

County Board of Appeals
Rm -Room-219, Court House
49 Towson, Maryland 21204

CASE # 96-4-A

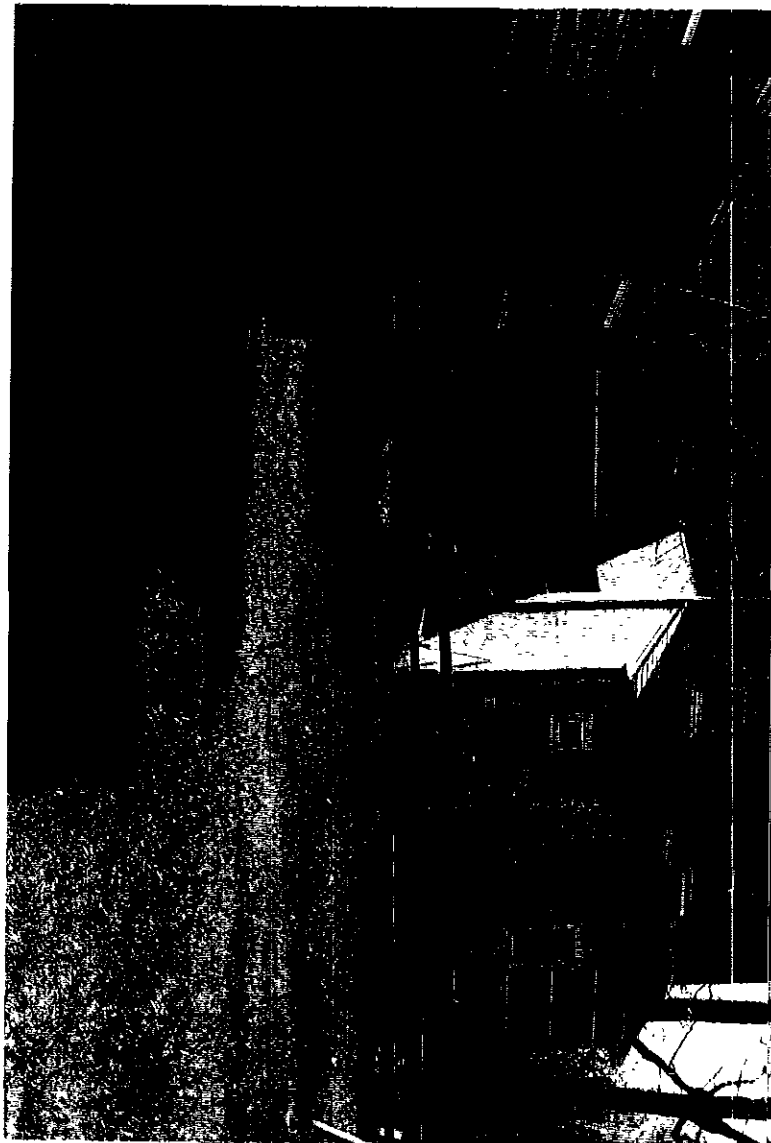
PETITIONER'S EXHIBITS

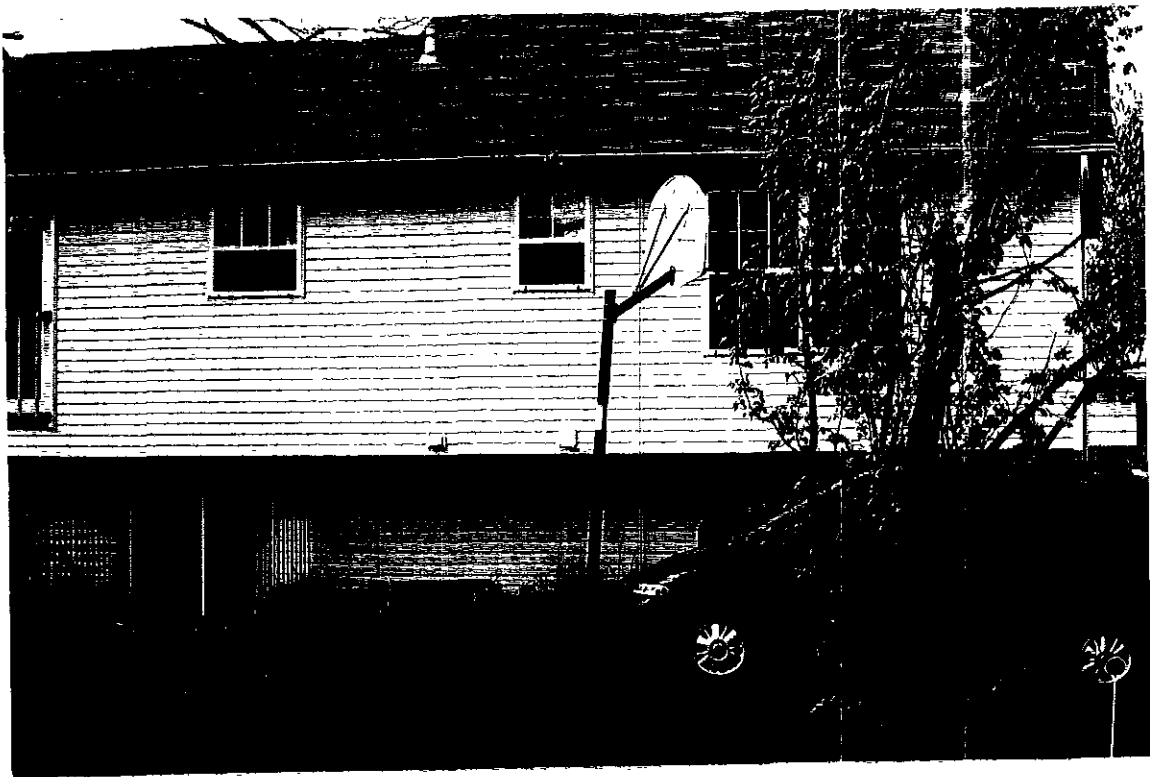
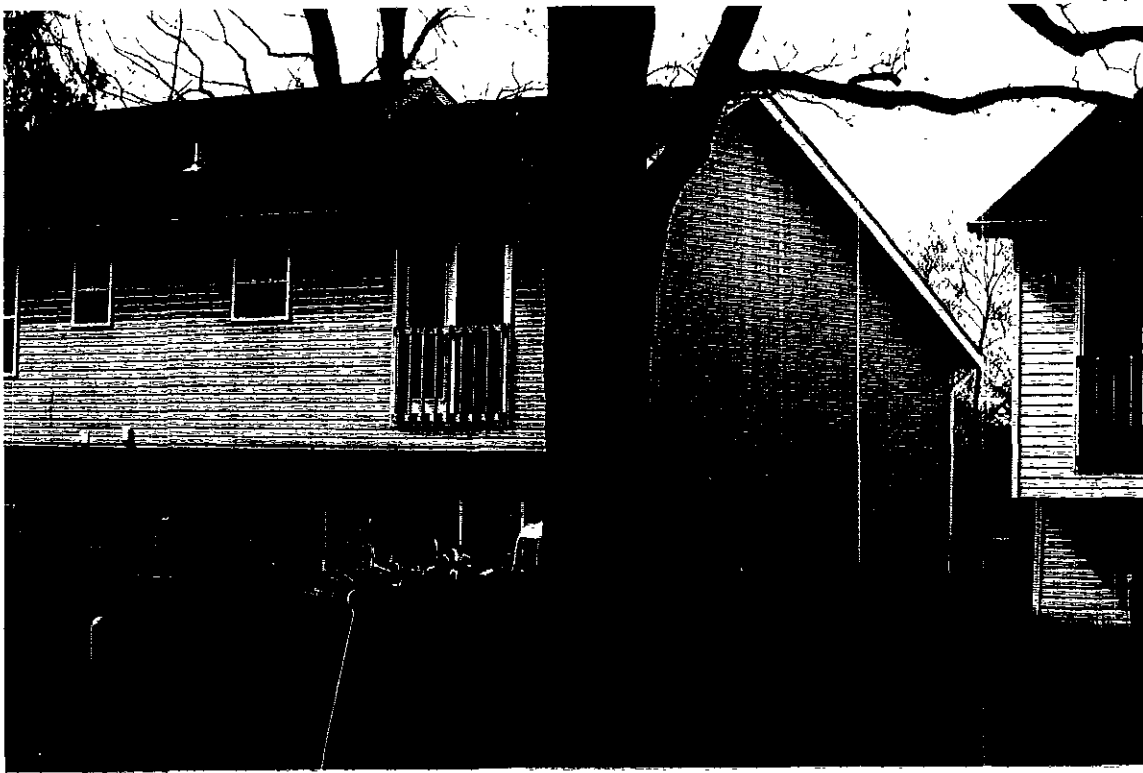
4A → 4M

(4C = 4 PHOTOS TAPES
FOR PANORAMIC VIEW)

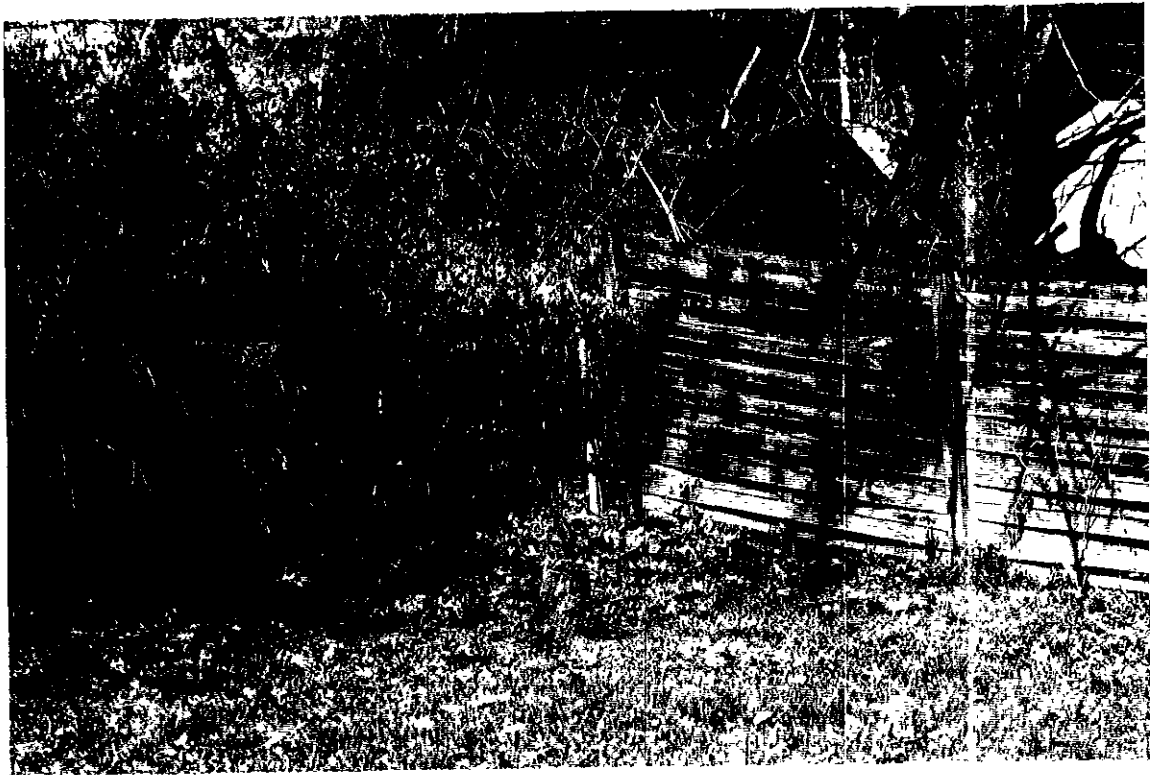
PHOTOS

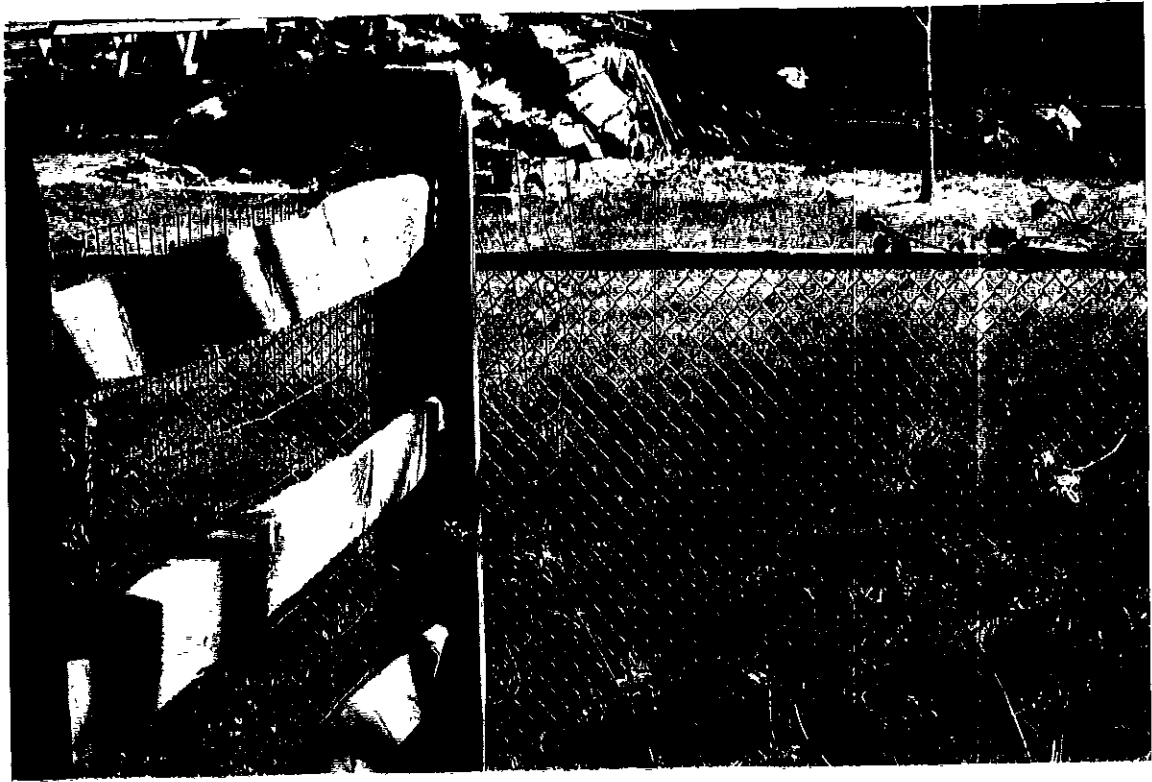


















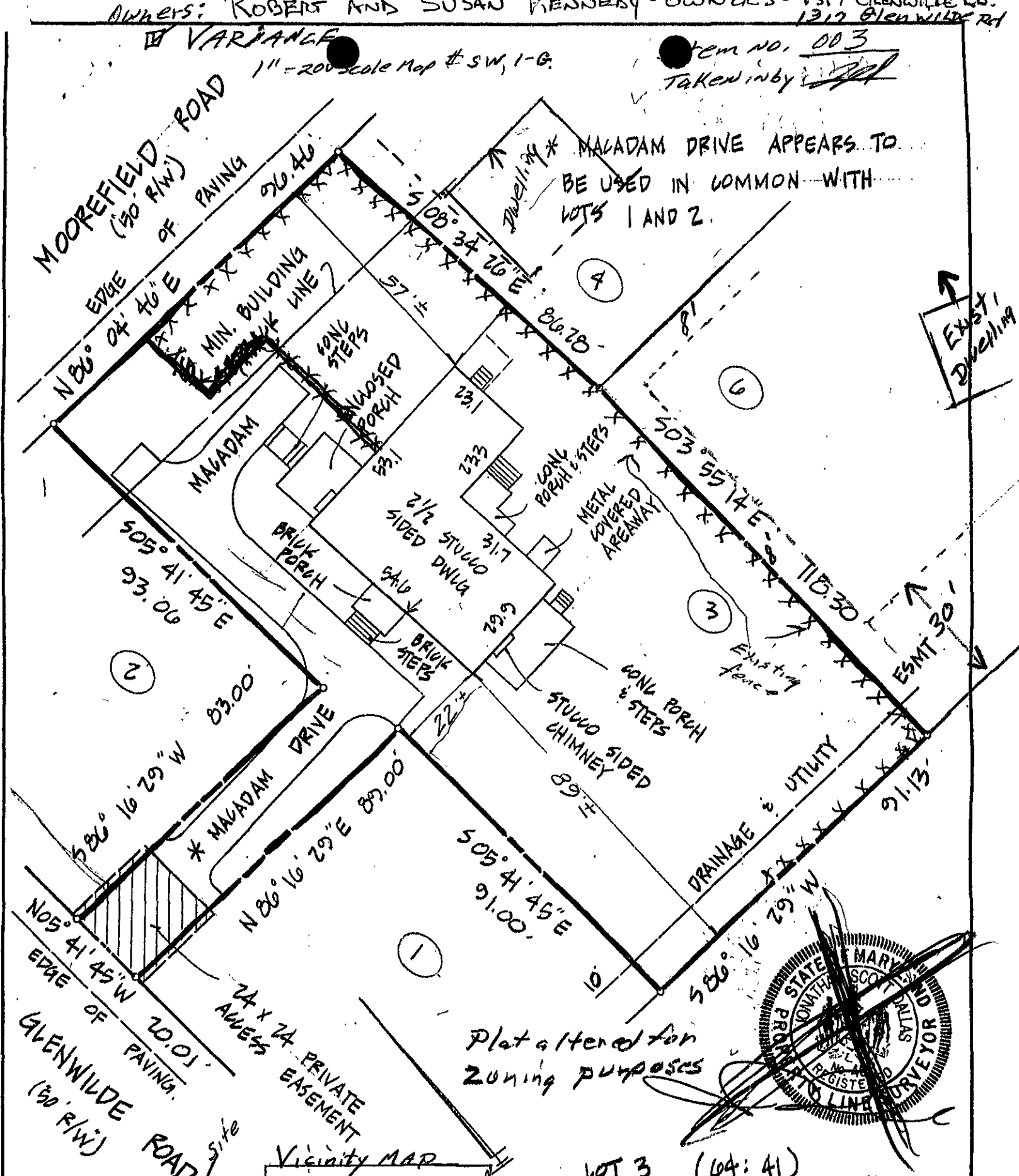
OWNERS: ROBERT AND SUSAN KENNEDY - OWNERS - 1317 GLENWILDE RD.

VARIANCE

1" = 200' scale Map # SW, 1-G.

Item No. 003

Taken by [Signature]



LOT 3 (04:41)

WESTVIEW PARK (SECTION B)

1ST EL. DIST. BALTO. COUNTY MD
1ST CD. DIST. Zoning: PR-5.5
Public Water & Public Sewer
489 A & E, 21,300 SQ. FT.
NOT CRITICAL AREA

I have examined Flood Insurance Rate Map Panel Number 240010-0370-B for the subject property and it appears to lie within Zone C per said Map. The information shown on this plat shows only that the improvements indicated hereon are contained within the outlines of the lot upon which they are erected unless otherwise noted and is not to be used to establish property lines or corners.

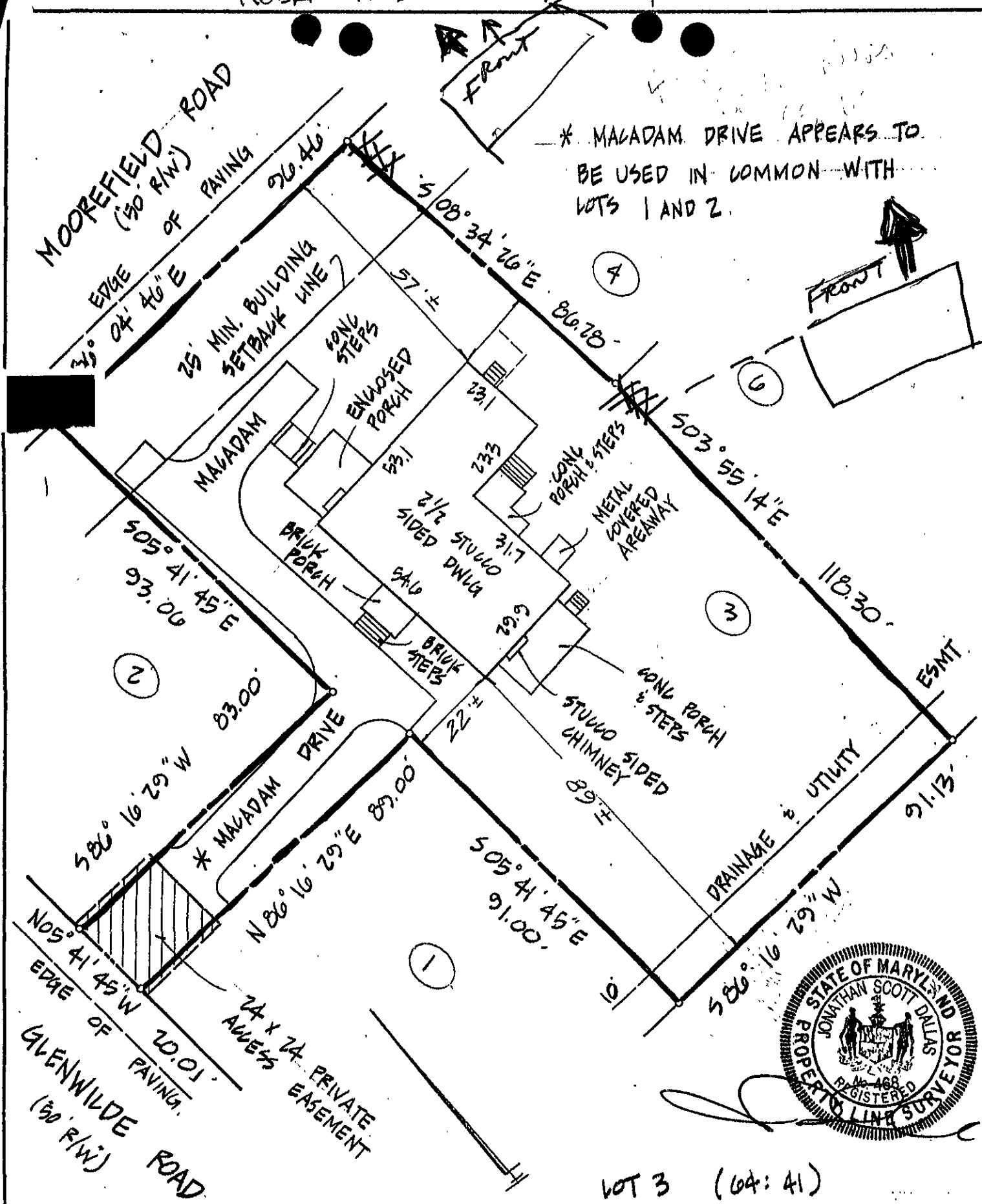
LOCATION SURVEY



1317 GLENWILDE ROAD
J.S. DALLAS, INC.
Surveying & Engineering
4932 Hazelwood Avenue Baltimore, Md. 21206
(410) 866-2001

Date: 10-29-93
Scale: 1" = 30'
Job Number: VT-2772
Drawn By: SS
Checked By: USD

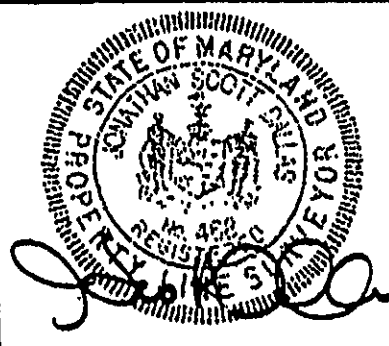
Designed and Printed by PARAGON Design & Drafting



LOT 3 (64:41)
WESTVIEW PARK (SECTION B)
1ST EL. DIST. BALTO., COUNTY MD.

I have examined Flood Insurance Rate Map Panel Number 240010-0370-B for the subject property and it appears to lie within Zone C per said Map.
The information shown on this plat shows only that the improvements indicated hereon are contained within the outlines of the lot upon which they are erected unless otherwise noted and is not to be used to establish property lines or corners.

LOCATION SURVEY



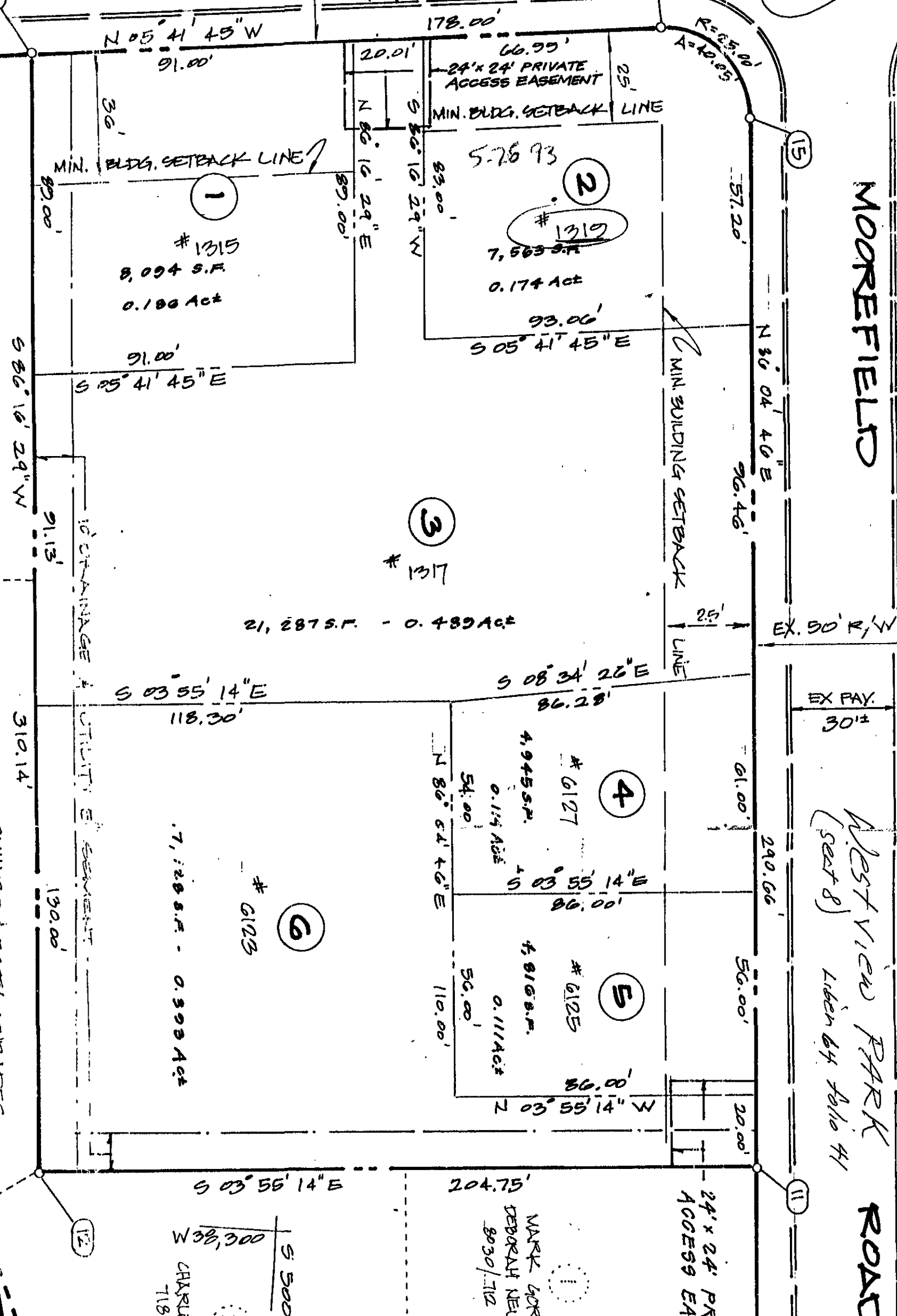
1317 GLENWILDE ROAD
J.S. DALLAS, INC.
Surveying & Engineering
4932 Hazelwood Avenue Baltimore, Md. 21206
(410) 866-2001

Date: 10-29-93
Scale: 1" = 30'
Job Number: VT-2772
Drawn By: SS
Checked By: USD

LEN WILDE

ROAD

#3



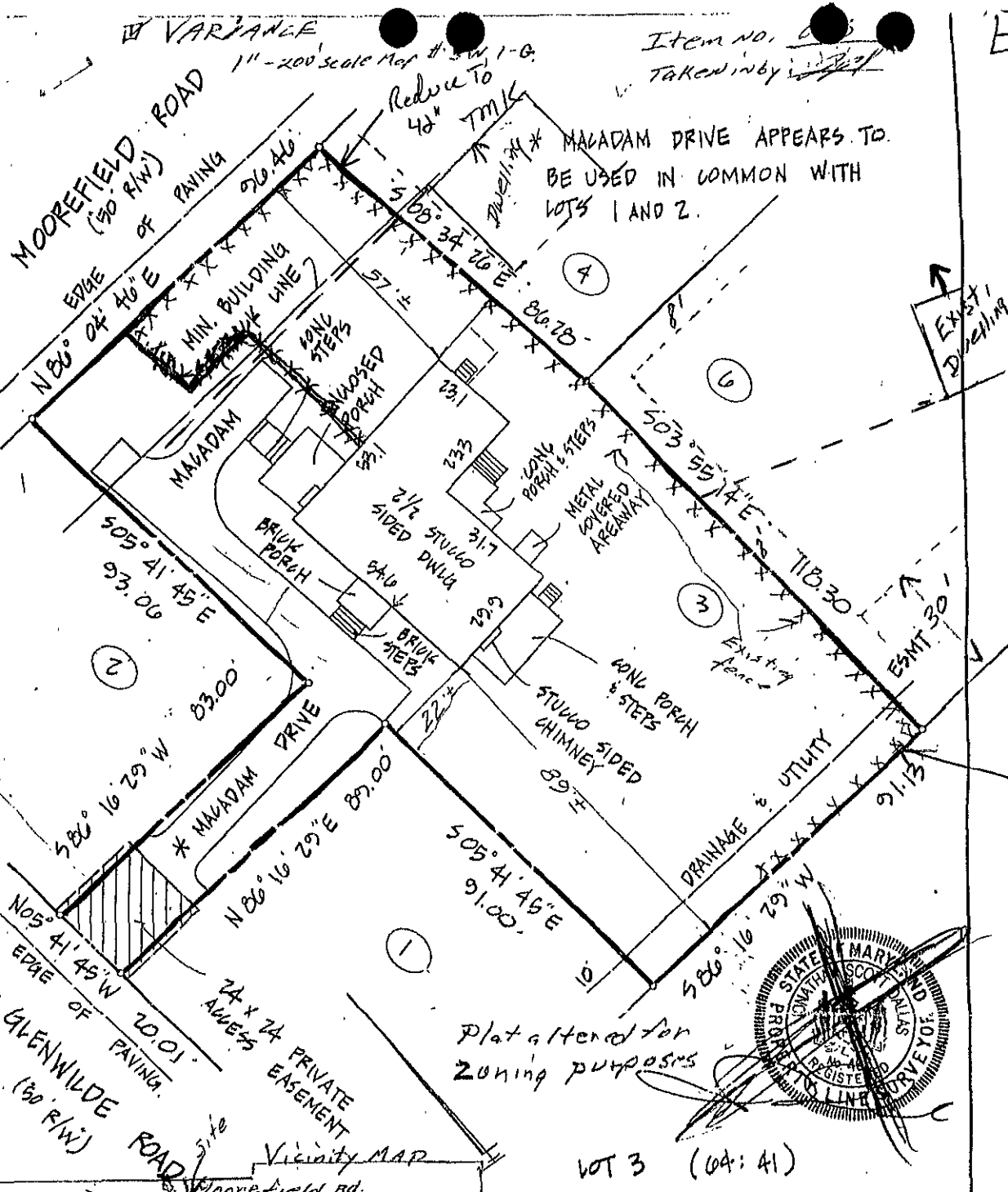
MOOREFIELD

West View PARK
(sect 8) Liben 64 folio 41

ROAD

Exhibit A

96-4-A



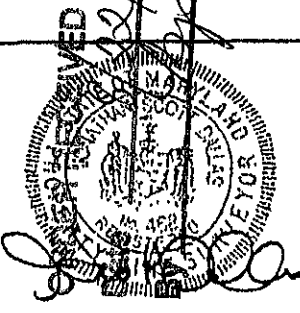
RECEIVED
FLOOD INSURANCE RATE MAP PANEL NUMBER 240010-0770-B
for the subject property and it appears to lie within Zone C per said Map.
The information shown on this plat shows only that the improvements indicated hereon are contained within the outlines of the lot upon which they are erected unless otherwise noted and is not to be used to establish property lines or corners.

LOT 3 (04:41)
WESTVIEW PARK (SECTION B)
1ST EL. DIST. BALTO, COUNTY MD.
1ST EL. DIST. Zoning: PR-5.5
Public Water & Public Sewer
489 A.S., 21,300 S.G. ft.
NOT Critical Area

LOCATION SURVEY

1317 GLENWILDE ROAD
J.S. DALLAS, INC.
Surveying & Engineering
4932 Hazelwood Avenue Baltimore, Md. 21206
(410) 866-2001

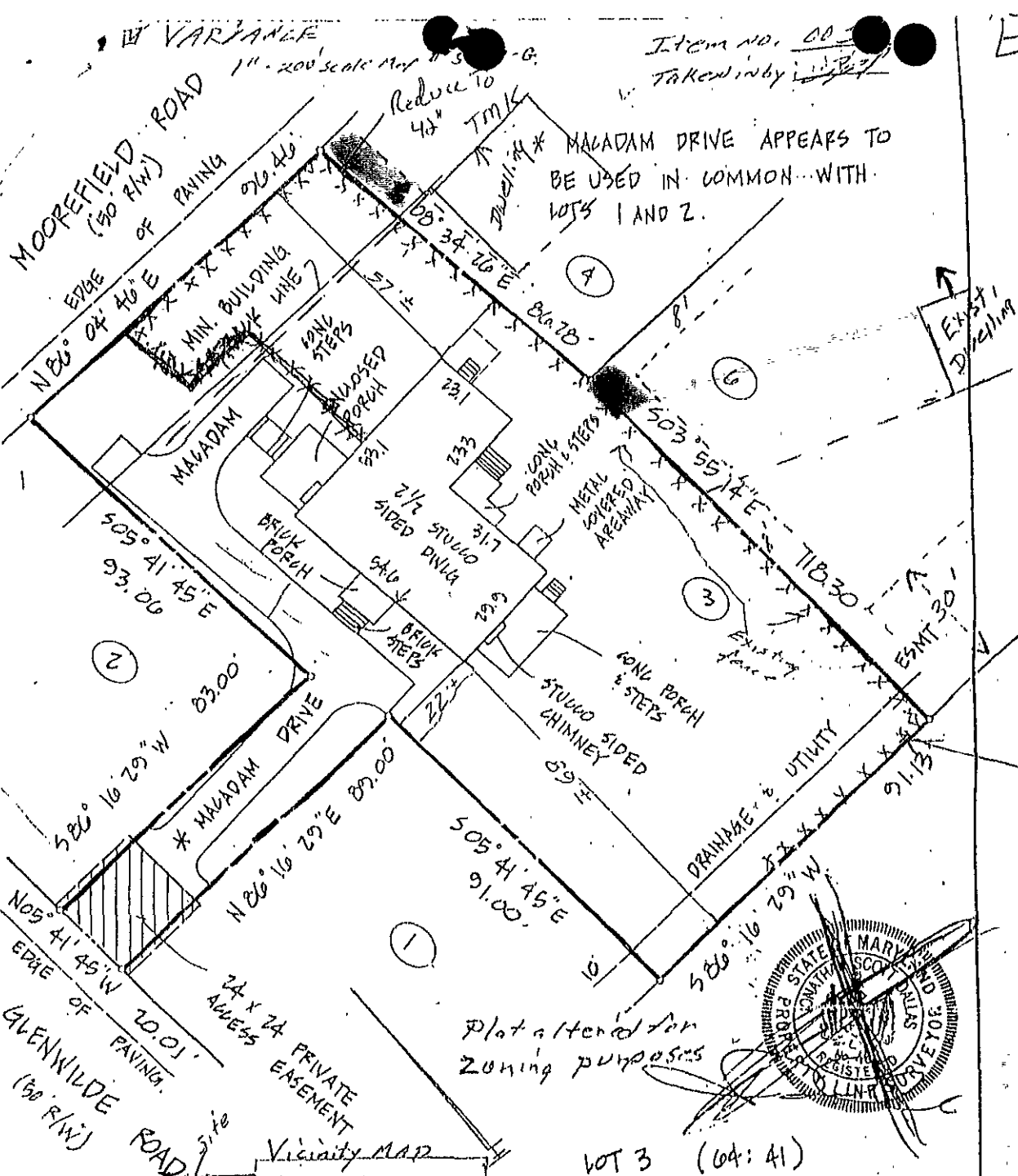
Date: 10-29-93
Scale: 1" = 30'
Job Number: VT-2772
Drawn By: SS
Checked By: USD



Designed and Printed by PNA/ACON Design & Drafting

Exhibit A

96-4-A



I have examined Flood Insurance Rate Map Panel Number 210010-0370 B for the subject property and it appears to lie within Zone C- per said Map. The information shown on this plat shows only that the improvements indicated hereon are contained within the outlines of the lot upon which they are erected unless otherwise noted and is not to be used to establish property lines or corners.

LOT 3 (64:41)
 WESTVIEW PARK (SECTION B)
 1ST EL. DIST. BALTO, COUNTY MD.
 1ST EL. DIST. Zoning: PR-5.5
 Public Water & Public Sewer
 489 A & L, 221, 300 S & P
 NOT Critical Areas

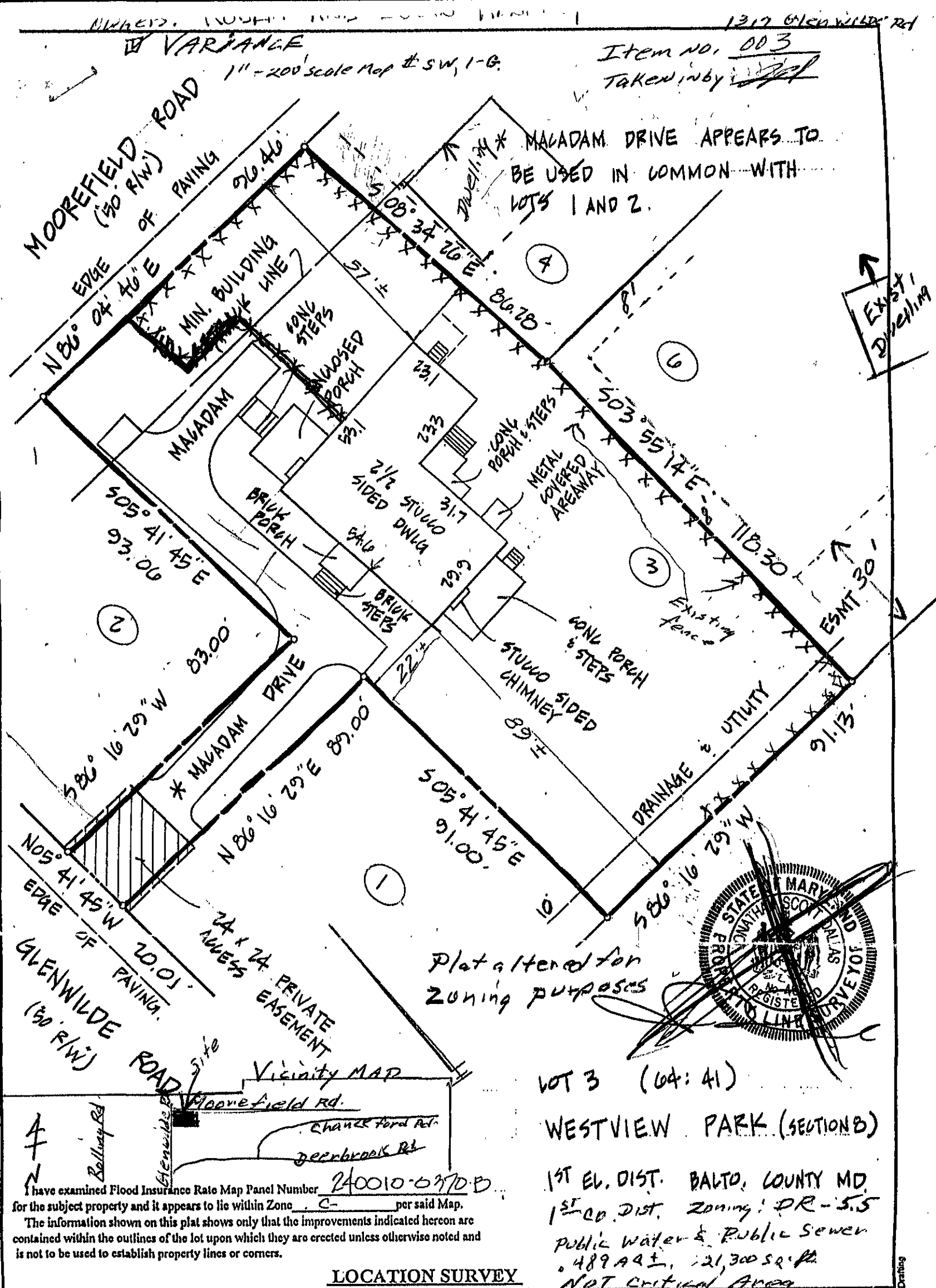
LOCATION SURVEY

	# 1317 GLENWILDE ROAD	Date: 10-29-93
	J.S. DALLAS, INC.	Scale: 1" = 30'
	Surveying & Engineering	Job Number: VT-2112
	4932 Hazelwood Avenue Baltimore, Md. 21206	Drawn By: SS
	(410) 866-2001	Checked By: USD

Item
3

(SHEET N.W. - I - G)





96-4-A

	# 1317 GLENWILDE ROAD	Date: 10-29-93
	J.S. DALLAS, INC. Surveying & Engineering 4932 Hazelwood Avenue Baltimore, Md. 21206 (410) 866-2001	Scale: 1" = 30' Job Number: VT-2772 Drawn By: SS Checked By: USD

PETITIONER'S
EXHIBIT NO. 1

IN THE MATTER OF
THE APPLICATION OF
ROBERT L. KENNEDY, ET UX
FOR A VARIANCE ON PROPERTY
LOCATED ON THE SOUTH SIDE
MOOREFIELD ROAD, 90' E OF
GLENWILDE ROAD
1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 96-4-A

* * * * *

O P I N I O N

Mr. and Mrs. Robert L. Kennedy filed a Petition for Variance to permit a fence height of 48" in lieu of the permitted 42" on certain portions of the fence at their residence on the south side Moorefield Road, 90' East of Glenwilde Road in the 1st Election District, 1st Councilmanic District.

A hearing was held before the Deputy Zoning Commissioner, who denied the Petitioners permission for the Variance in an order dated August 22, 1995. In an amended order dated October 5, 1995, the Deputy Zoning Commissioner granted permission for the section of the fence adjacent to Lot 6 to remain at the present height of 48" inasmuch as it is located in the rear yard. Mr. and Mrs. Kennedy then filed an appeal.

At a de novo hearing on the appeal, July 3, 1996, this Board received testimony from the property owners, Mr. and Mrs. Kennedy and their neighbor, Susan Hartka, as witnesses for the Petitioners. Anthony J. DiPaula, Esquire, represented the Petitioners as legal counsel. There were no Protestants present. Peter Max Zimmerman entered his appearance as People's Counsel.

Mr. Zimmerman raised the issue of whether or not the appeal by the Kennedys was timely in that it was filed within 30 days of the

date of the amended order, not the date of the original order. Counsel for the Petitioners, Mr. DiPaula, argued that when the original order is amended, the door is reopened, and the appeal period begins again for a 30-day period.

Acting Board Chairman, Lawrence Stahl, ruled that the appeal was made within the required time frame, and the Board would hear the case de novo. Mr. Stahl explained that what occurred in this instance points out a gap in the rules for Zoning Commissioner action, and that he would hope that the County Council would take measures to close this gap. Presently, there is no rule for when an amended order must be issued. The County Board of Appeals cannot superimpose the rules of the courts and the County Board of Appeals on the Zoning Commissioner. The Board hears appeals from a final decision, and in this case, the final decision was the amended order from which the Kennedys made a timely appeal.

Mr. Zimmerman responded that he would not litigate the case on the merits and asked to be excused. Mr. Stahl granted the request.

Section 307.1 of the Baltimore County Zoning Regulations (BCZR) permits the Board of Appeals to grant a variance upon certain terms and conditions, which in pertinent part in this case, allow a variance where special circumstances or conditions exist that are unique to the land or structure which is the subject of the variance requested, and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

On behalf of the Petitioners, Susan Hartka testified that, in

large part, it is her side yard which adjoins the Kennedys' backyard, and that the fence between the two properties was existing prior to purchase of the lot adjoining by the Hartkas and prior to the construction of their house. Mrs. Hartka testified that only a small portion of the fence adjoins the Hartkas' front yard, and that she had no problem with the Kennedys' fence which is constructed of post-and-rail.

Mrs. Susan Kennedy, property owner and Petitioner, testified that she and her husband live in the original house on the property from which the subdivision was created. Their property is served by a panhandle driveway off Glenwilde Avenue. They acquired the property in November 1993 and put up the fence 10 days later. Part of the fence, which is 48" in height, faces the Hartka property and part faces the lot owned by William H. Hohn.

Mrs. Kennedy explained that in an order from the Deputy Zoning Commissioner, dated August 22, 1995, Mr. Kotroco misunderstood the location of the fence relative to the neighboring yards, and therefore denied the variance request. Upon Mrs. Kennedy explaining the error to the Deputy Zoning Commissioner, Mr. Kotroco issued an amended order, dated October 5, 1995, stating as follows:

Specifically, the Petitioners advised this office that the highlighted areas on the site plan included a section of fence which was not in the front yard of their neighbor's house on adjoining Lot 6. The Petitioners pointed out that the house on Lot 6 faces in a southeasterly direction and thus, that section of fence located on the northwest corner of the subject property is actually located in the rear yard of that property. Therefore, that section of fence does not need to be lowered to the 42" height required by my Order dated August 22, 1995.

Mr. Kennedy followed with further testimony that the fence was built to contain their dog and their child, and that the building material was chosen to have minimal impact to the neighbors. Mr. Kennedy also made reference to the letters in the file from neighbors Yakel, Hohn, and Hartka indicating that they have no objection to the fence as presently constructed.

In closing, Mr. DiPaula, attorney for the Petitioners, pointed out that the fence is now in compliance except for the small portion which adjoins the Hartka and the Hohn properties. It is this portion for which the Petitioners request a variance. The fence adjoining the Hartka front yard pre-existed the construction of the Hartka house, and it was in compliance at the time of construction.

Mr. DiPaula argued further that the fence next to the Hohn property meets the requirements under Cromwell v. Ward 102 Md App. 691 (1995), because the lots in this particular subdivision were laid out randomly in a "bizarre" manner whereby the houses are each oriented in a different direction. This unusual situation with the land, therefore, said Mr. DiPaula, meets the criteria of uniqueness as set forth in Ward. Finally, the expense, aesthetic interference, and labor of lowering the height of this small portion of fence by 6" meets the second prong of undue hardship and physical difficulty.

The Board determined that there is no conflict as to facts, dates, or testimony in the case before us. The case then rests on whether or not the Petitioners can meet the strict criteria on

variances as set forth under Cromwell v. Ward. We find that the nature of development in which it happened haphazardly and the location of the Hohn house next to the Kennedy property in fact rendered that small portion where the angle of that neighbor's yard met the Kennedys' a unique circumstance. Therefore, the first prong of the test is satisfied.

On the second prong of whether the denial of the variance would result in practical difficulty or unreasonable hardship, we find that lowering this small part of the fence would be expensive and burdensome to the Petitioners, and aesthetically displeasing to the community.

This Board finds that the Petitioners have met the requirements of Section 307.1 and will grant the Petition for Variance as requested.

With regard to the portion adjoining the Hartka property, this Board finds that this case exists under the basic constitutional principle of ex post facto: if something is legal when it is done, then the doer cannot be punished later. The Board heard uncontradicted evidence that the Petitioners' house and fence were constructed before the Hartka house was built. Only the imposition of the Hartka house rendered the Kennedy fence not in compliance with the supplied scale of fence heights in the BCZR. Therefore, no variance is required for this section of fence.

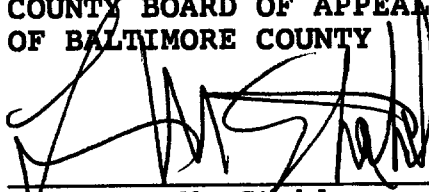
O R D E R

IT IS THEREFORE this 26th day of September, 1996 by
the County Board of Appeals of Baltimore County

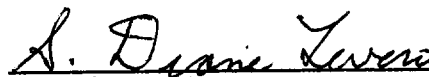
ORDERED that the Petition for Variance of the fence between the Hohn property and the Kennedy property is hereby GRANTED, and the Variance for the fence height between the Hartka property and the Kennedy property is found to be unnecessary as cited above.

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.

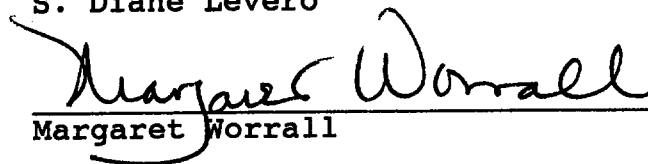
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY



Lawrence M. Stahl



S. Diane Levero



Margaret Worrall



County Board of Appeals of Baltimore County

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

September 26, 1996

Anthony J. DiPaula, Esquire
COVAHEY & BOOZER, P.A.
614 Bosley Avenue
Towson, MD 21204

RE: Case No. 96-4-A
Robert L. Kennedy, et ux

Dear Mr. DiPaula:

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.

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 and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Mr. and Mrs. Robert L. Kennedy
Mr. and Mrs. Ronald Rodriguez
Mr. Donald Yakel
People's Counsel for Baltimore County
Pat Keller /Planning Director
Timothy M. Kotroco
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney



