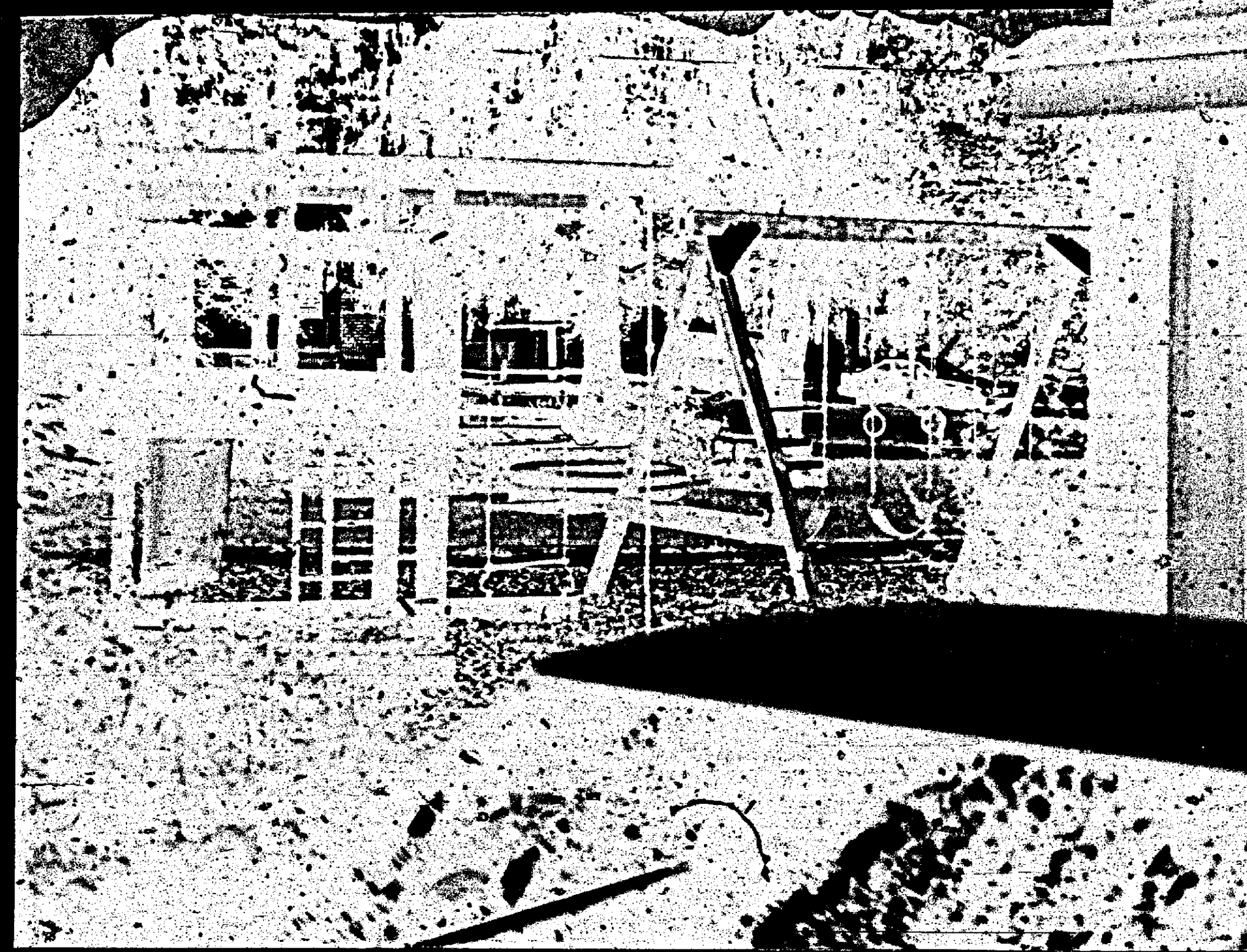
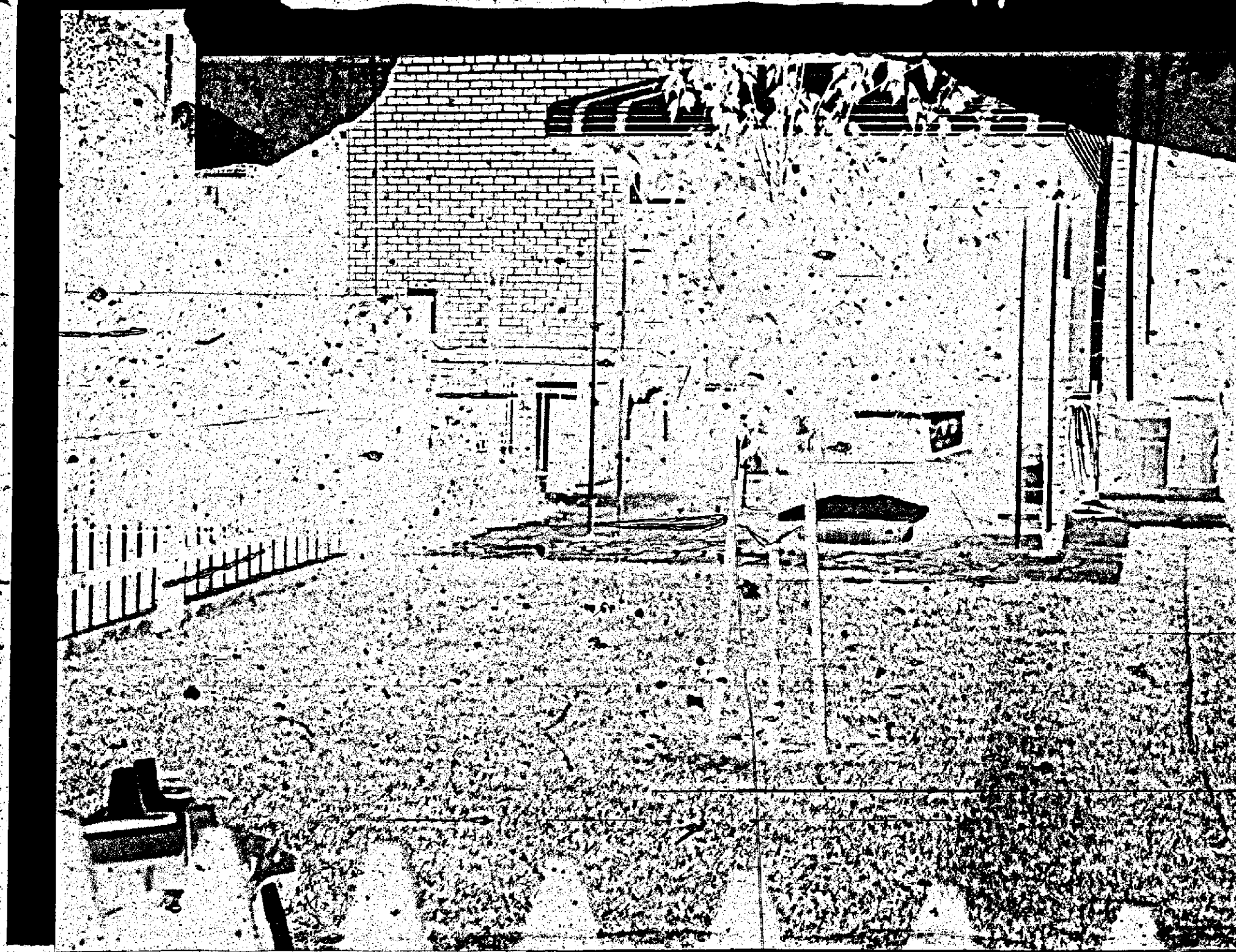
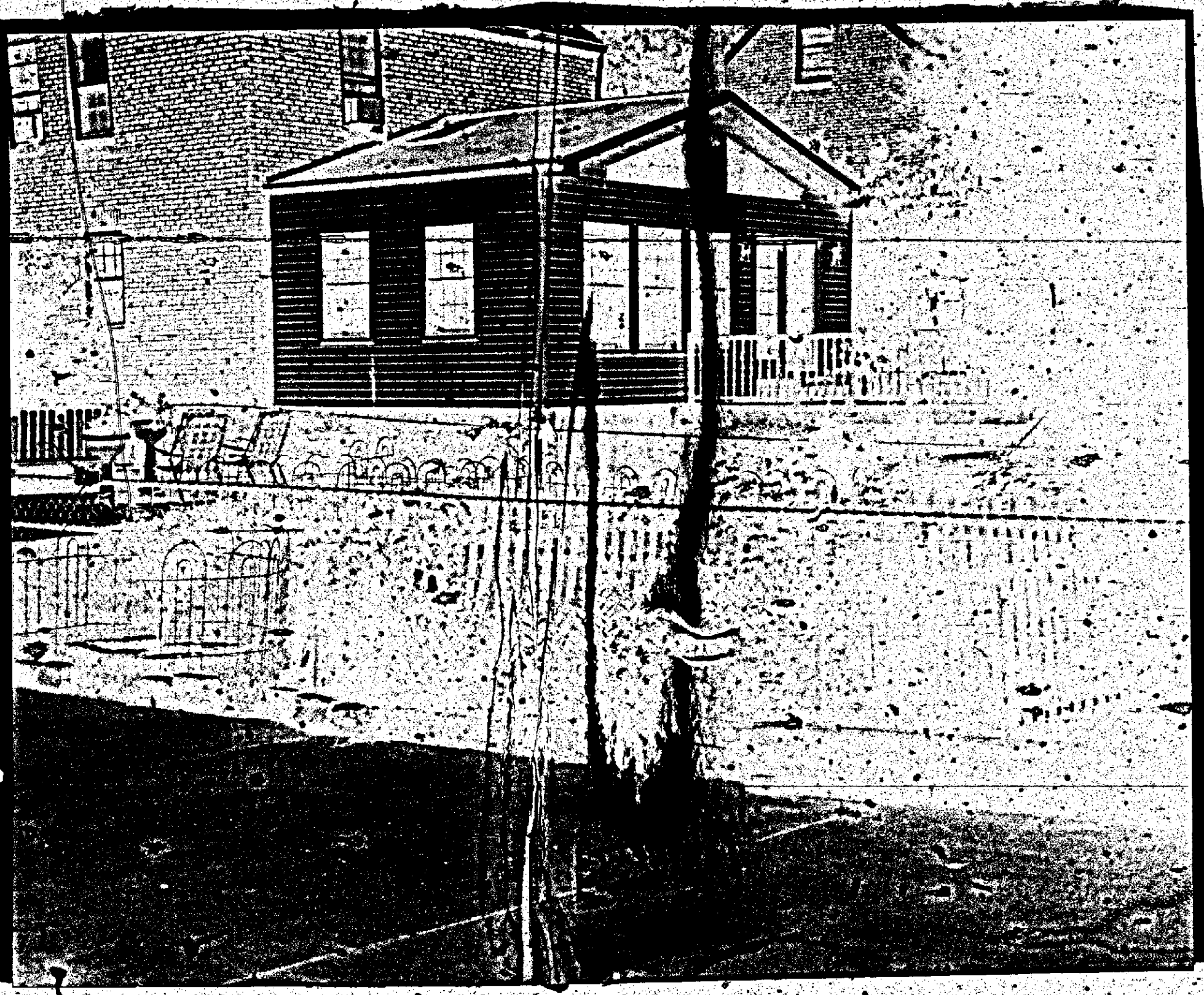


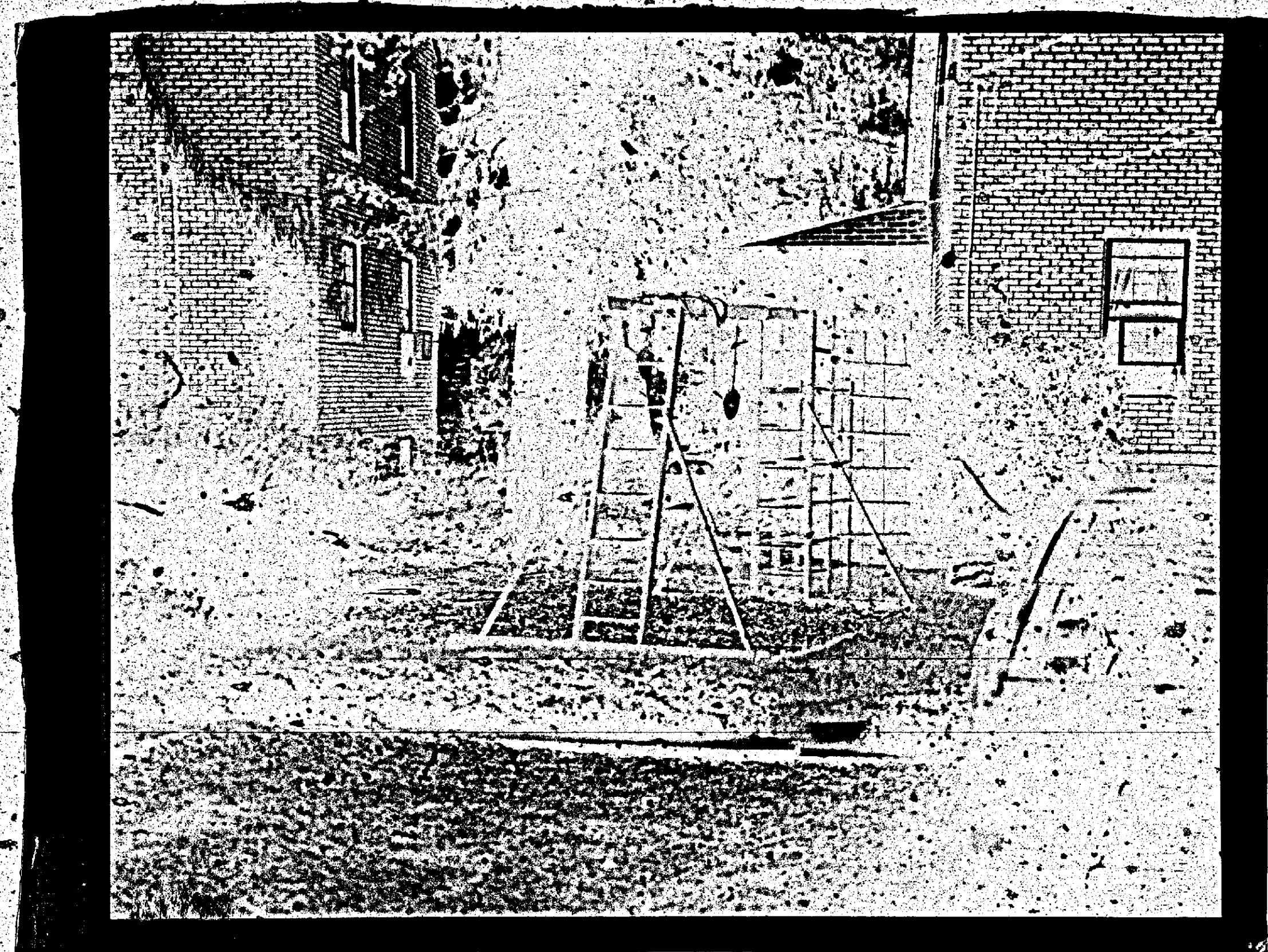
ROSEWOOD AVE - 200 BLOCK (NOON 7/26/94)



FAMILIES
MAKE-UP
THE MAJORITY
OF RESIDENTS
ON ROSEWOOD
AVE. IN SIGNS ARE:
TOYS + GARDENS.
OUT ARE: CONGESTION
AND PEOPLE WHO
COME + GO AND
DO NOT OWN THEIR
PROPERTIES.



PROTESTANT'S
EXHIBIT NO. 5



209 ROSEWOOD AVE



FRONT ENTERANCE
(FACES EAST)

PROTESTANT'S
EXHIBIT NO. 2

94-521-SPH

PHOTOS TAKEN NOON, TUESDAY 7/26/94
WEATHER: CLOUDY

REAR EXIT & IN BUILDING
ONE CAR GARAGE

NO CENTRAL A/C; INDICATED BY
WINDOW FANS AND AIR CONDITIONERS

ROSEWOOD AVE - 200 BLOCK

209 ROSEWOOD AVE



SOUTH SIDE

NORTH SIDE

PROTESTANT'S
EXHIBIT NO. 3

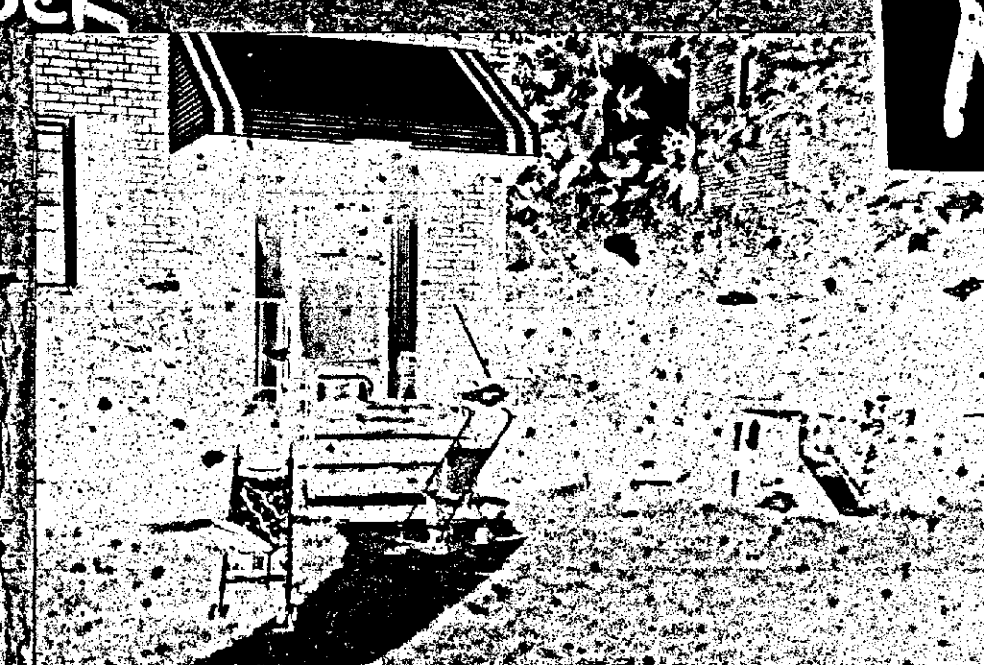
NO ADDITIONAL DOOR OPENINGS ON SIDES.



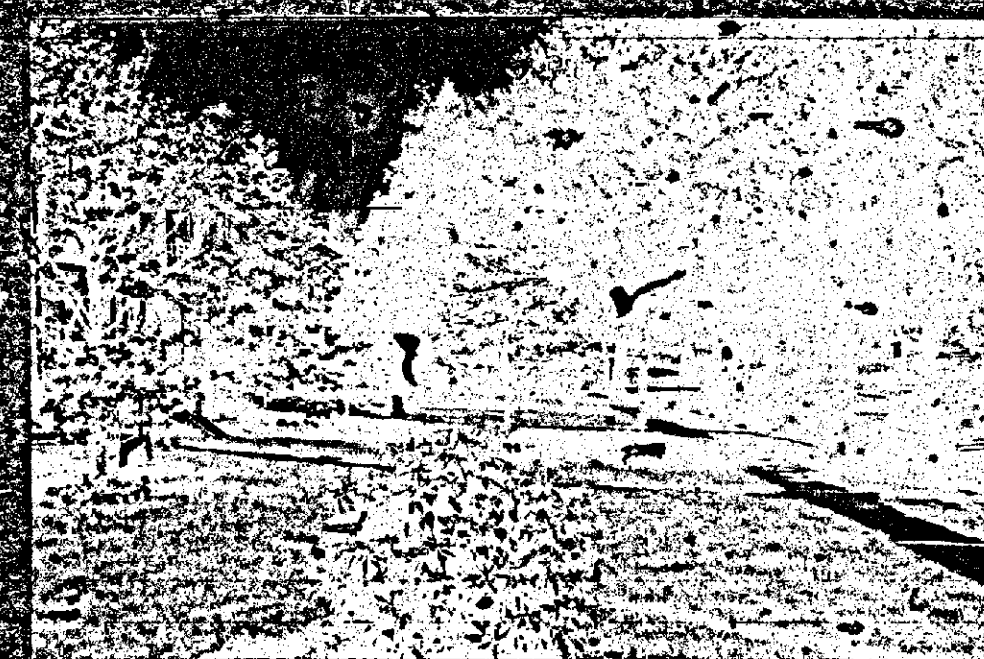
LOOKING NORTH



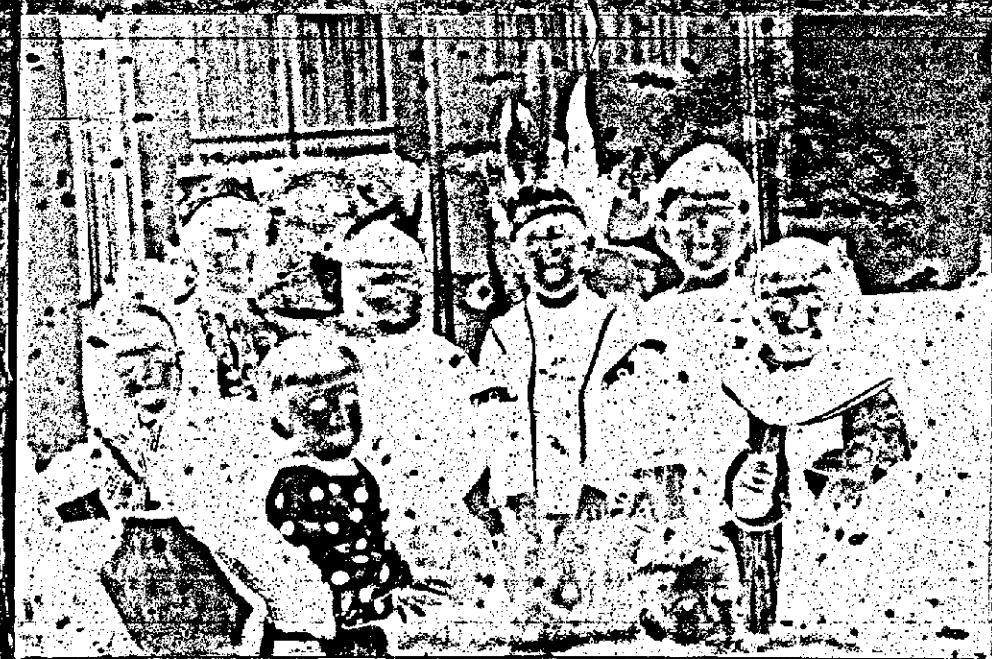
TYPICAL HOME 6 ROOMS



209 NEIGHBORS: 201



LAWNS 201 + 203



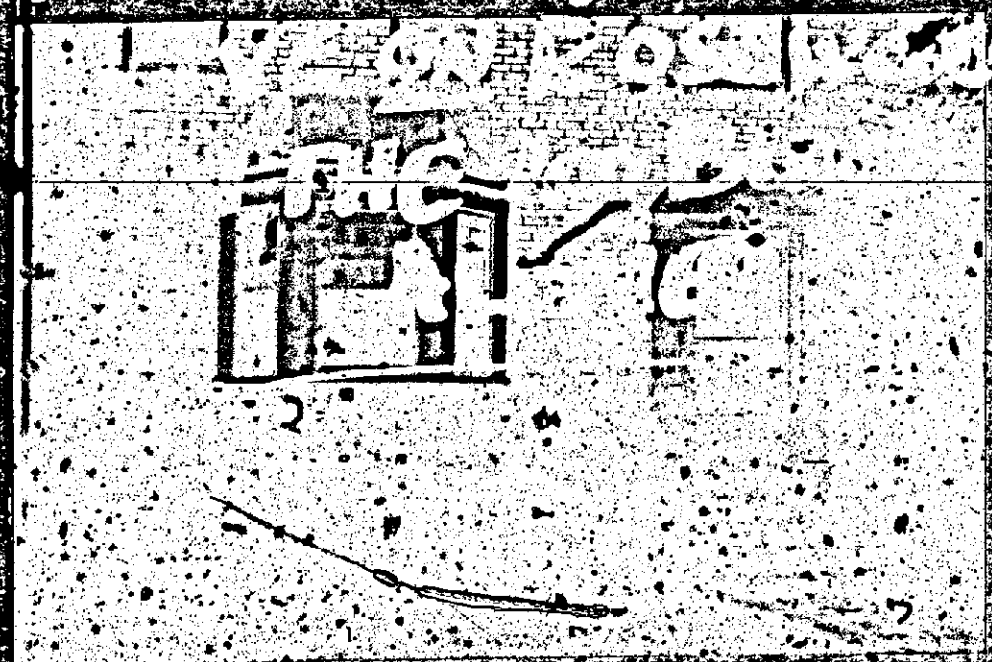
16 CHILDREN - 14 ADULTS



207



203



211



213

PROTESTANT'S
EXHIBIT NO. 4

WE: PETITION FOR VARIANCE *
204 Rosewood Avenue, W/S Rosewood
Avenue, 195 feet NW of c/l Edmondson
Avenue, 1st Election Dist., 1st
Councilmanic
Evelyn A. Kincaid
Petitioner
* * * * *

BEFORE THE
ZONING COMMISSIONER
FOR BALTIMORE COUNTY
CASE NO.: 94-521-SPH

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice 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
People's Counsel for Baltimore County

CAROL S. DEMILLO
Deputy People's Counsel
Room 41, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July, 1994, a copy of the foregoing Entry of Appearance was mailed to Louis J. Weinkam, Sr., Esquire, 1002 Frederick Road, Baltimore, MD 21228, attorney for the Petitioner.

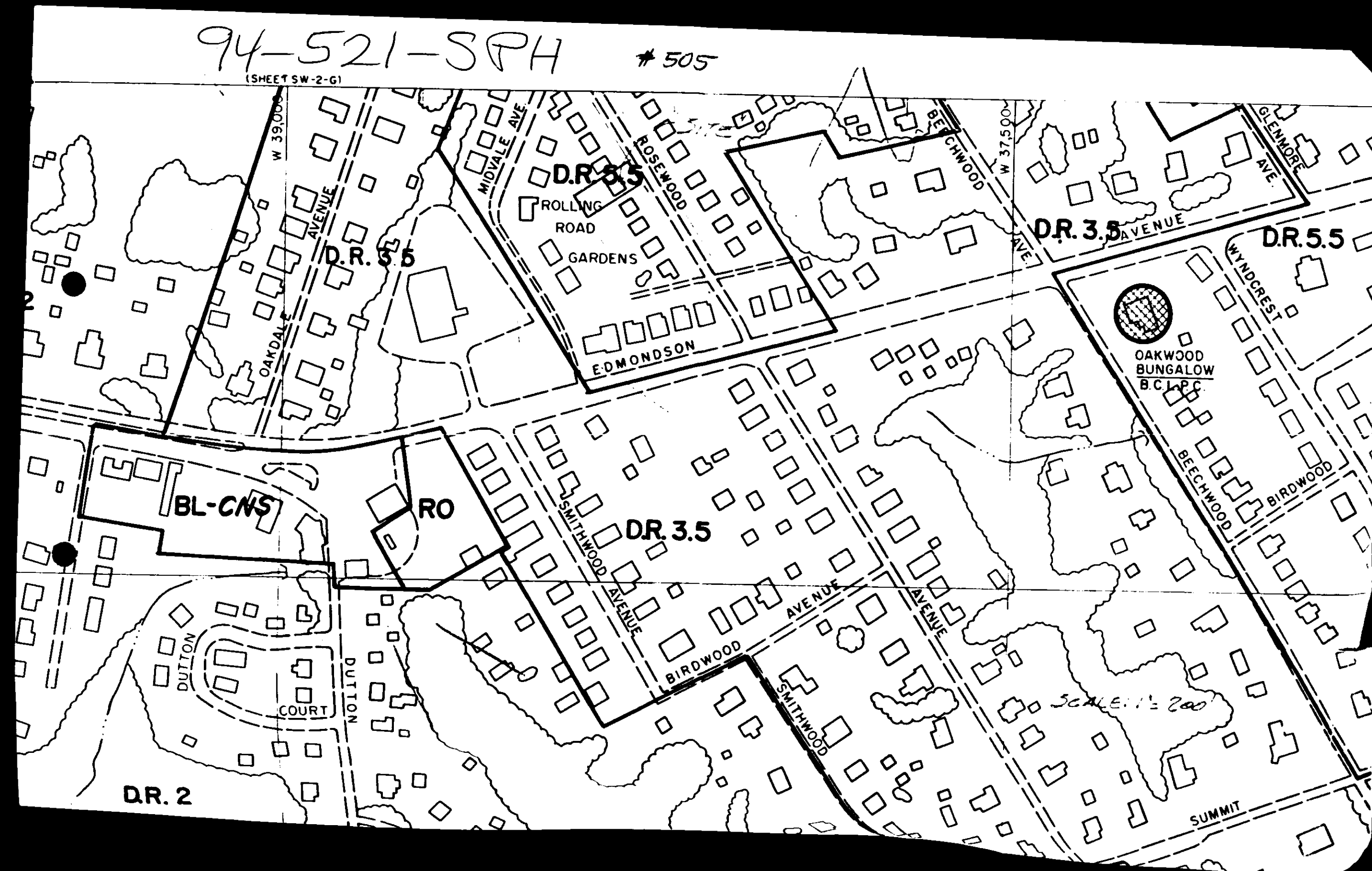
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

PLEASE PRINT CLEARLY BALTIMORE COUNTY REPRESENTATIVES
SIGN-IN SHEET

NAME	ADDRESS
Mark West	204 Rosewood Ave
Mark West	1304 Howard Ave 21338

PLEASE PRINT CLEARLY BALTIMORE COUNTY REPRESENTATIVES
SIGN-IN SHEET

NAME	ADDRESS
Charles J. Kincaid	1002 Frederick Ave
Charles J. Kincaid	1002 Frederick Ave



INVENTORY - 209 ROSEWOOD AVENUE
CATONSVILLE 28, MARYLAND
Second Floor Apartment

- LIVING ROOM - 1 Rug
1 Studio Couch
1 Mirror
2 Wall Racks & Birds
2 End Tables
2 Barrell Chairs
1 Pull-up Chair
1 Side Chair
1 Radio Shelf
1 Floor Lamp
2 Chairs Curtains & Drapes
4 Pictures
1 Chest of Drawers.
- HALL - 1 Wall table & Vase
2 Scatter rugs
- BEDROOM - 1 Rug
1 Dresser & Mirror
1 Vanity - Mirror &
1 Beach
1 Chest Robe
4 Lamps
1 Night Table
1 Side Chair
4 Pictures
2 Curtains & Drapes
- KITCHEN - 1 Gas Stove
1 G. M. Frigidaire
1 Table
4 chairs
1 clock
1 pin-up lamp
1 cabinet table
1 set of dishes & glasses
1 set of cooking utensils
1 set of flat ware
2 scatter rugs
1 tea pot
1 coffee pot
2 sets of curtains

PETITIONER'S EXHIBIT NO. 3

Witnesses
Margaret S. Walters
Laura S. Glover
Anna M. Avers
Margaret S. Walters
Laura S. Glover
Anna M. Avers

Witnesses
Margaret S. Walters
Laura S. Glover
Anna M. Avers
Margaret S. Walters
Laura S. Glover
Anna M. Avers

LEASE OF APARTMENT-40

This Lease, Made this 1st day of September, 1975, between Mrs. M. C. Kincaid Kincaid, Landlord, and Mrs. Evelyn A. Kincaid, Tenant, Witnesseth: THAT the said landlord does hereby rent to the said tenant, all that apartment or suite of rooms, Apartment 2, in the building known as 209 Rosewood Ave., Baltimore, Maryland, 21228, for the term of one year, beginning on the 1st day of September, 1975, and ending on the 31st day of August, 1976, for the sum of \$1384.00 per year, payable in equal monthly payments of \$115.33 on the first day of each month in advance subject to the following conditions, viz:

- The premises shall be used only as, and for the purposes of a private dwelling. They shall not be sublet; nor shall the lease be assigned (or advertised), without the written consent of the landlord first endorsed hereon.
- The tenant shall quit and surrender the premises at the end of the term, or any renewal thereof, in as good condition as when received, reasonable wear and tear, and damage by fire excepted.
- The tenant shall not make any alterations, additions or changes in the said premises or the fixtures thereof, nor permit these things to be done, without the written consent of the landlord; nor shall the tenant in any manner deface the walls, doors or ceiling of said premises.
- The tenant shall pay to the landlord the cost of repairing any injury done to the said premises by himself, his family, guests, servants or employees, whether said injury be caused by negligence, default or willful act.
- The tenant shall not do, nor suffer to be done, nor keep, on the premises, anything which shall affect the Fire Insurance upon the building or its contents, or which shall conflict with the City ordinances, or with the rights of the other tenants.
- The tenant shall not keep any dog, or other pet, upon the premises, without the consent in writing of the landlord; nor retain it after receiving notice from the landlord to dispose of it.
- Children will not be permitted to play in the halls or upon the stairways.
- Disturbing noises shall be avoided at all times. Musical instruments shall not be played between the hours of 10:00 p.m. and 9:00 a.m., without the written consent of the landlord.
- The tenant shall use carefully, and for their legitimate purposes only, all plumbing, gas, electric and other fixtures and shall pay for all repairs thereof, not caused by ordinary wear and tear.
- The tenant shall not display signs in the windows or elsewhere, nor erect awnings, without the written consent of the landlord.
- Stairways, or corridors shall be used for ingress and egress only.
- The leased premises shall be kept by the tenant in a good and sanitary condition, neither clothing, curtains, rugs, nor other articles shall be shaken or cleaned in any of the halls or front porches, from any of the windows, doors or landings; nor shall anything be placed outside the window sills, nor thrown from the windows. Sweepings and foodwaste shall be placed by the tenant in proper galvanized iron vessels made with covers, and will be removed daily from the apartment by the landlord.
- The tenant agrees and covenants to pay said rent promptly as it accrues, and to abide by and perform all covenants on his part to be performed, and if said rent or any part thereof shall be in arrears at any time, that said landlord may distrain therefor; and if said rent, in whole or in part, shall be in arrears and unpaid for the period of ten days, or if the tenant shall fail to comply with any of the conditions of this lease, then the said landlord may, at its option, re-enter upon the premises hereby rented, without further notice or process of law, and such re-entry shall constitute a termination of this lease, and the tenant, upon re-entry, shall be deemed to have accepted the termination of this lease, and the tenant shall be liable for any further rent.
- Either party hereto may terminate this lease at the end of said term by giving the other party written notice at least 60 days prior thereto; but in default of such notice, this lease shall continue upon the same terms and conditions as herein contained, for a further period of one year, and so on from period to period, until terminated by either party hereto giving to the other 60 days written notice of removal prior to the expiration of the then current term. But if the then landlord shall have given 60 days notice in writing previous to the expiration of said term or any renewal thereof, of his intention to change the terms and conditions of this lease, and if the lease shall hold over after such notice, he shall be considered as tenant under the terms and conditions mentioned in such notice.
- The landlord shall have the right to enter this apartment at reasonable hours of the day, to examine the same, or to make such alterations and repairs as may be deemed necessary. The tenant shall allow the rooms to be shown to applicants desiring to hire, on any week day during the 30 days next before the expiration of the lease.

Witnesses
Laura S. Glover
Anna M. Avers
Margaret S. Walters
Laura S. Glover
Anna M. Avers
Margaret S. Walters

PETITIONER'S EXHIBIT NO. 4

THE DAILY RECORD CO., BALTIMORE, MD.

LEASE OF APARTMENT-40

This Lease, Made this 27th day of August, 1975, between Mrs. Evelyn A. Kincaid, Landlord, and Mrs. and Mrs. Richard E. Kincaid, Tenant, Witnesseth: THAT the said landlord does hereby rent to the said tenant, all that apartment or suite of rooms, Apartment 2, in the building known as 209 Rosewood Ave., Baltimore, Maryland, 21228, for the term of one year, beginning on the 1st day of September, 1975, and ending on the 31st day of August, 1976, for the sum of \$1384.00 per year, payable in equal monthly payments of \$115.33 on the first day of each month in advance subject to the following conditions, viz:

- The premises shall be used only as, and for the purposes of a private dwelling. They shall not be sublet; nor shall the lease be assigned (or advertised), without the written consent of the landlord first endorsed hereon.
- The tenant shall quit and surrender the premises at the end of the term, or any renewal thereof, in as good condition as when received, reasonable wear and tear, and damage by fire excepted.
- The tenant shall not make any alterations, additions or changes in the said premises or the fixtures thereof, nor permit these things to be done, without the written consent of the landlord; nor shall the tenant in any manner deface the walls, doors or ceiling of said premises.
- The tenant shall pay to the landlord the cost of repairing any injury done to the said premises by himself, his family, guests, servants or employees, whether said injury be caused by negligence, default or willful act.
- The tenant shall not do, nor suffer to be done, nor keep, on the premises, anything which shall affect the Fire Insurance upon the building or its contents, or which shall conflict with the City ordinances, or with the rights of the other tenants.
- The tenant shall not keep any dog, or other pet, upon the premises, without the consent in writing of the landlord; nor retain it after receiving notice from the landlord to dispose of it.
- Children will not be permitted to play in the halls or upon the stairways.
- Disturbing noises shall be avoided at all times. Musical instruments shall not be played between the hours of 10:00 p.m. and 9:00 a.m., without the written consent of the landlord.
- The tenant shall use carefully, and for their legitimate purposes only, all plumbing, gas, electric and other fixtures and shall pay for all repairs thereof, not caused by ordinary wear and tear.
- The tenant shall not display signs in the windows or elsewhere, nor erect awnings, without the written consent of the landlord.
- The hallways, or corridors shall be used for ingress and egress only.
- The leased premises shall be kept by the tenant in a good and sanitary condition, neither clothing, curtains, rugs, nor other articles shall be shaken or cleaned in any of the halls or front porches, from any of the windows, doors or landings; nor shall anything be placed outside the window sills, nor thrown from the windows. Sweepings and foodwaste shall be placed by the tenant in proper galvanized iron vessels made with covers, and will be removed daily from the apartment by the landlord.
- The tenant agrees and covenants to pay said rent promptly as it accrues, and to abide by and perform all covenants on his part to be performed, and if said rent or any part thereof shall be in arrears at any time, that said landlord may distrain therefor; and if said rent, in whole or in part, shall be in arrears and unpaid for the period of ten days, or if the tenant shall fail to comply with any of the conditions of this lease, then the said landlord may, at its option, re-enter upon the premises hereby rented, without further notice or process of law, and such re-entry shall constitute a termination of this lease, and the tenant, upon re-entry, shall be deemed to have accepted the termination of this lease, and the tenant shall be liable for any further rent.
- Either party hereto may terminate this lease at the end of said term by giving the other party written notice at least 60 days prior thereto; but in default of such notice, this lease shall continue upon the same terms and conditions as herein contained, for a further period of one year, and so on from period to period, until terminated by either party hereto giving to the other 60 days written notice of removal prior to the expiration of the then current term. But if the then landlord shall have given 60 days notice in writing previous to the expiration of said term or any renewal thereof, of his intention to change the terms and conditions of this lease, and if the lease shall hold over after such notice, he shall be considered as tenant under the terms and conditions mentioned in such notice.
- The landlord shall have the right to enter this apartment at reasonable hours of the day, to examine the same, or to make such alterations and repairs as may be deemed necessary. The tenant shall allow the rooms to be shown to applicants desiring to hire, on any week day during the 30 days next before the expiration of the lease.

Witnesses
Richard E. Kincaid
Laura S. Glover
Anna M. Avers
Margaret S. Walters
Richard E. Kincaid
Laura S. Glover
Anna M. Avers
Margaret S. Walters

PETITIONER'S EXHIBIT NO. 5

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 15 Date of Posting: 7/4/94
Posted for: Special Hearing
Petitioner: Frederick R. Kincaid
Location of property: 209 Rosewood Ave. Wp
Location of Sign: Facing the way on property being zoned
Remarks: _____
Posted by: [Signature] Date of return: 7/1/94
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD., July 8, 1994
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 7, 1994.

THE JEFFERSONIAN,
A. Henrichson
LEGAL AD. - TOWSON

Baltimore County
Zoning Administration &
Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Date: 6/20/94
Kincaid - 209 Rosewood Ave.
030 - SPH - \$50.00
030 - Sign - \$35.00
\$85.00

receipt
94-521-SPH
Account: R-001-6150
Number: #505
Taken by: JRF

QUARTERLY FEE \$85.00
P.O. #001111-0006-20-94
Please Make Checks Payable To: Baltimore County

Cashier Validation

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighborhood property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be assessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

[Signature]
ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 505
Petitioner: EVELYN KINCAID
Location: 209 ROSEWOOD AVE
PLEASE FORWARD ADVERTISING BILL TO:
NAME: LOUIS J WEINKAM SR
ADDRESS: 1002 FREDERICK RD
CATONSVILLE MD 21228
PHONE NUMBER: 744-3216

AJ:ggg

(Revised 04/09/93)

TO: FUTURE FURNISHING COMPANY
July 7, 1994 Issue - Jeffersonian

Please forward billing to:
Louis J. Weinkam, Sr., Esquire
1002 Frederick Road
Catonsville, Maryland 21228
744-3256

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: 94-521-SPH (Item 505)
209 Rosewood Avenue
W/S Rosewood Avenue, 395 feet NW of c/l Edmondson Avenue
1st Election District - 1st Councilmanic
Petitioner(s): Evelyn A. Kincaid
HEARING: THURSDAY, JULY 28, 1994 at 9:00 a.m., Rm. 106 County Off. Bldg.

Special Hearing to approve a non-conforming use for a two-apartment dwelling.

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 THIS FILE AND/OR HEARING, PLEASE CALL 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(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: 94-521-SPH (Item 505)
209 Rosewood Avenue
W/S Rosewood Avenue, 395 feet NW of c/l Edmondson Avenue
1st Election District - 1st Councilmanic
Petitioner(s): Evelyn A. Kincaid
HEARINGS: THURSDAY, JULY 28, 1994 at 9:00 a.m., Rm. 106 County Off. Bldg.

Special Hearing to approve a non-conforming use for a two-apartment dwelling.

[Signature]
Arnold Jablon
Director

cc: Evelyn A. Kincaid
Louis J. Weinkam, Sr., Esquire

NOTES: (1) ZONING 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 THIS FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

July 19, 1994

Louis J. Weinkam, Sr., Esquire
1002 Frederick Road
Catonsville, Maryland 21228

RE: Case No. 94-521-SPH, Item No. 505
Petition for Special Hearing
Petitioner: Evelyn A. Kincaid

Dear Mr. Weinkam:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above-referenced petition, which was accepted for filing on June 20, 1994 and scheduled for a hearing accordingly. Any attached comments from a reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., zoning commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the hearing file.

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

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



Maryland Department of Transportation
State Highway Administration

U. James Luginizer
Secretary
Hal Kassoff
Administrator

Ms. Charlotte Minton
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: 505 (JRF)

Dear Ms. Minton:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,
[Signature]
for DAVID H. BRINSEAL, ACTING CHIEF
Engineering Access Permits
Division

BS/

My telephone number is _____
Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 07/01/94

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW
LOCATION: SEE BELOW

Item No.: SEE BELOW Zoning Agenda:

Gentlemen:

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

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation. IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 492, 503, 504, AND 510.

RECEIVED
JUL 5 1994
ZADM

REVIEWER: LT. ROBERT P. SWEETWALD
Fire Marshal Office, PHONE 887-4801, MS-1102F

cc: File

Printed on Recycled Paper

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
W/S Rosewood Avenue, 395' NW * DEPUTY ZONING COMMISSIONER
of the c/l of Edmondson Avenue (209 Rosewood Avenue) * OF BALTIMORE COUNTY
1st Election District * Case No. 94-521-SPH
1st Councilmanic District
Evelyn A. Kincaid
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing for the subject property known as 209 Rosewood Avenue, located in the Catonsville area of southwestern Baltimore County. The Petition was filed by the owner of the property, Evelyn A. Kincaid, through her attorney, Louis J. Weinkam, Sr., Esquire. The Petitioner seeks a special hearing to approve the nonconforming use of the subject property, zoned D.R. 5.5, as a two-apartment dwelling. The property and relief sought are more particularly described on the plat submitted into evidence as Petitioner's Exhibit 1.

Appearing on behalf of the Petition were George I. Johnston, the property owner's son, Doris M. Willis, adjoining property owner, Paul Lee, Professional Engineer, and the Petitioner's attorney, Louis J. Weinkam, Sr., Esquire. Appearing as Protestants in the matter were James Whelan and Mark Parr, the President of the Oakcrest Community Association.

Testimony and evidence offered revealed that the subject property consists of 0.155 acres, more or less, zoned D.R. 5.5, and is improved with a two-story dwelling containing two apartments. The Petitioner filed the instant Petition to bring the property into compliance with current zoning regulations. Testimony offered by Mr. Paul Lee was that the subject property contains two separate apartments and is serviced by public water

and sewer. He testified that two apartment dwellings were permitted as of right given the type of zoning that applied to this property prior to 1955.

Mr. George Johnston, the Petitioner's son, traveled from Portland, Oregon to appear and testify on behalf of his mother. Mr. Johnston testified that his mother has lived at the Charlestown Retirement complex since April 1954 and it is unlikely that she will be able to live outside that facility. Mr. Johnston testified that his mother and stepfather were married in the subject dwelling in 1949 and that at that time, the property was converted into two apartments. Mr. Johnston testified that the second floor of the dwelling was occupied by three schoolteachers from approximately 1949 until 1970. He testified that he resided in the dwelling with his mother and stepfather from 1949 until 1952 when he moved to a location near Johns Hopkins University. He testified that from 1952 to 1958, he would regularly visit with his mother and that the house was always used as two apartments during that time. Mr. Johnston testified that he moved to Oregon in 1958, but visited with his mother at least once a year from 1958 until the present time and would stay with his mother at the subject site. During these once a year visits, the second floor was always leased to a tenant while his mother resided on the first floor.

Evidence presented revealed that Mrs. Kincaid kept meticulous records concerning the rental of the second floor apartment. Mrs. Kincaid was able to produce every lease she had with the various tenants who occupied the second floor apartment from 1950 until the present date. Those leases were entered into evidence as Petitioner's Exhibits 3 through 10.

Finally, Ms. Doris Willis, adjoining property owner, appeared and testified on behalf of the Petition. Ms. Willis testified that she has resided at 207 Rosewood Avenue since 1951 and that from her personal obser-

vation, the subject property has always been used continuously and without interruption as a two-apartment dwelling the entire time that she has resided on her property.

Appearing and testifying in opposition to the Petitioner's request were James Whelan and Mark Parr, both of whom reside in the neighborhood. Mr. Whelan submitted numerous photographs of the homes on Rosewood Avenue which clearly demonstrate that this community is a very nice residential neighborhood containing very attractive single family homes. Mr. Whelan testified concerning the individuals, and in particular, the number of children who reside on Rosewood Avenue. He testified that Rosewood Avenue is a very narrow street and that there is insufficient parking to allow the use of this property as two apartments. Both Mr. Whelan and Mr. Parr had no objections to the manner in which Mrs. Kincaid had used the property in the past and that she was a very conscientious landlord. However, they fear that an absentee landlord may purchase the property and lease both apartments to outsiders. In support of their position, Mr. Whelan presented a signed Petition by various other residents of the community who are opposed to the special hearing relief sought.

The concerns voiced by Messrs. Whelan and Parr are legitimate; however, they do not relate to the historical use of the subject property as two apartments. The testimony and evidence offered at the hearing was overwhelming and clearly established that this property has been continuously utilized as two separate apartments since prior to 1955. I am compelled to grant the special hearing relief sought.

It should be noted that the Protestants who attended the hearing and testified in opposition to the use proposed clearly have the best interests of the community in mind. They are concerned over what effect

this two apartment dwelling will have in the future on the quality of life of this residential community. In the 47 years that Mrs. Kincaid resided on the property, she was an outstanding neighbor. While I cannot legally control Mrs. Kincaid as to whom she might sell her property, I trust that she would have the same best interests of the community in mind that she has exhibited over the years that she resided on Rosewood Avenue when she chooses a buyer for the subject property.

As with all nonconforming use cases, the first task is to determine whether a lawful nonconforming use existed on the subject property prior to the year in which a change in the zoning regulations caused the use of the property to become illegal. The controlling year in this case is 1955. Therefore, it is incumbent for the Petitioner to prove by virtue of the testimony offered at the hearing that the subject property has existed as a two-apartment dwelling since prior to 1955.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A2d. 96 (1978).

When the claimed nonconforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the

current activity is within the scope of the nonconforming use, the Zoning Commissioner should consider the following factors:

"(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;

(b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;

(c) Does the current use have a substantially different effect upon the neighborhood;

(d) Is the current use a "drastic enlargement or extension" of the original nonconforming use."

McKemy v. Baltimore County, Md., Supra.

After due consideration of the testimony and evidence presented, it is clear that the subject property has been used continuously and without interruption as a two-apartment dwelling since prior to 1955, and as such, enjoys a legal nonconforming use.

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 Petition for Special Hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 2nd day of August, 1994 that the Petition for Special Hearing seeking approval of the nonconforming use of the subject property, zoned D.R. 5.5, as a two-apartment dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED.

Timothy M. Kotrocco
TIMOTHY M. KOTROCCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

August 2, 1994

Louis J. Weinkam, Sr., Esquire
1002 Frederick Road
Catonsville, Maryland 21228

RE: PETITION FOR SPECIAL HEARING
W/S Rosewood Avenue, 395' NW of the c/l of Edmondson Avenue
(209 Rosewood Avenue)
1st Election District - 1st Councilmanic District
Evelyn A. Kincaid - Petitioner
Case No. 94-521-SPH

Dear Mr. Weinkam:

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. Kotrocco
TIMOTHY M. KOTROCCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. James Whelan
209 Rosewood Avenue, Catonsville, Md. 21228

Mr. Mark Parr, President, Oakcrest Community Association
1304 Hovner Avenue, Catonsville, Md. 21228

People's Counsel; File



Petition for Special Hearing
to the Zoning Commissioner of Baltimore County
for the property located at 209 Rosewood Avenue
which is presently zoned DR5.5

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 a Non Conforming use for a 2 apartment dwelling in a DR5.5 zone

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.

Correct Purchase/Lesse:
(Type or Print Name)
Signature
Address
City State Zip

Signature
Address
City State Zip

Signature
Address
City State Zip

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City State Zip

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City State Zip

Legal Owner(s):
(Type or Print Name)
Signature
Address
City State Zip

Legal Owner(s):
(Type or Print Name)
Signature
Address
City State Zip

Paul Lee P.E.

Paul Lee Engineering Inc.
304 W. Pennsylvania Ave.
Towson, Maryland 21204
410-821-5344

DESCRIPTION

#209 Rosewood Avenue

Elect. Dist. 1 Baltimore County, Md.

Beginning for the same at a point on the west side of Rosewood Avenue, said point also being located Northwesterly-395 feet from the center of Edmondson Avenue; thence binding on the west side of Rosewood Avenue (1) N 27°09' W - 50.00 feet, thence leaving said west side of Rosewood Avenue (2) S 64°33' W - 135.06 feet to the east side of a 10 foot alley; thence binding on the east side of said 10 foot alley (3) S 27°09' E - 50.00 feet, thence leaving said east side of the 10 foot alley (4) N 64°33' E - 135.06 feet to the point of beginning.

Containing 6,753 s.f. (0.155 ac.) of land more or less.



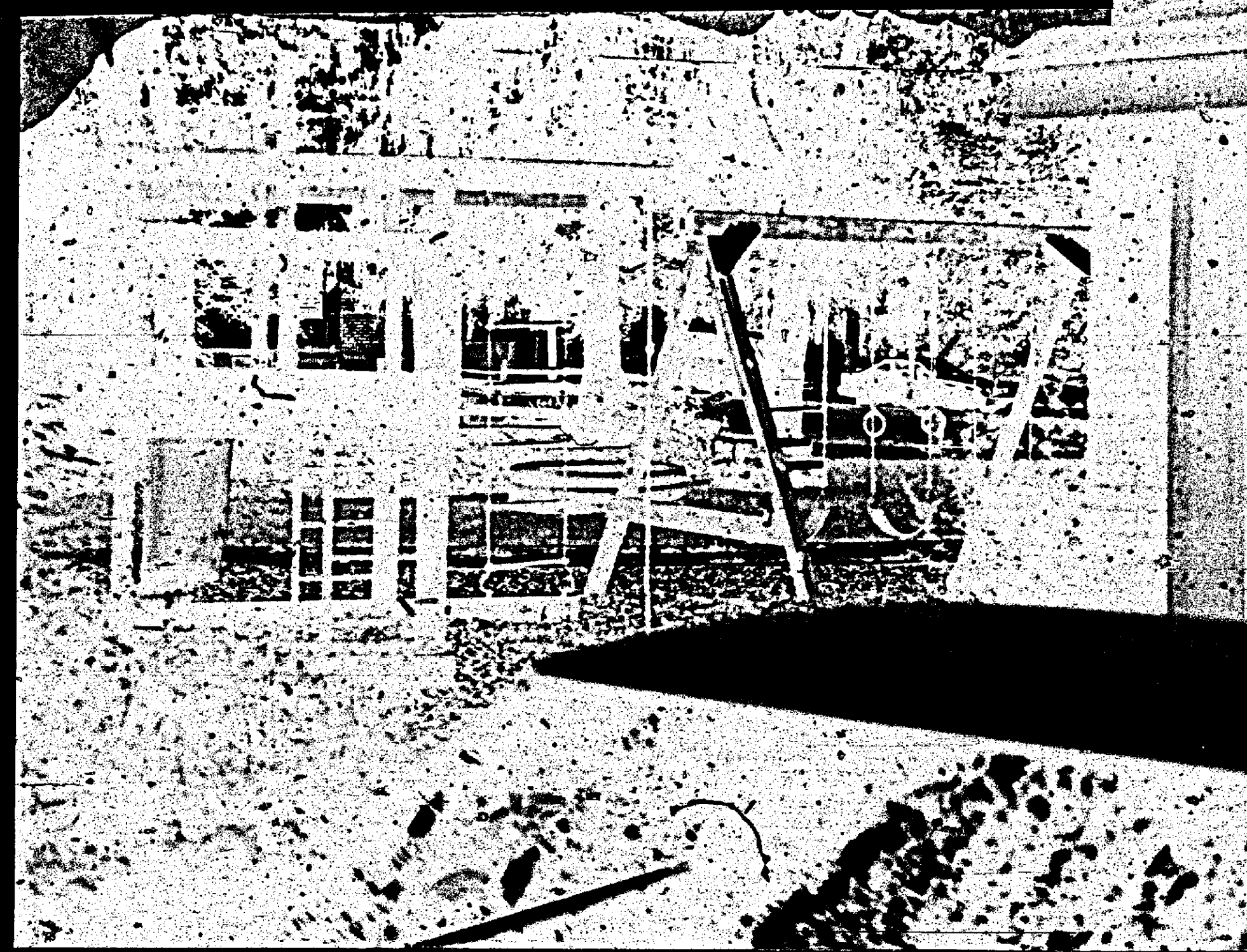
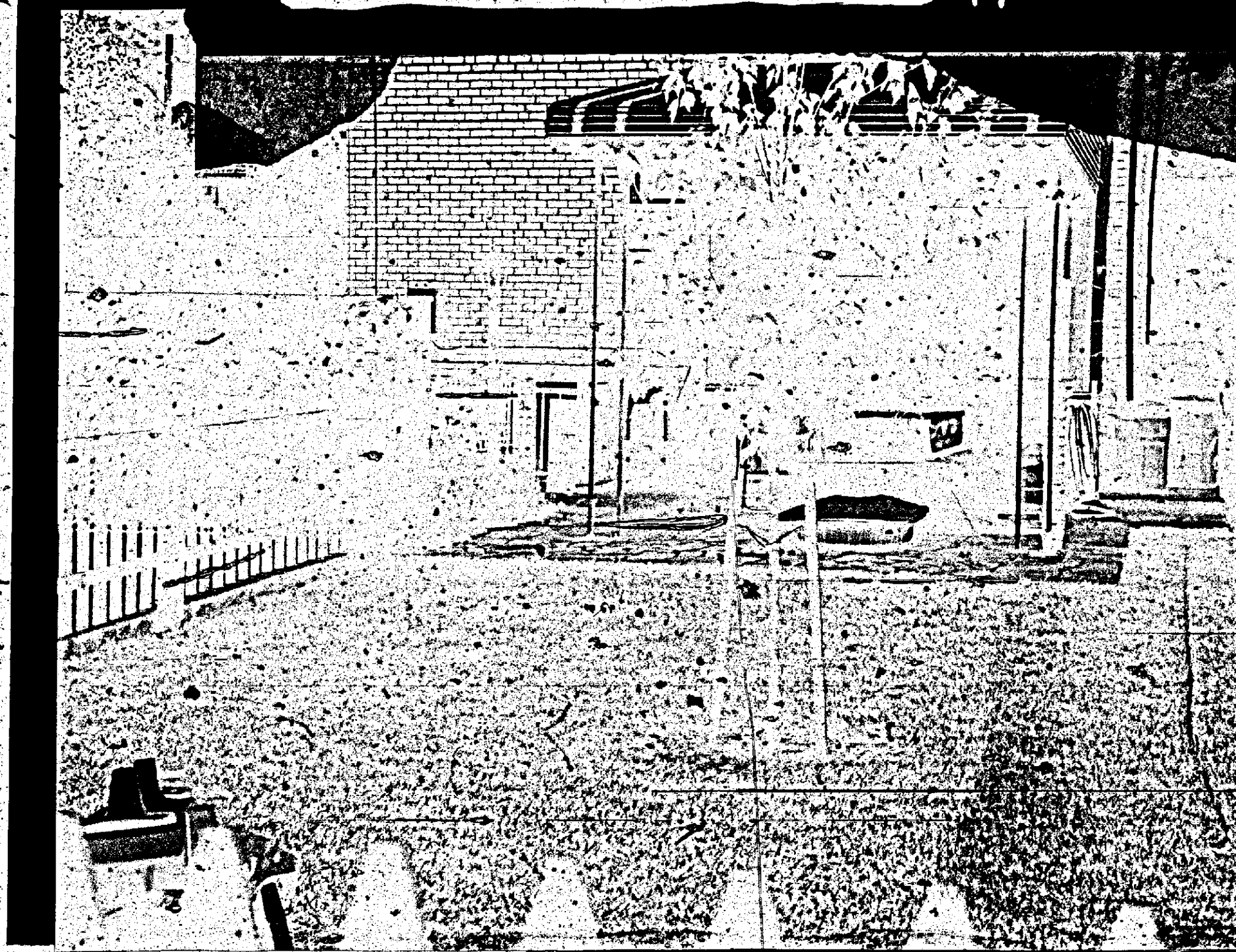
505

2/11/94

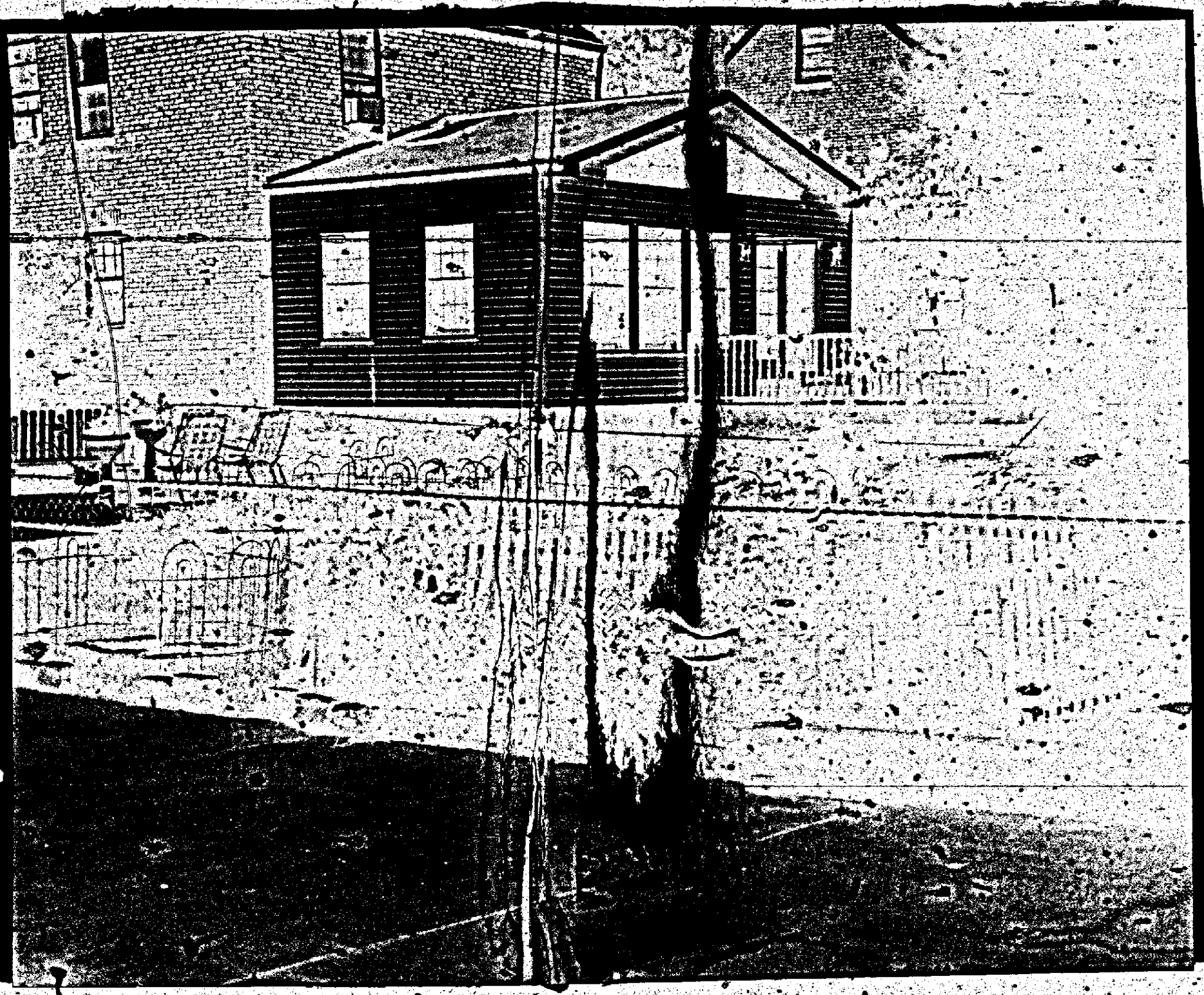
J.O. 93-028

Engineers - Surveyors - Site Planners

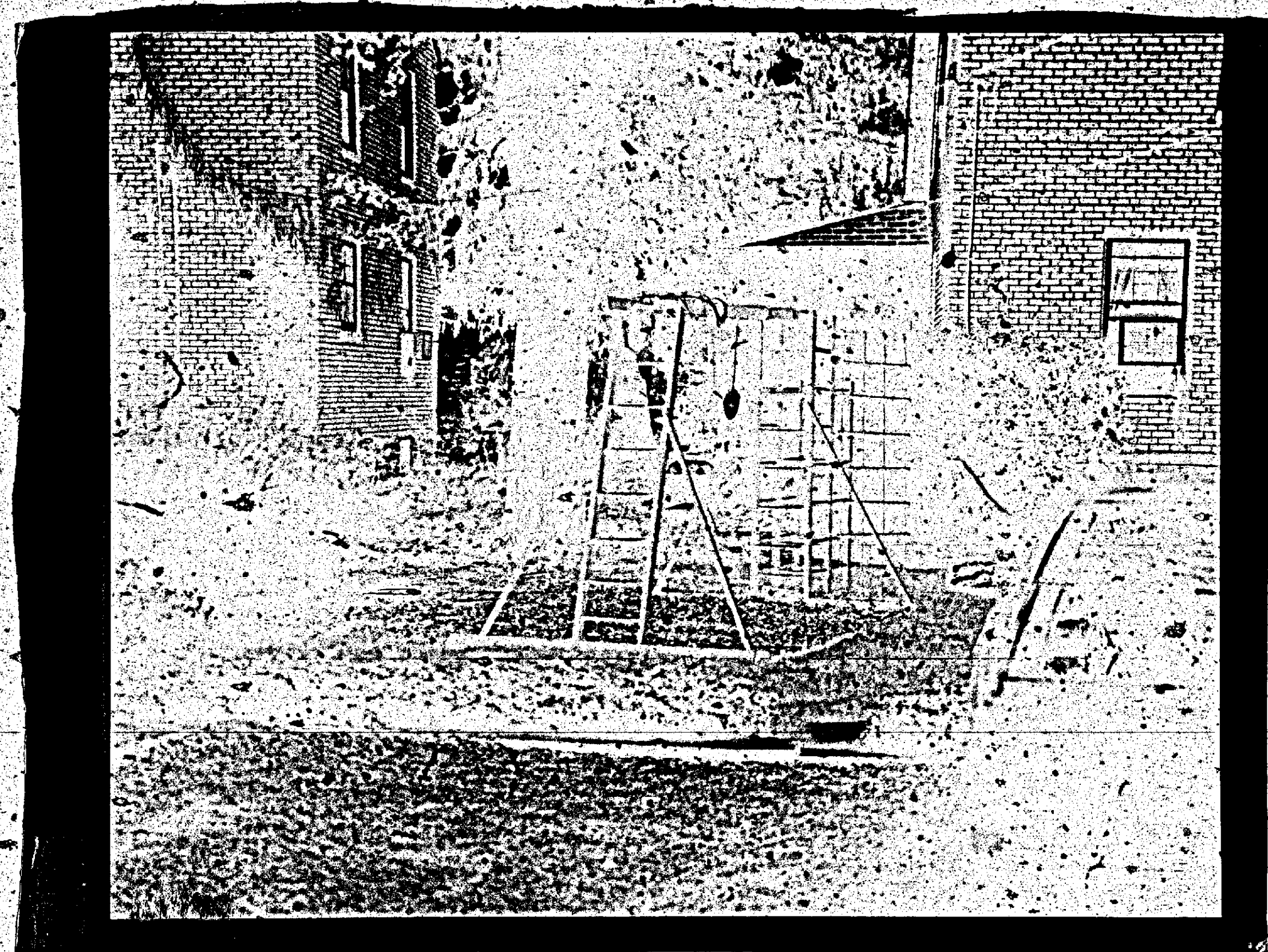
ROSEWOOD AVE - 200 BLOCK (NOON 7/26/94)



FAMILIES
MAKE-UP
THE MAJORITY
OF RESIDENTS
ON ROSEWOOD
AVE. IN SIGNS ARE:
TOYS + GARDENS.
OUT ARE: CONGESTION
AND PEOPLE WHO
COME + GO AND
DO NOT OWN THEIR
PROPERTIES.



PROTESTANT'S
EXHIBIT NO. 5



209 ROSEWOOD AVE



FRONT ENTERANCE
(FACES EAST)

PROTESTANT'S
EXHIBIT NO. 2

94-521-SPH

PHOTOS TAKEN NOON, TUESDAY 7/26/94
WEATHER: CLOUDY

REAR EXIT & IN BUILDING
ONE CAR GARAGE

NO CENTRAL A/C; INDICATED BY
WINDOW FANS AND AIR CONDITIONERS

ROSEWOOD AVE - 200 BLOCK

209 ROSEWOOD AVE



SOUTH SIDE

NORTH SIDE

PROTESTANT'S
EXHIBIT NO. 3

NO ADDITIONAL DOOR OPENINGS ON SIDES.



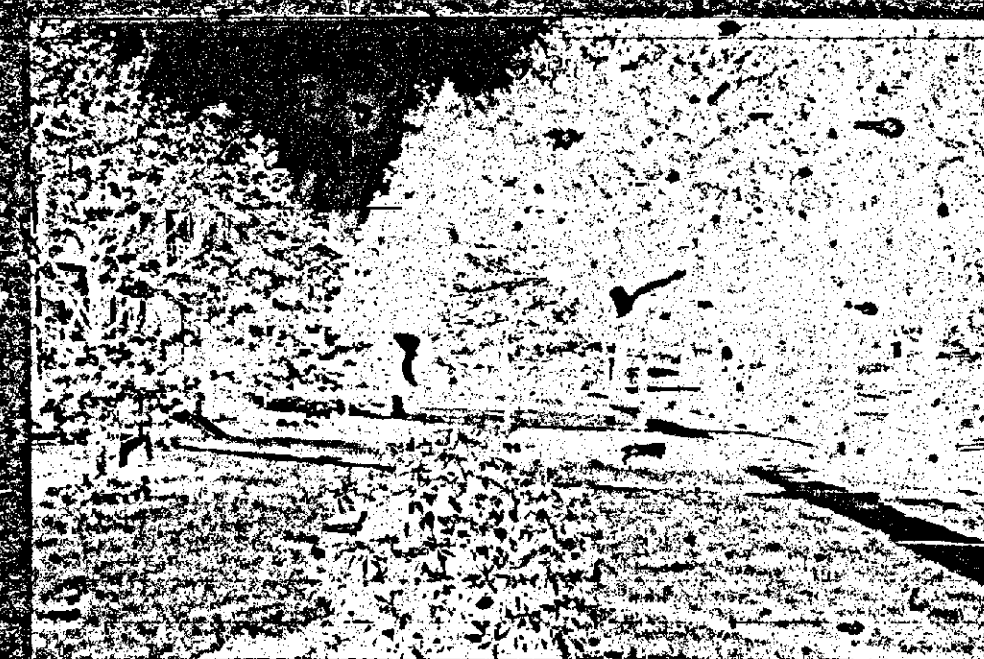
LOOKING NORTH



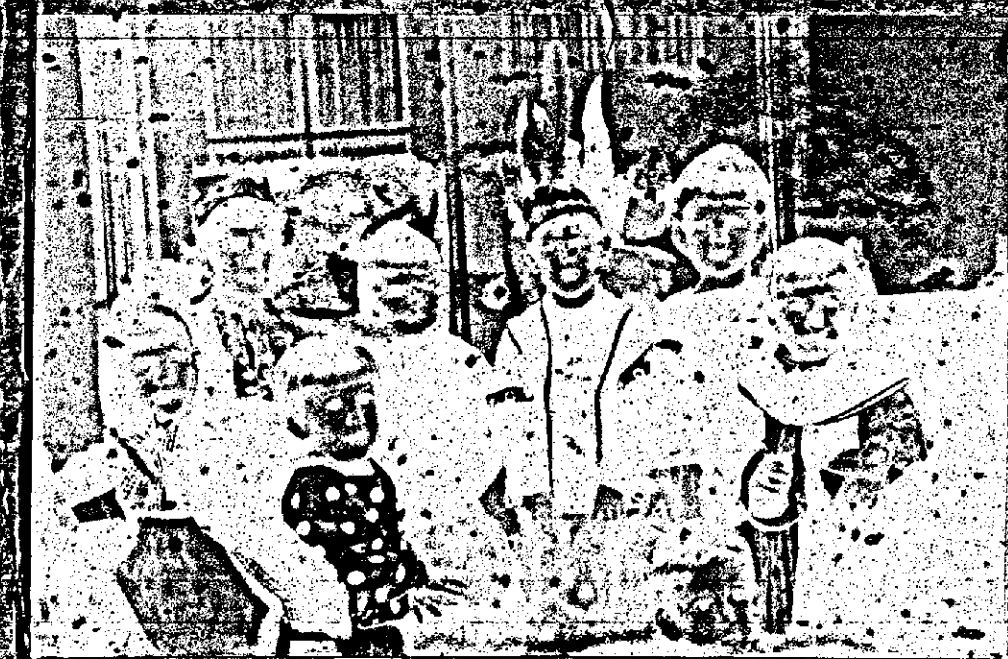
TYPICAL HOME 6 ROOMS



209 NEIGHBORS: 201



LAWNS 201 + 203



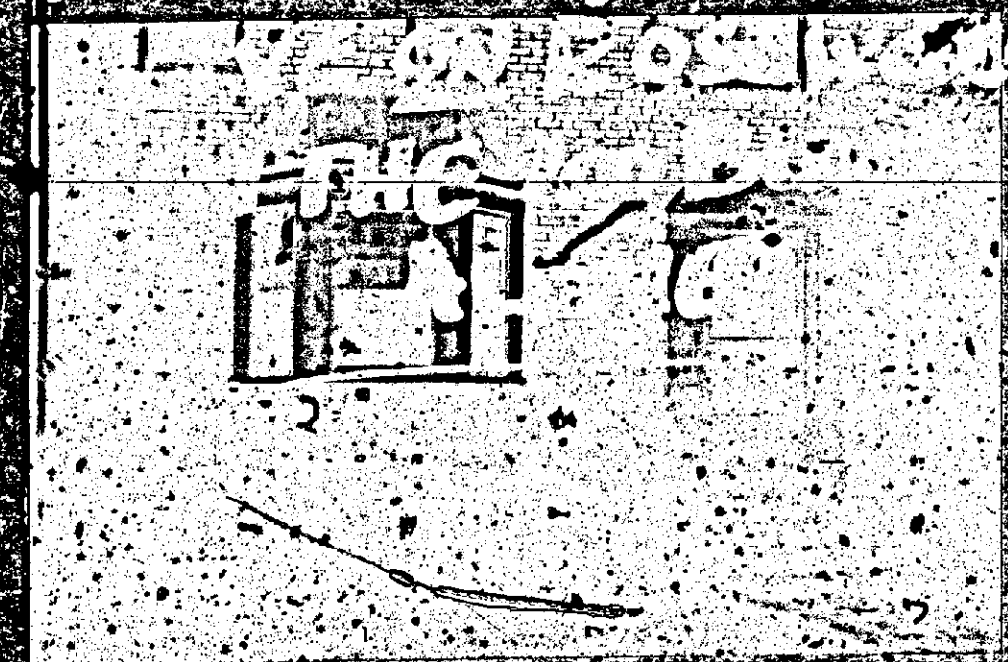
16 CHILDREN - 14 ADULTS



207



203



211



213

PROTESTANT'S
EXHIBIT NO. 4

WE: PETITION FOR VARIANCE *
209 Rosewood Avenue, W/S Rosewood
Avenue, 195 feet NW of c/l Edmondson
Avenue, 1st Election Dist., 1st
Councilmanic
Evelyn A. Kincaid
Petitioner
* * * * *

BEFORE THE
ZONING COMMISSIONER
FOR BALTIMORE COUNTY
CASE NO.: 94-521-SPH

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice 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
People's Counsel for Baltimore County

CAROL S. DEMILIO
Deputy People's Counsel
Room 41, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July, 1994, a copy of the foregoing Entry of Appearance was mailed to Louis J. Weinkam, Sr., Esquire, 1002 Frederick Road, Baltimore, MD 21228, attorney for the petitioner.

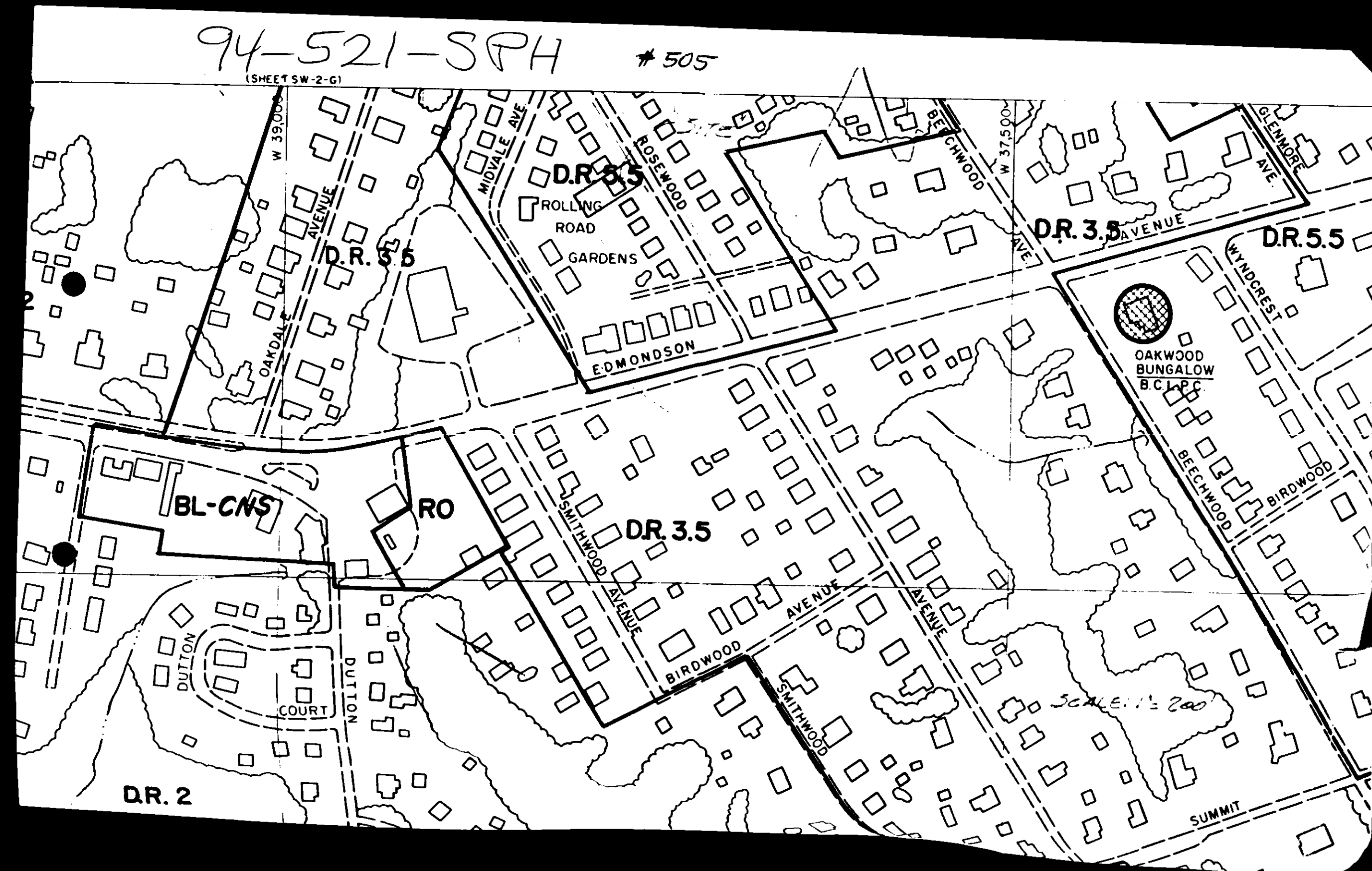
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

PLEASE PRINT CLEARLY BALTIMORE COUNTY REPRESENTATIVES
SIGN-IN SHEET

NAME	ADDRESS
Mark West	209 Rosewood Ave
Mark West	1304 Howard Ave 21338
	209 Rosewood Avenue

PLEASE PRINT CLEARLY BALTIMORE COUNTY REPRESENTATIVES
SIGN-IN SHEET

NAME	ADDRESS
Mark West	209 Rosewood Ave
Mark West	1304 Howard Ave
	209 Rosewood Avenue



INVENTORY - 209 ROSEWOOD AVENUE
CATONSVILLE 28, MARYLAND
Second Floor Apartment

- LIVING ROOM - 1 Rug
1 Studio Couch
1 Mirror
2 Wall Racks & Birds
2 End Tables
2 Barrell Chairs
1 Pull-up Chair
1 Side Chair
1 Radio Shelf
1 Floor Lamp
2 Chairs Curtains & Drapes
4 Pictures
1 Chest of Drawers.
- HALL - 1 Wall table & Vase
2 Scatter rugs
- BEDROOM - 1 Rug
1 Dresser & Mirror
1 Vanity - Mirror &
1 Beach
1 Chest Robe
4 Lamps
1 Night Table
1 Side Chair
4 Pictures
2 Curtains & Drapes
- KITCHEN - 1 Gas Stove
1 G. M. Frigidaire
1 Table
4 chairs
1 clock
1 pin-up lamp
1 cabinet table
1 set of dishes & glasses
1 set of cooking utensils
1 set of flat ware
2 scatter rugs
1 tea pot
1 coffee pot
2 sets of curtains

PETITIONER'S EXHIBIT NO. 3

Witnesses
Margaret S. Walters
Laura S. Glover
Anna M. Avers
Margaret S. Walters
Laura S. Glover
Anna M. Avers

Witnesses
Margaret S. Walters
Laura S. Glover
Anna M. Avers
Margaret S. Walters
Laura S. Glover
Anna M. Avers

LEASE OF APARTMENT-40

This Lease, Made this 1st day of September, 1975,
between Mrs. Evelyn A. Kincaid Landlord,
and Mrs. Richard E. Kincaid Tenant, Witnesseth:

THAT the said landlord do hereby rent to the said tenant, all that apartment or suite of rooms, Apartment
Space in this Floor, in the building known as 209 Rosewood Ave.,
Baltimore, Maryland, 21228,
in the County of Baltimore for the term of one year, beginning on the 1st day of
September, 1975, and ending on the 31st day of August,
1976, for the sum of \$1350.00 dollars

per year, payable in equal monthly payments of \$112.50 on the first day of each month in advance subject to the following conditions, viz:
1. The premises shall be used only as, and for the purposes of a private dwelling. They shall not be sublet; nor shall this lease be assigned (or advertised), without the written consent of the landlord first endorsed hereon.
2. The tenant shall quit and surrender the premises at the end of the term, or any renewal thereof, in as good condition as when received, reasonable wear and tear, and damage by fire excepted.
3. The tenant shall not make any alterations, additions or changes in the said premises or the fixtures thereof, nor permit these things to be done, without the written consent of the landlord; nor shall said tenant in any manner deface the walls, doors or ceiling of said premises.
4. The tenant shall pay to the landlord the cost of repairing any injury done to the said premises by himself, his family, guests, servants or employees, whether said injury be caused by negligence, default or willful act.
5. The tenant shall not do, nor suffer to be done, nor keep, on the premises, anything which shall affect the Fire Insurance upon the building or its contents, or which shall conflict with the City ordinances, or with the rights of the other tenants.
6. The tenant shall not keep any dog, or other pet, upon the premises, without the consent in writing of the landlord; nor retain it after receiving notice from the landlord to dispose of it.
7. Children will not be permitted to play in the halls or upon the stairways.
8. Disturbing noises shall be avoided at all times. Musical instruments shall not be played between the hours of 10:00 p.m. and 9:00 a.m., without the written consent of the landlord.
9. The tenant shall use carefully, and for their legitimate purposes only, all plumbing, gas, electric and other fixtures and shall pay for all repairs thereof, not caused by ordinary wear and tear.
10. The tenant shall not display signs in the windows or elsewhere, nor erect awnings, without the written consent of the landlord.
11. The tenant shall not use the premises for any other purpose than that for which they were originally intended.
12. The tenant agrees and covenants to pay said rent promptly as it accrues, and to abide by and perform all covenants on his part to be performed, and if said rent or any part thereof shall be in arrears at any time, that said landlord may distrain therefor; and if said rent, in whole or in part, shall be in arrears and unpaid for the period of ten days, or if the tenant shall fail to comply with any of the conditions of this lease, then the said landlord may, at its option, re-enter upon the premises hereby rented, without further notice or process of law, and such re-entry shall constitute a termination of this lease, and the tenant, upon re-entry, shall be deemed to have accepted the termination of this lease, and shall be liable for any further rent.
13. The tenant shall not use the premises for any other purpose than that for which they were originally intended.
14. The tenant shall not use the premises for any other purpose than that for which they were originally intended.
15. If during this term the premises shall be injured by fire or the elements, they shall be repaired with all reasonable diligence by the landlord, and the rent shall continue; but if the premises shall be rendered untenable, as aforesaid, then this lease shall terminate, and the tenant, upon payment of any back rent, and a pro rata part of the running rent, to the day the premises are surrendered, shall not be liable for any further rent.
16. Either party hereto may terminate this lease at the end of said term by giving the other party written notice at least 60 days prior thereto; but in default of such notice, this lease shall continue upon the same terms and conditions as herein contained, for a further period of one year, and so on from period to period, until terminated by either party hereto giving to the other 60 days written notice of removal prior to the expiration of the then current term. But if the then landlord shall have given 60 days notice in writing previous to the expiration of said term or any renewal thereof, of his intention to change the terms and conditions of this lease, and if the tenant shall hold over after such notice, he shall be considered as tenant under the terms and conditions mentioned in such notice.
17. The landlord shall have the right to enter this apartment at reasonable hours of the day, to examine the same, or to make such alterations and repairs as may be deemed necessary. The tenant shall allow the rooms to be shown to applicants desiring to hire, on any week day during the 30 days next before the expiration of the lease.
Witness our hand and seals in duplicate.

Witness:
Laura S. Glover (SEAL)
Anna M. Avers (SEAL)
Margaret S. Walters (SEAL)
Laura S. Glover (SEAL)
Anna M. Avers (SEAL)
Margaret S. Walters (SEAL)

PETITIONER'S EXHIBIT NO. 4

LEASE OF APARTMENT-40

This Lease, Made this 27th day of August, 1975,
between Mrs. Evelyn A. Kincaid Landlord,
and Mrs. Richard E. Kincaid Tenant, Witnesseth:

THAT the said landlord do hereby rent to the said tenant, all that apartment or suite of rooms, Apartment
Space in this Floor, in the building known as 209 Rosewood Ave.,
Baltimore, Maryland, 21228,
in the County of Baltimore for the term of one year, beginning on the 1st day of
September, 1975, and ending on the 31st day of August,
1976, for the sum of \$1350.00 dollars

per year, payable in equal monthly payments of \$112.50 on the first day of each month in advance subject to the following conditions, viz:
1. The premises shall be used only as, and for the purposes of a private dwelling. They shall not be sublet; nor shall this lease be assigned (or advertised), without the written consent of the landlord first endorsed hereon.
2. The tenant shall quit and surrender the premises at the end of the term, or any renewal thereof, in as good condition as when received, reasonable wear and tear, and damage by fire excepted.
3. The tenant shall not make any alterations, additions or changes in the said premises or the fixtures thereof, nor permit these things to be done, without the written consent of the landlord; nor shall said tenant in any manner deface the walls, doors or ceiling of said premises.
4. The tenant shall pay to the landlord the cost of repairing any injury done to the said premises by himself, his family, guests, servants or employees, whether said injury be caused by negligence, default or willful act.
5. The tenant shall not do, nor suffer to be done, nor keep, on the premises, anything which shall affect the Fire Insurance upon the building or its contents, or which shall conflict with the City ordinances, or with the rights of the other tenants.
6. The tenant shall not keep any dog, or other pet, upon the premises, without the consent in writing of the landlord; nor retain it after receiving notice from the landlord to dispose of it.
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10. The tenant shall not display signs in the windows or elsewhere, nor erect awnings, without the written consent of the landlord.
11. The tenant shall not use the premises for any other purpose than that for which they were originally intended.
12. The tenant agrees and covenants to pay said rent promptly as it accrues, and to abide by and perform all covenants on his part to be performed, and if said rent or any part thereof shall be in arrears at any time, that said landlord may distrain therefor; and if said rent, in whole or in part, shall be in arrears and unpaid for the period of ten days, or if the tenant shall fail to comply with any of the conditions of this lease, then the said landlord may, at its option, re-enter upon the premises hereby rented, without further notice or process of law, and such re-entry shall constitute a termination of this lease, and the tenant, upon re-entry, shall be deemed to have accepted the termination of this lease, and shall be liable for any further rent.
13. The tenant shall not use the premises for any other purpose than that for which they were originally intended.
14. The tenant shall not use the premises for any other purpose than that for which they were originally intended.
15. If during this term the premises shall be injured by fire or the elements, they shall be repaired with all reasonable diligence by the landlord, and the rent shall continue; but if the premises shall be rendered untenable, as aforesaid, then this lease shall terminate, and the tenant, upon payment of any back rent, and a pro rata part of the running rent, to the day the premises are surrendered, shall not be liable for any further rent.
16. Either party hereto may terminate this lease at the end of said term by giving the other party written notice at least 60 days prior thereto; but in default of such notice, this lease shall continue upon the same terms and conditions as herein contained, for a further period of one year, and so on from period to period, until terminated by either party hereto giving to the other 60 days written notice of removal prior to the expiration of the then current term. But if the then landlord shall have given 60 days notice in writing previous to the expiration of said term or any renewal thereof, of his intention to change the terms and conditions of this lease, and if the tenant shall hold over after such notice, he shall be considered as tenant under the terms and conditions mentioned in such notice.
17. The landlord shall have the right to enter this apartment at reasonable hours of the day, to examine the same, or to make such alterations and repairs as may be deemed necessary. The tenant shall allow the rooms to be shown to applicants desiring to hire, on any week day during the 30 days next before the expiration of the lease.
Witness our hand and seals in duplicate.

Witness:
Laura S. Glover (SEAL)
Anna M. Avers (SEAL)
Margaret S. Walters (SEAL)
Laura S. Glover (SEAL)
Anna M. Avers (SEAL)
Margaret S. Walters (SEAL)

PETITIONER'S EXHIBIT NO. 5

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 15 Date of Posting: 7/4/94
Posted for: Special Hearing
Petitioner: Frederick R. Kincaid
Location of property: 209 Rosewood Ave. Wp
Location of Sign: Facing the way on property being zoned
Remarks: _____
Posted by: [Signature] Date of return: 7/1/94
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD., July 8, 1994
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 7, 1994.

THE JEFFERSONIAN,
A. Henrichson
LEGAL AD. - TOWSON

Baltimore County
Zoning Administration &
Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Date: 6/20/94
Kincaid - 209 Rosewood Ave.
030 - SPH - \$50.00
030 - Sign - \$35.00
\$85.00

receipt
94-521-SPH
Account: R-001-6150
Number: #505
Taken by: JRF

QUARTERLY FEE \$85.00
P.O. #001111-0006-20-94
Please Make Checks Payable To: Baltimore County

Cashier Validation

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighborhood property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be assessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

[Signature]
ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 505
Petitioner: EVELYN KINCAID
Location: 209 ROSEWOOD AVE
PLEASE FORWARD ADVERTISING BILL TO:
NAME: LOUIS J WEINKAM SR
ADDRESS: 1002 FREDERICK RD
CATONSVILLE MD 21049
PHONE NUMBER: 744-3216

AJ:ggg

(Revised 04/09/93)

TO: FUTURE FURNISHING COMPANY
July 7, 1994 Issue - Jeffersonian

Please forward billing to:

Louis J. Weinkam, Sr., Esquire
1002 Frederick Road
Catonsville, Maryland 21228
744-3256

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: 94-521-SPH (Item 505)
209 Rosewood Avenue
W/S Rosewood Avenue, 395 feet NW of c/l Edmondson Avenue
1st Election District - 1st Councilmanic
Petitioner(s): Evelyn A. Kincaid
HEARING: THURSDAY, JULY 28, 1994 at 9:00 a.m., Rm. 106 County Off. Bldg.

Special Hearing to approve a non-conforming use for a two-apartment dwelling.

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 THIS FILE AND/OR HEARING, PLEASE CALL 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(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: 94-521-SPH (Item 505)
209 Rosewood Avenue
W/S Rosewood Avenue, 395 feet NW of c/l Edmondson Avenue
1st Election District - 1st Councilmanic
Petitioner(s): Evelyn A. Kincaid
HEARING: THURSDAY, JULY 28, 1994 at 9:00 a.m., Rm. 106 County Off. Bldg.

Special Hearing to approve a non-conforming use for a two-apartment dwelling.

[Signature]
Arnold Jablon
Director

cc: Evelyn A. Kincaid
Louis J. Weinkam, Sr., Esquire

NOTES: (1) ZONING 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 THIS FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

July 19, 1994

Louis J. Weinkam, Sr., Esquire
1002 Frederick Road
Catonsville, Maryland 21228

RE: Case No. 94-521-SPH, Item No. 505
Petition for Special Hearing
Petitioner: Evelyn A. Kincaid

Dear Mr. Weinkam:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above-referenced petition, which was accepted for filing on June 20, 1994 and scheduled for a hearing accordingly. Any attached comments from a reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., zoning commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the hearing file.

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

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



Maryland Department of Transportation
State Highway Administration

U. James Luginizer
Secretary
Hal Kassoff
Administrator

Ms. Charlotte Minton
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: 505 (JRF)

Dear Ms. Minton:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,
[Signature]
for DAVID H. BRINSEAL, ACTING CHIEF
Engineering Access Permits
Division

BS/

My telephone number is _____
Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 07/01/94

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW
LOCATION: SEE BELOW

Item No.: SEE BELOW Zoning Agenda:

Gentlemen:

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

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation. IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 492, 503, 504, AND 510.

RECEIVED
JUL 5 1994
ZADM

REVIEWER: LT. ROBERT P. SWEETWALD
Fire Marshal Office, PHONE 887-4801, MS-1102F

cc: File

Printed on Recycled Paper

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
W/S Rosewood Avenue, 395' NW * DEPUTY ZONING COMMISSIONER
of the c/l of Edmondson Avenue (209 Rosewood Avenue) * OF BALTIMORE COUNTY
1st Election District * Case No. 94-521-SPH
1st Councilmanic District
Evelyn A. Kincaid
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing for the subject property known as 209 Rosewood Avenue, located in the Catonsville area of southwestern Baltimore County. The Petition was filed by the owner of the property, Evelyn A. Kincaid, through her attorney, Louis J. Weinkam, Sr., Esquire. The Petitioner seeks a special hearing to approve the nonconforming use of the subject property, zoned D.R. 5.5, as a two-apartment dwelling. The property and relief sought are more particularly described on the plat submitted into evidence as Petitioner's Exhibit 1.

Appearing on behalf of the Petition were George I. Johnston, the property owner's son, Doris M. Willis, adjoining property owner, Paul Lee, Professional Engineer, and the Petitioner's attorney, Louis J. Weinkam, Sr., Esquire. Appearing as Protestants in the matter were James Whelan and Mark Parr, the President of the Oakcrest Community Association.

Testimony and evidence offered revealed that the subject property consists of 0.155 acres, more or less, zoned D.R. 5.5, and is improved with a two-story dwelling containing two apartments. The Petitioner filed the instant Petition to bring the property into compliance with current zoning regulations. Testimony offered by Mr. Paul Lee was that the subject property contains two separate apartments and is serviced by public water

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Date 8/20/94
By [Signature]

and sewer. He testified that two apartment dwellings were permitted as of right given the type of zoning that applied to this property prior to 1955.

Mr. George Johnston, the Petitioner's son, traveled from Portland, Oregon to appear and testify on behalf of his mother. Mr. Johnston testified that his mother has lived at the Charlestown Retirement complex since April 1954 and it is unlikely that she will be able to live outside that facility. Mr. Johnston testified that his mother and stepfather were married in the subject dwelling in 1949 and that at that time, the property was converted into two apartments. Mr. Johnston testified that the second floor of the dwelling was occupied by three schoolteachers from approximately 1949 until 1970. He testified that he resided in the dwelling with his mother and stepfather from 1949 until 1952 when he moved to a location near Johns Hopkins University. He testified that from 1952 to 1958, he would regularly visit with his mother and that the house was always used as two apartments during that time. Mr. Johnston testified that he moved to Oregon in 1958, but visited with his mother at least once a year from 1958 until the present time and would stay with his mother at the subject site. During these once a year visits, the second floor was always leased to a tenant while his mother resided on the first floor.

Evidence presented revealed that Mrs. Kincaid kept meticulous records concerning the rental of the second floor apartment. Mrs. Kincaid was able to produce every lease she had with the various tenants who occupied the second floor apartment from 1950 until the present date. Those leases were entered into evidence as Petitioner's Exhibits 3 through 10.

Finally, Ms. Doris Willis, adjoining property owner, appeared and testified on behalf of the Petition. Ms. Willis testified that she has resided at 207 Rosewood Avenue since 1951 and that from her personal obser-

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By [Signature]

- 2 -

vation, the subject property has always been used continuously and without interruption as a two-apartment dwelling the entire time that she has resided on her property.

Appearing and testifying in opposition to the Petitioner's request were James Whelan and Mark Parr, both of whom reside in the neighborhood. Mr. Whelan submitted numerous photographs of the homes on Rosewood Avenue which clearly demonstrate that this community is a very nice residential neighborhood containing very attractive single family homes. Mr. Whelan testified concerning the individuals, and in particular, the number of children who reside on Rosewood Avenue. He testified that Rosewood Avenue is a very narrow street and that there is insufficient parking to allow the use of this property as two apartments. Both Mr. Whelan and Mr. Parr had no objections to the manner in which Mrs. Kincaid had used the property in the past and that she was a very conscientious landlord. However, they fear that an absentee landlord may purchase the property and lease both apartments to outsiders. In support of their position, Mr. Whelan presented a signed Petition by various other residents of the community who are opposed to the special hearing relief sought.

The concerns voiced by Messrs. Whelan and Parr are legitimate; however, they do not relate to the historical use of the subject property as two apartments. The testimony and evidence offered at the hearing was overwhelming and clearly established that this property has been continuously utilized as two separate apartments since prior to 1955. I am compelled to grant the special hearing relief sought.

It should be noted that the Protestants who attended the hearing and testified in opposition to the use proposed clearly have the best interests of the community in mind. They are concerned over what effect

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Date 8/20/94
By [Signature]

- 3 -

this two apartment dwelling will have in the future on the quality of life of this residential community. In the 47 years that Mrs. Kincaid resided on the property, she was an outstanding neighbor. While I cannot legally control Mrs. Kincaid as to whom she might sell her property, I trust that she would have the same best interests of the community in mind that she has exhibited over the years that she resided on Rosewood Avenue when she chooses a buyer for the subject property.

As with all nonconforming use cases, the first task is to determine whether a lawful nonconforming use existed on the subject property prior to the year in which a change in the zoning regulations caused the use of the property to become illegal. The controlling year in this case is 1955. Therefore, it is incumbent for the Petitioner to prove by virtue of the testimony offered at the hearing that the subject property has existed as a two-apartment dwelling since prior to 1955.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A2d. 96 (1978).

When the claimed nonconforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the

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By [Signature]

- 4 -

current activity is within the scope of the nonconforming use, the Zoning Commissioner should consider the following factors:

"(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;

(b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;

(c) Does the current use have a substantially different effect upon the neighborhood;

(d) Is the current use a "drastic enlargement or extension" of the original nonconforming use."

McKemy v. Baltimore County, Md., Supra.

After due consideration of the testimony and evidence presented, it is clear that the subject property has been used continuously and without interruption as a two-apartment dwelling since prior to 1955, and as such, enjoys a legal nonconforming use.

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 Petition for Special Hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 2nd day of August, 1994 that the Petition for Special Hearing seeking approval of the nonconforming use of the subject property, zoned D.R. 5.5, as a two-apartment dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED.

Timothy M. Kotrocco
TIMOTHY M. KOTROCCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

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Date 8/20/94
By [Signature]

- 5 -

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

August 2, 1994

Louis J. Weinkam, Sr., Esquire
1002 Frederick Road
Catonsville, Maryland 21228

RE: PETITION FOR SPECIAL HEARING
W/S Rosewood Avenue, 395' NW of the c/l of Edmondson Avenue
(209 Rosewood Avenue)
1st Election District - 1st Councilmanic District
Evelyn A. Kincaid - Petitioner
Case No. 94-521-SPH

Dear Mr. Weinkam:

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. Kotrocco
TIMOTHY M. KOTROCCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. James Whelan
200 Rosewood Avenue, Catonsville, Md. 21228

Mr. Mark Parr, President, Oakcrest Community Association
1304 Hovner Avenue, Catonsville, Md. 21228

People's Counsel; File



Petition for Special Hearing
to the Zoning Commissioner of Baltimore County
for the property located at 209 Rosewood Avenue
which is presently zoned DR5.5

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 a Non Conforming use for a 2 apartment dwelling in a DR5.5 zone

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.

Correct Purchase/Lesse:
(Type or Print Name)
Signature
Address
City State Zip

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City State Zip

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505

Paul Lee P.E.

Paul Lee Engineering Inc.
304 W. Pennsylvania Ave.
Towson, Maryland 21204
410-821-5544

DESCRIPTION

#209 Rosewood Avenue

Elect. Dist. 1 Baltimore County, Md.

Beginning for the same at a point on the west side of Rosewood Avenue, said point also being located Northwesterly-395 feet from the center of Edmondson Avenue; thence binding on the west side of Rosewood Avenue (1) N 27°09' W - 50.00 feet, thence leaving said west side of Rosewood Avenue (2) S 64°33' W - 135.06 feet to the east side of a 10 foot alley; thence binding on the east side of said 10 foot alley (3) S 27°09' E - 50.00 feet, thence leaving said east side of the 10 foot alley (4) N 64°33' E - 135.06 feet to the point of beginning.

Containing 6,753 s.f. (0.155 ac.) of land more or less.



505

2/11/94

J.O. 93-028

Engineers - Surveyors - Site Planners