

Appellee Todd Unger filed a Petition for Special Hearing in June 1993 with the Zoning Commissioner of Baltimore County, requesting a determination that Building Permit No. B158562 complied with the Baltimore County Zoning Regulations ("B.C.Z.R."). Mr. Unger wanted to convert his existing carport into a garage. After a hearing, the Deputy Zoning Commissioner approved the petition by written opinion and order dated October 14, 1993, with the restriction that he not erect a peaked roof over the garage. Mr. Unger appealed the decision to the Baltimore County Board of Appeals ("the Board"). An evidentiary hearing was held on March 22, 1994, and the permit was approved with no restrictions. Appellants' appeal from a judgment of the Circuit Court for Baltimore County that affirmed the Board's approval.

Appellants present the following questions,<sup>2</sup> which have been rephrased for clarity:

- I. Is the enclosed garage an accessory building that is exempt from the usual minimum rear yard distance limit?
- II. Did the Board "capriciously and unreasonably" reverse an earlier decision?

---

<sup>1</sup>Appellants are Catherine Asendorf, Jack Howard, Cynthia Linthicum, Lorraine Zaganas, Cynthia Bussey, Samuel Lesight, Joseph J. Quingert and June Zang, all of whom live in the immediate area of Mr. Unger's home; and People's Counsel for Baltimore County ("People's Counsel").

<sup>2</sup>Appellants also ask: "Whether the Circuit Court opinion failed to recognize the legal character of the issues presented, used the wrong scope of review, and encouraged the filing and approval of building permit applications without disclosure of material facts and in violation of zoning requirements?" We need not address this issue because we use the same standard of review as that used by the circuit court, and therefore need only determine whether the Board's action was proper or improper. See, e.g., *Board of County Commissioners v. Holbrook*, 314 Md. 210, 218 (1988).

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL  
FOR BALTIMORE COUNTY  
Room 47 Washington Avenue  
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washing-  
ton Avenue, Towson, MD 21204

CIVIL  
ACTION  
No. 94-CV-03487  
/78/371

IN THE CASE OF: IN THE MATTER OF  
TODD UNGER  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE NORTHEAST SIDE OF  
SUSQUEHANNA AVENUE, 455' NORTHWEST OF  
THE CENTERLINE OF LINDEN AVENUE  
(244 E. SUSQUEHANNA AVENUE)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT  
CASE NO. 93-460-SPH

\* \* \* \* \*

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett, Michael B. Sauer, and Robert O. Schuetz, 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, Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Washington Avenue, Towson, Maryland 21204, Petitioner; Todd Unger, 244 E. Susquehanna Avenue, Towson, Maryland 21204; Kenneth G. Macleay, Esquire, ROLLINS, SMALKIN, RICHARDS & MACKIE, 401 N. Charles Street, Baltimore, Maryland 21201-4405, Counsel for Mr. Unger; 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

RECEIVED AND FILED  
94 APR 19 PM 2:33  
CLERK OF THE CIRCUIT COURT  
BALTIMORE COUNTY

93-460-SPH, Todd Unger  
File No. 94-CV-03487/78/371

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Washington Avenue, Towson, Maryland 21204, Petitioner; Todd Unger, 244 E. Susquehanna Avenue, Towson, Maryland 21204; Kenneth G. Macleay, Esquire, ROLLINS, SMALKIN, RICHARDS & MACKIE, 401 N. Charles Street, Baltimore, Maryland 21201-4405, Counsel for Mr. Unger, this 19th day of April, 1994.

*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

April 19, 1994

Peter Max Zimmerman  
People's Counsel  
for Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: Civil Action No. 94-CV-03487  
Todd Unger

Dear Mr. Zimmerman:

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*  
Charlotte E. Radcliffe  
Legal Secretary

Enclosure



Printed with Soybean Ink  
on Recycled Paper



County Board of Appeals of Baltimore County

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

April 19, 1994

Kenneth G. Macleay, Esquire  
Rollins, Smalkin, Richards & Mackie  
401 N. Charles Street  
Baltimore, Maryland 21201-4405

RE: Civil Action No. 94-CV-03487  
TODD UNGER

Dear Mr. Macleay:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on April 15, 1994 in the Circuit Court for Baltimore County from the majority 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).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 78/371/94-CV-03487.

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

Very truly yours,

A handwritten signature in cursive script, reading "Charlotte E. Radcliffe".

Charlotte E. Radcliffe  
Legal Secretary

Enclosure

cc: Todd Unger  
Cynthia Linthicum  
Joseph J. Quingert  
Jack R. Howard  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards  
Docket Clerk /ZADM  
Arnold Jablon /ZADM

Paul Lee  
Walter Asendorf  
Samuel Lesight



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IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL  
FOR BALTIMORE COUNTY  
Room 47 Washington Avenue  
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE COUNTY BOARD OF  
APPEALS OF BALTIMORE COUNTY  
Room 49, Old Court House  
400 Washington Avenue  
Towson, Maryland 21204

IN THE CASE OF: IN THE MATTER OF  
TODD UNGER  
FOR A SPECIAL HEARING ON  
PROPERTY LOCATED ON THE NORTH-  
EAST SIDE SUSQUEHANNA AVENUE,  
455' NORTHWEST OF THE CENTER-  
LINE OF LINDEN AVENUE  
(244 E. SUSQUEHANNA AVENUE)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT

RECEIVED  
COUNTY BOARD OF APPEALS

94 APR 18 AM 11:56

CIVIL ACTION

78 / 371 / 94CV3487

\* \* \* \* \*

PETITION FOR JUDICIAL REVIEW

People's Counsel for Baltimore County hereby requests judicial review of the decision of the County Board of Appeals, in the case of: In The Matter Of Todd Unger, for a Special Hearing on property located on the northeast side Susquehanna Avenue, 455' Northwest of the Centerline of Linden Avenue (244 E. Susquehanna Avenue), 9th Election District, 4th Councilmanic District, dated April 1st, 1994. People's Counsel was a party to the proceeding before the County Board of Appeals of Baltimore County in this matter.

RECEIVED AND FILED

94 APR 15 PM 12:58

CLERK OF THE CIRCUIT COURT  
BALTIMORE COUNTY



Peter Max Zimmerman  
People's Counsel  
For Baltimore County

PETITION OF: PEOPLE'S COUNSEL

CIVIL ACTION # 94-CV-03487 78/571

IN THE MATTER OF TODD UNGER

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

  
Clerk's Office

Date: \_\_\_\_\_

**Sandra Sanidas — 887-2660**  
Civil Assignment Commissioner

**Joyce Grimm — 887-3497**  
Director of Central Assignment

**CIRCUIT COURT FOR BALTIMORE COUNTY**

ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bosley Avenue  
P.O. Box 6754  
Towson, Maryland, 21285-6754

**Kathy Rushton — 887-2660**  
Jury Assignments — Civil

**Jan Dockman — 887-2661**  
Non-Jury Assignments — Civil

June 24, 1994

CAROLE S. DEMILIO, ESQ.  
KENNETH G. MACLEAY, ESQ.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

RE: Non-Jury 94 CV 3487 - IN THE MATTER OF TODD UNGER ✓

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

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: 1 Hour Thursday September 29, 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.

**CIRCUIT COURT FOR BALTIMORE COUNTY**  
**CIVIL CATEGORY** 94CV3487/78/371 JUDICIAL REVIEW

PETITION OF PEOPLE'S COUNSEL  
FOR BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE COUNTY BOARD OF  
APPEALS OF BALTIMORE COUNTY

IN THE CASE OF:

IN THE MATTER OF  
TODD UNGER  
FOR A SPECIAL HEARING ON  
PROPERTY LOCATED ON THE NORTH-  
EAST SIDE SUSQUEHANNA AVE.  
455' NORTHWEST OF THE CENTER-  
LINE OF LINDEN AVENUE  
(244 E. SUSQUEHANNA AVENUE)  
9th ELECTION DISTRICT  
4th COUNCILMANIC DISTRICT

TRANSCRIPT IN BASEMENT  
LOCATION: Box 208

\* PETITIONERS LISTED ON REVERSE \*

**ATTORNEYS**

Carole S. Demilio  
Room 47 Courthouse  
400 Washington Ave.  
Towson MD 21204/887-2188

Kenneth G. Macleay  
401 N. Charles Street  
21201 727-2443

PETER MAX ZIMMERMAN (ATTYS for  
CAROLE S. DEMILLO Peoples Counsel)  
COURTHOUSE 47  
400 WASHINGTON AVE  
21204 887-2188

*D/Es' Mailed 03/09/95*

HJ (1) April 15, 1994 People's Counsel for Baltimore County's Petition for  
Judicial Review, fd. Copy sent to Agency.

cs(2) Apr. 25, 1994 Certificate of Notice, fd. (rec'd 4-19-94)

cs(3) Apr. 25, 1994 Petition of CATHERINE ASENDORF, WALTER ASENDORF, CYNTHIA  
BUSSEY, JACK HOWARD, SAMUEL LESIGHT, CYNTHIA LINTHICUM, JOSEPH J. QUINGERT,  
LORRAINE ZAGANAS & JUNE ZANG for Judicial Review fd. (rec'd 4-20-94)

cs(4) May 20, 1994 Appellee TODD UNGER's Response to Petition fd. (rec'd 5-18-94)

\*df (5) June 13, 1994 - Transcript of Record fd.

\*df (6) June 13, 1994 - Notice of Filing of Record fd. Copies Sent.

mar(7) Jul 11, 1994 Memorandum of Petitioners, fd.

mar(8) Jul 11, 1994 Memorandum of People's Counsel's, fd.

rb(9) Sept. 29, 1994 Appellee, Todd Unger & Connie Cramer's reply  
memorandum, fd.

S ptember 29, 1994 Hon. Alfred L. Brennan, Sr. Hearing had. Testi-  
mony taken. Opinion to be filed.

cs\*(10) Oct. 11, 1994 People's Counsel's Reply Memorandum fd. (rec'd 10-6-94)

PH(11) Feb 28, 1995 Statement of Case Affirming the decision of the Baltimore  
County Board of Appeals, fd. (ALB,SR)

**COSTS**

TODD UNGER

93-460-SPH

NE/S Susquehanna Avenue, 455 feet NW of  
the c/l of Linden Avenue  
244 E. Susquehanna Avenue

9th Election District

RE: Special Hearing

---

|                   |                                                                                                                                                                                                                                            |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| June 22, 1993     | Petition for Special Hearing to approve or re-approve the construction under building permit #B158562 and to determine that the building permit complies with the B.C.Z.R., filed by Kenneth G. Macleay, Esquire, on behalf of Todd Unger. |
| July 26           | Hearing held on Petition by the Deputy Zoning Commissioner.                                                                                                                                                                                |
| October 14        | Order of the Deputy Zoning Commissioner in which Petition for Special Hearing was GRANTED with restrictions.                                                                                                                               |
| November 12       | Notice of Appeal filed by Kenneth G. Macleay, Esquire, on behalf of Todd Unger.                                                                                                                                                            |
| March 22, 1994    | Hearing before the Board of Appeals.                                                                                                                                                                                                       |
| April 1           | Opinion and Order of the Board in which the Petition for Special Hearing was GRANTED.                                                                                                                                                      |
| April 15          | Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel.                                                                                                                                          |
| April 18          | Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.                                                                                                                         |
| April 19          | Certificate of Notice sent to interested parties.                                                                                                                                                                                          |
| June 13           | Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.                                                                                                                                                           |
| February 28, 1995 | ✓ E Order issued by the CCT for Balto. County where the decision of the C.B.A. was AFFIRMED. (Hon. Alfred L. Brennan, Sr.)                                                                                                                 |
| March, 1995       | E Notice of Appeal filed in the CSA by _____                                                                                                                                                                                               |
| February 14, 1996 | ✓ E Order issued by the CSA; CCT AFFIRMED (Wenner, Salmon, Garrity, JJ.)                                                                                                                                                                   |

12/15/93 - Following parties notified of hearing set for Wednesday,  
March 2, 1994 at 10:00 a.m.:

Kenneth G. Macleay, Esquire  
Mr. Todd Unger  
Mr. Paul Lee  
Ms. Cynthia Linthicum  
Mr. & Mrs. Walter Asendorf  
Mr. Joseph J. Quingert  
Mr. Samuel Lesight  
Mr. Jack R. Howard  
People's Counsel for Baltimore County  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM

---

2/22/94 -Request for postponement from K.Macleay, Counsel for Appellants /Petitioners.  
(Request made due to change in due date of birth of child from 3/04/94  
to 3/01/94).

2/25/94 -T/C to Mr. Macleay's office and a follow-up letter (with cc to People's  
Counsel) -request for postponement denied by Board; however should birth  
of child preclude Mr. Macleay's attendance at hearing, request can be  
made on record by a representative from his office (not necessarily a  
lawyer) and would then be granted, with case reassigned to another date.

---

3/01/94 -T/C from Paul Donahue, office of Kenneth Macleay --Mr. Macleay is unavailable  
for 3/02/94 hearing due to birth of child; Mr. Donahue will be in  
attendance on 3/02/94 at 10:00 a.m. to request postponement on record;  
he indicated that he would notify P. Zimmerman.

Discussed above w/Peter Zimmerman; also Board members (L.S.C.) --  
to be postponed on record (date of 3/22/94 is available on Board's  
docket for reset date.

---

3/22/94 -Hearing held and concluded before Board (H.S.R.). Upon conclusion of  
hearing and open deliberation, Board granted Petition for Special  
Hearing /in compliance with BCZR. Written Opinion and Order to be  
issued; appellate period to run from date of said written Order.

We answer the first question in the affirmative, the second in the negative.

#### FACTS

Mr. Unger owns an interior rowhouse at 244 E. Susquehanna Avenue in Towson Manor Village, Baltimore County, which he purchased from his parents in 1993. The area in which Mr. Unger lives is zoned as D.R. 10.5 (density-residential), which requires a rear-yard dwelling setback of fifty feet. B.C.Z.R. § 1B02.3(C)(1) (1987). Carports may extend farther, if attached to the main building, allowing for a 37.5 feet rear-yard setback. See B.C.Z.R. § 301.1A (1987). An accessory building in a residential zone, however, must be only at least 2.5 feet from any side or rear lot line. B.C.Z.R. § 400.1 (1987).

In 1990, the Board approved a rear-yard variance of nineteen feet at 244 E. Susquehanna Avenue so that the previous owners could build an attached deck and an open carport. The carport was separated from the deck by about an inch. The prior owners had put railings around the roof of the carport, making it, in effect, an extension of the deck. The Board approved the variance for the rear-yard setback with the restriction that the carport roof not be used as a deck, the railing be removed from the roof of the carport, and a railing be constructed on the rear of the deck to prevent access to the carport roof.

Mr. Unger received a building permit on March 29, 1993, allowing him to build a peaked roof on and enclose the carport, turning it into a garage. Neighbors immediately complained. A stop work order was issued to Mr. Unger on April 9, 1994. He was able to resume work when a new building permit was issued on April

93 NOV 24 PM 3:46

APPEAL

Petition for Special Hearing  
NE/S Susquehanna Avenue, 455 feet NW of the  
c/l of Linden Avenue  
(244 E. Susquehanna Avenue)  
9th Election District - 4th Councilmanic District  
Todd Unger - PETITIONER  
Case No. 93-460-SPH

- ✓ Petition(s) for Special Hearing (6-22-93)
- ✓ Description of Property
- ✓ Certificate of Posting
- ✓ Certificate of Publication
- ✓ Entry of Appearance of People's Counsel

Petitioner's Exhibits: ✓ A-1<sup>c</sup> Seventeen Photographs  
- Material List  
- Pencil Sketch  
- Affidavit from Steve Miller

3/01/94 - See notes on cover page in  
file regarding postponement to be  
requested on record 3/02/94.

Nothing Marked as Exhibits)  
Letter of Opposition from Community dated  
April 14, 1993

Board notified.

3/22

4/1

6/1

Newspaper Article from The Towson Times dat  
August 25, 1993

Newspaper Article from The Towson Times dat  
October 12, 1988

✓ BOA Opinion from Case Number 90-7-SPHA

✓ Deputy Zoning Commissioner's Order dated October 14, 1993 (granted)

✓ Notice of Appeal received on November 12, 1993 from Kenneth G.  
Macleay on behalf of Todd Unger

\* cc: Kenneth G. Macleay, Rollins, Smalkin, Richards & Mackie, 401  
North Charles Street, Baltimore, MD 21201-4405  
Mr. Todd Unger, 244 E. Susquehanna Avenue, Towson, MD 21204  
Mr. Paul Lee, 305 W. Pennsylvania Avenue, Towson, MD 21204  
Ms. Cynthia Linthicum, 238 E. Susquehanna Avenue, Towson, MD 2  
Mr. & Mrs. Walter Asendorf, 242 E. Susquehanna Avenue,  
Towson, MD 21286  
Mr. Joseph J. Quingert, 108 Linden Terrace, Towson, MD 21286  
Mr. Samuel Lesight, President, Towson Manor Village, 212 Wilde  
Drive, Towson, MD 21286  
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  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM

Jack R. Howard  
256 E. Susquehanna Avenue  
Towson, MD 21286

✓ 1

VERIFIED  
4-22-94

93-460-SP

# LIST OF EXHIBITS

Verified  
5-22-94

- ✓ P.C. Ex (1) Attendance List
- ✓ Pet. Ex. 1 Special Hearing Plat
- ✓ 2A Bldg Permit
- ✓ 2B Bldg Permit
- P.C. Ex 2A Application for Permit
- ✓ 2B Schematic Plan
- ✓ 3 Computer Printout of
- ✓ 4 BOA Order and Opinion ; Case No. 90-7-SPHA
- ✓ 5 DZC Order 90-7-SPHA
- ✓ 6 Corresp. from Timothy Fitts to Mr & Mrs Unger 4/12/93
- ✓ 7 Corresp. from J.H. Thompson to J.R. Reisinger 4/13/93
- ✓ 8 Corresp. from J.H. Thompson to Rick S. Wisnom 4/15/93
- ✓ 9 Corresp. from J.H. Thompson to K Macleay 4/21/93
- ✓ Pet. Ex. 3A Site Plan (No title, no date)
- ✓ 3B "Side View"
- ✓ 3C Drawing
- ✓ 3D "End View"
- ✓ 3E Drawing with dimensions
- ✓ 4A Photo of garage in area
- ✓ 4B Photo of garage in area
- P.C. Ex 10 ADC Street Map
- ✓ 11 Inter-office memo Keller to Jablon 7/16/93
- ✓ 12 Bound color photos
- ✓ 13 Photograph copy (Photo by M.O. Brown)
- ✓ 14A Photos of deck/garage from Asendorf's window
- ✓ B
- ✓ C
- ✓ D
- ↓
- ✓ Pet. Ex. 5 Photo of nearby
- ✓ Pet. Ex. 6 Sunshine on Mrs. Asendorf's window
- ✓ Pet. Ex. 7 Black and white photo of underside

# LIST OF EXHIBITS

(2)

- ~~Pet.~~ Ex. #8 Color Photo down to garage
- ~~Pet.~~ Ex. #9 Color photo of rear of entire row of homes

**BALTIMORE COUNTY, MARYLAND**  
Board of Appeals of Baltimore County  
*Interoffice Correspondence*

DATE: November 9, 2001

TO: Arnold Jablon, Director  
Permits & Development Management  
Attn.: David Duvall

FROM: Patricia A. Huber *PAH*  
Board of Appeals

SUBJECT: **CLOSED FILES**

**93-460-SPH / Todd Unger**  
**95-65-SPH / Maryland Line Area Association**  
**CR-95-139-A / Michael K. Walter, et al**  
**95-317-A / Frederick Radtke, et ux**  
**98-336-SPHXA / James Riffin**

Since the above captioned cases have been completed, we are hereby closing our copies of the files and returning same to your office herewith. The original zoning files were previously returned to your office by the Circuit Court.

Attachments: **SUBJECT FILES ATTACHED**

County Board of Appeals of Baltimore County

ROOM 49 OLD COURTHOUSE  
TOWSON, MARYLAND 21204

PAUL LEE  
305 W PENNSYLVANIA AVENUE  
TOWSON MD 21204

nty Board of Appeals of Baltimore County

ROOM 49 OLD COURTHOUSE  
TOWSON, MARYLAND 21204

CYNTHIA LINTHICUM  
238 E SUSQUEHANNA AVENUE  
TOWSON MD 21204

County Board of Appeals of Baltimore County

ROOM 49 OLD COURTHOUSE  
TOWSON, MARYLAND 21204

JACK R HOWARD  
256 E SUSQUEHANNA AVENUE  
TOWSON MD 21286

County Board of Appeals of Baltimore County

ROOM 49 OLD COURTHOUSE  
TOWSON, MARYLAND 21204

SAMUEL LESIGHT PRESIDENT  
TOWSON MANOR VILLAGE  
212 WILDEN DRIVE  
TOWSON MD 21286

nty Board of Appeals of Baltimore County

ROOM 49 OLD COURTHOUSE  
TOWSON, MARYLAND 21204

WALTER ASENDORF  
242 E SUSQUEHANNA AVENUE  
TOWSON MD 21286

nty Board of Appeals of Baltimore County

ROOM 49 OLD COURTHOUSE  
TOWSON, MARYLAND 21204

JOSEPH J QUINGERT  
108 LINDEN TERRACE  
TOWSON MD 21286

12. On April 15, however, a second stop work order was issued to Mr. Unger, which referenced the Board's 1990 decision on the variance for the carport. The order continued, "[y]our existing carport is considered an open projection structure and was granted a variance as such. If the carport becomes enclosed, it has to meet the setback that is necessary for a primary dwelling, which in your case would be 50 feet."

Mr. Unger filed his Petition for Special Hearing, which was approved with the restriction that Mr. Unger erect a flat roof over it. Mr. Unger appealed the decision to the Board which approved the permit with no restrictions, finding that

the carport-now-garage is not attached in any way to the main structure. Since the garage is now classified as an accessory building, and since all the proper permits have been obtained, and since all Baltimore County regulations as to roof height, setbacks, etc., have been complied with, the Board finds that the garage is now a legal structure ....

Appellants appealed to the Circuit Court for Baltimore County (Brennan, J., presiding). The trial judge ruled that the garage was an accessory building and found "no justification for upsetting" the Board's decision.

#### STANDARD OF REVIEW

A court reviewing the decision of an administrative agency is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel Serv., Inc. v. People's Counsel*, 336 Md. 569, 577 (1994).

Appellee Todd Unger filed a Petition for Special Hearing in June 1993 with the Zoning Commissioner of Baltimore County, requesting a determination that Building Permit No. B158562 complied with the Baltimore County Zoning Regulations ("B.C.Z.R."). Mr. Unger wanted to convert his existing carport into a garage. After a hearing, the Deputy Zoning Commissioner approved the petition by written opinion and order dated October 14, 1993, with the restriction that he not erect a peaked roof over the garage. Mr. Unger appealed the decision to the Baltimore County Board of Appeals ("the Board"). An evidentiary hearing was held on March 22, 1994, and the permit was approved with no restrictions. Appellants' appeal from a judgment of the Circuit Court for Baltimore County that affirmed the Board's approval.

Appellants present the following questions,<sup>2</sup> which have been rephrased for clarity:

- I. Is the enclosed garage an accessory building that is exempt from the usual minimum rear yard distance limit?
- II. Did the Board "capriciously and unreasonably" reverse an earlier decision?

---

<sup>1</sup>Appellants are Catherine Asendorf, Jack Howard, Cynthia Linthicum, Lorraine Zaganas, Cynthia Bussey, Samuel Lesight, Joseph J. Quingert and June Zang, all of whom live in the immediate area of Mr. Unger's home; and People's Counsel for Baltimore County ("People's Counsel").

<sup>2</sup>Appellants also ask: "Whether the Circuit Court opinion failed to recognize the legal character of the issues presented, used the wrong scope of review, and encouraged the filing and approval of building permit applications without disclosure of material facts and in violation of zoning requirements?" We need not address this issue because we use the same standard of review as that used by the circuit court, and therefore need only determine whether the Board's action was proper or improper. See, e.g., *Board of County Commissioners v. Holbrook*, 314 Md. 210, 218 (1988).

We answer the first question in the affirmative, the second in the negative.

#### FACTS

Mr. Unger owns an interior rowhouse at 244 E. Susquehanna Avenue in Towson Manor Village, Baltimore County, which he purchased from his parents in 1993. The area in which Mr. Unger lives is zoned as D.R. 10.5 (density-residential), which requires a rear-yard dwelling setback of fifty feet. B.C.Z.R. § 1B02.3(C)(1) (1987). Carports may extend farther, if attached to the main building, allowing for a 37.5 feet rear-yard setback. See B.C.Z.R. § 301.1A (1987). An accessory building in a residential zone, however, must be only at least 2.5 feet from any side or rear lot line. B.C.Z.R. § 400.1 (1987).

In 1990, the Board approved a rear-yard variance of nineteen feet at 244 E. Susquehanna Avenue so that the previous owners could build an attached deck and an open carport. The carport was separated from the deck by about an inch. The prior owners had put railings around the roof of the carport, making it, in effect, an extension of the deck. The Board approved the variance for the rear-yard setback with the restriction that the carport roof not be used as a deck, the railing be removed from the roof of the carport, and a railing be constructed on the rear of the deck to prevent access to the carport roof.

Mr. Unger received a building permit on March 29, 1993, allowing him to build a peaked roof on and enclose the carport, turning it into a garage. Neighbors immediately complained. A stop work order was issued to Mr. Unger on April 9, 1994. He was able to resume work when a new building permit was issued on April

12. On April 15, however, a second stop work order was issued to Mr. Unger, which referenced the Board's 1990 decision on the variance for the carport. The order continued, "[y]our existing carport is considered an open projection structure and was granted a variance as such. If the carport becomes enclosed, it has to meet the setback that is necessary for a primary dwelling, which in your case would be 50 feet."

Mr. Unger filed his Petition for Special Hearing, which was approved with the restriction that Mr. Unger erect a flat roof over it. Mr. Unger appealed the decision to the Board which approved the permit with no restrictions, finding that

the carport-now-garage is not attached in any way to the main structure. Since the garage is now classified as an accessory building, and since all the proper permits have been obtained, and since all Baltimore County regulations as to roof height, setbacks, etc., have been complied with, the Board finds that the garage is now a legal structure ....

Appellants appealed to the Circuit Court for Baltimore County (Brennan, J., presiding). The trial judge ruled that the garage was an accessory building and found "no justification for upsetting" the Board's decision.

#### STANDARD OF REVIEW

A court reviewing the decision of an administrative agency is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel Serv., Inc. v. People's Counsel*, 336 Md. 569, 577 (1994).

"[T]he order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency's conclusions reasonably may be based upon the facts proven.... But a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law."

*Younkers v. Prince George's County*, 333 Md. 14, 19 (1993) (quoting *People's Counsel v. Maryland Marine Mfg. Co., Inc.*, 316 Md. 491, 496-97 (1989)). "It is only when an agency's exercise of discretion is 'arbitrary' or 'capricious' that courts are allowed to intervene." *Maryland State Police v. Zeigler*, 330 Md. 540, 558 (1993).

# I.

Appellants argue that the enclosed garage, built a mere one inch from the deck attached to the house, "forms a part of the dwelling, within the meaning, spirit and intent of the Baltimore County Zoning Regulations" and, therefore, "is not an accessory building." Appellants contend that an accessory building must be a substantial distance from the main building because "[t]he size and proximity of buildings which stand as essentially a single mass have a different and far more severe impact on the quality of residential life than smaller accessory structures which typically occupy their own space."

"[T]he legislative intent, as manifested in the wording of the statute, is to be strictly heeded and enforced. Consequently, if there is no ambiguity or obscurity in the language the Legislature elected to utilize to express its mandate, the usual and literal meaning of the terminology employed will prevail." *Bright v.*

*Unsatisfied Claim & Judgment Fund Bd.*, 275 Md. 165, 169 (1975). We must, therefore, start with the language of the regulation.

A "building" is defined as a "structure enclosed within exterior walls or firewalls for the shelter, support, or enclosure of persons, animals, or property of any kind." B.C.Z.R. § 101 (1955). An "accessory building" is defined as a building "which is subordinate and customarily incidental to and on the same lot with a main building.... A structure connected to a principal building by a covered passageway or with one wall in common shall not be considered an accessory building." *Id.*

There is nothing in the language of the regulation that says an accessory building must be a substantial distance from the main building. It must only have its own exterior walls and may not be connected to the principal building. The garage in Mr. Unger's backyard has four exterior walls. Because there is one inch of space between the garage and the deck, and because there is no wall in common with the house, the garage is not connected to the deck. The garage is an accessory building, which is exempt from the usual minimum rear-yard distance setback.<sup>3</sup>

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<sup>3</sup>Appellants cite two Court of Appeals cases in support of their argument that Mr. Unger's house, deck and detached garage be considered a single building. In *Windsor Hills Improvement Assoc., Inc. v. Mayor and City Council of Baltimore*, 195 Md. 383 (1949), the argument was made that three garden-style apartment buildings consisting of three units each should be considered to be nine buildings. *Id.* at 390. The Court held that there were three, not nine, buildings because the units shared side walls. *Id.* at 391. This situation is clearly distinguishable from Mr. Unger's, where the garage and main building share no walls in common. In *Feinberg v. Southland Corp.*, 268 Md. 141 (1973), the Court held that two "contiguous and adjoining buildings" that straddled a property line would be considered as a single building for the purposes of determining side yard setbacks. *Id.* at 151. The opinion never specifically states that the two buildings shared a common wall. "Contiguous" generally means "touching, in contact." WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 316 (1989), although a second definition for this word is "in close proximity without actually touching." *Id.* "Adjoining" generally means "being in contact at some point or line." WEBSTER'S, *supra*, at 18. If the  
(continued...)

## II.

Appellants also contend that the Board "capriciously and unreasonably reversed course" in finding that the garage was an accessory building after having determined in 1990 that the carport was a part of the main building.

The Board found in 1990 that,

[a]lthough not connected, and basically two separate structures, separated by several inches, the County inspectors viewed the carport as an addition to the deck, and therefore a violation of the 37' setback requirement.

...

It is evident to this Board that the carport should be considered as a functional addition to the approved deck attached to the residence. Although separated, in actuality a single deck area has been created ....

...

Therefore, it is the opinion of this Board that the variance to permit the carport at this location be granted, but that the use of the roof of the structure as an extension of the approved deck must be denied, and the railing on the perimeters of the roof must be removed, and access to this roof area must be discontinued.

The Board did not in fact find that the carport was a part of the main building. The Board expressly found that the carport was a separate structure that was a "functional addition" to the deck. Its order restricting access to the carport roof severed this functional connection between the deck and the carport.

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<sup>3</sup>(...continued)

building was a single structure separated by an interior common wall, this case is also clearly distinguishable from Mr. Unger's situation. The inherent ambiguity in the facts, however, makes this case virtually useless as a comparison.

In *Whittle v. Board of Zoning Appeals*, 211 Md. 36 (1955), the Court of Appeals stated:

The general rule, where the question has arisen, seems to be that ... a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions.... This rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law.

...

... It is our view that where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in fact and circumstances between the first case and the second, the doctrine of *res judicata* would not prevent the granting of the special permit sought by appellees.

*Id.* at 45.

The facts and circumstances have changed between 1990 and 1994. The Board was looking at a different structure in 1994 than that proposed in 1990. In 1990, the prior owners wanted to utilize the roof of the carport as a deck, which was an extension of a deck actually attached to the building. That use was disallowed; the variance was granted for a carport, not for a deck extension. Mr. Unger now wants to turn his freestanding carport into a freestanding garage. The Board did not reverse any earlier decision by calling the carport an accessory building and by allowing Mr. Unger to enclose and roof his carport. There is nothing arbitrary or capricious about the Board's action.

**JUDGMENT AFFIRMED;  
COSTS TO BE PAID BY APPELLANTS.**

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL  
FOR BALTIMORE COUNTY  
Room 47 Washington Avenue  
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washing-  
ton Avenue, Towson, MD 21204

CIVIL  
ACTION  
No. 94-CV-03487  
/78/371

IN THE CASE OF: IN THE MATTER OF  
TODD UNGER  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE NORTHEAST SIDE OF  
SUSQUEHANNA AVENUE, 455' NORTHWEST OF  
THE CENTERLINE OF LINDEN AVENUE  
(244 E. SUSQUEHANNA AVENUE)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT  
CASE NO. 93-460-SPH

\* \* \* \* \*

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, Michael B. Sauer and Robert  
O. Schuetz, 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 Office  
of Zoning Administration and Development Management and the Board  
of Appeals of Baltimore County:

RECEIVED AND FILED

94 JUN 13 AM 11:47 ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND  
OFFICE OF ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT  
OF BALTIMORE COUNTY

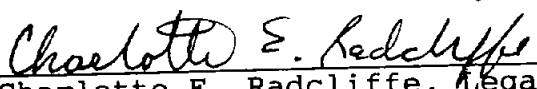
- 6 -Photo of sunshine on Asendorf's window
- 7 -Black and white photo of underside
- 8 -Color photo down to garage
- 9 -Color photo of rear of entire row of homes

People's Counsel Nos. 1 - Attendance List  
2A- Application for Permit  
2B- Schematic Plan  
3 - Computer Printout of  
4 - BOA Order and Opinion;  
Case No. 90-7-SPHA  
5 -DZC Order 90-7-SPHA  
6 -Corresp. from Timothy Fitts to Mr. &  
Mrs. Unger 4/12/93  
7 -Corresp. from J.H. Thompson to J.R.  
Reisinger 4/13/93  
8 -Corresp. from J.H. Thompson to Rich  
S. Wisnom 4/15/93  
9 -Corresp. from J.H. Thompson to K.  
Macleay 4/21/93  
10 -ADC Street Map  
11 -Inter-Office memo Keller to Jablon  
7/16/93  
12 -Bound color photos  
13 -Photograph copy (photo by M.O. Brown)  
14A-14D -Photos of deck/garage from  
Asendorf's window

June 13, 1994 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 of Baltimore  
County, Room 49, Basement - Old Courthouse  
400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

cc: People's Counsel for Baltimore County  
Kenneth G. Macleay, Esquire  
Todd Unger

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL  
FOR BALTIMORE COUNTY  
Room 47 Washington Avenue  
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washing-  
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF  
TODD UNGER  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE NORTHEAST SIDE OF  
SUSQUEHANNA AVENUE, 455' NORTHWEST OF  
THE CENTERLINE OF LINDEN AVENUE  
(244 E. SUSQUEHANNA AVENUE)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT  
CASE NO. 93-460-SPH

CIVIL  
ACTION  
No. 94-CV-03487  
/78/371

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett, Michael B. Sauer, and Robert O. Schuetz, 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, Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Washington Avenue, Towson, Maryland 21204, Petitioner; Todd Unger, 244 E. Susquehanna Avenue, Towson, Maryland 21204; Kenneth G. Macleay, Esquire, ROLLINS, SMALKIN, RICHARDS & MACKIE, 401 N. Charles Street, Baltimore, Maryland 21201-4405, Counsel for Mr. Unger; 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

RECEIVED AND FILED  
94 APR 19 PM 2:33  
CLERK OF THE CIRCUIT COURT  
BALTIMORE COUNTY

"[T]he order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency's conclusions reasonably may be based upon the facts proven.... But a reviewing court is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law."

*Younkers v. Prince George's County*, 333 Md. 14, 19 (1993) (quoting *People's Counsel v. Maryland Marine Mfg. Co., Inc.*, 316 Md. 491, 496-97 (1989)). "It is only when an agency's exercise of discretion is 'arbitrary' or 'capricious' that courts are allowed to intervene." *Maryland State Police v. Zeigler*, 330 Md. 540, 558 (1993).

# I.

Appellants argue that the enclosed garage, built a mere one inch from the deck attached to the house, "forms a part of the dwelling, within the meaning, spirit and intent of the Baltimore County Zoning Regulations" and, therefore, "is not an accessory building." Appellants contend that an accessory building must be a substantial distance from the main building because "[t]he size and proximity of buildings which stand as essentially a single mass have a different and far more severe impact on the quality of residential life than smaller accessory structures which typically occupy their own space."

"[T]he legislative intent, as manifested in the wording of the statute, is to be strictly heeded and enforced. Consequently, if there is no ambiguity or obscurity in the language the Legislature elected to utilize to express its mandate, the usual and literal meaning of the terminology employed will prevail." *Bright v.*

93-460-SPH, Todd Unger  
File No. 94-CV-03487/78/371

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Washington Avenue, Towson, Maryland 21204, Petitioner; Todd Unger, 244 E. Susquehanna Avenue, Towson, Maryland 21204; Kenneth G. Macleay, Esquire, ROLLINS, SMALKIN, RICHARDS & MACKIE, 401 N. Charles Street, Baltimore, Maryland 21201-4405, Counsel for Mr. Unger, this 19th day of April, 1994.

*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

April 19, 1994

Peter Max Zimmerman  
People's Counsel  
for Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: Civil Action No. 94-CV-03487  
Todd Unger

Dear Mr. Zimmerman:

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*  
Charlotte E. Radcliffe  
Legal Secretary

Enclosure



Printed with Soybean Ink  
on Recycled Paper



County Board of Appeals of Baltimore County

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

April 19, 1994

Kenneth G. Macleay, Esquire  
Rollins, Smalkin, Richards & Mackie  
401 N. Charles Street  
Baltimore, Maryland 21201-4405

RE: Civil Action No. 94-CV-03487  
TODD UNGER

Dear Mr. Macleay:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on April 15, 1994 in the Circuit Court for Baltimore County from the majority 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).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 78/371/94-CV-03487.

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

Very truly yours,

A handwritten signature in cursive script, reading "Charlotte E. Radcliffe".

Charlotte E. Radcliffe  
Legal Secretary

Enclosure

cc: Todd Unger  
Cynthia Linthicum  
Joseph J. Quingert  
Jack R. Howard  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards  
Docket Clerk /ZADM  
Arnold Jablon /ZADM

Paul Lee  
Walter Asendorf  
Samuel Lesight



Printed with Soybean Ink  
on Recycled Paper

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL  
FOR BALTIMORE COUNTY  
Room 47 Washington Avenue  
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE COUNTY BOARD OF  
APPEALS OF BALTIMORE COUNTY  
Room 49, Old Court House  
400 Washington Avenue  
Towson, Maryland 21204

IN THE CASE OF: IN THE MATTER OF  
TODD UNGER  
FOR A SPECIAL HEARING ON  
PROPERTY LOCATED ON THE NORTH-  
EAST SIDE SUSQUEHANNA AVENUE,  
455' NORTHWEST OF THE CENTER-  
LINE OF LINDEN AVENUE  
(244 E. SUSQUEHANNA AVENUE)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT

RECEIVED  
COUNTY BOARD OF APPEALS

94 APR 18 AM 11:56

CIVIL ACTION

78 / 371 / 94CV3487

\* \* \* \* \*

PETITION FOR JUDICIAL REVIEW

People's Counsel for Baltimore County hereby requests judicial review of the decision of the County Board of Appeals, in the case of: In The Matter Of Todd Unger, for a Special Hearing on property located on the northeast side Susquehanna Avenue, 455' Northwest of the Centerline of Linden Avenue (244 E. Susquehanna Avenue), 9th Election District, 4th Councilmanic District, dated April 1st, 1994. People's Counsel was a party to the proceeding before the County Board of Appeals of Baltimore County in this matter.

RECEIVED AND FILED

94 APR 15 PM 12:58

CLERK OF THE CIRCUIT COURT  
BALTIMORE COUNTY



Peter Max Zimmerman  
People's Counsel  
For Baltimore County

PETITION OF: PEOPLE'S COUNSEL

CIVIL ACTION # 94-CV-03487 78/571

IN THE MATTER OF TODD UNGER

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

  
Clerk's Office

Date: \_\_\_\_\_

**Civil Assignment Commissioner**

**CIRCUIT COURT FOR BALTIMORE COUNTY**

**Kathy Rushton—887-2660**

### Jury Assignments — Civil

**Joyce Grimm — 887-3497**

**Director of Central Assignment**

**CAROLE S. DEMILIO, ESQ.**

**KENNETH G. MACLEAY, ESQ.**

# COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

## ASSIGNMENT OFFICE

COUNTY COURTS BUILDING

**401 Bosley Avenue**

**P.O. Box 6754**

**Towson, Maryland, 21285-6754**

**June 24, 1994**

RE: Non-Jury 94 CV 3487 - IN THE MATTER OF TODD UNGER

**Confidentiality Agreement**

**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: 1 Hour**

Thursday September 29, 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.

**Jan Dockman — 887-2661**

### Non-Jury Assignments — Civil

**CIRCUIT COURT FOR BALTIMORE COUNTY**  
**CIVIL CATEGORY** 94CV3487/78/371 JUDICIAL REVIEW

PETITION OF PEOPLE'S COUNSEL  
FOR BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE COUNTY BOARD OF  
APPEALS OF BALTIMORE COUNTY

IN THE CASE OF:

IN THE MATTER OF  
TODD UNGER  
FOR A SPECIAL HEARING ON  
PROPERTY LOCATED ON THE NORTH-  
EAST SIDE SUSQUEHANNA AVE.  
455' NORTHWEST OF THE CENTER-  
LINE OF LINDEN AVENUE  
(244 E. SUSQUEHANNA AVENUE)  
9th ELECTION DISTRICT  
4th COUNCILMANIC DISTRICT

TRANSCRIPT IN BASEMENT  
LOCATION: Box 208

\* PETITIONERS LISTED ON REVERSE \*

**ATTORNEYS**

Carole S. Demilio  
Room 47 Courthouse  
400 Washington Ave.  
Towson MD 21204/887-2188

Kenneth G. Macleay  
401 N. Charles Street  
21201 727-2443

PETER MAX ZIMMERMAN (ATTYS for  
CAROLE S. DEMILLO Peoples Counsel)  
COURTHOUSE 47  
400 WASHINGTON AVE  
21204 887-2188

*D/Es' Mailed 03/09/95*

HJ (1) April 15, 1994 People's Counsel for Baltimore County's Petition for  
Judicial Review, fd. Copy sent to Agency.

cs(2) Apr. 25, 1994 Certificate of Notice, fd. (rec'd 4-19-94)

cs(3) Apr. 25, 1994 Petition of CATHERINE ASENDORF, WALTER ASENDORF, CYNTHIA  
BUSSEY, JACK HOWARD, SAMUEL LESIGHT, CYNTHIA LINTHICUM, JOSEPH J. QUINGERT,  
LORRAINE ZAGANAS & JUNE ZANG for Judicial Review fd. (rec'd 4-20-94)

cs(4) May 20, 1994 Appellee TODD UNGER's Response to Petition fd. (rec'd 5-18-94)

\*df (5) June 13, 1994 - Transcript of Record fd.

\*df (6) June 13, 1994 - Notice of Filing of Record fd. Copies Sent.

mar(7) Jul 11, 1994 Memorandum of Petitioners, fd.

mar(8) Jul 11, 1994 Memorandum of People's Counsel's, fd.

rb(9) Sept. 29, 1994 Appellee, Todd Unger & Connie Cramer's reply  
memorandum, fd.

S ptember 29, 1994 Hon. Alfred L. Brennan, Sr. Hearing had. Testi-  
mony taken. Opinion to be filed.

cs\*(10) Oct. 11, 1994 People's Counsel's Reply Memorandum fd. (rec'd 10-6-94)

PH(11) Feb 28, 1995 Statement of Case Affirming the decision of the Baltimore  
County Board of Appeals, fd. (ALB,SR)

**COSTS**

TODD UNGER

93-460-SPH

NE/S Susquehanna Avenue, 455 feet NW of  
the c/l of Linden Avenue  
244 E. Susquehanna Avenue

9th Election District

RE: Special Hearing

---

|                   |                                                                                                                                                                                                                                            |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| June 22, 1993     | Petition for Special Hearing to approve or re-approve the construction under building permit #B158562 and to determine that the building permit complies with the B.C.Z.R., filed by Kenneth G. Macleay, Esquire, on behalf of Todd Unger. |
| July 26           | Hearing held on Petition by the Deputy Zoning Commissioner.                                                                                                                                                                                |
| October 14        | Order of the Deputy Zoning Commissioner in which Petition for Special Hearing was GRANTED with restrictions.                                                                                                                               |
| November 12       | Notice of Appeal filed by Kenneth G. Macleay, Esquire, on behalf of Todd Unger.                                                                                                                                                            |
| March 22, 1994    | Hearing before the Board of Appeals.                                                                                                                                                                                                       |
| April 1           | Opinion and Order of the Board in which the Petition for Special Hearing was GRANTED.                                                                                                                                                      |
| April 15          | Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel.                                                                                                                                          |
| April 18          | Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.                                                                                                                         |
| April 19          | Certificate of Notice sent to interested parties.                                                                                                                                                                                          |
| June 13           | Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.                                                                                                                                                           |
| February 28, 1995 | /E Order issued by the CCT for Balto. County where the decision of the C.B.A. was AFFIRMED. (Hon. Alfred L. Brennan, Sr.)                                                                                                                  |
| March, 1995       | E Notice of Appeal filed in the CSA by _____                                                                                                                                                                                               |
| February 14, 1996 | /E Order issued by the CSA; CCT AFFIRMED (Wenner, Salmon, Garrity, JJ.)                                                                                                                                                                    |

12/15/93 - Following parties notified of hearing set for Wednesday,  
March 2, 1994 at 10:00 a.m.:

Kenneth G. Macleay, Esquire  
Mr. Todd Unger  
Mr. Paul Lee  
Ms. Cynthia Linthicum  
Mr. & Mrs. Walter Asendorf  
Mr. Joseph J. Quingert  
Mr. Samuel Lesight  
Mr. Jack R. Howard  
People's Counsel for Baltimore County  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM

---

2/22/94 -Request for postponement from K.Macleay, Counsel for Appellants /Petitioners.  
(Request made due to change in due date of birth of child from 3/04/94  
to 3/01/94).

2/25/94 -T/C to Mr. Macleay's office and a follow-up letter (with cc to People's  
Counsel) -request for postponement denied by Board; however should birth  
of child preclude Mr. Macleay's attendance at hearing, request can be  
made on record by a representative from his office (not necessarily a  
lawyer) and would then be granted, with case reassigned to another date.

---

3/01/94 -T/C from Paul Donahue, office of Kenneth Macleay --Mr. Macleay is unavailable  
for 3/02/94 hearing due to birth of child; Mr. Donahue will be in  
attendance on 3/02/94 at 10:00 a.m. to request postponement on record;  
he indicated that he would notify P. Zimmerman.

Discussed above w/Peter Zimmerman; also Board members (L.S.C.) --  
to be postponed on record (date of 3/22/94 is available on Board's  
docket for reset date.

---

3/22/94 -Hearing held and concluded before Board (H.S.R.). Upon conclusion of  
hearing and open deliberation, Board granted Petition for Special  
Hearing /in compliance with BCZR. Written Opinion and Order to be  
issued; appellate period to run from date of said written Order.

93 NOV 24 PM 3:46

APPEAL

Petition for Special Hearing  
NE/S Susquehanna Avenue, 455 feet NW of the  
c/l of Linden Avenue  
(244 E. Susquehanna Avenue)  
9th Election District - 4th Councilmanic District  
Todd Unger - PETITIONER  
Case No. 93-460-SPH

- ✓ Petition(s) for Special Hearing (6-22-93)
- ✓ Description of Property
- ✓ Certificate of Posting
- ✓ Certificate of Publication
- ✓ Entry of Appearance of People's Counsel

Petitioner's Exhibits: ✓ A-1<sup>c</sup> Seventeen Photographs  
- Material List  
- Pencil Sketch  
- Affidavit from Steve Miller

3/01/94 - See notes on cover page in  
file regarding postponement to be  
requested on record 3/02/94.

Nothing Marked as Exhibits)  
Letter of Opposition from Community dated  
April 14, 1993

Board notified.

3/22

4/1

6/1

Newspaper Article from The Towson Times dat  
August 25, 1993

Newspaper Article from The Towson Times dat  
October 12, 1988

✓ BOA Opinion from Case Number 90-7-SPHA

✓ Deputy Zoning Commissioner's Order dated October 14, 1993 (granted)

✓ Notice of Appeal received on November 12, 1993 from Kenneth G.  
Macleay on behalf of Todd Unger

\* cc: Kenneth G. Macleay, <sup>ES.</sup> Rollins, Smalkin, Richards & Mackie, 401  
North Charles Street, Baltimore, MD 21201-4405  
Mr. Todd Unger, 244 E. Susquehanna Avenue, Towson, MD 21204  
Mr. Paul Lee, 305 W. Pennsylvania Avenue, Towson, MD 21204  
Ms. Cynthia Linthicum, 238 E. Susquehanna Avenue, Towson, MD 2  
Mr. & Mrs. Walter Asendorf, 242 E. Susquehanna Avenue,  
Towson, MD 21286  
Mr. Joseph J. Quingert, 108 Linden Terrace, Towson, MD 21286  
Mr. Samuel Lesight, President, Towson Manor Village, 212 Wilde  
Drive, Towson, MD 21286  
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  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM

Jack R. Howard  
256 E. Susquehanna Avenue  
Towson, MD 21286

✓ 1

*Unsatisfied Claim & Judgment Fund Bd.*, 275 Md. 165, 169 (1975). We must, therefore, start with the language of the regulation.

A "building" is defined as a "structure enclosed within exterior walls or firewalls for the shelter, support, or enclosure of persons, animals, or property of any kind." B.C.Z.R. § 101 (1955). An "accessory building" is defined as a building "which is subordinate and customarily incidental to and on the same lot with a main building.... A structure connected to a principal building by a covered passageway or with one wall in common shall not be considered an accessory building." *Id.*

There is nothing in the language of the regulation that says an accessory building must be a substantial distance from the main building. It must only have its own exterior walls and may not be connected to the principal building. The garage in Mr. Unger's backyard has four exterior walls. Because there is one inch of space between the garage and the deck, and because there is no wall in common with the house, the garage is not connected to the deck. The garage is an accessory building, which is exempt from the usual minimum rear-yard distance setback.<sup>3</sup>

---

<sup>3</sup>Appellants cite two Court of Appeals cases in support of their argument that Mr. Unger's house, deck and detached garage be considered a single building. In *Windsor Hills Improvement Assoc., Inc. v. Mayor and City Council of Baltimore*, 195 Md. 383 (1949), the argument was made that three garden-style apartment buildings consisting of three units each should be considered to be nine buildings. *Id.* at 390. The Court held that there were three, not nine, buildings because the units shared side walls. *Id.* at 391. This situation is clearly distinguishable from Mr. Unger's, where the garage and main building share no walls in common. In *Feinberg v. Southland Corp.*, 268 Md. 141 (1973), the Court held that two "contiguous and adjoining buildings" that straddled a property line would be considered as a single building for the purposes of determining side yard setbacks. *Id.* at 151. The opinion never specifically states that the two buildings shared a common wall. "Contiguous" generally means "touching, in contact." WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 316 (1989), although a second definition for this word is "in close proximity without actually touching." *Id.* "Adjoining" generally means "being in contact at some point or line." WEBSTER'S, *supra*, at 18. If the  
(continued...)

VERIFIED  
4-22-94

93-460-SP

# LIST OF EXHIBITS

Verified  
5-22-94

- ✓ P.C. Ex (1) Attendance List
- ✓ Pet. Ex. 1 Special Hearing Plat
- ✓ 2A Bldg Permit
- ✓ 2B Bldg Permit
- P.C. Ex 2A Application for Permit
- ✓ 2B Schematic Plan
- ✓ 3 Computer Printout of
- ✓ 4 BOA Order and Opinion ; Case No. 90-7-SPHA
- ✓ 5 DZC Order 90-7-SPHA
- ✓ 6 Corresp. from Timothy Fitts to Mr & Mrs Unger 4/12/93
- ✓ 7 Corresp. from J.H. Thompson to J.R. Reisinger 4/13/93
- ✓ 8 Corresp. from J.H. Thompson to Rick S. Wisnom 4/15/93
- ✓ 9 Corresp. from J.H. Thompson to K Macleay 4/21/93
- ✓ Pet. Ex. 3A Site Plan (No title, no date)
- ✓ 3B "Side View"
- ✓ 3C Drawing
- ✓ 3D "End View"
- ✓ 3E Drawing with dimensions
- ✓ 4A Photo of garage in area
- ✓ 4B Photo of garage in area
- P.C. Ex 10 ADC Street Map
- ✓ 11 Inter-office memo Keller to Jablon 7/16/93
- ✓ 12 Bound color photos
- ✓ 13 Photograph copy (Photo by M.O. Brown)
- ✓ 14A Photos of deck/garage from Asendorf's window
- ✓ B
- ✓ C
- ✓ D
- ↓
- ✓ Pet. Ex. 5 Photo of nearby
- ✓ Pet. Ex. 6 Sunshine on Mrs. Asendorf's window
- ✓ Pet. Ex. 7 Black and white photo of underside

# LIST OF EXHIBITS

(2)

- ~~Pet.~~ Ex. #8 Color Photo down to garage
- ~~Pet.~~ Ex. #9 Color photo of rear of entire row of homes

**BALTIMORE COUNTY, MARYLAND**  
Board of Appeals of Baltimore County  
*Interoffice Correspondence*

DATE: November 9, 2001

TO: Arnold Jablon, Director  
Permits & Development Management  
Attn.: David Duvall

FROM: Patricia A. Huber *PAH*  
Board of Appeals

SUBJECT: **CLOSED FILES**

**93-460-SPH / Todd Unger**  
**95-65-SPH / Maryland Line Area Association**  
**CR-95-139-A / Michael K. Walter, et al**  
**95-317-A / Frederick Radtke, et ux**  
**98-336-SPHXA / James Riffin**

Since the above captioned cases have been completed, we are hereby closing our copies of the files and returning same to your office herewith. The original zoning files were previously returned to your office by the Circuit Court.

Attachments: **SUBJECT FILES ATTACHED**

County Board of Appeals of Baltimore County

ROOM 49 OLD COURTHOUSE  
TOWSON, MARYLAND 21204

PAUL LEE  
305 W PENNSYLVANIA AVENUE  
TOWSON MD 21204

nty Board of Appeals of Baltimore County

ROOM 49 OLD COURTHOUSE  
TOWSON, MARYLAND 21204

CYNTHIA LINTHICUM  
238 E SUSQUEHANNA AVENUE  
TOWSON MD 21204

County Board of Appeals of Baltimore County

ROOM 49 OLD COURTHOUSE  
TOWSON, MARYLAND 21204

JACK R HOWARD  
256 E SUSQUEHANNA AVENUE  
TOWSON MD 21286

County Board of Appeals of Baltimore County

ROOM 49 OLD COURTHOUSE  
TOWSON, MARYLAND 21204

SAMUEL LESIGHT PRESIDENT  
TOWSON MANOR VILLAGE  
212 WILDEN DRIVE  
TOWSON MD 21286

nty Board of Appeals of Baltimore County

ROOM 49 OLD COURTHOUSE  
TOWSON, MARYLAND 21204

WALTER ASENDORF  
242 E SUSQUEHANNA AVENUE  
TOWSON MD 21286

nty Board of Appeals of Baltimore County

ROOM 49 OLD COURTHOUSE  
TOWSON, MARYLAND 21204

JOSEPH J QUINGERT  
108 LINDEN TERRACE  
TOWSON MD 21286

## II.

Appellants also contend that the Board "capriciously and unreasonably reversed course" in finding that the garage was an accessory building after having determined in 1990 that the carport was a part of the main building.

The Board found in 1990 that,

[a]lthough not connected, and basically two separate structures, separated by several inches, the County inspectors viewed the carport as an addition to the deck, and therefore a violation of the 37' setback requirement.

...

It is evident to this Board that the carport should be considered as a functional addition to the approved deck attached to the residence. Although separated, in actuality a single deck area has been created ....

...

Therefore, it is the opinion of this Board that the variance to permit the carport at this location be granted, but that the use of the roof of the structure as an extension of the approved deck must be denied, and the railing on the perimeters of the roof must be removed, and access to this roof area must be discontinued.

The Board did not in fact find that the carport was a part of the main building. The Board expressly found that the carport was a separate structure that was a "functional addition" to the deck. Its order restricting access to the carport roof severed this functional connection between the deck and the carport.

---

<sup>3</sup>(...continued)

building was a single structure separated by an interior common wall, this case is also clearly distinguishable from Mr. Unger's situation. The inherent ambiguity in the facts, however, makes this case virtually useless as a comparison.

In *Whittle v. Board of Zoning Appeals*, 211 Md. 36 (1955), the Court of Appeals stated:

The general rule, where the question has arisen, seems to be that ... a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions.... This rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law.

...

... It is our view that where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in fact and circumstances between the first case and the second, the doctrine of *res judicata* would not prevent the granting of the special permit sought by appellees.

*Id.* at 45.

The facts and circumstances have changed between 1990 and 1994. The Board was looking at a different structure in 1994 than that proposed in 1990. In 1990, the prior owners wanted to utilize the roof of the carport as a deck, which was an extension of a deck actually attached to the building. That use was disallowed; the variance was granted for a carport, not for a deck extension. Mr. Unger now wants to turn his freestanding carport into a freestanding garage. The Board did not reverse any earlier decision by calling the carport an accessory building and by allowing Mr. Unger to enclose and roof his carport. There is nothing arbitrary or capricious about the Board's action.

**JUDGMENT AFFIRMED;  
COSTS TO BE PAID BY APPELLANTS.**

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL  
FOR BALTIMORE COUNTY  
Room 47 Washington Avenue  
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE DECISION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washing-  
ton Avenue, Towson, MD 21204

CIVIL  
ACTION  
No. 94-CV-03487  
/78/371

IN THE CASE OF: IN THE MATTER OF  
TODD UNGER  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE NORTHEAST SIDE OF  
SUSQUEHANNA AVENUE, 455' NORTHWEST OF  
THE CENTERLINE OF LINDEN AVENUE  
(244 E. SUSQUEHANNA AVENUE)  
9TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT  
CASE NO. 93-460-SPH

\* \* \* \* \*

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, Michael B. Sauer and Robert  
O. Schuetz, 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 Office  
of Zoning Administration and Development Management and the Board  
of Appeals of Baltimore County:

RECEIVED AND FILED

94 JUN 13 AM 11:47 ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND  
OFFICE OF ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT  
OF BALTIMORE COUNTY

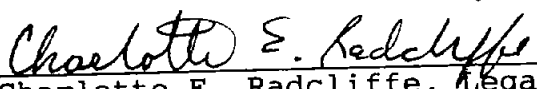
- 6 -Photo of sunshine on Asendorf's window
- 7 -Black and white photo of underside
- 8 -Color photo down to garage
- 9 -Color photo of rear of entire row of homes

People's Counsel Nos. 1 - Attendance List  
2A- Application for Permit  
2B- Schematic Plan  
3 - Computer Printout of  
4 - BOA Order and Opinion;  
Case No. 90-7-SPHA  
5 -DZC Order 90-7-SPHA  
6 -Corresp. from Timothy Fitts to Mr. &  
Mrs. Unger 4/12/93  
7 -Corresp. from J.H. Thompson to J.R.  
Reisinger 4/13/93  
8 -Corresp. from J.H. Thompson to Rich  
S. Wisnom 4/15/93  
9 -Corresp. from J.H. Thompson to K.  
Macleay 4/21/93  
10 -ADC Street Map  
11 -Inter-Office memo Keller to Jablon  
7/16/93  
12 -Bound color photos  
13 -Photograph copy (photo by M.O. Brown)  
14A-14D -Photos of deck/garage from  
Asendorf's window

June 13, 1994 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 of Baltimore  
County, Room 49, Basement - Old Courthouse  
400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

cc: People's Counsel for Baltimore County  
Kenneth G. Macleay, Esquire  
Todd Unger

IN THE MATTER OF TODD UNGER

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

Case No: 94 CV 03487

#### STATEMENT OF THE CASE

This case comes before the Court on an Appeal by The Office of Peoples Counsel from a decision of the County Board of Appeals, in which the Board approved the construction of a garage on the property of the Appellee.

#### STATEMENT OF FACTS

The Appellee, Mr. Todd Unger, owns a home in Towson Manor Village. His home is one of a group of row homes which fronts on E. Susquehanna Avenue in Towson, MD. Mr. Todd purchased the home at 244 E. Susquehanna Ave. from his parents on March 8, 1993. Mr. Unger almost immediately applied for, and on March 28, 1993, received, a building permit to enclose a carport, in the rear of the property, making it into a garage. A Stop Work Order was issued on April 9, 1993, requiring Mr. Unger to make corrections to the Building Permit relating to the type of construction employed in construction of the roof. The correction having been made a new Permit was issued on April 12, 1993. On April 15, 1993, a second Stop Work Order was issued, coming at a time when the garage was nearly completed.

The second Stop Work Order alleged that Mr. Unger had violated a policy of the Department of Permits and Licensing by not disclosing in the Application for a Building Permit, that the property was subject to a Variance issued to the previous owners in 1990. Mr. Unger

MICROFILMED

find a Decision for Special Hearing before the Deputy Zoning Commissioner in order to resolve any violation. The Deputy Zoning Commissioner found that the garage was a permissible accessory structure, but that the roof was aesthetically undesirable and would, therefore, have to be reduced in pitch.

Appeal was taken to the County Board of Appeals and on March 22, 1994, the Board conducted a full evidentiary hearing, the testimony from which is summarized in the Board's Opinion. The Board upheld the issuance of the Building Permit, without any special restrictions. It is this decision which the Peoples Counsel bring before this Court for review.

#### STANDARD OF REVIEW

The standard of review to be applied by this Court in reviewing the decision of the Board is governed by the State Government Article of the Annotated Code of Maryland, Sections 10-201 et seq. The decision of an administrative agency may not be overturned if it is supported by substantial evidence, see *Hoyt v. Police Comm'r of Baltimore City*, 279 Md. 74 (1977); *Maryland Racing Comm'n v. McGee*, 212 Md. 69 (1957); *Steamship Trade Ass'n of Baltimore v. David*, 190 Md. 215 (1948); *Brown v. Maryland Unemployment Compensation Board*, 189 Md. 233 (1947); *Heath v. Mayor of Baltimore*, 187 Md. 206 (1946); *Heaps v. Cobb*, 185 Md. 372 (1945), is not arbitrary or capricious, see *Bullock v. Pelham Woods Apartments*, 283 Md. 505 (1978), and is based upon a proper construction of the law, see *Hackley v. City of Baltimore*, 70 Md. App. 111 (1987). Since the agency is recognized to have special expertise in its field of endeavor, see *O'Donnel v. Bassler*, 289 Md. 501 (1981), a decision by the agency is considered prima facie correct and is presumed valid by reviewing courts, see *State Comm'n on Human Relations v. Washington County Community Council, Inc.*, 59 Md. App. 451 (1984); *Nationwide Mutual Ins. Co. v. Ins. Comm'r.*, 67 Md. App. 727 (1986).

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#### OPINION AND ORDER

Peoples Counsel, in its Memorandum on Appeal raises two issues for consideration by this Court. First, whether the garage's proximity to the deck on the rear of the house precludes the garage from consideration as an accessory building. Secondly, whether the Board erred in evaluating the Building Permit for the garage without considering the earlier grant of a variance for the carport.

As to the first issue the Board was specific in its findings as put forward in its Opinion and Order. The Board stated:

Testimony from Paul Lee and from Mr. Unger clearly showed that the carport-now-garage is not attached in any way to the main structure. Since the garage is now classified as an accessory building, and since all the proper permits have been obtained, and since all Baltimore County regulations as to roof height, setbacks, etc., have been complied with, the Board finds that the garage is now a legal structure and that building permits B158562 are in compliance with the BCZR, and that the conversion of the existing carport to a garage be permitted. (Emphasis supplied)

Applying the standard of review, as outlined above, to the findings of the Board, this Court can find no justification for upsetting their decision. Decisions of the Board are prima facie correct and People's Counsel has not met its burden of showing any error on the part of the Board in defining Mr. Unger's garage as an accessory building.

The second issue submitted by People's Counsel involves the prior variance. People's Counsel urges upon this Court the proposition that once a variance has been granted to the property an affirmative duty of disclosure attaches to the homeowner. This Court rejects this creation of a duty upon the homeowner. Nowhere does this duty manifest itself in the Baltimore County Zoning Regulations. Its creation, furthermore, is contrary to public policy. The Building Permit obtained by Mr. Unger could have been obtained by any of Mr. Unger's neighbors. To

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deny to Mr. Unger the right to construct upon his property an accessory building available to any of his neighbors solely because the previous owner had been granted a variance for the property is unjust. Even if the duty to disclose the variance were removed from the homeowner and placed upon the Department of Permits and Licensing, the inequities of such a rule would not be removed. Unless clearly articulated by the legislature the resulting restriction of the homeowner's otherwise lawful exercise of his property rights cannot be sanctioned by this Court.

It is, therefore, ORDERED that the decision of the Baltimore County Board of Appeals be AFFIRMED.

Dated: February 24, 1995

CC: Peter Max Zimmerman  
Kenneth G. Macleay

Judge Alfred L. Brennan, Sr.

MICROFILMED

IN THE MATTER OF THE APPLICATION OF TODD UNGER FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE NORTH-EAST SIDE SUSQUEHANNA AVENUE, 455' NORTHWEST OF THE CENTER-LINE OF LINDEN AVENUE (244 E. SUSQUEHANNA AVENUE) 9TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

CASE NO. 93-460-SPH

#### OPINION

This case comes before the Board on appeal from a decision by the Deputy Zoning Commissioner which granted with restrictions a Petition for Special Hearing for approval of Building Permit #B158562 as being in compliance with the Baltimore County Zoning Regulations (BCZR) and an amendment to a previously approved site plan in Case No. 90-7-SPHA, for conversion of an existing carport to a garage. Petitioner was represented by Kenneth G. Macleay, Esquire. Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel, also participated in the hearing. The case was heard this day in its entirety.

In opening statement, the Board was made aware that Mr. Todd Unger applied for a building permit to enclose an existing carport with wood frame, windows and truss roof, same being an accessory building detached from the main structure. Subsequently, a stop work order was issued when the inspector noted the truss roof designated in the building permit was not being used, but that a stick-built rafter roof was being erected. Mr. Unger then contacted the Department of Permits & Licenses, explained the

Case No. 93-460-SPH Todd Unger /Petitioner 2

situation, and the building permit with the necessary change in wording was reissued. Mr. Unger then continued with the construction. Shortly thereafter, another stop work order was issued, and Mr. Unger was informed that a special hearing was required in order to determine whether the structure was in fact a detached structure, making it an accessory building rather than an extension of the main building. People's Counsel argued that when Mr. Unger applied for the building permit he should have made the Department of Permits & Licenses aware of a prior Board of Appeals ruling in Case No. 90-7-SPHA, in which the Board granted the variance for the rear yard setback, granted the approval of the carport construction, and denied the use of the carport roof for a deck and ordered a solid railing to be constructed between the existing deck and the roof of the now existing carport. A major issue that seems to be creating the contention is the height of the roof on the now-enclosed garage.

The following people testified on behalf of Petitioner. Steve Miller, the next-door neighbor who resides at 246 E. Susquehanna Avenue, testified that he had no objections to the conversion of the carport to a garage. Paul Lee, Professional Engineer, testified that he drew up the plans, that he went over all the requirements for an accessory structure in the rear yard, and that the garage as built complies with all Baltimore County regulations. Richard Kellman, planner for Baltimore County, testified that he reviews and considers all building permits, and testified that he approved this permit and it was his opinion that the building as

Case No. 93-460-SPH Todd Unger /Petitioner 3

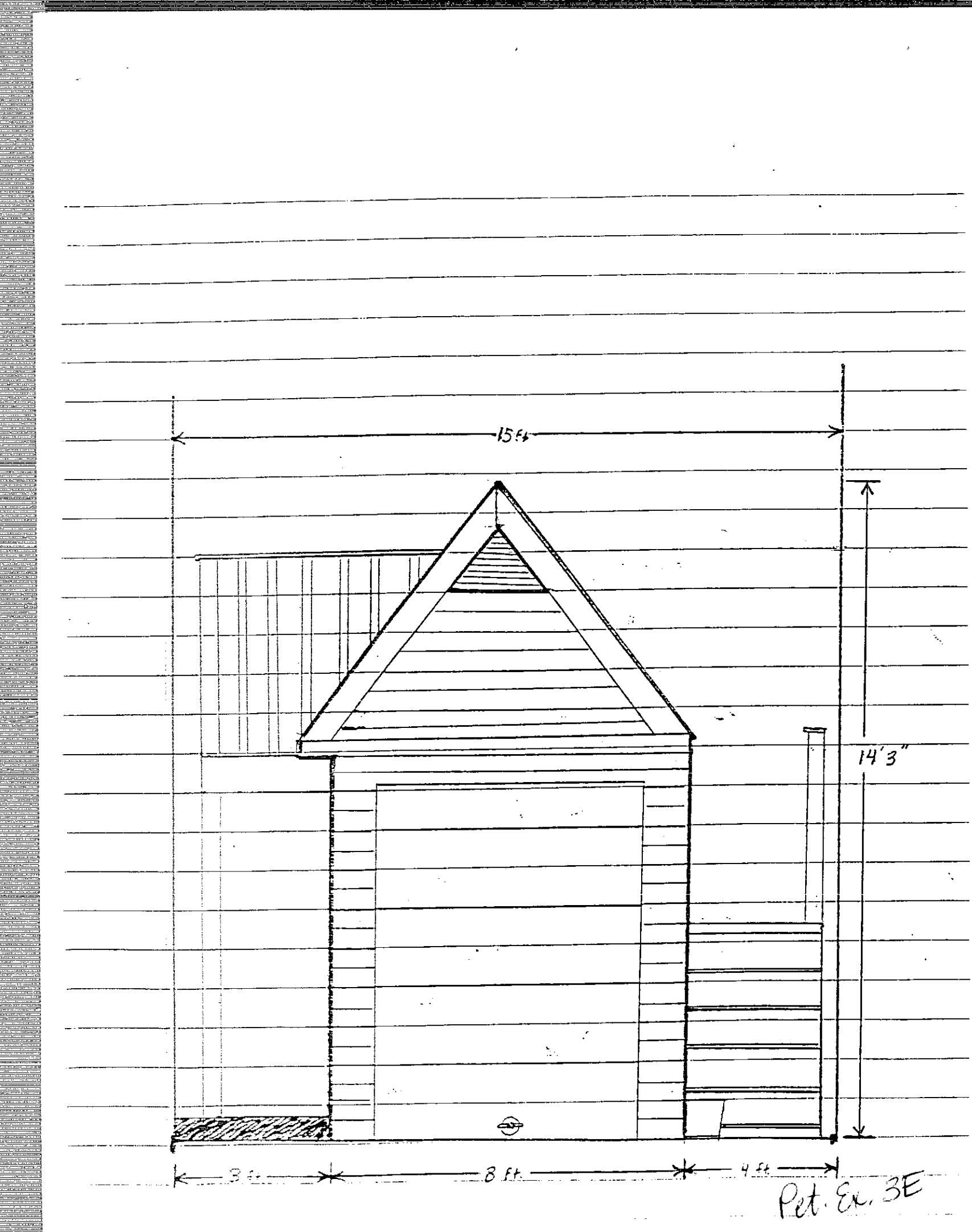
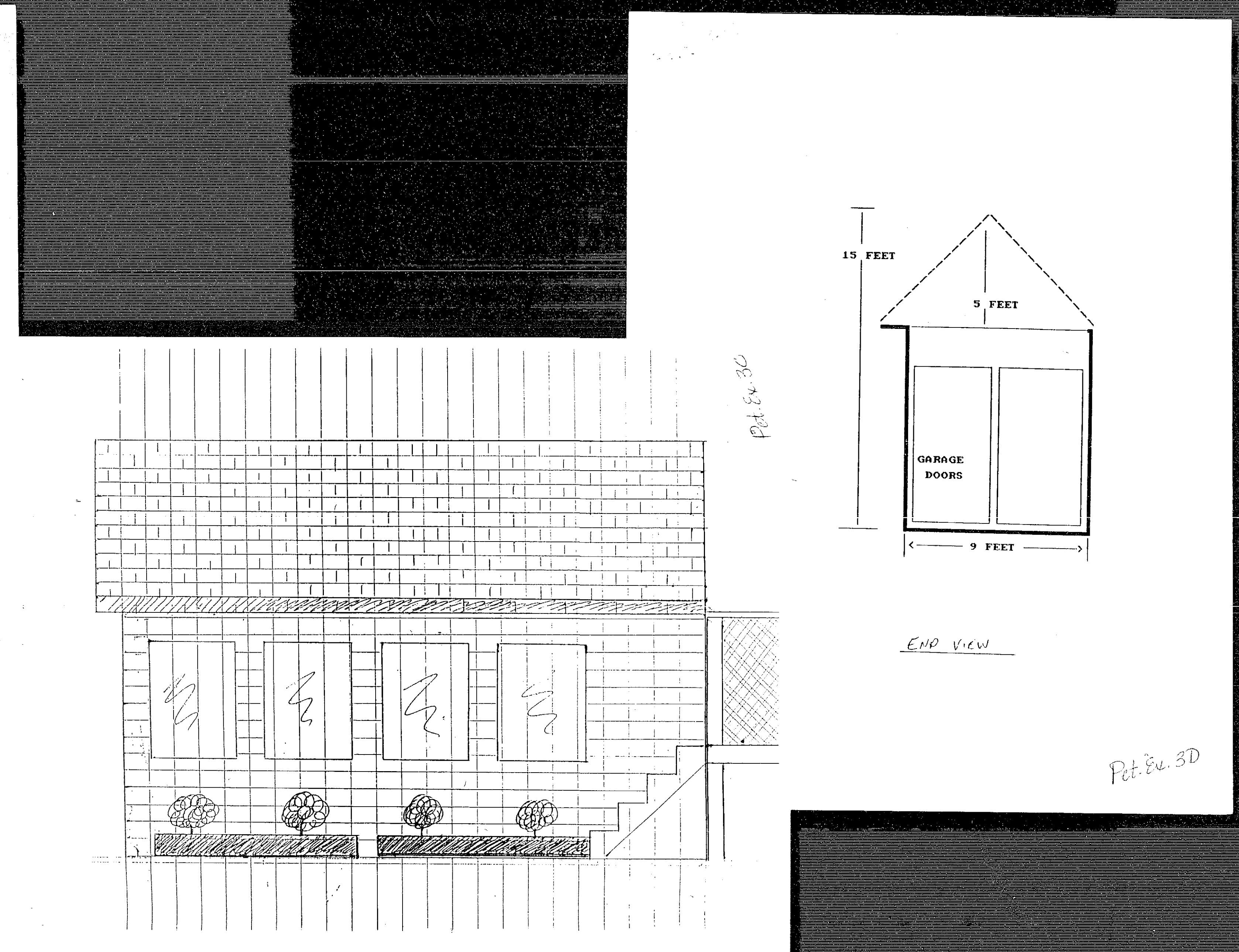
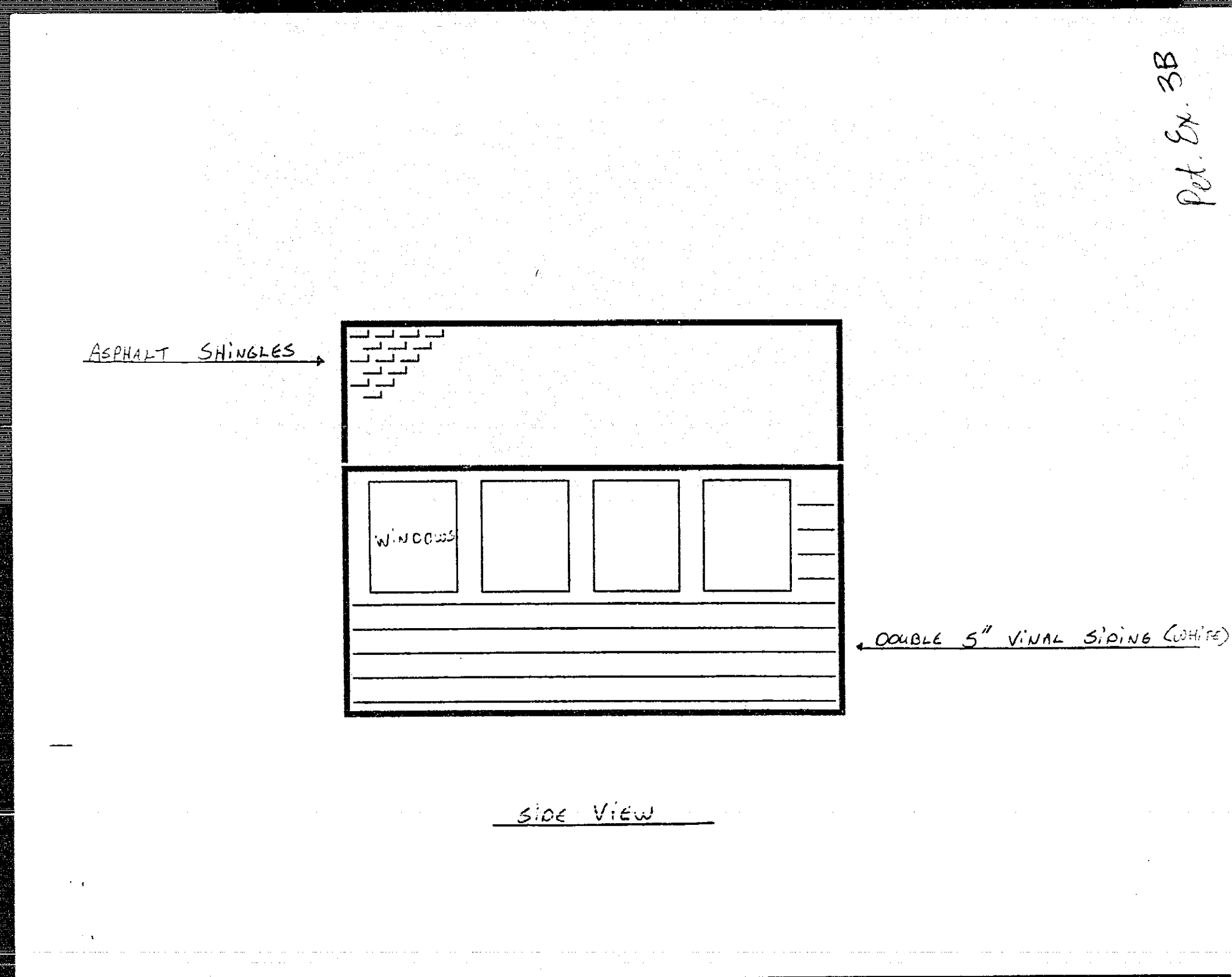
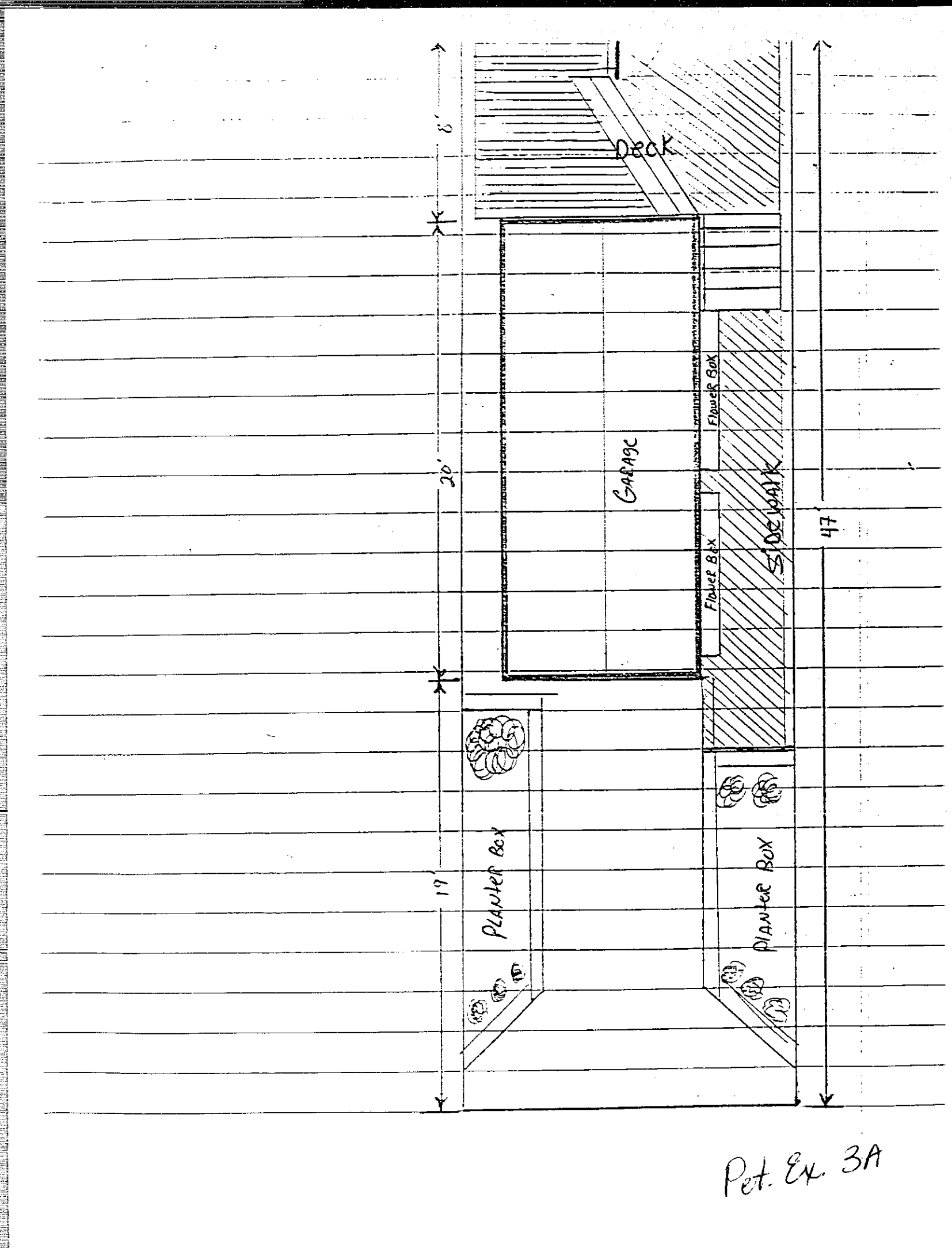
erected is in full compliance with all Baltimore County regulations for an accessory building. He further testified that it was his opinion that any house in the area building a like structure would have to be approved. Robin Kone, a neighbor at 220 E. Susquehanna Avenue since 1991, testified that she has no objections to the structure as erected. She testified that it was her opinion that the garage was an improvement over the carport, and it was her opinion that most of the people favoring the garage just do not bother to attend the hearings. Last to testify in support of the Petition was Todd Unger. He testified that he has religiously applied for the proper permits, started the work, stopped the work, had the permit reissued, received the second stop work order, and requested the special hearing as directed by Baltimore County. He testified that the carport was in no way attached to the main structure, and that he had complied with every requirement of Baltimore County in the closing in of this carport to make it a garage. He further testified that the project is now complete and, having complied with all Baltimore County's requirements, the Deputy Zoning Commissioner now says he has to remove the roof, which is in full compliance with Baltimore County regulations. The Petitioner then rested.

People's Counsel, in opposition to the garage, presented Katherine Asendorf, a neighbor who lives abutting the other side of Mr. Unger's house. She testified that in her opinion there was no separation between the existing garage and the main house, and that the height of the roof on the new building cuts off the sun and the

Case No. 93-460-SPH Todd Unger /Petitioner 4

air to her house, and that the building as erected was totally out of character with the area. Joseph Quingert testified as a representative of the Towson Manor Association in opposition to the structure. It was his opinion that the structure is in no way compatible to the neighborhood and a disgrace to the area. Jack Howard, who lives at 256 E. Susquehanna Avenue, rendered his opinion that this garage was an eyesore, and his only opposition was to the steep-pitched roof. If it had been built with a flat roof, he would have had no objections. June Sang, of 268 E. Susquehanna Avenue, rendered her opinion that the garage was obnoxious, out of character with the area, and the high roof was especially undesirable. Cynthia Bussey, of 236 E. Susquehanna Avenue, testified that it was her opinion that this garage was a detriment to the neighborhood. Lorraine Zaganas, of 242 E. Susquehanna Avenue, testified that in her opinion the building was out of character, is much too tall, and creates shade in the backyard of her aunt, with whom she lives, and precludes her sunbathing all summer long. Closing arguments were received from both attorneys.

It is the opinion of this Board that the garage as shown on the photographs is not a very attractive building. The Board will note that on page 2 of the Board of Appeals Order in Case No. 90-7-SPHA, the carport erected at that time was definitely noted to be a separate building. The Order calling for the fence to deny access to the roof of the carport definitely removes the carport from an extension of the main building to an accessory building.



## PETITIONERS EXHIBIT NO. 4

PETITION FOR SPECIAL HEARING  
AND ZONING VARIANCE - SW/S  
Susquehanna Avenue, 420' SE of  
Aigburth Avenue  
(244 East Susquehanna Avenue)  
9th Election District  
4th Councilmanic District

Todd Unger  
Petitioners

### AFFIDAVIT

I, STEVE MILLER, being over 18 years of age and competent to testify in the Court of Law under penalties of perjury offer the following statement and opinions in regards to the above-captioned matter.

I have been a resident and owner of 246 East Susquehanna Avenue for approximately seven (7) years and have observed the construction which encloses the existing car port at 244 East Susquehanna Avenue. I support the owner of 244 East Susquehanna Avenue, Todd Unger, in his efforts to obtain permission from the Baltimore County Zoning Office to enclose his existing car port with the roof as has already been constructed. I perceive no ill effect on the health, safety or welfare of my property or those properties surrounding 244 East Susquehanna Avenue with the accessory structure as constructed. Further, I believe that the accessory structure as constructed would have no ill effect on my property value or the property value of the surrounding residents and in fact could have a positive effect on the property values of the surrounding residents. Since the construction of the roof over the existing car port in April of 1993 I have noticed no difference in wind, sunlight or enjoyment of space as it pertains to the adjoining property which I reside at at 246 East Susquehanna Avenue.

Steve Miller  
Steve Miller

## Garage angers residents

BY LON INGRAM

At 244 E. Susquehanna Avenue, the deck from hell has been replaced by the garage from hell, according to some Towson Manor Village residents.

But 244 occupant Todd Unger says he just wants to spruce up an unattractive, poorly constructed carport and have a nice place in which to store his vintage Austin Healy.

This is not the first time the small, two-story dwelling has spurred a controversy in this community of small, 15-foot-wide row-houses with tiny backyards that abut Hillen Road.

After Unger's parents bought the house in 1987 as a home for him and his brother, he and the brother built a carport behind it and used its roof as a deck.

The rear of the house already had a second-story deck that extended eight feet into the shallow rear yard; the carport roof, in effect, extended that deck another 20 feet.

To visually over-enclose the narrow property and impose on the privacy of neighbors, residents said.

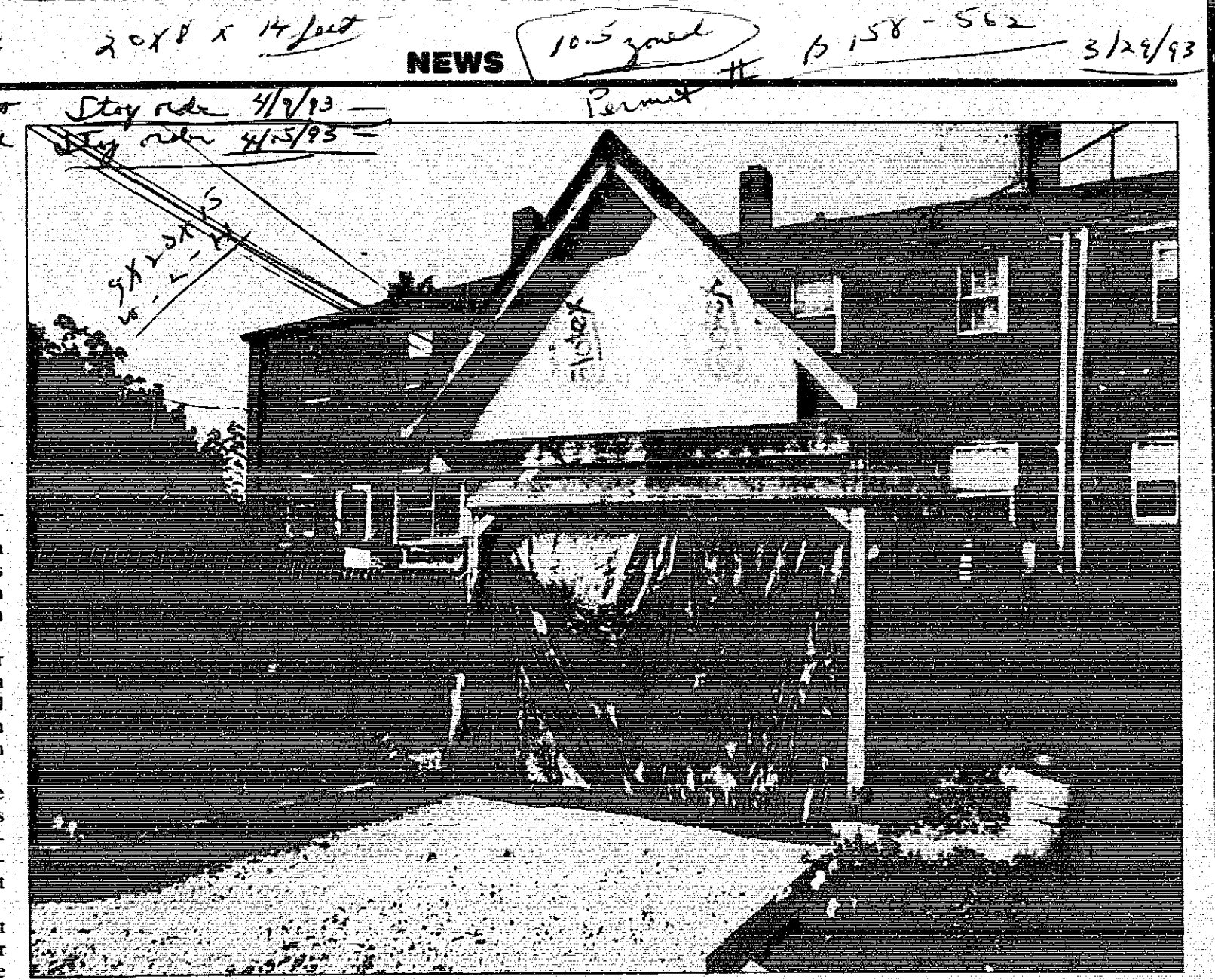
The county Board of Appeals ruled in 1990 that the deck had a detrimental effect on adjacent residences and ordered the removal of the railings and access to the roof and to stop using it as a deck.

Even Cynthia Lindholm, who lives three houses away, says the deck is visually obtrusive from her yard and a concern with regard to property values.

But this spring Unger and his fiance purchased the house from his parents and began turning the carport into an enclosed garage with windows on its sides and a black asphalt-shingled roof above the former deck that peaked 14 feet above the ground.

It was not well received by the immediate neighbors, who filed blocks both breezes that might wait through their yards and their view of the street.

After complaints were filed with the county, Unger was advised by the county zoning office in April to delay construction until it is determined if the permit violates regulations. He has proceeded, however.



Unger's lawyer, Kenneth Mackley, said Unger had been issued a building permit by the county and assumed the county was acting in good faith when he began construction.

There is no deed or covenant that requires prior approval from the community association, Mackley claimed. "However, for the sake of neighborhood harmony and brotherly love, an effort will be made to accommodate any concerned resident."

The case may rest on whether the garage is attached to the house. If it is, it violates zoning laws.

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## Proposed bills target off-campus housing

BY JAY DOYLE

County Councilman Doug Riley goes after noisy college students with legislation to regulate rooming and boarding houses.

A move from county officials to tone down noisy college students living in otherwise quiet neighborhoods is likely to impact only one rooming house in West Towson for now.

The brick colonial at 307 West Chesapeake Avenue is the only legal rooming house known to Councilman Doug Riley of Towson. He has submitted two bills that aim to keep neighborhoods quiet by toughening regulations on all rooming and boarding houses.

"I regularly received phone calls in the middle of the night about noise" from 307 West Chesapeake, said Sue Schenning, a past president of the Southland Hills Improvement Association. Schenning said parties with up to 300 students have been held at the house, which has been embroiled in zoning disputes since the 1970s.

three or more unrelated people live and pay rent. That doesn't include apartments, hotels and group homes for the handicapped or the elderly. Boarding houses serve food as well but are not treated differently in Riley's bills.

College students often seek off-campus quarters in rooming houses, which in turn can bring their often boisterous behavior into conflict with more sedate homeowners.

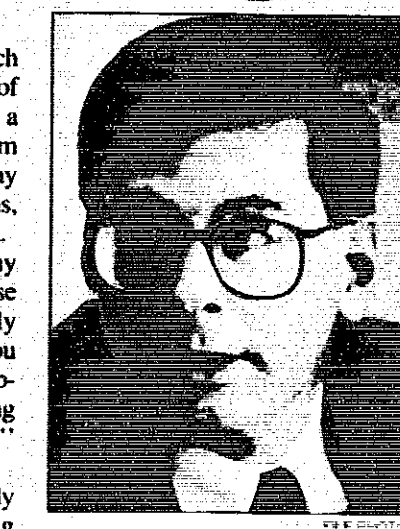
"I regularly received phone calls in the middle of the night about noise" from 307 West Chesapeake, said Sue Schenning, a past president of the Southland Hills Improvement Association. Schenning said parties with up to 300 students have been held at the house, which has been embroiled in zoning disputes since the 1970s.

A recent county planning study found only two legally operating rooming houses. But neighbor complaints show that as many as 20 houses operate illegally in Towson alone during the school year, most occupied by Towson State.

the whole solution." Residents who make too much noise, based on the judgement of county police, will be guilty of a misdemeanor and face maximum penalties of a \$500 fine and 90-day jail term. After three violations, owners or landlords can be fined.

Yet county officials say many rooming houses are illegal because they have never been properly zoned. "Residents can tell you where they are and what the problems are — but enforcing a zoning violation has been very difficult," said Schenning.

A recent county planning study found only two legally operating rooming houses. But neighbor complaints show that as many as 20 houses operate illegally in Towson alone during the school year, most occupied by Towson State.



Councilman Doug Riley says the bills are a step to force rooming houses to comply with the law.

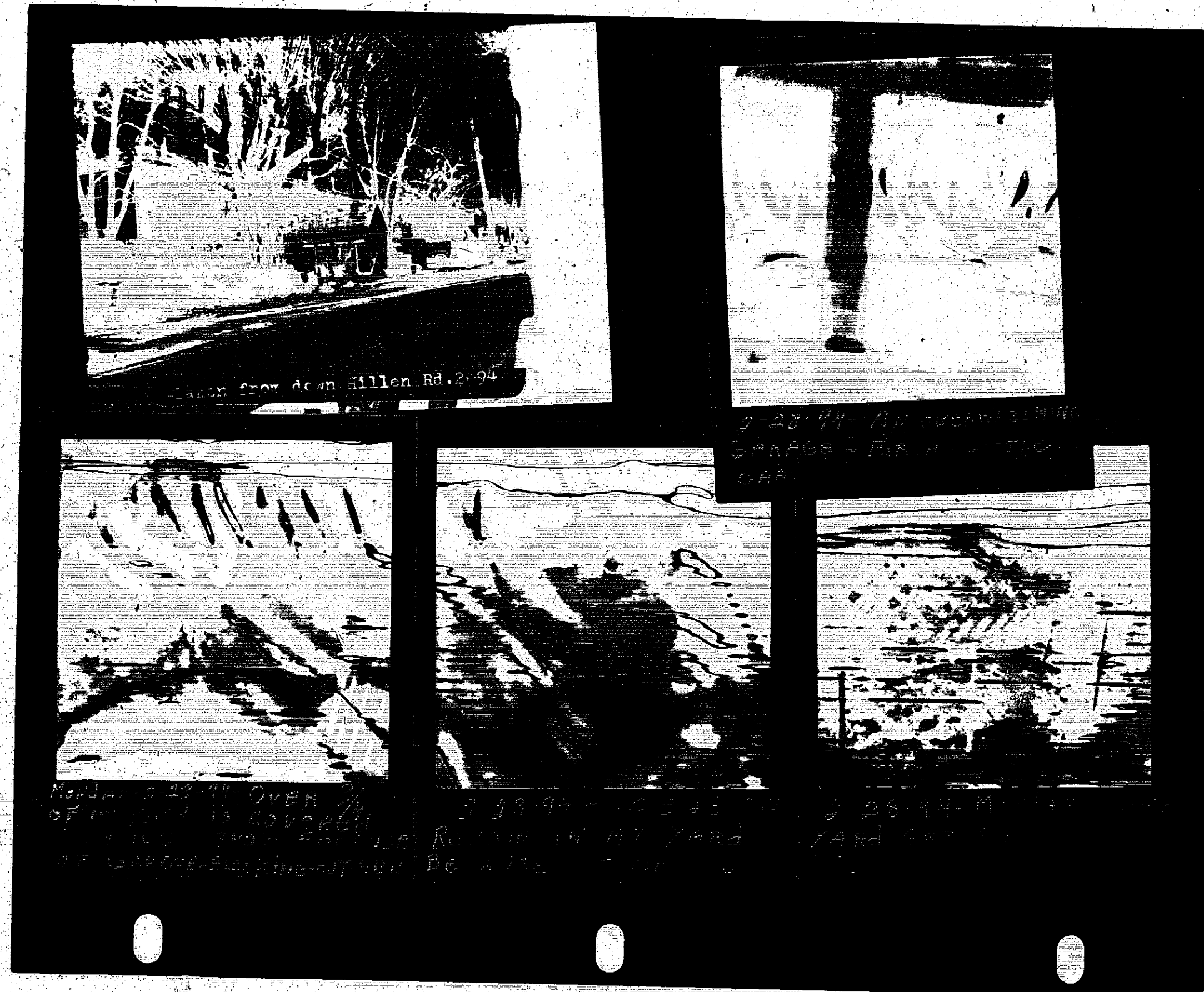
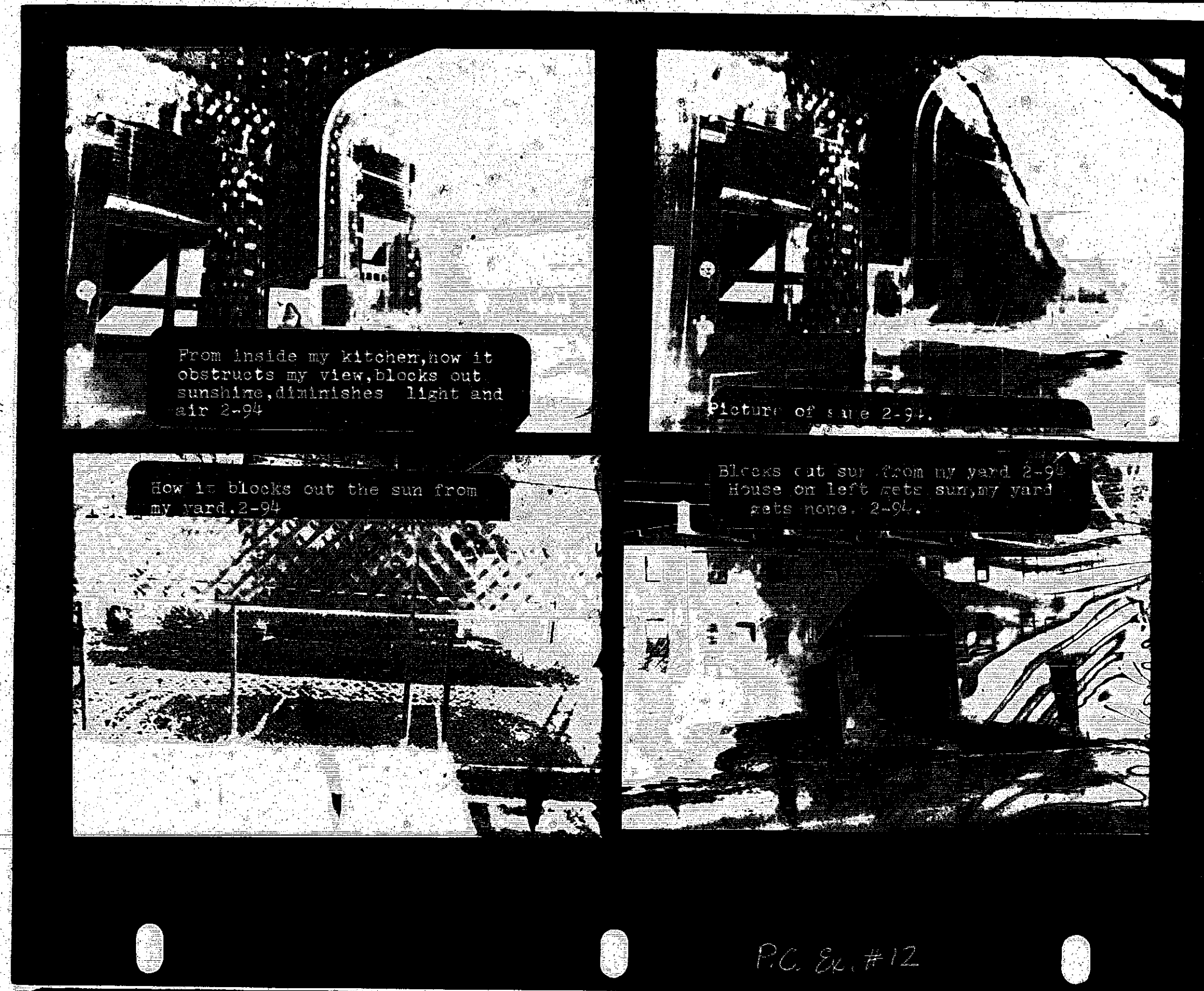
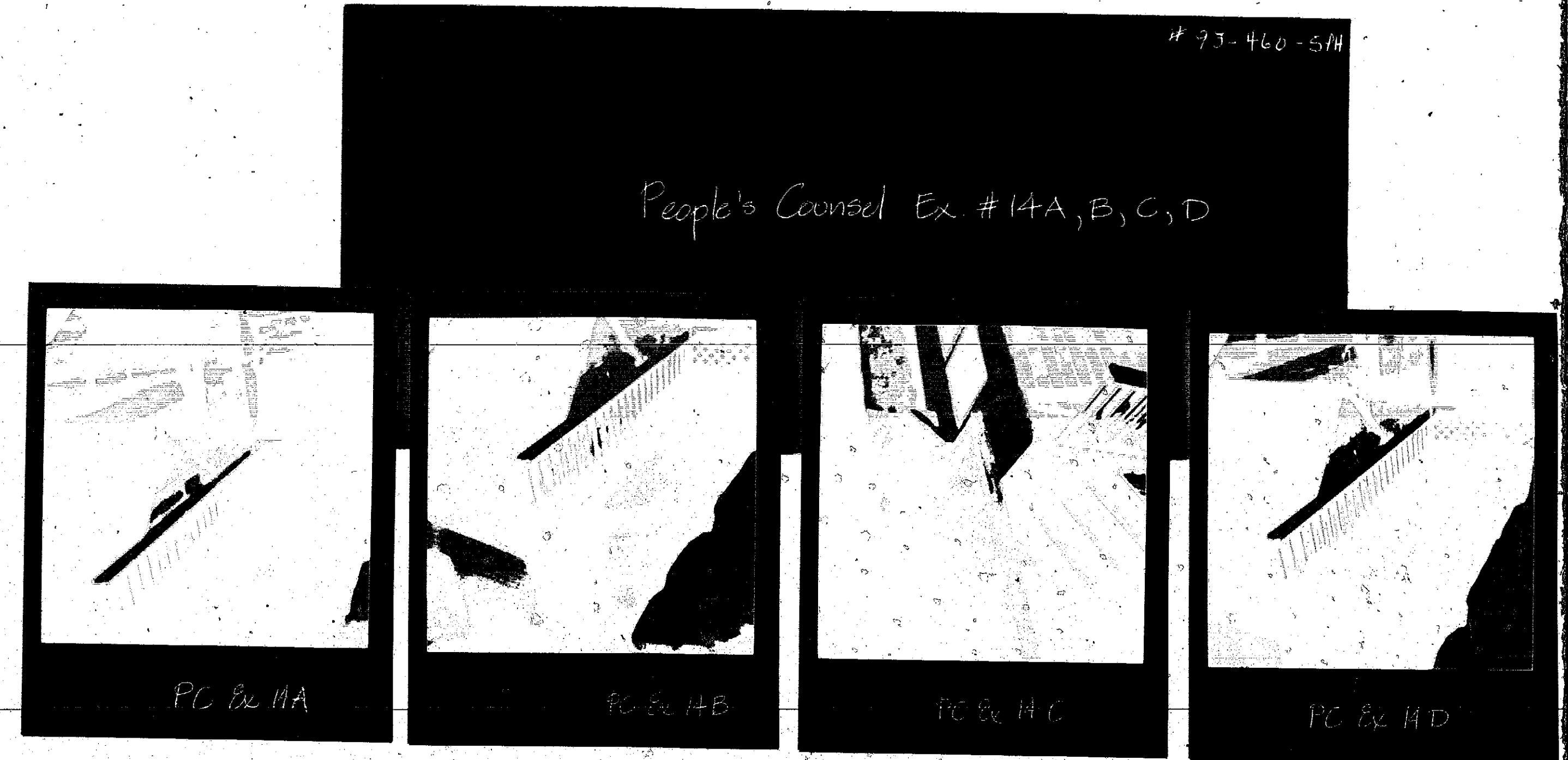
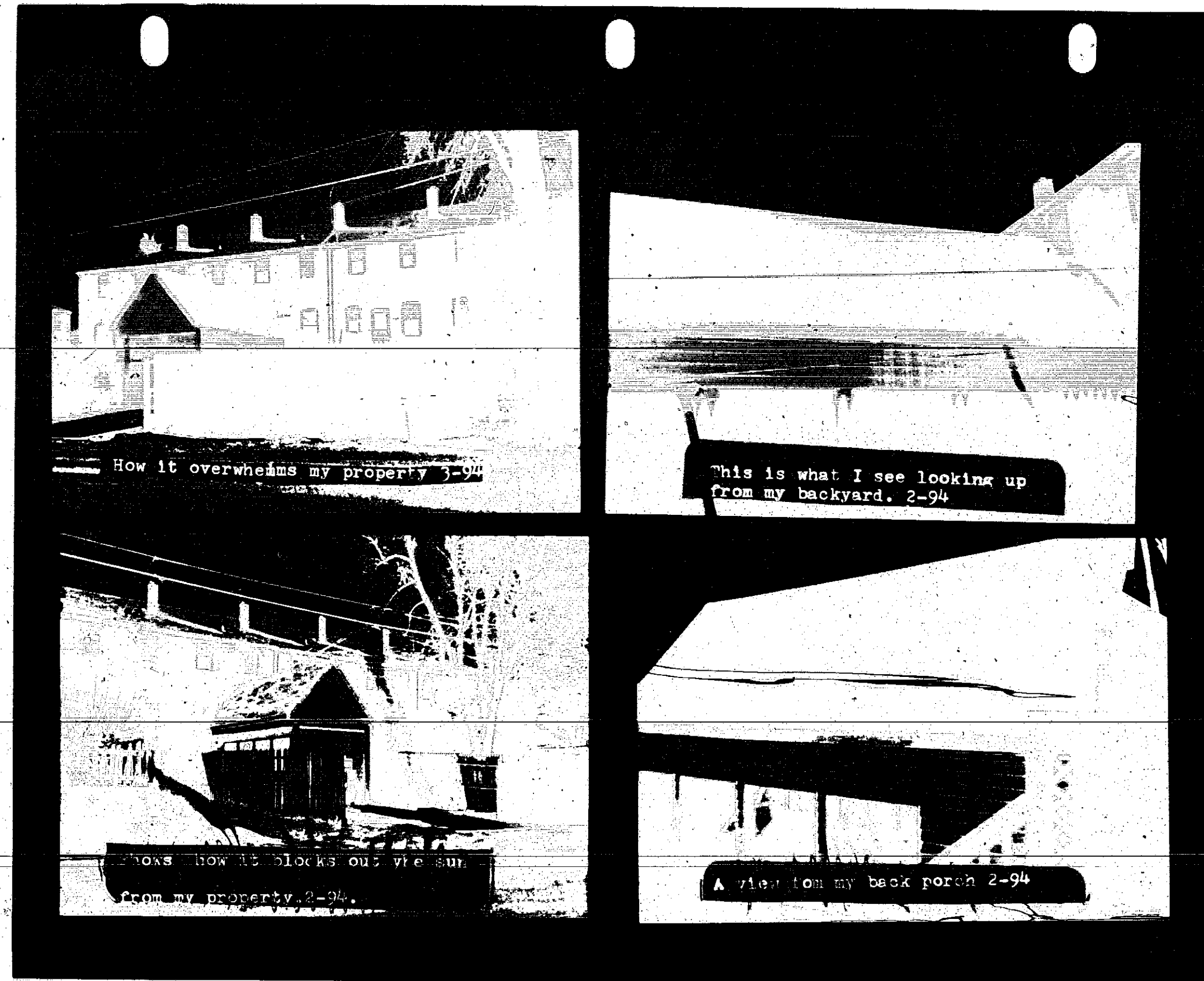
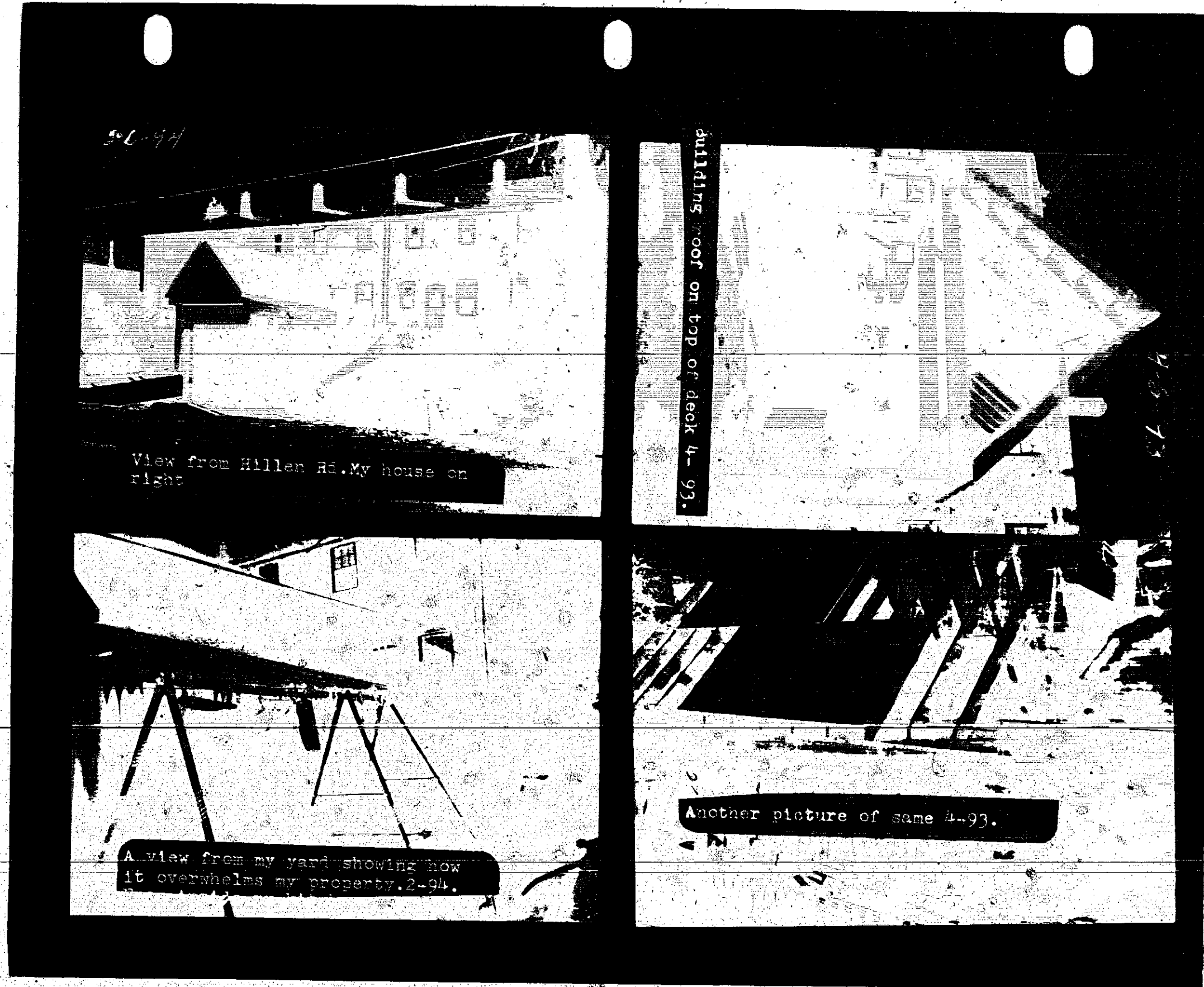
patrons — it's one too," Riley described his bills, to be voted on Sept. 7, as "a step forward" that will at least force known rooming houses to comply with the law.

Councilwoman Bertha Manley of Catonsville supports Riley's bill, though her office can't identify any such houses operating legally in her district.

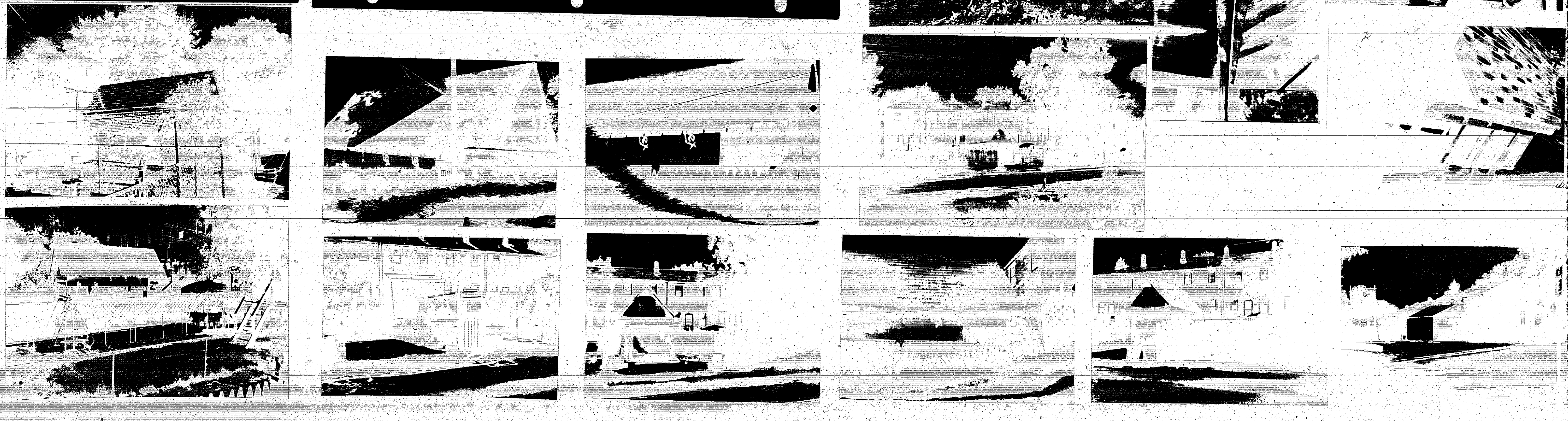
Manley said Arthus and River Chase residents complain about loud University of Maryland Baltimore County students living in row houses, but she believes Riley's bill will address the problem.

Holding the landlord someone what responsible is going to help," she said.

Schenning said the West Chesapeake rooming house is likely to face opposition if its owner applies for a permit.



Petitioner's  
Exhibits 1A-1C  
and  
3-10  
Case 93-460-57H



Testimony from Paul Lee and from Mr. Unger clearly showed that the carport-now-garage is not attached in any way to the main structure. Since the garage is now classified as an accessory building, and since all the proper permits have been obtained, and since all Baltimore County regulations as to roof height, setbacks, etc., have been complied with, the Board finds that the garage is now a legal structure and that building permits B158562 are in compliance with the BCZR, and that the conversion of the existing carport to a garage be permitted.

## O R D E R

IT IS THEREFORE this 1st day of April, 1994 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to approve the construction under Building Permit No. B158562 and determine that the building permit complies with the Baltimore County Zoning Regulations, and to amend the previously approved site plan to permit the conversion of the existing carport to a garage as designated on the building permit be and the same is GRANTED; and that the garage shall be established as an accessory structure.

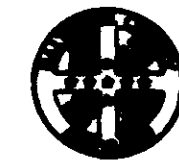
Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman

Michael B. Sauer  
Michael B. Sauer

Robert O. Schuetz  
Robert O. Schuetz



## County Board of Appeals of Baltimore County

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

April 1, 1994

Kenneth G. Macleay, Esquire  
ROLLINS, SMALKIN, RICHARDS  
& MACLEAY  
401 N. Charles Street  
Baltimore, MD 21201-4405

RE: Case No. 93-460-SPH  
Todd Unger /Petitioner

Dear Mr. Macleay:

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.

Very truly yours,  
Charlotte E. Rodcliffe for  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Mr. Todd Unger  
Mr. Paul Lee  
Ms. Cynthia Linthicum  
Mr. & Mrs. Walter Asendorf  
Mr. Joseph J. Quingert  
Mr. Samuel Lesight  
Mr. Jack R. Howard  
People's Counsel for Baltimore County  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director/ZADM

Printed with Soybean Ink  
on Recycled Paper

IN RE: PETITION FOR SPECIAL HEARING  
NE/S Susquehanna Avenue, 455'  
NW of the c/l of Linden Avenue  
(244 E. Susquehanna Avenue)  
9th Election District  
4th Councilmanic District  
Todd Unger  
Petitioner

BEFORE THE  
DEPUTY ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
Case No. 93-460-SPH

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing filed by the owner of the subject property, Todd Unger, through his attorney, Kenneth G. Macleay, Esquire. The Petitioner requests approval of Building Permit No. B158562 as being in compliance with the Baltimore County Zoning Regulations (B.C.Z.R.) and an amendment to the previously approved site plan in Case No. 90-7-SPHA, for the conversion of an existing carport to a garage in accordance with Petitioner's Exhibit 1.

Appearing on behalf of the Petition was Todd Unger, property owner, and Paul Lee, Professional Engineer. The Petitioner was represented by Kenneth G. Macleay, Esquire. Many residents of the surrounding community appeared in opposition to the Petitioner's request.

Testimony indicated that the subject property, known as 244 East Susquehanna Avenue, consists of 0.038 acres, more or less, zoned D.R. 10.5 and is improved with a two-story, inside group townhouse dwelling with an attached 8' x 14' wood deck and carport which has been partially converted to a garage. The instant Petition was filed as a result of a complaint filed with this Office concerning the conversion noted above.

In order to adequately address the substance of this request, a review of the zoning history of the subject property is necessary. This

ORDER RECEIVED FOR FILING  
Date 11/14/93  
By [Signature]

MICROFILMED

property was the subject of prior Case No. 90-7-SPHA in which the former owners, the Petitioner's parents, Dr. and Mrs. Dennis R. Unger, requested a special hearing and variance for a combined deck and carport. The Petitioners had obtained a building permit for an 8' x 14' deck to be added to the rear of the existing dwelling to replace the rear stairway and kitchen door entrance, which is above ground level. Thereafter, a second building permit was issued for the construction of a 9' x 20' carport, which was built approximately 1 inch from the deck. Although not physically connected, the top of the carport had been completed for use as an extension to the deck. The Petitioners were denied the variance for the carport, but were granted the special hearing relief to permit the carport to remain. Said relief was conditioned upon the Petitioners removing a railing from around the perimeter of the carport so that same could not be used in conjunction with the deck. An appeal was filed to the Board of Appeals who subsequently granted the variance in that case, but agreed that any use connected with the top of the carport would be overwhelming to the surrounding neighbors. The Board also required the Petitioners remove the railing from around the perimeter of the carport roof to prevent them from utilizing same as an extension to the deck.

Todd Unger, who has since acquired the property, now comes before this Hearing Officer and requests approval to enclose the existing carport and convert same to a garage. Several photographs were entered into evidence by the Petitioner and the Protestants depicting the structure in question which has been partially enclosed and has a peaked roof. Because the carport was the subject of the prior case, the Petitioner must also amend the previously approved site plan to show the conversion of the carport to a garage.

ORDER RECEIVED FOR FILING  
Date 11/14/93  
By [Signature]

- 2 -

MICROFILMED

Many residents appeared in opposition to the Petitioner's request. Ms. Asendorf, who resides on the adjacent property and is most affected by the variance sought, appeared and testified in opposition to the relief requested. Ms. Asendorf, who testified in the prior case, both before the Zoning Commissioner and the Board of Appeals, testified that the roof above the carport makes for a very imposing structure. She testified that it cuts off air and light to her property. Furthermore, she states that the structure is an eyesore and is not in character and keeping with other structures in the neighborhood. Ms. Asendorf believes that the structure is not appropriate given its size as compared to the rear yard.

I agree that the garage as proposed is not in character with the surrounding community. It is clear from the photographs submitted that the size of this peaked roof is overwhelming and certainly imposes upon Ms. Asendorf and other neighboring property owners. Further, given the history of this property, the Petitioner should have been aware that a special hearing was needed in order to proceed with the improvements. It is clear that the roof of the carport is not in keeping with surrounding improvements and should not be permitted to exist.

Apparently, my same reasoning was applied by the Board of Appeals in Case No. 90-7-SPHA. In that case, the Board found that the size and elevation of the deck had a detrimental effect on adjacent residents and required that the Petitioners remove the railing around the perimeter of that deck. Given the fact that the railing and any use on top of that deck imposed too much upon the neighbors to be approved in that instance, I feel that the same holds true for the rather large, peaked roof which has been placed above the carport. Therefore, the Petitioner shall be required to remove the peaked roof from the carport; however, the enclosure

of the carport will be permitted. Some of this work has already been completed and the Petitioner shall not be required to remove any of the work started to enclose the sides of this structure. My Order will only affect the peaked roof above this carport.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 14th day of October, 1993, that the Petition for Special Hearing to approve the construction under Building Permit No. B158562 complies with the B.C.Z.R., and to amend the previously approved site plan for the subject property to permit the conversion of the existing carport to a garage, in accordance with the terms and conditions set forth below, be and the same is hereby GRANTED, subject to the following restrictions:

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 relief granted herein shall be rescinded.

2) Within sixty (60) days of the date of this Order, the peaked roof shall be removed from the carport. The Petitioner shall be permitted to replace same with a flat, shingled roof. There shall be no further improvements on top of the carport. All work begun on the sides of the carport to enclose same shall be permitted to remain and shall be completed.

3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy M. Kotroco  
Deputy Zoning Commissioner  
for Baltimore County

ORDER RECEIVED FOR FILING  
Date 11/14/93  
By [Signature]

- 4 -

MICROFILMED

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning

Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

October 14, 1993

(410) 887-4386

Kenneth G. Macleay, Esquire  
401 N. Charles Street  
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL HEARING  
NE/S Susquehanna Avenue, 455' NW of the c/l of Linden Avenue  
(244 East Susquehanna Avenue)  
9th Election District - 4th Councilmanic District  
Todd Unger - Petitioner  
Case No. 93-460-SPH

Dear Mr. Macleay:

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

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

Timothy M. Kotroco  
TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

THK:bjs

cc: Mr. & Mrs. Walter Asendorf  
242 E. Susquehanna Avenue, Towson, Md. 21286

Mr. Joseph J. Quingert  
108 Linden Terrace, Towson, Md. 21286

Mr. Samuel Lesight, Vice President, Towson Manor Village  
212 Wilden Drive, Towson, Md. 21286

Ms. Cynthia Linthicum  
238 E. Susquehanna Avenue, Towson, Md. 21286

People's Counsel; File

MICROFILMED

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER  
NE/S Susquehanna Ave., 455' :  
NW of C/L Linden Ave. (244 E. : OF BALTIMORE COUNTY  
Susquehanna Ave.), 9th Election :  
Dist., 4th Councilmanic Dist. : Case No. 93-460-SPH  
TODD UNGER, Petitioner :  
:

## ENTRY OF APPEARANCE

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

Peter Max Zimmerman  
Peter Max Zimmerman  
People's Counsel for Baltimore County

Carole S. Demillo  
Carole S. Demillo  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-2188

I HEREBY CERTIFY that on this 13th day of July, 1993, a copy of the foregoing Entry of Appearance was mailed to Kenneth G. Macleay, Esquire, 401 N. Charles St., Baltimore, MD 21201, Attorney for Petitioner.

Peter Max Zimmerman  
Peter Max Zimmerman

MICROFILMED

ZADM



# Petition for Special Hearing

93-460-SPH  
to the Zoning Commissioner of Baltimore County

for the property located at 244 East Susquehanna  
which is presently zoned D-R-10-5

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 described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve or re-approve the construction under building permit #B158562 and such other relief as may be required at the time of the hearing in this matter. I determine that the building permit complies with the BCR.

Property is to be posted and advertised as prescribed by Zoning Regulations.  
I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Lessor  
Type or Print Name  
Signature  
Address  
City  
State  
Zip Code

Legal Owner  
Type or Print Name  
Signature  
Address  
City  
State  
Zip Code

Acquiesce to Petitioner  
Type or Print Name  
Signature  
Address  
City  
State  
Zip Code

Kenneth G. Macleay, Esquire  
Type or Print Name  
Signature  
401 N. Charles Street  
Baltimore, Maryland 21201

Todd Unger  
Type or Print Name  
Signature  
244 East Susquehanna Ave  
943-Boevey-Avenue  
Towson, Maryland 21204  
Name Address and phone number of representative to be contacted  
Kenneth G. Macleay  
401 N. Charles Street  
Baltimore, Maryland 21201  
Office Use Only  
ESTIMATED LENGTH OF HEARING  
REVIEWED BY  
DATE

ORDER RECEIVED FOR FILING  
Date  
By

Paul Lee Engineering Inc.

Paul Lee Engineering Inc.  
300 W. Hampden Ave.  
Towson, Maryland 21204  
410-871-5000

## DESCRIPTION

244 E. SUSQUEHANNA AVENUE  
9TH ELECTION DISTRICT - BALTIMORE COUNTY, MD.

Beginning for the same on the northeast side of Susquehanna Avenue at a distance 455 feet northerly from the center of Linden Avenue, said place of beginning also being at a point in line with the center of the partition wall between the house erected on the lot now being described and the house erected on the lot adjoining on the southeast and running thence and binding on the northeast side of Susquehanna Avenue (1) N 27°58' W 15.00 feet to a point in line with the center of the partition wall between the house on the lot now being described and the house erected on the lot adjoining on the northwest, thence (2) N 62°02' E to and through the center of said wall and continuing the same course in all 110 feet to the southwest side of Hillen Road, thence binding on the southwest side of said road S 27°58' E 15.00 feet to a point in line with the center of the partition wall first herein mentioned and thence S 62°02' W to and through the center of said wall and continuing the same course in all 110 feet to the place of beginning.

Containing 1,650 S.F. ± of land, more or less.



Engineers - Surveyors - Site Planners  
6/21/93

## CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY 93-460-SPH  
Towson, Maryland

District: 9th Date of Posting: 7/1/93  
Posted for: Special Hearing  
Petitioner: Todd Unger  
Location of property: 244 East Susquehanna Ave, 9th Election District  
Location of Sign: Along roadway on property of Petitioner  
Remarks:  
Posted by: [Signature]  
Number of Signs: 1 Date of return: 7/1/93

MICROFILMED

## CERTIFICATE OF PUBLICATION

TOWSON, MD. July 8, 1993  
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on July 8, 1993.

THE JEFFERSONIAN,

MICROFILMED

## CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY 93-460-SPH  
Towson, Maryland

District: 9th Date of Posting: 7/1/93  
Posted for: Special Hearing  
Petitioner: Todd Unger  
Location of property: 244 E. Susquehanna Ave, 9th Election District  
Location of Sign: Along roadway on property being appealed  
Remarks:  
Posted by: [Signature]  
Number of Signs: 1 Date of return: 7/1/93

## CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY 93-460-SPH  
Towson, Maryland

District: 9th Date of Posting: 7/1/93  
Posted for: Special Hearing  
Petitioner: Todd Unger  
Location of property: 244 E. Susquehanna Ave  
Location of Sign: Both sides of road - checked - signs had been made 72 hours before by sign company to go on from Hillen Rd.  
Posted by: [Signature]  
Number of Signs: 1 Date of return: 7/1/93

450

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

DATE: 4-22-93 ACCOUNT: 2001-6150  
AMOUNT: \$ 85.00  
RECEIVED FROM: Ken Macleay, Esq.  
FOR: Petition for Sp. Hearing  
VALIDATION OR SIGNATURE OF CASHIER  
FBI - 4000 YELLOW - 000000

MICROFILMED

Baltimore County Government  
Office of Zoning Administration  
and Development Management

111 West Chesapeake Avenue  
Towson, MD 21204  
JUNE 30, 1993

(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 NUMBER: 93-460-SPH (Item 456)  
244 E. Susquehanna Avenue  
9th Election District - 4th Councilmanic  
Petitioner(s): Todd Unger  
HEARING: MONDAY, JULY 26, 1993 at 9:00 a.m. in Rm. 118, Old Courthouse.

Special Hearing to determine that the building permit complies with the BCR.

[Signature]

Arnold Jablon  
Director

cc: Todd Unger/244 E. Susquehanna Avenue/Towson MD 21204  
Kenneth G. Macleay, Esq./401 N. Charles Street/Baltimore MD 21201  
Cynthia Lishinski/238 E. Susquehanna Avenue/Towson MD 21206

NOTES: (1) HEARING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.  
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

MICROFILMED

TO: POTENTIAL PUBLISHING COMPANY  
July 8, 1993 Issue - Jeffersonian

Please forward billing to:

Todd Unger  
244 E. Susquehanna Avenue  
Towson, Maryland 21204  
(410) 727-2443

## 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 NUMBER: 93-460-SPH (Item 456)  
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Petitioner(s): Todd Unger  
HEARING: MONDAY, JULY 26, 1993 at 9:00 a.m. in Rm. 118, Old Courthouse.

Special Hearing to determine that the building permit complies with the BCR.

[Signature]  
Lawrence E. Schmidt  
Zoning Commissioner for Baltimore County

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

MICROFILMED

Baltimore County Government  
Office of Zoning Administration  
and Development Management

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

JULY 29, 1993

**NOTICE OF REASSIGNMENT**

Rescheduled from 7/26/93  
CASE NUMBER: 93-460-SPH (Item 456)  
244 E. Susquehanna Avenue  
NE/S Susquehanna Avenue, 455' NW of c/l Linden Avenue  
9th Election District - 4th Councilmanic  
Petitioner(s): Todd Unger

Special Hearing to determine that the building permit complies with the  
BCZR.

HEARING: WEDNESDAY, AUGUST 25, 1993 at 11:00 a.m. in Rm. 118, Old  
Courthouse.

ARNOLD JABLON  
DIRECTOR

cc: Todd Unger  
Kenneth G. Macleay, Esq.  
Cynthia Linthicum  
Sue Asendorf 242 E. Susquehanna

MICROFILMED

County Board of Appeals of Baltimore County

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

December 15, 1993

Hearing Room -  
Room 48, Old Courthouse  
400 Washington Avenue

**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. [REDACTED] TODD UNGER -Petitioner  
NE/S Susquehanna Avenue, 455' NW of the c/l  
of Linden Avenue  
(244 E. Susquehanna Avenue)  
9th Election District  
4th Councilmanic District

SPH - Seeking approval of Building Permit  
No. B158562 as being in compliance with  
BCZR; amendment to previously approved site  
plan in Case No. 90-7-SPHA, for conversion  
of existing carport to a garage.

10/14/93 -D.Z.C.'s Order in which Petition  
for Special Hearing was GRANTED with  
restrictions.

**ASSIGNED FOR: WEDNESDAY, MARCH 2, 1994 at 10:00 a.m.**

cc: Kenneth G. Macleay, Esquire Counsel for Appellant /Petitioner  
Mr. Todd Unger Appellant /Petitioner  
Mr. Paul Lee Professional Engineer

Ms. Cynthia Linthicum  
Mr. & Mrs. Walter Asendorf  
Mr. Joseph J. Quingert  
Mr. Samuel Lesight  
Mr. Jack R. Howard

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

Kathleen C. Weidenhammer  
Administrative Assistant

MICROFILMED

County Board of Appeals of Baltimore County

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

December 15, 1993

Hearing Room -  
Room 48, Old Courthouse  
400 Washington Avenue

**NOTICE OF ASSIGNMENT**

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT  
REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND  
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DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY  
COUNCIL BILL NO. 59-79.

CASE NO. 93-460-SPH TODD UNGER -Petitioner  
NE/S Susquehanna Avenue, 455' NW of the c/l  
of Linden Avenue  
(244 E. Susquehanna Avenue)  
9th Election District  
4th Councilmanic District

SPH - Seeking approval of Building Permit  
No. B158562 as being in compliance with  
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plan in Case No. 90-7-SPHA, for conversion  
of existing carport to a garage.

10/14/93 -D.Z.C.'s Order in which Petition  
for Special Hearing was GRANTED with  
restrictions.

**ASSIGNED FOR: WEDNESDAY, MARCH 2, 1994 at 10:00 a.m.**

cc: Kenneth G. Macleay, Esquire Counsel for Appellant /Petitioner  
Mr. Todd Unger Appellant /Petitioner  
Mr. Paul Lee Professional Engineer

Ms. Cynthia Linthicum  
Mr. & Mrs. Walter Asendorf  
Mr. Joseph J. Quingert  
Mr. Samuel Lesight  
Mr. Jack R. Howard

People's Counsel for Baltimore County  
P. David Fields  
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W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer  
Administrative Assistant

MICROFILMED

County Board of Appeals of Baltimore County

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

March 2, 1994

Hearing Room -  
Room 48, Old Courthouse  
400 Washington Avenue

**NOTICE OF POSTPONEMENT & 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.

CASE NO. 93-460-SPH TODD UNGER -Petitioner  
NE/S Susquehanna Avenue, 455' NW of the c/l  
of Linden Avenue  
(244 E. Susquehanna Avenue)  
9th Election District  
4th Councilmanic District

SPH - Seeking approval of Building Permit  
No. B158562 as being in compliance with  
BCZR; amendment to previously approved site  
plan in Case No. 90-7-SPHA, for conversion  
of existing carport to a garage.

10/14/93 -D.Z.C.'s Order in which Petition  
for Special Hearing was GRANTED with  
restrictions.

which was scheduled for hearing on March 2, 1994 has been POSTPONED ON  
THE RECORD at the request of Counsel for Appellant /Petitioner and  
rescheduled on the record to the following date; and has been

**REASSIGNED FOR: TUESDAY, MARCH 22, 1994 at 10:00 a.m.**

cc: Kenneth G. Macleay, Esquire Counsel for Appellant /Petitioner  
Mr. Todd Unger Appellant /Petitioner  
Mr. Paul Lee Professional Engineer

Ms. Cynthia Linthicum  
Mr. & Mrs. Walter Asendorf  
Mr. Joseph J. Quingert  
Mr. Samuel Lesight  
Mr. Jack R. Howard

People's Counsel for Baltimore County  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco

W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer  
Administrative Assistant

MICROFILMED

Baltimore County Government  
Office of Zoning Administration  
and Development Management

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

November 15, 1993

Mr. & Mrs. Walter Asendorf  
242 E. Susquehanna Avenue  
Towson, MD 21286

Mr. Joseph J. Quingert  
108 Linden Terrace  
Towson, MD 21286

Mr. Samuel Lesight, President  
Towson Manor Village  
212 Wilden Drive  
Towson, MD 21286

Ms. Cynthia Linthicum  
238 E. Susquehanna Avenue  
Towson, MD 21286

RE: Petition for Special Hearing  
NE/S Susquehanna Avenue, 455 ft NW of  
c/l of Linden Avenue  
(244 E. Susquehanna Avenue)  
9th Election District  
4th Councilmanic District  
Todd Unger-Petitioner  
Case No. 93-460-SPH

Gentlemen:

Please be advised that an appeal of the above-referenced case was  
filed in this office on November 12, 1993 by Kenneth G. Macleay. All  
materials relative to the case have been forwarded to the Board of  
Appeals.

If you have any questions concerning this matter, please do not  
hesitate to contact Julie Winiarski at 887-3391.

Sincerely,  
ARNOLD JABLON  
Director

AJ:jaw

c: People's Counsel

MICROFILMED

**APPEAL**

Petition for Special Hearing  
NE/S Susquehanna Avenue, 455 feet NW of the  
c/l of Linden Avenue  
(244 E. Susquehanna Avenue)  
9th Election District - 4th Councilmanic District  
Todd Unger - PETITIONER  
Case No. 93-460-SPH

Petition(s) for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Petitioner's Exhibits: 1 - Seventeen Photographs  
2 - Material List  
3 - Pencil Sketch  
4 - Affidavit from Steve Miller

Protestant's Exhibits: (Nothing Marked as Exhibits)  
Letter of Opposition from Community dated  
April 14, 1993  
Newspaper Article from The Towson Times dated  
August 25, 1993  
Newspaper Article from The Towson Times dated  
October 12, 1988  
BOA Opinion from Case Number 90-7-SPHA

Deputy Zoning Commissioner's Order dated October 14, 1993 (granted)

Notice of Appeal received on November 12, 1993 from Kenneth G.  
Macleay on behalf of Todd Unger

cc: Kenneth G. Macleay, Rollins, Smalkin, Richards & Mackie, 401  
North Charles Street, Baltimore, MD 21201-4405  
Mr. Todd Unger, 244 E. Susquehanna Avenue, Towson, MD 21204  
Mr. Paul Lee, 305 W. Pennsylvania Avenue, Towson, MD 21204  
Ms. Cynthia Linthicum, 238 E. Susquehanna Avenue, Towson, MD 21204  
Mr. & Mrs. Walter Asendorf, 242 E. Susquehanna Avenue,  
Towson, MD 21286  
Mr. Joseph J. Quingert, 108 Linden Terrace, Towson, MD 21286  
Mr. Samuel Lesight, President, Towson Manor Village, 212 Wilden  
Drive, Towson, MD 21286  
People's Counsel of Baltimore County  
Rm. 304, County Office Bldg., Towson, MD 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Feller, Office of Planning & Zoning  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM

MICROFILMED

12/15/93 - Following parties notified of hearing set for Wednesday,  
March 2, 1994 at 10:00 a.m.:

Kenneth G. Macleay, Esquire  
Mr. Todd Unger  
Mr. Paul Lee  
Ms. Cynthia Linthicum  
Mr. & Mrs. Walter Asendorf  
Mr. Joseph J. Quingert  
Mr. Samuel Lesight  
Mr. Jack R. Howard  
People's Counsel for Baltimore County  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM

2/22/94 -Request for postponement from K.Macleay, Counsel for Appellants /Petitioners.  
(Request made due to change in due date of birth of child from 3/04/94  
to 3/01/94).

2/25/94 -T/C to Mr. Macleay's office and a follow-up letter (with cc to People's  
Counsel) -request for postponement denied by Board; however should birth  
of child preclude Mr. Macleay's attendance at hearing, request can be  
made on record by a representative from his office (not necessarily a  
lawyer) and would then be granted, with case reassigned to another date.

3/01/94 -T/C from Paul Donahue, office of Kenneth Macleay -Mr. Macleay is unavailable  
for 3/02/94 hearing due to birth of child; Mr. Donahue will be in  
attendance on 3/02/94 at 10:00 a.m. to request postponement on record;  
he indicated that he would notify P. Zimmerman.

Discussed above w/Peter Zimmerman; also Board members (L.S.C.) --  
to be postponed on record (date of 3/22/94 is available on Board's  
docket for reset date.

3/22/94 -Hearing held and concluded before Board (H.S.R.). Upon conclusion of  
hearing and open deliberation, Board granted Petition for Special  
Hearing /in compliance with BCZR. Written Opinion and Order to be  
issued; appellate period to run from date of said written Order.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

**MINUTES OF DELIBERATION**

IN THE MATTER OF: Todd Unger -Petitioner  
Case No. 93-460-SPH

DATE: March 22, 1994 /at conclusion of hearing

BOARD /PANEL: William T. Hackett (WTH)  
Michael B. Sauer (MBS)  
Robert O. Schuetz (ROS)

SECRETARY: Kathleen C. Weidenhammer  
Administrative Assistant

Those present included Kenneth Macleay, Counsel for Petitioner;  
People's Counsel and Deputy People's Counsel for Baltimore  
County.

PURPOSE --to deliberate issues and matter of petition for  
special hearing presented to the Board; testimony and evidence  
taken this date. Opinion and Order to be issued by Board  
setting forth written findings of fact.

Open deliberation in the hearing room ensued among the Board  
members as to consideration of evidence, testimony, etc. Upon  
completion of this open deliberation, each Board member then  
expressed his final decision in this matter as follows:

ROS: Began by stating that this matter comes down to the written  
Opinion of CBA in Case #90-7-SPHA; believes that what the  
Board did in that Opinion was to create an accessory  
structure; at this time, it's a physical separation; an  
accessory structure; expressed personal opinion as to  
offensive appearance of garage; however no legal grounds to  
cause the Petitioner to remove any improvements as a result of  
actions; inclined to grant Petition.

Petition for Special Hearing should be granted.

MBS: Reviewed and considered evidence and testimony; discussed by  
way of open deliberation; concurs with ROS; believes that it's  
an accessory structure today; reviewed CBA opinion rendered in  
1990; clearly references fact that there is separation between  
two decks; finds and believes as matter of fact that it is in  
fact separate; up to this Board to determine if what  
Petitioner has done is correct; whether or not he has violated  
zoning laws of Baltimore County; regrettably feels that zoning  
regulations have been met; this Board cannot find differently;  
cannot pass judgement on esthetics and appearance.

**MICROFILMED**

July 22, 1993

Re: Our file #930228  
Zoning Item #456  
Case #93-460-SPH  
Petitioner: Todd Unger

Please be advised that I represent the Petitioner in the above-captioned manner which is scheduled for a special hearing on Monday, July 26, 1993. I have just been informed this afternoon that an essential witness, Paul Lee, who will be testifying on behalf of the Petitioner, will be unavailable for the entire week of July 26th through July 30th. Paul Lee is an essential witness for the Petitioner's case and it necessitates that I respectfully request that this hearing be postponed until the first available date after July 30, 1993.

Please do not hesitate to contact me should you have any questions or concerns regarding this matter. My client and I would be willing to make any accommodations necessary to accommodate Your Honor in this matter.

*Kenneth G. Macleay*  
KENNETH G. MACLEAY

MICROFILMED

**November 12, 1993**

RE: Our File: #930728  
Case No.: 93-460-SPH  
244 East Susquehanna Avenue

Please enter an appeal of the decision rendered in the above-captioned case on October 14, 1993. Enclosed please find our draft in the amount of \$210.00 to cover all fees associated with the petitioners request for an appeal in this case.

Please do not hesitate to contact me should you have any questions or concerns regarding this matter.

Very truly yours,  
*Kenneth G. Macleay*  
KENNETH G. MACLEAY

**Enclosures**

cc: Mr. Todd Unger

February 22, 1994

RE: Our File: #930228  
Case No.: C-93-2108  
344 East Susquehanna Avenue  
9th Election District

Please be advised that I represent the appellant, Todd Unger in the above-captioned matter which is scheduled before the Board of Appellate March 2, 1994. I am respectfully requesting a postponement of that hearing as my wife and I are expecting our first child to be born prior to March 2, 1994. Previously, we were expecting my wife to deliver on or after March 4, 1994 and a postponement therefore was not necessary or requested from the trial date of March 2, 1994. However, on February 18, 1994 my wife was informed by her physician that she, in fact, will in all probability deliver early and should probably anticipate a delivery date of March 1, 1994.

I apologize for the late notice to this Honorable Court of this pending conflict, however, I had fully anticipated all along to be able to continue working on March 2, 1994 until this recent development presented by my wife's physician.

Please do not hesitate to contact me should you have any questions or concerns regarding this matter.

*Kenneth G. Macleay*  
KENNETH G. MACLEAY

KGM/lbs

94 FEB 23 AM 9:20

RECEIVED  
COUNTY BOARD OF HEALTH

To Whom It May Concern regarding property at 244 East  
Susquehanna Avenue:

I am unable to attend the hearing due to another appointment this morning. However, I would like to express my views regarding the construction of a building in the back yard of the above mentioned property. This yard has only two other yards separating it from mine.

There is a large black roof on top of what looks like a make-shift garage. However, the garage is actually below this "house-type construction" and has plexi-glass type walls. If I wish to sit or stand in the yard, I can see on or off the property, this towering black, sun-blocking roof is in constant view. It just doesn't seem right that this dominating structure should be in that small back yard. What are there three dead trees, a few shrubs, and unattractive structures in each of our back yards? Fortunately, most people in this neighborhood have an appreciation for the beauty of the landscape and what is not as evidenced by pretty back yards and gardens.

It is my opinion that this house in the back yard of 244 East Susquehanna Avenue is inappropriate and unacceptable in this little neighborhood.

Cynthia Linthicum  
238 East Susquehanna Avenue  
Towson, Maryland 21286

We, the undersigned residents of East Susquehanna Avenue in Towson, Maryland 21286, submit this petition for your consideration and action regarding a neighbor who is in the process of constructing a building on the top of his carport in his backyard of East Susquehanna Avenue. His address is 244 East Susquehanna Avenue.

While we are cognizant and considerate of each homeowner's desire and right to maintain and enhance individual properties, we sincerely feel that the construction of this building is neither an embellishment nor a practical addition to our lovely community. In fact, it is unattractive, oversized, and to nearby neighbors, an obstruction to sunshine and visibility.

We are concerned objectively as well as subjectively and wonder if this type of building meets the appropriate standards for zoning in our neighborhood? We are respectfully requesting serious examination, assessment and action regarding this situation.

Howell R Schuler 234 E. Susquehanna Ave  
 Cynthia Bussey 236 E. Hill  
 Ray & Mary Bergard 224 E. Susquehanna Ave 21286  
~~Raymond & Patricia~~ 220 E. Susquehanna Ave  
 King & Jill Lewis 280 E. Susquehanna Ave  
 Phil & Wileen 252 E. Susquehanna Ave  
 James & Lucille 254 S. Susquehanna Ave  
 Wyatt & Arthurium 238 E. Susquehanna Ave  
 George & Edna 262 E. Susquehanna Ave  
 Lucille & Bob 222 E. Susquehanna Ave  
 Rose & Emma 248 E. Susquehanna Ave  
 Jack & Howard 256 E. Susquehanna Ave  
 Jerry & Howard 256 E. Susquehanna Ave  
 Mary & Willie 252 E. Susquehanna Ave  
 Phil & Marion 252 E. Susquehanna Ave  
 - Marion & Willie 214 E. Susquehanna Ave

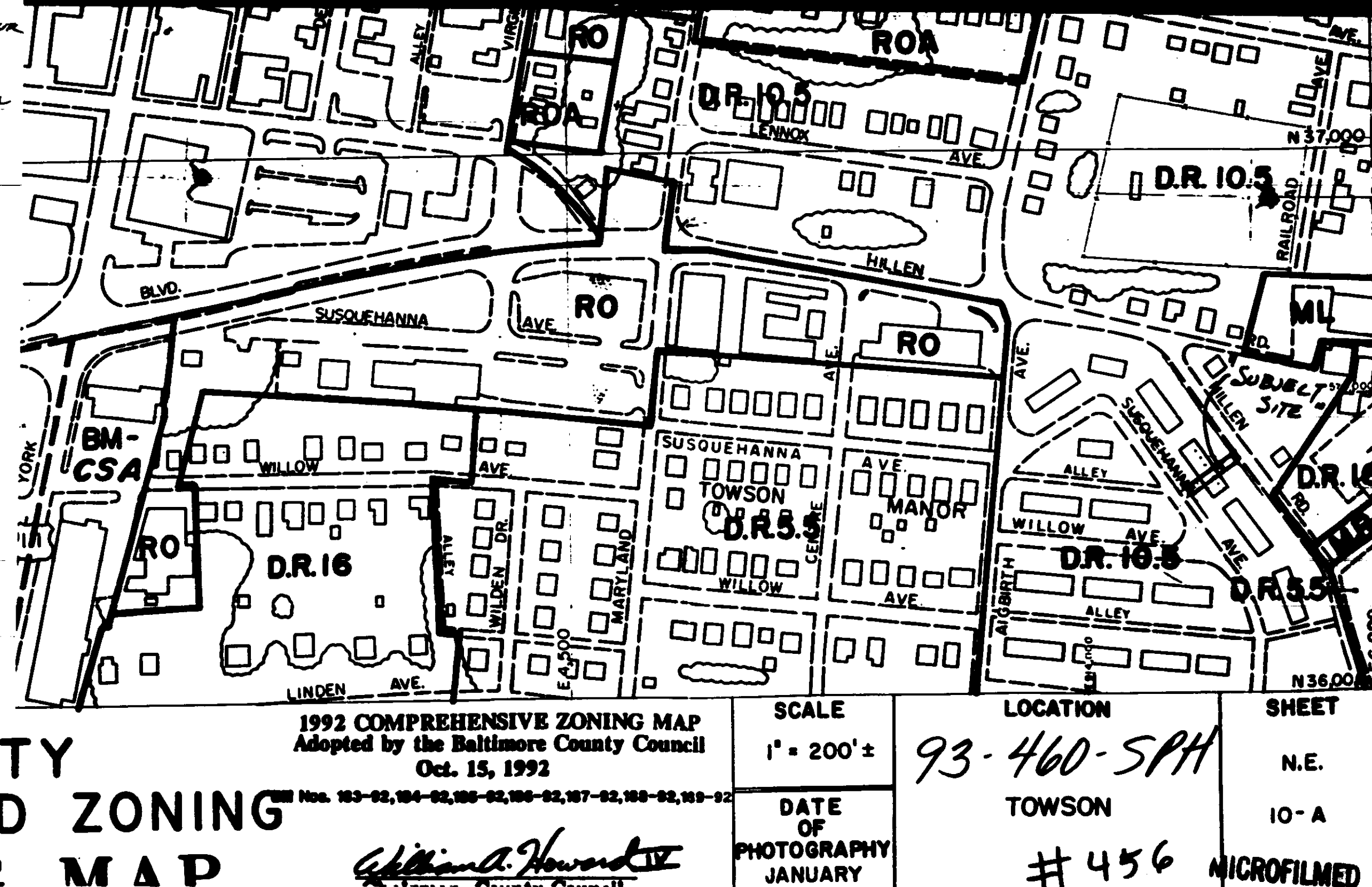
235 Willow Ave  
Towson, Md 21286  
Aug 6, 1993

To whom it may concern.

I cannot attend this meeting  
due to my health.

The garage at 244 East Swazeywood  
Ave, in Towson, Md is really an  
eyesore to our neighborhood, and a  
discredit to our properties.

Thank you  
Kathryn L. Dodson  
235 Willow Ave  
Towson, Md. 21286



# ORIGINAL

1 IN THE MATTER OF THE \* BEFORE THE  
2 APPLICATION OF \* COUNTY BOARD OF APPEALS  
3 TODD UNGER \* OF BALTIMORE COUNTY  
4 FOR A SPECIAL HEARING ON \*  
5 PROPERTY LOCATED ON THE \* Case No. 93-460-SPH  
6 NORTHEAST SIDE \*  
7 SUSQUEHANNA AVENUE \* March 22, 1994  
8 (244 E. Susquehanna Avenue) \*  
9 9th Election District \*  
10 4th Councilmanic District \*

11  
12 The above-referenced matter came on for hearing  
13 before the County Board of Appeals of Baltimore County at  
14 Room 48, Old Courthouse, 400 Washington Avenue, Towson,  
Maryland 21204 at 10 o'clock a.m., March 22, 1994.

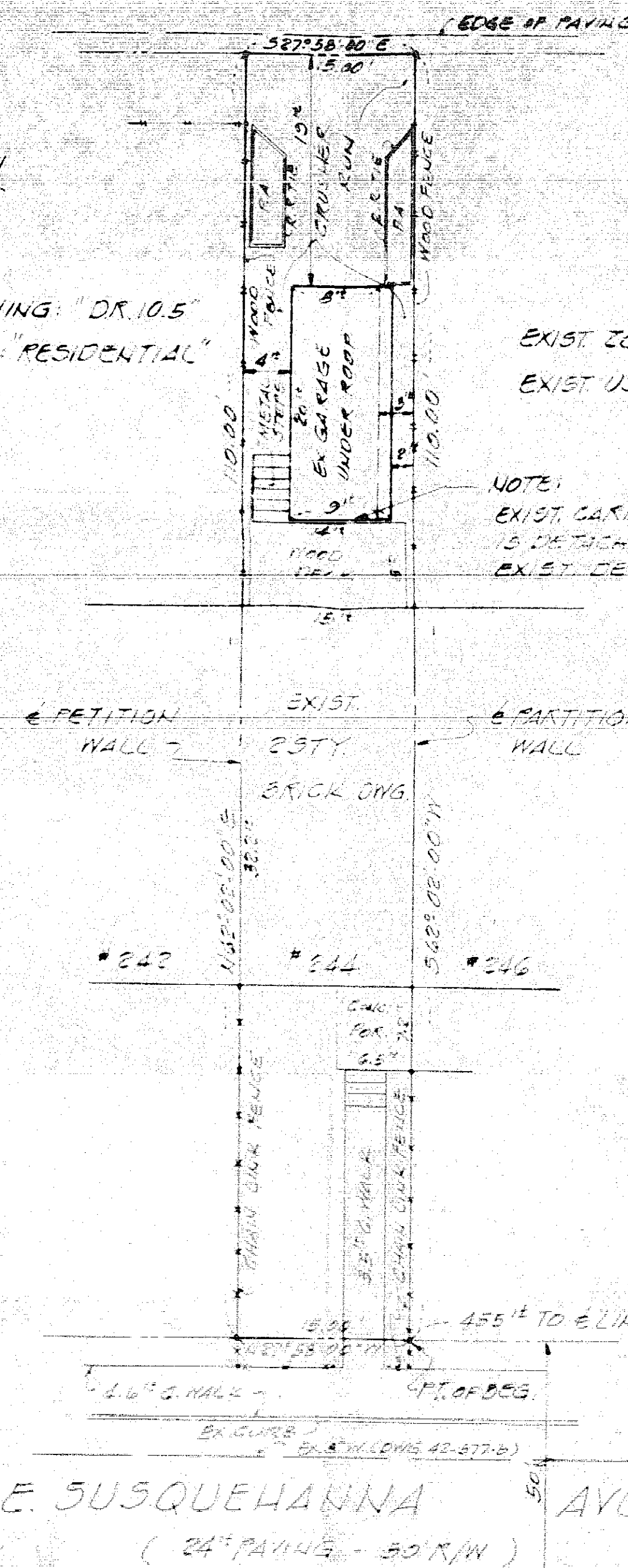
## BOARD MEMBERS:

16 WILLIAM T. HACKETT, Chairman  
17 MICHAEL B. SAUER  
18 ROBERT O. SCHUETZ

19 Reported by:  
20 C.E. Peatt  
21

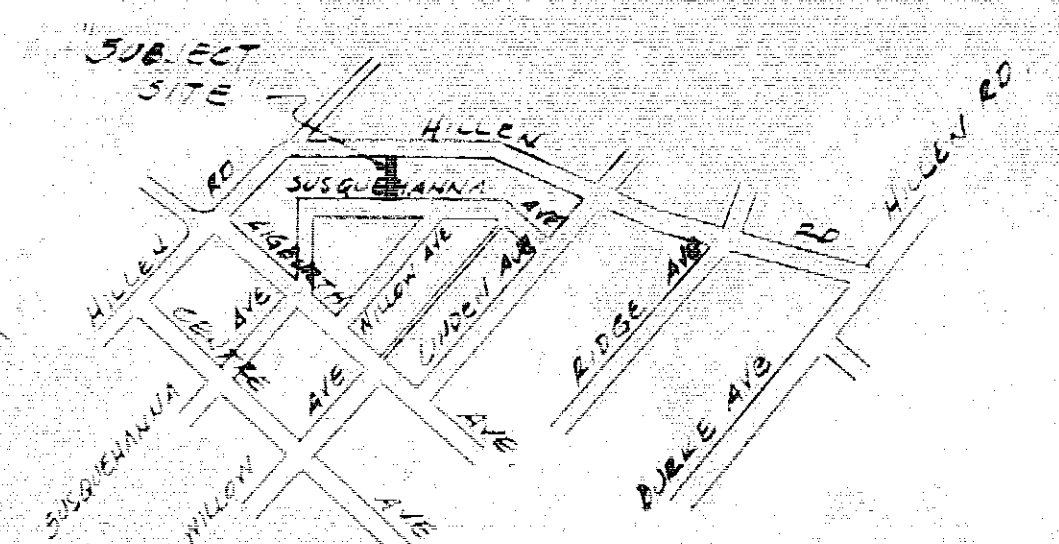
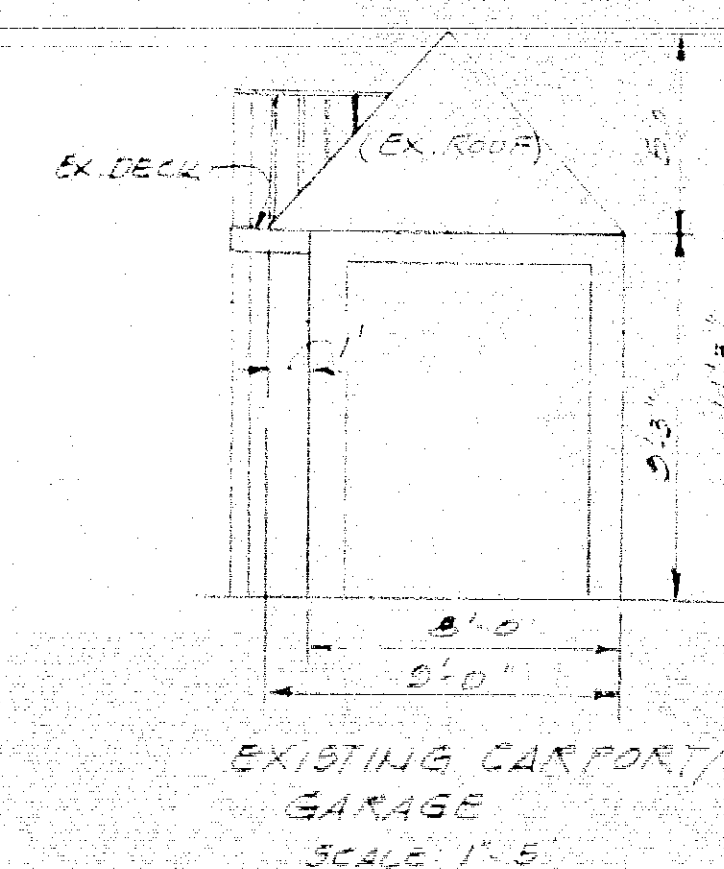
BOARD OF APPEALS - original -

EXIST. ZONING: "DR.10.5"  
EXIST. USE: "RESIDENTIAL"  
HILLEN ROAD  
EX. 8'S (CHG. 24-37, A.7-B)  
EXIST. ZONING: "DR.10.5"  
EXIST. USE: "RESIDENTIAL"  
EXIST. ZONING: "DR.10.5"  
EXIST. USE: "RESIDENTIAL"



EXIST. ZONING: "DR.10.5"  
EXIST. USE: "RESIDENTIAL"

NOTE:  
EXIST. CARPORT / GAN  
IS DETACHED FROM  
EXIST. DECK



AREA OF PROPERTY \* 1650 S.F. 00304:  
1. EXISTING ZONING OF PROPERTY \* DR.10.5  
2. EXISTING USE OF PROPERTY \* "RESIDENTIAL"  
3. PROPOSED ZONING OF PROPERTY \* "DR.10.5"  
4. PROPOSED USE OF PROPERTY \* "RESIDENTIAL"  
5. PROPERTY SERVED BY PUBLIC UTILITIES.  
6. ZONING HISTORY:  
CASE 199-7-3-44, 6-16-90 COUNTY BOARD OF APPEALS GRANTED  
APPROVED CARPORT CONSTRUCTION AND A REAR YARD SETBACK  
OF 15' IN L.P. OF REE. 37A.  
7. PETITIONER REQUESTS A SPECIAL HEARING TO AMEND THE  
SITE PLAN TO CONVERT EXISTING CARPORT INTO A FRAME  
GARAGE AND TO DETERMINE THAT BUILDING PERMIT #B155563  
COMPLIES WITH THE BALTIMORE COUNTY ZONING REGULATIONS.

PLAT TO ACCOMPANY PETITION  
FOR

SPECIAL HEARING  
244 E. SUSQUEHANNA AVENUE

9TH ELECT DIST. BALTIMORE COUNTY MD.  
SCALE 1"=10' JUNE 21, 1993

PAUL LEE ENGINEERING, INC.  
504 W. PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204

Petitioner Ex. 1 ONLY

CASE 93-460 COUNTY BOARD OF APPEALS  
TODD UNGER ATTENDANCE LIST 3/2/94

Cynthia Luthow 823-3549  
238 E. Susquehanna Ave  
June Yang 823-0141  
268 E. Susquehanna Ave  
Joe Quergert 321-1969  
108 Linden Terrace  
Valter Asendorf 825-0391  
242 E. Susquehanna Ave  
Joe Asendorf 825-0391  
242 E. Susquehanna Ave  
Lorraine Zagner 825-0391  
242 E. Susquehanna Ave  
Sam Laught 296-2764  
242 Willow Drive  
John Manno 825-1157

## Attendee List

March 22, 1994 - County Board of Appeals  
Unger Case 93-460

| Name                       | Address                           |
|----------------------------|-----------------------------------|
| Mr. & Mrs. Walter Asendorf | 242 E. Susquehanna Ave            |
| Lorraine Zagner            | 242 E. Susquehanna Ave            |
| Sam Laught                 | 242 Willow Drive                  |
| Cynthia Bursay             | 238 E. Susquehanna Ave            |
| June Yang                  | 268 E. Susquehanna Ave            |
| LOUI MERRIAM               | TOWNSHIP 409 WASHINGTON AVE 21204 |
| Helen Howard               | 207 Willow Ave                    |
| Jack R. Howard             | 256 E. Susquehanna Ave (21206)    |
| Jerry Howard               | 256 E. Susquehanna Ave (21206)    |
| Donna Miranda              | 1614 Muscular Pl. 21206           |
| Robert W. KENNARD          | 240 S. BAYVIEW AVE 21206          |
| Ed. Zangst                 | 108 Linden Terr 21206             |
| Barry Kelley               | 224 Willow Ave 21206              |

PC & #1