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IN RE:	PETITION FOR VARIANCE	* BEFORE THE
	E/S Jaydee Avenue, 164.49' N of	* DEPUTY ZONING COMMISSIONER
	the c/l of German Hill Road	* OF BALTIMORE COUNTY
	(875 Jaydee Avenue)	* Case No. 97-478-A
	12th Election District	*
	7th Councilmanic District	
	Nelson E. Weaver, Jr., et ux	
	Petitioners	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Variance for that property known as 875 Jaydee Avenue, located in the vicinity of German Hill Road in Dundalk. The Petition was filed by the owners of the property, Nelson E. Weaver, Jr., and his wife, Cheryl A. Weaver. The Petitioners seek relief from Section 424.1.C of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a family child care home adjacent to an existing family child care home. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Nelson and Cheryl Weaver, property owners, William C. Rash, Mary J. Koras, and Kimberly A. Clark. Appearing as Protestants in the matter were Angela Lineberry, Sandy Bailey, Angelina Szarek, and Vicki Wisner, adjoining property owner, who operates a family child care home on her property. Ms. Wisner was represented by J. Michael McLaughlin, Jr., Esquire.

Testimony and evidence offered revealed that the subject property consists of 1,600 sq.ft., zoned D.R. 10.5, and is improved with a two-story single family townhouse dwelling. The Petitioners testified that they have provided child day care in their home for the past 13 and 1/2 years. How-

ever, it was only in January of this past year that they obtained a permit from the State of Maryland to operate their child care center. Testimony indicated that their neighbor, Vicki Wisner, got a license to operate a child day care center in her home in June 1995. Apparently since that time, the relationship between the Weavers and Ms. Wisner has deteriorated and hard feelings have grown between the parties. The Petitioners believe that as a result of these hard feelings, Baltimore County was advised that the Petitioners were operating a child care home on their property without a license. Thus, the Petitioners have filed the instant Petition in order to legitimize their day care center. Further testimony revealed that the Petitioners decided to offer their property for sale in October, 1996 in the hope of moving away from this ever-growing bad situation; however, no buyer has come forward as of this date.

As noted above, Ms. Vicki Wisner, the adjoining property owner, appeared in opposition to the variance. Ms. Wisner testified that she has operated a child day care facility in her home since obtaining her license in June 1995. Ms. Wisner testified that she has always operated her day care facility with a license, contrary to the Petitioners. Ms. Wisner indicated that she played no role in turning her neighbors in for this violation and that the complaint came from someone else.

After considering all of the testimony and evidence offered by the Petitioners as well as the Protestant, and the various documents submitted into evidence regarding this Petition, I find that a variance should be granted to the Petitioners until such time as their property is sold. However, the variance shall only be extended for a period of nine months during which time the Petitioners should be able to sell their home. As noted above, the Petitioners have had their property for sale

for some time and are awaiting offers from prospective buyers. However, in order to insure that the house does not sit on the market forever, I shall impose a nine-month limitation on the relief granted, after which the variance shall expire.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

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

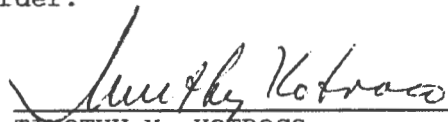
After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the subject property and that the requirements from which the Petitioners seek relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance, as conditioned herein, will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

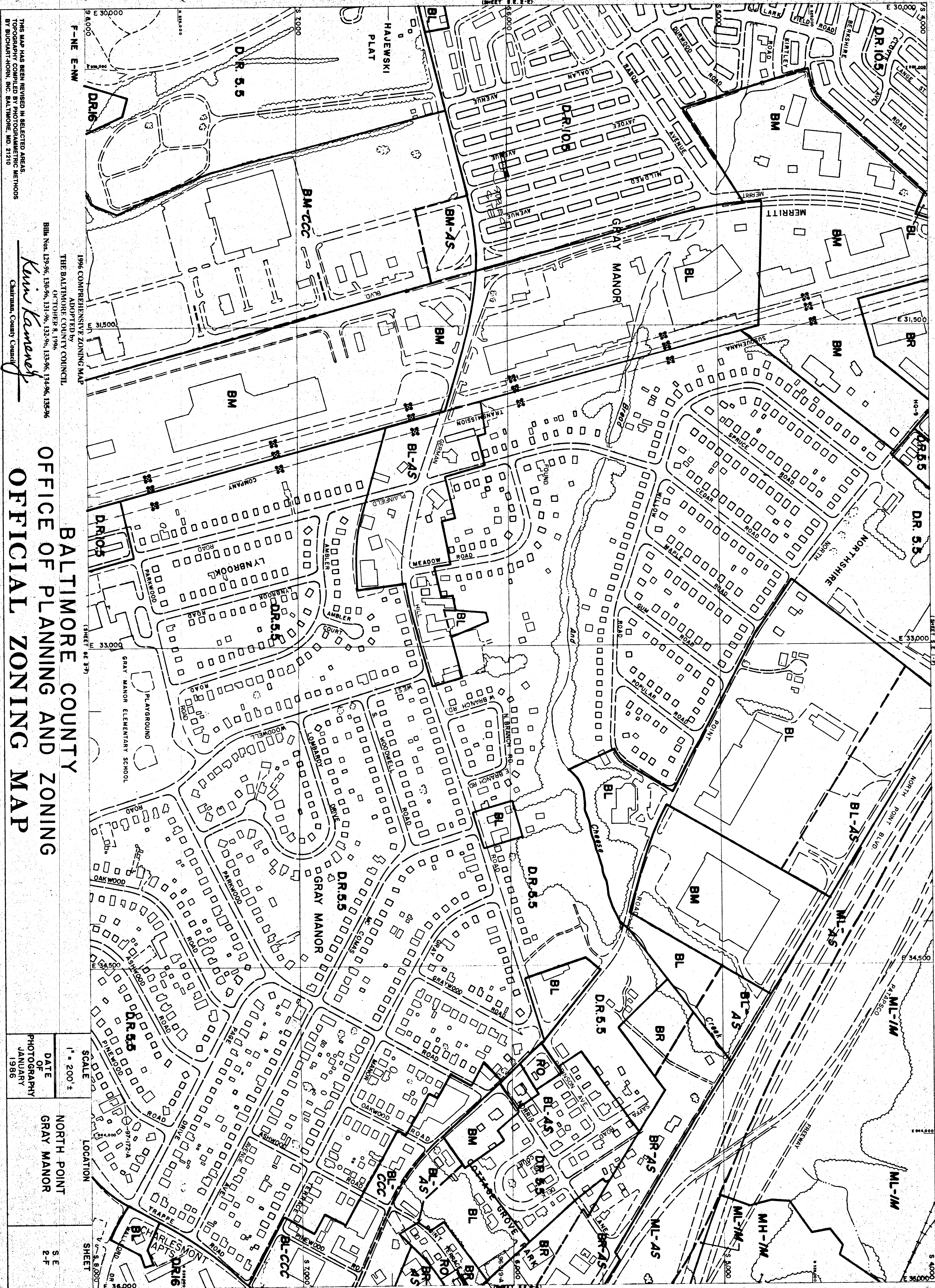
Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested shall be granted subject to the restrictions set forth below.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 11th day of July, 1997 that the Petition for Variance seeking relief from Section 424.1.C of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a family child care home adjacent to an existing family child care home, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their use permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their 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) The relief granted herein is limited to a period of nine (9) months from the date of this Order, after which the variance shall expire and the Petitioners must cease to operate the child care center on their property.
- 3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

TMK:bjs


TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

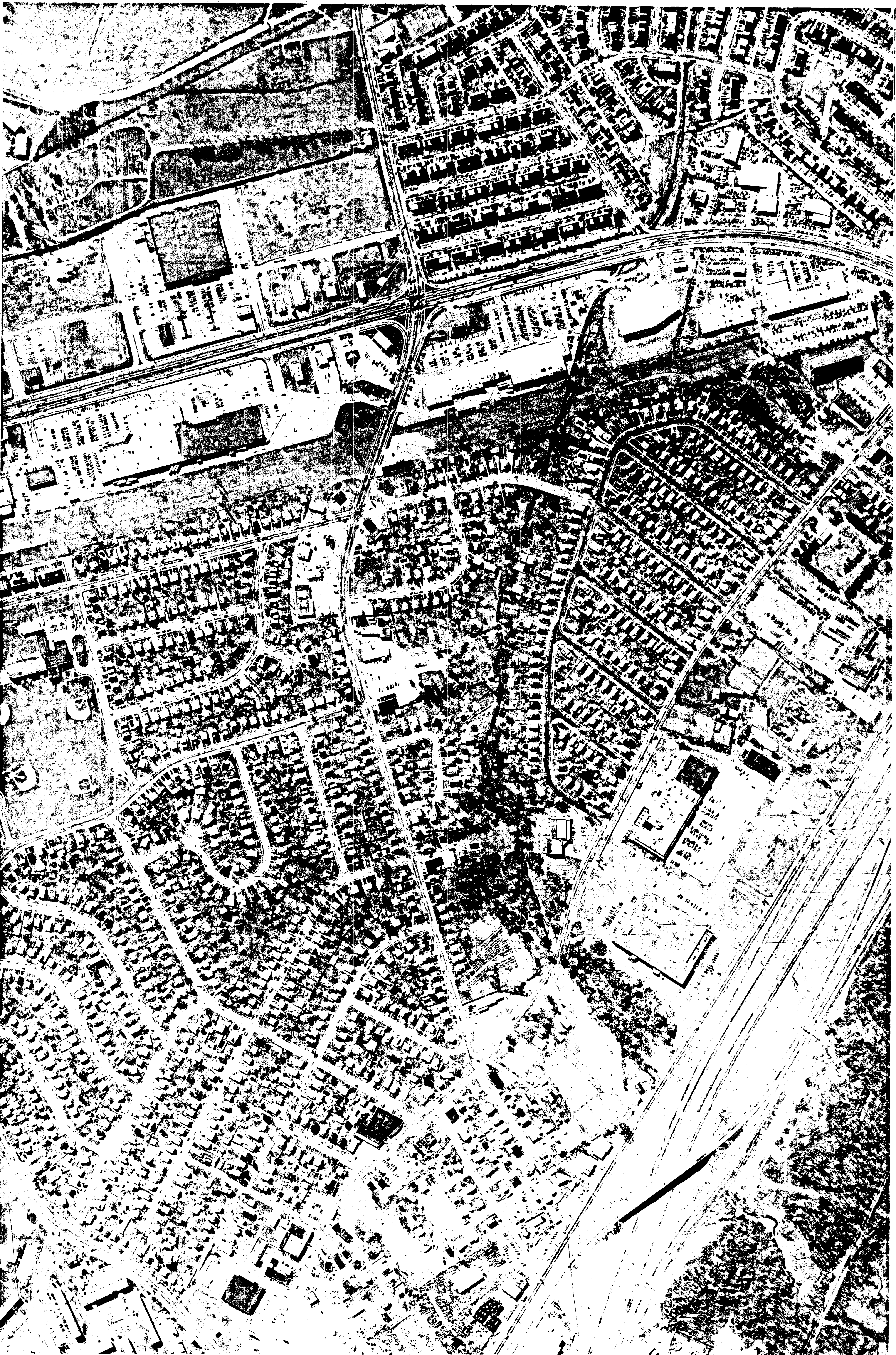


THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHANAN, INC., BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

1996 COMPREHENSIVE ZONING MAP
THE BALTIMORE COUNTY COUNCIL
ORDINANCE NO. 129-96, 130-96, 131-96, 132-96, 133-96, 134-96, 135-96
OF JUNE 8, 1996
Karin Lawrence
Chairman, County Council

SCALE	1" = 200'
DATE	NORTH POINT
PHOTOGRAPHY	GRAY MANOR
JANUARY 1986	SHEET



PREPARED BY AER PHOTOGRAPHICS, INC.
BETHESDA, M.D. 20814

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

SCALE		LOCATION	SHEET
1" = 200' ±	DATE OF PHOTOGRAPHY JANUARY 1966		
		NORTH POINT GRAY MANOR ITEM # 476	S.E. 2-F