with meeting the regulation, regulation 307, and I believe you are right, that the regulations are there to give general guidance, but that in fact, there is a procedure for granting variances, and this is a case in which a variance should have been, and in all likelihood, would have been granted had it been requested prior to the erection of the building.

So again, gentlemen, it was a pure pleasure to have you all in my court today.

MR. WILLIAMS: Thank you, Your Honor.

MR. SMITH: Thank you, Your Honor.

MR. BODIE: Thank you, Your Honor.

(Proceedings concluded.)

REPORTER'S CERTIFICATE

I, A. M. Greaver, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that I stenographically recorded the proceedings in the matter of the Petition of David Cromwell and Jenkins Cromwell, Case No. 93CV7265, in the Circuit Court for Baltimore County, on January 4, 1994, before the Honorable Lawrence R. Daniels, Judge.

I further certify that the page numbers one through seven constitute the official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this *17th* day of January, 1994.

A. M. Greaver
A. M. Greaver
Official Court Reporter

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL CATEGORY JUDICIAL REVIEW 59/147/93CV7265

ATTORNEYS

PETITION OF DAVID CROMWELL AND JENKINS CROMWELL

IN THE MATTER OF THE APPLICATION OF
 ARTHUR THOMAS WARD, III FOR A VARIANCE
 ON PROPERTY LOCATED ON THE SOUTH SIDE
 OF CANDLEWICK ROAD, 500' WEST OF CENTERLINE
 WEST JOPPA ROAD (2003 W. Joppa Road)
 9th ELECTION DISTRICT
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 (410)823-7856
 (Attny for Ward)

TRANSCRIPT IN BASEMENT

LOCATION: TRANSCRIPTS & EXHIBITS
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WCC# 93-16-A

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

FILED - MAILED 1/1/94

COSTS

ps (1) August 12, 1993 Appellants David Cromwell and Jenkins Cromwell's
 Petition for Judicial Review from the decision of the County Board of
 Appeals of Baltimore County, fd.

CIVIL 937265

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lb(2) Aug. 27, 1993 (rec'd 8/17/93) Certificate fo notice, fd.

tg(3) Sept. 16, 1993, Answer of Arthur Thomas Ward, III to
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al*(4) September 20, 1993 Proceedings before the zoning commissioner
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al*(5) September 20, 1993 Notice of filing of record, fd. Copies
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tg(6) Oct. 6, 1993, Pltffs' memorandum, fd. (rec'd 10/1/93)

s(7) Nov. 5, 1993 Appellee ARTHUR THOMAS WARD, III's Memorandum fd. (rec'd 11-1-93)

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 Maryland for a prehearing conference, fd. Judge Paul E. Alpert
 Rec.'d 3/11/94.

OVER

Sandra Sanidas—887-2660

Civil Assignment Commissioner

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE

COUNTY COURTS BUILDING

401 Bosley Avenue

P.O. Box 6754

Towson, Maryland, 21285-6754

October 20, 1993

Joyce Grimm—887-3497

Director of Central Assignment

THOMAS G. BODIE, ESQ.
MICHAEL PAUL SMITH, ESQ.

NEWTON A. WILLIAMS, ESQ.

OFFICE OF LAW

COUNTY BOARD OF APPEALS

RE:

Non-Jury 93 CV 7265 - THE MATTER OF ARTHUR THOMAS WARD, III

SETTLEMENT CONFERENCE DATE:

N/A

Conference Room # 507 before the Honorable

All counsel and their clients **MUST** attend this Settlement Conference in person. All Insurance Representatives or, in domestic cases, a corroborating witness **MUST** attend this Settlement Conference in person. Failure of attendance in person of all parties listed above can result in sanctions being imposed, unless prior approval of the Court is obtained. THERE WILL BE NO EXCEPTIONS.

HEARING DATE: Appeal: $\frac{1}{2}$ Hour

Tuesday, January 4, 1994, @ 9:30 a.m.

WITH THE EXCEPTION OF DOMESTIC CASES, COURT COSTS MUST BE PAID ON THE DATE OF SETTLEMENT CONFERENCE OR TRIAL, UPON SETTLEMENT OF THE CASE.

POSTPONEMENT POLICIES:

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other to conform calendars for the above date(s).
Claim of not receiving notice will not constitute reason for postponement.

A request for postponement **MUST BE MADE IN WRITING** to the Assignment Office with a copy to all counsel involved.

COUNSEL MUST NOTIFY THE CIVIL ASSIGNMENT OFFICE WITHIN 15 DAYS OF RECEIPT OF THIS NOTICE AS TO ANY CONFLICTS THAT MAY EXIST WITH THE ABOVE REFERENCED DATES. OTHERWISE, IT WILL BE ASSUMED THAT THESE DATES ARE VALID AND NO POSTPONEMENT WILL BE GRANTED.

INDIVIDUALS WITH DISABILITIES, WHO MAY NEED ACCOMMODATIONS PRIOR TO COURT DATES, SHOULD CONTACT THE COURT ADMINISTRATOR'S OFFICE (887-2687) OR USE THE COURTS TDD LINE (887-3018) OR THE VOICE/TDD MD. RELAY SERVICE 1-800-735-2258.

RECEIVED
COUNTY BOARD OF APPEALS

93 OCT 22 AM 9:32

93-16-A

Kathy Rushion—887-2660

Jury Assignments—Civil

Jan Dockman—887-2661

Non-Jury Assignments—Civil

PETITION OF: DAVID CROMWELL, ET AL

CIVIL ACTION # 93-CV-07265/59/147

IN THE MATTER OF ARTHUR THOMAS WARD, III

RECEIVED FROM THE COUNTY BOARD OF
APPEALS EXHIBITS, BOARD'S RECORD
EXTRACT & TRANSCRIPT FILED IN THE
ABOVE-ENTITLED CASE, AND ZONING
COMMISSIONER'S FILE AND EXHIBITS

Mary Ross
Clerk's Office

Date: 9/3/93

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF DAVID CROMWELL, ET AL
1932 Old Court Road
Baltimore, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Courthouse, 400 Washington
Towson, MD 21204

CIVIL
ACTION
No. 93-CV-07265
/59/147

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF ARTHUR THOMAS
WARD, III FOR A ZONING VARIANCE

Case No. 93-16-A

* * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Harry E. Buchheister, Jr. and
C. William Clark, constituting the County Board of Appeals of
Baltimore County, and in answer to the Petition for Judicial Review
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 Zoning
Commissioner's Office and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS
AND THE OFFICE OF THE ZONING COMMISSIONER

No. 93-16-A

July 24, 1992

Petition for Variance filed by Newton A.
Williams, Esquire, on behalf of Arthur Thomas
Ward, III, Petitioner, to permit 21.2 feet in
height in lieu of the permitted 15 feet. (For
a garage and wine storage facility).

RECEIVED AND FILED
93 SEP -3 PM 12:25

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

August 6	Publication in newspapers.
August 14	Certificate of Posting of property.
August 28	Comments of Baltimore County Zoning Plans Advisory Committee.
September 1	Hearing held on Petition by the Zoning Commissioner.
September 30	Order of the Zoning Commissioner GRANTING Petition for Variance with restrictions.
October 23	Notice of Appeal received from G. Matthew Immler, Attorney on behalf of Dr. & Mrs. David Cromwell, protestants
June 16, 1993	Hearing before the Board of Appeals.
July 16	Opinion and Order of the Board GRANTING the Petition for Variance, and Ordered that the plant screening shall be Mr. Ward's responsibility.
July 16	Dissenting Opinion issued by C. William Clark, member of the Board.
August 12	Order for Appeal (Petition for Judicial Review) filed in the Circuit Court for Baltimore County by Thomas G. Bodie, Esquire, on behalf of David Cromwell, et al, Appellants (Petitioner).
August 16	Copy of Appeal (Petition for Judicial Review) received by the Board of Appeals from the Circuit Court for Baltimore County.
August 17	Certificate of Notice sent to interested parties.
September 3	Transcript of testimony filed.

Petitioner's Exhibit No.

- 1-Plat of property
- 2-Aerial Photo of 1986
(Brooklandville)
- 3-Drawing of Garage by Huber 8/90
- 4-Site Plan by McKee & Assoc. 8/90

- 5-A-Q -Photos of Ward Property
- 6-(I.D. only) Letter from Williams to Schmidt
- 7-(I.D. only) Landscape Drawing
- 8-Resume of Fred Klaus

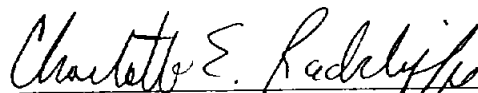
Protestant's Exhibit No.

- 1-Permit Application of Arthur Ward
- 2-Building Permit (3 pages)
- 3-Photo of Carriage House from Cromwell
- 4-Plan from Development Potential of Cromwell

September 3, 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, together with exhibits entered into evidence before the Board.

Respectfully submitted,



Charlotte E. Radcliffe
Legal Secretary
County Board of Appeals, Room 49
Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: Thomas G. Bodie, Esquire
David Cromwell
Jenkins Cromwell
Newton A. Williams, Esquire
Arthur Thomas Ward, III
People's Counsel for Baltimore County



County Board of Appeals of Baltimore County

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

August 17, 1993

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-5340

RE: Civil Action No. 93-CV-07265
ARTHUR THOMAS WARD, III /93-16-A

Dear Mr. Williams:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on August 12, 1993 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B) of the Maryland Rules.

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

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Arthur Thomas Ward, III
Thomas G. Bodie, Esquire
David Cromwell and Jenkins Cromwell
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards
Docket Clerk /ZADM
Arnold Jablon /ZADM



County Board of Appeals of Baltimore County

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

August 17, 1993

Thomas G. Bodie, Esquire
POWER AND MOSNER
21 W. Susquehanna Avenue
Towson, MD 21204

RE: Civil Action No. 93-CV-07265
ARTHUR THOMAS WARD, III /93-16-A

Dear Mr. Bodie:

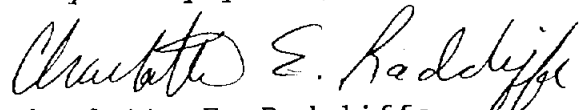
In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

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 within sixty days, in accordance with Rule 7-206(c).

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

Very truly yours,


Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: David Cromwell and Jenkins Cromwell

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF DAVID CROMWELL , ET AL
1932 Old Court Road
Baltimore, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Courthouse, 400 Washington
Towson, MD 21204

CIVIL
ACTION

No. 93-CV-07265
/59/147

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF ARTHUR THOMAS
WARD, III FOR A ZONING VARIANCE

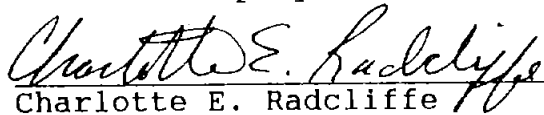
Case No. 93-16-A

* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett, Harry E. Buchheister, Jr. and C. William Clark, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Thomas G. Bodie, Esquire, POWER AND MOSNER, 21 W. Susquehanna Avenue, Towson, Maryland 21204, Counsel for Petitioners; David Cromwell and Jenkins Cromwell, 1932 Old Court Road, Baltimore, MD 21204, Petitioners; Arthur Thomas Ward, III, P.O. Box 432, Riderwood, MD 21139, Newton A. Williams, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., 700 Court Towers, Towson, MD 21204, Counsel for Mr. Ward; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49 - Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.


Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

FILED AUG 17 1993

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Thomas G. Bodie, Esquire, POWER AND MOSNER, 21 W. Susquehanna Avenue, Towson, Maryland 21204, Counsel for Petitioners; David Cromwell and Jenkins Cromwell, 1932 Old Court Road, Baltimore, MD 21204, Petitioners; Arthur Thomas Ward, III, P.O. Box 432, Riderwood, MD 21139; Newton A. Williams, Esquire, NOLAN, PLUMHOFF AND WILLIAMS, CHTD., 700 Court Towers, Towson, MD 21204, Counsel for Mr. Ward; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49 - Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, on this 17th day of August, 1993.



Charlotte E. Radcliffe
Legal Secretary, County Board
Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

Copy Board of Appeals

IN THE MATTER OF
THE APPLICATION OF
ARTHUR THOMAS WARD, III
FOR A VARIANCE ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CANDLEWICK ROAD, 500' WEST OF
CENTERLINE WEST JOPPA ROAD
(2003 W. JOPPA ROAD)
9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

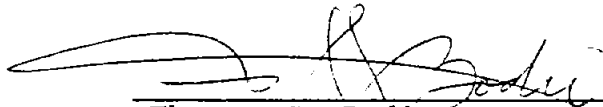
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO: 59/147/93CV 1265

* * * * *

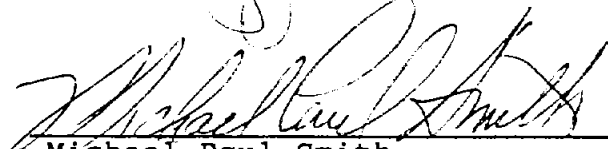
ORDER FOR APPEAL

David Cromwell and Jenkins Cromwell, Appellants, through their counsel, Thomas G. Bodie and Michael Paul Smith, appeal the decision in the above captioned case before the County Board of Appeals of Baltimore County, Case No. 93-16-A which was rendered on July 16, 1993.

BODIE, NAGLE, DOLINA, SMITH & HOBBS



Thomas G. Bodie



Michael Paul Smith
143 Main Street
Reisterstown, Maryland 21136
833-1221
Attorneys for Appellants

RECEIVED
COUNTY BOARD OF APPEALS
93 AUG 16 PM 12:10

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 1993, a copy of the foregoing Order for Appeal was personally served upon an authorized agent of the County Board of Appeals and was mailed first class, postage prepaid, to Newton A. Williams, Esquire, 210 W. Pennsylvania Avenue, Suite 700, Towson, Maryland 21204.



Michael Paul Smith

FILE

AUG 18 1993

CASE NO. _____

*df (10) April 19, 1994 - Order to the Court of Special Appeals Directing the Preparation of the Transcript fd. (P.E.A.). (6/256).

JUNE 16, 1994 - ORIGINAL RECORD AND PROCEEDINGS SENT TO THE COURT OF SPECIAL APPEALS OF MARYLAND BY CERTIFIED MAIL.

IN THE MATTER OF
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(2003 W. JOPPA ROAD)
9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* CASE NO:

* * * * *

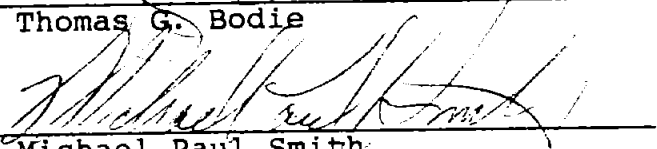
PETITION

Appellants, David Cromwell and Jenkins Cromwell, appeal from the decision dated July 16, 1993 before the County Board of Appeals of Baltimore County, Case No. 93-16-A. In said decision the Board in a divided opinion granted a variance to Arthur Thomas Ward, III to allow an accessory building to exceed the 15' height limitation. The Board erred in its decision in that the basis for the granting of the variance is a self-imposed hardship which cannot support the granting of a variance.

WHEREFORE, Appellants respectfully request this Honorable Court reverse the decision of the Board of Appeals and thereby deny the application of Arthur Thomas Ward, III for a variance on property located on the south side of Candlewick Road, 500' West of Centerline West Joppa Road (2003 W. Joppa Road) 9th Election District, 4th Councilmanic District.

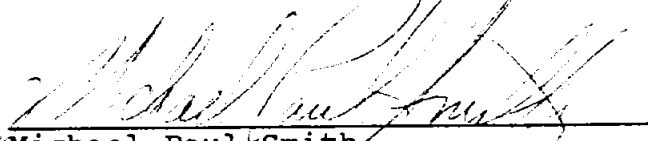
BODIE, NAGLE, DOLINA, SMITH & HOBBS


Thomas G. Bodie


Michael Paul Smith
143 Main Street
Reisterstown, Maryland 21136
833-1221

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August, 1993,
a copy of the foregoing Petition was personally served upon an
authorized agent of the County Board of Appeals and was mailed
first class, postage prepaid, to Newton A. Williams, Esquire, 210
W. Pennsylvania Avenue, Suite 700, Towson, Maryland 21204.



Michael Paul Smith

CARL R. GOLD
ATTORNEY AT LAW
406 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204
(410) 337-5545

MEMBER MARYLAND
AND DISTRICT OF
COLUMBIA BAR

October 23, 1992

Baltimore County Board of Appeals
Mr. Arnold Jablon
111 W. Chesapeake Ave.
Towson, Maryland 21204

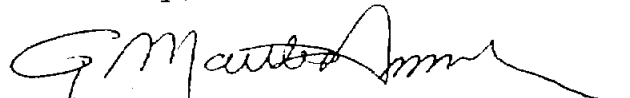
Re: Request for Appellate Review, In the Matter of Arthur Thomas Ward, III, Petition for Zoning Variance, Case No. 93-16-A.

Dear Mr. Jablon,

This office represents Dr. and Mrs. David Cromwell who opposed the Petition for Zoning Variance in the above captioned case. Zoning Commissioner Lawrence E. Schmidt granted the Variance in an opinion dated September 30, 1992.

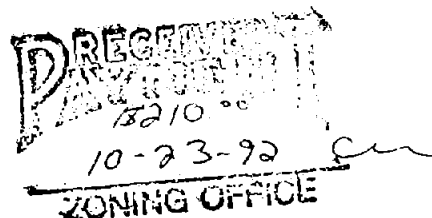
We are now requesting an appeal of Commissioner Schmidt's decision and ask that the matter be heard by the Baltimore County Board of Appeals. Enclosed is a check in the amount of \$210.00 to cover the filing and sign fees.

Sincerely,


G. Matthew Immler, Esquire

Copy to: Newton A. Williams, Esquire
Nolan, Williams and Plumhoff
Court Towers, Suite 700
210 W. Pennsylvania Ave.
Towson, Maryland 21204

Copy to: Dr. David Cromwell



93-16-17

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District Hut

Date of Posting APR 2/26/93

Posted for: Appeal

Petitioner: Arthur T. Ward, III

Location of property: S/S Conde Wick Rd, 300' w/ W. Joppa Rd.
2003 W. Joppa Rd

Location of Signs: Facing roadway at beginning of driveway leading
to property

Remarks: _____

Posted by M. J. Bradley Date of return: 3/3/93

Number of Signs: 1

en removed. Newton
ine) requesting that
nd /scheduled for

WARD, III
Joppa Rd.)

25-11/3
5/20/93
copy letter
sent to
Hut

APPEAL

Petition for Zoning Variance
S/S Candlewick Road, 500 ft.
W of c/l of West Joppa Road
2003 W. Joppa Road
9th Election District - 4th Councilmanic District
ARTHUR THOMAS WARD, III - Petitioner
Case No. 93-16-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 (Included with ZAC Comments)

✓ Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: ✓ 1. Plat to accompany Petition
✓ 2. Nine photographs of site
✓ 3. Eighteen photographs of site
✓ 4. Copy of Building Permit (B072950)
✓ 5. Topographic Map

Protestant's Exhibits: ✓ 1. Red Line Tax Map

✓ Zoning Commissioner's Order dated September 30, 1992 (Granted)

✓ Notice of Appeal received October 23, 1992 from G. Matthey Immler

cc: Arthur Thomas Ward, III *Kiderwood*
2003 W. Joppa Road, P.O. Box 432, Lutherville, MD 21139

Newton Williams, Esquire, 700 Court Towers, Towson, MD 21204

*G. Matthew Immler, Esquire, 406 Allegheny Avenue, Towson, MD 21204

People's Counsel of Baltimore County *not per SH 2/12/93*
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 ZADM
Public Services

Thomas G. Bodie, Esquire *233-1250*
OWER AND MOSNER
1 W. Susquehanna Avenue
Towson, MD 21204

Rec'd copy 3/23/93

JE
cc
✓ E

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

IN THE MATTER OF THE
PETITION OF DAVID CROMWELL
AND JENKINS CROMWELL

Case No. 93CV7265

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(EXCERPT)

January 4, 1994
Towson, Maryland

BEFORE:

THE HONORABLE LAWRENCE R. DANIELS, Judge

APPEARANCES:

On behalf of the Appellants:

MICHAEL PAUL SMITH, ESQ.
THOMAS G. BODIE, ESQ.

On behalf of the Appellee:

NEWTON A. WILLIAMS, ESQ.

Reported by:

A. M. Greaver
Official Court Reporter
401 Bosley Avenue
Towson, Maryland 21204

93-16-A- CROMWELL (VS WARD)
COT AFFIDAVIT CBA
1-4-94- JUDGE DANIELS

P R O C E E D I N G S(E X C E R P T)

THE COURT: Well, I believe, and perhaps I am mistaken, that I could attempt to research this matter and educate myself with regard to zoning law and really be in no better position to make a decision in this case than I am right now, sitting on the bench here this afternoon.

I could attempt to make it look as if my decision would be more appropriate and well-thought out by simply holding this matter sub curia and perhaps doing some more research and issuing an opinion a month later, but again, in all honesty, I don't believe that there is anything that I would be able to find by way of research that would put me in any better position to make a decision than I am here today, and I have always been of the belief that the role of a nisi prius judge is to rule, so that if there is an aggrieved party, that party can take an appeal on the most expeditious basis.

The Court will rule here today that there is a substantial basis for this Court affirming the action of the Board of Appeals. The Court finds that, in looking at the pictures, that are submitted of the building in question, the Court has to agree with Mr. Williams that there really would have been no way to

3
build this house or this structure, this accessory
structure, with a 15 foot high roof, short of changing
the pitch of the roof, so that the roof of the main house
would have been pitched at a much more acute angle than
the roof of the accessory building.

And I would think that that is due in part to
the topography of the building site, because again, I am
advised by Mr. Williams, and without controversy or
without contradiction from appellant, that in fact the
bath house or pool house is, in fact, at a height equal
to the height of the accessory building, even though it
does meet the zoning requirements.

So I will rule here today that the decision
of the Board of Appeals should be affirmed on that basis,
that there would be a practical hardship in attempting to
build this accessory building in any other way or any
other fashion, the hardship being that it would be
aesthetically unsound to have two roofs on adjacent and
abutting buildings at a different pitch.

I certainly can't say I should substitute my
predilection and tastes for that of the Cromwells, but I
believe the Cromwells would be much more affronted by
seeing two roofs pitched at different angles and having
to look at that on a day-in and day-out basis, than
having to look at perhaps the extra six feet of roof

4
involved in the accessory building in this case.

So without any further ado, the Court does find in favor of the appellee.

MR. WILLIAMS: Your Honor, my client, very honestly, wants me to state that the pool house may be slightly lower or somewhat lower.

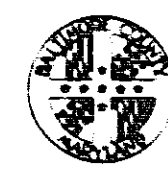
THE COURT: I understand that we are not talking about an exact perpendicular.

MR. WILLIAMS: My client is whispering to me, and of course, my duty as an attorney would be to stand up and immediately tell you this, but my client, this is indicative of his nature, that he has, that regardless of what Your Honor might do as a consequence, he wanted me to tell you that, and I like to think I would stand up and do it also.

THE COURT: I know you would.

The fact of the matter is, I am not ruling here today because Mr. Ward is an honest fellow. I'm sure he is an honest fellow, but there are a lot of honest people that go out and make mistakes in life.

Every honest person, who runs a stop sign or goes a little too fast down a hill and runs into someone is probably not a scofflaw. They are all good people, but they make mistakes. They make a negligent act, and then they have to pay for it.



County Board of Appeals of Baltimore County

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

Hearing Room -
Room 48, Old Courthouse
400 Washington Avenue
October 29, 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. 93-16-A
ARTHUR THOMAS WARD, III
S/s Candlewick Road, 500' West
of c/l W. Joppa Road (2003 W. Joppa Rd.)
9th Election District
4th Councilmanic District
VAR-Accessory structure (existing garage)
w/height of 21.2' in lieu of required 15'.
9/30/92 -Z.C.'s Order GRANTING Petition.

ASSIGNED FOR: THURSDAY, FEBRUARY 18, 1993 at 10:00 a.m.

cc: G. Matthew Immler, Esquire - Appellant

Arthur Thomas Ward, III - Petitioner

Newton A. Williams, Esquire - Counsel for Petitioner

People's Counsel for Baltimore County
P. David Fields
Public Services

Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director - Zoning Administration

LindaLee M. Kuszmaul
Legal Secretary



County Board of Appeals of Baltimore County

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

Hearing Room -
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400 Washington Avenue
October 29, 1992

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ASSIGNED FOR: THURSDAY, FEBRUARY 18, 1993 at 10:00 a.m.

cc: G. Matthew Immler, Esquire - Appellant

Arthur Thomas Ward, III - Petitioner

Newton A. Williams, Esquire - Counsel for Petitioner

People's Counsel for Baltimore County

P. David Fields

Public Services

Lawrence E. Schmidt

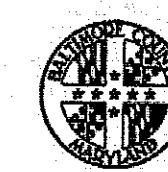
Timothy M. Kotroco

W. Carl Richards, Jr.

Docket Clerk - Zoning

Arnold Jablon, Director - Zoning Administration

LindaLee M. Kuszmaul
Legal Secretary



County Board of Appeals of Baltimore County

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

Hearing Room -
Room 48, Old Courthouse
400 Washington Avenue
December 8, 1992

NOTICE OF POSTPONEMENT AND REASSIGNMENT

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.

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9/30/92 -Z.C.'s Order GRANTING Petition.

which was scheduled for hearing on February 18, 1993 has been POSTPONED at the request of Counsel for Petitioner and has been

REASSIGNED FOR: WEDNESDAY, MARCH 31, 1993 at 10:00 a.m.

cc: G. Matthew Immler, Esquire - Appellant

Arthur Thomas Ward, III - Petitioner

Newton A. Williams, Esquire - Counsel for Petitioner

People's Counsel for Baltimore County

P. David Fields

Lawrence E. Schmidt

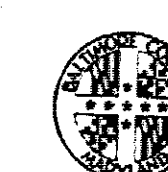
Timothy M. Kotroco

W. Carl Richards, Jr.

Docket Clerk - Zoning

Arnold Jablon, Director - Zoning Administration

LindaLee M. Kuszmaul
Legal Secretary



County Board of Appeals of Baltimore County

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

Hearing Room -
Room 48, Old Courthouse
400 Washington Avenue
December 8, 1992

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REASSIGNED FOR: WEDNESDAY, MARCH 31, 1993 at 10:00 a.m.

cc: G. Matthew Immler, Esquire - Appellant

Arthur Thomas Ward, III - Petitioner

Newton A. Williams, Esquire - Counsel for Petitioner

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 - Zoning Administration

LindaLee M. Kuszmaul
Legal Secretary



County Board of Appeals of Baltimore County

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

Hearing Room -
Room 48, Old Courthouse
400 Washington Avenue
March 31, 1993

NOTICE OF POSTPONEMENT AND REASSIGNMENT

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w/height of 21.2' in lieu of required 15'.
9/30/92 -Z.C.'s Order GRANTING Petition.

which was scheduled for hearing on March 31, 1993 has been POSTPONED at the request of Counsel for Petitioner and has been

REASSIGNED FOR: WEDNESDAY, JUNE 16, 1993 at 10:00 a.m.

cc: G. Matthew Immler, Esquire - Appellant

Arthur Thomas Ward, III - Petitioner

Newton A. Williams, Esquire - Counsel for Petitioner

P. David Fields

Lawrence E. Schmidt

Timothy M. Kotroco

W. Carl Richards, Jr.

Docket Clerk - Zoning

Arnold Jablon, Director - Zoning Administration

Kathleen C. Weidenhammer
Administrative Assistant

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



August 28, 1992

(410) 887-3353

Newton A. Williams, Esquire
Newton A. Williams
100 Court Towers
100 W. Pennsylvania Avenue
Towson, MD 21204

RE: Item No. 9, Case No. 93-16-A
Petitioner: Arthur T. Ward
Petition for Variance

Dear Mr. Williams:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure 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 preliminary review by Zoning personnel.

Zoning Plans Advisory Committee Comments
Date: August 28, 1992
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, engineers and applicants 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 forfeiture loss of the filing fee.

Very truly yours,

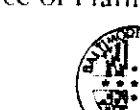
W. Carl Richards, Jr.
W. Carl Richards, Jr.
Zoning Coordinator

MCR:jw

Enclosures

cc: Mr. Arthur T. Ward, 2003 W. Joppa Road, Baltimore, MD 21093

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



(410) 887-3353

Your petition has been received and accepted for filing this
24th day of July, 1992

Arnold Jablon
DIRECTOR

Received By:

W. Carl Richards, Jr.
Chairman,
Zoning Plans Advisory Committee

Petitioner: Arthur T. Ward, et al

Petitioner's Attorney: Newton A. Williams

MICROFILMED



2. View of garage from Ward Patio Area.



3. Ward Pool and south side of pool house



4. Looking southwest over fence from south end of Ward Lane.



5. Looking northwest over fence from south end of Ward Lane.



6. Smaller Cromwell House looking northwest



7. Looking southeast at rear of Ward Property from the Cromwell Property.

(where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub* *judice*.

Special Exceptions (and Conditional Uses) and Variances - Distinguished

The treatise writers define the concept as:

A variance is an authorization for [that] which is prohibited by a zoning ordinance.

[The difference between the two variances and special exceptions] . . . is of practical significance.

[The variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception contemplates a permitted use . . . [once] the prescribed conditions therefor are met."

[A] variance is "authority . . . to use his property in a manner forbidden . . ." while an exception "allows him to put his property to a use which the enactment expressly permits."

Continued.
However, "conditional uses" refer to uses while exceptions normally apply to area, i.e., yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

[The standards for . . . exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.

"A special exception . . . is one which is controlled and . . . permitted in a given zone. It is granted . . . upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized . . . where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02-03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County*, 239 Md. 189, 193 (1965)). See also *Schultz v. Pritts*, 291 Md. 1, 11 (1981); *People's Counsel v. Mangione*, 85 Md. App. 738, 748 (1991).

A distinction commonly is made between [special] exceptions . . . and variances An "exception" . . . is a dispensation permissible where a board . . . finds existing those facts . . . specified in the ordinance as sufficient But zoning ordinances usually provide for another kind of dispensation, . . . by which a variance . . . may be authorized . . . where a literal enforcement . . . would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances. . . . A variance should be strictly construed

Id. § 25.162 (footnotes omitted). See also 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* § 38.01 (4th ed. 1981); 3 E. C. Yokley, *Zoning Law and Practice* § 21-6 (4th ed. 1979); 3

Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception . . . is expressly permissible [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property . . . or by reason of exceptional topographical conditions or other extraordinary situations . . . of specific parcels of property, the strict application . . . would result in . . . unusual practical difficulties to, or exceptional or undue hardship

Stacy, 239 Md. at 193.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 288-91 (1953):

It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area . . . the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance. . . .

There is a distinction between . . . the ordinance provisions . . . in those cases [Baltimore City cases] and the facts and the ordinance provision in this case

See also our case of *Martin Marietta Aggregates v. Citizens*, 41 Md. App. 26, 34-35 (1978).

A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use . . . so long as . . . conditions cannot be encompassed within the . . . statutory authority to grant variances.

Eberhart v. Indiana Waste Systems, Inc., 452 N.E.2d 455, 459 (Ind. App. 3 Dist. 1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals*, 464 N.E.2d 347, 350 (Ind. App. 1 Dist. 1984), opined:

A great deal of confusion has been generated . . . because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions A variance involves a deviation . . . from the legislated zoning classification A special exception involves a use which is permitted . . . once certain statutory criteria have been satisfied. [Citations omitted.]

See also *Lindquist v. Board of Adjustment*, 490 So.2d 16, 18 (Ala. Civ. App. 1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the . . . burden of proving . . . hardship"); *Wolfner v. Board of Adjustment*, 672 S.W.2d 147, 150 (Mo. App. 1984) ("an

Exceptional is used here in its generic sense.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because

the board of zoning appeals is in effect given the power to set aside or annul the ordinance . . . with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships" [U]nder our system of written constitutions it is essential that they accomplish those . . . objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them For such phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, appeal dismissed, 290 U.S. 585 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church*, 164 Md. 487 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore*, 187 Md.

296, 300 (1946). By the time of its decision in *Heath*, the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances in his own discretion." 187 Md. at 301. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar*, the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible where the Board . . . finds . . . those facts . . . specified in the ordinance" Id. at 303.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their

respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore*, 231 Md. 280, 285 (1963) ("In Baltimore City there appears to be no distinction between the two terms"). We also attempted to indicate the problem in *North v. St. Mary's County*, 99 Md. App. 502, 510 (1994), in footnote 3:

Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances. . . . [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore*, 195 Md. 395, 400 (1950), where the Court noted "facts to justify an exception . . . [show] that the hardship affects the particular premises and is not common to other property in the neighborhood." This is a variance

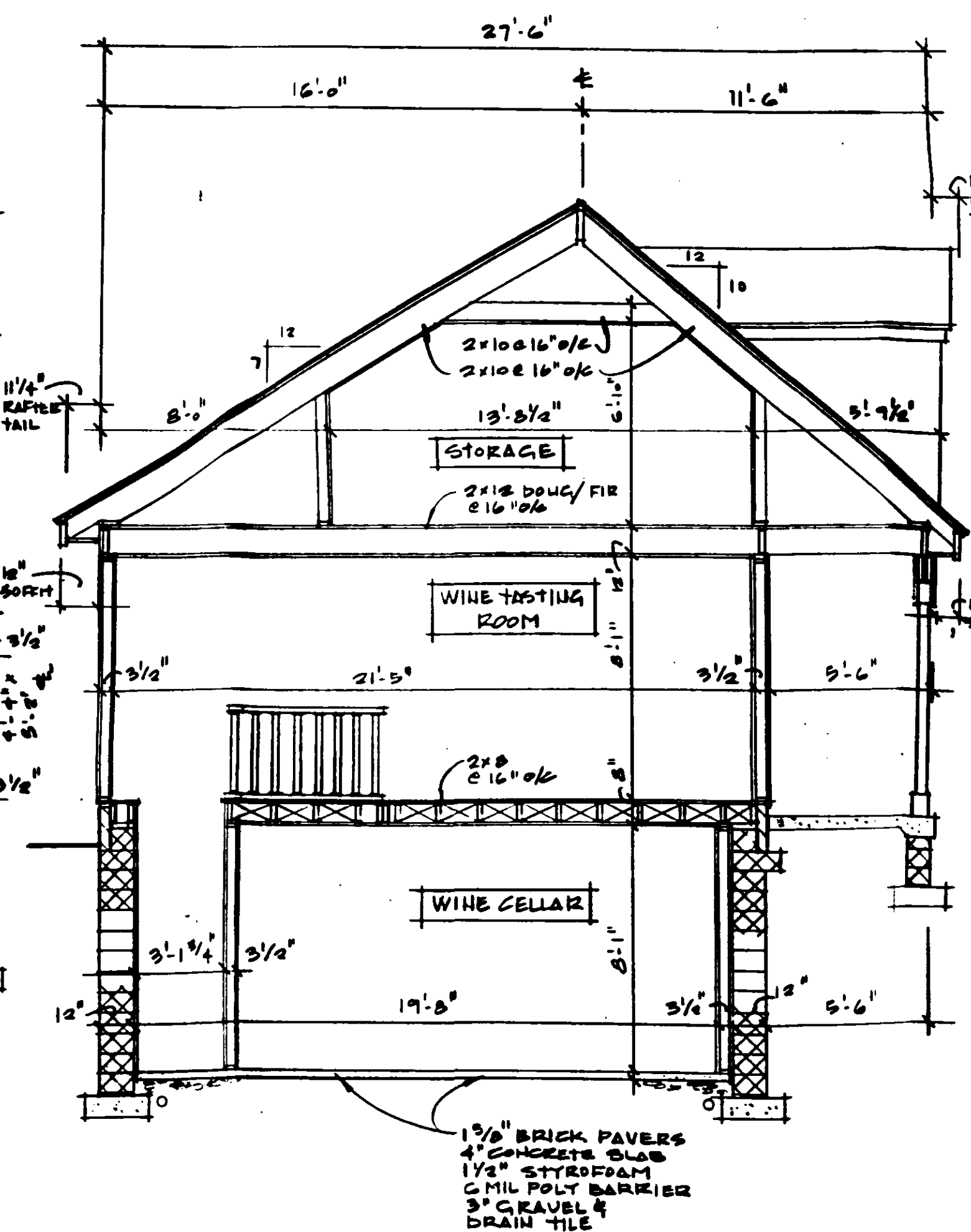
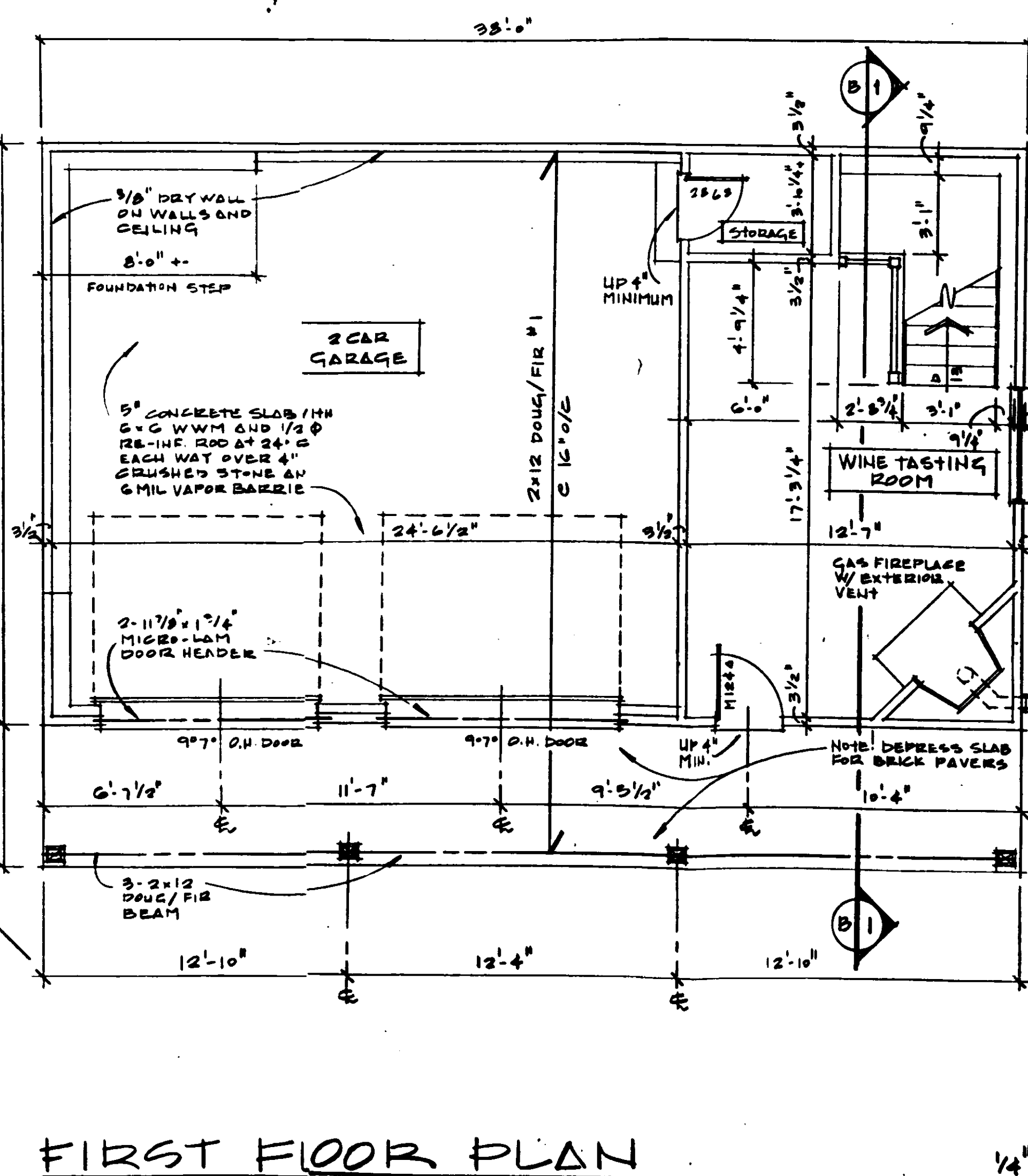
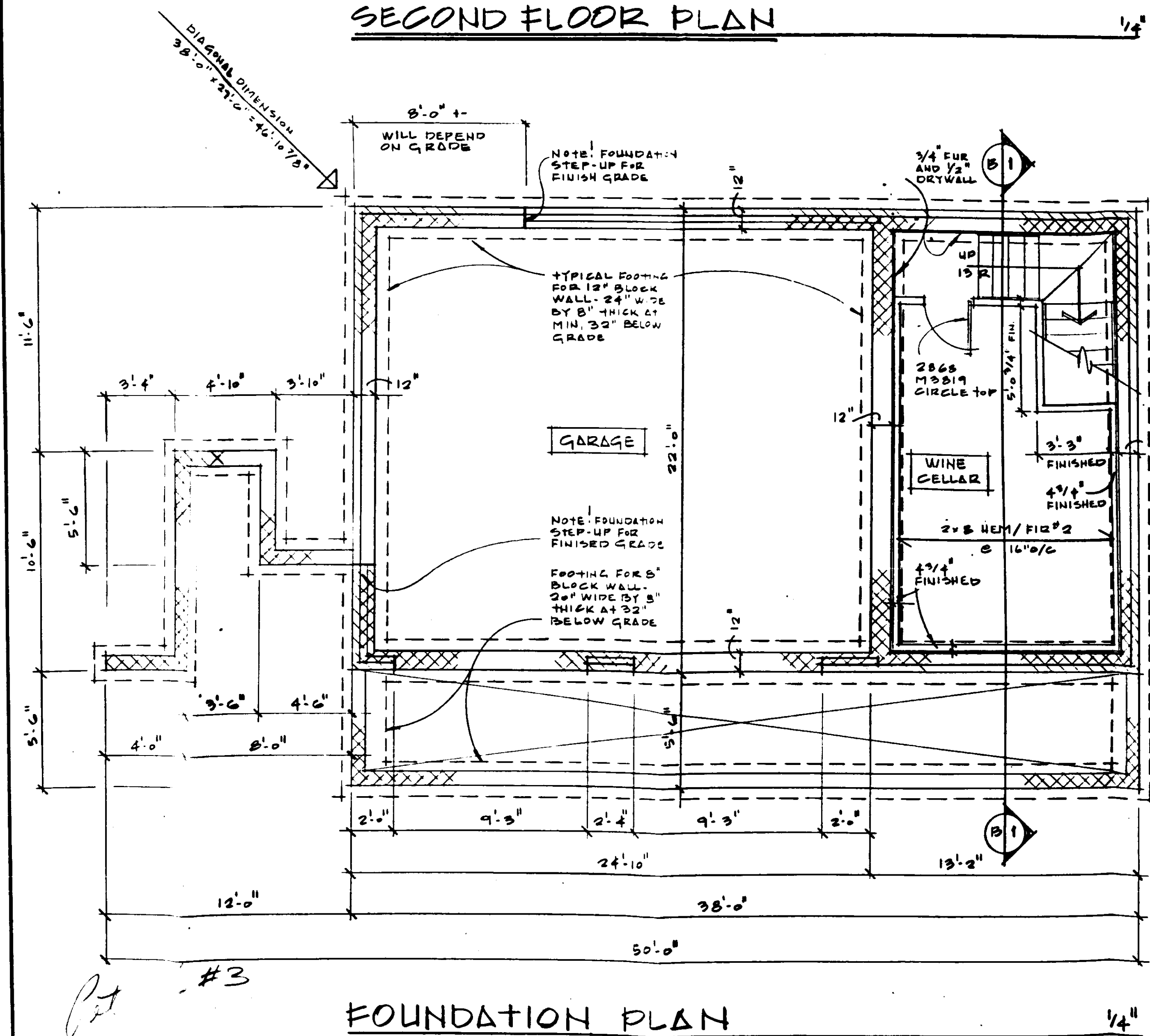
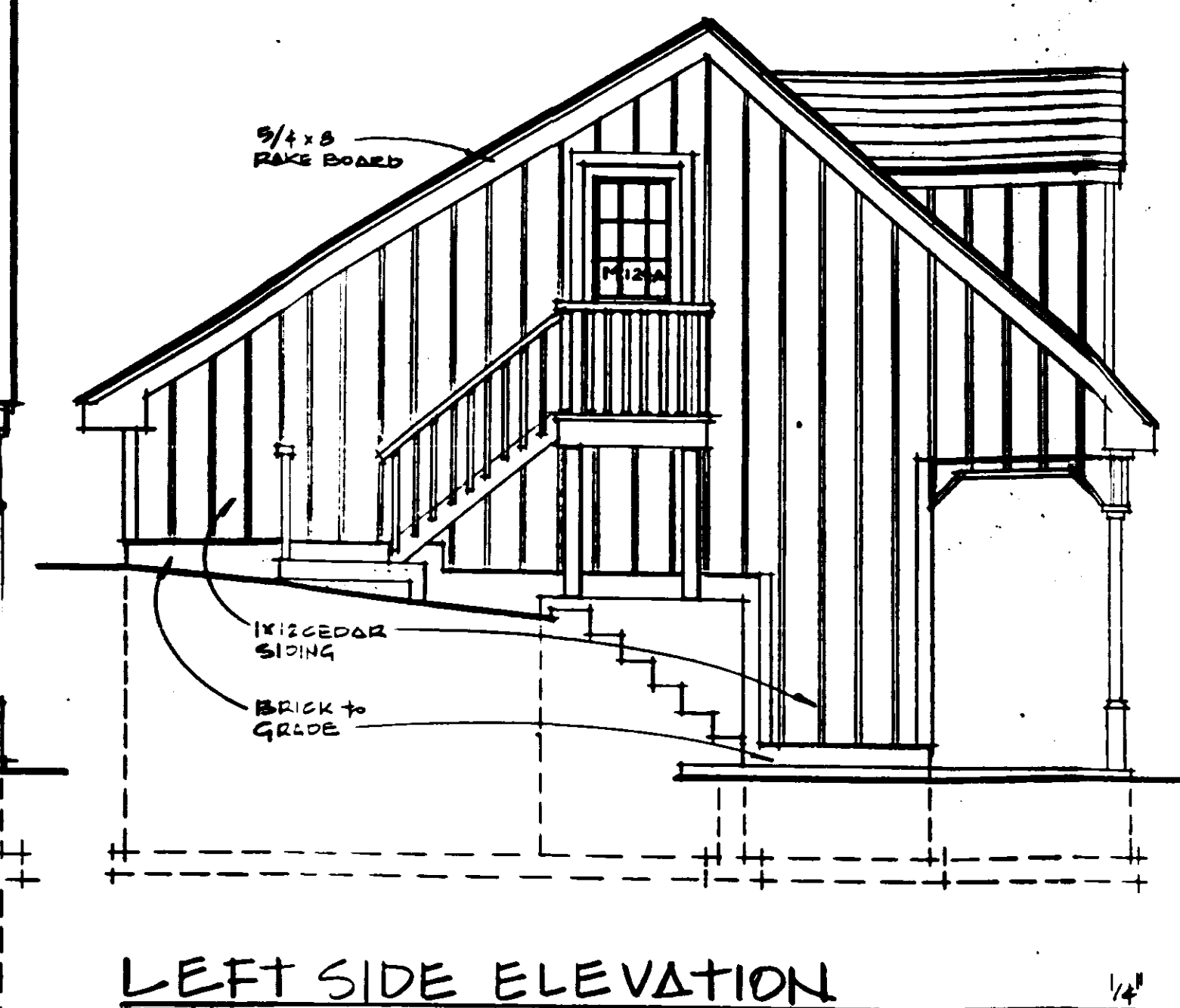
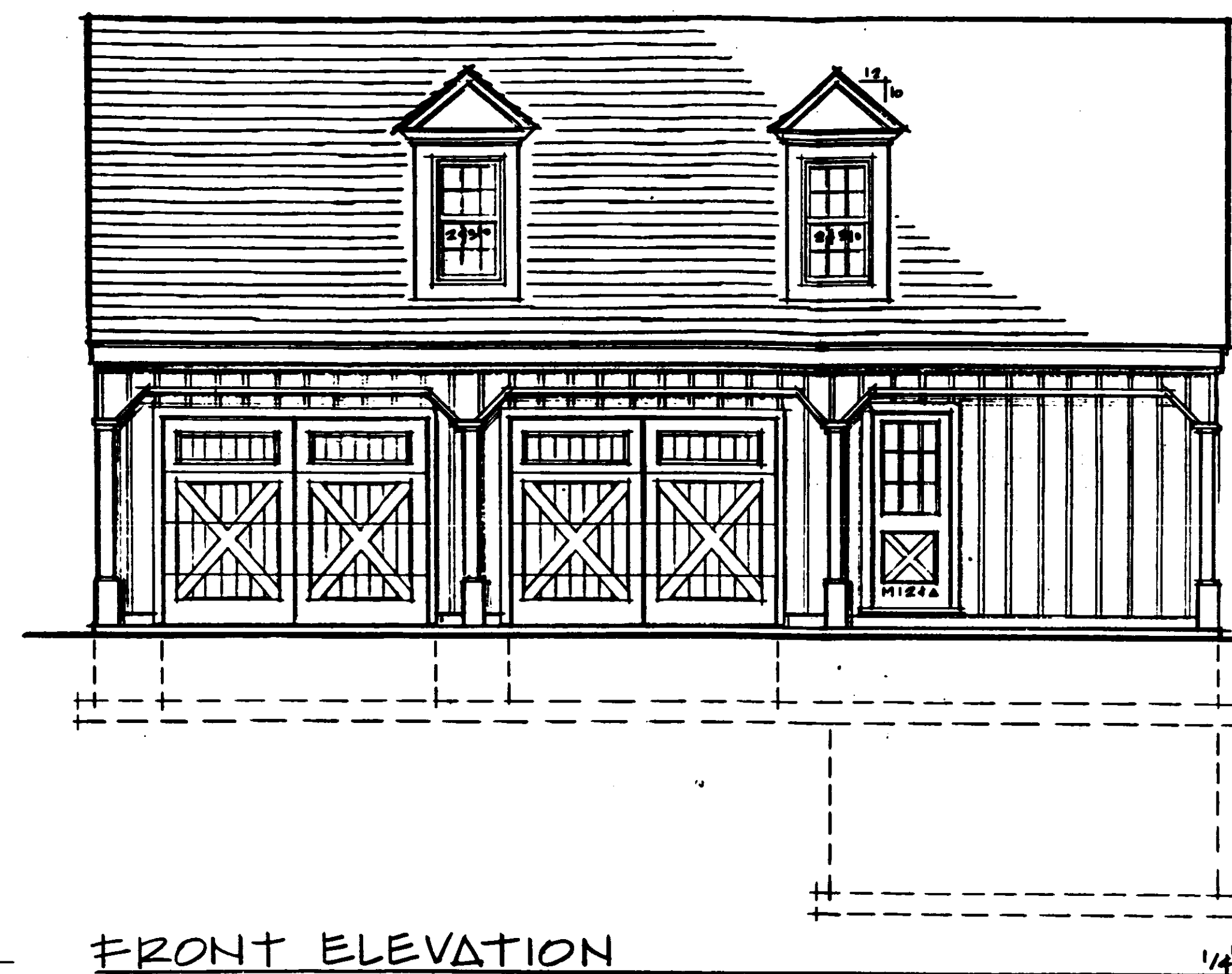
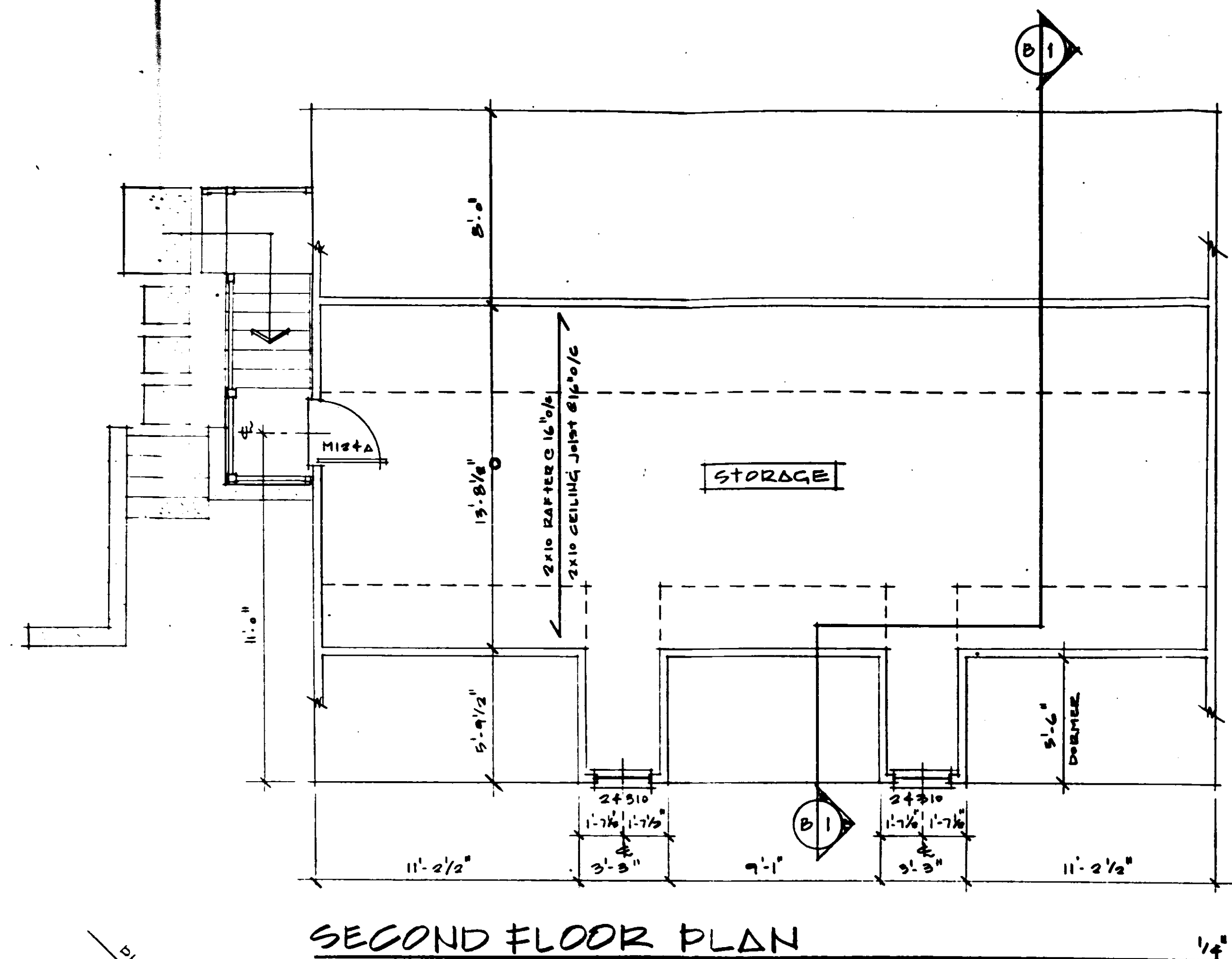
exception is legislatively prescribed whereas a variance is legislatively prohibited, but may be allowed for special reasons": *Great Falls, Inc. v. Franklin Lakes*, 401 A.2d 141, 147 (N.J. Super. App. Div. 1979), *cert. denied*, 414 A.2d 144, 145 (1981). Special exception and variance defined - case decided on during appellate review: *A. J. Broder & Associates v. Zoning Hearing Bd.*, 481 A.2d 143, 145 (Pa. Commonwealth 1985); *Bohl v. City Council*, 197 S.W.2d 811, 813-14 (Mo. 1946).

VARIANCE - The First Step - Uniqueness or Peculiarity of the Subject Property

The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. See, e.g., A. Rathkopf, *The Law of Zoning and Planning* § 38 (1985).

Boorack v. Board of Adjustment, 709 S.W.2d 140, 143 (Mo. App. 1986). See also *Morrow v. Board of Adjustment*, 765 S.W.2d 700, 711-12 (Mo. App. 1989); *Taylor v. Board of Zoning Adjustment*, 738 S.W.2d 141, 144 (Mo. App. 1987).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md. Code Article 66B, and it is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws - and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.



DONALD S. HUBER CO.
213 OLD PADONIA ROAD
COCKEYSVILLE, MARYLAND 21030
501-

CARRIAGE HOUSE / WINE CELLAR
WARD RESIDENCE

SEPTEMBER 21, 1990
REVISIONS

1 of 1



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

Plot #2

SCALE
1" = 200' ±
DATE
OF
PHOTOGRAPHY
JANUARY
1986

LOCATION
BROOKLANDVILLE

SHEET
N.W.
11-C

BY AIR PHOTOGRAPHICS, INC.
BAL. W.V. 25401

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

[It was incumbent upon the Marinors to have shown . . . (ii) that the difficulties or hardships were peculiar to the property in question in contrast with those of other property owners in the same district, and (iii) that the hardship was not the result of the applicants' own actions.

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees. . . .

240 Md. at 554. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning*, § 48-1, and then noted:

"Where property, due to unique circumstances applicable to it, cannot reasonably be adapted to use in conformity with the restrictions . . . hardship arises . . . The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship. . . . The hardship, arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief. . . ."

The instant case fits squarely within the above general rule. . . . If the appellees had used proper diligence . . . and then made accurate measurements . . . the resultant

hardship could have been avoided. The hardship . . . was entirely self-created. . . .

Id. at 554-55 (emphasis added). Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. See also *Burns v. Mayor and City Council of Baltimore*, 251 Md. 554, 559 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore*, 233 Md. 372, 378 (1964) ("[There was] no evidence of any limitation . . . by . . . size of yards, irregularity of shape of land or buildings, topography, grade or accessibility" . . .); *Mayor and City Council v. Sapero*, 230 Md. 291 (1962); *Frankel v. Mayor and City Council of Baltimore*, 223 Md. 97, 104 (1960) ("It was incumbent . . . to show that the hardship . . . affected his particular premises and was not . . . common to other property in the neighborhood. . . . [H]e met the burden . . ."); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.*, 216 Md. 271, 277-78 (1958).

Secs. 14 (b), 14 (d) and 16 . . . have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property. . . .

Mayor and City Council v. Polakoff, 233 Md. 1, 9 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore*, 247 Md. 601, 606-07 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant

a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "urgent necessity, hardship peculiar to the particular property" . . . Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley*, 270 Md. 208, 210 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy . . . that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance. . . .

Concededly, this is a close case, but it is nevertheless sufficient. . . .

Id. at 215. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman*, 227 Md. 243 (1961), and *Frankel v. Mayor & City Council of Baltimore*, 223 Md. 97 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

The Court in the sludge storage case of *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmation of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances

sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question . . . that do not apply generally to other properties . . . in the . . . district." *Id.* at 140. The Court concluded:

The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary characteristics of the land itself and therefore not the kind of hardship cognizable under the zoning ordinance. . . .

We think the Board's decisions . . . reflect no error of law.

Id. at 140-41 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel*, 96 Md. App. 219, 224 (1993), after noting the standard of review, we said:

In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.

The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist that are peculiar to the land . . . and where strict compliance . . . would result in practical difficulty

. . . " *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances of a particular location and must be analyzed individually." *Id.* at 227-28 (emphasis added).

In *North v. St. Mary's County*, 99 Md. App. at 512, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land" We there stated that, in the zoning context, the term "unique" has a customized meaning:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, in *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific . . . property . . . or by reason of exceptional topographic conditions or other extraordinary situation or special condition of . . . property the literal enforcement . . . would make it exceptionally difficult . . . to comply . . . and would cause unwarranted hardship and injustice. . . .

The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.*

Id. at 514-15.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean*, *supra*; *Stacy*, *supra*; *Sapero*, *supra*; *Loyola Federal Savings & Loan Assoc.*, *supra* (a Baltimore County case); and *Frankel*, *supra*. All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel*, *Loyola*, and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly . . . close case" *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky*, 239 Md. 611 (1965), involved one of the same issues that was presented in *Frankel*, i.e., whether a zoning restriction so

compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance - a variance *Frankel* was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged that Borinsky had the "same expert witness," "he was asked the same general questions . . . and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* at 624. The Court, nevertheless, made a factual distinction and declined to apply *Frankel*. Judge Barnes opined in dissent that, based on what the Court had done in *Frankel*, the facts for variances were stronger in *Borinsky*. *Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel*, *Loyola*, and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York*, 482 N.W.2d 537 (Neb. 1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell*, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank*, the court said at 545: "[A] variance [may be granted] . . . only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of the zoning

ordinance] 'would result in peculiar and exceptional practical difficulties . . . or exceptional . . . hardships'

In *Shafer v. Zoning Bd. of Appeals*, 511 N.E.2d 635 (Mass. App. Ct. 1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

There was no evidence . . . regarding "soil conditions, shape or topography of [the property] . . . especially affecting [the property] but not affecting generally the zoning district in which it is located" . . . The . . . argument that the insufficient width . . . constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

511 N.E.2d at 636-37 (citation omitted). See also *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn. 1983) ("the plight of respondent was not due to circumstances 'unique to his property' . . . [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware")

In *St. Clair v. Skagit County*, 715 P.2d 165 (Wash. App. 1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board,

approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings" 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist . . . peculiar to the land" *Id.* The court then noted that the applicant had done there what Ward attempts to do in the case *sub judice*:

[The appellant] relied primarily upon the fact that the County issued a building permit . . . and that she acted in good faith

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75-foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity" *Id.* at 169. In the case *sub judice*, the Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment*, 706 P.2d 899 (Okla. 1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had

expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner . . . constitutes no valid basis for a variance" [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44-107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, not to activities peculiar to the owner of such property.

Id. at 904-05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992), but had facts similar to *Lucas*, the Supreme Court of Delaware in *Baker v. Connell*, 488 A.2d 1303 (Del. Supr. 1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0-1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight

of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the property could not conform to open space land. The appellate court affirmed, stating:

[F]inancial return . . . alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0-1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R-2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas and Dolan v. City of Tigard*, ___ U.S. ___, [62 U.S.L.W. 4576] (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment*, 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice*. The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance . . . the applicant [must] show . . . that there are special conditions with regard to the property" 685 P.2d at 1035-36. The court continued:

What must be shown . . . is that the property itself contains some special circumstance that relates to the hardship complained of

. . . The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of

property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.

. . . . Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos(es) brought their losses upon themselves. The application affirmatively alleged . . . that no dwelling existed

Id. at 1036-37 (footnotes omitted).

The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice*, that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice . . . in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication . . . and . . . shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id.* at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimen-

⁸ The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

sions from other schematics, they certainly were not required to do so in light of appellants' affirmative statement of compliance.

See also *Chambers v. Smithfield City*, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond*, 300 S.E.2d 781 (Va. 1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A-1 district." *Id.*

The court in *Richardson v. Town of Salisbury*, 455 A.2d 1059, 1061 (N.H. 1983), noted:

We have defined unnecessary hardship as follows:

"A hardship exists only if due to special conditions unique to a particular parcel of land, the ordinance unduly restricts the use The hardship must relate to the special character of the land

rather than to the personal circumstances of the landowner." (Emphasis added.)

See also *Margate Motel, Inc. v. Gilford*, 534 A.2d 717 (N.H. 1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment*, 459 A.2d 244 (N.H. 1983).

In *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

[T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;

. . . . [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.

. . . . However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size. . . .

. . . . However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also *Williams v. Salem Township*, 500 A.2d 933 (Pa. Commonwealth 1985) *alloc. denied*, 531 A.2d 781 (1987); *Harsh v. Zoning Hearing Bd. of Marlborough Township*, 493 A.2d 807 (Pa. Commonwealth 1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem*, 480 A.2d 362 (Pa. Commonwealth 1984) (burden sustained); *Davis v. Zoning Bd. of Adjustment*, 468 A.2d 1183 (Pa. Commonwealth 1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment*, 456 A.2d 1110

(Pa. Commonwealth 1983); *Immordino v. Zoning Hearing Bd.*, 441 A.2d 818, 821 (Pa. Commonwealth 1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship which is unique to his particular property") (Emphasis added.)

A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by other property owners in the area Indialantic's zoning restrictions are common difficulties shared by all other ocean-front lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla. App. 5th Dist. 1981), *aff'd*, 419 So.2d 1041 (1982) (citation omitted). See also *Fort Lauderdale Bd. of Adjustment v. Nash*, 425 So.2d 578, 579 (Fla. App. 4th Dist. 1983); *City of Naples v. Clam Court Marina Trust*, 413 So.2d 475, 477 (Fla. App. 2d Dist. 1982); *Lakeshore Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments*, 481 So.2d 162, 168 (La. App. 4th Cir. 1985), *cert. denied*, 494 So.2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231 (D.C. App. 1979), where, due to the size of the lot, no viable economical

use of the property could be had without the variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in *U-Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord*, 451 A.2d 1315, 1317 (N.H. 1982), saying: "The location and characteristics of the property involved create greater security requirements . . . than . . . other property in the area because the parcel . . . is less central . . . less populated and . . . less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland*, 637 P.2d 1302 (Or. App. 1981), cert. denied, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. See also *Higgins v. Township of Radnor*, 318 A.2d 761, 763 (Pa. Commonwealth 1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty or unnecessary hardship in respect to use variances).

It is fundamental that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions to particular property and not general in character. . . . It is not uniqueness of the plight of the owner, but

uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit (if the statute so provides). . . . [T]he hardship [in order to justify a variance, however,] . . . must relate to the particular property of the applicant

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

[I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, *supra* § 14.55 (1968).

It follows that the unnecessary hardship . . . must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance

In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question. . . .

Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot . . . arises from circumstances peculiar to that lot . . . ; and in that case the appropriate remedy is . . . a variance In the other types of cases, the hardship . . . may arise because of conditions which are general in the neighborhood. . . . it is often held that the

appropriate remedy is a change in the zoning. . . . [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

The great strengthening of the criteria for granting variances, . . . has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question. . . . Moreover, the courts have again emphasized that a variance granted to take care of some hardship personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. See also Rathkopf, *supra* § 38.04; Yokley, *supra* § 21-6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.")

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals*, 93 N.E.2d 645, 647 (N.Y. 1950):

[T]he record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21-6.

We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been - a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific

property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists. Before applying the facts of the instant case to the law and, thus, resolving the case *sub judice*, we must touch upon two other aspects of the process, i.e., the self-inflicted injury and the zoning authorities' acquiescence in issuing a building permit based on plans that left unclear the elevation of the structure and the subsequent inspection.

Self-Inflicted Hardship

We have before referred to *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206. There, the Court said, "it was incumbent [on the applicant] to [show] . . . that the hardship was not the result of the applicants' own actions." *Id.* at 218. The Court of Appeals noted in *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. at 340:

The essence of Ad + Soil's argument . . . is that the setback requirements . . . would cause . . . unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements. . . . The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted . . . and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. See *Pollard v. Zoning Bd. of Appeals*, 438 A.2d 1186, 1190 (Conn. 1982) ("[S]elf-inflicted or self-created hardship . . . is never considered proper grounds for a variance." . . . "Where the applicant . . . creates a nonconformity, the board lacks power to grant a variance.") (citations omitted); *Volkman v.*

"Adoption of zoning ordinance *ipso facto* revokes permit for construction . . . where no construction has begun."

. . . They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro*, 187 Md. 623, 634 (1947), *overruled on other grounds in Nutter v. Non-Profit Housing Co.*, 230 Md. 6 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit . . . does not create a vested right, or estop⁹ the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Synder*, 186 Md. 342, 347 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward*, 186 Md. 330, 340 (1946), the Court held:

⁹ The applicability of the "doctrine of zoning estoppel" has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council*, 96 Md. App. 526 (1993), *rev'd in part*, 334 Md. 499 (1994).

The Board . . . as an administrative body, was bound to follow the regulations it adopted, in the exercise of . . . delegated legislative power. The fact that it might have reasoned . . . does not alter its obligation to adhere to existing regulations. . . .

In the case of *Lipsitz v. Parr*, 164 Md. 222 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

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. . . . [T]he ordinance forbade the officials . . . to grant the permit which the plaintiff asked and obtained

. . . [I]t was therefore unlawful for the officers . . . to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued . . . does not . . . prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality. . . . Every one 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.

So, even where a municipality has the power but has done nothing, to ratify or sanction the unauthorized act . . . it is not estopped by the unauthorized or wrongful act of its officer . . . in issuing a permit that is forbidden by the explicit terms of an ordinance. . . . *Valentine v. Rds. Directors*, 146 Md. 199, 206 [(1924)] [Citations omitted, emphasis added].

164 Md. at 227-28.

The Court cited *Lipsitz v. Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates*, the Court opined that "[c]onsequently, '[e]veryone dealing with 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.'" 313 Md. at 437. The Court added: "[T]he doctrine of equitable estoppel 'cannot be . . . invoked to defeat the . . . enforcement of . . . ordinances, because of an error or mistake committed by one of its officers . . . which has been relied on by the third party to his detriment.'" *Id.*

Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward.

The authorities elsewhere are in accord.

The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the principal that hardship relates to the special character of the land, not to the circumstances of the owner.

Richardson, 455 A.2d at 1062.

[R]elator argues the Board should be estopped from denying the height variance because a

city building inspector visited the premises several times and observed the construction taking place but made no complaint . . .

In any case there is no authority on the part of a building inspector to grant a variance . . .

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La. App. 4th Cir. 1970). See also Kianke v. Zoning Bd. of Adjustment, 477 A.2d 937, 909 (Pa. Commonwealth 1984), and Walkingstick, supra; Xanthos, supra; and St. Clair, supra.

Resolution

We resolve here only the issue of the granting of the variance sought and applied for by Ward.

There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's impact upon the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional

violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policy-makers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF DAVID CROMWELL, ET AL
1932 Old Court Road
Baltimore, MD 21204

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Courthouse, 400 Washington
Towson, MD 21204

* CIVIL
ACTION
* No. 93-CV-07265
* 759/147

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF ARTHUR THOMAS
WARD, III FOR A ZONING VARIANCE

Case No. 93-16-A

* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett, Harry E. Buchheister, Jr. and C. William Clark, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Thomas G. Bodie, Esquire, POWER AND MOSNER, 21 W. Susquehanna Avenue, Towson, Maryland 21204, Counsel for Petitioners; David Cromwell and Jenkins Cromwell, 1932 Old Court Road, Baltimore, MD 21204, Petitioners; Arthur Thomas Ward, III, P.O. Box 432, Ridewood, MD 21139, Newton A. Williams, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., 700 Court Towers, Towson, MD 21204, Counsel for Mr. Ward; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49 - Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

93-16-A, Arthur Thomas Ward
File No. 59/147/93-CV-07265

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I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Thomas G. Bodie, Esquire, POWER AND MOSNER, 21 W. Susquehanna Avenue, Towson, Maryland 21204, Counsel for Petitioners; David Cromwell and Jenkins Cromwell, 1932 Old Court Road, Baltimore, MD 21204, Petitioners; Arthur Thomas Ward, III, P.O. Box 432, Ridewood, MD 21139; Newton A. Williams, Esquire, NOLAN, PLUMHOFF AND WILLIAMS, CHTD., 700 Court Towers, Towson, MD 21204, Counsel for Mr. Ward; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49 - Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, on this 17th day of August, 1993.

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

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

August 17, 1993

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-5340

RE: Civil Action No. 93-CV-07265
ARTHUR THOMAS WARD, III /93-16-A

Dear Mr. Williams:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on August 12, 1993 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B) of the Maryland Rules.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Arthur Thomas Ward, III
Thomas G. Bodie, Esquire
David Cromwell and Jenkins Cromwell
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards
Docket Clerk /ZADM
Arnold Jablon /ZADM

AUG 17 1993

ZADM

IN THE MATTER OF
THE APPLICATION OF
ARTHUR THOMAS WARD, III
FOR A VARIANCE ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CANDLEWICK ROAD, 500' WEST OF
CENTERLINE WEST JOPPA ROAD
(2003 W. JOPPA ROAD)
9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO: 93-16-A
* * * * *

OPINION

This matter comes to the Board on appeal from a decision of the Zoning Commissioner dated September 30, 1992 granting the requested variance to permit an accessory structure height of 21.2 ft. in lieu of the required 15 ft. Petitioner appeared and was represented by Newton A. Williams, Esquire, and Appellants/Protestants appeared and were represented by Thomas G. Bodie, Esquire, and Michael Paul Smith, Esquire. Testifying for the Petitioner was Arthur Thomas Ward, III, the property owner; Donald Huber, the general contractor who erected the accessory structure; James W. McKee, land surveyor and real estate developer, who prepared the site plans; William F. Kirwin, a land planner and landscape architect; and Frederick P. Klaus, real estate appraiser. Testifying for Appellants /Protestants were John R. Alexander, zoning administrator, and Michael Cromwell, the abutting property owner. The case was heard this day in its entirety.

Arthur Thomas Ward, III, testified that he purchased the site containing some 3.5 +/- acres zoned D.R. 1 in 1980. Since then, he has renovated the existing house that is some 240 +/- years old. He also renovated a decrepit pool house in 1982, and in 1986 added

Case No. 93-16-A Arthur Thomas Ward, III

a family room to the original structure. His next project was the two-car garage with a wine tasting room, a wine cellar, and the storage on the second floor. The ultimate cost of this project was \$150,000, and Mr. Ward entered as Petitioner's Exhibit 5 a series of photographs A through K depicting this accessory structure. Mr. Ward further testified that part of the reason for the high cost of this building was due to the fact that, in order to build it where it was located, extensive blasting of solid rock was necessary. This blasting was not only very expensive but also diminished his chances of lowering the elevation. It is totally uncontradicted that this is an attractive structure, and that it is aesthetically pleasing in that its general shape, roof line, etc., blend with all the existing structures. The first complaint as to the height of the building was recorded June 9, 1992, and a violation notice issued on June 20, 1992. Mr. Ward testified that he also had erected a privacy fence along the entire property line between his holdings and the Cromwell's, said fence being also depicted on the above-noted photographs. He further testified that the only way the 15-foot requirement could be attained would be to eliminate the second floor entirely, which would require removal of the dormer windows and the chimney.

Donald Huber, general contractor, next testified. Mr. Huber testified that he has been in the contracting business for 20 years, and that in those 20 years this is the first time any of his projects has ever suffered a stop work or violation notice. He

Case No. 93-16-A Arthur Thomas Ward, III

further testified that everything on this property is absolutely AI quality, and that he was the contractor in 1986 who constructed the addition to the main house. In 1989, he began the design of this proposed building and drew the construction drawings. He also testified that this is his first free-standing accessory building, and that it was designed to conform in size and shape with the existing buildings. On October 10, 1990, he presented to the clerk in the Department of Permits & Licenses his permit application, #B-072950. He also presented the clerk with the site plan and the construction drawings. At this point, it was his testimony that once he filled out the section of the permit application noted as "applicant information," the clerk then took the form and filled out the rest of the information on the sheet. Mr. Huber then walked through the various departments necessary to receive a permit. The building plans department approved the plans on October 10, 1990, signature by J. Picco. Zoning approved the plans on October 10, 1990, signature by John Alexander. Environment approved the plans on October 10, 1990, signature by Wesley Wood. On October 11, 1990, the permit was issued, and immediately thereafter, construction begun. Mr. Huber noted that on November 2, 1990, the footings were inspected and approved; on November 15, 1990, the foundation was inspected and approved; and on March 18, 1991, the framing was inspected and approved. The Board will note that at this stage of construction the building could be seen to be 21 ft. in elevation. The next inspection was on March 25, 1991 and

Case No. 93-16-A Arthur Thomas Ward, III

was approved; and on September 2, 1991, the building was noted as complete and an occupancy permit issued. The first indication that Mr. Huber had of any potential problem was in June of 1992 when he received a call from Mr. Ward noting the problem with the height of the building. Mr. Huber testified that during the permit process he specifically checked the setback requirements to be sure the building was properly positioned, but he never made inquiries as to any restriction on height or configuration of the building, nor did anyone in any department at any time ever mention the problem with the height.

James W. McKee, surveyor and real estate developer, testified that he drew the site plan to accompany the building permit. He noted that these steep roofs of raised seam construction are very typical of this area. He noted that the Cromwell home is 260 ft. from the new building, and the second Cromwell cottage is 270 ft. from the new building, and that the new building poses no harm or detriment to the health, safety or welfare of the area.

William F. Kirwin, land planner and registered landscape architect, described the beauty of the entire property, and evidenced his opinion that the location of the new building in relation to the driveway and the pool house was proper. He further testified that the rear of the Wards' new building can be properly screened, but only by planting some trees on the Cromwell property.

Frederick P. Klaus, a real estate appraiser, testified that the continuity of the roof line and shape with those of the

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Case No. 93-16-A Arthur Thomas Ward, III

existing buildings were aesthetically pleasing, and that the granting of this variance to permit this in no way would lower the property values of the adjoining property. He further testified that to reduce the height of this two-car garage at this time would be a tremendous hardship, and that as it exists, there is no detriment whatsoever to anyone's property values, and may in fact actually increase the value of neighboring properties. This concluded Petitioner's case.

The Protestants first presented John R. Alexander, representing the zoning administration, who explained his duties and noted that he reviews all plans and accepts the petitions for all the permits. It was his responsibility to review for compliance with setbacks, rear yard location, height compliance, etc. He noted that noncompliance with any of these would require that the plans be altered or a variance sought. He was shown the application for the permit, entered as Protestants' Exhibit 1, and noted that there appeared to be alterations on this sheet. He also noted that he had signed off on this permit application. On cross-examination, he testified that a site plan must accompany the permit application, as well as drawings for the proposed building. It was his testimony that he does not remember seeing the plans for the proposed building.

Next to testify was Michael Cromwell, the property owner to the west of the Ward property. It was his testimony that he permitted the use of his property during the construction of this

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Case No. 93-16-A Arthur Thomas Ward, III

building, and that upon completion of the construction he was satisfied in that his property was returned to its original pristine condition. Objections to this new building were that it is too big, too visible, and too high, and that it is his opinion that the value of his site is therefore reduced. He further testified that he became aware of the problem with the height of the building only very recently. This completed the testimony presented the Board by the Protestants /Appellants.

This encapsulation of the testimony and evidence taken this day is in no way to be considered as the total testimony but the record will speak for itself in its entirety.

From the testimony and evidence received, there are several givens. The building in question is complete and is 6.2 ft. too high. The building in question is not a ramshackle shed-type structure but is in fact a \$150,000 very attractive building. The building contractor personally walked through the various departments with his plans and received approval. The erection of the building went through all the normal processes of construction inspection. Not until almost one year after its completion, and a year and a half after the framing inspection, was a complaint lodged. Had this problem with the height been brought to anyone's attention at any time during the construction or the planning, it is apparent that the property owner would have met every effort to comply with the regulations as he has done so in all his other projects. In an estate of this kind, aesthetics are especially

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Case No. 93-16-A Arthur Thomas Ward, III

important. This, in combination with the necessity of blasting, would have lent credence to any request for a variance to permit the building to be built as it ultimately was. The Board is of the opinion that, at this stage of the proceedings, there would be an extreme hardship encountered by Mr. Ward through no fault of his own if the height limitation must now be complied with. The Board is therefore of the opinion that all of the above circumstances warrant the granting of the variance to permit this building to be of a height of 21.2 ft. and will so order.

ORDER

IT IS THEREFORE, this 16th day of JULY, 1993, by the County Board of Appeals of Baltimore County,

ORDERED that the requested variance to permit an accessory structure (garage) with a height of 21.2 ft. in lieu of the required 15 ft., in accordance with Joint/Petitioner's Exhibit 1, be and is hereby GRANTED; and it is further

ORDERED that, if Mr. Cromwell is agreeable to have the building screened as testified to by Mr. Kirwin by planting the screening on his (Cromwell's) property, the cost of this screening shall be Mr. Ward's responsibility.

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

William T. Hackett, Chairman
William T. Hackett, Chairman

Harry E. Buchheiser, Jr.
Harry E. Buchheiser, Jr.

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IN THE MATTER OF
THE APPLICATION OF
ARTHUR THOMAS WARD, III
FOR A VARIANCE ON PROPERTY
LOCATED ON THE SOUTH SIDE OF
CANDLEWICK ROAD, 500' WEST OF
CENTERLINE WEST JOPPA ROAD
(2003 W. JOPPA ROAD)
9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO: 93-16-A

DISSENTING OPINION

I respectfully dissent. Try as I might to accept the decision of the majority, I cannot. Chang-tsu, an ancient Chinese philosopher, commenting on the advisability of isolation, wrote "...for much knowledge is a curse". Today, I curse my legal knowledge and training for requiring me to vote to order the Petitioner to reduce the height of a superb building erected to house his cars, his wine tasting room, his wine cellar and to serve as a storage facility. The facts demonstrate it violates the height restriction of the Baltimore County Zoning Regulations (BCZR).

The problem arises in applying the law of area variances to the facts presented. One must prove that strict compliance with zoning regulations would result in practical difficulty or unreasonable hardship McLean v. Soley, 270 Md. 208, 310 A2d 783, (1973). As noted by the Court of Appeals in Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A2d 810, (1965) the essential basis for a variance consists of the hardship being caused solely through the manner of operation of the ordinance upon a particular property, considering its unique circumstances, self-

Case No. 93-16-A Arthur Thomas Ward, III (Dissent)

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inflicted hardship cannot be the basis for a variance. In Salisbury (supra) the Court stated:

"...The resultant hardship could have been avoided if the appellees had used proper diligence in ascertaining what the density requirements were..., and then made accurate measurements to see if this particular property met the ...requirements."

As the majority finds factually, Mr. Huber, the Petitioner's builder who handled all aspects of obtaining the permit based on drawings he made and submitted, never made inquiries as to any height restriction. Unfortunately, Mr. Ward, the Petitioner must suffer the result of his agent's error, since proper diligence would have disclosed the requirement which could have been met or a variance obtained, prior to construction, if needed.

Although Mr. Ward testified about the necessity of blasting which caused greater expense, the evidence failed to demonstrate that the top of the building needed to reach 21 feet 6 inches above the grade because it could not be placed further below grade due to rock that could not be blasted away.

I disagree with the majority, and find that the hardship suffered by the Petitioner is self-imposed.

THEREFORE, I would DENY the petition.

By: William Clark
C. William Clark

DATE: July 16, 1993



County Board of Appeals of Baltimore County

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

July 16, 1993

Thomas G. Bodie, Esquire
POWER AND MOSNER
21 W. Susquehanna Avenue
Towson, MD 21204

RE: Case No. 93-16-A
Arthur Thomas Ward, III

Dear Mr. Bodie:

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. Also enclosed is a copy of the Dissenting Opinion of C. William Clark.

Sincerely,

Kathleen C. Woldenhammer
Kathleen C. Woldenhammer
Administrative Assistant

encl

cc: Newton A. Williams, Esquire
Mr. Arthur Thomas Ward, III
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

BEFORE THE
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Case No. 93-16-A
Arthur Thomas Ward, III
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Zoning Variance from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (garage) with a height of 21.2 ft. in lieu of the required 15 ft., as more particularly described on Petitioner's Exhibit No. 1, the plat to accompany the Petition for Zoning Variance. The subject property and improvements thereon, are located at 2003 West Joppa Road in the Ruxton section of Baltimore County.

The Petitioner/property owner, Arthur Thomas Ward, III, appeared, testified, and was represented by Newton Williams, Esquire. Also appearing on behalf of the Petition was James W. McKee, the Professional Land Surveyor who prepared Petitioner's Exhibit No. 1., and Don Huber, the Contractor who constructed the subject garage. Appearing in opposition to the Petition were Dr. and Mrs. David Cromwell, who reside immediately adjacent to the subject property at 1932 Old Court Road. They were represented by Matthew Immler, Esquire.

Mr. Ward testified and presented the plan. The subject site is approximately 3.5 acres in area and zoned D.R.1. It is a substantial residential property located off of a panhandle drive known as Candlewick Road. The nearest public road with access to the site is Joppa Road.

Mr. Ward described the property, on which he resides with his wife

ORDER RECEIVED FOR FILING

Date July 16, 1993
By Sh. Ward

UNRECORDED

and children. The site is improved by a substantial dwelling. Also on site is a driveway, a pool house and pool, as well as the subject garage. Mr. Ward indicated that he purchased the house in August of 1980. Since then, he has made renovations and expended substantial sums in upgrading the site. In approximately October of 1990, Mr. Ward decided to construct the subject garage. The plans for the garage, which in dimension is 27 ft. by 37 ft. x 21.2 ft., were prepared by Mr. and Mrs. Ward and their contractor, Mr. Huber. The Petitioner testified that he and his contractor were unaware of the building height limitations set forth in the B.C.Z.R.

The description of the garage is in order. It is a substantial building which, according to Mr. Ward, cost approximately \$150,000.00 to construct. The structure has three (3) levels. In the lower level, (basement) is a 3500 bottle capacity wine cellar. The middle level contains room for two (2) automobiles, as well as a wine tasting room. The upper floor contains storage space. Mr. Ward testified that it would be extremely expensive to renovate the garage to bring same into compliance with the height limitation required by the B.C.Z.R. He also noted that the garage, in its present configuration, is compatible with the other existing buildings on site. He also testified that the storage space which the garage provides is necessary to accommodate his personal needs.

Donald S. Huber also testified. He advised that his firm had installed a family room addition to the main dwelling on the property in 1986. When approached by Mr. and Mrs. Ward in 1990 about construction of a garage, he was aware of the height limitation imposed by the B.C.Z.R. for an accessory building. He testified that he obtained the requisite building permit and that his application for same accurately listed the

proposed dimensions of the garage. He also offered several reasons why the building should remain as is, including compatibility with other buildings on the property and site constraints (underground rock and utilities) which would prevent a garage of a different size.

Lastly, Mr. James McKee testified on behalf of the Petition. He believes that the variance should be granted and that to deny the Petition would result in practical difficulty upon the property owners for the reasons stated by Mr. Ward and Mr. Huber.

In opposition to the Petition, David M. Cromwell, M.D., testified. His family owns the property which immediately adjoins the subject site at 1932 Old Court Road. His objections to the height of the garage center upon the structure's interference with his view from his property. He admitted that the structure was professionally done and expressed surprise that same could be constructed without regard to the applicable zoning regulations. He believes that the garage is a visual affront to the neighborhood and the height of same should be reduced.

Also testifying in opposition to the Petition was Bernard Semon, a recognized expert real estate appraiser. Mr. Semon believes that the garage contributes to a 15% diminution of the value of the improved neighboring properties owned by Dr. Cromwell and a 5% diminution to the Cromwells' unimproved lots, which are also adjacent. Although there was no professional testimony offered in contradiction of the testimony presented by Mr. Semon, the photographs, plans and other evidence calls into question Mr. Semon's conclusions.

Having recounted the testimony presented, attention must now be turned to the legal issues presented. In fact, there are two issues presented, namely, the merits of the proposed variance and the issue of equi-

table estoppel. That is, is the variance justified under the applicable zoning regulations and case law? If not, is the County now prohibited from revoking its building permit?

Turning first to the variance issue, 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).

After considering all of the testimony and evidence presented, I am persuaded that if the variance is granted such use will not be contrary to the spirit of the B.C.Z.R. and will not result in any injury to the public good.

It is clear that a practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special conditions exist that are peculiar to the subject lot and which justify the variance. These include the underground rock which prohibits construction of a larger basement and the desirability of an accessory struc-

ture which is compatible in shape, size and layout to the existing buildings. In addition, the variance requested will not cause any injury to the public health, safety and general welfare. Further, granting of the variance will be in strict harmony with the spirit and intent of the B.C.Z.R.

Having determined that the variance should be granted, it is unnecessary to reach a conclusion as to the estoppel issue. Let it be noted, however, that I find no evidence that the Petitioner, or his contractor, misrepresented any information to the County when applying for their permit. A copy of the permit offered in evidence at the hearing discloses a change to that section thereof which lists the garage's dimensions. However, it is unclear who made this change, whether it was made mistakenly, or with deliberate intent to deceive the County. In any event, having reached a determination that the variance should be granted, further consideration of that issue is unnecessary.

Lastly, it should be noted that I have the authority to impose appropriate restrictions upon the granting of any variance. In fact, landscaping to the rear of the subject garage facing the Cromwell property is appropriate. Subsequent to the hearing, this office received a letter from counsel for Mr. Ward offering certain landscaping to screen the garage from the Cromwell property. However, due to the location of the garage and its close proximity to the property line, this landscaping must be placed on the Cromwell property. In that I should not order landscaping on property not owned by the Petitioner, I shall require, as a restriction to the relief granted, compliance with the terms within Mr. Williams' letter, if acceptable to Dr. Cromwell.

ORDER RECEIVED FOR FILING
Date 9/29/92
By [Signature]

ORDER RECEIVED FOR FILING
Date 9/29/92
By [Signature]

ORDER RECEIVED FOR FILING
Date 9/29/92
By [Signature]

ORDER RECEIVED FOR FILING
Date 9/29/92
By [Signature]

MICROFILMED

-5-

MICROFILMED

Enclosed to the subject property, and public health and safety, and the resulting harm above the subject requested should be granted.

WHEREAS, the Petitioner, David M. Cromwell, M.D., has applied to the Zoning Commissioner for Baltimore County, Maryland, for a variance from Section 100.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (garage) with a height of 21.2 ft. in lieu of the required 15 ft. in accordance with Petitioner's Exhibit B, 1, 2, 3, 4, 5, 6, and 7, and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

2. With the acquiescence of Mr. David Cromwell and the other owners of the lot immediately adjacent to the subject garage, the Petitioner shall cause landscaping to be placed adjacent to the garage, all in accordance with the letter of Newton A. Williams, counsel for Mr. Ward, dated September 9, 1992.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

Suite 113, Courthouse
400 Washington Avenue
Towson MD 21204

(410) 887-4386

September 30, 1992

Newton A. Williams, Esquire
Nolan, Williams and Plumbhoff
Court Towers, Suite 700
210 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: Case No. 93-16-A
Petition for Zoning Variance
Arthur Thomas Ward, III, Petitioner

Dear Mr. Williams:

Enclosed please find the decision rendered in the above captioned case. The Petition for Zoning Variance has been granted, 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.

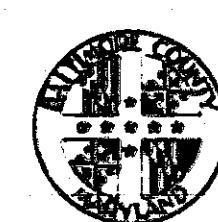
Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner

LES:mmm
att.
cc: Matthew Immler, Esquire
107 Nelson Road, Balto.Md. 21208
cc: Carl Gold, Esquire
406 Allegheny Avenue, Towson, Md. 21204
cc: Dr. and Mrs. David M. Cromwell, M.D.
1932 Old Court Road
Baltimore, Maryland 21204
cc: Arthur T. Ward, III
2003 W. Joppa Road, P.O. Box 432
Riderwood, Md. 21139

ORDER RECEIVED FOR FILING
Date 9/29/92
By [Signature]

-6-



Petition for Variance to the Zoning Commissioner of Baltimore County

for the property located at 2003 W. Joppa Road

which is presently zoned D.R. 1

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is "located in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 400.3, to permit 21.2 feet in height in lieu of the permitted 15 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

1. The building was built pursuant to a validly issued permit, permit No. B072950, properly and honestly applied for.
2. The building, a garage and wine storage facility, is a part of a 3.5 acre estate property, and its design and roof is in keeping with its surroundings.
3. That the building cannot be seen from any road, and it abuts the rear yard of its neighbors.

Property is to be posted and advertised as prescribed by Zoning Regulations. (see attached) 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.

Current Postmaster/Owner:

Type or Print Name

Signature

Address

City

State

Zip

Agency for Petitioner:

Type or Print Name

Address

City

State

Zip

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

Arthur Thomas Ward, III

Type or Print Name

Signature

Address

City

State

Zip

Agency for Petitioner:

Type or Print Name

Address

City

State

Zip

Agency for Petitioner:

Type or Print Name

Address

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Agency for Petitioner:

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City

State

Zip

Agency for Petitioner:

Type or Print Name

Address

City

DPW/Developers Engineering Division (Public Services)
Development Review Committee Response Form
Authorized signature Deanna A. Kennedy Date 8/10/92

Project Name	Waiver Number	Zoning Issue	Meeting Date
✓ Raymond F. And Deborah D. Borsetti	25		8-3-92 NC
DED DEPRM RP STP TE			
✓ Robert L. And Jeannette McElroy	26		NC
DED DEPRM RP STP TE			
✓ Gary G. And Ilene S. Walitt	27		NC
DED DEPRM RP STP TE			
✓ Bruce P. And India V. Curry	28		NC
DED DEPRM RP STP TE			
✓ Herbert B. And Edith G. Querido	29		NC
DED DEPRM RP STP TE			
✓ Emma E. Hubbard	30		NC
DED DEPRM RP STP TE			
✓ Arthur Thomas Ward, III	31		NC
DED DEPRM RP STP TE			

COUNT 14
FINAL TOTALS
COUNT 17
*** END OF REPORT ***

Department of Recreation and Parks
Development Review Committee Response Form
Authorized signature Walter J. Family Date 8/10/92

Project Name	Waiver Number	Zoning Issue	Meeting Date
✓ Elise Boyce Kelsey, Trustee w/w Eliza Gillet Boyce Et Al	24		8-3-92 No Comment
DED DEPRM RP STP TE			
✓ Raymond F. And Deborah D. Borsetti	25		No Comment
DED DEPRM RP STP TE			
✓ Robert L. And Jeannette McElroy	26		No Comment
DED DEPRM RP STP TE			
✓ Gary G. And Ilene S. Walitt	27		No Comment
DED DEPRM RP STP TE			
✓ Bruce P. And India V. Curry	28		No Comment
DED DEPRM RP STP TE			
✓ Herbert B. And Edith G. Querido	29		No Comment
DED DEPRM RP STP TE			
✓ Emma E. Hubbard	30		No Comment
DED DEPRM RP STP TE			
✓ Arthur Thomas Ward, III	31		No Comment
DED DEPRM RP STP TE			

COUNT 14
FINAL TOTALS
COUNT 19
*** END OF REPORT ***

DPW/Traffic Engineering
Development Review Committee Response Form
Authorized signature Walter J. Family Date 8/10/92

Project Name	Waiver Number	Zoning Issue	Meeting Date
Gary G. And Ilene S. Walitt	27	W/L	8-3-92
DED DEPRM RP STP TE			
✓ Bruce P. And India V. Curry	28	N/L	
DED DEPRM RP STP TE			
✓ Herbert B. And Edith G. Querido	29	N/L	
DED DEPRM RP STP TE			
✓ Emma E. Hubbard	30	N/L	
DED DEPRM RP STP TE			
✓ Arthur Thomas Ward, III	31	N/L	
DED DEPRM RP STP TE			

COUNT 14
FINAL TOTALS
COUNT 16
*** END OF REPORT ***

BALTIMORE COUNTY, MARYLAND
OFFICE OF PLANNING AND ZONING
New Courts Building
401 Bosley Avenue
Towson, MD 21204

MEMORANDUM

TO: Arnold Jablon, Director - Zoning Administration & Development Management

FROM: Ervin McDaniel, Chief Development Review Section Office of Planning and Zoning

DATE: August 4, 1992

SUBJECT: PETITIONS FROM ZONING ADVISORY COMMITTEE - August 3, 1992

The Office of Planning and Zoning has no comments on the following petitions:

BRUCE & INDIA CURRY	- ITEM 6
HUBBARD, EMMA	- ITEM 8
BORSETTI, RYMOND & DEBORAH	- ITEM 25
MCLEROY, ROBERT & JEANNETTE	- ITEM 26
MORTMAN, JOHN & MARY	- ITEM 17
WARD, ARTHUR THOMAS	- ITEM 31

If there should be any further questions or if this office can provide additional information, please contact Francis Morsey in the Office of Planning and Zoning at 887-3211.

RECEIVED
AUG 11 1992
ZONING OFFICE

Baltimore County Government
Office of Planning and Zoning
700 East Joppa Road, Suite 401
Towson, MD 21204-5554
August 4, 1992
(410) 887-4500

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

Re: Property Owner: ARTHUR THOMAS WARD, III
Location: 2003 WEST JOPPA ROAD
Item No.: 31/10/92 Zoning Agenda: AUGUST 3, 1992

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.

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

REVIEWERS: Deanna A. Kennedy Noted and Approved
Planning Group
Special Inspection Division
Fire Prevention Bureau

JP/PB

RECEIVED
AUG 10 1992
ZONING OFFICE

MICROFILMED

Baltimore County Government
Office of Planning and Zoning
Office of Planning & Zoning
October 26, 1992
(410) 887-3353

Baltimore County Board of Appeals
212 Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance
S/S Candlewick Road, 500 ft.
W of J of West Joppa Road
2003 W. Joppa Road
9th Election District
4th Councilmanic District
Arthur Thomas Ward, III
Case No. 93-16-A

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on October 23, 1992 by G. Matthew Immler, Attorney on behalf of the 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,
Arnold Jablon
Arnold Jablon - Director
Zoning Administration and
Development Management

Enclosures

cc: Arthur Thomas Ward, III
2003 W. Joppa Road, P.O. Box 432, Lutherville, MD 21139
Newton Williams, Esquire, 700 Court Towers, Towson, MD 21204
G. Matthew Immler, Esquire, 406 Allegheny Avenue, Towson, MD 21204
People's Counsel of Baltimore County
Old Courthouse, 400 Washington Avenue, Towson, MD 21204

APPEAL
Petition for Zoning Variance
S/S Candlewick Road, 500 ft.
W of J of West Joppa Road
2003 W. Joppa Road
9th Election District - 4th Councilmanic District
ARTHUR THOMAS WARD, III - Petitioner
Case No. 93-16-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 (Included with ZAC Comments)

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits:

1. Plat to accompany Petition
2. Nine photographs of site
3. Eighteen photographs of site
4. Copy of Building Permit (B072950)
5. Topographic Map

Protestant's Exhibits:

1. Red Line Tax Map

Zoning Commissioner's Order dated September 30, 1992 (Granted)

Notice of Appeal received October 23, 1992 from G. Matthew Immler

cc: Arthur Thomas Ward, III
2003 W. Joppa Road, P.O. Box 432, Lutherville, MD 21139
Newton Williams, Esquire, 700 Court Towers, Towson, MD 21204
G. Matthew Immler, Esquire, 406 Allegheny Avenue, Towson, MD 21204
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 ZADM
Public Services

10/29/92 - Following parties notified of hearing set for February 18, 1993 at 10:00 a.m.:

G. Matthew Immler, Esquire
Arthur Thomas Ward, III
Newton A. Williams, Esquire
People's Counsel for Baltimore County
P. David Fields
Public Services
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon

11/02/92 - P.O. from Mr. Ward did not receive copy of Notice of Assignment (had been advised of hearing date through his counsel, N. Williams). Changed address in file pursuant to Mr. Ward's request for same; sent copy of Notice.

12/07/92 - Request for Postponement from N. Williams, Esquire, Counsel for Petitioner; conflict w/Circuit Court schedule on 2/18/93.

12/8/92 - Above parties notified of POSTPONEMENT AND REASSIGNMENT to March 31, 1993 at 10:00 a.m. at request of Counsel for Petitioner.

3/23/93 - Letter from N. Williams, Esquire, requesting postponement /key witness will be out of country 3/27 through 6/04 (approx dates); requests date after April 15, 1993.

3/18/93 - Postponement GRANTED; case rescheduled for hearing on Wednesday, June 16, 1993 at 10:00 a.m. and notices sent this date.

MCKEE & ASSOCIATES, INC.
Engineering - Surveying - Real Estate Development

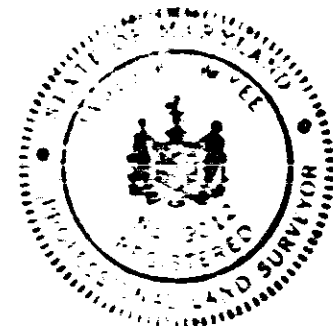
SHAWAN PLACE & SHAWAN ROAD HUNT VALLEY, MARYLAND 21030
Telephone: (410) 527-1555
Facsimile: (410) 527-1563

July 9, 1992

ZONING DESCRIPTION FOR
2003 WEST JOPPA ROAD
9TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

Beginning at a point in the centerline of Candlewick Road (private road - 30 feet wide) at the distance of 500 feet, more or less from the centerline of Joppa Road, thence running South 87° 01' 30" West 163.37 feet, by a curve to the right with a radius of 165.00 feet and an arc length of 77.78 feet, South 05° 02' 40" East 170.07 feet, by a curve to the right with a radius of 175.00 feet and an arc length of 15.8 feet, North 52° 44' 40" West 1.50 feet, North 05° 02' 40" West 17.3 feet, North 03° 30' West 162.16 feet, North 71° 09' 50" West 21.99 feet, South 15° 53' 10" West 203.65 feet, South 00° 09' 30" East 385.56 feet, North 15° 53' 10" East 177.16 feet, North 54° 01' 30" East 334.44 feet, and North 03° 23' 00" West 15.00 feet to the place of beginning.

Containing 52,460 square feet or 1.2 Acres more or less, as recorded among the land records of Baltimore County in Liber 6195, folio 785.



MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: 8/4/92
Posted for: Variance
Petitioner: Arthur T. Ward, III
Location of property: 5/8 Candlewick Rd., 500' W of Joppa Rd.
2003 W. Joppa Rd.
Location of Sign: Between Joppa Rd. & N. & S. Hous. & d/d
to sign
Remarks: _____
Posted by: M. H. H. Date of return: 8/24/92
Number of Signs: 1 **MICROFILMED**

CERTIFICATE OF PUBLICATION

TOWSON, MD. Aug 4, 1992
This is to certify that the proposed amendment was published in this newspaper, a weekly newspaper published at Towson, Baltimore County, Md., once in each of 1 consecutive weeks, the first publication appearing on Aug 4, 1992.

THE APPROXIMATE

S. Zaks, Editor
Publisher

\$ 260.93

MICROFILMED

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Date: 7-24-92
Arthur T. Ward, III
Residential Zoning Variance
2003 W. Joppa Rd.

Account: R-001-6100
Number: 19

Filing fee \$50.00

Please Make Checks Payable To: Baltimore County
BA COLL:38AM77-24-92 \$50.00

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

DATE: 7-24-92
FOR: Residential Zoning Variance
FROM: Arthur T. Ward, III
TELEPHONE: 823-7800

Account: R-001-6100
Number: 19

Please Make Checks Payable To: Baltimore County

receipt

10/27/92 A9300018
APPEAL FEES QTY PRICE
140 - OF ALL OTHER ORDERS 1 X \$175.00
150 - POSTING SIGNS / ADVERTISING 1 X \$35.00
TOTAL: \$210.00
LAST NAME OF OWNER: WARD III
Please Make Checks Payable To: Baltimore County
BA COLL:38AM10-27-92 \$210.00

MICROFILMED

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

93-16-A

Account: R-001-6100
Number: _____

DATE: 7-24-92
FOR: Residential Zoning Variance
FROM: Arthur T. Ward, III
TELEPHONE: 823-7800

MICROFILMED

Please Make Checks Payable To: Baltimore County
BA COLL:36AM08-31-92 \$67.62

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: 10/30/92
Posted for: Appeal
Petitioner: Arthur Thomas Ward, III
Location of property: 5/8 Candlewick Rd., 500' W of Joppa Rd.
2003 W. Joppa Rd.
Location of Sign: Facing Joppa Rd. at Smith's driveway, leading to property
Remarks: _____
Posted by: M. H. H. Date of return: 11/6/92
Number of Signs: 1

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 4th Date of Posting: 7/26/93
Posted for: Appeal
Petitioner: Arthur T. Ward, III
Location of property: 5/8 Candlewick Rd., 500' W of Joppa Rd.
2003 W. Joppa Rd.
Location of Sign: Facing roadways at hearing driveway leading to property
Remarks: _____
Posted by: M. H. H. Date of return: 3/1/93
Number of Signs: 1

COUNTY BOARD OF APPEALS

TELEPHONE MESSAGE

DATE: 2/23/93
FOR: Mr. Staley
FROM: Newton Williams
TELEPHONE: 823-7800

REGARDING: CASE NO. 93-16-A / ARTHUR THOMAS WARD, III
S/S Candlewick Road, 500' West
of c/l W. Joppa Road (2003 W. Joppa Rd.)
9th Election District
4th Councilmanic District

The sign posted at the above property has been removed. Newton telephoned (conference call w/Mr. Ward on the line) requesting that it be re-posted; sign is nowhere to be found / scheduled for hearing on March 31, 1993.

TAKEN BY: Kathi

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

111 West Chesapeake Avenue
Towson, MD 21204
JULY 1, 1992

(410) 887-3353

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 Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE 93-16-A (Item 9)
S/S Candlewick Road, 500' W of c/l West Joppa Road
2003 West Joppa Road
9th Election District - 4th Councilmanic
Petitioner(s): Arthur Thomas Ward, III
HEARING: TUESDAY, SEPTEMBER 1, 1992 at 9:00 a.m. in Room 118, Old Courthouse.

Variances to permit 21.2 feet in height in lieu of the permitted 15 feet.

Laurence B. Schmidt
Laurence B. Schmidt
Zoning Commissioner of
Baltimore County

cc: Arthur Thomas Ward, III
Newton A. Williams, Esq.

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

MICROFILMED

111 WEST CHESAPEAKE AVENUE
TOWSON, MD 21204

(410) 887-3353

DATE: 5/18/92

Arthur Thomas Ward, III
2003 W. Joppa Road
Baltimore, Maryland 21204

RE: CASE 93-16-A (Item 9)
S/S Candlewick Road, 500' W of c/l West Joppa Road
2003 West Joppa Road
9th Election District - 4th Councilmanic
Petitioner(s): Arthur Thomas Ward, III
HEARING: TUESDAY, SEPTEMBER 1, 1992 at 9:00 a.m. in Room 118, Old Courthouse.

Dear Petitioner(s):

Please be advised that \$ 67.62 is due for advertising and posting of the above captioned property and hearing date.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(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 106, Towson, Maryland 21204. Please place the case number on the check and make sure payable to Baltimore County, Maryland. In order to avoid delay of the issuance of proper credit and/or your order, immediate attention to this matter is suggested.

Carl J. Jahn

ARNDT JACOB
DIRECTOR

cc: Newton A. Williams, Esq.

MICROFILMED

Baltimore County Government
Zoning Commission
Office of Planning and Zoning
Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204
October 21, 1992 (410) 887-4386

Newton A. Williams, Esquire
210 W. Pennsylvania Avenue, Suite 700
Towson, Maryland 21204
RE: PETITION FOR ZONING VARIANCE
Arthur Thomas Ward, III - Petitioner
Case No. 93-16-A

Dear Mr. Williams:

This letter is being written to clarify any misunderstanding regarding the decision I made in the above-captioned matter. As you know, I granted the request to permit an accessory structure (garage) with a height of 15 feet in lieu of the maximum permitted 15 feet, subject to restrictions, by Order issued September 30, 1992. One of the restrictions required that the Petitioner, Mr. Ward, undertake certain landscaping on the property of his adjoining neighbor, Dr. David Cromwell.

To clarify the intent of that restriction, it should be noted that I believe it inappropriate to require that Mr. Ward landscape his neighbor's property without first having received consent to do so from the property owner. That is, if Dr. Cromwell does not want landscaping on his lot, I will not require Mr. Ward to do so. Further, the granting of the variance is not conditioned on the implementation of the landscaping. That is, if Dr. Cromwell does not acquiesce to the proposed landscaping set forth in your letter of September 9, 1992 and referenced in my Order, then the restriction, and not the variance, will be eliminated. That is, the variance is granted with or without the landscaping. However, said landscaping must be undertaken if Dr. Cromwell accepts Mr. Ward's offer.

I trust that this letter has clarified the intent of my Order. However, should you have any questions regarding same, please do not hesitate to contact me.

Very truly yours,
Lawrence E. Schmidt
Zoning Commissioner
for Baltimore County

cc: Matthew Immler, Esquire
107 Nelson Road, Baltimore, Md. 21204

People's Counsel: Mike

ZONING ENFORCEMENT

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Larry E. Schmidt
Zoning Commissioner
FROM: James H. Thompson
Zoning Enforcement Coordinator

SUBJECT: ITEM NO.: 9
PETITIONER: ARTHUR THOMAS WARD, III

VIOLATION CASE: # C92-2736

LOCATION OF VIOLATION: 2003 WEST JOPPA ROAD
BALTIMORE, MARYLAND 21093

DEFENDANT: ARTHUR THOMAS WARD, III

ADDRESS: SAME

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME	ADDRESS
G. MATTHEW IMMLER, ESQUIRE	406 ALLEGHENY AVENUE TOWSON, MARYLAND 21204

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

JHT/TV /ccr

304.7--The director of zoning administration shall establish appropriate fee schedules. (Bill No. 47, 1992.)

Section 305--REPLACEMENT OF DESTROYED OR DAMAGED DWELLINGS (S.C.Z.R., 1955; repealed by Bill No. 124, 1991; re-enacted by Bill No. 214, 1991.)

In case of complete or partial casualty loss by fire, windstorm, flood, or otherwise of an existing dwelling that does not comply with height or area requirements of the zone in which it is located, such dwelling may be restored provided area or height deficiencies of the dwellings before the casualty are not increased in any respect, and such restoration is subject to the limitations imposed by Section 104.2 of the Baltimore County Zoning Regulations.

Section 306--MINOR PUBLIC UTILITY STRUCTURES (S.C.Z.R., 1955.)

Minimum lot area regulations in any zone shall not apply to repeater, booster, or transformer stations, or small community dial offices. (S.C.Z.R., 1955; Resolution, November 21, 1956.)

Section 307--VARIANCES (S.C.Z.R., 1955; Bill No. 107, 1963.)

307.1--The zoning commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations and from sign 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. No increase in residential density beyond that otherwise allowable by the zoning regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking, or sign regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare. They shall have no power to grant any other variances. Before granting any variance, the zoning commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the zoning commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance. (S.C.Z.R., 1955; Bill No. 107, 1963; No. 32, 1988; Bill No. 2, 1992.)

307.2--In addition to the authority and limitations set forth in Section 307.1 above, within the Chesapeake Bay Critical Area, the zoning commissioner, or upon appeal, the Board of Appeals of Baltimore County, shall have the power to authorize the expansion

REV 2/92

3-38

IN THE MATTER OF
THE APPLICATION OF
ARTHUR THOMAS WARD, III
S/S Candlewick Road, 500' West
of 411 W. Joppa Road
(2003 W. Joppa Rd.)
9th Election District
4th Councilmanic District
VAR-Accessory structure
(existing garage)
w/height of 21.2' in lieu of
required 15'

* BEFORE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 93-16-A

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on June 16, 1993 at 10:00 a.m. in Room 48, Basement, Old Courthouse, located at 400 Washington Avenue, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: JOHN ALEXANDER
Address: Baltimore County Zoning Office
111 West Chesapeake Avenue, Towson, MD 21204

Requested by:

NAME: Thomas G. Bodie, Esquire
FIRM: POWER & MOSNER
ADDRESS: 21 W. Susquehanna Avenue
Towson, Maryland 21204

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

00:1 Wd 01 NNC 66

RECEIVED
COUNTY BOARD OF APPEALS

IN THE MATTER OF
ARTHUR THOMAS WARD, III
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 93-16-A

AFFIDAVIT OF SERVICE

I, the undersigned, certify that on June 10, 1993, I effected service of process by personally serving a Subpoena upon John Alexander at Baltimore County Office of Planning and Zoning, 111 W. Chesapeake Ave, Towson, MD 21204

to appear before the County Board of Appeals of Baltimore County.

I further certify that I am over the age of 18 and am not a party to this action.

I solemnly affirm under penalty of perjury that the contents of this Affidavit are true and correct to my knowledge.

(signature)
Name: Don Jackson
Firm: Power & Mosner
Address: 21 West Susquehanna Ave
Towson, Md 21204

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5340
(410) 823-7800
TELEFAX (410) 296-2765
September 9, 1992

Honorable Lawrence E. Schmidt, Esq. Carl Gold, Esquire
Baltimore County Zoning Commissioner 406 Allegheny Avenue
Court House Towson, Maryland 21204

Matthew Immler, Esquire
107 Nelson Road
Baltimore, Maryland 21208

Dear Commissioner Schmidt, Mr. Gold and Immler:

RE: The Ward Property
2003 W. Joppa Road
Case No.: 93-16-A
Hearing Date: Tuesday, September 1, 1992
at 9:00 a.m.

First of all, I would again like to thank everyone that attended the Hearing for their courtesy, and for the manner in which the Hearing was conducted.

As everyone will recall, Bernie Semon, Esquire, the Protestant's appraiser, testified that in his opinion there was damage to the adjoining property, which may range as high as 15%, but which would be mitigated to 5% or so by appropriate landscaping.

In that spirit, and in the spirit of cooperation, which Dr. Cromwell asked for, and offered during the Hearing, we would put forth the following suggestion to settle this case before it gets out of hand, and causes a total neighborhood dispute.

Our suggestion and offer is as follows:

1. That Dr. Cromwell and his family choose a landscaper of their choice to advise them as to how planting along their eastern boundary, and just west of the Ward's western boundary would act to solve this problem.

Page Two

2. My client has contacted several landscapers, and there seems to be a uniform agreement that White Pines, on the order of 16 to 18 feet in height, when planted, with 7 to 8 trees being planted in the gap would satisfactorily screen this building. Of course, there is no room for such large trees to be placed on the Ward Property.

3. We are told these 16 to 18 foot White Pines would grow slowly the first year, but then would readily reach a height sufficient to appropriately screen this building. Once planted, they are to remain, particularly as the Cromwell Property is developed. Further, the maintenance, trimming, etc., will be the Cromwell's responsibility, since they are on their land.

4. Parenthetically, 14 to 16 foot White Pines are only about half as expensive at \$425.00 as the \$870.00 installed, (and presumably guaranteed) cost of 16 to 18 foot White Pines. Furthermore, an attempt to plant trees higher than that is usually unsuccessful due to the shock of transplanting.

5. My client would propose to contribute up to 50% of the cost, not to exceed \$3,500.00, bearing in mind that had he built the building 15 feet in height at its present location, that there would be no obligation whatsoever to screen. Of course, my client must pre-approve any such landscape plan and expenditure.

We believe that this is a fair offer, and we would put it forward in a spirit of cooperation, and if it is agreeable to the Cromwells, we have no objection and in fact would ask that it be incorporated in the Order.

As I said at the Hearing, I have seen a number of neighborhood disputes, and they can cause a great deal of problems, and it would be my recommendation that we seek to settle this matter. Awaiting word from all involved, I am,

Sincerely yours,

Newton A. Williams

NAW/psk

cc: Mr. and Mrs. Thomas Ward
P.O. Box 432
Riderwood, Maryland 21139
Mr. James McKee
Mr. Jeff Schultz
McKee & Associates
Mr. Donald Huber

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5340
(410) 823-7800
TELEFAX (410) 296-2765
December 4, 1992

Honorable William Hackett, Chairman
County Board of Appeals
Old Court House, Room 48
400 Washington Avenue
Towson, Maryland 21204

Dear Mr. Hackett:

RE: Case No.: 93-16-A
Mr. Arthur Thomas Ward, III
2003 W. Joppa Road
Accessory Structure Variances
Scheduled for Thursday, February 18, 1993
at 10:00 a.m.
Request for Postponement Due to
Circuit Court Conflict

In reviewing my schedule for the coming year, I have just discovered a conflict between this case set for Thursday the 18th of February at 10:00 a.m., and the Cameron Mill argument before the Circuit Court set for the exact same date one-half hour earlier.

As the Board is well aware, the Cameron Mill case involves Carroll Holzer, Esquire, Larry Meigs, Esquire, myself, possibly the People's Counsel, and other parties, and it would be very difficult if not impossible to reschedule that Hearing date. Accordingly, we would respectfully ask that the Board reset this case for a date other than February 18, 1993, and my client, Mr. Ward will be traveling between Friday, March 12th and the week beginning March 22, 1993, and hence we would ask that it not be reset between March 12th and March 26th.

10-2113 7-73022
RECEIVED
COUNTY BOARD OF APPEALS

PP to 3/31/92

Mr. Hackett
Page Two
December 4, 1992

Thanking the Board for its kind attention to this request for postponement due to conflict, I am,

Respectfully,
Newton A. Williams
Newton A. Williams

NAW/psk

cc: G. Matthew Immler, Esquire
Mr. Thomas Ward
Phyllis Friedman, Esquire
People's Counsel

NEWTON A. WILLIAMS
THOMAS J. DENNIS
WILLIAM F. ENGLEHART, JR.
STEPHEN J. NOLAN
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
STEPHEN H. SCHENNING
DOUGLAS L. BURGESS
ROBERT E. CAHILL, JR.
E. BRUCE JONES
GREGORY J. JONES
J. JOSEPH CURRAN, II
CHRISTINE K. MCHERRY
*ALSO ADMITTED IN D.C.
*ALSO ADMITTED IN NEW JERSEY

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5340
1410 823-7800
TELEFAX: 1410 295-2755
March 5, 1993

JAMES D. NOLAN
J. CARLE PLUMHOFF
1940-1992
RALPH E. DEITZ
1931-1992
OF COUNSEL
T. BAYARD WILSON
WRITER & EDITOR
822
RECEIVED
JAN 15 1993
5 PM 4:04

Honorable William Hackett, Chairman
County Board of Appeals
Old Court House, Room 48
400 Washington Avenue
Towson, Maryland 21204

Dear Mr. Hackett:

RE: Case No.: 93-16-A
Mr. Arthur Thomas Ward, III
2003 W. Joppa Road
Accessory Structure Variances
Scheduled for Wednesday, March 31, 1993
at 10:00 a.m.

This is a request for postponement due to absence of a key, contractor witness, central to the case.

Recently, I have been speaking with counsel for the Cromwells, and it is my belief that Thomas G. Bodie, Esquire will shortly enter his appearance on behalf of the Cromwells.

Regretably, I find myself in the position of asking for a postponement from the Board, for what we believe is a very good reason. As the Board may know, from reading the Zoning Commissioner's Opinion and Order of September 30, 1992, this case involves testimony regarding an existing structure, its construction, permits, etc.

Unfortunately, our contractor, Mr. Donald Huber, will be out of the country on a nondiscretionary trip from about March 27 through the 4th or so.

Rather than presenting the testimony in a disjointed manner, my Petitioner, my contractor, and my other witnesses, we all believe that it would be sensible to present the Petitioner's case all at one time, to be followed by the Protestant's case, all in the same day, hopefully.

Page Two
March 5, 1993

Accordingly, we would respectfully request that the Board postpone this matter, and not reset it before April 15th at the very earliest. Thanking the Board and its staff for its consideration of this postponement request, I am,

Respectfully,
Newton A. Williams
Newton A. Williams

NAW/psk

cc: Thomas G. Bodie, Esquire
Mr. & Mrs. A. Thomas Ward, III
Phyllis Friedman, Esquire
People's Counsel

Dr. & Mrs. Melvin N. Kramer
2406 Sugarcoone Road
Baltimore, Maryland 21209
(301) 484-9135

June 8, 1993

Ms. Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Case No: 93-115-A
Melvin N. Kramer, Et Ux

Dear Ms. Weidenhammer:

At the end of our hearing on June 1, 1993, opposing counsel, Howard Alderman, Jr., Esquire, in his closing remarks made a reference in an inflammatory manner as to how we could not address the discussed water remediation with terracing as our expert discussed, without encroaching onto the neighboring property. This point was made to attempt to support his position that we should not be granted the relief sought, but he was not accurate.

Mr. Alderman made reference to the number of terraces and the distance required to install the terraces to prove his point that encroachment was required as part of our solution as stated by our expert. Nothing could be farther from the truth!

Enclosed please find a copy of a letter from the expert, Rich Kingsbury, ASLA, from the firm of Anshen + Allen, clearly stating his testimony for the record refuting the impression left with the Appeals Board. In fact, there will be no encroachment onto the neighboring property, and the terraces would not even approach the line on our property.

I would be grateful if you could provide a copy of this letter and Mr. Kingsbury letter to the Board for clarification during their deliberation.

Thank you for your assistance in this matter. If you have any questions or require further clarification of anything contained herein, please do not hesitate contacting me any time.

Very truly yours,
Melvin N. Kramer
Melvin N. Kramer,

June 4, 1993

Dr. Melvin Kramer
2406 Sugarcoone Road
Baltimore, Maryland 21209

Re: Zoning Appeal

Dear Dr. Kramer:

Per our conversation of June 4, 1993, I was stressed that my testimony regarding the proposed terraces could have been misconstrued.

The terraces as I discussed and proposed would be to the south of the existing and the proposed structure, therefore, not impacting the space needed for the addition of the adjoining property. As a matter of fact, the proposed terraces would not even approach the property line on your property.

I hope this clarifies my testimony.

Sincerely,

Rich Kingsbury
Rich Kingsbury, ASLA
Associate

ARK:da

MEMORANDUM FOR THE RECORD
DATE: 10/23/92

October 23, 1992

Baltimore County Board of Appeals
Mr. Arnold Jablon
111 W. Chesapeake Ave.
Towson, Maryland 21204

Re: Request for Appellate Review, In the Matter of Arthur Thomas Ward, III. Petition for Zoning Variance, Case No. 93-16-A.

Dear Mr. Jablon,

This office represents Dr. and Mrs. David Cromwell who opposed the Petition for Zoning Variance in the above captioned case. Zoning Commissioner Lawrence E. Schmidt granted the Variance in an opinion dated September 30, 1992.

We are now requesting an appeal of Commissioner Schmidt's decision and ask that the matter be heard by the Baltimore County Board of Appeals. Enclosed is a check in the amount of \$210.00 to cover the filing and sign fees.

Sincerely,

G. Matthew Immler
G. Matthew Immler, Esquire

Copy to: Newton A. Williams, Esquire
Nolan, Williams and Plumhoff
Court Towers, Suite 700
210 W. Pennsylvania Ave.
Towson, Maryland 21204

Copy to: Dr. David Cromwell

RECEIVED
10-23-92
ZONING OFFICE

David M. Cromwell, M.D.
1832 Old Court Road
Baltimore, MD 21204

Mr. Jablon
Director of ZADM
111 West Chesapeake Ave.
Towson, MD 21204

Dear Mr. Jablon:

August 16, 1992

I am writing about a variance hearing for case # 93-16A concerning A. Thomas Ward's unattached wine-cellar. I am the claimant represented by attorney's Carl Gold and Matthew Immler, and I would like to respectfully request a postponement from the scheduled September 1 hearing date.

As a physician in a fellowship training program at Johns Hopkins Hospital my schedule is generally busy and unpredictable. But I know with certainty that during the next two weeks and through the second full week of September it is unlikely that I'll be able to participate in that hearing.

I am sure Mr Ward would like a quick resolution to the issue, and I want to remain sensitive to that desire, but I would much rather participate in person than by written letter.

Thank you for your time and consideration.

Sincerely,

RECEIVED
AUG 18 1992
ZONING OFFICE

MICROFILMED

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

Robert Cromwell *1932 Old Court Rd. Baltimore, MD 21204*

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

David M. Ward, III *2003 W. Joppa Rd. P.O. Box 432 LUTHERVILLE, MD 21139*
LEAH WILLIAMS *700 COURT TOWERS*
Don Huber *5 SHAWAN RD. JACHT VALLEY, MD 21038*
Don Huber *213 Old Padonia Rd. 21030*

MICROFILMED

ORIGINAL

IN THE MATTER OF: * BEFORE THE
ARTHUR THOMAS WARD, III * COUNTY BOARD OF APPEALS
for a variance on property * OF BALTIMORE COUNTY
located on the south side * Case No. 93-16-A
Candlewick Road, 800' west * June 16, 1993
of c/l West Joppa Road *

The above-entitled matter came on for hearing
before the County Board of Appeals of Baltimore County at
the Old Courthouse, Towson, Maryland 21204 at 10 o'clock
a.m., June 16, 1993.

Reported by:
C.B. Pease

BOARD OF APPEALS



Plat to accompany Petition for Zoning ☒ Variance ☐ Special Hearing

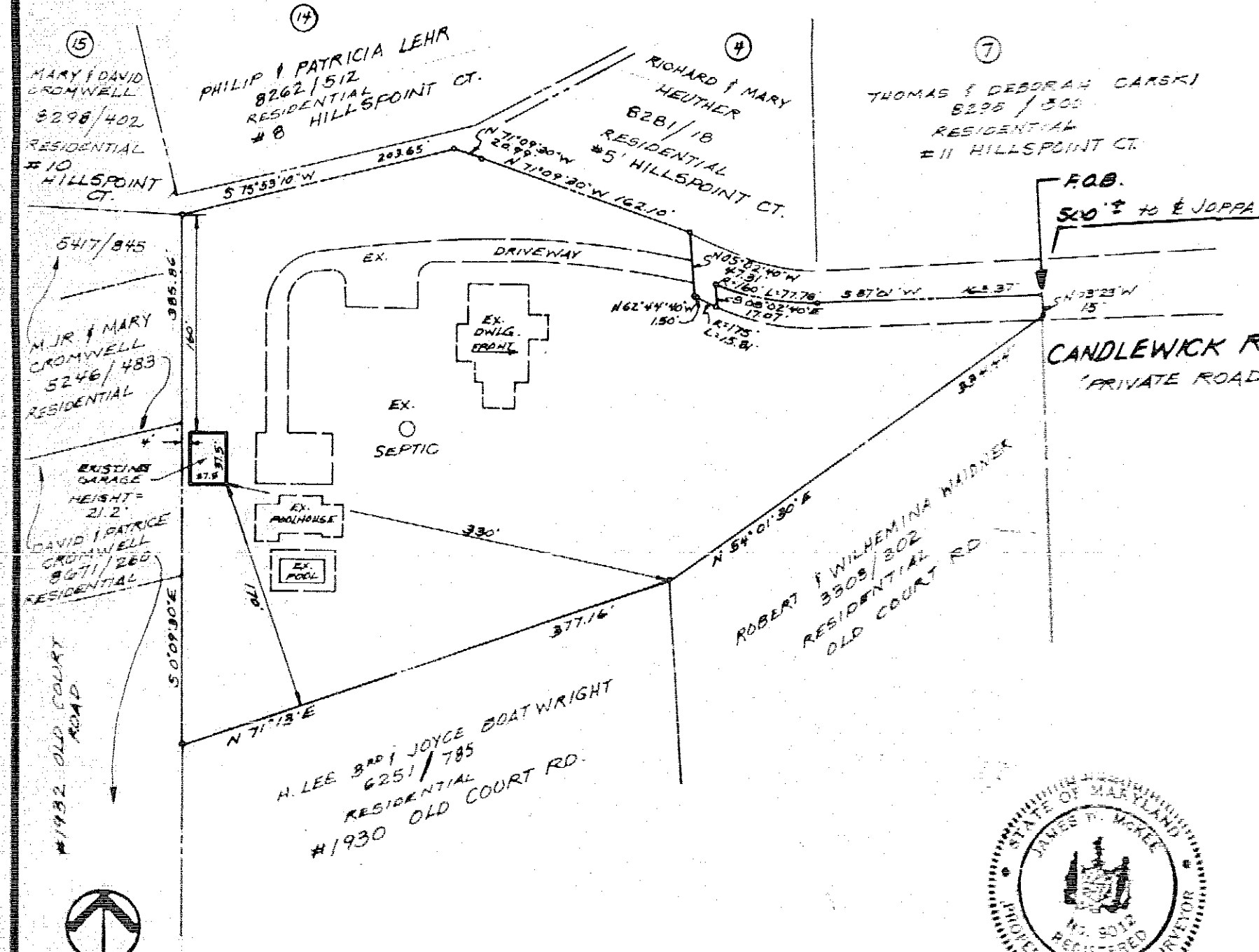
PROPERTY ADDRESS: #2003 W. JOPPA ROAD

Subdivision name: N/A DEED REF. 6195/785

plat book# - , folio# - , lot# - , section# -

OWNER: ARTHUR THOMAS WARD, III

"SUNSET KNOLL"
4 60/84



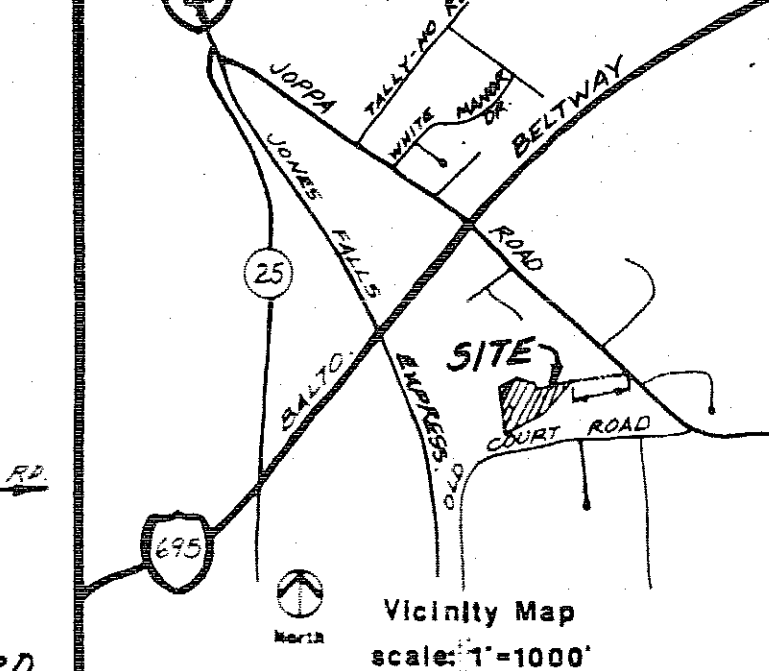
North

date: 7-7-92
prepared by:

McKEE & ASSOCIATES, INC.
CIVIL ENGINEERS - LAND SURVEYORS
SHAWAN PLACE 5 SHAWAN ROAD
HUNT VALLEY, MD 21030
PHONE - (410) 527-1555

Scale of Drawing: 1" = 100'

see pages 5 & 6 of the CHECKLIST for additional required information



LOCATION INFORMATION

Councilmanic District: 4TH

Election District: 9TH

1"=200' scale map: NW 118 & 110

Zoning: DR-1

Lot size: 3.5 acreage 152,460 square feet

SEWER: ☒ public ☒ private

WATER: ☒ ☐

Chesapeake Bay Critical Area: ☐ ☒

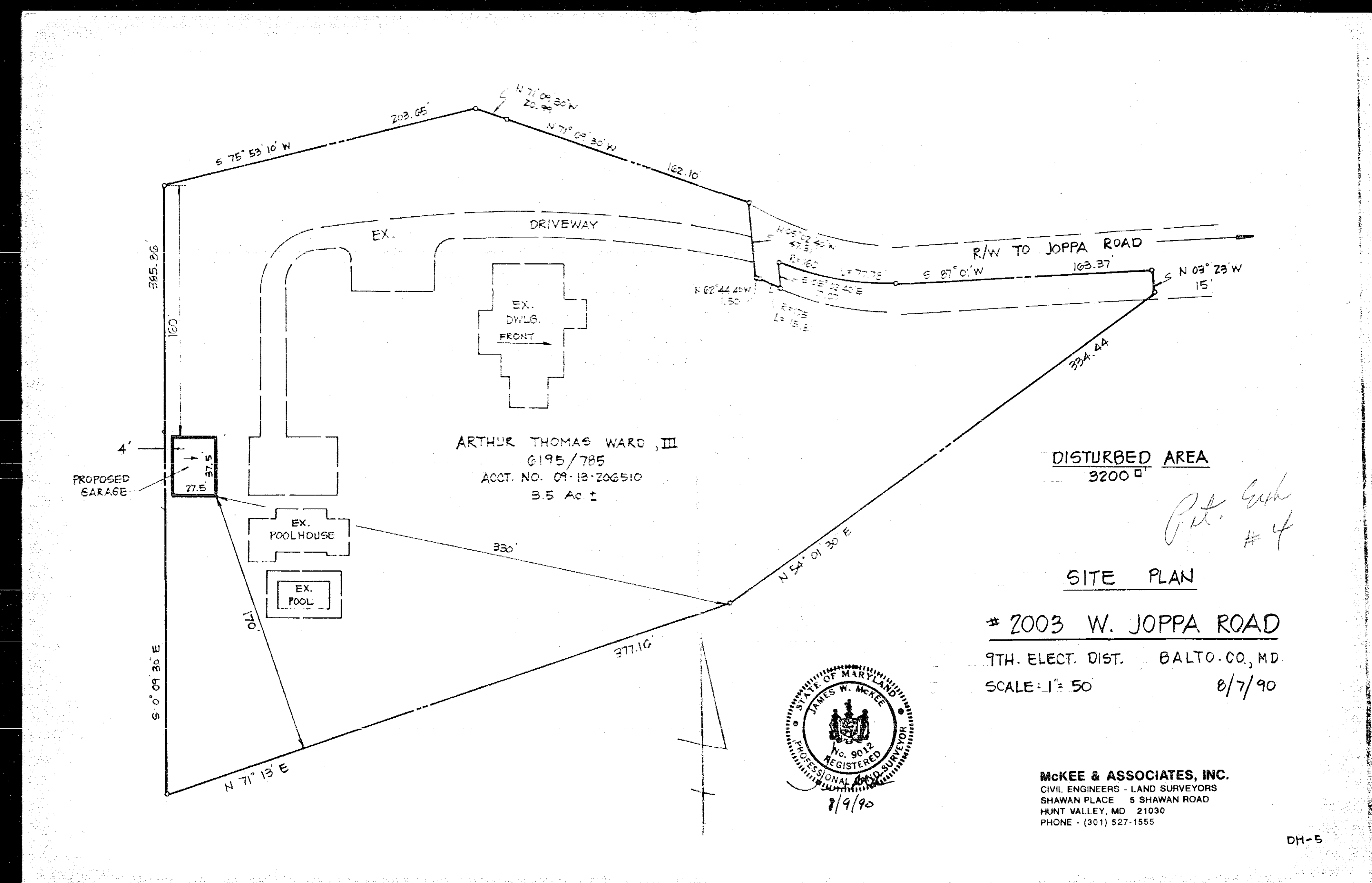
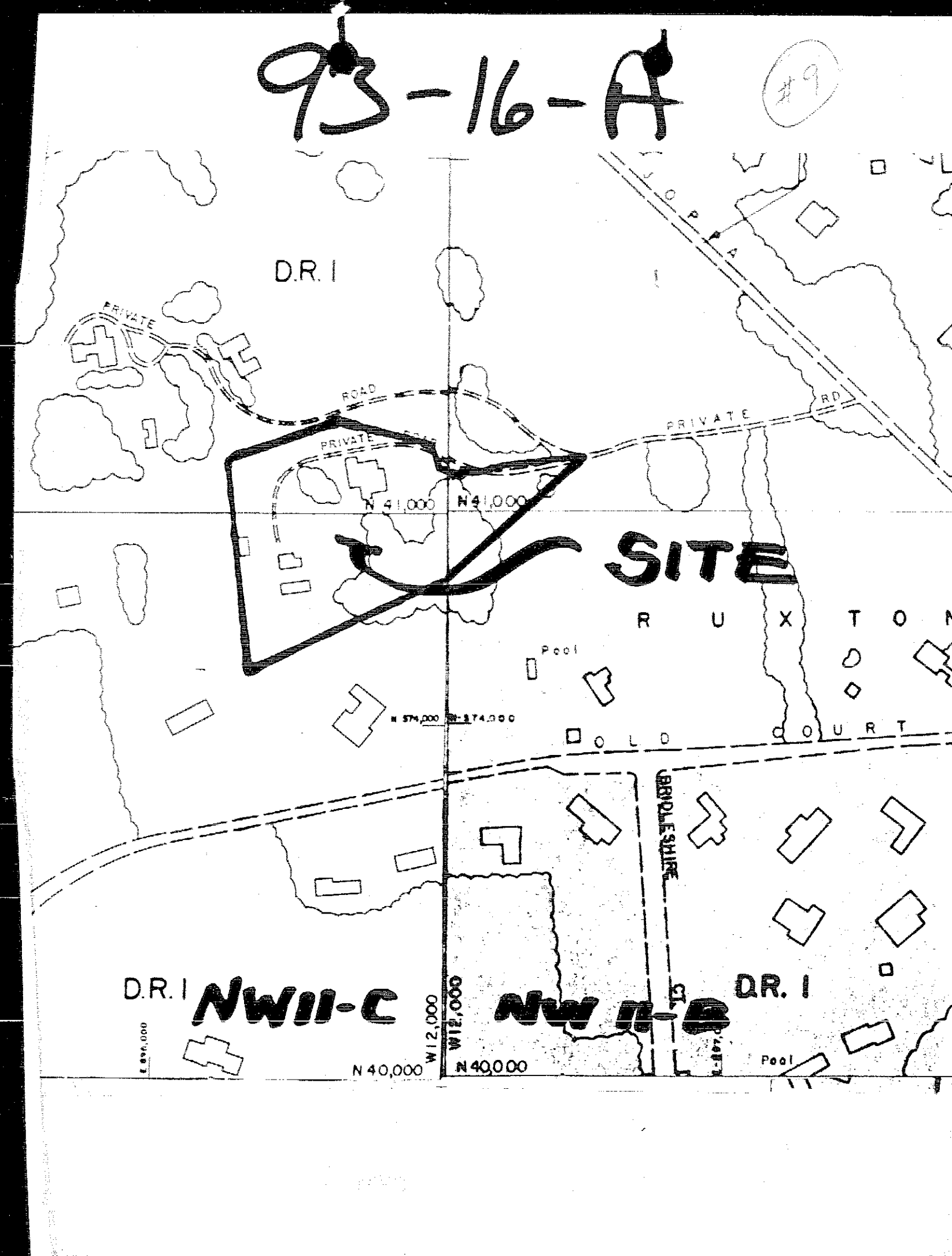
Prior Zoning Hearings: NONE

Zoning Office USE ONLY

reviewed by: ITEM #: CASE#:

93-16-A

Pet No. 1



DISTURBED AREA
3200 sq

SITE PLAN

#2003 W. JOPPA ROAD

9TH. ELECT. DIST. BALTO. CO., MD.

SCALE: 1" = 50'

8/7/90



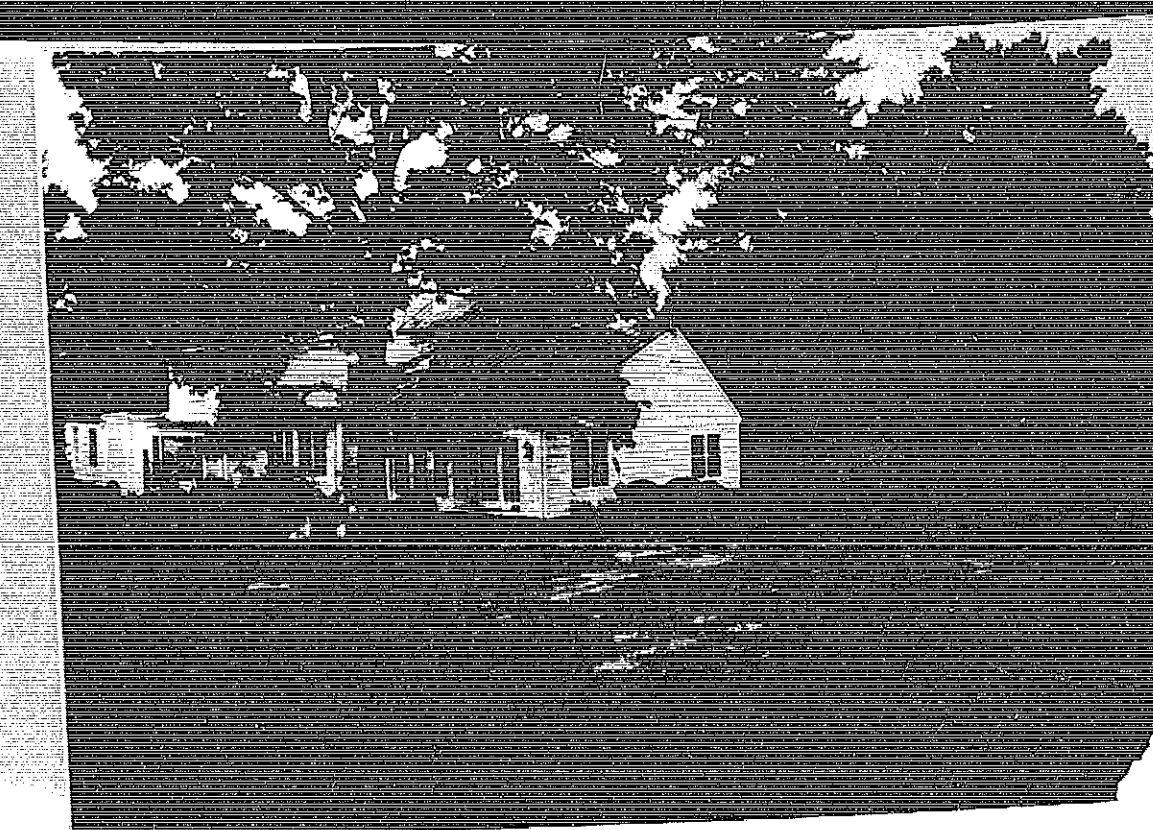
McKEE & ASSOCIATES, INC.
CIVIL ENGINEERS - LAND SURVEYORS
SHAWAN PLACE 5 SHAWAN ROAD
HUNT VALLEY, MD 21030
PHONE - (301) 527-1555

DH-5



1. Front of 2003 W. Joppa Rd.

Wind
Case
93-16-A
2003
W. Joppa
Rd.

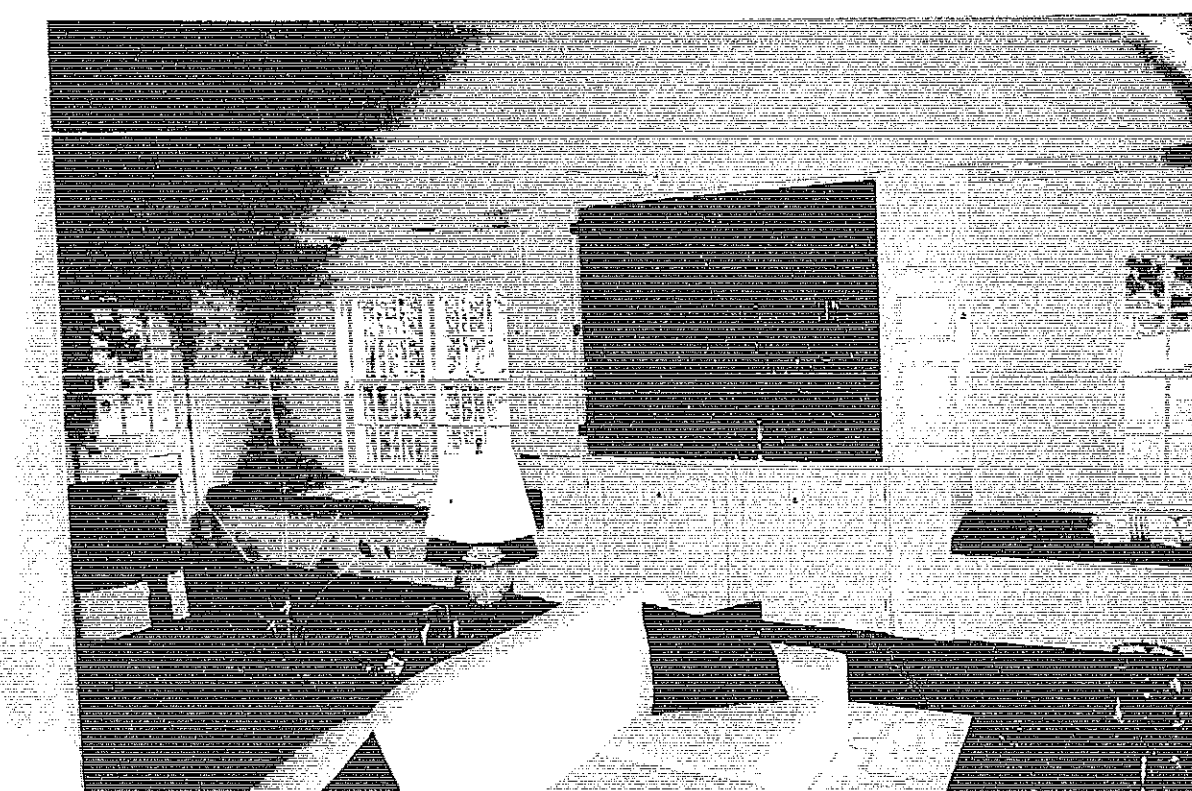


2. Addition to House.

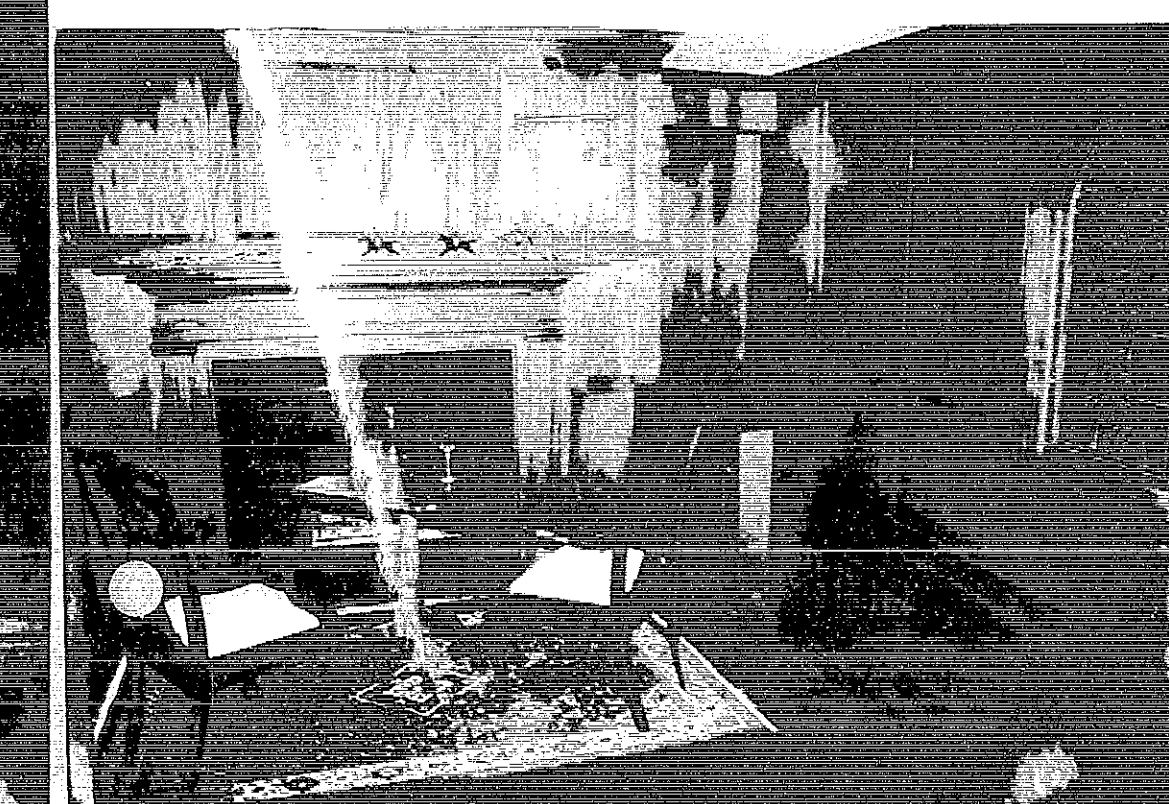


3. Family Room Addition

Ward



4. Same.



5. Wine Tasting Room



6. Wine Racks.



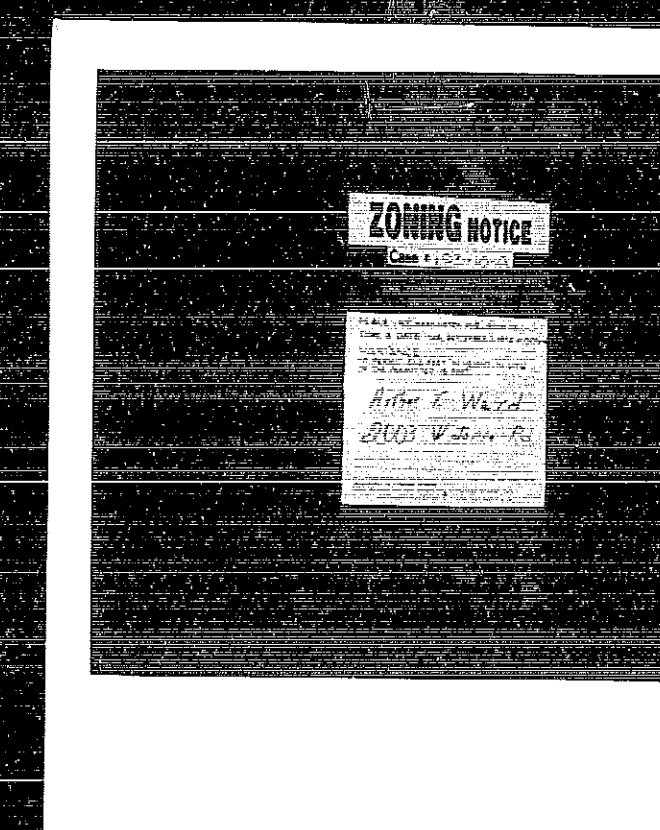
7. Storage Room.



8. Wine Racks



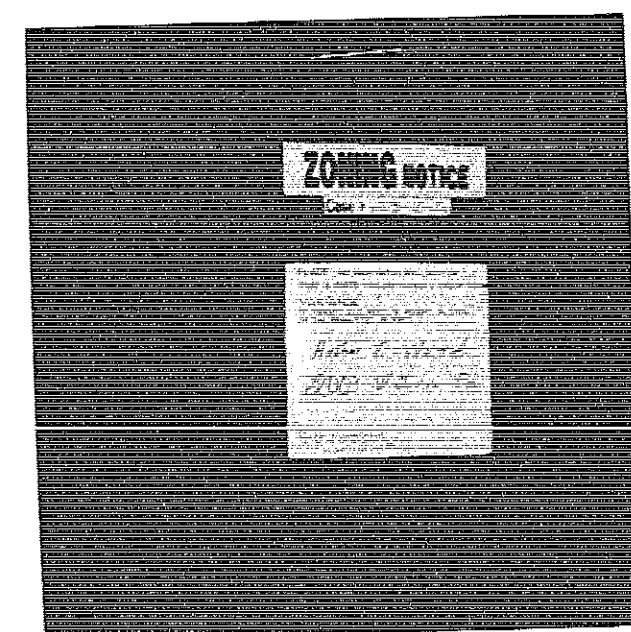
9. Original Grade.





A. Pool House & Garage
Looking S on driveway

Ward
Case
93-16-A.
2003
W. Joppa
Rd.



B. Looking W at
Garage Bldg.

Zoning Sign on
C. W. Joppa Rd.



D. Front of Garage - Wine Tasting
Room Bldg.



E. Looking W between 2 bldgs at
shed roofs



H. Looking SW over 2 sheds. toward
home at 1932 Old Court Rd.



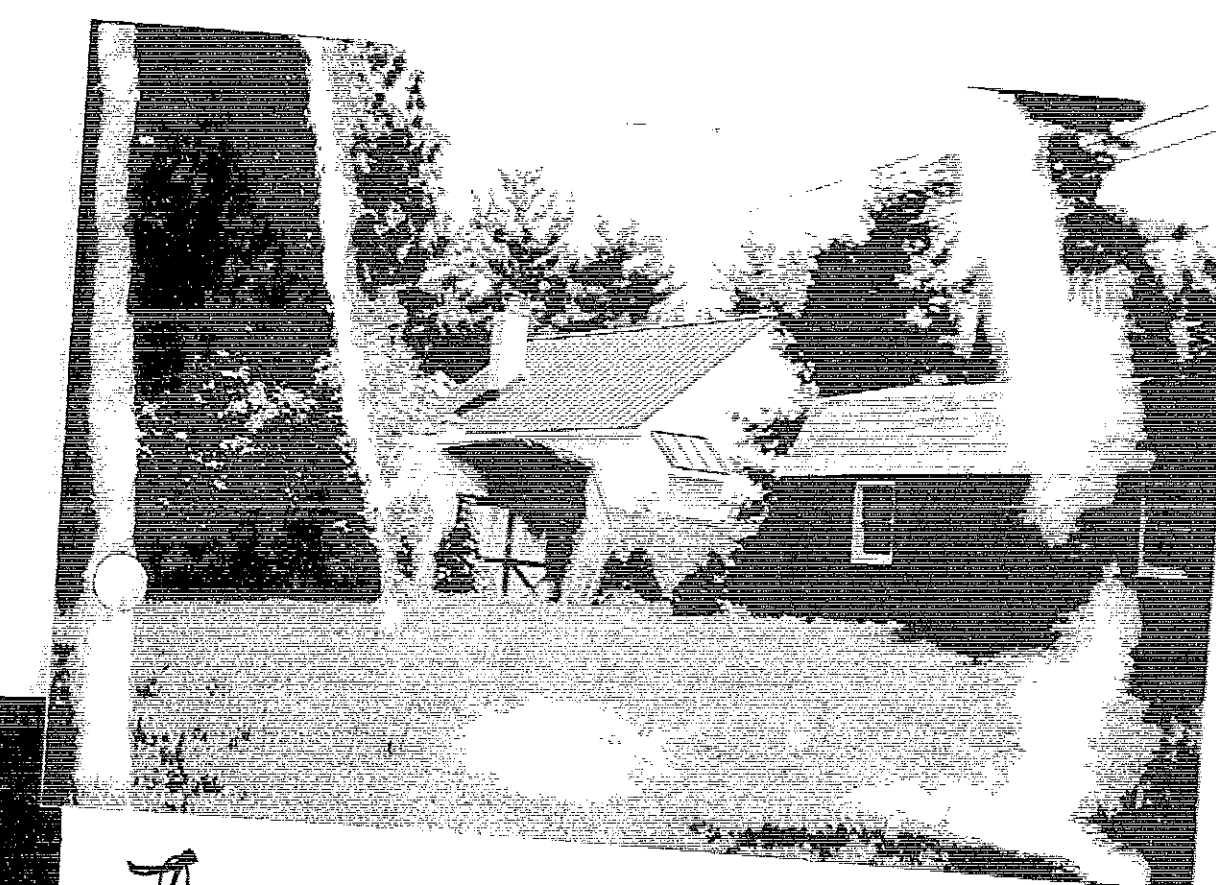
I. Close up of some reeds



F. S end of Ward Garage and
fence - shed on
property to W



G. N end of Garage -
Wine Room window view



J. Looking at SW/c Corner
of Ward Bldg. from
1932 Joppa Rd. side.



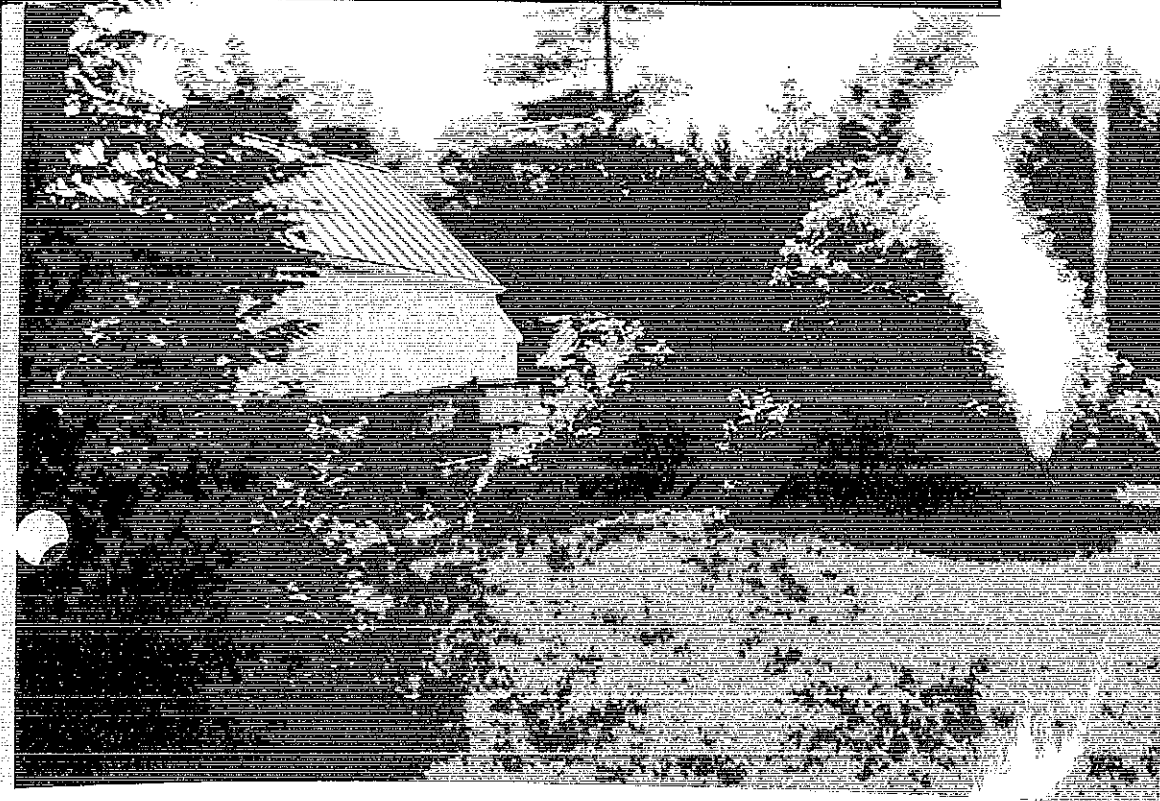
M. Looking at end of pool house
and 1932 shed.



J. NW/c of new bldg.



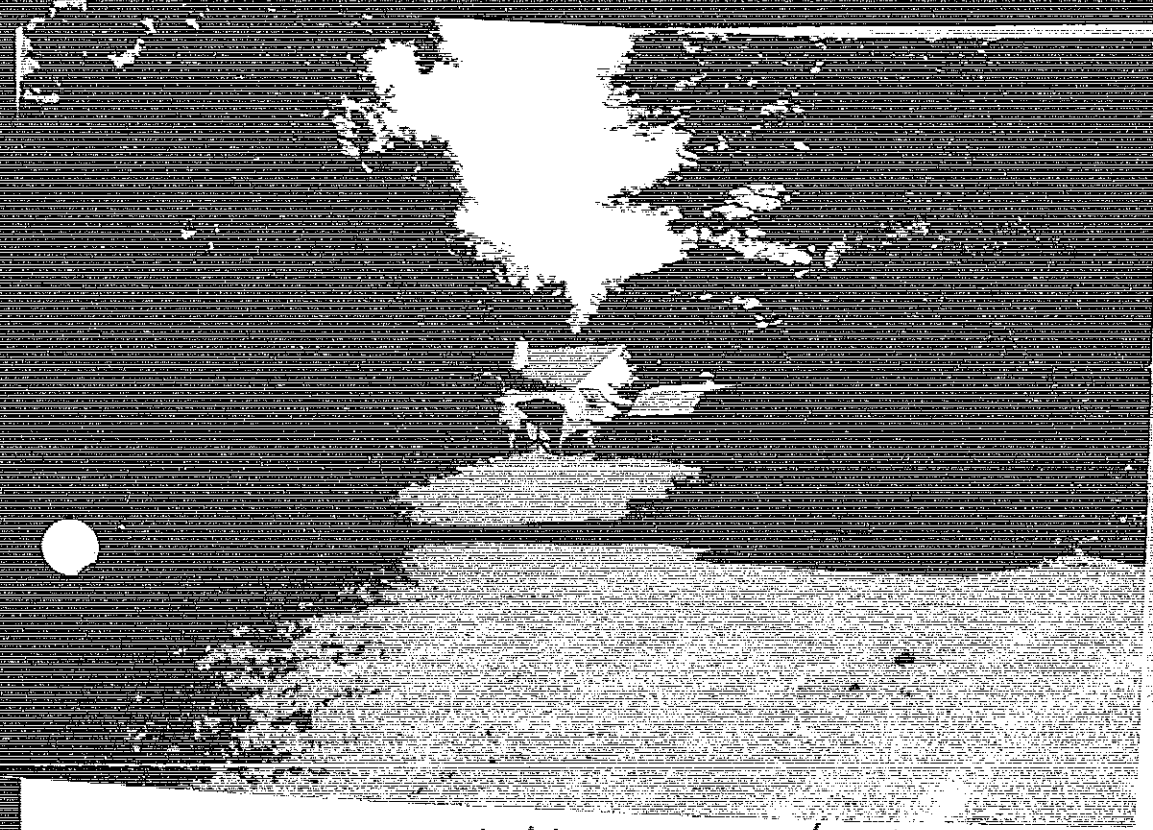
K. N end of shed at 1932
Old Court Rd.



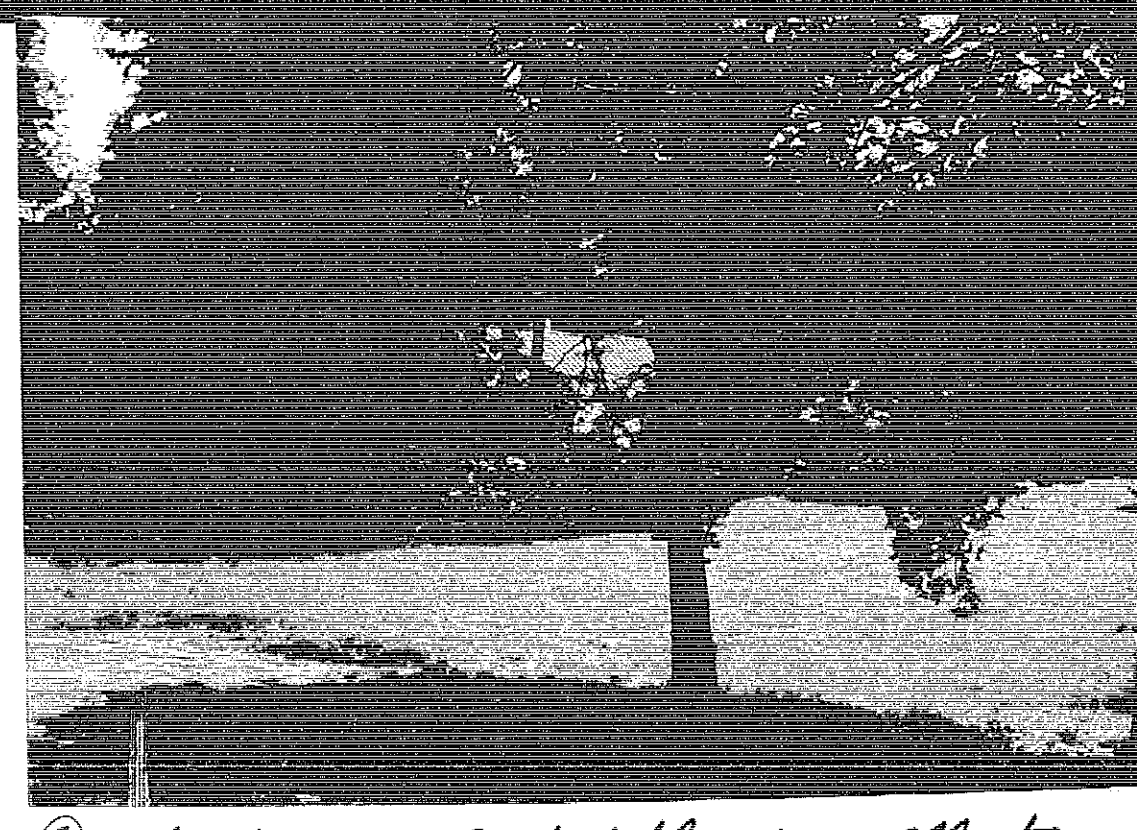
N. Looking SE at N shed
and Bldg.



O. Looking directly E at bldg.
from West



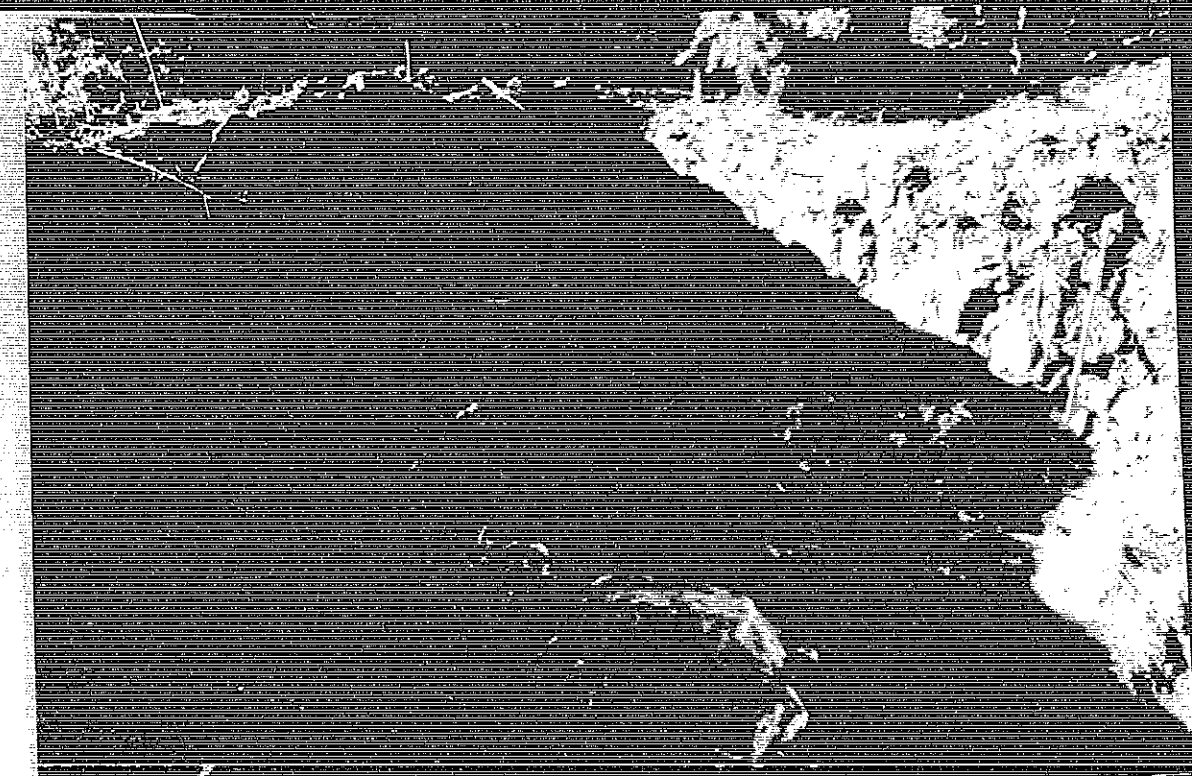
P. View of hills, + shade from 1932 Old Court Rd.



Q. Looking SE at hill from Mist



R. Blasting experts used by Wards.



S. Rock encountered during grading and construction



A. Entrance - common driveway - W. Joppa Rd., N of Old Court



B. Ward Driveway, looking west



C. Front of Ward House, looking west

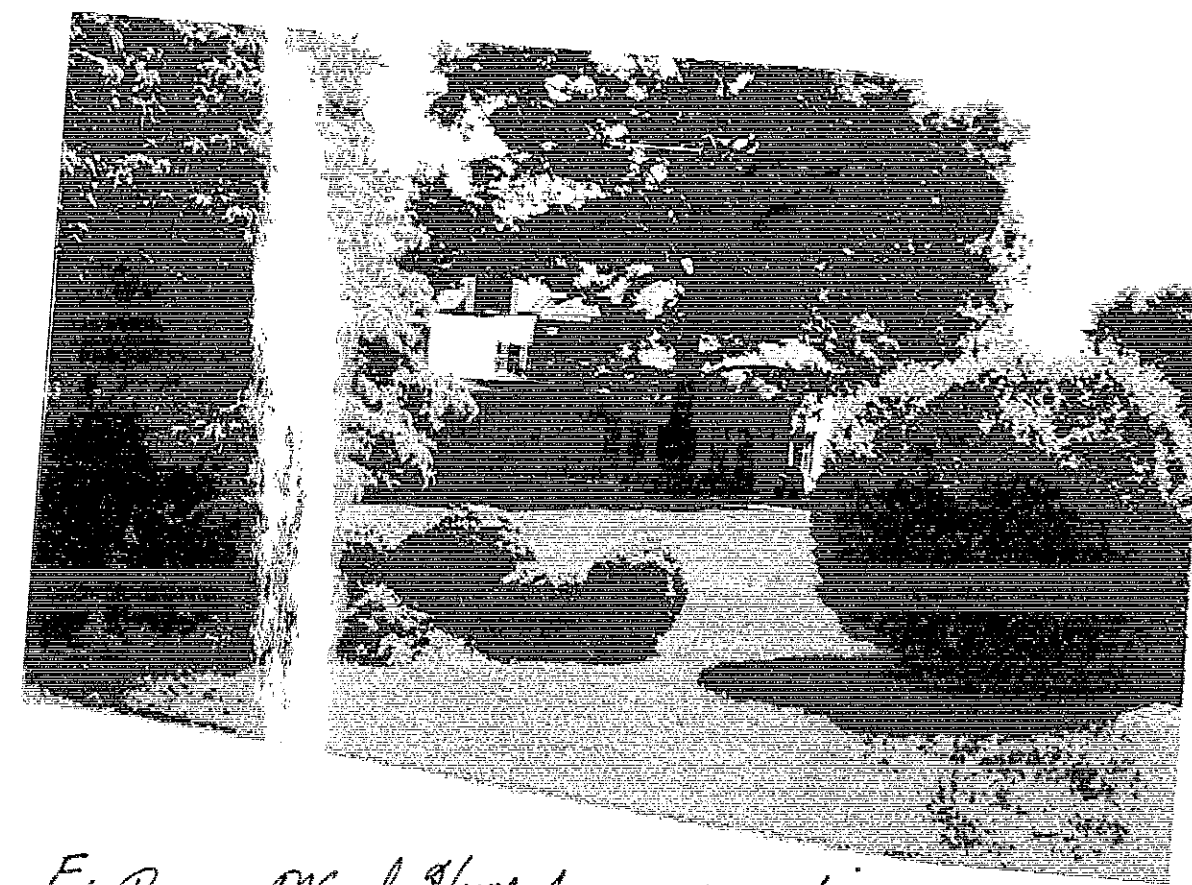


D. South end of Ward House

The Ward Property
2003 West Joppa Road
Case No. 93-16-A



E. Ward rear yard and south side yard.



F. Rear of Ward Home from near driveway



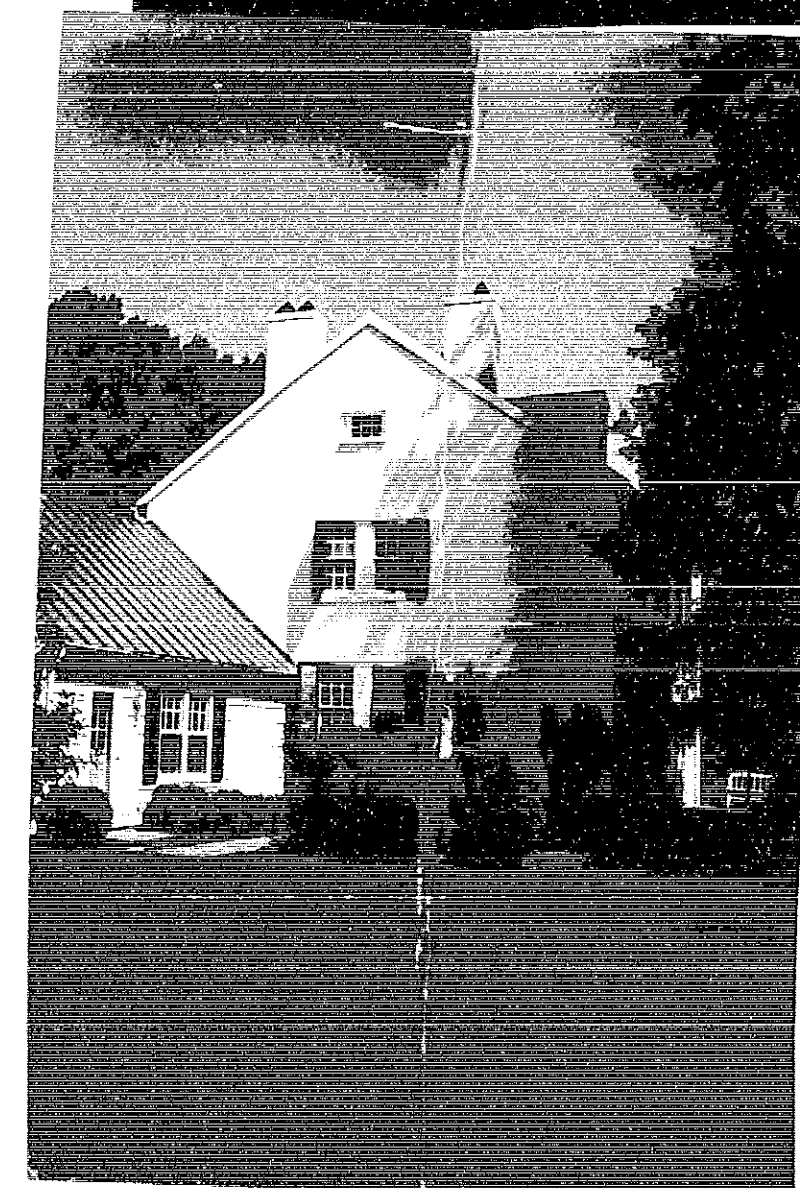
G. Ward Garage, Wine Cellar and Storage Building looking west



H. Ward Pool House, looking south, garage on right



I. North end of Ward Garage, looking southwest



J. South end of Ward Home



K. South end of Ward Garage, looking north