3/16/00

98-251-A & CBA-98-128
ROBERT LONG PROPERTY
CCT AFFIRMS CBA
3/16/2000 (J. N. Byrnes, J)

PETITION OF:
MELVIN C. WOODELL, JR.
3825 ANNADALE ROAD
BALTIMORE, MD. 21221 *

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

OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washington Ave.,
Towson, MD. 21204 *

IN THE CASE OF: IN THE MATTER
ROBERT LONG, ET UX, FOR A ZONING *
VARIANCE ON PROPERTY LOCATED ON
THE S/S ANNADALE ROAD, 90' E OF C/L
MATTHAI ROAD (3825 ANNADALE ROAD) *
AND APPLICATION FOR CRITICAL AREA
VARIANCE AT 3825A ANNADALE RD.
15th ELECTION DISTRICT *
7th COUNCILMANIC DISTRICT

CASE NO. 98-251-A *
and CBA-98-128

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

CASE NO. 3-C-99-6263

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COUNTY BOARD OF APPEALS

* * * * * * * * * * *

OPINION

This case involves two appeals in one record taken by Melvin C. Woodell, Jr. and others ("Appellants") from two decisions by the Baltimore County Board of Appeals. The first, case CBA- 98-128, involves the granting of a variance from a Chesapeake Bay critical area regulation to Mr. and Mrs. Robert Long ("Petitioners") by the Department of Environmental Protection and Resource Management ("DEPRM"). The variance permits the building of a single family dwelling within a 100 foot buffer to Tobasco Cove.[1]

---

[1]The August 13, 1997 letter from George G. Perdikakis, Director of DEPRM, makes reference to "Bear Creek." Tobasco Cove is off of Bear Creek.

FILED MAR 16 2000

The second case CBS-98-251-A involves the granting of two zoning variances. The first permits a lot 43 feet wide in lieu of the required 55 feet and the second a 10 foot side yard setback in lieu of the required 25 feet setback. The property is zoned DR5.5.

THE LAW

When reviewing decisions of an administrative body involving zoning matters, the test to be applied is whether the issue before the administrative body is "fairly debatable" which is to say whether the Board's determination is based upon evidence from which reasonable persons could come to different conclusions. *Sembly v. County Board of Appeals*, 269 Md. 177 (1973). For the decision to be fairly debatable, the administrative body must have "substantial evidence" on the record supporting its decision. *Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383 (1979).

THE FACTS

The property in question is located along Tobasco Cove, which is adjacent to Bear Creek in the Annadale sub-division. The original plat of Annadale was recorded among the Land Records of Baltimore County on March 23, 1926. There are a number of lots bordering Tobasco Cove of varying widths and depths.

In 1987, the Longs purchased, among other lots in the sub-division, lots 31 through 36. They re-configured the lots and turned the six lots into five. What had been lots 32 through 36 became four lots with widths of 66 feet. What had been lot 31 now has a width of 43 feet. It should be noted that in 1987 there were no Chesapeake Bay critical area regulations. Because the width of lot 31 increased to approximately 71 feet as it approached the water, a single family

dwelling could have been build on the lot. As noted, following the adoption of the Chesapeake Bay critical area regulations, no home could be built within 100 feet of Tobasco Cove without a critical area administrative variance.

There are five criteria listed in COMAR 27.01.11 that must be used in evaluating the variance request. All five must be satisfied in order to gain approval for the variance. The request was tentatively granted by the Baltimore County Department of Environmental Protection and Resource Management. Their letter of August 13, 1997 (County Exhibit No. 6) was admitted into evidence, and at the hearing before the Board, Mr. Keith Kelly testified in support of the variance. In its decision, the Board, by implication, adopted both the reasoning of the August 13, 1997 letter and Mr. Kelly's testimony. The August 13, 1997 letter reads as follows:

> Dear Mr. & Mrs. Long:
>
> The Department of Environmental Protection and Resource Management (DEPRM) has received your variance request to construct a single-family dwelling on a vacant lot in the 100 foot buffer to Bear Creek. The Director of DEPRM may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.
>
> The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. Due to the configuration of the lot, a majority of the dwelling must be built in the 100 foot buffer, or the lot would be unbuildable. Therefore, the hardship is warranted.
>
> The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. As stated above, there is no room to build a dwelling out of the 100 foot buffer. If the regulations were literally enforced, the applicant would not be able to build a dwelling on the property and would, thus, be deprived of a right commonly enjoyed by others.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. No special privileges will be conferred upon the applicant by the granting of this variance. Therefore, this criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. The variance is not based upon conditions or circumstances which were the result of your own actions, and this criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The granting of this variance will not adversely impact fish, wildlife, or plant habitat. Potential water quality impacts can be minimized through the planting of trees.

Based upon our review, it is this Department's findings that the first four of the above criteria have been met, and that the fifth criterion can be met by planting 1.5 inch caliper native deciduous trees, preferably on the waterward side of the proposed structure, at a rate of 3 trees for each 100 square feet of the proposed disturbance to occur within the 100 foot buffer. Therefore, the requested variance is hereby approved in accordance with Section 26-445 (c) of the Baltimore County Code with the following conditions:

1. The attached "Notice of Granting of Variance" must be published in The Avenue, The Dundalk Eagle or The Essex Times. Final variance approval cannot be granted until fifteen (15) calendar days after the notice has been published. A copy of the Certificate of Publication for the advertisement issued by the newspaper, or a copy of the advertisement from the paper must be submitted to this office prior to receiving final variance approval.

2. The sum of all man-made impervious areas shall not exceed 25% of the lot; including the development proposed as part of this variance request and any accessory uses or structures.

3. No accessory structures shall be placed on the property waterward of the proposed dwelling.

4. The proposed dwelling shall be placed as close to the road as

allowed by Baltimore County Zoning Regulations, and shall extend no closer than sixty-five (65) to mean high tide.

5. If all of the required mitigation cannot be accomplished onsite, the Department may accept a fee-in-lieu of mitigation at a rate of $1.20 per square feet of disturbance. Any fee-in-lieu payment shall be made prior to building permit issuance.

6. The above-referenced mitigation shall be completed within ninety (90) days of building permit issuance for the proposed dwelling.

7. Rooftop runoff shall be directed through downspouts and across the lawn.

8. Prior to receiving final variance approval, a revised plot plan which shows the following additional information must be submitted to this office:

a. the Limit of Disturbance (L.O.D.) as 15 feet from the proposed work,

b. location of proposed trees to be planted,

c. the 100 foot buffer limit,

d. a note stating, "There shall be no clearing, grading, or disturbance of the 100 foot buffer other than mowing, except as permitted by the Department of Environmental Protection and Resource Management (DEPRM)", and

e. the location of the driveway for the dwelling.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request.

Please sign the statement on the next page and then return a copy of the Certificate of Publication, the revised plot plan, and the letter to this Department c/o Ms. Patricia M. Farr of Environmental Impact Review. Failure to return a signed copy of this letter and the other two items may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have any questions regarding this project, please contact Mr. Keith Kelley at (410) 887-3980.

Sincerely,

George G. Perdikakis
Director

Final approval was granted on June 22, 1998 (County Exhibit No. 8). The only serious argument made by the protestants against the granting of the variance involves criterion number 4. It requires that the variance not be based upon conditions or circumstances which are the result of actions taken by the Longs. Appellants argue that Petitioners were the ones that reduced the width of the lot from 50 feet to 43 feet and thus caused a condition or circumstance requiring the variance. The short answer is that the width of the property is not and was not a concern of DEPRM. (Kelly, T. at p. 84-86). The Court finds that the issues involving the Critical Area administrative variance are, at a minimum, fairly debatable; and, further, that there was substantial evidence before the Board to support its conclusion. *See also White v. North*, 356 Md. 31, 33 (1999).

The Longs also sought relief from Sections 1 BO2.3.C.1. to permit a lot with a width of 43 feet in lieu of the required 55 feet, and a side yard setback of 10 feet in lieu of the required 25 feet. Section 307.1. of the Baltimore County Zoning Regulations sets out the criteria which must be met before an area variance may be granted.

The Board has the power to grant a variance "only in cases where special circumstances or conditions exist that are peculiar to the land . . . and where strict compliance with the zoning regulations . . . would result in practical difficulty or unreasonable hardship."

In addition, the variance "shall be granted only if in strict harmony with the spirit and intent of said . . . area . . . regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare." (BCZR 307.1)

A variance may only be granted after a two-step inquiry. There must be a determination of whether the subject property is unique and unusual in a manner different from the nature of the surrounding properties which would result in the zoning provision having a disproportionate impact on the property. *Cromwell v. Water*, 102 Md. App. 691 (1995). If indeed this is the case, the zoning authority must then determine whether the impact would result in an unreasonable hardship or practical difficulties.

In *North v. St. Mary's County*, 99 Md. App. 502 (1994), the Court of Special Appeals defined "uniqueness." The unique aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property:

> "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or nonaccess to navigable waters, practical restrictions imposed by abutting properties (such as obstructions), or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls. *Id.* at 514.

It is clear from the Board's opinion that it understood its role and it did, in fact, apply the correct standard. Both the Zoning Commissioner and the Board found that the existence of the paper street (Tobasco Road) adjacent to the property, the tapered nature of the property, the particular slope of the property, and that the property would meet the 55 foot requirement if the Longs could build the dwelling closer to the water as evidence that the property is unique.

The Board also found that the combination of the enactment of the critical area regulations

in 1993 combined with the zoning regulations rendered the property unbuildable without the variance. It also noted that there were other lots in the area with widths less than 43 feet. "In a given case, whether a property owner is being denied a reasonable and significant use initially will be a determination of the zoning agency, which we presume possesses the necessary expertise to decide what is reasonable and significant." *White*, 356 Md. at 49.

This Court finds that the issues involving the zoning variance are fairly debatable and that there was substantial evidence before the Board to support its decision. Accordingly, the decision will be affirmed.

It is so ORDERED this 15th day of March, 2000 in the Circuit Court for Baltimore County.

J. Norris Byrnes

J. NORRIS BYRNES

JNB:jla

3/23/99

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY *

PETITION OF: *
MELVIN C. WOODELL, JR. *
3825 ANNADALE ROAD
BALTIMORE, MD 21221 *

FOR JUDICIAL REVIEW OF THE DECISION OF * CIVIL
THE COUNTY BOARD OF APPEALS ACTION
OF BALTIMORE COUNTY * No. 3-C-99-6263
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204 *

IN THE CASE OF: IN THE MATTER *
ROBERT LONG, ET UX, FOR A ZONING
VARIANCE ON PROPERTY LOCATED ON THE *
S/S ANNADALE ROAD, 90' E OF C/L MATTHAI
ROAD (3825A ANNADALE ROAD) AND *
APPLICATION FOR CRITICAL AREA VARIANCE
AT 3825A ANNADALE ROAD *
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT *

CASE NO. 98-251-A *
and CBA-98-128
*
* * * * * * * * * * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT, AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence M. Stahl, Lynn Barranger, and Margaret Worrall, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS, DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT AND THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

No. 98-251-A

January 7, 1998	Petition for Variance filed by Robert and Rose Long, to permit a lot width of 43' in lieu of the required 55', a side yard setback of 10' ilo the required 25', and to approve the subject property as an undersized lot.

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

February 5, 1998	Certificate of Posting.
February 5	Publication in newspaper.
February 7	Entry of Appearance filed by People's Counsel for Baltimore County.
February 12	ZAC Comments.
February 20	Hearing held on Petition for Variance by the Zoning Commissioner.
March 13	Order issued by the Zoning Commissioner in which the Petition for Variance was GRANTED with restrictions in part and DENIED in part.
April 7	Notice of Appeal filed by Melvin C. Woodell, Jr., et al

CBA-98-128

August 13, 1997	Letter from George G. Perdikakis, Director /DEPRM, to Mr and Mrs. Robert Long; request for administrative variance to construct a single-family dwelling on a vacant lot in the 100 foot buffer to Bear Creek is GRANTED.
April 7, 1998	Notice of Appeal filed by Melvin C. Woodell, Jr., et al (concerned property owners of Annadale), Appellants /Protestants.

98-251-A and CBA-98-128

August 27, 1998	Entry of Appearance filed by Newton A. Williams, Esquire, as counsel for Mr. Melvin Woodell, et al.
October 6	Motion for Dismissal filed by Robert Long.
October 9	Answer to Motion for Dismissal and for Postponement filed by Newton A. Williams, Esquire, on behalf of Melvin Woodell, et al.
October 26	Subpoenas served on Mr. & Mrs. Norris Shanholtz and Mrs. Annabelle Chenowith at the request of Robert Long.
November 4	Appellants' Motion to Quash Subpoenas filed by Newton A. Williams, Esquire, on behalf of Mr. & Mrs. Shanholtz, and Mrs. Chenowith.
January 13, 1999	Hearing held by the Board of Appeals.
March 1	Closing Memoranda filed by Wendy A. Zerwitz, Esquire, on behalf of Robert & Rose Long.

March 1, 1999	Hearing Memorandum (letter form) filed by Newton A. Williams, Esquire, on behalf of Melvin C. Woodell, Jr.
March 1	Memorandum of Baltimore County, Maryland filed by Virginia W. Barnhart, County Attorney and Nancy C. West, Assistant County Attorney.
March 18	Deliberation conducted by the Board of Appeals.
May 25	Opinion and Order issued by the Board; Appellant/Protestant's Motion to Quash Subpoenas is *GRANTED: Petitioners'* Motion to Dismiss is DENIED; decision of DEPRM granting request *for admin.* variance is AFFIRMED; Petitioners' requested admin. variance is GRANTED with conditions; and Petition for Variance is GRANTED with restrictions.
June 23	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Newton A. Williams, Esquire, on behalf of Melvin C. Woodell, Jr.
June 29	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
June 30	Certificate of Notice sent to interested parties.

Petitioner's Exhibit Nos. 1- 9/98 Property Survey by Thos. Phelps
2-Photographs
A-Next to house toward Annadale Rd -N
B-New lot -shows location of house
C-Paper Rd -looking north
D-Long's house
E-Back yd /pier Long House & rip rap
F-From pier showing easement for road
G-Showing grasses on lot
3-Plat 5-8-91 Annadale Rd extension

Protestant's Exhibit No. 1-Packet dated January 13, 1998
2-Photographs of Long Property
A-Lot 31
B-Looking north on Annadale Ave.
C-Looking east on Annadale Ave.
D-Woodell property & 3823
E-E/s of Woodell property
F-W/s of Long property
G-Looking across lot & Long property
H-Looking east on Annadale
I-Outfall on Lot 31
J-Long property for sale adj. Lot 31

3-Plat of Annadale -April, 1925

County's Exhibit No. 1-Critical area administrative variance application, dated 7/14/97
2-Section 26, 445 Balto. Cty. Code - Building within 100' buffer
3-Natural Resource Act - Md. Code -8-1811b(3)
4-COMAR 27-0111 Variance Process for CA
5-Letter July 25, 1997 to Kelley from Susan McConville CBCAC
6-Letter to Long from Perdikakis -8/13/97
7-Notice of granting of variance, notice of newspaper ad, plat plan - 3 pages
8-Final granting variance letter 6/22/98

August 23, 1999 Transcript of testimony filed.

August 23, 1999 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Respectfully submitted,

Charlotte E. Radcliffe

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

cc: Newton A. Williams, Esquire
Melvin C. Woodell, Jr.
Wendy A. Zerwitz, Esquire
Mr. & Mrs. Robert Long
People's Counsel for Baltimore County
Nancy C. West, Esquire
Virginia W. Barnhart, County Attorney

6/30/99

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY *

PETITION OF: *
MELVIN C. WOODELL, JR. *
3825 ANNADALE ROAD *
BALTIMORE, MD 21221 *

FOR JUDICIAL REVIEW OF THE DECISION OF * CIVIL
THE COUNTY BOARD OF APPEALS ACTION
OF BALTIMORE COUNTY * No. 3-C-99-6263
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204 *

IN THE CASE OF: IN THE MATTER *
ROBERT LONG, ET UX, FOR A ZONING
VARIANCE ON PROPERTY LOCATED ON THE *
S/S ANNADALE ROAD, 90' E OF C/L MATTHAI
ROAD (3825A ANNADALE ROAD) AND *
APPLICATION FOR CRITICAL AREA VARIANCE
AT 3825A ANNADALE ROAD *
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT *

CASE NO. 98-251-A *
and CBA-98-128
*

* * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Lawrence M. Stahl, Lynn Barranger, and Margaret Worrall, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Newton A. Williams, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., Suite 700 - Nottingham Centre, 502 Washington Ave., Towson, Maryland 21204, Counsel for Petitioner; Melvin C. Woodell, Jr., 3825 Annadale Road, Baltimore, Maryland 21222, Petitioner; Mr. and Mrs. Robert Long, 3827 Annadale Road, Baltimore, Maryland 21222, Property Owners; Wendy A. Zerwitz, Esquire, 600 Washington Avenue, Suite 310, Towson, Maryland 21204, Counsel for Property Owners; Nancy C. West, Assistant County Attorney, and Virginia W. Barnhart, County Attorney, 400 Washington Avenue, Towson, Maryland 21204.

RECEIVED AND FILED
99 JUN 30 PM 2:1[illegible]
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Charlotte E. Radcliffe

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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Newton A. Williams, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., Suite 700 - Nottingham Centre, 502 Washington Avenue, Towson, Maryland 21204, Counsel for Petitioner; Melvin C. Woodell, Jr., 3825 Annadale Road, Baltimore, Maryland 21221, Petitioner; Mr. and Mrs. Robert Long, 3827 Annadale Road, Baltimore, Maryland 21222, Property Owners; Wendy A. Zerwitz, Esquire, 600 Washington Avenue, Suite 310, Towson, Maryland 21204, Counsel for Property Owners; Nancy C. West, Assistant County Attorney, and Virginia W. Barnhart, County Attorney, 400 Washington Avenue, Towson, Maryland 21204, this 30th day of June, 1999.

Charlotte E. Radcliffe

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

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

June 30, 1999

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
520 Washington Avenue
Towson, MD 21204

RE: Civil Action No. 3-C-99-06263
ROBERT LONG, ET UX /LONG PROPERTY

Dear Mr. Williams:

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

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

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

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Melvin C. Woodell, Jr.

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on Recycled Paper

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

June 30, 1999

Wendy A. Zerwitz, Esquire
600 Washington Avenue, Suite 310
Towson, Maryland 21204

RE: Civil Action No. 3-C-99-06263
ROBERT LONG, ET UX /LONG PROPERTY

Dear Ms. Zerwitz:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on June 23, 1999, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-99-06263.

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

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

c: Mr. and Mrs. Robert Long
Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth
People's Counsel for Baltimore County
George Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller /Planning
Lawrence E. Schmidt /ZC
Arnold Jablon /PDM
Nancy C. West, Asst. Co. Atty
Virginia W. Barnhart, Co. Atty

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on Recycled Paper

C-99-6263

PETITION OF:	Melvin C. Woodell, Jr. 3825 Annandale Road Baltimore, MD 21221	*	IN THE
		*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF		*	FOR
	County Board of Appeals of Baltimore County Old Courthouse, Room 49 400 Washington Avenue Towson, Maryland 21204 (410) 887-3180	*	BALTIMORE
		*	COUNTY
		*	
IN THE CASE OF:	IN THE MATTER OF THE APPLICATION OF ROBERT LONG, et ux, Petitioners FOR VARIANCES ON PROPERTY LOCATED ON THE S/S Annadale Rd. 90'E of C/L of Mathai Road, (3825A Annadale Road) 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT CASE NO. 98-251-A and CASE NO. CBA-98-128	*	CIVIL ACTION NO.

* * * * * * * * * * * *

Case: 99-C-99-006263
CF*Civil Fili 90.00
MLSC 10.00
Appearance*Fee 10.00
TOTAL $100.00

COMMENT:
Check for proceedings
Receipt #199900012766
Cashier ID: CSHR2AB60
06/23/99 3:55pm

RECEIVED
COUNTY BOARD OF APPEALS
99 JUN 29 AM 11:27

PETITION

MELVIN C. WOODELL, JR., Appellant who participated in the proceedings before the County Board of Appeals of Baltimore County, by Newton A. Williams, Esquire and Nolan, Plumhoff & Williams, Chartered, his attorneys, in accordance with Maryland Rule 7-202, hereby requests judicial review of the May 25, 1999 Decision of the County Board of Appeals of Baltimore County in the above-captioned matter, in both of the noted cases.

Newton A. Williams

Newton A. Williams
Nolan, Plumhoff & Williams, Chtd.
Suite 700 - Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(410) 823-7800

Attorneys for Appellants

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

RECEIVED AND FILED
99 JUN 23 PM 3:45
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

cc: ITPCC1 6/23/99

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 23 day of June, 1999, that a copy of the foregoing Petition was mailed, postage prepaid, to Wendy A. Zerwitz, 600 Washington Avenue, Suite 310, Towson, MD 21204; Virginia W. Barnhart, Esquire and Nancy C. West, Esquire, County Attorneys Office, Court House, Towson, MD 21204; and to Baltimore County People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204; and to County Board of Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Room 49, Towson, MD 21204.

Newton A. Williams

Newton A. Williams

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-99-006263

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Rm 49
400 Washington Ave
Baltimore, MD 21204

1/25/99

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
ROBERT LONG, ET UX, FOR ZONING	*	COUNTY BOARD OF APPEALS
VARIANCE ON PROPERTY LOCATED		
ON THE S/S ANNADALE ROAD, 90'	*	OF
E OF CENTERLINE MATTHAI ROAD		
(3825A ANNADALE ROAD) AND	*	BALTIMORE COUNTY
APPLICATION FOR CRITICAL AREA		
VARIANCE /3825A ANNADALE ROAD	*	CASE NO. 98-251-A
15TH ELECTION DISTRICT		AND
7TH COUNCILMANIC DISTRICT	*	CASE NO. CBA-98-128

* * * * * * * * *

O P I N I O N

The matter 98-251-A comes before the Board of Appeals as an appeal of a decision by the Zoning Commissioner dated March 13, 1998, in which a Petition for Variance was granted, seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (BCZR) to permit a lot width of 43 feet in lieu of the required 55 feet, and a side yard setback of 10 feet in lieu of the required 25 feet for the subject property at 3825A Annadale Road, 15th Election District; 7th Councilmanic District. While the Zoning Commissioner denied the Petitioners' request to approve the subject property as an undersized lot, pursuant to Section 304 of the BCZR, this request was not before this Board on appeal.

A coordinate appeal comes before the Board (Case No. CBA-98-128) relative to the granting of an administrative variance on June 22, 1998, by the Department of Environmental Protection & Resource Management (DEPRM) and the Chesapeake Bay Critical Area Commission to construct a single-family dwelling within the 100-foot buffer.

The appeals were taken by Melvin C. Woodell, Jr., and "Concerned Property Owners of Annadale" on April 7, 1998, and June 23, 1998, respectively. Newton A. Williams, Esquire, represented the Appellants before the Board.

Counsel for the Petitioners /Property Owners, Mr. and Mrs. Robert Long, was Wendy A. Zerwitz, Esquire; Nancy C. West, Assistant County Attorney, appeared on behalf of Baltimore County. Ms. West indicated that she was present concerning the approval of the variance from the Chesapeake Bay Critical Area Commission to build within the critical area buffer.

The first order of business before the Board was a motion from Mr. Williams to quash subpoenas secured by Ms. Zerwitz on behalf of the Petitioners for the appearance of neighbors to the subject property. Ms. Zerwitz argued that the subpoenas and subsequent testimony were necessary in order to understand why the "Concerned Property Owners" mentioned in the appeal felt the need to protect their properties from the Petitioners' desire to build on his lot. Mr. Williams pointed out that the neighbors named in the subpoenas were not Appellants in this case. The Board found unanimously that Mr. Williams' motion should be granted as there would be ample opportunity to hear from any interested parties within the body of the hearing as well as an opportunity for Ms. Zerwitz to cross-examine them.

Ms. West, Counsel for Baltimore County, requested that the DEPRM appeal (Case No. CBA-98-128) be heard first as the County was participating only in that portion of the hearing. All parties agreed and the Board granted the request. Ms. West pointed out that the critical area appeal would be heard de novo and that the burden of proof lay with the County and the Petitioner. In opening statement, she argued that the Petitioners desired to build a

single-family dwelling within the 100-foot buffer and to do so required a variance. Provisions for such a variance are set out under COMAR Title 27. DEPRM determined that the subject property met the criteria for the variance and granted same.

On behalf of the Petitioners, Ms. Zerwitz concurred that the Longs had met all regulations for the requested variance. In opposition, Mr. Williams argued on behalf of the Protestant /Appellant, that DEPRM did not have all the facts they needed to come to an appropriate decision, and, if they had, the subject property would have failed to meet the burden of the criteria.

Ms. West called Keith Kelley to testify on behalf of Baltimore County. Mr. Kelley said that he had been employed with DEPRM for 18 years as a natural resource specialist. It is his duty to consider the environmental impact and oversee development within the Chesapeake Bay Critical Area. The subject property, Mr. Kelley explained, is located in Dundalk on Bear Creek. As is the usual procedure (County Exhibit #2), according to Mr. Kelley, the property owners applied for a critical area administrative variance for construction within the 100-foot buffer and submitted that application to DEPRM. Mr. Kelley made a site visit on July 14, 1997 (County Exhibit #1). His report was then sent for review to the Critical Area Commission in accordance with Maryland Code requirements (County Exhibit #3). Under the COMAR regulations, Title 27 (County Exhibit #4), there are five elements which must be satisfied for variance approval.

Mr. Kelley also testified that the Longs advertised the

variance request in area newspapers as required and submitted a revised site plan to comply with DEPRM's conditions (County Exhibit #7). On June 22, 1998, the final approval letter was issued (County Exhibit #8), and on June 23, 1998, the Appellant, Melvin Woodell, appealed DEPRM's decision.

In response to questions from Ms. West, Mr. Kelley testified that DEPRM does not "get involved in zoning issues," and that he did not appear at the hearing before the Zoning Commissioner on Case No. 98-251-A. He explained that he was not familiar with the history of the property and only makes determinations within the confines of the COMAR regulations which have been in effect since 1993.

On cross-examination by Mr. Williams, Mr. Kelley explained that stormwater outfall and water runoff from the street do not fall within the scope of his review since they are not natural resources. It is his duty to focus strictly on the environmental impact on the water quality of the Chesapeake Bay from the building and disturbance which would occur within the 100-foot buffer if a variance request is approved. He further offered that the site plan for the subject property falls well within the impervious surface limits.

Ms. West offered Mr. Kelley as an expert limited to Critical Area Commission review and the procedures and criteria relative to this subject. The Board accepted Mr. Kelley as an expert in this field.

The County rested their case with this single witness.

Counsel for the Appellant and County for the Petitioners offered no witnesses. The Board requested memorandums in lieu of closing arguments.

In her opening statement in Case No. 98-251-A, Counsel for the Petitioner, Wendy Zerwitz, Esquire, argued that the Longs own an undersized lot which will require a variance to permit a lot 43 feet wide in lieu of the required 55 feet and a 10-foot side yard setback in lieu of the required 25 feet in order to build a single-family dwelling. Ms. Zerwitz contended that the subject property is unique and that the Petitioners would suffer hardship and practical difficulty if such a variance were to be denied. Further, the site plan proposed meets the spirit and intent of the zoning regulations.

Attorney for the Appellant, Mr. Williams, argued that the Petitioners purchased 15 lots in 1987, the residue of the 1925 subdivision known as Annadale, which they configured to create larger lots 66 feet in width. Mr. Williams said that the property owners have chosen to configure the lots in this manner and thereby have created their own hardship and should be denied the requested variance.

The first witness for the Petitioner was Thomas E. Phelps, a land surveyor who testified that he is familiar with the Annadale subdivision, having completed the surveying of numerous lots along Annadale Road. He indicated that many of the older lots were small with "tight" side yards. The construction on the older lots was accomplished prior to the enactment of Critical Area regulations.

In his opinion it is the latter restriction which hampers the Petitioners because of the unusual shape of their lot which is narrower near the road and widens toward the water side. If there was no critical area limit, the proposed construction could be placed at the wider part of the lot and meet the frontage requirement of 55 feet.

Mr. Phelps also testified that the existing "paper" street, Tobasco Road, effectively separates the Petitioners' proposed dwelling from the Appellant's property line by 25 feet because the Longs' deed refers to ownership to the center line of Tobasco Road. He also said that he was unaware of any drainage easement and saw no reference to one in the deed which he reviewed for the Petitioners. On cross-examination by Mr. Williams, Mr. Phelps said that originally the subject lot was 50 feet wide, but that the adjoining lot, also owned by the Longs, had taken the northwest corner of this property in the reconfiguration of the original subdivision.

The Petitioner, Robert Long, was the next witness. Mr. and Mrs. Long have lived at 3827 Annadale Road for 10 to 12 years. When they purchased the lots originally, they had wanted to build at the corner of Cove and Annadale Roads, but had been unable to do so because of sewer requirements. Mr. Long testified that Baltimore County required him to build where he did because of the availability of public water and sewer. At that time no variance was needed because there were no critical area regulations.

In reconfiguring the remaining lots, Mr. Long testified that

the County required him to bring the lots up to the current code regulations. His house was already built at 3827 which left the subject property as the residue of the re-subdivision. When the lots were reconfigured, Mr. Long testified that the subject property was buildable under the regulations in effect at the time.

He further indicated that a portion of the lot meets the 55-foot requirement but it is within the 100-foot critical area buffer so he is required to build closer to the road where the lot is narrower. It is this "pie-shape" that makes the subject property unique. The other lots in the neighborhood are roughly rectangular. In addition, the subject property is adjacent to the paper road, Tobasco Road, and he testified that his lot is riprapped because of the drainage easement (Petitioners' Exhibit #3) which flows over Tobasco Road. The subject property is also lower in elevation than others in the neighborhood.

Without the variance, Mr. Long testified that the property would be unbuildable, although he could legally build an addition to his present house that would be larger than the single-family house which he proposes for the subject property.

The next witness was the Appellant, Melvin C. Woodell, Jr. Mr. Woodell lives at 705 S. 49th Street, Baltimore, but owns 3825 Annadale Road which he purchased 15 to 18 years ago and rents to a tenant. Mr. Woodell indicated that his concerns centered around Mr. Long denying him access to Tobasco Road and to drainage over the easement which could adversely impact water flow if the proposed dwelling is placed too close. On cross-examination, Mr.

Woodell testified that the neighbor on his other side was 15 to 18 feet away. He also felt that a house placed closer to his would overcrowd and devalue his property.

Joseph Ernstberger of 3830 Annadale Road, which is on the opposite side of the road from the subject property, also testified with concerns about stormwater flow and drainage. He said that he would like to have access to Bear Creek over Tobasco Road but he knows of no legal reason why he is entitled to that access.

Once again, the Board asked for memorandums in lieu of closing arguments.

In her memorandum, Ms. Zerwitz, Counsel for the Petitioner, moved to dismiss on the grounds that the Appellant in both Case No. 98-251-A and Case No. CBA-98-128 was identified only as "Concerned Property Owners of Annadale." She opined that Rule 3(a) of the Board of Appeals' Rules of Practice and Procedure specifically states that "[n]o appeal shall be entertained by the Board of Appeals unless the Notice of Appeal shall state the names and addresses of the persons taking the appeal."

The Board finds that the motion to dismiss on the failure to perfect the appeal is denied. First, the Board finds no evidence that this motion was brought forth within the hearing. Therefore, it was not presented in a timely matter, there was no opportunity for rebuttal, and the motion should be denied. Further, the Board finds that it is apparent that Mr. Woodell is the Appellant. His name and address appear on the letters of appeal; he signed the check for the appeals fee and his name and address appear on the

check; and he testified as the singular person appealing the issues. The addition of the appellation "Concerned Property Owners of Annadale" is confusing because no such entity appears to exist as a community group. If Mr. Woodell had not been present to speak for himself, the Board would have had to dismiss for failure of the Appellant to appear. Such is not the case, however, and the motion is denied.

With regard to Case No. CBA-98-128 regarding the DEPRM decision to grant an administrative variance to construct a single-family dwelling within the 100-foot critical area buffer, having individually reviewed their notes taken at the public hearing, and upon examination of the evidence produced, this Board concludes that all the requirements of COMAR 27.01.11 have been established by the Petitioner. A variance may be granted to the Chesapeake Bay Critical Area Regulations only as provided in accordance with the regulations specified in COMAR 27.01.11. Those Regulations require that all five of the designated criteria must be met. We turn our attention, therefore, to the five criteria as follows:

1. There must exist special conditions that are unusual or peculiar to the land or structure that make literal enforcement of the regulations an unwarranted hardship to the property owner.

Due to the unusual shape and topography of the lot, a majority of the dwelling must be built in the 100-foot buffer, or the lot would be unbuildable. This Board finds, therefore, that special conditions do exist and this criterion has been met by Petitioner.

2. A literal enforcement of the Regulations would

> deprive the property owner of rights commonly enjoyed by other property owners in the area of the critical region.

As stated above, there is no room to build a dwelling out of the 100-foot buffer. If the regulations were literally enforced, the Petitioner would not be able to build a dwelling on the property and would, therefore, be deprived of a right commonly enjoyed by others. Based on the testimony and evidence presented, this Board finds that Petitioner has met this criterion.

> 3. If a variance were granted, such action would not grant to the Appellants any special privileges that would be denied to other land or structures within the critical region.

We further find that no special conditions would be conferred upon the Petitioner by the granting of this variance. Therefore, this criterion has been met.

> 4. Any variance requested requires that the request is not based on conditions or circumstances that are the result of the Appellants' actions, or any conditions that related to land or building use (either permitted or nonconforming) on any neighboring property.

This Board concludes from the evidence and testimony that the variance is not based upon conditions or circumstances which were the result of Petitioners' own actions, and this criterion has been met.

> 5. The requested variance would not adversely impact water quality or adversely impact wildlife, fish or plant habitat within the critical region, and would be within the spirit and intent of the Critical Area requirements.

The evidence supports a finding that the granting of this variance

will not adversely impact fish, wildlife, or plant habitat. Potential water quality impacts can be minimized through the planting of trees.

We find that Petitioners have complied with all five of the above criteria necessary for the granting of this variance request. The Petitioners have therefore met their burden and the Board grants the request for variance from Section 26-499 of the Code, subject to the conditions imposed by DEPRM in their letter of August 13, 1997.

Moving on to Case No. 98-251-A, Section 307 of the BCZR permits granting of 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 peculiar to the land which is the subject of the variance requested, and where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship.

Under the Court of Special Appeals decision in Cromwell v. Ward, 102 Md.App. 691, 651 A.2d 424 (1995), which sets forth the legal standards under which a variance may be granted, the Board of Appeals, hearing the case de novo, is given the task of interpreting regulations and statutes where issues are debatable in the light of the law. The first burden on the Petitioner for variance is to prove that the property is unique. This standard must be met before other parts of the variance requirements can be properly considered.

The Board finds that there is substantial evidence that the

subject property is unique by virtue of its size, shape relative to other properties in the area, and its sloping nature. Due to the unique qualities of the subject property, the proposed dwelling could meet the 55-foot regulation if it were placed closer to the water; however, the Critical Area regulations render this option unacceptable.

As to the side yard setback, the property adjoins Tobasco Road, a paper road supporting a drainage easement which cannot be developed, another unusual factor. The Petitioner owns to the center line of this road. In effect, the proposed dwelling will be located some 40 feet from Appellant's house. The Appellant offered no concrete evidence to prove that this distance would adversely affect his enjoyment of his property.

The second prong under Cromwell v. Ward speaks to practical difficulty and undue hardship. It is clear to the Board from evidence and testimony that circumstance beyond the Petitioners' control created the lot as it presently exists. The combination of Critical Area regulations imposed in 1993 and zoning regulations relative to lot width and side yard setback render the subject property unbuildable without the variance requested.

Finally, any variance to the BCZR must comply with the spirit and intent of the regulations. While the Board acknowledges and understands the concerns of the Appellant, Mr. Woodell, and the neighbor, Mr. Ernstberger, about access to Bear Creek over Tobasco Road and flooding in the low-lying areas and street, the Board finds that these concerns are not relevant to the case in point.

There is no evidence presented that the neighbors have any legal access to Tobasco Road, and even if they did, the proposed construction would not change the use of the paper road as it presently exists. Similarly, there is no evidence that the drainage easement under Tobasco Road will be impacted in any way by the proposed dwelling. In building the proposed dwelling, the Petitioner must satisfy all standards set out by DEPRM and all other County agencies relating to stormwater outfall and runoff. The Board finds as a matter of fact that neither of these issues is sufficient to overcome our ruling that the request for variance meets the spirit and intent of the zoning regulations.

Therefore, the Petition for Variance seeking relief from Section 1B02.3.C.1 of the BCZR is granted.

O R D E R

THEREFORE, IT IS THIS 25th **day of** May **, 1999 by** the County Board of Appeals of Baltimore County

ORDERED that Appellant /Protestant's Motion to Quash Subpoenas be and the same is hereby **GRANTED**; and it is further

ORDERED that Petitioners' Motion to Dismiss be and the same is **DENIED**; and it is further

ORDERED that the decision of the Department of Environmental Protection & Resource Management (DEPRM) in Case No. CBA-98-128, granting Petitioners' request for administrative variance, be and is hereby **AFFIRMED**; and it is further

ORDERED that Petitioners' requested Administrative Variance to construct a single-family dwelling within the 100-foot buffer be

and is hereby **GRANTED**, subject to the following conditions:

1. The sum of all man-made impervious areas shall not exceed 25% of the lot; including the development proposed as part of this variance request and any accessory uses or structures.

2. No accessory structures shall be placed on the property waterward of the proposed dwelling.

3. The proposed dwelling shall be placed as close to the road as allowed by Baltimore County Zoning Regulations, and shall extend no closer than sixty-five (65) to mean high tide.

4. If all of the required mitigation cannot be accomplished on-site, the Department of Environmental Protection & Resource Management (DEPRM) may accept a fee-in-lieu of mitigation at a rate of $1.20 per square foot of disturbance. Any fee-in-lieu of payment shall be made prior to building permit issuance.

5. The above-referenced mitigation shall be completed within ninety (90) days of building permit issuance for the proposed dwelling.

6. Rooftop runoff shall be directed through downspouts and across the lawn.

7. Prior to receiving final variance approval, a revised plot plan which shows the following additional information shall be submitted to DEPRM:

   a. The Limit of Disturbance (L.O.D.) as 15 feet from the proposed work,

   b. Location of proposed trees to be planted,

   c. The 100-foot buffer limit,

   d. A note stating, "There shall be no clearing, grading, or disturbance of the 100-foot buffer other than mowing, except as permitted by DEPRM," and

   e. The location of the driveway for the dwelling;

and it is further

ORDERED that the Petition for Variance in Case No. 98-251-A to

permit a lot width of 43 feet in lieu of the required 55 feet, and a side yard setback of 10 feet in lieu of the required 25 feet for the subject property at 3825A Annadale Road be and is hereby **GRANTED**, subject to the following restrictions:

1. The Petitioners may apply for their building 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 the 30-day appeal period from the date of this Order has expired. If a Petition for Judicial Review is filed and this Order is reversed, the relief granted herein shall be rescinded.

2. Compliance with the Zoning Plans Advisory Committee comments submitted by DEPRM dated January 20, 1998 and the Bureau of Developer's Plans Review Division of the Department of Permits & Development Management dated January 26, 1998, copies of which are attached hereto and made a part hereof.

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

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, Panel Chairman

Lynn Barranger

Margaret Worrall

County Board of Appeals of Baltimore County

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

May 25, 1999

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
520 Washington Avenue
Towson, MD 21204

RE: In the Matter of Robert Long, et ux /Long Property
/Case No. 98-251-A and Case No. CBA-98-128

Dear Mr. Williams:

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, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** 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 for

Kathleen C. Bianco
Administrator

encl.

cc: Melvin C. Woodell, Jr.
Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth
Wendy A. Zerwitz, Esquire
Mr. and Mrs. Robert Long
Susan McConville
Chesapeake Bay Critical Areas Commission
People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
Virginia W. Barnhart, County Attorney

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IN THE MATTER OF:	*	BEFORE THE
ROBERT LONG ET UX - Petitioners	*	COUNTY BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
	*	CASE NOS. 98-251-A and CBA-98-128

* * * * * * *

MEMORANDUM OF BALTIMORE COUNTY, MARYLAND

Baltimore County, Maryland, by Virginia W. Barnhart, County Attorney and Nancy C. West, Assistant County Attorney, hereby submits this Memorandum in order to assist the Board of Appeals (the "Board") in its consideration of the issues raised in the case involving the Chesapeake Bay Critical Area administrative variance. The above-captioned matter involves two cases which were consolidated before the Board, namely, 98-251-A, which involves an appeal from an Order of the Zoning Commissioner granting in part and denying in part a request relative to a Petition for a Zoning Variance and CBA-98-128 which involves an appeal from the Baltimore County Department of Permits and Development Management's ("The County" or "DEPRM") granting of an administrative variance from the Chesapeake Bay Critical Area regulations. At the conclusion of the testimony before the Board in the latter case, the parties were requested to submit Memoranda in lieu of closing argument. The issues addressed in this submittal are germane only to that case.

STATEMENT OF FACTS

Robert and Rose Long, his wife, ("the Longs") are owners of the property located at 3827 Annadale Road in the Dundalk section of Baltimore County. They requested an administrative variance from the Chesapeake Bay Critical Area regulations to construct a single family dwelling on a vacant lot in the 100-foot buffer to Bear Creek. (County Exhibit 1) The subject property is a waterfront lot consisting of approximately .186 acres which abuts Bear Creek in southeastern

Filed 3/01/99 C.B.A. /ccb

Baltimore County. Vehicular access to the site is by Annadale Road, which is located close to the intersection of North Point Boulevard and Old North Point Road. The property is roughly rectangular in shape, with a width of 43 feet along the property adjacent to the street, and tapering to a greater width along the waterfront.

The Longs acquired a portion of Lot 33, all of Lot 32, and the property identified as Lot 31 on the Annadale plat. (Protestants' Exhibit 3) Lot 32 and a portion of Lot 33 have been developed with a single family dwelling in which the Longs currently reside, known as 3827 Annadale Road. They wish to subdivide their property and develop Lot 31 with a single family dwelling which will be approximately 28 feet by 28 feet in dimension. The west side of the subject property abuts a 15-foot wide paper street, which is shown on the site plan as Tobasco Road. The effect of this 15-foot wide strip is significant in that it separates Lot 31 from Lot 30 by a distance of 15 feet. In order to move forward with the construction of their proposed dwelling, the Longs filed an administrative variance request with DEPRM to build within the 100-foot buffer to Bear Creek. (County Exhibit 1) After the appropriate review and consideration, the Director of DEPRM granted a variance to the Chesapeake Bay Critical Area regulations in accordance with the regulations adopted by the Chesapeake Bay Critical Area Commission concerning variances as set forth in the Code of Maryland Regulations ("COMAR"), Section 27.01.11. Melvin C. Woodell, Jr., et al (the "Appellants" or "Protestants"), noted an appeal of this grant of a variance to the Board of Appeals. It is within this context that the above proceedings arose.

ISSUE

WHETHER THE DECISION OF DEPRM TO GRANT A VARIANCE TO CONSTRUCT A SINGLE FAMILY DWELLING ON A VACANT LOT IN THE 100-FOOT BUFFER TO BEAR CREEK IS SUPPORTED BY SUBSTANTIAL AND COMPETENT EVIDENCE.

After the Longs submitted their application for an administrative variance from the Chesapeake Bay Critical Area regulations, (County Exhibit 1), it was forwarded to the Chesapeake Bay Critical Area Commission (the "Commission") as required by Section 8-1811(b)(3) of the Natural Resources Article of the Annotated Code of Maryland. Thereafter, Keith Kelley of DEPRM received a letter dated July 25, 1997 from Susan McConville in which she advised that the Commission did not oppose the granting of a variance but recommended that the encroachment into the buffer and impervious surfaces be minimized. Additionally, McConville recommended the planting of native vegetation in the 100-foot buffer at a ratio of 3:1 to mitigate for the area of new disturbance in the buffer. (County Exhibit 5) Kelley advised that this was standard protocol with regard to mitigation.

In the County's case-in-chief, Keith Kelley of DEPRM testified. Kelley has been a County employee for over 18 years and for the last 6 years has been a Natural Resource Specialist whose responsibilities include the development and review of Chesapeake Bay Critical Area projects. On an annual basis, he reviews approximately a dozen variance requests. He has been recognized by the Board as an expert witness with regard to the interpretation of the Chesapeake Bay Critical Area regulations.

Kelley testified that the County may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with the regulations adopted by the Critical Area Commission as set forth in COMAR 27.01.11. He opined that there are five criteria listed which are used to evaluate a variance request, namely:

> 1. That findings are made by the local jurisdiction which demonstrate that special conditions or circumstances exist that are

peculiar to the land or structure within the jurisdiction's Critical Area program, would result in unwarranted hardship;

2. That a literal interpretation of this subtitle or the local Critical Area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction;

3. That the granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area;

4. That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property;

5. That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations adopted in this subtitle.

With regard to the first criterion, Kelley noted that due to the configuration of the lot, a majority of the dwelling must be built within the 100-foot buffer or the lot would be unbuildable. Therefore, he deemed that the hardship was warranted.

With regard to the second criterion, Kelley emphasized that if the regulations were literally enforced, the Longs would not be able to build a dwelling on the property because there is no room to build it outside the 100-foot buffer zone. Therefore, they would be deprived of a right commonly enjoyed by other properties in similar areas within the Critical Area.

In reviewing the third criterion, Kelley opined that the granting of the variance would not confer any special privilege upon the Longs that would otherwise be denied to property owners of other lands or structures within the Critical Area.

Further, Kelley determined that the Longs had met the fourth criterion in that their request for a variance was not predicated upon any conditions or circumstances which are attributable to them nor did the request arise from any condition conforming on any neighboring property.

Finally, with regard to the fifth criterion, Kelley noted that the granting of the variance request would not adversely impact fish, wildlife, or plant habitat. He stated that potential water quality impacts could be minimized through the planting of trees. Specifically, he stated that this criterion could be met "by planting 1.5 inch caliper native deciduous trees, preferably on the waterward side of the proposed structure, at a rate of 3 trees for each 100 square feet of the proposed disturbance to occur within the 100-foot buffer." (County Exhibit 6)

In granting the requested variance, the County imposed additional site design and variance approval conditions. These conditions included:

1. An advertising requirement;

2. A requirement that the aggregate of all man-made impervious areas shall not exceed 25% of the lot;

3. An admonition that no accessory structures be placed on the property waterward of the proposed dwelling;

4. The proposed dwelling must be placed as close to the road as allowed by the Baltimore County Zoning Regulations but in no event to extend closer than 65 feet to mean high tide;

5. The County acknowledged that it would accept a fee-in-lieu of mitigation at a rate of $1.20 per square foot of disturbance;

6. The mitigation must be completed within 90 days of building permit issuance for the proposed dwelling;

7. Rooftop run-off shall be directed through downspouts and across the lawn;

8. DEPRM required additional information be submitted prior to granting final variance approval, i.e. a limit of disturbance as 15 feet from the proposed work; location of proposed

trees to be planted; the 100-foot buffer limit; the location of the driveway for the dwelling; and a note stating there would be no clearing, grading or disturbance of the 100-foot buffer other than mowing, except as permitted by DEPRM.

On cross examination, Kelley stated that he did not know where a swale was located on the property but that, in any event, because a swale is not a stream or wetland, it is not subject to review under the Chesapeake Bay Critical Area regulations. Additionally, he opined that the size of the lot is irrelevant because one is still the same distance from the water. Although it would affect the amount of impervious surface, the effect would be negligible.

On June 22, 1998, DEPRM acknowledged receipt of the requisite Certificate of Publication relative to the granting of the variance (County Exhibit 7) as well as a signed copy of the variance approval letter and a revised plot plan. Patricia M. Farr of the Environment Impact Review Division of DEPRM advised the Longs that their requested administrative variance became final on June 16, 1998, the date on which all variance approval documents were submitted for review to the County. (County Exhibit 8) Thereafter, Melvin C. Woodell et al duly noted their appeal.

Protestants averred a number of reasons for opposing DEPRM's decision to grant the variance on the undersized lot. In their letter dated June 23, 1998 to DEPRM, they stated that:

> Tabasco (sic) Road is a paper road which has been turned into the drainage area from the newer part of our community, which goes directly into Tabasco Creek. Tabasco Creek already has enough pollution problems without putting another house on top of the drainage area, which will add to the pollution problem and further restrict the filtration of drainage from the newer community.
>
> Allowing this construction would have a major impact on the wildlife that is left. Before the construction of the newer community we had an abundance of wildlife, since then the number has dropped greatly. This area and the adjoining paper road area are the only areas left for the wildlife. The only area left with high grass for nesting is

adjoining this property. It is our fear that developing so close would further reduce our wildlife.

It is our opinion that the development of this property would have a total negative effect on our creek, wildlife, and our community as a whole. (County Exhibit 9)

The Protestants offered no testimony to rebut that of the County's witness, Keith Kelley. The only documentary evidence submitted to support Protestants' claims of aggrievement were offered by the County in its case-in-chief. And their proferred reasons pale when viewed in light of the compelling reasons Kelley articulated for DEPRM's action.

CONCLUSION

It is clear that DEPRM's decision to grant the Longs an administrative variance to construct a single family dwelling on a vacant lot in the 100-foot buffer to Bear Creek comports with the stringent Chesapeake Bay Critical Area regulations and must be affirmed.

Respectfully submitted,

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County Attorney

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400 Washington Avenue, 2nd Floor
Towson, Maryland 21204
410/887-4420

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 12 day of March, 1999, a copy of the foregoing Memorandum of Baltimore County, Maryland was mailed, postage prepaid, to: Newton A. Williams,

Esquire, Nolan, Plumhoff & Williams, Chartered, Suite 700, Nottingham Centre, 502 Washington Avenue, Towson, MD 21204-4528 and Wendy Anne Zerwitz, Esquire, 36 S. Dundalk Avenue, Baltimore, MD 21222.

NANCY C. WEST

3/1/99

IN THE MATTER OF: *ROBERT LONG, et ux*	*	*BEFORE THE*
	*	*BOARD OF APPEALS OF*
Petitioners	*	*BALTIMORE COUNTY*
RE: ZONING VARIANCE	*	*CASE NO. 98-251A*
RE: CRITICAL AREA VARIANCE	*	*CASE NO. CBA-98-128*

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CLOSING MEMORANDA

The above-captioned matters were called for a hearing before the Board of Appeals on January 13, 1999. The issues before the Board were Protestants' Motion to Quash Subpoenas which had been requested by Petitioners, Petitioners' Motion to Dismiss Appeal, and Protestants' Appeals from the granting of a zoning variance by the Zoning Commissioner allowing for a lot width of 43 feet in lieu of the required 55 feet and a side yard setback of 10 feet in lieu of the required 25 feet. Also appealed was a critical area variance by DEPRM which would allow Petitioners to build within the 100 foot buffer zone. Facts will be presented as they pertain to each argument.

The Board heard arguments regarding Protestants' Motion to Quash Subpoenas and granted same.

MOTION TO DISMISS

On or about April 7, 1998, a letter was sent to the County Board of Appeals appealing the March 13, 1998 decision of the zoning commissioner and on or about June 23, 1998 a letter was sent to the Baltimore County Department of Environmental

99 MAR -1 PM 1:02

COUNTY BOARD OF APPEALS
RECEIVED

Protection and Resource Management requesting an appeal of their decision to grant a crictical area variance. Both letters were signed "Concerned Property Owners of Annadale" and identified those persons filing the appeal as "concerned citizens of Annadale".[1]

In Protestants' response to the Motion to Dismiss they acknowledge that all Protestants were not listed on the Appeal, however, they argue that Petitioners had adequate notice as to their identities due to the fact that they were listed on the hearing assignment. The reason that they were listed on the hearing assignment was due to their request before the zoning commissioner to be notified of future proceedings and not because they were participants in this filing of an appeal.

The Board of Appeals, in promulgating its rules of practice and procedure set forth specific requirements for those individuals desiring to appear before it. Rule 3(a) specifically states that "[n]o appeal shall be entertained by the Board of Appeals unless the Notice of Appeal shall state the names and addresses of the persons taking such appeal". This rule does not provide for any exceptions such as if the persons taking the appeal appeared at a prior hearing. The rule does not allow for a cure for a defective appeal by subsequently identifying those persons who may have filed the appeal.

To interpret the meaning of Rule 3(a), this Board is

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[1]*The only individual identified in the letter is Melvin Woodell, Jr., and he is only identified as a mailing address for futre correspondence. (See Exhibit 1 & 2)*

governed by the rules of statutory construction. Rules, like statutes, should be interpreted according to their common and ordinary meaning so long as the words are not ambiguous. See County Council for Montgomery County v. Supervisor of Assessments of Montgomery County, et al 274 Md. 116, 332 A.2d. 879 (1975). In Rule 3a the word "shall" is used. "Shall" mandates that strict adherence to the plain language of the Rule is mandatory. As Protestants failed to follow the Rule, their Appeal must be dismissed.

Assuming arguendo, that Protestants' Appeal does not fail for the aforementioned reasons, it must still be dismissed. The letter of Appeal refers to those individuals taking the appeal as "Concerned Property Owners of Annadale", suggesting that the appeal was filed by a civic or improvement association. Clearly, the Protestants holding themselves out as a civic or improvement association for purposes of filing an appeal is not only misleading but also improper.

Under Rules 6 & 8 of the Board's Rules of Practice and Procedure, persons can appear before the Board and testify on behalf of a civic or improvement association, however, the rules set forth what is necessary before a person can testify on behalf of an association. No evidence was ever presented to suggest that "Concerned Property Owners of Annadale" is a legitimate civic or improvement association. However, assuming arguendo that a legitimate civic or improvement association existed, then this appeal must still be dismissed as well or the Protestants' testimony must be stricken because they failed to file the proper

procedure for appearing and testifying on behalf of that association. If an association exists, then the appeal must be dismissed or Protestants' testimony stricken, because they failed to follow the proper procedures for appearing and testifying on behalf of an association.

The Board has the right to enact its own rules for practice and procedure. Once it has done so, the burden is on the party, in this case the Protestants, to show why they should not be required to abide by those rules. In this case, the Board has set forth clear and precise rules, using plain and common language, to guide those individuals who wish to file an appeal or appear on behalf of a civic or improvement association. The rules clearly explain how this is to be done, without exception. Protestants did not follow the rule. Accordingly, Protestants' appeal must be dismissed.

EVIDENCE PRESENTED

Mr. & Ms. Robert Long, Petitioners, are the owners of a plot of land which is pie shaped. At the water's edge, Bear Creek, the land is approximately seventy-one (71) feet wide and at the other end, abutting Annadale Road, it is approximate 43 feet wide. The length of the plot of land, on the left side from the water's

edge, is 160 feet long and abuts Tabasco Road, a paper road with a drainage easement underneath, and 140 feet on the right abutting another plot owned by Mr. & Ms. Long.

Mr. & Ms. Long wish to build a house on this plot of land, however, due to the size and location of property, need a zoning variance to build on a lot approximately 43 feet wide instead of 55 feet wide, to have a side yard set back of 10 feet instead of 25 feet and a critical bay variance to build within the 100 feet buffer zone.

Addressing first the evidence regarding the critical bay variance, Petitioner called a witness from DEPRM, the agency which granted the critical bay administrative variance. Kieth Kelly, a natural resource specialist, testified that he visited the site on July 14, 1997 and prepared an application for submission to the Chesapeake Bay Critical Area Commission. When he visited the site, Mr. Kelly observed no vegetation or improvements to the property. As his purpose was to determine whether to recommend a variance to allow a house to be build with the 100 feet buffer zone was necessary, his primary concern was the distance from the water to the road. He observed that a house could not be built outside the buffer zone. In-fact, he observed that all of the homes already built were built inside the 100 foot buffer zone.

DEPRM determined that Petitioners met the criteria for a critical bay variance as set forth in COMAR 27.01.11. Specifically, they found that the lot would be unbuildable

without the variance because, due to the unique shape of the land, a majority of the house would have to be in the buffer zone and therefore clearly a hardship existed. They also determined that since others had built within the buffer zone, denial of a variance would deny Petitioners a right enjoyed by others in the community. They found no special privileges would be afforded to Petitioners if the variance was granted. The fourth criteria was met when it was determined that the need for the variance was based upon the affects of mother nature eroding away at the shore line and not by the actions of the Petitioners. The last criteria would be met if Petitioners planted trees in the buffer zone so as to minimize any adverse affect on the water, animals and plants.[2]

The next witness called was Thomas Phelps, a surveyor whose job it is to establish property lines, layout homes and do whatever is necessary to obtain building permits. Mr. Phelps testified that he was familiar with the Annadale area because he had done work for some of the other homeowners. He further testified that he observed Petitioners' property to be unique as compared to other lots in the area because of its shape and because of the water.

Based upon his survey, Mr. Phelps observed that if the part of Tabasco Road, the paper road, were to be included in the measuring of Petitioners' property, they would be able to obtain

---

[2] *Petitioners agree that if critical Bay Administrative Variance is granted they will satify the request to plant trees.*

the necessary 25 foot side yard setback. Although his review of the plats did not reveal any drainage easement, if there were such an easement, he saw nothing which would indicate a problem if Petitioners were allowed to build a house on their lot.

Petitioner, Robert Long, testified that he purchased a number of lots in Annadale and then sold them off. He kept some of the lots, specifically, the one in question, lot 31, and the adjacent lot, lot 32. The vast majority of lots in the subdivision were 50 feet wide. Lot 31 originally was 50 feet wide on road side, and 71 feet wide at water's edge. When he went to build his house on lot 32, the county told him where to place the house, causing him to take part of the northwest corner of lot 31.

Petitioner testified that he wants the variances to build a single family dwelling, 28 feet x 28 feet, on lot 31. Due to the shape of the property, he could obtain the necessary 55 foot lot size but that would put him to close to the water. He believed it to be better for the environment if the house were built closer to the road. As to the side yard set back, the property adjoins Tabasco Road, a paper road which is never going to be developed. But for the paper road, Petitioner would have the necessary footage between himself and the lot on the other side, owned by Mr. Woodell and would not need the variance for the side yard setback. It is not Petitioners intent to build his house in the easement, it would be 10 feet away if the variance were to be granted and there would be 40 feet between himself and Mr.

Woodell's house. Without the variances, Petitioners cannot build a house on lot 31 and it is econically useless.

Two Protestants testified against the granting of Petitioners' request for variances. Melvin Woodell lives on lot 30, the lot on the other side of Tabasco Road. He testified that he was concerned about denial of access to Tabasco Road, drainage problems, as the drainage ditch crosses Tabasco Road, and possible increased erosion. He also conceded that he was concerned about how an additional house would affect the resale value of his property.

Joseph Ernstberger lives across the street and can see lot 31 from his house. He felt if Petitioner built a house on lot 31 it would limit his access to Tabasco Road as he uses that land for access to the water. He, also expressed concern regarding drainage problems on his property from storms as he felt a blockage would increase the problem. He had prior damage done to his property because of the widening of Annadale Road and he was concerned how close the new house would be to his house. Finally, he testified that it was not fair for Petitioners' Petition to be granted as he brought two lots to get the necessary lot size of 55 feet.[3]

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[3] *The record does not reflect whether or not Mr. Ernstberger ever considered applying for an appropriate variance.*

ARGUMENT

Cromwell v. Ward 102 Md.App.691,651 A.2d 424 (1995) is the seminal case for determining whether the granting of a variance is proper. The Court of Special Appeals has held that for a variance to be appropriate, it must be shown that the property is unique or unusual from the surrounding properties and the need for the variance must be based upon practical difficulties or unreasonable hardships not created by the landowner. Nowhere does Cromwell or any other case state the proposition that a variance should be denied if, as protestants suggest, it would keep others from enjoying the landowner's property. The fact that protestants use Tabasco Road, in essence trespassing on Petitioners' property, get to the water, is irrelevant and should not form a basis to deny the variances requested.

As to the drainage concerns, no evidence was presented that would suggest to this Board that allowing Petitioners to build a house would cause problems during a rainstorm, and there is nothing in the record to support Protestants testimony that the drainage easement would be blocked if Petitioner is allowed to build his house. The house will be 10 feet from the edge of Tabasco Road and the easement is in the middle, an additional 7 1/2 feet from the end of the proposed house. The only testimony regarding the drainage easement came from the surveyor Thomas Phelps who indicated that he did not find anything to indicate that a house on lot 31 would cause such a problem.

Protestants' other arguments to have the variance request

denied also are not supported by the evidence. In examining the testimony, and the reasons for opposing the building of a house on lot 31, the Board might consider Mr. Woodell's testimony that he was concerned about how this house would affect the resale value of his house and Mr. Ernstberger's testimony that he was required to purchase two lots 50 feet each to obtain the required lot size. This testimony might suggest that the only two (2) Protestants to testify against the proposed variance did so for their own personal agendas and not for the betterment of the communinty as a whole.

The only issue remaining for the Board to determine is whether Petitioners have met the burden of proving their property is unique or unusual and whether they have demonstrated that compliance with the zoning regulations would constitute a practical difficulty or unreasonable hardship. In other words, it must be proven by Petitioner that without the variances, their land is unsuitable for its proposed use. See North v. St. Mary's County, 99 Md. App. 502, 638 A.2d 1175 (1994)

As to the first prong, Petitioners' property is clearly unique. As was testified to by Kieth Kelly, Thomas Phelps and Robert Long and supported by the plat maps, all the other lots are rectangular in shape and almost all are 50 feet wide. Lot 31 is oddly shaped, being substantially wide at the water's edge even before approximately 7 feet were taken away from the northwest corner. Additionally, the property adjoins a paper road on one side and water on one side. The paper road narrows

the property. The shoreline, through erosion, has shortened the property line, and, while most lots are flat, the topography of lot 31 is unique in that it slopes. The shoreline also creates a whole other area of concern such that DEPRM was brought in to make sure the environment was protected. In fact, it is DEPRM who created part of Petitioners' quandary because, but for the 100 foot buffer zone setback, he has a portion of his property which would be wide enough to build a house. The shoreline, the topography, the shape of the property and the practical restrictions of abutting Tabasco Road are all inherent characteristics of this lot which are not found in other lots in Annadale. It is these characteristics which make the property unique and satisfy the first prong of the Cromwell v. Ward requirements. See Umerley v. Peoples' Counsel for Baltimore County 108 Md.App. 497, 672 A.2d 173 (1996).

After Petitioner have proven their property is unique, the second requirement is that they prove that the failure to grant them a variance will result in practical difficulties for them in the use and enjoyment of their property or will result in an unreasonable hardship. Without the variances, Petitioner cannot develop the lot or construct a single family dwelling. The lot, due to the zoning ordinances and critical bay requirements will be useless. The fact that Petitioners own the adjoining lot and could use both lots together to extend their existing house is irrelevant. Variances go to the property not the property's owner or the owners' personal circumstances or situation. Lot 31

is a separate parcel of land from Petitioners' other lots and should be considered separately.

In this case, the hardship derives from the fact that Lot 31 is an undersize lot and it is waterfront property. It is that the property is located in the Chesapeake Bay Critical area that created the hardship. As the property is tapered, it is wide enough near the water to build without a zoning variance. As DEPRM has specific requirements necessary to ensure that the environment is protected, that is what created the burden.

Protestants argue that if any hardship or practical difficulty exists, then it is self imposed. Clearly, Petitioners did not create the problem which resulted in the granting of the critical bay administrative variance. As to the zoning variance, Protestants' position that Petitioner created the lot size and therefore created his own problem is also not supported by evidence. Lot 31 was undersize to begin with, therefore the fact that Petitioner narrowed the northwest corner is inconsequential. The problem of the undersize lot would have existed even without Petitioner's actions.[4] *There is no evidence to support Protestants other claims that Petitioner's created the problem of Lot 31 by having the Annadale Subdivision re-subdivided.*

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[4] *The original lot size was in-fact 50 feet wide and less than the required footage for building a single family house.*

CONCLUSION

As Petitioner's property is unique and denial of the variance would cause him practical difficulty or undue hardship, this request for a zoning variance and a critical bay area administrative variance should be granted. There is no evidence that the difficulty or hardship was created by Petitioner. There is no evidence that the granting of the variances would negatively impact the community as a whole. As Petitioners have indicated a willingness to abide by any conditions set forth by DEPRM, their approval of a critical bay administrative variance was proper. There was no evidence admitted contrary to the position set forth by DEPRM. As Lot 31 is useless without the zoning variance the granting of same is also appropriate.

Petitioners pray this Board award them a variance from Baltimore County Zoning Regulations, Section 1B02.3.C.1, to permit a lot width less than the required 55 feet and a side yard setback of 10 feet in lieu of the required 25 feet and critical area administrative variance to allow them to construct a single family dwelling within the 100 foot buffer to Bear Creek.

Respectfully submitted,

WENDY A. ZERWITZ
38 S. Dundalk Avenue
Dundalk, Maryland 21222
Phone: (410) 288-9303
Attorney for Petitioners

APPENDIX

Rules of Practice and Procedure of County Board of Appeals

****

Rule 3. Appeals.

a. No appeal shall be entertained by the board of appeals unless the notice of appeal shall state the names and addresses of the persons taking such appeal.

b. An appeal may be withdrawn or dismissed at anytime prior to the conclusion of the hearing on said appeal.

c. Unless otherwise provided for by statute, all appeals to the board of appeals, subject to and limited by statutory authority to hear appeals, shall be made within thirty (30) days from the date of the final action appealed.

****

Rule 6. Appearances and practice before the board of appeals.

a. Any individual who is a party toa proceeding before the board may appear in his own behalf; and a member of a partnership may appear as representing said partnership if it is a party; a duly authorized officer of a corporation, trust or an association may appear as representing said body, if it is a party to the proceedings; and a duly authorized officer or an employee of any political subdivision or body or department may represent the same before the board.

b. Any party may be represented in any proceeding by an attorney-at-law admitted to practice before the Court of Appeals of Maryland.

c. No person shall appear before the board in a representative capacity, engage in practice, examine witnesses or otherwise act in a representative capacity except as provided in sections a. and b. above.

d. When an attorney wishes to appear in any proceeding in a representative capacity which involves a hearing before the county board of appeals, he shall file with the board a written notice of such appearance, which shall state his name, address, telephone number, and the names and addresses of the persons on

whose behalf he has entered his appearance.

****

Rule 8. Special rule pertaining to persons appearing before the board as representatives of civic or improvement associations.

a. Before any person shall testify on behalf of any civic or improvement association, it shall be shown that he has accurate knowledge of the number of members in the association and geographical limits of the association.

b. Before any person shall testify it shall also be shown that he is authorized to speak for and present the views of the civic or improvement association.

c. Such authorization shall consist of presenting at the hearing or prior thereto a resolution in duplicate duly adopted by the association at its annual meeting or first meeting of each year, signed by the president and attested by the secretary, providing that the responsibility for review and action on all zoning matters be placed in its board of directors or a duly elected zoning committee.

d. Before any such authorized person shall testify, it shall be shown by written affidavit in duplicate, signed by the president of the association and attested by the secretary, that he is currently a duly elected member of the board of directors or zoning committee of that association, or is an attorney appointed to represent the board of directors or zoning committee.

e. Before any such authorized person shall testify, a resolution stating the position of the association as adopted by the board of directors or zoning committee, signed by the president and attested by the secretary, shall also be produced in duplicate at the hearing.

****

LAW OFFICES
ZERWITZ & ZERWITZ

38 SOUTH DUNDALK AVENUE

DUNDALK, MARYLAND 21222

FAX (410) 288-9305

TELEPHONE (410) 288-9303

ARNOLD M. ZERWITZ
WENDY A. ZERWITZ

COUNSEL
LOUIS L. DEPAZZO

TOWSON OFFICE
600 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
FAX (410) 337-0975
TELEPHONE (410) 337-8600

March 1, 1999

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

Re: In the matter of Robert Long, et ux
Petitioners
Zoning Variance Case No. 98-251A
Critical Area Variance Case No. CBA-98-128

Dear Sir/Madam:

Enclosed, herewith, please find original and three (3) copies of Closing Memoranda in the above-captioned matter. Kindly file same.

Very truly yours,

WENDY A. ZERWITZ

WAZ/rml
Enclosures

cc: Mr. & Ms. Robert Long

cc: Newton A. Williams, Esquire
Nolan, Powhoff & Williams

cc: Nancy West, Esquire

99 MAR -1 PM 1:02

1/13/99

IN THE MATTER OF	*	BEFORE THE
LONG PROPERTY	*	BOARD OF APPEALS OF
	*	BALTIMORE COUNTY
RE: ZONING VARIANCE	*	CASE NO. 98-251A
RE: CRITICAL BAY AREA VARIANCE	*	CASE NO. CBA-98-128

****

NOTICE TO ENTER APPEARANCE

Dear Sir/Madam:

Please enter the appearance of WENDY A. ZERWITZ and ZERWITZ & ZERWITZ, Attorneys, on behalf of Mr. Robert Long, in the above-captioned matter.

WENDY A. ZERWITZ
38 S. Dundalk Avenue
Dundalk, Maryland 21222
Phone: 410-288-9303
Attorney for Robert Long

CERTIFICATION

I HEREBY CERTIFY, that on this 13th day of January, 1999, a copy of the foregoing was hand delivered to Virginia W. Barnhart, Esquire, 400 Washington Avenue, Towson, Maryland 21204 and Newton Williams, Esquire, Suite 700, Nottingham Center, 502 Washington Avenue, Towson, Maryland 21204.

WENDY A. ZERWITZ

11/11/98

IN THE MATTERS OF ROBERT LONG ET UX. ZONING VARIANCE LONG PROPERTY AND DEPRM DECISION FOR 3825A ANNADALE ROAD, 15TH ELECTION DISTRICT, 7TH COUNCILMANIC DIST.	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY CASE NO. 98-251-A AND CASE NO. CBA- 92-128

APPELLANTS' MOTION TO QUASH SUBPOENAS

Mr. and Mrs. Norris Shanholtz and Mrs. Annabelle Chenoweth, Appellants herein, by Newton A. Williams and Nolan, Plumhoff and Williams, their attorneys, moves to quash the Subpoenas served upon them, incorporated by reference herein and attached hereto, by Robert B. Long the Appellee for the following reasons:

1. The subpoenas were not properly served under the Board's Rules. See Rule 5,attached hereto and incorporated by reference herein. The subpoenas also do not comply with the provisions of Rule 5," a general statement as to purpose."

2. The materials requested are not relevant to this Variance and DEPRM case involving the Long property.

3. The subpoenas seek as to the Chenoweth Property at 3821 Annadale Road numerous plans, which if existent, are available from Baltimore County, as well as similar building permits, lists of improvements for the last three years, permits and size data for a gazebo, shed, boat lift and pier, none of which are in any way related to this case. The subtext being if you oppose my requests, I will cause you problems about your property and improvements.

4. The subpoenas seek as to the Shanholtz property at 3822 Annadale Road similar plans and permits as in 3, above, as well as driveway data and size. Again these materials are irrelevant to these cases, and the intent seems to be potentially extortionate.

5. The inquiry in these cases centers upon the Long, undersized, residue lot known as 3825A Annadale Road, and not upon details of the Shanholtz or Chenoweth properties, and hence the Appelle should be confined to materials and matters germane to the cases under appeal.

Accordingly, until the Board rules on these Motions to Quash and until properly served, the Appellees Chenoweth and the Shanholtzs will not answer or respond further to these subpoenas.

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COUNTY BOARD OF APPEALS
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11/4/98

Newton A. Williams

Newton A. Williams

Nolan, Plumhoff & Williams

Nolan, Plumhoff and Williams
700 Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
410 823 7800
Attorneys for Appellees

Certification of Mailing

I hereby certify this 4th day of November 1998, that a copy of this Motion to Quash was mailed, postage prepaid, to the Appellee, Robert B. Long at 3825 Annadale Road, Baltimore, Md. 21222, and to William O. Jensen, Assistant County Attorney, Office of Law,Old Courthouse, Towson, Md. 21204.

Newton A. Williams

Newton A. Williams
Attorney for Appelees

10/2/98

IN THE MATTER OF THE

LONG PROPERTY

ANNADALE ROAD, 21222

BEFORE THE

COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

CASE NUMBER 98-251-A

CASE NUMBER CBA- 98-128

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ANSWER TO MOTION FOR DISMISSAL

AND FOR POSTPONEMENT

Mr. And Mrs. Mel Woodell, Mr. And Mrs. Norris Shanholtz, Mr. And Mrs, Joseph Erstberger, and Ms. Ann Chenoweth, Protestants and Appellants, by Newton A. Williams and Nolan, Plumhoff and Williams, their attorneys, for their answers herein to the above Motions respectfully say to the Board, as follows:

1. The Protestants and Appellants , hereinafter the Protestants, had perfected their appeal to the Board before we entered our appearance in the matter. Mr. Woodell remains the primary spokesperson for the Protestants, as at the Zoning Commissioner level where the Protestants were not represented by counsel. However, the Protestants were present at Zoning Commissioner hearing and several testifies and all noted their protestant status and requested notification os all action taken.

2. Our letter of August 25, 1998, to the Board attached to the Long Motion for Dismissal herein notes our appearance **for Mr. Woodell and others noted on your hearing assignments as protestants,** certainly adequate notice to Mr. Long and other counsel of our representation.

3. Mr. Long has also moved for postponement of the Thursday, October 29,1998, hearing date scheduled, a second hearing date assigned after the Protestants requested that the matter not be continued indefinitely.

4. Mr. Long at first requested a postponement until the end of the year or later based upon indefinite travel plans to which the Protestants objected. Now the Longs request a postponement on the basis of possible hand surgery for Mrs. Long. We would ask the Board to act on this request with the knowledge that the Protestants wish to have the matter heard in a timely and early fashion.

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

5. Further, the Protestants have difficultly in extending scheduling consideration to Mr. Long, when in the same Motion he seeks to have all of their appeals dismissed.

The Protestants respectfully represent that the perfected appeals should not be dismissed , and they await the ruling on Mr. Long's request for a postponement.

Newton A. Williams

Newton A. Williams
Nolan,Plumhoff and Williams
700 Nottingham Centre
502 Washington Ave.
Towson, Md 21204
410 823 7800
Attorneys for the Protestants

Certificate of Service

I HEREBY CERTIFY THAT ON THIS 8th DAY OF OCTOBER, 1998, A COPY OF THE FOREGOING ANSWER was mailed first class, postage prepaid to :

Robert Long
3827 Annadale Road
Baltimore, Md. 21222

William O. Jensen, Jr.
Assistant County Attorney
Office of Law
2nd Floor, Court House
Towson, Md. 21204

Peter J. Zimmerman, Esq.
Peoples Counsel
Basement, Court House
Towson, Maryland 21204

Susan McConville
Natural Resources Planner

State of Maryland
Chesapeake Bay Critical Areas Commission
45 Calvert Street, 2nd Floor
Annapolis, Md. 21401

10/5/98

TO WCH for file

IN THE MATTER OF	*	**BEFORE THE**
LONG PROPERTY	*	**BOARD OF APPEALS OF**
	*	**BALTIMORE COUNTY**
RE: ZONING VARIANCE	*	**Case No. 98-251A**
RE: CRITICAL BAY AREA VARIANCE	*	**Case No. CBA-98-128**

* * * * *

MOTION FOR DISMISSAL

I am respectfully requesting a dismissal, due to the fact that when the Notice of Appeals were filed, the names and addresses of the protestants were not stated (Reference Rule 3A), (See Attachments) and the Notice of Appeals was not signed . Also, the Concerned Citizens of Annadale are not a Civic nor an Improvement Association. Given the limited amount of time for the Board to render a decision, I am also requesting a postponement because my wife will possibly need surgery on one or both hands the last week of October, we are uncertain which day of the week it will be scheduled.

98 OCT -6 PM 2:11
COUNTY BOARD OF APPEALS
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Mr. Robert Long
3827 Annadale Road
Baltimore, MD 21222

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of October , 1998, a copy of the foregoing Motion for Dismissal was mailed first class, postage prepaid, to:

Newton A. Williams, Esq.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204-4528
Attorney for Appellant/Protestant

Susan McConville
Natural Resources Planner
State of Maryland
Chesapeake Bay Critical Area Commission
45 Calvert Street, 2nd Floor
Annapolis, Maryland 21401

William O. Jensen, Assistant County Attorney
Virginia W. Barnhart, County Attorney
Peoples Council for Baltimore County
George G. Perdiakis, Director/DEPRM
Patricia M. Farr/DEPRM
Pat Keller, Director/Planning & Zoning
Arnold Jablon, Director/PDM
Roy List/DEPRM
Lawrence E. Schmidt, Zoning Commissioner

Mr. Robert Long
3827 Annadale Road
Baltimore, MD 21222

RE: ZONING VARIANCE * **Case No. 98-251A**

RE: CRITICAL BAY AREA VARIANCE * **Case No. CBA-98-128**

* * * * *

MOTION FOR DISMISSAL

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Mr. Robert Long
3827 Annadale Road
Baltimore, MD 21222

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of October , 1998, a copy of the foregoing Motion for Dismissal was mailed first class, postage prepaid, to:

Newton A. Williams, Esq.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204-4528
Attorney for Appellant/Protestant

Susan McConville
Natural Resources Planner
State of Maryland
Chesapeake Bay Critical Area Commission
45 Calvert Street, 2nd Floor
Annapolis, Maryland 21401

98 OCT -6 PM 4:40

William O. Jensen, Assistant County Attorney
Virginia W. Barnhart, County Attorney
Peoples Council for Baltimore County
George G. Perdiakis, Director/DEPRM
Patricia M. Farr/DEPRM
Pat Keller, Director/Planning & Zoning
Arnold Jablon, Director/PDM
Roy List/DEPRM
Lawrence E. Schmidt, Zoning Commissioner

Mr. Robert Long
3827 Annadale Road
Baltimore, MD 21222

9/3/98

IN THE MATTER OF	*	BEFORE THE
LONG PROPERTY	*	BOARD OF APPEALS OF
RE: DEPRM DECISION-Grant of variance from Critical Area regulations by DEPRM	*	BALTIMORE COUNTY
	*	Case No. CBA-98-128

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of William O. Jensen, Jr., Assistant County Attorney on behalf of Baltimore County, Maryland in the above-captioned case. Please send all correspondence and notices in the above-captioned case to William O. Jensen, Jr.

WILLIAM O. JENSEN, JR.
Assistant County Attorney
Office of Law
2nd Floor, Court House
Towson, Maryland 21204
(410) 887-4420

ATTORNEY FOR BALTIMORE COUNTY, MARYLAND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2 day of August, 1998, a copy of the foregoing Entry of Appearance was mailed first class, postage prepaid, to:

Mr. and Mrs. Robert Long
3825A Annadale Road
Baltimore, Maryland 21222

Newton A. Williams, Esq.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204-4528
Attorney for Appellant/Protestant

Howard L. Alderman, Jr., Esq.
305 W. Chesapeake Avenue, Suite 113
Towson, Maryland 21204

Susan McConville
Natural Resources Planner
State of Maryland
Chesapeake Bay Critical Area Commission
45 Calvert Street, 2nd Floor
Annapolis, Maryland 21401

RECEIVED
BOARD OF APPEALS
98 SEP -3 AM 11:13
COUNTY

George G. Perdikakis, DEPRM
Patricia M. Farr, DEPRM
Roy List, DEPRM
Pat Keller, Director, Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director, PDM

WILLIAM O. JENSEN, JR.
Assistant County Attorney

C:\OFFICE\WPWIN\WOJ\PLEADS\LONG.APP
O/L File No.: 16,587-08
9/1/98

3/3/98

IN RE: PETITION FOR VARIANCE
S/S Annadale Road, 90' E of
the c/l of Matthai Road
(3825A Annadale Road)
15th Election District
7th Councilmanic District

Robert Long, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 98-251-A
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Robert B. and Rose M. Long. The Petitioners seek relief from Sections 1B02.3.C.1 and 304 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 43 feet in lieu of the required 55 feet, a side yard setback of 10 feet in lieu of the required 25 feet, and to approve the subject property as an undersized lot, pursuant to Section 304 of the B.C.Z.R., and any variances deemed necessary by the Zoning Commissioner. 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 Robert and Rose Long, property owners. Appearing as Protestants in the matter were Norris and Shirley Shanholtz, Ann Chenoweth, Joseph and Patricia Ernstberger, and Mel Woodell, Jr., all of whom own property nearby.

Testimony and evidence presented by the Petitioners revealed that the subject property is a waterfront lot which abuts Tobasco Creek in southeastern Baltimore County. The property consists of .186 acres in area, zoned D.R. 5.5, and is presently vacant. Vehicular access to the site is via Annadale Road, which is located not far from the intersection

ORDER RECEIVED FOR FILING
Date 3/3/98
By

of North Point Boulevard and Old North Point Road. The property is roughly rectangular in shape, with a width of 43 feet along the property adjacent to the street, and tapering to a greater width along the waterfront.

Mr. & Mrs. Long testified that they acquired the subject property approximately 12 years ago, at which time they purchased parts of three different lots as originally established in the plat of Annadale, which was recorded in the Land Records on March 23, 1926. The plat shows that the community was generally laid out with 50-foot wide lots. At that time, there were no zoning regulations in effect in Baltimore County, and thus, no requirement that the lots be of a specific width. The zoning regulations presently in effect require that a D.R. 5.5 lot be at least 55 feet wide.

In any event, Mr. & Mrs. Long apparently acquired a portion of Lot 33, all of Lot 32, and the subject property, identified as Lot 31 on the plat. Lot 32 and a portion of Lot 33 have been developed with a single family dwelling in which the Petitioners presently reside, known as 3827 Annadale Road. The Petitioners wish to subdivide their property and develop Lot 31 with a single family dwelling. As shown on the site plan, the proposed dwelling envelope will be 28 feet by 28 feet in dimension. The house will be set back a distance consistent with other houses in the neighborhood, in terms of the distance from both the water and roadway. It was noted that the house could be shifted closer towards the water to a location where the lot is wider. However, the Petitioners rejected this approach because they believe that construction closer to the water is environmentally improper and would be inconsistent with other houses in the neighborhood.

It is also of note that the west side of the subject property abuts a 15-foot wide paper street, which is shown on the site plan as Tobasco Road. However, it is evident that a permanent road will not be constructed, at least in the near future. The effect of this 15-foot wide strip is significant in that it separates Lot 31 from Lot 30 by a distance of 15 feet.

Additional testimony and evidence offered by the Petitioners is that they wish to live in a smaller house than their present dwelling at 3827 Annadale Road, and thus a smaller house is proposed for the subject property. The Petitioners contemplate selling their existing house and moving into the new dwelling upon completion of its construction. Lastly, they indicated that the Development Review Committee (DRC) had approved a lot line adjustment between Lots 31 and 32 in order to more appropriately configure the Petitioners' holdings.

Testimony in opposition to the Petitioners' request was received from Mr. Woodell and Ms. Shanholtz. The other Protestants who were present supported that testimony. The Protestants object to development of the lot for a variety of reasons. Several of the neighbors believe that their view of the water will be blocked by the proposed dwelling. Other reasons stated included the fear that the neighborhood would be overdeveloped and that public access to the water through the Tobasco Road right-of-way would be blocked. Concerns were also voiced for wildlife in the area, etc.

In addition to the testimony and evidence presented, I visited the neighborhood and walked the site. This inspection was of assistance to me in reaching a decision on this case. My inspection revealed that most of the houses in the area are quite close together. Many of the lots on Annadale Road which abut the water are 50 feet wide. The house styles

Received for filing
Date 3/13/95
By

are quite diverse; however, as previously stated, many of the dwellings are quite close to one another.

The Petitioners seek relief pursuant to both Sections 304 and 307 of the B.C.Z.R. Section 304 allows the property owner to build a single family dwelling on a lot of insufficient width, by right, if three conditions are met. Specifically, the Petitioner must show that he/she owns sufficient adjoining land to satisfy the width requirement, that the subject lot is part of a subdivision duly recorded in the Baltimore County Land Records prior to 1955, and, that no other variance relief is necessary. In this regard, the Petitioners are not eligible for relief pursuant to Section 304, in view of their ownership of adjacent property, and the fact that a variance from side yard setback requirements is also requested. Thus, this portion of the relief requested shall be denied. In the alternative, however, the Petitioners may be eligible for relief pursuant to Section 307. That Section allows the Petitioner to obtain a variance from height, setback, and other area requirements.

In my judgment, a variance pursuant to Section 307 of the B.C.Z.R. is warranted. I specifically find that this property is unique, by virtue of its configuration and location. The existence of the paper street (Tobasco Road) immediately adjacent to the subject property is one factor that supports the finding of uniqueness. Moreover, the taper of the property gives the lot an unusual shape. I also find that the Petitioners would suffer a practical difficulty if relief were denied. In such event, the lot could not be developed and used for a permissible purpose; i.e., the construction of a single family dwelling. Lastly, I find that there will be no detrimental impact if variance relief is granted. In this regard, I was greatly impressed during my site visit that the houses in

the neighborhood are close together and many are on 50-foot wide lots. In my judgment, the proposed house would not be out of character with the surrounding community.

As to the Protestants' concerns, they have no legitimate right to utilize the Petitioners' property for their own purposes. The Petitioners could construct an addition on their house, for example, which would block the Protestants' view. As owners of the property, the Petitioners have the right to utilize their property in any lawful manner which they deem appropriate. There are legitimate environmental concerns, however. In this regard, the property is located in the Chesapeake Bay Critical Area and is environmentally sensitive. For these reasons, I shall require the Petitioners comply with any and all requirements of the Department of Environmental Protection and Resource Management (DEPRM). That is, before any construction can be approved, or a building permit issued, the Petitioners must satisfy the standards set out by DEPRM or obtain a variance from those standards from that agency.

Lastly, I shall also require that the Petitioners submit building elevation drawings for the proposed structure to the Office of Planning for its review and approval to assure consistency with housing types and styles in the neighborhood. The Office of Planning shall only approve plans for a dwelling which will be compatible with others in the neighborhood.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 13th day of March, 1998 that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regula-

ORDER RECEIVED FOR FILING
Date 3/13/98
By

tions (B.C.Z.R.) to permit a lot width of 43 feet in lieu of the required 55 feet, and a side yard setback of 10 feet in lieu of the required 25 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building 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 the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) Compliance with the Zoning Plans Advisory Committee comments submitted by the Department of Environmental Protection and Resource Management (DEPRM), dated January 20, 1998, and the Bureau of Developer's Plans Review division of the Department of Permits and Development Management (DPDM), dated January 26, 1998, copies of which are attached hereto and made a part hereof.

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

IT IS FURTHER ORDERED that the Petition for Variance to approve the subject property as an undersized lot, pursuant to Section 304 of the B.C.Z.R., be and is hereby DENIED.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

Baltimore County
Zoning Commissioner
Office of Planning

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

March 13, 1998

Mr. & Mrs. Robert Long
3827 Annadale Road
Baltimore, Maryland 21222

RE: PETITION FOR VARIANCE
S/S Annadale Road, 90' E of the c/l of Matthai Road
(3825A Annadale Road)
15th Election District - 7th Councilmanic District
Robert Long, et ux - Petitioners
Case No. 98-251-A

Dear Mr. & Mrs. Long:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance has been granted in part and denied in part, 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,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Norris Shanholtz, 3822 Annadale Road, Baltimore, Md. 21222
Mr. & Mrs. Joseph Ernstberger, 3830 Annadale Road, Baltimore, Md.21222
Ms. Ann Chenoweth, 3821 Annadale Road, Baltimore, Md. 21222
Mr. Mel Woodell, Jr., 705 S. 49th Street, Baltimore, Md. 21224

Chesapeake Bay Critical Areas Commission
45 Calvert Street, 2nd Floor, Annapolis, Md. 21401

DEPRM; People's Counsel; Case Files

Printed with Soybean Ink
on Recycled Paper

CBCA

Petition for Variance

CRITICAL AREA

to the Zoning Commissioner of Baltimore County

for the property located at 3825A Annadale Road

which is presently zoned DR 5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1802.3C.1 & 304(BCZR) TO PERMIT A LOT WIDTH OF 43' IN LIEU OF THE REQUIRED 55', A DWELLING WITH A 10' SIDE YARD SETBACK IN LIEU OF THE REQUIRED 25' AND TO APPROVED AN UNDERSIZED LOT PER SECTION 304 WITH ANY VARIANCE DEEMED NECESSARY BY THE ZONING COMMISSIONER.

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

Undersized lot does not meet current zoning regulations. Owner does not own enough property on either side to meet current zoning regulations. We have been paying taxes on this property for 10 yrs. We would like to sell our house & move into a smaller house with a different floor plan next door.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser/Lessee

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address Phone No.

City State Zipcode

Legal Owner(s):

Robert Long
(Type or Print Name)

Signature

Rose Long
(Type or Print Name)

Signature

3827 Annadale Rd. (410) 388-1974
Address Phone No

Baltimore MD 21222
City State Zipcode

Name, Address and phone number of representative to be contacted.

Robert Long
Name

3827 Annadale Rd. (410) 388-1974
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates Next Two Months

ALL OTHER

REVIEWED BY: R.T. DATE 1-7-98

ITEM 251

UNDER RECEIVED Date By

Printed with Soybean Ink on Recycled Paper

98-251-A

ZONING DESCRIPTION

Zoning Description For 3825A Annadale Road, Baltimore, MD 21222

Election District 15, Councilmatic District 7. Beginning at a point which fronts on the South Side of Annadale Rd. which is 40 ft. wide at a distance of 90 ft. East of the centerline of Matthai Rd. which is a 30 ft. right of way wide. Being lot #31 in the subdivision of Plat of Annadale as recorded in Baltimore County, Plat Book 8, Folio 34 containing 8,130 sq. ft. also known as 3825A Annadale Road and located in the 15th Election District and the 7th Councilmatic District.

ITEM 251

98-251-A

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 in Towson, Maryland on the property identified herein as follows:

Case: #98-251-A
3825A Annadale Road
(21222)
S/S Annadale Road, 90' E of centerline Matthai Road
15th Election District
7th Councilmanic District
Legal Owner(s):
Robert Long &
Rose Long

Variance: to permit a lot width of 43 feet in lieu of the required 55 feet, a dwelling with a 10-foot side yard setback in lieu of the required 25 feet and to approve an undersized lot with any variance deemed necessary by the zoning commissioner.

Hearing: Friday, February 20, 1998 at 10:00 a.m., in Room 407, County Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call (410) 887-3353.
(2) For information concerning the File and/or Hearing, Please Call (410) 887-3391.

2/026 Feb. 5 C204792

CERTIFICATE OF PUBLICATION

TOWSON, MD., 2-5, 1998

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 2-5, 1998.

THE JEFFERSONIAN,

A. Henrikson

LEGAL AD. - TOWSON

CERTIFICATE OF PUBLICATION

Office of

THE AVENUE

NEWSPAPER GROUP

442 Eastern Blvd
Baltimore, MD 21221

March 5, 1998

THIS IS TO CERTIFY, that the annexed advertisement of

Baltimore County Department of Enviromental Protection and Resource Management. Notice of variance for 3825A Annandale Road. Legal owner Mr. & Mrs. Robert Long.

1 x 3.0 = 3.0 inchès @ $12.45 or $37.35

was inserted in THE AVENUE and THE PERRY HALL/PARKVILLE AVENUE a weekly newspaper published in Baltimore County, Maryland once a week for 1 consecutive week(s) before the 28th day of February 1998; that is to say the same was inserted in the issue of February 26, 1998.

The Avenue, Inc.

Kenneth C. Coldwell

Publisher

BALTIMORE COUNTY
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
NOTICE OF GRANTING OF VARIANCE
ADDRESS: 3825A Annandale Road
LEGAL OWNER: Mr. & Mrs. Robert Long

The Baltimore County Department of Environmental Protection and Resource Management, pursuant to Section 26-445(c) of the Baltimore County Code, hereby gives notice that a variance from Section 26-449 of the Code, Chesapeake Bay Critical Area Requirements, will be granted for the purpose of constructing a single-family dwelling within the 100 foot buffer to Bear Creek on the above referenced property. Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by this decision, may appeal to the Baltimore County Board of Appeals within forty-five (45) days from the date of this notice. Appeals must be made in writing, stating the reason for appeal, and must be mailed to Environmental Impact Review, Baltimore County Department of Environmental Protection and Resource Management, 401 Bosley Avenue, Suite 416, Towson, Maryland 21204. All appeals must be accompanied by a check for $75.00 payable to Baltimore County Government.

CERTIFICATE OF POSTING

RE: Case No. 98-251-A
Petitioner/Developer:
(Robert Long)
Date of Hearing/Closing:
(Feb. 20, 1998)

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attention : Ms. Gwendolyn Stephens

Ladies and Gentleman:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 3825A Annadale Road Baltimore, Maryland 21222

The sign(s) were posted on Feb. 5, 1998
(Month, Day, Year)

Sincerely,

2/5/98
(Signature of Sign Poster & Date)

Thomas P. Ogle, Sr.

325 Nicholson Road

Baltimore, Maryland 21221

(410)-687-8405
(Telephone Number)

98-251-A

CERTIFICATE OF POSTING

RE: Case No.: 98-251-A

Petitioner /Developer:

ROBERT LONG

Date of Hearing/Closing:

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 3825A ANNADALE RD.

The sign(s) were posted on 5/6/98
(Month, Day, Year)

Sincerely,

Gary C Freund 5/6/98
Signature of Sign Poster and Date

GARY C. FREUND
Printed Name

Address

City, State, Zip Code

Telephone Number

BALTIMORE COUNTY, MAI
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

AND

No. 04450

DATE 1-7-98

ACCOUNT R001-6150

Pet. Variance

AMOUNT $ 50.00

RECEIVED FROM: Robert Long

FOR: VARIANCE & UNDERSIZED LOT
3925 A Annabelle Rd
98-251-A

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
1/07/1998 1/07/1998 09:58:16
REG: WS03 CASHIER UNIT 03 DAWN R
5 MISCELLANEOUS CASH RECEIPT
Receipt # 051073
CK NO. 004861
50.00 CHECK
Baltimore County, Maryland

98-251-A

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 107

DATE 4/7/98

ACCOUNT R001-6150

AMOUNT $ 210.00

RECEIVED FROM: Melvin C. Woodell, Jr.

FOR: Appeal 98-251-A

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
4/07/1998 4/07/1998 14:56:26
REG: WS04 CASHIER UNIT 03 DAWN R
5 MISCELLANEOUS CASH RECEIPT
Receipt # 052262
CK NO. 051072
210.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 042078

DATE April 7, 1998 ACCOUNT _____

AMOUNT $ 75.00

RECEIVED FROM: Melvin C. Woodell Jr.

FOR: Critical Area Variance

3825A Annadale Road.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

MELVIN C. WOODELL JR.
705 S. 49TH STREET
BALTIMORE, MD 21224

494

65-40/521
BRANCH 61

4-7 19 96

PAY TO THE ORDER OF Balto. County Government $ 45.00

Forty-five ——— XX/100 DOLLARS

First National Bank of Maryland
SALISBURY, MARYLAND ACCOUNTING CENTER 1078

FOR Fee Annual Appraisal Melvin C. Woodell

⑆052100408⑆ 112601741 0494

©HARLAND 1992

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Aven
Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring 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 (responsibility of which, lies with the petitioner/applicant) 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 advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

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.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 251

Petitioner: ROBERT LONG

Location: 3825A Annadale Rd, BALTO. MD. 2122

PLEASE FORWARD ADVERTISING BILL TO:

NAME: ROBERT LONG

ADDRESS: 3827 Annadale Rd. Balto MD 2122

PHONE NUMBER: 410 - 388 - 1974

AJ:ggs

(Revised 09/24/96)

98-251-A

Printed with Soybean Ink

Exhibit B

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than _____.

Format for Sign Printing, Black Letters on White Background:

ITEM 251

ZONING NOTICE

Case No.: 98-251A

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: _____

DATE AND TIME: _____

REQUEST: VARIANCE TO PERMIT A LOT LOT WIDTH OF 43' IN LIEU OF THE REQUIRED 55'; A DWELLING WITH A 10' SIDE YARD SETBACK IN LIEU OF THE REQUIRED 25' AND TO APPROVED AN UNDERSIZED LOT PER SECTION 304 WITH ANY OTHER VARIANCES DEEMED NECESSARY BY THE ZONING COMMISSIONER.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

9/96
post.4.doc

TO: PATUXENT PUBLISHING COMPANY
February 5, 1998 Issue - Jeffersonian

Please forward billing to:
Robert Long 410-388-1974
3827 Annadale Road
Baltimore, MD 21222

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 in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-251-A
3825A Annadale Road (21222)
S/S Annadale Road, 90' E of centerline Matthai Road
15th Election District - 7th Councilmanic District
Legal Owner: Robert Long & Rose Long

Variance to permit a lot width of 43 feet in lieu of the required 55 feet, a dwelling with a 10-foot side yard setback in lieu of the required 25 feet and to approve an undersized lot with any variance deemed necessary by the zoning commissioner.

HEARING: Friday, February 20, 1998 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 410-887-3391.

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

January 15, 1998

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 in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-251-A
3825A Annadale Road (21222)
S/S Annadale Road, 90' E of centerline Matthai Road
15th Election District - 7th Councilmanic District
Legal Owner: Robert Long & Rose Long

Variance to permit a lot width of 43 feet in lieu of the required 55 feet, a dwelling with a 10-foot side yard setback in lieu of the required 25 feet and to approve an undersized lot with any variance deemed necessary by the zoning commissioner.

HEARING: Friday, February 20, 1998 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

c: Robert & Rose Long

NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY FEBRUARY 5, 1998.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3391.

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on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

July 7, 1998

NOTICE OF ASSIGNMENT

CASE #: 98-251-A

IN THE MATTER OF: ROBERT LONG, ET UX -Petitioners
3825A Annadale Road 15th E; 7th C

Petition for Variance GRANTED in part; DENIED in part by Z.C.

ASSIGNED FOR: TUESDAY, AUGUST 25, 1998 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

cc: Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)

Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Petitioners : Mr. and Mrs. Robert Long

Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

July 30, 1998

AMENDED NOTICE OF ASSIGNMENT

CASE #: 98-251-A **IN THE MATTER OF:** ROBERT LONG, ET UX -Petitioners
3825A Annadale Road 15th E; 7th C

Petition for Variance GRANTED in part; DENIED in part by Z.C.

AND

CASE #: CBA-98-128 **IN THE MATTER OF:** LONG PROPERTY /DEPRM Decision
3825A Annadale Road 15th E; 7th C

Grant of variance from Critical Area regulations by DEPRM

NOTE: This Notice has been amended to include Case No. CBA-98-128; no change in date or time of hearing.

ASSIGNED FOR: **TUESDAY, AUGUST 25, 1998 at 10:00 a.m.**

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

PP'd 8/19/98 Long Due addl. by appellant. reason request. Ltr dspsn to parties 8/19/98

Kathleen C. Bianco
Administrator

cc: Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)

Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Petitioners : Mr. and Mrs. Robert Long
Newton A. Williams
Howard L. Alderman, Jr.
Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

August 19, 1998

NOTICE OF POSTPONEMENT

CASE #: 98-251-A — **IN THE MATTER OF:** ROBERT LONG, ET UX -Petitioners
3825A Annadale Road 15th E; 7th C

Petition for Variance GRANTED in part; DENIED in part by Z.C.

AND

CASE #: CBA-98-128 — **IN THE MATTER OF:** LONG PROPERTY /DEPRM Decision
3825A Annadale Road 15th E; 7th C

Grant of variance from Critical Area regulations by DEPRM

which was scheduled for hearing on August 25, 1998 has been **POSTPONED** at the request of Petitioner /Property Owner, and without objection by counsel for Appellant /Protestant; to be reassigned a new date upon request of either party.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Protestant: Newton A. Williams, Esquire
Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)

Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Petitioners : Mr. and Mrs. Robert Long

Howard L. Alderman, Jr.
Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney
William O. Jensen, Jr., Assistant County Attorney

10/29/98

Cancelled to @ 11 a.m.

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County Board of Appeals of Baltimore County

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

ppd to 11/17/98 @ 11:00 am

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

August 31, 1998

NOTICE OF REASSIGNMENT

CASE #: 98-251-A — **IN THE MATTER OF:** ROBERT LONG, ET UX -Petitioners
3825A Annadale Road 15th E; 7th C

Petition for Variance GRANTED in part; DENIED in part by Z.C.

AND

CASE #: CBA-98-128 — **IN THE MATTER OF:** LONG PROPERTY /DEPRM Decision
3825A Annadale Road 15th E; 7th C

Grant of variance from Critical Area regulations by DEPRM

which had been postponed from the previously scheduled date of 8/25/98 has been reassigned a date for hearing; and has been

REASSIGNED FOR: **THURSDAY, OCTOBER 29, 1998 @ 11:00 a.m.**

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Protestant: Newton A. Williams, Esquire
Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)

Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Petitioners : Mr. and Mrs. Robert Long

Howard L. Alderman, Jr.
Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
William O. Jensen, Jr., Assistant County Attorney
Virginia W. Barnhart, County Attorney

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NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MD 21285-6754

William O Jensen Jr
Room 202, Old Courthouse
400 Washington Avenue
Towson MD 21204

Assignment Date: 04/02/98

Case Title: Baltimore County Md VS Godlewski Et Al
Case No: 03-C-91-113747 CD

The above case has been assigned to the CIVIL STANDARD TRACK. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1.	Motions to Dismiss under MD. Rule 2-322(b) are due by.....	04/17/98
2.	*Plaintiff's Expert Reports or* Md.Rule2-402(e)(1) Disclosures...	07/01/98
3.	Defendant's Expert Reports or Md.Rule2-402(e)(1)Disclosures....	07/31/98
4.	Joinder of Additional Parties Deadline is.....	07/31/98
	Dismissal Notice for unserved defendants (Md.Rule2-507(B))....	07/31/98
	Discovery must by completed by.....	09/14/98
7.	All Motions (excluding Motions in Limine) are due by.....	09/29/98
8.	ADR Deadline Date is.....	09/29/98
9.	Settlement Conference is.....	
10.	Deadline/Exchange list of all exhib. and copies of paper exhib.	11/02/98
11.	Deadline for Motions in Limine incl. objections to exhibits is.	11/12/98
	(Note: Documents will be deemed authentic if objection is not filed)	
12.	TRIAL DATE is.....	11/17/98
	Civil Jury Trial; Start Time: 09:30AM; To Be Assigned; 1-2 DAYS MERITS NOTE; AGREED DATE.	

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponements must be submitted in writing with a copy to all counsel/parties involved. All requests for postponements of cases filed after October 1, 1994 must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue October 20, 1998

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 98-251-A

IN THE MATTER OF: ROBERT LONG, ET UX -Petitioners
3825A Annadale Road 15th E; 7th C

Petition for Variance GRANTED in part; DENIED in part by Z.C.

AND

CASE #: CBA-98-128

IN THE MATTER OF: LONG PROPERTY /DEPRM Decision
3825A Annadale Road 15th E; 7th C

Grant of variance from Critical Area regulations by DEPRM

which was reassigned for hearing to 10/29/98 has been **POSTPONED** at the request of Petitioners; and has been

REASSIGNED FOR: **TUESDAY, NOVEMBER 17, 1998 @ 10:00 a.m.**

PLEASE NOTE: ORAL ARGUMENT ON PETITIONERS' MOTION TO DISMISS WILL BE RECEIVED AT THE START OF HEARING ON 11/17/98; ALL PARTIES SHALL BE READY TO PROCEED ON THE MERITS ON THAT DAY SHOULD THE MOTION BE DENIED OR NOT IMMEDIATELY RULED UPON.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Protestant: Newton A. Williams, Esquire
Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)

Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Petitioners : Mr. and Mrs. Robert Long

Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
William O. Jensen, Jr., Assistant County Attorney
Virginia W. Barnhart, County Attorney

pp'd to 1/13/99 @ req. of h.o. - given 11/17/98

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County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue November 2, 1998

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 98-251-A **IN THE MATTER OF:** ROBERT LONG, ET UX -Petitioners
3825A Annadale Road 15th E; 7th C
Petition for Variance GRANTED in part; DENIED in part by Z.C.

AND

CASE #: CBA-98-128 **IN THE MATTER OF:** LONG PROPERTY /DEPRM Decision
3825A Annadale Road 15th E; 7th C
Grant of variance from Critical Area regulations by DEPRM

which was postponed to 11/17/98 at request of Petitioner is **POSTPONED** at the request of Baltimore County Office of Law due to jury trial conflict; and has been

REASSIGNED FOR: **WEDNESDAY, JANUARY 13, 1999 @ 10:00 a.m.**

PLEASE NOTE: ORAL ARGUMENT ON PETITIONERS' MOTION TO DISMISS WILL BE RECEIVED AT THE START OF HEARING ON 1/13/99; ALL PARTIES SHALL BE READY TO PROCEED ON THE MERITS ON THAT DAY SHOULD THE MOTION BE DENIED OR NOT IMMEDIATELY RULED UPON.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Protestant: Newton A. Williams, Esquire
Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)

Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Petitioners : Mr. and Mrs. Robert Long

Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
William O. Jensen, Jr., Assistant County Attorney
Virginia W. Barnhart, County Attorney

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County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

January 20, 1999

NOTICE OF DELIBERATION:

IN THE MATTER OF:
ROBERT LONG, ET UX -Petitioners
Case No. 98-251-A and Case No. CBA-98-128

The subject matter, having been heard by the Board of Appeals on January 13, 1999, has been assigned the following date and time for public deliberation:

DATE AND TIME : Thursday, March 18, 1999 at 9:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

NOTE: Closing Memos are due from Counsel on Monday, March 1, 1999 (Original and three (3) copies).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Protestant: Newton A. Williams, Esquire
Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)
Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Counsel for Petitioners : Wendy A. Zerwitz, Esquire
Petitioners : Mr. and Mrs. Robert Long

Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
Virginia W. Barnhart, County Attorney

Copies to: L.B.W.

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

February 12, 1998

Mr. and Mrs. Robert Long
3827 Annadale Road
Baltimore, MD 21222

RE: Item No.: 251
Case No.: 98-251-A
Petitioner: Robert Long, et ux

Dear Mr. and Mrs. Long:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on January 7, 1998.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (410-887-3391).

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)

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B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Management

Date: January 26, 1998

FROM: Robert W. Bowling, Chief
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for January 26, 1998
Item No. 251

The Bureau of Developer's Plans Review has reviewed the subject zoning item. The property to be developed is located adjacent to tidewater. The Developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.

In conformance with Federal Flood Insurance requirements, the first floor or basement floor must be at least 1 foot over the flood plain elevation in all construction. The minimum flood protection elevation for this site is 10.4 feet. The first floor elevation must be greater than 10.4 feet or a waiver is required.

RWB:HJO:jrb

cc: File

ORDER RECEIVED FOR FILING
Date 3/13/98
By [signature]

ZONE0126.251

Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary

Parker F. Williams
Administrator

Ms. Roslyn Eubanks
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County 1/16/98
Item No. 251 RT

Dear Ms. Eubanks:

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 affected by any State Highway Administration projects.

Please contact Larry Gredlein at 410-545-5606 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Cindy M. Wolf

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

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
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

January 28, 1998

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

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF January 20, 1998

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.

8. The Fire Marshal's Office has no comments at this time.
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

249, 250, 251, 252, 254, 255, 256, and 258

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

RECEIVED
JAN 30 1998
PDM

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2/20
Ko

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Dept. of Permits & Development Management

DATE: January 29, 1998

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: Zoning Advisory Petitions

The Planning Office has no comments on the following petition (s):

Item No. 251 and 264

If there should be any questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 410-887-3495.

Prepared by: Jeffrey W. Long

Division Chief: Carl L. Kerns

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\NOCOM\251.DOC

CBA 98-128

DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND RESOURCE MANAGEMENT
INTEROFFICE CORRESPONDENCE

TO: Kathleen Bianco
Administrator
Baltimore County Board of Appeals

FROM: Patricia M. Farr PMF
Program Supervisor
Environmental Impact Review

DATE: July 17, 1998

SUBJECT: Robert Long Property
3825A Annadale Road

Mr. Melvin C. Woodell, Jr., an aggrieved party has filed an appeal in accordance with Section 26-445(e) of the Baltimore County Code from the decision of the Department of Environmental Protection and Resource Management to approved a variance from provisions of the Chesapeake Bay Critical Area regulations on the above referenced property. At this time I am forwarding a copy of their appeal to you, along with a receipt for their $75.00 check to cover the cost of the appeal. The appeal was received within the allotted 30 day appeal period.

If you have any questions, I can be reached at 410-887-3980.

PMF/KDK

Attachments

c: Ms. Susan McConville, CBCA
Office of Law

kdk#3/long.doc

TRUE COPY TEST

DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION & RESOURCE MANAGEMENT

98 JUL 20 PM 5:20

COUNTY BOARD OF APPEALS
RECEIVED

DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND RESOURCE MANAGEMENT
INTEROFFICE CORRESPONDENCE

TO: Kathleen Bianco, Administrator
Baltimore County Board of Appeals

DATE: August 2, 1999

FROM: Patricia M. Farr, Program Supervisor
Environmental Impact Review

SUBJECT: Robert Long Property
3825A Annadale Road
CBA-98-128

The Director of this Department has signed the copy of the cover sheet contained within the submitted packet, certifying that the packet originated from this office. The entire packet is being returned to you, per your request.

If you have any questions, please contact me at 410-887-3980.

pmfdoc7\longcba.doc

RECEIVED
BALTIMORE COUNTY BOARD OF APPEALS
AUG -5 PM 3:28

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

DATE: January 20, 1998

To: Arnold L. Jablon

From: Bruce Seeley BS/gp

Subject: Zoning Item #251

Long Property (Robert), 3825 A Annadale Road

Zoning Advisory Committee Meeting of December 29, 1997

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

_____ The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

_____ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code.)

_____ Development of this property must comply with the Forest Conservation Regulations (Sections 14-401 through 14-422 of the Baltimore County Code), if the property is being subdivided according to the Development Regulations.

__X__ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

KK:GP:sp

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: L. Stahl
L. Barranger
M. Worrall

DATE: March 2, 1999

FROM: Kathi

SUBJECT: Case No. 98-251-A and CBA-98-128 /Robert Long, et ux

The subject matter has been scheduled for public deliberation on Thursday, March 18, 1999 at 9:00 a.m. A copy of that Notice of Deliberation was mailed to you on January 20, 1999. Attached are the following documents filed by Counsel with regard to this case:

1. Closing Memoranda filed by Wendy A. Zerwitz, Esquire, on behalf of Petitioners (Robert Long, et ux);

2. Hearing Memorandum (in the form of a letter with attachments) filed by Newton A. Williams, Esquire, on behalf of Appellant /Protestant (Melvin Woodell, Jr.); and

3. Memorandum of Baltimore County, Maryland, filed by Nancy C. West, Assistant County Attorney, as to the issues raised in CBA-98-128 involving Chesapeake Bay Critical Area administrative variance.

Should you have any questions regarding the above, or need any additional information, please call me.

kathi

Attachments

2/20

RE: PETITION FOR VARIANCE 3825A Annadale Road, S/S Annadale Rd, 90' E of c/l Matthai Rd 15th Election District, 7th Councilmanic	*	BEFORE THE ZONING COMMISSIONER
	*	OF BALTIMORE COUNTY
Robert and Rose Long Petitioners	*	CASE NO. 98-251-A

* * * * * * * * * * * * *

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

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 1998, a copy of the foregoing Entry of Appearance was mailed to Robert and Rose Long, 3827 Annadale Road, Baltimore, MD 21222, Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

B A L T I M O R E C O U N T Y, M A R Y L A N D

Inter-Office Correspondence

TO: George Perdikakis, Director **DATE:** July 19, 1999
Department of Environmental Protection
and Resource Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Certified Copies - Robert Long Property /CBA-98-128
Petition for Judicial Review filed in Circuit Court

Please certify the attached packet (cover sheet only!) which originated from your office, and return same to this office as soon as possible. The Board will, in turn, forward the certified sets of documents to the Circuit Court along with the Board's file.

Thank you for your immediate attention to this matter.

Attachments

/cer

RECEIVED
JUL 2 6 99
DEPRM
ADMINISTRATION

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Permits & Development Management

DATE: April 19, 2000

FROM: Charlotte E. Radcliffe
County Board of Appeals

Picked up
By John Almond

SUBJECT: Closed Files:

Case No. 97-556-XA /AT&T Wireless Services
98-251-X /Robert Long, et ux

Since the above captioned cases have been completed in the upper courts, we are hereby closing and returning herewith, our case files along with the original record which was returned to the Board's office by John Almond, Records Manager /CCt.

Attachments: (File Nos. 97-556-XA w/ large exhibit & 98-251-X)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: George G. Perdikakis /DEPRM **DATE:** April 27, 2000
Department of Environmental
Protection and Resource Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: CBA-98-128 /Long Property (also zoning case 98-251-A)
3825A Annadale Road, Balto., MD 21222
(Appeal filed in the Court of Special Appeals 4/14/00)

The record in the above captioned matter was previously returned to the Board initiating our closing this case by memo of April 19, 2000.

We have been advised by the property owner that a last minute appeal was filed in the Court of Special Appeals. The original record will be forwarded once again to the Circuit Court for Baltimore County, and the Board of Appeals' case file will remain open until the case is completed in the upper courts.

c: Nancy West

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: L. Stahl
L. Barranger
M. Worrall

DATE: March 2, 1999

FROM: Kathi

SUBJECT: Case No. 98-251-A and CBA-98-128 /Robert Long, et ux

The subject matter has been scheduled for public deliberation on Thursday, March 18, 1999 at 9:00 a.m. A copy of that Notice of Deliberation was mailed to you on January 20, 1999. Attached are the following documents filed by Counsel with regard to this case:

1. Closing Memoranda filed by Wendy A. Zerwitz, Esquire, on behalf of Petitioners (Robert Long, et ux);

2. Hearing Memorandum (in the form of a letter with attachments) filed by Newton A. Williams, Esquire, on behalf of Appellant /Protestant (Melvin Woodell, Jr.); and

3. Memorandum of Baltimore County, Maryland, filed by Nancy C. West, Assistant County Attorney, as to the issues raised in CBA-98-128 involving Chesapeake Bay Critical Area administrative variance.

Should you have any questions regarding the above, or need any additional information, please call me.

kathi

Attachments

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

April 9, 1998

Mr. and Mrs. Robert Long
3827 Annadale Road
Baltimore, MD 21222

RE: Petition for Zoning Variance
Case No.: 98-251-A
3825A Annadale Road
15c7
Robert Long, et ux - Petitioners

Dear Mr. and Mrs. Long:

Please be advised that an appeal of the above referenced case was filed in this office on April 7, 1998 by the concerned property owners of Annadale, c/o Melvin C. Woodell, Jr. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call the Board of Appeals at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:rye

c: Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth
Chesapeake Bay Critical Areas Commission
People's Counsel

Printed with Soybean Ink
on Recycled Paper

APPEAL

Petition for Zoning Variance
S/S Annadale Road, 90' E of centerline Matthai Road
(3825A Annadale Road)
15th Election District - 7th Councilmanic District
Robert Long, et ux - Petitioners
Case Number: 98-251-A

98 APR 15 PM 6:24
RECEIVED
COUNTY BOARD OF APPEALS

✓ Petition for Variance

✓ Description of Property

✓ Certificate of Posting

✓ Certificate of Publication

✓ Entry of Appearance of People's Counsel

✓ Zoning Advisory Committee Comments

✓ Petitioners and Protestants Sign-In Sheets

✓ Petitioners' Exhibit: 1 - Plat to Accompany Petition for Zoning Variance

✓ Undersized Lot Form with Attachment (Approved on 2/6/98 by Ervin McDaniel, Office of Planning and Community Conservation

✓ Letter from George G. Perdikakis, Director of the Department of Environmental Protection and Resource Management, to Mr. and Mrs. Robert Long, dated August 13, 1997

✓ Twenty-seven Photographs not Marked as Exhibits

✓ Zoning Commissioner's Order dated March 13, 1998 (Granted in Part, Denied in Part)

✓ Notice of Appeal received on April 7, 1998 from the concerned property owners of Annadale, c/o Melvin C. Woodell, Jr. (No signatures on appeal letter.)

c: Mr. and Mrs. Robert Long, 3827 Annadale Road, Baltimore, MD 21222 ✓ E
Mr. and Mrs. Norris Shanholtz, 3822 Annadale Road, Baltimore, MD 21222
Mr. and Mrs. Joseph Ernstberger, 3830 Annadale Road, Baltimore, MD 21222
Ms. Ann Chenoweth, 3821 Annadale Road, Baltimore, MD 21222
✱ Mr. Mel Woodell, Jr., 705 S. 49th Street, Baltimore, MD 21224
Chesapeake Bay Critical Areas Commission, 45 Calvert Street, 2nd Floor, ~~Baltimore~~ Annapolis, Maryland 21401
DEPRM
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, Chtd.
Ste. 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204-4528

ENTERED APPEARANCE 8-25-98
for Melvin Woodell, et al
Appellants / PROTESTANTS

Counsel for Property Owner (Long):
Wendy A. Zerwitz, Esquire
38 S. Dundalk Avenue
Dundalk, MD 21222

Case No. 98-251-A — VAR -To permit lot width of 43' in lieu of required 55; side yard setback of 10' in lieu of 25'; approval of undersized lot.

3/13/98 -Z.C.'s Order in which Petition for Variance was GRANTED in part and DENIED in part.

and CBA-98-128 — DEPRM grant of critical areas variance -Long Property

---

4/15/98 -Letter from Robert and Rose Long -- requesting hearing as soon as possible due to financial constraints and arranged financing for the sale of present home and construction of new home on property which is the subject of this appeal. (Variance granted by ZC; appealed by neighboring property owner; file not received by Board to date.)

5/12/98 - Notice of Assignment for hearing scheduled for Tuesday, August 25, 1998 at 10:00 a.m. sent to following:

Melvin C. Woodell, Jr.
(Concerned Property Owners
of Annadale)
Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth
Mr. and Mrs. Robert Long
Newton A. Williams
Howard L. Alderman, Jr.
Susan McConville
Chesapeake Bay Critical Areas Commission
People's Counsel for Baltimore County
Patricia M. Farr /DEPRM
George G. Perdikakis, Director /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

7/30/98 -Amended Notice of Assignment sent to parties; no change in date or time of hearing; Amended to include Case No. CBA-98-128 /Long Property (appeal from granting of DEPRM critical area variance) only. Amended notice sent to all parties listed above.

8/13/98 -FAX copy of letter from N. Williams to H. Alderman re suggested continuance for possible meeting and settlement regarding above matter scheduled for 8/25/98.

8/19/98 -FAX letter from Robert Long; requesting continuance of hearing scheduled for 8/25/98; time to meet with counsel (appearance to be entered) and unavailability of counsel on set date, as well as wife's injuries.
- FAX letter from N. Williams - entering appearance on behalf of Mr. Woodell, Appellant, and indicating no objection to the granting of this requested continuance.
-- Notice of PP sent to parties (and by FAX to Messrs. Alderman, Long, Williams, and Woodell). To be reset upon request.

8/26/98 -Letter dated 8/25/98 by FAX from N. Williams; entering appearance on behalf of Mr. Woodell and others noted in hearing assignment as protestants; also requesting that matter be scheduled for hearing in the course of the Board's docket.

8/31/98 -Notice of Reassignment sent to parties; matter reassigned for hearing on Thursday, October 29, 1998 at 11:00 a.m.

See page 2 for continuation

9/01/98 -FAX letter from H. Alderman (hard copy received 9/02/98); as of the writing of the instant letter, Mr. Alderman nor any member of Levin & Gann has entered appearance in either variance case or DEPRM case re Long property. Will advise per Rule 6.d should his firm be retained as counsel in these matters.

10/06/98 -Motion for Dismissal filed by Robert Long, Petitioner. Also requests postponement from 10/29/98 hearing (wife scheduled for hand surgery). Awaiting response from N. Williams.

10/09/98 -Answer to Motion for Dismissal and for Postponement filed by N. Williams, Esquire, on behalf of M/M Woodell, M/M Shanholtz, M/M Erstberger, and Ms. Chenoweth - and opposing request for postponement.

10/19/98 -T/C to both Petitioners and Counsel for Protestants; postponement will be granted and reassigned to Tuesday, November 17, 1998 at 10:00. Argument on Motion to Dismiss to be received first; parties to be ready to proceed on merits 11/17/98 should the Board deny the Motion or hold it sub curia and decide all issues at the conclusion of the case on the merits. No further postponements will be granted.

10/20/98 -Notice of PP and Reassignment to parties; rescheduled to Tuesday, November 17, 1998 at 10:00 a.m. As indicated above, argument on Motion first; then proceed on merits if necessary. Noted on Notice that **no further postponements will be granted** in this matter.

10/30/98 -Letter from B. Jensen; requesting postponement from 11/17/98 hearing date; he has a jury trial on that date.

11/02/98 -T/C to N. Williams, Counsel for Protestants, and R. Long regarding Mr. Jensen's request; postponement to be granted and reassigned to Wednesday, January 13, 1999 at 10:00 a.m.; notice sent this date. (FAX copy to Mr. Williams and to Mr. Long).

11/04/98 -Appellants' Motion to Quash Subpoenas filed by Newton A. Williams, Esquire on behalf of Mr. and Mrs. Shanholtz and Mrs. Chenoweth.

11/04/98 -Letter from Rev. and Mrs. Shanholtz regarding subpoenas and lack of possession /location of documents requested.

1/13/99 -Hearing concluded in both DEPRM appeal and zoning variance appeal; Memos due from counsel Monday, 3/01/99; deliberation to be scheduled shortly thereafter. Notice of Deliberation to be sent to parties when scheduled. (L.B.W.) Wendy A. Zerwitz, Esquire, entered her appearance on behalf of Robert Long, Petitioner /property owner.

1/20/99 -Notice of Deliberation sent to parties; scheduled for Thursday, March 18, 1999 at 9:00 a.m. Copy to L.B.W.

3/01/99 Memos filed: Zerwitz 3/01/99
Williams 3/01/99
West 3/01/99

3/02/99 -Copies of Memos to L.B.W.

3/18/99 -Deliberation concluded; Petition for Variance GRANTED with restrictions as to compliance with DEPRM requirements; Critical Area Variance GRANTED with conditions imposed by DEPRM; Motion to Quash granted; Motion to Dismiss DENIED. Order to be issued; appellate period to run from date of written Order.

Long Property 98-251-A /ZC

CBA-98-128 /DEPRM

Civil Action No. 3-C-99-006263

January 7, 1998 Petition for Variance filed by Robert and Rose Long, to permit a lot width of 43' in lieu of the required 55', a sd yd setback of 10' ilo 25', and to approve the subject property as an undersized lot.

February 20 Hearing held on Petition for Variance by the Zoning Commissioner.

March 13 Order issued by the ZC in which the Petition for Variance was GRANTED w/ restrctns. in pt & DENIED in pt.

April 7 Notice of Appeal filed by Melvin C. Woodell, Jr., et al

CBA-98-128

August 13, 1997 Letter from George G. Perdikakis, Director /DEPRM, to Mr and Mrs. Robert Long; request for admin. variance to construct a single-family dwelling on a vacant lot in the 100 foot buffer to Bear Creek is GRANTED.

April 7, 1998 Notice of Appeal filed by Melvin C. Woodell, Jr., et al (concerned property owners of Annadale), Appellants /Protestants.

98-251-A and CBA-98-128

August 27, 1998 Entry of Appearance filed by Newton A. Williams, Esquire, as counsel for Mr. Melvin Woodell, et al.

October 6 Motion for Dismissal filed by Robert Long.

October 9 Answer to Motion for Dismissal and for Postponement filed by Newton A. Williams, Esquire, on behalf of Melvin Woodell, et al.

October 26 Subpoenas served on Mr. & Mrs. Norris Shanholtz and Mrs. Annabelle Chenowith (request of Robert Long.

November 4 Appellants' Motion to Quash Subpoenas filed by Newton A. Williams, Esquire, on behalf of Mr. & Mrs. Shanholtz, and Mrs. Chenowith.

January 13, 1999 Hearing held by the Board of Appeals.

March 1 Closing Memoranda filed by Wendy A. Zerwitz, Esquire, on behalf of Robert & Rose Long.

March 1 Hearing Memorandum (letter) filed by Newton A. Williams, Esquire, on behalf of Melvin C. Woodell, Jr.

March 1 Memorandum of Baltimore County, MD filed by Virginia W. Barnhart, C.A. and Nancy C. West, Asst. Co. Atty.

March 18 Deliberation conducted by the Board of Appeals.

May 25 Opinion and Order issued by the Board; Appellant/Protestant's Motion to Quash Subpoenas is GRANTED: Petitioners' Motion to Dismiss is DENIED; decision of DEPRM granting request for admin. variance is AFFIRMED; Petitioners' requested admin. variance is GRANTED with conditions; and Petition for Variance is GRANTED with restrictions.

June 23 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Newton A. Williams, Esquire, on behalf of Melvin C. Woodell, Jr.

June 23 Copy of Petition for Judicial Review rec'd by the Board of Appeals from the Circuit Court.

June 30 Certificate of Notice sent to interested parties.

August 23, 1999 Transcript of testimony and Record of Proceedings filed in the Circuit Court for Baltimore County.

March 16, 2000 Opinion of the CCt issued; decision of the CBA is AFFIRMED (Judge Byrnes).

April 14, 2000 Notice of Appeal filed in the CCt by Melvin Woodell, Jr. (Protestant).

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

10/24/00

Case Number: 03-C-99-006263 AE
Date Filed: 06/24/1999
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter Of: Robert Long

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C99006263V01
Administrative Agency	CBA-98-128

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
RES	001	Long, Robert		CT DO 03/16/00	06/24/99
		Attorney: 0800233 Zerwitz, Wendy A Zerwitz & Zerwitz 38 South Dundalk Avenue Dundalk, MD 21222 (410)288-9303		07/09/99	
PET	001	Woodell, Melvin C, Jr		CT DO 03/16/00	06/24/99
		Mail: 3825 Annandale Road Baltimore, MD 21221	06/24/99		
		Attorney: 0017486 Williams, Newton A Nolan, Plumhoff & Williams, Chartered 502 Washington Avenue Suite 700 Towson, MD 21204-5340		06/24/99	

(410)823-7800

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ITP	001	County Board Of Appeals Of Baltimore County		CT DO 03/16/00	06/24/99
Mail		Old Courthouse Rm 49	06/24/99		
		400 Washington Ave			
		Baltimore, MD 21204			

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day Of Rslt	By	ResultDt	Jdg T	Notice	Rec User ID
01/10/00	09:30A	02Q	yes	CIVI	S		JNB	01 /01 CON	C	01/10/00	JNB P	Y	KLS
Stenographer(s): Rita M. Taggart													
01/10/00	09:30A	02Q	yes	MOTN	S		TBA	01 /01 CON	C	03/16/00	P	12/30/99	CAH

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	06/24/99	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review	06/24/99	06/24/99	PET001	TBA		03/16/00	JM PH
0001001	Answer	07/08/99	07/09/99	RES001	TBA		03/16/00	MJ PH
0002000	Certificate Of Notice	07/01/99	07/01/99	000	TBA		03/16/00	JH PH
0003000	Cross-Petition for Judicial Review	07/08/99	07/09/99	RES001	TBA		03/16/00	MJ PH
0004000	Transcript of Record from Adm Agency *	08/23/99	08/25/99	ITP001	TBA		03/16/00	DFF PH
0005000	Notice of Transcript of Record Sent	08/25/99	08/25/99	ITP001	TBA		08/25/99	DFF DFF
0006000	Notice of Transcript of Record Sent	08/25/99	08/25/99	PET001	TBA		08/25/99	DFF DFF
0007000	Notice of Transcript of Record Sent	08/25/99	08/25/99	RES001	TBA		08/25/99	DFF DFF
0008000	Memorandum in support of appeal	09/23/99	09/24/99	PET001	TBA		09/24/99	PH PH

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0008001	Answer	10/29/99	10/29/99	RES001	TBA		03/16/00	DR PH
0009000	Scheduling Order	10/14/99	10/14/99	000	TBA		10/14/99	KLS KLS
0010000	Cross-Appellee's Memorandum in Support of Administrative Appeal	10/29/99	10/29/99	RES001	TBA		10/29/99	DR DR
0011000	Motion for Compensation for Defense of Unjustified Proceeding, filed in Bad Faith	11/30/99	12/02/99	PET001	TBA		03/16/00	MJ PH
0011001	Response to Appellant's Motion for Compensation for Defense of Unjustified Proceeding, filed in bad Faith	12/13/99	12/15/99	RES001	TBA		03/16/00	AR PH
0012000	Hearing Notice	12/30/99	12/30/99	000	TBA		12/30/99	CAH CAH
0013000	Open Court Proceeding January 10, 2000. Hon. J. Norris Byrnes. Hearing had re: Petition for Judicial Review. Opinion and Order to be filed.	01/10/00	01/10/00	000	TBA		03/16/00	GI PH
0014000	Order affirming decision	03/16/00	03/16/00	000	JNB	Granted	03/16/00	PH PH
0015000	Docket entries sent to Board of Education-Baltimore County	03/17/00	03/17/00	000	TBA			CAM CAM
0016000	Notice of Appeal to COSA (11/54)**	04/14/00	04/14/00	PET001	TBA			PH PH
0017000	Pre Trial Hearing Letter Issued	04/17/00	04/17/00	000	TBA		04/17/00	AJ AJ
0018000	Order to proceed w/out prehearing conf. * (James R Eyler, Judge). (11/54).	05/16/00	05/17/00	000	TBA			DFF DFF
0019000	Original Record sent to COSA OF MARYLAND BY CERTIFIED MAIL NUMBER Z 010 930 874, ONE VOLUME AND ONE LARGE ENVELOPE (EXHIBIT - BOX 165).	07/06/00	07/06/00	000	TBA			AJ AJ
0020000	Mandate from the COSA dismissing appeal	10/24/00	10/24/00	000	TBA			PH PH

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	06/23/00	365	no	no	DAAA	D	000	000
1ANS	1st Answer Tickle	CLOSED	07/08/99	0	no	no	DANS	D	001	001
SLTR	Set List For Trial	DONE	07/08/99	0	yes	yes	1ANS	T	001	001

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
SLMR	Set List For Motions	CANCEL	12/22/99	22	no	no	DANS	D	000	000
XPU	Exhibit Pickup Notic	CLOSED	05/15/00	30	no	no			000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 County Board Of Appeals Of Ba								
000		B	returned to zoanin		0			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 10/14/99 Order Date : 10/14/99
Start Date : 10/14/99 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		10/29/99	03/16/00	CLOSED
All Motions (excluding Motions in Limine		12/03/99	03/16/00	CLOSED
TRIAL DATE is	01/10/00	01/12/00	01/10/00	REACHED

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F M O T I O N S H E A R I N G

Case Number: 03-C-99-006263
Administrative Agency : CBA-98-128
C I V I L

In The Matter Of: Robert Long

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

TO: County Board Of Appeals Of Baltimore County
Old Courthouse Rm 49
400 Washington Ave
Baltimore, MD 21204

This case has been assigned a hearing on all open motions on:

CIRCUIT COURT FOR BALTIMORE COUNTY
County Courts Building
401 Bosley Avenue
Towson, Maryland 21285-6754

Court date:
January 10, 2000
At: 09:30 AM
Motion Hearing (Civil)
1/2 HOUR MOTION SAME DAY AS TRIAL

PLEASE NOTE: If you desire to submit prior to this hearing date, please contact the Motion Assignment Clerk. A total of no more that one-half hour is allotted for a hearing on "Motion Days". If motions will take more than one-half hour, please contact the Motion Assignment Clerk for reassignment.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

A court reporter will not be present at the motion hearing unless specifically requested. Requests for reporters should be directed to the Motion Assignment Clerk. All requests for a postponement **MUST BE MADE IN WRITING AS SOON AS POSSIBLE**. This should be directed to the Motion Assignment Clerk with a copy to all counsel. Claim of not receiving this notice will not constitute reason for postponement.

Please refer to Information Desk for Court Room Designation.

Assignment Clerk: Harris Christina

Assignment Office Phone: (410)-887-2660

Date Issued: 12/30/99

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F R E C O R D

Case Number: 03-C-99-006263
Administrative Agency : CBA-98-128
C I V I L

In The Matter Of: Robert Long

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 23rd day of August, 1999.

Suzanne Mensh
Clerk of the Circuit Court, per D. F.

Date issued: 08/25/99

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Rm 49
400 Washington Ave
Baltimore, MD 21204

RECEIVED
COUNTY BOARD OF APPEALS
99 AUG 26 PM 5:13

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

03/17/00

Case Number: 03-C-99-006263 AE
Date Filed: 06/24/1999
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter Of: Robert Long

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C99006263V01
Administrative Agency	CBA-98-128

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
RES	001	Long, Robert		CT DO 03/16/00	06/24/99
		Attorney: 0800233 Zerwitz, Wendy A		07/09/99	
		Zerwitz & Zerwitz			
		38 South Dundalk Avenue			
		Dundalk, MD 21222			
		(410)288-9303			
PET	001	Woodell, Melvin C, Jr		CT DO 03/16/00	06/24/99
		Mail: 3825 Annandale Road	06/24/99		
		Baltimore, MD 21221			
		Attorney: 0017486 Williams, Newton A		06/24/99	
		Nolan, Plumhoff & Williams, Chartered			
		502 Washington Avenue			
		Suite 700			
		Towson, MD 21204-5340			

Circuit Court for BALTIMORE COUNTY
City or County

CIVIL---NON-DOMESTIC CASE INFORMATION REPORT

Directions:

Plaintiff: *This Information Report must be completed and attached to the complaint filed with the Clerk of the Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111. A copy must be included for each defendant to be served.*

Defendant: *You must file an Information Report as required by Rule 2-323(h).*

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER TO RESPONSE.

FORM FILED BY: ☐ PLAINTIFF ☐ DEFENDANT CASE NUMBER: ~~A~~ 98-251-A + CBA-98-128

CASE NAME: Robert Long, 3825A Annadale Rd. (Plaintiff) v. N/A (Defendant)

JURY DEMAND: ☐ Yes ☑ No Anticipated length of trial: 3 hours or _____ days

RELATED CASE PENDING? ☐ Yes ☑ No If yes, Case #(s), if known: N/A.

HAS ALTERNATIVE DISPUTE RESOLUTION (ADR): Been Tried? ☐ Yes ☑ No

Requested? ☐ Yes ☑ No

If yes, specify: _____

Special Requirements? ☐ Interpreter/communication impairment

N/A ☐ Other ADA accommodation: _____

NATURE OF ACTION
(CHECK ONE BOX)

TORTS
- ☐ Motor Tort
- ☐ Premises Liability
- ☐ Assault & battery
- ☐ Product Liability
- ☐ Professional Malpractice
- ☐ Wrongful Death
- ☐ Business & Commercial
- ☐ Libel & Slander
- ☐ False Arrest/Imprisonment
- ☐ Nuisance
- ☐ Toxic Torts
- ☐ Fraud
- ☐ Malicious Prosecution
- ☐ Lead Paint
- ☐ Asbestos
- ☐ Other _____

LABOR
- ☐ Workers' Comp.
- ☐ Wrongful Discharge
- ☐ EEO
- ☐ Other _____

CONTRACTS
- ☐ Insurance
- ☐ Confessed Judgment
- ☐ Other _____

REAL PROPERTY
- ☐ Judicial Sale
- ☐ Condemnation
- ☐ Landlord/Tenant
- ☐ Other _____

OTHER
- ☐ Civil Rights
- ☐ Environmental
- ☐ ADA
- ☑ Other Judicial Review

DAMAGES/RELIEF

A. TORTS

Actual Damages
- ☐ Under $7,500
- ☐ $7,500 - $50,000
- ☐ $50,000 - $100,000
- ☐ Over $100,000

- ☐ Medical Bills $_____
- ☐ Property Damages $_____
- ☐ Wage Loss $_____

B. CONTRACTS
- ☐ Under $10,000
- ☐ $10,000 - $20,000
- ☐ Over $20,000

C. NONMONETARY RELIEF
- ☐ Declaratory Judgment
- ☐ Injunction
- ☑ Other Judicial Review Board of Appeals

TRACK REQUEST

With the exception of Baltimore County, Baltimore City, and Prince George's County, please fill in the estimated LENGTH OF TRIAL. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.

- ☐ *½ day of trial or less*
- ☐ *1 day of trial time*
- ☐ *2 days of trial time*
- ☐ *3 days of trial time*
- ☐ *More than 3 days of trial time*

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY, PLEASE SEE REVERSE SIDE OF FORM FOR INSTRUCTIONS.

Date: June 23, 1999 *Signature:* Newton A. Williams

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY, PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

CIRCUIT COURT FOR BALTIMORE CITY (check only one)

☐ Expedited	Trial 60 to 120 days from notice. Non-jury matters.
☐ Standard-Short	Trial seven months from Defendant's response. Includes torts with actual damages up to $7,500; contract claims up to $20,000; condemnations; injunctions and declaratory judgments.
☑ Standard-Medium	Trial 12 months from Defendant's response. Includes torts with actual damages of $7,500 and under $50,000, and contract claims over $20,000.
☐ Standard-Complex	Trial 18 months from Defendant's response. Includes complex cases requiring prolonged discovery with actual damages in excess of $50,000.
☐ Lead Paint	Trial per model order.
☐ Asbestos	Events and deadlines set by individual judge.
☐ Protracted Cases	Complex cases designated by the Administrative Judge.

CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

☐ TRACK I	Cases having Judicially-assessed values under $25,000.
☐ TRACK II	Cases having Judicially-assessed values greater than $25,000 but not complex litigation.
☐ TRACK III	Non-Jury.
☐ TRACK IV	Statutory Priority Jury Track.
☐ TRACK V	Complex Litigation (Business, Tort, Orphan's Court Appeals).

LIABILITY FACTORS

- ☐ Rear-end
- ☐ Slip and Fall
- ☐ Intersection
- ☐ Changing Lanes
- ☐ Left-hand Turn
- ☐ Other: _____

INJURY FACTORS

- ☐ Soft Tissue
- ☐ Broken Bones
- ☐ Joint Damages (knee, ankle, etc.)
- ☐ Herniated Disk
- ☐ Severe Head Injury
- ☐ Other: _____

CIRCUIT COURT FOR BALTIMORE COUNTY

☑ Expedited (Trial Date-90 days)	Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
☐ Standard (Trial Date-240 days)	Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, Intentional Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
☐ Extended Standard (Trial Date-345 days)	Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of $100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
☐ Complex (Trial Date-450 days)	Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

County Board of Appeals of Baltimore County

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

July 15, 1998

TO: Robert Long 410/388/1610 (FAX)

FROM: Kathleen Bianco /Board of Appeals
Telephone 410-887-3180

RE: Subpoena Forms

Per our telephone conversation, attached are copies of two subpoena forms which may be used to subpoena witnesses to testify before the Board. Also attached is a copy of the affidavit to be filed upon service of the subpoena (when using private process server in lieu of the County Sheriff's Office). As I explained, in order for the Sheriff to serve a subpoena, that office requires a minimum of 5 business days prior to the hearing.

Upon completion of the subpoena form, you would then come in to our office to have the subpoena stamped in and signed, and, depending upon the time frame and your choice, either the Sheriff or a server of your choosing would actually serve the subpoena.

Please call me with any questions.

Kathi Bianco

Printed with Soybean Ink
on Recycled Paper

IN THE MATTER OF	*	**BEFORE**
ROBERT LONG, ET UX	*	**BALTIMORE COUNTY BOARD**
ZONING VARIANCE	*	**OF APPEALS**
LONG PROPERTY/DEPRM	*	**OF BALTIMORE COUNTY**
DECISION FOF 3825A	*	**CASE NO. 98-251A and**
ANNADALE ROAD, 15th E	*	**CASE NO. CBA-92-128**
7th C	*	

* * * * * * * * * * * *

98 OCT 26 PM 2:59

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: **Mrs. Annabelle Chenowith**
3821 Annadale Road
Baltimore, County MD 21222

YOU ARE HEREBY COMMANDED TO: **Personally Appear and Produce**

Documents and/or objects; in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on Tuesday the 17th day of November, 1998 at 10:00 a.m.

YOU ARE COMMANDED TO PRODUCE THE FOLLOWING DOCUMENTS OR OBJECTS FOR 3821 ANNADALE ROAD, BALTIMORE, MD 21222:

1. **All Approved Site Plans, Grading Studies, Flood Plain Certification From Baltimore County**
2. **All Building Permits Issued From Baltimore County, Electrical, Plumbing, Building Additions**
3. **Detailed Lists of All Improvements for the Past Three (3) Years**
4. **All Approved Permits for Gazebo, Shed, Boat Lift and Pier From Baltimore County**
5. **Any Documentation Stating the Size of the Gazebo, Shed, Boat Lift and Pier**
6. **Any Documents for Variances or Waivers for the Gazebo and Shed in the 100 ft. Buffer Zone.**
7. **Any Documents Related to Any Variances or Waivers Approved or Denied by Baltimore County**

Subpoena Requested By:

Robert B. Long, 3827 Annadale Road, Baltimore, Maryland 21222

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

Charlotte E. Radcliffe
County Board of Appeals
Baltimore County

IN THE MATTER OF	*	**BEFORE**
ROBERT LONG, ET UX	*	**BALTIMORE COUNTY BOARD**
ZONING VARIANCE	*	**OF APPEALS**
LONG PROPERTY/DEPRM	*	**OF BALTIMORE COUNTY**
DECISION FOF 3825A	*	**CASE NO. 98-251A and**
ANNADALE ROAD, 15th E	*	**CASE NO. CBA-92-128**
7th C	*	

* * * * * * * * * * * * *

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: **Mr. & Mrs. Norris Shanholtz**
3822 Annedale Road
Baltimore, County MD 21222

YOU ARE HEREBY COMMANDED TO: Personally Appear and Produce

Documents and/or objects; in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on Tuesday the 17th day of November, 1998 at 10:00 a.m.

YOU ARE COMMANDED TO PRODUCE THE FOLLOWING DOCUMENTS OR OBJECTS FOR 3822 ANNADALE ROAD, BALTIMORE, MD 21222:

1. All Approved Site Plans, Grading Studies, Flood Plain Certification From Baltimore County
2. All Building Permits Issued From Baltimore County, Electrical, Plumbing, Building Additions
3. Detailed Lists of All Improvements for the Past Three (3) Years
4. All Surveys and All Documentation From Baltimore County to Change the Storm Drain in Front of 3822 Annadale Road
5. All Permits for Driveway From Baltimore County
6. Any Documentation Stating the Size of the Driveway
7. Any Documents Related to Any Variances or Waivers Approved or Denied by Baltimore County

Subpoena Requested By:

Robert B. Long, 3827 Annedale Road, Baltimore, Maryland 21222

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

Charlotte E. Radcliffe
County Board of Appeals
Baltimore County

98 OCT 26 PM 2:49

IN THE MATTER OF	*	BEFORE
ROBERT LONG,ET UX	*	BALTIMORE COUNTY BOARD
ZONING VARIANCE	*	OF APPEALS
LONG PROPERTY/DEPRM	*	OF BALTIMORE COUNTY
DECISION FOR 3825A	*	CASE NO. 98-251A and
ANNADALE ROAD, 15th E	*	CASE NO. CBA-98-128
7th C	*	

* * * * * * * * * *

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: Custodian of Records of Zoning for Baltimore County

YOU ARE HEREBY COMMANDED TO: Personally Appear and Produce

Documents and/or objects; in Room 48, Basement, Old Courthouse, 400 Washington Avenue,

Towson, MD 21204 on Wednesday the 13th day of January, 1992 at 10:00 a.m.

YOU ARE COMMANDED TO PRODUCE THE FOLLOWING DOCUMENTS OR OBJECTS FOR ZONING VARIANCE CASE THAT WAS HEARD BEFORE THE ZONING COMMISSIONER ON FEBRUARY 20, 1998 at 10:00 a.m.:

GENERAL STATEMENT: The Purpose of this Subpoena is to Have a True Copy of the Previous Zoning Hearing Case No.98-251a to be Submitted as Evidence Before the Board of Appeals.

1. To Produce a Copy of the Tape from the Hearing on February 20, 1998

2. All Transcripts of the Hearing on February 20, 1998.

Subpoena Requested By:

Robert B. Long, 3827 Annadale Road, Baltimore, Maryland 21222

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

Charlotte E. Radcliffe

County Board Of Appeals
Baltimore County

98 DEC 28 AM 12:33

IN THE MATTER OF ROBERT LONG,ET UX ZONING VARIANCE LONG PROPERTY/DEPRM DECISION FOR 3825A ANNADALF ROAD, 15th E 7th C	*	BEFORE BALTIMORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 98-251A and CASE NO. CBA-98-128

98 OCT 28 PM 2:04

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: Custodian of Records of Zoning for Baltimore County

YOU ARE HEREBY COMMANDED TO: Personally Appear and Produce

Documents and/or objects; in Room 48, Basement, Old Courthouse, 400 Washington Avenue,

Towson, MD 21204 on Tuesday the 17th day of November, 1998 at 10:00 a.m.

YOU ARE COMMANDED TO PRODUCE THE FOLLOWING DOCUMENTS OR OBJECTS FOR ZONING VARIANCE CASE THAT WAS HEARD BEFORE THE ZONING COMMISSIONER ON FEBRUARY 20, 1998 at 10:00 a.m.:

1. To Produce a Copy of the Tape from the Hearing on February 20, 1998

2. All Transcripts of the Hearing on February 20, 1998.

Subpoena Requested By:

Robert B. Long, 3827 Annadale Road, Baltimore, Maryland 21222

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

Charlotte E. Radcliffe
County Board Of Appeals
Baltimore County

Sent By: COVENANT REALTY,INC. 410 10/28/98 2:36PM Job 517 Page 2/2

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Robert Long, et ux /Long Property
Case No. 98-251-A and Case No. CBA-98-128

DATE : Thursday, March 18, 1998

BOARD /PANEL : Lawrence M. Stahl (LMS)
Margaret Worrall (MW)
Lynn Barranger (LB)

SECRETARY : Kathleen C. Bianco
Administrator

PURPOSE: To deliberate Case No. 98-251-A (Robert Long, et ux) and Case No. CBA-98-128 (Long Property). Heard before the Board on January 13, 1999.

The Board, having convened for public deliberation as scheduled, and upon deliberation between panel members, reached the following decision:

Issues to be highlighted:

1) Two Motions /Motion to Quash subpoenas
Motion to Dismiss Appeal (not filed appropriately)

2) Merits of the case /DEPRM variance

3) Zoning Variance

As to (1) above, ruling made from the bench on date of hearing as to Motion to Quash -granted (to be mentioned in Board's final written Opinion).

As to determination that appeal was filed properly - not raised during hearing but filed preliminarily; who are appellants /name and addresses per Board's rules.

Motion to Dismiss is DENIED by unanimous decision; only Appellant recognized is Mr. Woodell; no "concerned citizens" recognized. Mr. Woodell did include check; his name and his address; "feeling aggrieved" gives right to appeal. He testified in singular; appeared at hearing; was the only Appellant in this matter. Moved forward on the merits.

As to (2) above, DEPRM decision /Critical Area variance

Kelly's testimony cited and discussed; met criteria for granting of DEPRM variance -- odd-shaped lot; fit in with neighborhood; no special privilege; not based on "after fact"; does not affect fish, plants, etc. DEPRM imposed conditions; to be imposed by CBA in written Opinion /Order; Variance to be granted with restrictions.

As to (3) above, zoning variance

Per Cromwell v. Ward -- it is unique; then on to practical difficulty and unreasonable hardship; then spirit and intent.

Unique -- cited testimony received; shape of lot, topography and slope; as it exists, it is unique.

Practical Difficulty or Unreasonable Hardship -- not self-imposed because at time of building his home, front foot was 50' and not 55'; law was later changed; could have built house on this lot after building his house (located at the direction of the County); requirements later changed; now he cannot build without variance. Not self-imposed but change in law.

Spirit and Intent -- Concerns raised by Appellant re drainage; erosion taking away filtration; access to Tabasco Road.

SWM issues - must be dealt with prior to issuance of permit -- DEPRM must be satisfied; no expert testimony opposed to this; only testimony of Phelps who saw no problems. Acknowledged concerns relative to drainage; unrebutted testimony as to drainage; conditioned to meet all requirements by DEPRM.

Paper road issue -- No use of Tabasco Road but would like to; nothing different. Would not be built over.

The Board's unanimous decision based on testimony and evidence produced at hearing and after public deliberation is that the Petition for Variance is GRANTED, with restrictions as to compliance with DEPRM requirements; Critical Area variance via DEPRM is GRANTED, with conditions imposed by DEPRM in its original grant of said variance relief; Motion to Quash granted; Motion to Dismiss DENIED.

Written Opinion and Order to be issued by the Board as required by statute. Appellate period to run from date of written Order; anyone feeling aggrieved by the Board's decision may appeal to Circuit Court.

~~~~~~~~~~~~~~~~~~~~

NOTE: This document confirms for the file that public deliberation was held this date in the subject matter and a final decision rendered in which the requested variance relief was granted; DEPRM variance relief GRANTED.

Respectfully submitted,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator
~~~~~~~~~~~~~~~~~~~~

Baltimore County
Department of Environmental Protection
and Resource Management

BUREAU OF RESOURCE MANAGEMENT
AND ENGINEERING SERVICES
401 Bosley Avenue, Suite 416
Towson, Maryland 21204
(410) 887-3768
Fax: (410) 887-4804

August 13, 1997

Mr. and Mrs. Robert Long
3827 Annadale Road
Baltimore, Maryland 21222

Re: 3825A Annadale Road
Critical Area Administrative Variance

Dear Mr. and Mrs. Long:

The Department of Environmental Protection and Resource Management (DEPRM) has received your variance request to construct a single-family dwelling on a vacant lot in the 100 foot buffer to Bear Creek. The Director of DEPRM may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. Due to the configuration of the lot, a majority of the dwelling must be built in the 100 foot buffer, or the lot would be unbuildable. Therefore, the hardship is warranted.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. As stated above, there is no room to build a dwelling out of the 100 foot buffer. If the regulations were literallly enforced, the applicant would not be able to build a dwelling on the property and would, thus, be deprived of a right commonly enjoyed by others.

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on Recycled Paper

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. No special privileges will be conferred upon the applicant by the granting of this variance. Therefore, this criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. The variance is not based upon conditions or circumstances which were the result of your own actions, and this criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The granting of this variance will not adversely impact fish, wildlife, or plant habitat. Potential water quality impacts can be minimized through the planting of trees.

Based upon our review, it is this Department's findings that the first four of the above criteria have been met, and that the fifth criterion can be met by planting 1.5 inch caliper native deciduous trees, preferably on the waterward side of the proposed structure, at a rate of 3 trees for each 100 square feet of the proposed disturbance to occur within the 100 foot buffer. Therefore, the requested variance is hereby approved in accordance with Section 26-445(c)of the Baltimore County Code with the following conditions:

1. The attached "Notice of Granting of Variance" must be published in The Avenue, The Dundalk Eagle or The Essex Times. Final variance approval cannot be granted until fifteen (15) calendar days after the notice has been published. A copy of the Certificate of Publication for the advertisement issued by the newspaper, or a copy of the advertisement from the paper must be submitted to this office prior to receiving final variance approval.

2. The sum of all man-made impervious areas shall not exceed 25% of the lot; including the development proposed as part of this variance request and any accessory uses or structures.

3. No accessory structures shall be placed on the property waterward of the proposed dwelling.

4. The proposed dwelling shall be placed as close to the road as allowed by Baltimore County Zoning Regulations, and shall extend no closer than sixty-five (65) to mean high tide.

5. If all of the required mitigation cannot be accomplished onsite, the Department may accept a fee-in-lieu of mitigation at a rate of $1.20 per square feet of disturbance. Any fee-in-lieu payment shall be made prior to building permit issuance.

6. The above-referenced mitigation shall be completed within ninety (90) days of building permit issuance for the proposed dwelling.

7. Rooftop runoff shall be directed through downspouts and across the lawn.

8. Prior to receiving final variance approval, a revised plot plan which shows the following additional information must be submitted to this office:

    a. the Limit of Disturbance (L.O.D.) as 15 feet from the proposed work,

    b. location of proposed trees to be planted,

    c. the 100 foot buffer limit,

    d. a note stating, "There shall be no clearing, grading, or disturbance of the 100 foot buffer other than mowing, except as permitted by the Department of Environmental Protection and Resource Management (DEPRM)", and

    e. the location of the driveway for the dwelling.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request.

Please sign the statement on the next page and then return a copy of the Certificate of Publication, the revised plot plan, and the letter to this Department c/o Ms. Patricia M. Farr of Environmental Impact Review. Failure to return a signed copy of this letter and the other two items may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Mr. Keith Kelley at (410) 887-3980.

Sincerely,

George G. Perdikakis /TRV

George G. Perdikakis
Director

GGP/KK

c: Ms. Susan McConville, CBCA Commission
Ms. Patricia M. Farr

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Chesapeake Bay Critical Area regulations.

_____ _____

Signature Date Signature Date

kdk#1/long.doc

Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
410-887-4420
Fax: 410-296-0931

October 28, 1998

Ms. Kathleen C. Bianco
Legal Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

98 OCT 30 AM 11:03

RE: Robert Long
Case No. CBA-98-128
O/L File No. 16,587-08

Dear Mrs. Bianco:

I am writing this letter to advise that I will be trying condemnation jury trial on Tuesday, November 17, 1998 at 10:00 A.M. See attached Scheduling Order.

Please reschedule the above-referenced case in the ordinary course of scheduling.

Thank you very much for your cooperation in this matter.

Very truly yours,

WILLIAM O. JENSEN, JR.
Assistant County Attorney

WOJ,JR:ak

Enc.

cc:Enc.: Mr. and Mrs. Robert Long
Newton A. Williams, Esq.
People's Counsel for Baltimore County
cc: Susan McConville, CBCAC
George Perdikakis, DEPRM
Patricia M. Farr, DEPRM
Roy List, DEPRM
Pat Keller, Director, Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director, PDM

Come visit the County's Website at **www.co.ba.md.us**

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County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

October 23, 1998

Mr. Joseph Ernstberger
3830 Annadale Road
Baltimore, MD 21222

RE: Case No. 98-251-A and
Case No. CBA-98-128 /Long Property

Dear Mr. Ernstberger:

As promised in our telephone conversation this afternoon, enclosed is a copy of the Motion for Dismissal filed by Mr. Long in the subject matter, as well as a copy of Mr. Williams' Answer to that Motion.

Should you have any further questions, please call me at 410-887-3180.

Sincerely yours,

E/ 10/23/98

Kathleen C. Bianco
Administrator

Enclosures (2)

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on Recycled Paper

INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM

TO: Director, Office of Planning & Community Conservation
Attn: Ervin McDaniel
County Courts Bldg, Rm 406
401 Bosley Av
Towson, MD 21204

B_____
Permit Number

FROM: Arnold Jablon, Director, Department of Permits & Development Management

RE: **Undersized Lots**

Pursuant to Section 304.2(Baltimore County Zoning Regulations) effective June 25, 1992; this office is requesting recommendations and comments from the Office of Planning & Community Conservation prior to this office's approval of a dwelling permit.

MINIMUM APPLICANT SUPPLIED INFORMATION:

☐ Robert B. & Rose M. Long 3827 Annadale Rd. (410) 388-1974
Print Name of Applicant — Address — Telephone Number

☐ **Lot Address** 3825A Annadale Rd. **Election District** 15 **Council District** 7 **Square Feet** 8,130

Lot Location: N E S W (side) / corner of Annadale Rd. (street), 75 **feet from** N E S W corner of Matthai (street)

Land Owner Robert B. & Rose M. Long **Tax Account Number** 1522000000226

Address 3827 Annadale Road **Telephone Number** (410) 388-1974
Baltimore, MD 21222

☐ **CHECKLIST OF MATERIALS:** to be submitted for design review by the Office of Planning & Community Conservation

	PROVIDED? YES	NO
1. This **Recommendation Form** *(3 copies)*	✓	___
2. **Permit Application**	___	___
3. **Site Plan**		
Property *(3 copies)*	✓	___
Topo Map (available in Rm 206 C.O.B.) *(2 copies)* (please label site clearly)	✓	___
4. **Building Elevation Drawings**	✓	___
5. **Photographs** (please label all photos clearly)		
Adjoining Buildings	✓	___
Surrounding Neighborhood	___	___

Residential Processing Fee Paid
Codes 030 & 080 ($85)
Accepted by RT
ZADM
Date_____

#251

TO BE FILLED IN BY THE OFFICE OF PLANNING & COMMUNITY CONSERVATION ONLY!!

RECOMMENDATIONS/COMMENTS:

☒ **Approval** ☐ **Disapproval** ☐ Approval conditioned on required modifications of the permit to conform with the following recommendations:

Signed by: Ervin McDaniel
for the Director, Office of Planning & Community Conservation

Date: 2/6/98

RECEIVED
JAN 15 1998
OFFICE OF PLANNING

Revised 9/5/95

SCHEDULED DATES, CERTIFICATE OF FILING AND POSTING
FOR A BUILDING PERMIT APPLICATION PURSUANT TO SECTION 304.2
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

The application for your proposed Building Permit Application has been accepted for filing by KT on 1-7-98 Date (A).

A sign indicating the proposed Building must be posted on the property for fifteen (15) days before a decision can be rendered. The cost of filing is $50.00 and posting $35.00; total $85.00.

In the absence of a request for public hearing during the 15-day posting period, a decision can be expected within approximately four weeks. However, if a valid demand is received by the closing date, then the decision shall only be rendered after the required public special hearing.

*SUGGESTED POSTING DATE 1-20-98 D (15 Days Before C)

DATE POSTED _____

HEARING REQUESTED-YES ____NO ____-DATE _____

CLOSING DAY (LAST DAY FOR HEARING DEMAND) 2-3-98 C (B-3 Work Days)

TENTATIVE DECISION DATE Feb. 5, 1998 B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

District _____

Location of property: _____

_____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

SCHEDULED DATES, CERTIFICATE OF FILING AND POSTING
FOR A BUILDING PERMIT APPLICATION PURSUANT TO SECTION 304.2
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

The application for your proposed Building Permit Application has been accepted for filing by PIT on 1-7-98 (A).
Date

A sign indicating the proposed Building must be posted on the property for fifteen (15) days before a decision can be rendered. The cost of filing is $50.00 and posting $35.00; total $85.00.

In the absence of a request for public hearing during the 15-day posting period, a decision can be expected within approximately four weeks. However, if a valid demand is received by the closing date, then the decision shall only be rendered after the required public special hearing.

*SUGGESTED POSTING DATE 1-20-98 D (15 Days Before C)

DATE POSTED _____

HEARING REQUESTED-YES ____ NO ____ -DATE _____

CLOSING DAY (LAST DAY FOR HEARING DEMAND) 2-3-98 C (B-3 Work Days)

TENTATIVE DECISION DATE Feb. 5, 1998 B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

District _____

Location of property: _____

_____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

Newton A. Williams

DIRECT DIAL:
(410) 823-7856

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

January 13, 1998

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

98 JAN -1 PM 2:45

Dear Members of the Board:

RE: The Long Property, 3825 A, Annadale Road
Zoning variances and DEPRM variances
Board of Appeals, Wednesday, January 13, 1999
Case No. 99-251 -A and Case No. CBA-98-128

With the indulgence of The Board and for the Board's guidance, we respectfully offer the following Hearing Memorandum in the form of a letter.

The variances requested by Mr. and Mrs. Robert Long for this matter should be denied for the following reasons, hereinafter set out.The facts are not as were understood by the Zoning Commissioner in this case. Briefly, the sequence is broadly as follows:

1987 LONG PURCHASE OF 15 ANNADALE 50 FOOT LOTS

1. In December of 1987, the Longs purchased some fifteen(15) lots in the old subdivision of Annadale from a Mr. Mathai, including Lots 7,8,9,10, 11, 12, 13, 14, 15, 31,32, 33, 34 35 and 36. These were 50 foot lots dating to April, 1925, when the original Annadale subdivision was laid out in 50 foot lots, there being few if any subdivision requirements in this early time, some 73 years ago. Mr. and Mrs. Long are not beginners in this area of subdivision. They trade as Covenant Realty, Inc., from the adjacent lot, their home 3827 Annadale Road.

LONG RESUBDIVISION

2. Subsequently, the Longs resubdivided these lots in Subdivision X. 662, into a lesser number of lots. In fact, on the waterfront lots, they chose to begin at the east end of the tract, that is with Lot 36, making that lot and each one to the west a 66-foot lot. Lot 31 is the residue, and it was reduced from 50 feet in width on the Annadale Road frontage to at best 43 feet on this new road. At the time this was done, they had at

least 299.46 feet of frontage to work with, and they could have created five lots of 55feet in width or more. However, they did not do so, but chose to create four, 66 foot wide lots and the residue of Lot 31was reduced from 50 feet to 43 feet of road frontage. This is certainly **self created hardship**, and as such they should not be allowed to create a very undersized lot now claiming hardship. The Longs and their engineers made a decision as to how to proceed and they should not now complain of it, and they should certainly not be allowed to profit from it, particularly when their own home lot next door is 66 feet in width.

EAST END START COMPRESSES LOT 31

3. In like manner, they chose to start on the east end of the former Mathai Property with the 66-foot wide lots, instead of starting on the west end with no variances required had 55 foot lots been used ,by starting on the west end the variances are pushed against the present neighbors, or across the street from them.

LOT 31 STORM WATER OUTFALL

4. This subdivision was done by BPS Land Technology, and Lot 31 reduced area was shown on the enclosed Sediment Control Plan for a storm water outfall on Lot 31 and the bed of Tobasco Road. It is clear that the grass area is being used for water quality and a drainage swale. Thus, this Lot 31 is not available for residential purposes due to its present use for a swale and water quality purposes. It should have never been granted the DEPRM variance.

ZONING DECISION UNAWARE OF SUBDIVISION

5. The sum and substance of the matter are that the Zoning Commissioner did not have the full story available when he decided this case. The Board has the advantage of the full subdivision history to consider.

NEIGHBOR'S OPPOSITION REASONABLE

6. The neighbors are not being unreasonable in opposing this effort to squeeze out the last dollar available from this area, particularly when an n excellent return has already been obtained. Lot 31 was further reduced by the Longs own chosen subdivision plan by their engineers at BPS Land Technology.

VARIANCE REQUIREMENTS NOT MET

7. As the Board is well aware, the leading Maryland case of Cromwell v. Ward, 651 A. 2d 42,102 Md. App. 691, (1995) does not allow variances to be granted unless stringent requirements are met. They have not been met here, and cannot be met here by the Longs. See also Anderson V. Board of Appeals of Chesapeake Beach, 322 A2d 220, 22 M. App. 28 (1974).

SECTION 307 REQUIREMENTS UNMET

8. Section 307 of the Baltimore County Zoning Regulations sets out the statutory

requirements for the granting of variances from the Regulations. Among other requirements is a requirement that a variance be granted "only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request." Also, practical difficulty or unreasonable hardship must be shown by the petitioner. This Lot 31 is not unique and its further reduced width is the result of subdivision decisions made by the Longs and their engineers. Formerly Lot 31 was 50 feet in width, now. It is only 43 feet at the street due to a decision to make lots 32 to 36 wider, namely four lots of 66 feet in width.

VARIANCES SHOULD NOT BE GRANTED

9. For these reasons, the variances should not be granted by the Board, and we are confident that the Board upon review will agree.

10. Please find enclosed the **marked subdivision plat**, as well as the **Sediment Control** Plan for review by the Board.

Respectfully submitted,

Newton A. Williams

Newton A. Williams
Nolan, Plumhoff and Williams
502 Washington Ave.
Towson, Md. 21204
Attorneys for the Protestants

Fax CC:
Mr. and Mrs. Melvin Woodell
fax 410 288 6237

Newton A. Williams

DIRECT DIAL:
(410) 823-7856

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765

JAMES D NOLAN
(RETIRED 1980)

J EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

TELECOPY COVER PAGE

August 13, 1998

CLIENT/MATTER:5986\1

TO: Howard Alderman, Esq.
FIRM: Levin and Gann
FAX NO :410 296 2801 PHONE NO. 410 321 0600
NUMBER OF PAGES (INCLUDING COVER SHEET):

Howard:

:

RE: Tobasco Road Closing appeal , CBA 98-105,
Dismissed for failure to perfect appeal,and
Robert Long, et ux 3825A Annadale Road,
98 251 A, and CBA 98 251A,
Tuesday, August 25, 1998, 10:00 A. M.,
Suggested Continuance for possible meeting and settlement

In response to your call yesterday, I am posing the request to discuss the matter if there is any room for settlement. By a copy of this fax I am asking for a prompt reply from the Woodells.

Proposal will save everyone's time, money and may allow the parties to work it out if there is any middle ground. I do not know .

All please review and advise promptly. Thanks.

Newton

Mr. and Mrs. Melvin C. Woodell, Jr., 705 S. 49th St , 21224, Fax 410 288 6237, Phone 410 285 4455
Nancy West , Esq., Office of Law, Fax 410 296 0931, Phone 410 887 4420

Kathleen C. Bianco, Board of Appeals, Fax 410 887 3182, Phone 410 887 3180

IF FOR ANY REASON YOU NEED TO CONTACT US, PLEASE CALL

Newton Williams ,NPW OR MARCIE At 410-823-7800

.wpdnewfax2998

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Newton A. Williams

DIRECT DIAL:
(410) 823-7856

Law Offices
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502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

August 25, 1998

Mrs. Kathleen Bianco
Baltimore County Board of Appeals
Court House
Towson, Md. 21204

BY Fax and By Mail
410 887 3182

Dear Mrs. Bianco:

RE: Mr. And Mrs. Robert Long
3825A Annadale Road
98 251 A and CBA 98 128
Scheduled Hearing, Tuesday,
August 25, 1998

Confirming my several calls and my recent letter to the Board, please enter the appearance of myself and our firm on behalf of Mr. Melvin Woodell and others noted on your hearing assignment as protestants.

As previously noted, we have received Mr. Long's fax requesting a postponement for the reasons noted therein. We are agreeable to this request. However, Mr. Woodell and others do not want to let the matter drag on indefinitely, and we therefore ask that the matter be assigned a new hearing date in the course of the Board's docket.

Also, by a copy of this fax we are asking if Howard Alderman, Esq. is entering his appearance in the case.

Thanking you and the Board for your attention to these matters, I am

Respectfully,

Newton A. Williams

Fax CC: Mr. Melvin Woodell, fax 410 288 6237
Howard Alderman, Esq. 410 296 2801
Mr. Robert Long 410 388 1610

RECEIVED
COUNTY BOARD OF APPEALS
98 AUG 27 PM 12: 37

Newton A. Williams

DIRECT DIAL:
(410) 823-7856

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
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TELEFAX: (410) 296-2765

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

TELECOPY COVER PAGE

SEPTEMBER 21, 1998, TO MR. LONG: Mr. WOODELL AND HIS NEIGHBORS ON THE ENCLOSED NOTICE DO NOT WANT THE CASE CONTINUED. WE ARE COMMUNICATING THIS OPPOSITION TO THE BOARD OF APPEALS. NEWTON A. WILLIAMS
BOARD OF APPEALS 410 887 3182

DATE: September 15, 1998 CLIENT MATTER NO: 5986\01

TO: Robert Long
FIRM: Covenant Realty
RE: Annadale Road Case
FAX TELEPHONE NUMBER: 410 388 1610 PHONE: 410 388 1974
TOTALS NUMBER OF PAGES (INCLUDING COVER SHEET): Two + 3 Notices
FROM: **Newton A. Williams**

Mr. Long:

Thank you for the Elevation sketch of yesterday. By a CC of this fax, it is being sent to Mr. Woodell and his neighbors for their review. I can repeat that they are all opposed to any new house on Lot 31, but I do not know their feelings about a proposed addition to your existing house. As soon as I have heard from them , we will be in touch.

Sincerely,

Newton A. Williams

FAX CC:
Melvin C. Woodell, FAX 410 I288 6237

RECEIVED
COUNTY BOARD OF APPEALS
98 SEP 22 AM 8:22

Newton A. Williams

DIRECT DIAL:
(410) 823-7855

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4626
(410) 823-7800
TELEFAX. (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

JAMES D NOLAN
(RETIRED 1990)

J EARLE PLUMHOFF
(1940-1986)

RALPH E DEITZ
(1918-1990)

October 19, 1998

Mrs. Kathy Bianco
County Board of Appeals
Courthouse
Towson, Md. 21204

Board Fax 410 887 3182

Dear Mrs. Bianco:

Thanks for your call re proposed rescheduling of the Long case to Tuesday, November 17, 1998, at 10 A.M..

I have added it to my schedule, and I am checking with Mr. Woodell and the other protestants / appellants to make sure they can make it and to mark their calendars.

Also, by Fax, I am checking with Mr. LONG as to his availability , as a courtesy to him and to aid the Board.

Thanking you and the Board for this date, and to make sure all understand it is to consider Mr. Long's Motion to Dismiss, and the merits if one or more appellants are retained.

With best regards, I am

Respectfully,

Newton A. Williams

Fax CC: Mr. Mel Woodell 410 288 6237
Mr. Robert Long 410 388 1610

98 OCT 19 PM 2:14

Newton A. Williams

DIRECT DIAL:
(410) 823-7856

Law Offices
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502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
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JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

TELECOPY COVER PAGE

DATE: May 17, 1999 CLIENT MATTER NO: NAW 5986-01

TO: Wendy Zerwitz, Esq.

FIRM: Zerwitz and Zerwitz

RE:Long Variance Cases 98 251 -A, CBA -98-112

FAX TELEPHONE NUMBER: 410 288 9305 PHONE: 410 2988 9303

TELEPHONE NUMBER TO CONFIRM RECEIPT: 410 Same

TOTALS NUMBER OF PAGES (INCLUDING COVER SHEET): Eight

FROM: **Newton A. Williams**

Ms Zerwitz:

The Board staff tells us that the Long Opinion is now in draft form. We all await the formal Opinion with interest. Thanks to the Board Staff.

Sincerely,

Newton A. Williams

Board of Appeals, 410 887 3182

Mr. and Mrs. Mel Woodell, fax 410 288 6237

Nancy West, Esq. County Attorneys Office, fax 410 296 0931

99 MAY 17 PM 12:15
COUNTY BOARD OF APPEALS
BALTIMORE COUNTY

Best regards.

NEWTON At 410-823-7800

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MERCANTILE BANK & TRUST BUILDING
TWO HOPKINS PLAZA
9TH FLOOR
BALTIMORE, MARYLAND 21201
410-539-3700
TELECOPIER 410-625-9050

HOWARD L. ALDERMAN, JR.
halderman@counsel.com

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
SUITE 113
TOWSON, MARYLAND 21204
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

September 1, 1998

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME	TELEFAX NO.
Ms. Kathleen Bianco	410.887.3182
Mr. and Mr. Robert Long	410.388.1610
Newton A. Williams, Esquire	410.296.2765

FROM: HOWARD L. ALDERMAN, JR., ESQUIRE

NUMBER OF PAGES [INCLUDING THIS COVER PAGE]: 2

CLIENT/MATTER: Case Nos. CBA 98-128 & 98-251-A

COMMENTS: **Our response to Newton's 8/25/98 letter follows. Thanks.**

[X] ORIGINAL TO FOLLOW VIA MAIL ***TO MS. BIANCO ONLY***

[X] ORIGINAL WILL NOT BE MAILED ***TO ANY OTHER RECIPIENT***

**If you do not receive all of the pages indicated above, please call 321-0600 as soon as possible.
My return FAX Number is (410) 296-2801.**

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410-539-3700
TELECOPIER 410-625-9050

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

HOWARD L. ALDERMAN, JR.
halderman@counsel.com

September 1, 1998

RECEIVED
BOARD OF APPEALS
COUNTY
98 SEP -2 PM 1:33

VIA TELEFAX & U.S. MAIL

Ms. Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
401 Washington Avenue, Old Court House
Towson, Maryland 21204

RE: Mr. and Mrs. Robert Long
Case Nos. CBA 98-128 and 98-251-A

Dear Ms. Bianco:

I am in receipt of a copy of a letter, dated August 25, 1998, from Newton A. Williams, Esquire to you regarding his entry of appearance on behalf of his clients in the above-referenced cases. In that correspondence, Mr. Williams inquired as to whether I was "entering my appearance in the case [*sic*]", presumably on behalf of Mr. and Mrs. Long.

I am writing to advise the Board and all persons concerned with the above-referenced cases that, as of this writing, neither I, this firm, nor any member of this firm have entered an appearance in either of the referenced cases. Should we be retained in the future to provide representation to one or more of the parties in the referenced cases, please be assured that Board Rule 6.d will be followed explicitly.

Thank you and the Board for your courtesies in these matters. Should you or any member of the Board desire additional information in this regard, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
c (***via telefax only***): Mr. and Mrs. Robert Long @ 410.388.1610
(***via telefax only***): Newton A. Williams, Esquire @ 410.296.2765

NEW HOPE LIGHTHOUSE

Pastor Nick Shanholtz Sr.

3033 Eastern Avenue

Baltimore Maryland 21224

(410) 388-2306

Received 11/04/98 C.B.A. ltr

November 2, 1998
3822 Annadale Rd.
Balto., MD 21222

Dear Sir,

I am writing this letter after my telephone conversation with Kathy Bianco this morning.

This letter is concerning subpoena's that we received and also Mrs. Annabelle Chenowith from Robert Long. We are very upset as to the commands that we are required to produce.

We were not properly served, and all this information is not in our possession. It is in the possession of Baltimore County and or our builder.

When our house was built three years ago, our builders (Tanner Bros.) had the county men down on many occasions. Concerning the storm drain in the front, the county man explained to the Tanners exactly how it had to be done. We happened to be at the house on that occasion.

NEW HOPE LIGHTHOUSE
Pastor Nick Shanholtz Sr.
3033 Eastern Avenue
Baltimore Maryland 21224
(410) 388-2306

We believed all the rules or specifications were followed.

So Kathy said it would be beneficial for us to write a letter and also including copies of the subpoena's.

We appreciate anything you could help us with. Our hearts are very grieved that things would have to come to this.

Sincerely
Ben. & Mrs. Nick Shanholtz, Sr.
(Norris)

April 15, 1998

Ms. Kathleen Bianco
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
Towson, MD 21204

Dear Ms. Bianco,

This letter is in response to the conversation that we had today regarding our zoning variance. We were granted the variance on March 13, 1998 and found out today that it has been appealed. We have not yet received notification in the mail but we went to the county today and found out there. We are requesting that this hearing be held as soon as possible due to the fact that my wife was hurt at work and we need to downsize to a smaller home. The house that we live in now is to large for us to take care of, it is creating a financial burden because we went from two paychecks to one paycheck. We want to build a much smaller home next to ours so that we can still stay in the area, our daughter attends Sparrows Point Middle School and we don't want to have to move her into a new school. This has been and is very hard on our whole family as we feel that our lives are on hold at this point. That is why we need to have this hearing very quickly.

We are in the process of selling our existing home while the interest rates are low and we have already arranged financing and we will be in a real mess if the interest rates go up. This is the prime to sell our existing home and build right next door.

It is of the utmost importance that we have this hearing as soon as possible. The longer it takes the worse our financial hardship will be.

Should you have any questions please call me at (410) 388-1974.

Sincerely,

Robert & Rose Long

RECEIVED
COUNTY BOARD OF APPEALS
98 APR 15 PM 3:08

Sent by: COVENANT REALTY,INC. 410 04/15/98 12:32PM Job 103 Page 1/1

August 19, 1998

Baltimore County Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Case #:98-251-A
Case #:CBA-98-128

Dear Ms Bianco.

We need to postpone the above case numbers because of the following reasons:

1. I have been speaking with Howard Alderman about representing me and because of his schedule and mine we have not had an opportunity to meet. He is unable to meet with me until after the 25th of August.

2. It is very important that my wife be at the hearing and she can not be there due to her being injured at work and she is receiving intense physical therapy and has doctor appointments and therapy which are conflicting and we did not know until this week that there would be a problem.

I apologize to the Board of Appeals for giving such a short notice.

Should you need to contact me, I can be reached at (410) 388-1974 or (410) 336-5100.

Thank you for your time and cooperation.

Sincerely,

Robert Long

RL:rl

cc: Newton A. Williams, Attorney for Melvin Woodell, Faxed 8/19/98
Kathleen C. Bianco, Faxed 8/19/98
Melvin Woodell, etal

RECEIVED
COUNTY BOARD OF APPEALS
98 AUG 19 AM 9:43

September 10, 1998

Ms. Kathleen Bianco
County Board of Appeals of Baltimore County
Old Court House
Room 49
400 Washington Avenue
Towson, MD 21204

RE: Case # 98-251A
Case # CBA-98-128

Dear Ms. Bianco,

We are requesting a postponement until the month of December, because of my schedule I will not be available from October 29th to the end of November.

Should you have any questions regarding this matter, please call me at (410) 388 1974 or (410) 336-5100.

Sincerely,

Robert Long

RL:rl

Sent by: COVENANT REALTY,INC. 410 09/15/98 2:23PM Job 441 Page 1/1

TO: **Ms. Kathleen Bianco**
Baltimore County Board of Appeals

Fax#: **(410) 887-3182**

FROM: **Robert Long**

Fax#: **(410) 388-1610**
Home#: **(410) 388-1974**

Ms. Bianco:

Please look over the attached Subpoena's and Affidavit's and let me know if they are ok. I will be using a private processor.

Thank you for all of your help and cooperation.

Sincerely,

Robert Long

Robert Long

TO: **Ms. Kathleen Bianco**
Baltimore County Board of Appeals

Fax#: **(410) 887-3182**

FROM: **Robert Long**

Fax#: **(410) 388-1610**
Home#: **(410) 388-1974** - T/C FOR Pick up 12/28 @ 12:30pm.

98 DEC 28 PM 12:3
COUNTY BOARD OF APPEALS
RECEIVED
(illegible)

Ms. Bianco:

Please look over the attached Subpoena's and Affidavit's and let me know if they are ok. I will be using a private processor.

Also, I can pick these up on Monday at your office. You do not need to mail them back to me.

Have a great Holiday!

Thank you for all of your help and cooperation.

Sincerely,

Robert Long

Robert Long

DEC-23-1998 11:01 ENGINEERING & CAP. IMPR. P.01

10/28/98

Mrs. Bianco:

Here is another Subpoena
that I need signed.

Thank you

Robert Long

(410) 547-3182

(410) 385-1610 Fax
385-1974 Phone

Robert Long

410-336-5180 Fax phone # Long

Sent by: COVENANT REALTY,INC. 410 10/28/98 2:36PM Job 517 Page 1/2

STATE OF MARYLAND
COUNTY OF ANNE ARUNDEL
RECEIVED
98 OCT 28 PM 2:47
CLERK'S OFFICE

2:04 (Time Subpoena was signed)

4/7/98
&
WCR

To: Pos
4/8/98 ua

County Board of Appeals

April 7, 1998

Re: PETITION FOR VARIANCE
S/S Annadale Rd. 90' E of the c/l of Matthai Rd.
(3825A Annadale Road)
15th Election District - 7th Councilmanic District
Robert Long, et ux - Petitioners
Case No. 98-251-A

We the concerned citizens of Annadale would at this time like to appeal the decision of March 13, 1998 concerning the above case.

Send all correspondence to:

Melvin C. Woodell, Jr.
705 S. 49th Street
Baltimore, Md. 21224

Thank you in advance for your consideration in this matter.

Concerned Property Owners of Annadale

RECEIVED
APR - 7 1998
98-13.59
PDM

RECEIVED APR 0 7 1998

Environmental Impact Review

April 7, 1998

Baltimore County Department of
Environmental Protection & Resource
Management

Re: 3825 A Annadale Rd.
Critical Area Administrative Variance

We would like to appeal the decision of granting a variance to build a house on this undersized lot.

The lot in question is grossly undersized and adjoins Tabasco Road. Tabasco Road is a paper road which has been turned into the drainage area from the newer part of our community, which goes directly into Tabasco Creek. Tabasco Creek already has enough pollution problems without putting another house on top of the drainage area, which will add to the pollution problem and further restrict the filtration of drainage from the newer community.

Allowing this construction would have a major impact on the wildlife that is left. Before the construction of the newer community we had an abundance of wildlife, since then the number has dropped greatly. This area and the adjoining paper road area are the only areas left for the wildlife. The only area left with high grass for nesting is adjoining this property. It is our fear that developing so close would further reduce our wildlife .

It is our opinion that the development of this property would have a total negative effect on our creek, wildlife, and our community as a whole.

We the property owners of the community should have an opportunity to voice our concerns in this matter.

Please find enclosed a check for seventy-five dollars.

Send all correspondence to:

advertised
2/25/98

Melvin C. Woodell, Jr.
705 S. 49th Street
Baltimore, Md. 21224

Thank you in advance for your consideration in this matter.

Concerned citizens of Annadale

Environmental Impact Review

June 23, 1998

Baltimore County Department of
Environmental Protection & Resource
Management

Re: 3825 A Annadale Rd.
Critical Area Administrative Variance

We would like to appeal the decision of granting a variance to build a house on this undersized lot.

The lot in question is grossly undersized and adjoins Tabasco Road. Tabasco Road is a paper road which has been turned into the drainage area from the newer part of our community, which goes directly into Tabasco Creek. Tabasco Creek already has enough pollution problems without putting another house on top of the drainage area, which will add to the pollution problem and further restrict the filtration of drainage from the newer community.

Allowing this construction would have a major impact on the wildlife that is left. Before the construction of the newer community we had an abundance of wildlife, since then the number has dropped greatly. This area and the adjoining paper road area are the only areas left for the wildlife. The only area left with high grass for nesting is adjoining this property. It is our fear that developing so close would further reduce our wildlife .

It is our opinion that the development of this property would have a total negative effect on our creek, wildlife, and our community as a whole.

We the property owners of the community should have an opportunity to voice our concerns in this matter.

Please find enclosed a check for seventy-five dollars.

Send all correspondence to:

Melvin C. Woodell, Jr.
705 S. 49th Street
Baltimore, Md. 21224

Thank you in advance for your consideration in this matter.

Concerned citizens of Annadale

Environmental Impact Review

June 23, 1998

Baltimore County Department of
Environmental Protection & Resource
Management

Attention: Keith Kelly

Re: 3825 A Annadale Rd.
Critical Area Administrative Variance

As per our phone conversation of June 23, 1998 please find enclosed copy of the original appeal and appeal renewal. Check was submitted with the original appeal dated April 7, 1998.

Copy of receipt that check was submitted on April 7, 1998 with letter is also enclosed.

Melvin C. Woodell, Jr.

February 18, 1998

To whom it may concern,

We are writing this letter to state our opposition to Case # 98-251-A, which would allow a home to be built on a 43' wide parcel of land in lieu of the required 55'wide. We oppose this for several reasons, and we will list some below:

1) When we purchased our property now known as 3830 Annadale road, we were made to buy 2 parcels of land in order to receive a permit to build, due to the fact that each lot was only 50' wide. By doing this we now are forced to pay front footage taxes on 100' and water and sewer connections on 2 lots, even though we will never be able to put a second home on our lot.

2) When Mr. Long designed the road and had the road put in, the contractors totally destroyed the Landscape of our front yard, and never repaired it to our satisfaction. Now whenever it rains, we have large puddles of water that stay in front of our property. This again is caused by the poor design of the Drainage. We are extremely concerned that a new dwelling built on this property will make the Drainage problem worse. due to the fact that the main drain dumps onto this property, and into the waterway. If this drain is removed we will have more water laying in front of our home. This would not be fair.

3) There is currently an easement on this property, which allows our children to go to the waterfront to fish or feed the waterfowl. If this house is built, our children would be cut off from one of the most enjoyable parts of living in a waterfront community.

Please understand that we are not opposed to growth, however we are opposed to someone gaining at another persons loss, and we feel that allowing a dwelling to be built on this lot will definitely cause us undue hardships. We apologize for not being able to attend this meeting, however we are both hard-working, tax-paying citizens who get limited vacation days, and we try to spend those days with our children.

Sincerely,

Joseph R Ernstberger Sr

Patricia K. Ernstberger

Mr. and Mrs. Joseph Ernstberger
3830 Annadale Road
Baltimore, Maryland 21222
410-477-3721

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Norris Shanholtz Sr	3822 Annadale Rd. #21222
Shirley Shanholtz	3822 Annadale Rd. #21222
David Kenneth	3821 Annadale Rd 21222
[redacted]	
Joseph Ernstberger	3830 Annadale Rd.
Patricia Ernstberger	3830 Annadale Rd.
Mel Woodall Jr.	205 S. 49th St. 21224

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Robert Long	3827 Annandale Rd
Rose Long	" "

Printed with Soybean Ink
on Recycled Paper

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF	*	COUNTY BOARD OF APPEALS
ROBERT LONG, ET UX, FOR	*	OF
ZONING VARIANCE ON PROPERTY	*	BALTIMORE COUNTY
LOCATED ON THE S/S ANNADALE	*	Case NO. 98-251-A
ROAD, 90' E OF CENTERLINE	*	AND
MATTHAI ROAD	*	CASE NO. CBA-98-128
(3825A ANNADALE ROAD)	*	
APPLICATION FOR CRITICAL	*	January 13, 1999
AREA VARIANCE /3825A	*	
ANNADALE ROAD	*	
15TH ELECTION DISTRICT	*	
7TH COUNCILMANIC DISTRICT	*	

ORIGINAL

* * * * *

The above-entitled matter came on hearing

before the Baltimore County Board of Appeals at the Old

Courthouse, 400 Washington Avenue, Towson, Maryland 21204

at 10 a.m., January 13, 1999.

* * * * *

Reported by:

C.E. Peatt

BOARD MEMBERS:

LAWRENCE M. STAHL, Panel Chairman
LYNN BARRANGER
MARGARET WORRALL

APPEARANCES:

WENDY A. ZERWITZ, Esquire
On behalf of Petitioners/
Property Owners

NANCY C. WEST, Esquire
On behalf of Baltimore County

NEWTON A WILLIAMS, Esquire
On behalf of Appellants/Protestants

P R O C E E D I N G S

THE CHAIRMAN: Good morning, everyone. This is the meeting of January 13, 1999, of the County Board of Appeals for Baltimore County.

We're here for two matters, 98-251-A, which is the matter of Robert Long, et ux, petitioner, at the address of 3825A Annadale Road in the 15th Election District and 7th Councilmanic District.

We are here regarding the granting in part of a variance petition and the denial in part of a vaiance petition by the Zoning Commissioner.

We're also hearing Case No. CBA-98-128, which is also the matter of Robert Long property, same address, same election and councilmanic district, on the issue of the grant of a variance from the critical area regulations by DEPRM.

Counsel, before we do anything else, for the record, please?

MR. WILLIAMS: Good morning. Newton A. Williams, 502 Washington Avenue, Towson 21204, appearing on behalf of Mr. and Mrs. Woodell, who are the owners of the

property known as Lot 3825 Annadale Road, and it adjoins the subject property on the other side of a paper street call Tobasco Road, and also here own behalf of Mr. and Mrs. Ernstberger, in the first row here.

MS. WEST: If it please the Board, Nancy West, from the county law office on behalf of the county with regard to one case only, that is, CBA-98-128, and that would be the matter which pertains to the Chesapeake Bay critical areas administrative variance.

MS. ZERWITZ: For the record, Wendy Zerwitz, on behalf of Robert Long, property owner, of 3827 Annadale Road, Baltimore 21222.

THE CHAIRMAN: I would state, for the record, Ms. Zerwitz is new in the matter. She has filed and entered into the record a notice to enter her appearance on behalf of Mr. Long.

MS. ZERWITZ: Thank you.

MS. WEST: Excuse me.

THE CHAIRMAN: Ms. West?

MS. WEST: For the record, I should said my entry of appearance is because of the withdrawal of appearance

which had not been formally done of William O. Jenson, a former member of my office who recently retired, and I received this case yesterday afternoon.

THE CHAIRMAN: Congratulations. The record should reflect we have had a previous discussion with counsel in chambers, and we are going to proceed preliminarily in the following way.

We have two separate matters arising, separate issues and separate questions of fact. We also have two motions that have been filed. One is a Motion to Dismiss the matter, I think, mostly as it relates to the DEPRM case, and also a Motion to Quash subpoenas, that is, to refuse to allow the subpoenas to be given force and effect.

We have determined that, based upon the length of the cases and based upon the facts presented, apparently by both sides, that we'll proceed in the following manner.

We'll hear today, now, the Motion to Quash the subpoenas, becuse that affects the carrying out of any trial that we would have.

We'll hear, very briefly, argument from each

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counsel, if they chose to, and we'll in open session rule as to whether or not the subpoenas are valid or should be, in fact, quashed.

Having done that, we'll hear both cases, that is, we'll hear all the witnesses for each side in both of those cases.

We will hold the Motion to Dismiss sub curia, sub curia meaning, for those of you who are guests today, that we'll not rule on the Motion to Dismiss until the conclusion of the case when the Board is ready to render a decision.

We do this in order that justice moves as quickly as possible, and I note that this case has been postponed on a number of occassions, and, frankly, with new counsel coming in today, I want to thank both counsel who are new in the case for not asking us the hard question of, Well, I've just got to request another postponement to get my case together.

I appreciate the fact it's very difficult to do that on one day's notice, having been put in that position myself any number of times.

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What we'll do is, at the conclusion of all the evidence, as is the normal procedure of this Board, in liew of, instead of closing aguments, we will receive brief memoranda from counsel which will lay out not only the facts as they were presented, but the applicable law and standards of review of this Board. And that those memos will include a discussion based on case law or argument or precedent of any kind as to whether or not the Motion to Dismiss should or should not be granted,, depending on whose memo it is, and we will then issue in the course of our normal procedure an opinion and written opinion as to all matters.

If we were to dismiss, to grant the Motion to Dismiss, this will end the opinion there, obviously. If we rule that the Motion to Dismiss should be denied, then we'll have already heard the evidence and we'll be able to rule on the merits of the case itself.

So that, one way or the other, we'll hear everything today and resolve everything today. And then, if somebody needs to take an appeal, they have the entire package to do so and we don't wind up having possibly an appeal overturned on some preliminary action and then have to come back at some future day and hear the case at that point.

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So we are going to get everything done in one day and, hopefully, move on and resolve the case, because I think that the ultimate resolution is in the best interests of all parties concerned.

Okay. Having said that, there is one more procedural matter after we rule on that and, Ms. West, you will put that on the record when we get to that point in terms of the order of witnesses.

MS. WEST: Yes, sir, certainly.

THE CHAIRMAN: What we are going to do now, we have read the Motion to Quash filed by the appellant, and we'll now hear some brief argument as to the Motion to Quash. Mr. Williams.

MR. WILLIAMS: Mr. Chairman, members of the Board, in order to help you to understand this, I have a legal memo that I prepared.

I have given a copy to Ms. Zerwitz and given a copy to Ms. West, and I'd like to give it to the Board

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because it has some attachments on it that are in the Board's file and that will help you to sort of understand what I am speaking about.

THE CHAIRMAN: Does the county have any comments?

MS. WEST: I haven't had a chance to review it.

MR. WILLIAMS: I hope the Board, and I know they will, look at the substance of it later.

I would ask the Board to look at it because it explains where people live, or we can put something on the board, but I would just like to have something to give the Board some context.

THE CHAIRMAN: That's fine with me. This is for the variance? This is not for the Motion to Quash?

MR. WILLIAMS: This is for the variance, but the reason I am going to put -- I need my motion right here, and I am trying to stand where everybody can see me.

MS. ZERWITZ: Your Honor, I'm sorry, I am going to object to the introduction of Mr. Williams' memo. We are dealing with so many -- the memo goes to the heart of the hearing.

THE CHAIRMAN: That was the point of my question

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as I began to look at that. I have no objection to it coming in, if it's all right with counsel, not as to the merits of the case, but as a quick thanking you for your highlighted headlines of each paragraph. I don't particularly see anything here that goes to the question of the subpoenas.

MR. WILLIAMS: I'm not asking you to look at it for that purpose. If you look at the attachments to it --

THE CHAIRMAN: Okay. In the sense of your argument, okay, we'll do that, so he has to put the things in so we can look at the map that's connected.

MR. WILLIAMS: That's what I'm trying do do.

MS: WEST: Are we marking that for identification?

THE CHAIRMAN: Why don't we mark this for identification. And let me suggest you move it as evidence when we get to that point in the case.

MR. WILLIAMS: That's fine.

THE CHAIRMAN: Just give it a number now, so that would be Protestants No. 1.

MR. WILLIAMS: It is strictly for identification.

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THE CHAIRMAN: Absolutely.

MR. WILLIAMS: I'd just like to give the Board a very short introduction so it puts it a little bit in context. We're down on the North Point peninsula. North Point Road is at the top to the north. Matthai Road runs essentially north and south, and it tees into Annadale Road at the -- just short of the water.

This is a subdivision that goes back to 1925. we are dealing with Lot 31 here. And if the Board sees the paper street marked Tobasco -- not Tobasco -- Tobasco Road, Lot 31, is the lot in question we are dealing with. Mr. Woodell's property is 3825 immediately to the left. It's Lot 30. Mr. Long's property is 38 -- I'm sorry, what is your address?

ROBERT LONG. 3827.

MR. WILIAMS: Thank you, sir. Lot 32. Now, I won't say anything more about that. I just wanted to set the stage.

There were other people in the case, but the two subpoenas in question, one goes to Mr. and Mrs. Norris Shanholtz. The Shanholtz live here at the northeast

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corner of Annadale Road, 3822 Annadale Road. The Cheneweths live at 3821 Annadale Road, which is the house immediately to the east of the Shanholtz on the north -- on the north side of the road. I'd like to point out -- excuse me -- identify the lot numbers. The Shanholtz live on sixteen and seventeen, and that is 3822. And the Ernstbergers -- correct me if I am wrong -- live on lots five and fourteen --

VOICE: Fifteen.

MR. WILLIAMS: I'm sorry. The one on my thing just says five, for some reason. Fourteen and fifteen, and that is known as 3821 and 3830.

I think they're wrong in the subpoenas then. That's where I got the information. But let me -- the Chenoweths -- where do the Chenoweths live?

VOICE: 3821.

MR. WILLIAMS: The bottom line. I am trying to cut to the case here. The bottom line is these people are not here as protestants this morning, neither Mr. and Mrs. Shanholtz nor Mr. and Mrs. Cheneweth.

The material requested all relates, if the Board

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can see items one through seven, the approved site plan, building permit, detailed list of all improvements, all permits for driveways, size of the driveway, to my view, and the similar things as to the Chenowoths, it has nothing to do with this case.

And I said, I said in item number four of my Motion to Quash, that I felt that it could give the appearance of being somewhat threatening or extortioning on the part of the petitioner, and, if so, he, to that extent has succeeded, because these people are not here.

Now, if Mr. Long --

MS. ZERWITZ: Objection.

THE CHAIRMAN Sustained.

MR. WILLIAMS: I had said it appears.

THE CHAIRMAN: Sustained.

MR. WILLIAMS: These people are not here. Mr. Long still feels he needs this information to try this case. I believe that the Board is entitled to an explanation of how it would be relevant and how it would bear, but these people, neither the Shanholtzs nor the Chenoweths are here. Now, that's all I have to say,

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except thank you, your Honor.

MS. ZERWITZ: Briefly, in response, this is a very small, as in size, neighborhood. Houses are very close together. As the evidence will come forth to support, the houses are on small lots, not a lot of room between houses. And there is also an allegation, at least being made by the protestants, if an additional house were built in the neighbohood, there would be problems.

We believe for that reason we should be entitled to know where these people are coming from? What's their background in the neighborhood? What have they done to their property? They may have also caused problems by virtue of their own development on these lots.

And to say they can come foward today and say Mr. Long shouldn't be able to use his property for his own enjoyment, where they have been able to do so on their own property, I would just suggest the Court would gain from knowing their background as to what they have done to their own use and enjoyment of their property, and that's why the subpoenas were issued, so more information can be determined and facilitate the questions to find out what

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made these people have to protest the entire neighborhood as a whole. Thank you.

THE CHAIRMAN: Thank you. Ms. West?

MS. WEST: Very, briefly, I think, first of all, we join Ms. Zerwitz in her comments. Additionally, we would note that a number, a bulk of the information requested does seem to be germain to the matter before the Board with regard to not only the zoning variance, but with regard to the Chesapeak Bay critical area administrative variance that was requested and, for that reason, I would ask the Board deny that Motion to Quash.

THE CHAIRMAN: Okay. We're going to do this off the top of our head. Obviously, we're treating that as a motion that needs to be publicly deliberated in public.

(Public Deliberation from the Bench.)

* * * * *

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THE CHAIRMAN: Now, I will say this, procedurally. That was a public deliberation. We'll go ahead now, subject to any other motion at this point. Certainly our ruling relative to the subpoenas, just so there no question about what's appealable when we ruled on the subpoenas, we'll ultimately issue a written opinion. We will note in the written opinion that we had this discussion, because, certainly, the Motion to Quash is in the record and we'll make that ruling part of of that written opinion, albeit a brief one, so that should there be an appeal on the entire case, that certainly that's a relevant issue for an appellate court and the Circuit Court to review in terms of whether it was appropriate for us to do it or not.

MS. ZERWITZ: Thank you.

THE CHAIRMAN: So your appeal doesn't begin from today. It begins like, everything else in the case, thirty days from the written opinion.

All right. Having resolved that, Ms. West, are you going to favor us with a suggestion for procedure?

MS. WEST: Yes. Thank you. And once again

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begging your indulgance, as you stated earlier, your Honor, this is a consolidated matter with regard to two cases, one the zoning variance case as well as what I'm going to refer to as, just for ease of reference as well as clarity, the DEPRM variance, which is the Cheasapeke Bay critical administrative variance.

Since the county is only going to be participating as to the latter case involving the DEPRM variance, we respectfully request with regard to proceeding here today that we be allowed to move forward, and with regard to the order of proof, while it's different from the burden of proof, we be allowed as the county to put its witness on so that we can complete the entire case in context administratively so the Board would know what action it is the county took from which these protestants are objecting and noted an appeal.

I would note for the record, that with regard to the DEPRM appeal, that matter is referred to in Title 26, specifically Section 26-445(e), which grants any person or persons either jointly or severally the right to note an appeal to this Board from any decision made relative to

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the DEPRM variance.

They would have that right to note an appeal to the Board, and that section specifically provides that the right of appeal before this Board would be de novo.

So if one looks at that particular provision, and in concert with the Board's Rules of Practice And procedures, specifically those that are contained in Appendix C of the County Code, specifically Rule 7, 7(d), which provides that except as otherwise may be provided by statute, and it's not provided in the statute, the protestants of the action shall have the burden of proof. So, legally, the burden of proof in this case would be upon Mr. Long as well as the county to demonstrate the reasons for taking the action they took.

However, that doesn't affect the order of proof and, normally, given the fact the appeal was taken by the community protestants in the case, the order of proof would be upon them.

But I respectfully ask the Board's indulgance as a matter just for ease of clarity and trying to set the administrative background, the context, if the county were

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to put its case in chief on first, and we only have one witness, and that would probably create a lot less confusion because of the two appeals that were taken.

And I have discussed this matter with Ms. Zerwitz and Mr. Williams, and they have no objection to our proceeding in this manner.

Also, it would enable me -- I do have three people here from the Department of Environmental Protection and Resource Management, whom I only anticipate calling one, but at least that would allow us to conclude that portion of the consolidated appeal, and with the Board's permission, the witnesses could be excused as opposed to staying here all day since they're not going to participate in the zoning appeal.

THE CHAIRMAN: I have no objection.

MS. ZERWITZ: No objection.

MR. WILLIAMS: I have no objection.

THE CHAIRMAN: What we'll do is present that witness, and then we'll go back to the normal burden of proof after that presentation.

Okay. That being the case, let's have some

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brief, if you want, brief opening statements as to the issues in the case in chief, cases in chief.

For clarity, let's go left to right. Okay, Mr. Williams, briefly.

MR. WILLIAMS: Thank you very. Mr. Chairman, members of the Board I am -- in order, and I will offer this at the appropriate time. Does the Board -- because I got this out of the Board's file -- does the Board have the notification of the project application? I have copies if the Board would like.

THE CHAIRMAN: If you already have copies, why don't you present them at the appropriate time.

MR. WILLIAMS: Does the Board have that in its file, the source of my item, Chesapeake Bay Critical Area Commission notification of project application and subsequently --

MS. WEST: We anticipated, Mr. Williams, introducing that in our case in chief.

THE CHAIRMAN: I don't see it listed.

MS. WEST: Everything you're showing me, I will introduce.

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MR. WILLIAMS: I want to keep my copies straight so now I am down to six. I'd just like to say, very briefly, if the Board will compare the zoning variance request plan and that in my -- it's in the Board's file and also it's part of my Protestants' Exhibit 1 for identification -- that shows the zoning request, shows the dimension forty-three feet. I have some question about that, and we'll get to that.

What was ruled on by Baltimore County, by DEPRM, and DEPRM had only to work with what it was shown -- I'm not impuning DEPRM in any way -- it shows on the attachment to the notification of project application, it shows a lot sixty feet in width, which of necessity would include the entire bed of Tobasco Road in order to get to that.

So my point is this. What DEPRM was shown and what they ruled on is not what the zoning case contains. It is a wider lot. So now, for whatever purposes that may be, essentially we are dealing with DEPRM was looking at one thing, and that's all they had to look at.

And, by the way, I believe their action came

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prior to the Zoning Commissioner's action. And the zoning case deals with another. And and more than that, I will say, in the course of the case, I remind the Board DEPRM was not shown the fact that there is a stormwater outfall on this lot. Mr. Long alluded to it in the course of the exchange that we had. DEPRM didn't have the whole story. That's my point.

THE CHAIRMAN: Ms. West.

MS. WEST: Thank you, Mr. Chair. Just very briefly, the property which is the subject matter of this proceedings is a waterfront lot which abuts Tobasco Creek in southeastern Baltimore County.

It's presently vacant. And the property owner who's here before you today, Mr. Long and his wife, are seeking to construct a single family dwelling on this vacant lot, and it's in the 100-foot buffer to Bear Creek.

And the reason that's significant is because normally you can't build in the 100-foot buffer unless you come and get an administrative variance and that's the gravemens of what's before the Board with regard to the DEPRM variance.

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There are certain regulations that DEPRM looks at. They are established by the Chesapeake Bay Critical Area Commission. Those regulations are contained in COMAR, which is the Code of Maryland Regulations, and it's specifically -- there's a section, Title 27, which has the criteria, sets forth five separate criteria. That's what the Board is going to hear today.

What the testimony of Keith Kelley, who's an employee of the Baltimore County Department of Environmental Protection and Resource Management who will testify as to what those criteria are and how Mr. Long met those criteria and ultimately granted an administrative variance, and at the appropriate time we'll be introducing the relevant correspondence, the law, the administrative paperwork germane to that. But to put it in context, that would be the county's participation with regard to the DEPRM variance.

THE CHAIRMAN: Thank you. Ms. Zerwitz?

MS. ZERWITZ: Thank you, your Honor. In response, if your Honors please, we have a piece of property that we are dealing with which is actually

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pie-shaped. It's not a perfect square. There are places where the property becomes bigger, and as it gets to the 100-foot buffer, it becomes much larger, and it's because of the 100-foot buffer zone that the variance for the variance aspects of the case is necessary.

We'll present evidence to this Court regarding the size of the property both through the property owner as well as the surveyor that will talk about the size of the property and different points in the property and why the issue of it being waterfront and Bear Creekis both relevant and necessary to his applying for the variance, and we'll present evidence to that effect through DEPRM, and DEPRM came out and did their five step criteria, made their determination, Mr. Long abided, has done what they have asked him to do, and, as such, we believe once he has met the environmental concerns, the request for a variance should follow suit. Thank you.

THE CHAIRMAN: Let me ask you a question. Procedurally, we do have two cases, obviously, two sets of criteria, one eminating from the Count Code, one eminating from COMAR.

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Is it the intention of counsel to present witnesses and testimony separately for both, or are your witnesses such that you can put them on and be able to deal with issues relevant to both variance requests?

Let me hear from counsel. We can do the DEPRM, finish the DEPRM, and then start the regular zoning case, at which point Ms. West --

MS. WEST: Can recuse herself.

THE CHAIRMAN: -- absent herself along with her witness, and then we'll be down to you two who can go to the zoning case. Not probably the best way to proceed.

MR. WILLIAMS: Whatever the Board would like to do, I think it makes the most sense.

THE CHAIRMAN: Just particularly because the county is not involved in both cases, let's get the county's case involvement done.

MS. WEST: Certainly, I want to say, for the record, my witnesses will be available for recall, if you want to bring them back.

THE CHAIRMAN: That's up to counsel. So let's do it that way, because I noticed everybody opted essentially

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to talk about the DEPRM case, so let's do the DEPRM case first, and then we'll go from there. Your first witness?

MS. WEST: Thank you, sir. We'll be calling to the stand Keith Kelley, please.

KEITH KELLEY,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. WEST:

Q. Good morning, Mr. Kelley. Would you state your name, and spell your last name, for the record.

A. My name is Keith David Kelley. K-e-l-l-e-y.

Q. Mr. Kelley, you're employed by the Baltimore County Department of Environmental Protection and Resource Management, sir?

A. That is correct.

Q. How long have you been a county employee?

A. Eighteen years.

Q. Have all those eighteen years been with the Department of Environmental Protection and Resource Management?

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A. Yes, they have.

Q. What is your current position, sir?

A. Natural Resource Specialist in the section of the environmental impact review.

Q. What are your duties and responsibilities with regard to that position, Mr. Kelley?

A. I receive development and permit review of projects in the Chesapeake Bay critical area. That's a line defined as a thousand feet from the Bay or any of it tributaries.

Q. Are you familiar with the property known as 3825A Annadale Road?

A. Yes, I am.

Q. Where's that located, sir. What part of the Baltimore County?

A. Down in the Dundalk area of Baltimore County, southeast Baltimore County.

Q. Do you know who the property owners are?

A. Robert and Rose Long.

Q. How did that particular property come to your attention?

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A. Through a critical administrative variance application.

Q. Is that something for which you would be responsible in your current position?

A. That is correct.

Q. Can you explain to us what exactly a critical area administrative variance is? Let me strike that question and ask you this. Why don't we do it by way of the application.

I am going to ask the Board to mark for identification as County Exhibit 1 --

MR. WILLIAMS: I have extra copies of that, if the Board would like, so the Board members can follow along as we go through.

THE CHAIRMAN: Do you want to offer them through Ms. West?

MS. WEST: Off the record.

(Discussion held off the record.)

THE CHAIRMAN: Okay. We have a document entitled Notification of Project Application, of a number of pages, and we'll note that as County Exhibit No. 1.

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Q. Mr. Kelley, if you will, sir, can you identify that, for the record, what's been identified or marked for identification as County Exhibit 1?

A. Yes, I can. In front of me I have an application submitted by Robert Long for building a house in the one-hundred foot buffer to Bear Creek.

Q. What's the date on that, sir?

A. Mr. and Mrs. Long signed it on June 18, 1997. We received it --

Q. You say the 18th. My copy looks like the 14th.

A. 18th. And we received it on June 19, 1997.

Q. Just out of curiosity, there's a date here 7-14-97 on the cover sheet?

A. That is when I made the site visit and processed the variance.

Q. Does it identify the name of the project, the address?

A. Yes.

Q. I'm sorry. This particular exhibit is several pages, so I apologize. Does the cover sheet identify the property location and the project?

A. Yes, it does.
Q. What is that address, sir?
A. 3825A Annadale Road.
Q. Once again, that's in the Dundalk section of Baltimore County?
A. Correct.
Q. That would be zone 22?
A. Correct.
Q. Now, referring your attention, please, to the second page of the application, does that specifically identify what they're seeking in terms of relief from the department? What they're asking for you to do?
A. Yes.
Q. What does it ask for?
A. Under Part C, to construct a new home within the 100 feet from mean high tide.
Q. What exactly is the problem here, Mr. Kelley? Why did they have to come in for a DEPRM variance, a Chesapeake Bay critical administrative variance?
A. They need the variance because they are proposing to build within a hundred feet of the mean high tide, and

in this case of Bear Creek.
Q. That would be prohibited generally without getting a variance from your office?
A. Correct.
Q. What's normally required when somebody comes in to make application for a variance, what's the procedure?
A. They submit an application to us. We make a site visit. And then we send a copy of the variance application down to the Chesapeake Bay Critical Area Commission for their review.
Q. You have admitted by virtue of this application the Longs did, in fact, submit this application. Did you undertake your customary review?
A. Yes, I did.
Q. And then you conducted a site visit?
A. Correct, on July 14, 1997.
Q. What, if anything, did you observe upon your site visit?
A. I just observed the waterfront lot, manicured lawn with stone shoreline. No vegetation. No improvements on the property.

Q. Did you have a conversation with the property owners at the time of your site visit?
A. I don't recall. I don't believe so.
Q. Other than what you described, is there anything else unusual that you noticed about the lot you think is relevant?
A. To the variance --
Q. Yes.
A. -- application? No.
Q. Can you describe the lot in reference to the surrounding property?
A. It's one of the few unimproved lots in the neighborhood. There are all single family homes surrounding this property on fairly small lots, less than a quarter-acre size.
Q. So once you got the final paperwork from the Longs and you went down and, I believe, inspected the place, you indicated you sent the application along to the Chesapeake Bay Critical Areas Commission, correct?
A. I attached the cover letter dated July 14, 1997, entitled Notification of Project Application.

Q. Is that your writing on the face of this application, Mr. Kelley?
A. Yes, it is.
Q. And that's your signature at the bottom where it says contact person?
A. Correct.
Q. What happened after that? Did you get a response from the Commission in regard to this application?
A. Yes, I did.
Q. Let me just, preliminarily, if I may, ask if you can identify for the record -- and I guess we can take judicial notice of this --
THE CHAIRMAN: But it should have a place in the file, so let's give it a number.
Q. Can you identify what's going to be marked as County No. 2 for i.d., for the record?
A. Yes. That's Section 26-445 in the Baltimore County Code.
Q. What does that section, Mr. Kelley, pertain to?
A. That pertains to building within the hundred foot buffer, and that's the variance process.

Q. That's part of the administrative process regarding a variance?

A. Yes.

MS. WEST: We would like to have that marked as County No. 2.

THE CHAIRMAN: So noted.

MS. WEST: I would like to mark this as Exhibit No. 3.

Q. I'm going to show you, Mr. Kelley, what's been marked as County No. 3 and ask you to identify that for the record.

A. That's the natural resource article.

Q. That would be of the Annotated Code of Maryland?

A. Correct. 8-1811(b)(3) states that the local approving authority may not process an application of which a copy must be sent to the Commission until the local approving authority has received notice of receipt from the Commission, and any action of the local approving authority in violation of this paragraph shall be void.

We have to wait for the Commission to respond to the application before we can make a decision.

MS. WEST: I note for the record this is a redacted section out of the Natural Resources Article of the Annotated Code of Maryland, previously referring to page 21, 8-1811(b)(3), which Mr. Kelley has referenced.

THE CHAIRMAN: Okay. Noted as County Exhibit No. 3.

Q. Mr. Kelley, once again, I'm showing you what's going to be marked for identification as County Exhibit 4, and ask you if you can identify that, for the record, please?

A. Yes, I can. That is the COMAR. Excuse me.

Q. Certainly.

A. COMAR 27.

Q. Title 27?

A. Title 27.01.11, and it explains the variance process which for Chesapeake Bay critical area --

Q. Would it be fair to state the variance procedures, the criteria that the county follows, that specifically with the Department of Environmental Protection and Resource Management is codified here, which Title 27 of COMAR, the Code of Maryland, regulations?

A. That is correct.

Q. And that would be what you would look to to determine whether or not the applicant has met the variance procedure and is complying?

A. Yes.

Q. Okay, Mr. Kelley, you said you sent this packet you referred to earlier, the application, along with your cover sheet to the Chesapeake Bay Critical Areas Commission that would be in conformance with the performance of the law. What, if anything, happened after that?

A. I received correspondence from the Commission on July 30 of 1997. Their letter was dated July 25, 1997 from Susan McConville, who's the natural resource planner, basically stating that they support variance approval with certain conditions.

Q. I show you --

MS. WEST: Once again, this is going to be marked as County Exhibit 5. I want to say, for the record, the witness does have the originals of all these in his file, if counsel would like to review them, but we'll be

submitting copies and we will be providing counsel with copies of everything.

THE CHAIRMAN; So noted.

MS. WEST: I ask that the Board mark that for identification, which I think we're up to five?

THE CHAIRMAN: Five, yes.

Q. Referring your attention, once again, Mr. Kelley, to that Exhibit No. 5, you stated that's a letter you received from the Commission, Chesapeake Bay Critical Area Commission relative to this matter. And what did it state?

A. That is the letter I received, and it basically supported the variance with conditions such as keep encroachment in the buffer to a minimum, and some planting requirements, native vegetation in the 100-foot buffer to mitigate for new disturbance in the 100-foot buffer.

Q. What did you do after receiving that letter?

A. I prepared a variance approval letter for my supervisor to address to Mr. Long.

MS. WEST: I ask the Board to mark that for identification as County Exhibit -- I believe we're now at

six, Mr. Chair?

THE CHAIRMAN: Yes.

Q. Would you identify this, for the record, please?

A. That's the tentative approval letter sent to Mr. Long with the date of August 13, 1997.

Q. Who's the signatory on that letter?

A. George Perdikakis, the director of DEPRM.

Q. You, if fact, prepared that letter for his signature?

A. Yes.

Q. You authored this letter?

A. Correct.

Q. What exactly does this letter say?

A. That Mr. Long meets all five criteria based in COMAR 27, Title 27, and that the variance is approved, and then there are certain conditions to be met such as advertising in the newspaper.

Q. Since this letter, in effect, is the crux of the variance request, let's talk it.

Did this letter in some detail -- you said it references the criteria. Let's talk about the criteria.

Can you tell the Board what those five criteria are?

A. Sure. The first criterion requires that special conditions exist on the property that are peculiar to the land or structure. In this case, the majority of the property is in the 100-foot buffer. That hardship would be unwarranted, that is to say, the lot would be unbuildable if we didn't allow encroachment in the 100-foot buffer.

Q. So Mr. Long meets the first criteria, namely, there was a hardship that would result if, in fact, he were denied the right to build?

A That is correct.

Q. What is the second criteria?

A. The criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by others in similar areas of the critical area.

Q. What exactly does that mean?

A. That there's no room to build outside the 100-foot buffer, and that the flavor of the neighbor, all

the other homes are encroaching into the 100-foot buffer.

Q. So it was your considered opinion, in fact, he had complied, or this particular scenario as decribed in the application by you, complied with that criteria?

A. That is correct.

Q. How about the third criterion, can you please tell us about that?

A. The third criterion requires that granting of a variance would not confer upon the applicant any special privilege that would be denied to others.

No special privileges were conferred to Mr. Long in this case. Therefore, the criterion has been met.

Q. Now, why did you determine no special privilege would be conferred?

A. It didn't matter if someone else owned the property, I would have approved the third criterion. It wasn't arbitrary or capricious dealing with Mr. Long.

Q. How about the fourth criteria, can you tell us what the fourth criteria is?

A. It requires that a variance is not based upon conditions or circumstances that were the result of

actions by the applicant, nor does the request arise from any condition related to land or building use, either permitted or non-conforming, on any neighboring property.

The variance is not based upon conditions or circumstances which are the result of Mr. Long's actions such as building a structure and then coming in after the fact for a variance.

Q. To your knowledge, the lot has not been built on as of this time?

A. To my knowledge, it's still unimproved.

Q. Once again, your review was based upon the information that was submitted in the application by the Longs?

A. That is correct.

Q. Did you, in fact, verify that information on your site visit?

A. Yes. I filled out Part B on the part of the application. It's the bottom of the first page that was done on July 14, 1997, on the field trip.

Q. Okay. How about the fifth criteria?

A. The fifth criterion requires that granting of the

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variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the critical area, and that granting of the variance will be in harmony with the general spirit and intent of the critical area regulations.

The granting of this variance will not adversely impact fish, wildlife or plant habitat. Potential water quality impacts can be minimized through the planting of trees. That was one of the conditions.

Q. So this letter was prepared under the direction of George Perdikakis who signed it, and it was mailed to the property owner, and the property owner met all five criteria?

A. Yes.

Q. Doesn't the letter indicate that, on page two, that the department felt the first four conditiions were met, and the fifth one could be met with certain conditions?

A. That is correct.

Q. What was that condition with regard to the fifth criteria?

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A. Planting of trees in the buffer.

Q. Were there any other requirements for the granting of this variance?

A. Yes, there was. The attached note of granting a variance had to appear in one of the local newspapers. Mr. Long had to sign the bottom of the August 13, 1997, letter and submit a copy to us, and also submit a revised plot plan.

Q. Was that, in fact, done, to your knowledge?

A. Yes, it was.

MS. WEST: I ask this be marked for identification, as I think we are up to seven?

MS. WORRALL: Yes.

THE CHAIRMAN: So noted.

Q. I show you what's marked for identification as County No. 7, and ask you to identify that for the record.

A. That was the attachment to the tentative granting of the variance. It was the filed notice of granting of variance.

Q. What is that, Mr. Kelley?

A. In a nutshell, it's the advertisement that Mr. Long had to advertise in one of the local newspapers down in the southeast portion of Baltimore County.

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Q. Is that one of the code requirements? Let me withdraw that question and ask, did that enable Mr. Long to comply with one of the criteria that the property be advertised?

A. Yes.

Q. Who prepared that?

A. DEPRM did.

Q. Would you have prepared that?

A. Yes.

Q. Or someone else under your guidance?

A. I prepared it.

Q. Was that mailed to Mr. Long?

A. That is correct. It was attached to the tentative granting of the variance letter.

Q. He would have been required to advertise that in a local newspaper of general circulation?

A. Correct.

Q. Let me refer your attention to page two of that exhibit and ask you to identify that, for the record.

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A. That's the copy of the article that appeared in The Avenue, and it was the attached -- it's a receipt from The Avenue stating that the notice of granting of variance was advertised in the newspaper.

Q. Can you tell us when that was advertised? Did the Certificate of Publication indicate when it was advertised?

A. February 26, 1998.

Q. Is the requirement only it be advertised for one week as opposed to successive weeks?

A. It just need to appear in one of the local newspapers one time.

Q. Is it your testimony that the copy of this affixed to this page, in fact, comports with the text of the first page that you prepared?

A. Yes, it does.

Q. Finally, referring your attention, sir, to page three of that exhibit, I ask you to identify that for the record.

A. That is the plot plan of Lot 31, which is 3825A Annadale.

Q. Would that be the vacant lot?
A. That's the vacant lot. The plot plan was attached to the variance application.
Q. Look at the note on that. Did you prepare this, Mr. Kelley?
A. No, I did not. That, I assume, that was prepared by Robert Long, or his engineer.
Q. You're saying that because it appears to be sealed?
A. That is correct. Frank Lee.
Q. And is it customary, once it is sealed, you accept that?
A. Yes, I do.
Q. And how about those notes at the top of that page, what refers to critical area notes, zoning history case, that sort of thing, did you prepare that?
A. No, I did not.
Q. That would be part of the plat that was submitted under seal?
A. Correct, by Frank Lee.
MS. WEST: Just so the record is really clean, I

ask be marked for identification as County Exhibit -- I believe No. 8.
Q. I ask if you can identify this, for the record, Mr. Kelley, please?
A. That is the final granting of variance letter we sent to Mr. Robert Long on June 22, 1988, after he met all the conditions set forth in the tentative approval letter we sent out.
Q. So that when you said, "tentative letter," that would have been August of 1997?
A. August 13, 1997 was the four-page letter signed by George Perdikakis.
Q. So this letter, in fact, is notification to the property owner he's complied with those requirements,and you verified, additionally, the ad was published in accordance with code requirements, correct?
A. Correct.
Q. Who's the signature on that letter?
A. Patricia Farr.
Q. Who's Patricia Farr?
A. She's my immediate supervisor.

Q. She signed that letter?
A. Yes, she did.
Q. That would have been dated June 22, 1998?
A. That is correct.
Q. Mr. Kelley, how many critical area administrative variances do you process during the course of a year?
A. Approximately one dozen.
Q. Have you ever been accepted by the Board of Appeals as an expert witness relative to this matter, that is, the review and grant of an administrative variance in the Chesapeake Bay critical areas?
A. Yes, I have.
MS. WEST: Just a few more questions, if the Board will bear with me. If I may have Exhibit 1, again?
Q. I refer your attention to Exhibit 1, the original application which also contains your site visit. I refer you to page two of that exhibit.
I want to talk a little bit about the information you obtained when you go to the property, when you actually go out to visit the site.
What is your purpose with regard to the

information you're trying to obtain in the application?
A. We identify any natural resources, be it a stream, wetlands, tributary to the Bay, and any existing impervious surfaces and any forest on site.
Q. Did you actually verify the information contained in the application submitted by the property owner with regard to lot size?
A. No, I do not. At this time of building permit, I try to go do a cross-reference in the records.
Q. Do you customarily accept their information contained in the application as true and accurate with regard to lot size?
A. That is correct.
Q. Did there come a time, Mr. Kelley, when you received a notice of intent to file an appeal from the decision you had rendered in this matter?
A. That is correct.
MS. WEST: This is County 9, I believe.
Q. Mr. Kelley, I ask you to identify what's been marked for identification as County Exhibit 9. Can you identify that, for the record, sir?

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A. That was Melvin Woodell's appeal of the granting of the variance by DEPRM, dated June 23, 1988.
Q. Did you, in fact, receive that in your office?
A. Yes.
Q. What did you do as a result of receiving that correspsondence?
A. Prepared an interoffice correspondence to Kathleen Bianco, notifying her of the appeal.
Q. Is there anything else in your file that's relevant to this particular matter here today, Mr. Kelley, you'd like to apprise the Board of?
A. I think that's it. No.
MS. WEST: If the Board will indulge me for a moment, I don't want to belabor this --
THE CHAIRMAN: A lot of paper.
MS. WEST: Thank you, sir. I feel like I'm seeing this for the first time myself, most of it.
Q. Mr. Kelley, are you familiar with the Zoning Commissioner's decision in this matter relative to the zoning variance?
A. No, I'm not.

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Q. Did you participate in that proceeding?
A. No, I didn't.
Q. Is it customary for your office to get involved in that when there is essentially a variance request for a property?
A. No.
Q. Did you have any conversations with Susan McConville, who's the natural resource planner at the Chesapeake Bay Critical Areas Commission about this matter?
A. I don't recall, but she did send me a letter.
Q. So your file would reflect you have that piece of correspondence, but that's all you would have?
A. Correct.
Q. Have you ever had any conversations with Mr. Long about this matter?
A. Several times, yes.
Q. That would be prior to the granting of the variance?
A. During the processing of the variance. I don't have any dates. I don't keep records of my telephone

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conversations.
Q. That would be customary for you to do that, to have conversations with individuals who are making applications for a variance?
A. Correct. They ask, you know, Have you heard from the Commission? Questions like that. Where does my variance stand? Stuff like that.
Q. Just a few more questions, Mr. Kelley. Earlier in these proceedings the protestants' counsel, Mr. Williams, Newton Williams, in his argument to the Board has made some comments about the property, and in the exhibit which has been at this point just marked for identification, the January 13, 1998 letter, he has given some background on the property in paragraph one.
He talks about when the Longs purchased the property, the lots. He makes some references to the Annadale subdivision.
Are you at all familiar with the history of this particular subdivision?
A. No, I'm not.
Q. Normally, it wouldn't be within your baliwick to

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do that kind of historical research with regard to a variance application, would it?
A. That is correct, it would not.
Q. You would accept what the applicant has submitted to you as true and accurate with regard to the property?
A. Yes.
Q. As far as land records, would there be any kind of certification, survey, that sort of thing?
A. Correct.
Q. In fact, you did have something under seal that was submitted?
A. Yes, I did.
Q. From Frank Lee?
A. That is correct,
MS. WEST: That would be the county's case. Thank you.
THE CHAIRMAN: Ms. Zerwitz, why don't we have you, if you have any questions you want to ask, go next. Essentially, you folks are on the same side, so that Mr. Williams can have a unified cross-examination.
MS. ZERWITZ: Thank you, your Honor.

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CROSS EXAMNATION

BY MS. ZERWITZ:

Q. Mr. Kelley, you indicated that the site plan that was submitted to you under seal by Frank Lee was the one you relied upon.

How much of an effect on your decision was the size of the lot? If you understand my question.

A. I tried to field truth the plot plan.

Q. What does that mean, "field truth"?

A. I make a site visit to see that what was put on paper is, indeed, the truth. My main investigation centered on how wide the lot was, that is to say, from the water to the road, and can the house fit outside the 100-foot buffer, measured from mean high tide.

Q. Did you do into the meaurements yourself, or did you rely on the site plan?

A. I did a measurement myself.

Q. Based on that measurement, it was your determination as to whether the house could be outside the 100-foot buffer zone?

A. I didn't determine -- I couldn't -- I was getting

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about 125 feet from road to mean high tide.

Q. Now, you also indicated criteria number two, you testified, that there was no room to build another home. Did you observe this yourself?

A. Yes.

Q. Specifically which houses -- can you recall how many houses were inside the buffer zone?

A. They read from the two -- all the waterfront homes, that is, like Lot 32 through -- I think Mr. Long has three neighbors to his left as you're looking in his front door, and they were all within within a 100-foot buffer.

Q. As to your indication of criterion number four, that the conditions were not based upon actions of the applicant, what do you rely upon to make that determination? What type of conditions would you have relied upon?

A. Pretty much, you know, as mother nature, the property, where it's at, and it was meted out as such, and it's a small lot.

A reason to disapprove a variance would be after

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the fact, like a variance is a self-inflicted hardship, such as someone builds a structure and then comes in for an after-the-fact variance.

Q. Going back to your last comment from the effect of mother nature, what effect has the water had on this property, if any? Are you aware of any effect the natural water has had on this property?

A. No, I'm not.

Q. Other than conversations regarding when was the variance coming through, what's the status, things like that, did you and Mr. Long ever discuss the lot size at all?

A. I don't recall.

Q. Did you recall any conversation regarding Tobasco Road?

A. No, I do not.

Q. The letter that was sent to you by Susan McConville indicated that the Commission had made certain recommendations in that letter. Would you have conveyed this information to Mr. Long?

A. Yes, I would, in our approval for granting of the

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variance approval type letter.

Q. Do you recall doing that in this case?

A. Yes.

Q. As a result of that comment, did you observe Mr. Long to do anything, or was anything done to the property?

A. Nothing was required as of yet. Any trees that had to be planted had to be done prior to use and occupancy permit.

Q. If the letter also indicates the Commission supported a variance to a front yard setback, would you have conveyed that information to Mr. Long?

A. As part of the variance -- what they were saying is they preferred the house to be built as close to the road as possible and we would try to keep as much out of the 100-foot buffer with respect to the zoning setbacks.

Q. Would you have told Mr. Long how to do that, or just conveyed the information to him?

A. I just would have conveyed the information to him.

Q. You testified that you did not participate in the hearing before the Zoning Commissioner, but were you aware

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that was going on?
A. Yes, I was.
Q. And at any point in time, did you give Mr. Long any information or present him with anything to present at that hearing?
A. No.
Q. Did you ever discuss anything with him with regard to that hearing?
A. I knew the issues involved.
Q. Did it have any effect on you?
A. No.
Q. Other than looking at the neighboring property to see as far as the houses and buffer zone, did you have occasion to observe anything else about the other property in relation to Mr. Long's property?
A. No, not other than to see the character of the neighborhood. All the homes were built within a 100-foot buffer.
Q. Was that the only character in particular that you took note of about the neighborhood?
A. Nothing that stands out.

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MS. ZERWITZ: May I have the Court's indulgance, please?
Q. Are you aware to what the regulations as previously moved into evidence as COMAR, from the Maryland Code, are you aware as to when those laws went into effect?
A. I believe around 1993.
MS. ZERWITZ: I have no further questions, your Honor.
THE CHAIRMAN: MR. Williams.
MR. WILLIAMS: Thank you. I think I have some photographs, and I think it will help everyone understand the matter better.
I would offer these photographs and I will show them, of course,to counsel.
THE CHAIRMAN: Mr. Williams, how are we going to know -- somebody has to testify to when they were taken, right?
MS. WEST: Unless you're going to testify, unless they are going to stipulate?
MR. WILLIAMS: You know, I can put Mr. Woodell on. I will mark them for identification and have them authenticated by Mr. Woodell. I took the photographs.

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THE CHAIRMAN: That's fine. It's just that the niceties have to be observed.
MR. WILLIAMS: I prefer that -- I think it's one thing to be talking about -- I took them at the best time of the year. You'll see they are very attractive neighborhoods.
THE CHAIRMAN: Counsel, does anybody have any objection to the photographs, their authenticity?
MS. WEST: I'd like him to show them to the witness, and then I'd feel more comfortable.
MR. WILLIAMS: I will give the Board a copy and mark these Protestants No. 2 for identification. Off the record.
(Discussion held off the record.).
THE CHAIRMAN: We are back on the record.
MR. WILLIAMS: Did you want to ask the witness about the photographs?
MS. WEST: Let me show these to Wendy.
THE CHAIRMAN: Mr. Williams, why don't you simply

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ask the witness if they appear to represent that which they are supposed to be, and I will ask counsel again if they will stipulate.
MS. WEST: I wanted to give Ms. Zerwitz an opportunity to reply.
THE CHAIRMAN: If you want to join us up here to verify, you can have a moment together over these with Mr. Long.

CROSS EXAMINATION

BY MR. WILLIAMS:
Q. Mr. Kelley, I have shown you and you have seen, I believe you have the originals -- I'm sorry. They are over there. Let me get you another set.
THE CHAIRMAN: Off the record.
(Discussion held off the record.)
THE CHAIRMAN: Back on the record.
MS. WEST: If I may, for the record, Mr. Williams can elicit from the witness's testimony, he can authenticate they fairly and accurately depict the premises as he views them. I don't have a problem with them.

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MS. ZERWITZ: After reviewing them with Mr. Long, we don't have any objection.
MR. WILLIAMS: Thank you.
THE CHAIRMAN: Based on the same qualification that the witness can identify them and they are fair and accurate representations.
MS. ZERWITZ: Yes.
Q. Mr. Kelley, I have shown you the photographs, and they may be petitioners -- or Protestants' No. 2 --
THE CHAIRMAN: We'll give them a number, but let him authenticate them first.
MR. WILLIAMS: Excuse me, Mr. Chairman. Exhibit 1 that was just marked for identification, that hasn't been moved into evidence?
THE CHAIRMAN: Exhibit 1 hasn't, but using that number, I am going to make this Exhibit 2, and we'll admit it too since it's been authenticated.
MS. WILLIAMS: Thank you, sir.
Q. Mr. Kelley, have you had an opportunity to review what's been offered as Protestants' Exhibit 2?
A. Yes, I have.

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Q. Do they fairly and accurately represent the Annadale neighborhood as you saw it when you were out there, I believe in June of 1997?
A. That is correct.
MR. WILLIAMS: We would offer these as Protestants' Exhibit No. 2.
THE CHAIRMAN: Let's take them one at a time. Make them 2A, B, C, so we know what we are talking about.
MS. ZERWITZ: I do have a question. Are we moving all the photographs? Because I don't believe this witness can testify to all the information contained in all the photographs.
THE CHAIRMAN: He's simply having identified those are the photographs that fairly and accurately represent what's on the photographs.
MS. ZERWITZ: But there are certain photographs I don't believe he would have had any reason to look at.
MS. WEST: The problem I have, there's handwriting on here by Mr. Williams, that's his handwriting, and I want to make sure this witness can, in fact, cooroborate what's written is there with regard to

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the prospective on this. I don't have a problem with the photographs, per se.
THE CHAIRMAN: Why don't we do it this way? The photographs that will come into the record are the photographs that past muster.
MS. WEST: Fine.
Q. Mr. Kelley --
MR. WILLIAMS: Thank you for your help, Ms. West.
Q. -- I refer you to photograph two. I am going to call it two, and I realize it's for identification, and I ask you if you can tell us what that is and if that's what you saw in the field?
A. That's a picture of Lot 31, owned by Robert and Rose Long. That's the lot I processed the variance.
THE CHAIRMAN: So 2A, we would admit.
Q. Do you see the zoning appeal public hearing sign in the photograph?
A. Yes.
Q. Now, photograph 2B --
MS. WEST: Excuse me. So we can do this in context, with all due respect, if you get him to

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corroborate what you have got written down under the pictures, so when I come and cross -- it's very confusing to do these photographs.
THE CHAIRMAN: As a practical matter, if he wants, we'll cross those out. Mr. Kelley, when you look at these pictures, if you can also say that the description is an accurate one, and if you can't, then we'll take the wording out of it.
THE WITNESS: The wording matches the pictures in the first picture.
THE CHAIRMAN: So 2A is admitted.
Q. Mr. Kelley, now I refer you to photograph 2B, and my caption sayes that's looking north on Matthai Avenue from Annadale Avenue. Would you be familiar with that?
A. Mr. Long's house would be over here?
Q. This -- yes, it would. This is the one we're are referring to.
MS. WEST: Which is B?
A. Yes, I agree with that.
THE CHAIRMAN: We'll accept B.
Q. Now, photograph C, that's my caption, and it says

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it is looking east on Annadale from Matthai Avenue. Once again, is that what you saw in the field? Can you identify that from your field visit?

A. I have one question. Is it Mr. Long's house over here?

Q. Yes, it is.

A. Well, this is C. What happened to B?

Q. It's on the same sheet. I'm sorry. I always have trouble with photographs when there's a whole bunch loose.

MS. WORRALL: C is is looking east.

THE CHAIRMAN: East on Annadale.

MR. WILLIAMS: I thought I gave a set up there?

THE CHAIRMAN: Yes, we have a copy.

MR. WILLIAMS: I thought I had a set for everyone. I will try and do it slower on the second page. If I understand the witness correctly, he said B was what he saw in the field and the labeling was accurate?

THE CHAIRMAN: B and C are acceptable.

Q. Now, in the next page, this is a panaramic photograph, 2D, and I ask you if you can identify those

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properties, Mr. Kelley?

A. It's acceptable.

Q. Pardon me?

A. Mr. Woodell's property to the right.

Q. Right.

A. Of Lot 31 as you're looking at the water, and I don't know the neighbor on the other side of Mr. Woodell, but the labeling 3823 Annadale matches what's shown on the house, which you're saying the number actually --

Q. Yours is out of order.

MS. WORRALL: That's what I'm trying to find out. I don't seem to have any D. I go to E and F.

THE CHAIRMAN: Here, you can use my copy.

MS. WILLIAMS: I was having trouble with my copier.

MS. WORRALL: There it is.

MR. WILLIAMS: Somehow it got out of order. Mr. Kelley indicated that the house on the left is the Woodell property.

Q. Is that correct?

A. That is correct.

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Q. And you said the 3823, that the address on the house matches the label?

A. Correct.

THE CHAIRMAN: So we'll accept D.

MR. WILLIAMS: I hope they are in the right order.

Q. Photograph 2E just says east side of the Woodell property. And you can see the zoning appeal sign there in the picture, can you not?

A. Yes.

Q. So photograph 2E is what you saw in the field, and is that accurate?

A. That is correct.

THE CHAIRMAN: Accepted.

Q. Photograph F, the west side of the Long property, that's where you asked me before is that Mr. Long's house?

A. That is correct.

THE CHAIRMAN: So E and F are admitted.

Q. Now, photograph I --

THE CHAIRMAN: What happened to G?

Q. Photograph I --

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THE CHAIRMAN: So we're skipping G and H?

MS. WEST: Here's G and H.

MR. WILLIAMS: I apologize. I don't know what happened to my copier. Thank you.

Q. Photograph G says looking across the lot at the Long property. Is that what you saw in the field, sir?

A. That is correct.

Q. And photograph H, once again, looking east on Annadale from Lot 31?

A. That is correct.

Q. That's the end of Mr. Long's house?

A. Yes.

THE CHAIRMAN: G and H are accepted.

Q. Now, go to I and J. I will straighten it out. I is titled outfall on Lot 31. Can you identify that outfall from your visit?

A. Yes, I can.

Q. J is entitled inlet on the Shanholtz property. Did you have occasion to trace the source of the water that comes out from the outfall?

A. No, I didn't. I'm not familiar with the

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photograph J.
THE CHAIRMAN: We will excise I.
THE WITNESS: I is acceptable.
THE CHAIRMAN: J. I'm sorry.
Q. And K, that's --
MS. WEST: If we can, let's give that to the Board to excise or redact.
MR. WILLIAMS: It's the one on the right.
THE CHAIRMAN: We'll give that back to Mr. Williams.
Q. Photograph K, the Long property adjacent to Lot 31?
A. Yes, that is correct. Accepted.
THE CHAIRMAN: All right.
MR. WILLIAMS: Thank you very much.
THE CHAIRMAN: Now, we are going to redo the letters --
MS. WORRALL: So the last one becomes J.
MR. WILLIAMS: So it's 2A through J? I am talking about the labeling.
THE CHAIRMAN: 2A, so that's Petitioners' 2A

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through J. Let's give Ms. Worrall a second.
MS. WEST: That's 2A through --
THE CHAIRMAN: Through J.
MR. WILLIAMS: J was eliminated, and H. I beg your pardon. K became J.
MS. ZERWITZ: Can I ask one more question for cross-examination of the photographs before they are admitted?
THE CHAIRMAN Sure. This would be the appropriate time.

FURTHER CROSS EXAMINATION

BY MS. ZERWITZ:
Q. I have a quick question for you regarding the photographs. You indicated you do agree with them from your observation, or your didn't observe them? The comments placed, specifically referring to 2A and 2I which show an outlet -- do you still have the pictures before you?
A. No, I do not.
Q. The editorialization provided by counsel indicates that that outlet was on Lot 31. You indicated

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that you agreed, from your observation.
Are you agreeing that's something you observed, or are you agreeing that that outlet is actually on Lot 31? Do you understand my question?
A. I agreed I observed an outfall.
Q. But do you have any independent knowledge whether that's on the lot or not?
A. That is correct, I do not know if it's on Lot 31 or the adjacent lot.
MS. ZERWITZ: Based on that question, your Honor, I would object to those photographs which show the outlet.
THE CHAIRMAN: Which are specifically?
MS. ZERWITZ: Specifically, that would be 2A, which is the panaramic series of photographs, and 2I.
MS. WEST: I would concur, because the witness can't authenticate it.
THE CHAIRMAN: I am going to rule. I am going to agree with the request that those not be admitted at this time, until you present a witness in your case who can, in fact, authenticate it.
I don't want to change the numbers again,

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anticipating one of the witnesses in this case will be able to authenticate it. So, under the circumstances, I am going to leave A and I in the numbering system, but at the moment they are only procedurally for identification purposes.
MS. ZERWITZ: Thank you.
THE CHAIRMAN: Subject to further testimony.
MR. WILLIAMS: I don't have any objection.

FURTHER CROSS EXAMINATION

BY MR. WILLIAMS:
Q. Mr. Kelley, when you went out to the property, was the property staked in any way for you? Were there surveyor stakes or flags, anything of that sort?
A. I don't recall.
Q. When you measured from the water to the road, how did you determine, you know, where you were? This goes to Ms. Zertitz's question. In other words, how did you identify Lot 31 in the field?
A. I basically took measurements off of what I thought was the edge of Lot 32. The shoreline and the road aren't what I call undulating, so measurements from

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the mean high tide to the edge of Annadale Road should be approximately the same as Lot 31, or if I was off a little bit on Lot 30 or Lot 32, it should be about the same distance.

Q. If an outfall were on the property, would that make a difference in your finding?

A. No, it would not.

Q. It would not?

A. I would check to see if it was a stream or a wetlands. I did identify some sort of swale there. If it was not a natural resource, it wouldn't be part of my review.

Q. I think one of your criteria says water quality, is that correct?

A. That's correct. Criterion number five, I believe.

Q. If that culvert and that outfall were carrying stormwater across the street, under Annadale Road, would it be important for water quality purposes that it filter across a lawn before it reaches the creek?

A. I would say so, yes.

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Q. If it turns out to be on Lot 31, are you allowed to build, under your regulations, over an outfall or over a swale?

A. They are not a part of my regulations. I wouldn't have a say in the matter. I believe that would be a public works issue over at ZADM.

Q. Let me ask you this. I am going to show you part of Protestants' Exhibit 1 that was marked for identification and it is part of a stormwater or sediment control plan.

MR. WILLIAMS: If the Board has it?

Q. Do you see Lot 31 on there?

A. Yes, I do.

Q. Do you see that, at least on this one, at least on this plan, part of Mr. Long's house appears to intrude into Lot 31? Just asking what he sees.

A. From this photograph, it appears, or this plot plan, or whatever.

Q. Are you familiar with reading county plats and materials?

A. Somewhat.

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Q. On the left-hand side of that, of that sediment control plan, or a portion of it, do you see the outfall up near the street?

A. Yes, I do.

Q. Does it appear that that outfall is in a defined easement area?

MS. WEST: Objection.

MS. ZERWITZ: Objection.

MR. WILLIAMS: The man is an expert witness for the county.

MS. WEST: We haven't qualified him as to causation. If you want to accept him, we'll submit.

THE CHAIRMAN: Hold off for a second. He's the county's witness. The county has not offered him as an expert. It's really not your call since he's not your witness.

Does the county wish to offer the witness as an expert, subject to stipulation by the parties or voir dire?

MS. WEST: Let me converse with Ms. Zerwitz for a moment.

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MS. WEST: It's my understanding Mr. Kelley is customarily offered as an expert on Chesapeake Bay critical areas review as a natural resource specialist.

He's not an engineer. So if they want to stipulate to that, I have no problem, but he's not an engineer.

So with that caveat, we agree he'd be offered for that purpose.

THE CHAIRMAN: For the process and procedures of the critical area, the Chesapeake Bay critical area?

MS. WEST: I want Mr. Kelley to cooroborate that, because I met him for the first time today.

MR. WILLIAMS: I'd like to make sure what that means.

THE CHAIRMAN: First of all, I think they have to offer him as an expert witness for the criteria that he's testified. He's testified already, and there's been no objection, his testimony is in, whether he's an expert or not. Okay.

It's be be given the weight the Board feels his testimony deserved. If they are going to offer him as an

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expert in Chesapeake Bay critical areas, issues and procedures, and you want to object to the characterization limited to that, then we can stop for a moment and you can voir dire him and give us your objection.

But it's up to them to limit and define that area which they determin to offer him as an expert, and they can make it as wide or as narrow as counsel thinks is appropriate.

MS. WEST: We are not trying to paint with a broad brush here, because we feel he should be limited to that, unless he can advise me othewise at the present time to that, but he's not an engineer.

So if he is asking questions that require that expertise, he doesn't have it.

THE CHAIRMAN: So you're offering him within a very narrow area of expertise that involves the granting, the procedures and processing and criteria in the granting of the Chesapeake Bay critical area?

THE WITNESS: That's correct, I'm not an engineer.

MS. WEST: With all due respect to the witness --

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THE CHAIRMAN: You're offering him for that limited purpose. Mr. Williams, are you objecting to his being made an expert to that limited definition?

MR. WILLIAMS: No. I would just say to the Board that here's a man that deals with the Chesapeake Bay Critical Areas Commission.

I am asking him about water -- I am asking him about drainage, I am asking him about drainage swales.

THE CHAIRMAN: Which he may or may not be able to answer you, based upon his knowledge and expertise. That has nothing to to with the question I'm asking. Are you accepting him on the basis he's being offered?

MR. WILLIAMS: Yes.

THE CHAIRMAN: The record will reflect Mr. Kelley who has appeared before this Board and has been qualified as an expert previously is an expert in Chesapeake Bay critical areas variance procedures, processes and criterion, and the Board accepts him as such.

Now, if you want to ask him questions, he has to respond whether he believes it's his area of expertise or not.

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Q. Mr. Kelley, in connection with your evaluation of critical area requests for a variance, which you said were about a dozen a year, do you look at such things as stormwater drainage, that type of thing?

A. No, I do not.

Q. You do not?

A. No.

Q. I understand you're not an engineer, but I refer you to Protestants' Exhibit 1 for identification, the manner in which Lot 31 and the adjacent lot, the south Lot 30 are graded. What does that indicate to you?

MS. WEST: Objection.

MS. ZERWITZ: Objection. Foundation of knowledge. He's already said he doesn't deal with it.

THE CHAIRMAN: I will grant the objection. No one has laid any expertise or basis for that.

Q. I ask you if those contours -- I am an attorney and I can read a contour map. I ask you if those contours appear to indicate a drainage swale which runs across the property, Lot 31?

MR. ZERWITZ: I object to the entire question.

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Is Mr. Williams telling the witness what the map shows?

THE CHAIRMAN: I'll grant the objection. Rephrase the question.

Q. You show a drainage swale on the property?

A. Yes, I do.

Q. Okay. Do you see -- and the grading indicates what?

MS. ZERWITZ: Objection. If he knows. He still hasn't laid the foundation as to how he would know this.

MR. WILLIAMS: Just for the weight the Board will give it.

Q. Are you telling the Board if there's a recorded existing drainage swale on Lot 31, that that makes no difference in granting and allowing the ability to build over this lot?

A. If there's a recorded easement, a non-disturbanced area, this is the first time I have seen this.

Q. I understand.

A. I wasn't aware of any easement, recorded easement or paper road there.

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Q. (MS. WEST) This is your first knowledge?
A. Yes.
Q. (MR. WILLIAMS) If this is a recorded easement from the left-hand side of Exhibit 1 for identification, would that possibly make a difference to DEPRM's conclusions?
A. I would say not.
Q. Would DEPRM allow regrading of this lot, or did you contemplate that in connection with the granting of the variance?
A. No, I did not.
Q. I notice that in the application for the variance, Protestants' Exhibit No. -- County Exhibit No. 1 -- that's a plan by Mr. Lee -- it shows a lot of sixty feet in width, is that correct?
A. That is correct.
Q. Eighty feet in width off the water of Bear Creek?
A. That is correct.
Q. Now, County Exhibit No. 7, again by Mr. Frank Lee, is a somewhat different plan. Is there a reason for that? Which plan did the county -- here, I will be glad

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to loan you mine. Which plan did the county act upon?
A. I acted upon the plot plan submitted with the variance application.
THE CHAIRMAN: No. 1?
MR. WILLIAMS: Protestants -- yes. County --
THE CHAIRMAN: County Exhibit No. 1?
THE WITNESS: I don't know the exact number.
THE CHAIRMAN: The plan attached to the Notification of Project?
THE WITNESS: That is correct.
Q. Do you owe -- I've got to get seven back. Do you know why a different plan was published in the newspaper? Is that the usual process?
MS. WEST: Objection. That's speculative. How does he know?
THE CHAIRMAN: In which case, certainly, he can say he doesn't know.
A. The plan doesn't advertise in the newspaper verbiage of the granting of the notice variance. I don't know why the two plans don't describe --
Q. I'm not trying to embarrass you, Mr. Kelley. I

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don't envy your position. Do you know -- it says critical area notes at the top and zoning history. It appears to me this plan came later.
I took this out of the Board's file. Maybe I am doing you a service. I thought it was connected to the publication. So it's your testimony that you don't publish a plan in the newspaper?
A. Correct.
MR. WILLIAMS: This was attached to County Exhibit 7 --
MS. WEST: Certainly was, Mr. Williams.
MR. WILLIAMS: That was somewhat misleading.
Q. You said that lot width is of some interest. If it would turn out the lot was smaller than sixty feet, as reviewed, would that make a difference?
A. The width? No. Just the length of the lot from the road to the water. The side dimensions are different. That has to do with the maximum allowed impervious service per lot.
Q. So if it was less in width, the total lot area was less, the impervious surface area allowed would be

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less?
A. That is correct.
MR. WILLIAMS: Excuse me just a moment. I have no further questions.
THE CHAIRMAN: Redirect?
REDIRECT EXAMINATION
BY MS. WEST:
Q. Just so we are clear, for the record, Mr. Kelley, your testimony is that you, in fact, relied upon the plot plan that was attached to Exhibit 1 which was shown to you earlier, that is Exhibit 1, the original application of the property owner, in making your determination as to compliance with the criterion regarding the variance, is that correct?
A. That is correct.
Q. And Mr. Williams, on cross-examination, had asked you some questions about Exhibit 1 versus Exhibit 7, namely, the plats that were attached. Is there, in fact, a disparity between what's depicted on that plat versus Exhibit 1 and 7?
A. That is correct.

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Q. Would that change your opinion here today with regard to the decision you made with granting the variance?
A. No, it would not.
Q. Why is that, Mr. Kelley?
A. Again, the disparity was lot width, not the length, length being from Bear Creek to Annadale Road. At the time of a building permit, if there was a disparity and I found out the lot size was less, then there would be a less allowable impervious surface for a lot, for that lot.
Q. So do you customarily only look at the length, what the distance is between the actual waterfront, waterway, what have you, to the road, is that what you are looking at at that time?
A. In this case, yes. A variance is needed for building in the 100-foot buffer or exceeding impervious surface limits.
They were both staying under the impervious surface limit. Thus, I was just reviewing this variance for distance to the water.

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Q. So the fact they intended to stay under the impervious surface limits, it's for that reason you weren't concerned with width of the lot, your focus was strictly on the length of the distance to the waterway?
A. Correct.
Q. Had you had that piece of information at the time of your initial review, would that have caused you to make more of an inquiry with regard to this matter?
A. No, it would not.
MS. WEST: Thank you.
FURTHER CROSS EXAMAMINATION
BY MS. ZERWITZ:
Q. In regard to -- you indicated the impervious surface limits, he intended to stay under that. What would cause you to have concern regarding the surface limit? What type of things would come under your jurisdiction?
A. The law states that you cannot -- there's been an amendment since then, but normally lots less than a half acre, which is the case, can't exceed twenty-five percent impervious surface. Impervious surfaces are surfaces that

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rain hits and cannot penetrate the ground, such as footprints of the house, swimming pools, sheds, sidewalks, most driveways.
Q. Regardless of width of the lot size, his intention would not have affected that?
A. I believe he was well within his impervious surface limits.
MS. ZERWITZ: I have no further questions.
THE CHAIRMAN: Recross?
MR. WILLIAMS: No, sir.
THE CHAIRMAN: Thank you, Mr. Kelley. May counsel approach the Bench for a movement?
MS. WEST: Thank you, Mr. Kelley.
(Discussion at Bench, off the record.)
MS. WEST: If it please the Board, I have had an opportunity to confer with my client as well as with Ms. Zerwitz, and my understanding is that at this juncture, as well as given our sidebar with your Honors with regard for the proceeding in this matter, that there is not to be any further witness testimony or documentary evidence with regard to the DEPRM variance, that is, the Chesapeake Bay

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critical area administrative variance.
The county at this time would rest its case. We have no further witnesses. And my understanding, neither does Ms. Zerwitz nor Mr. Williams.
MR. WILLIAMS: That is correct.
MS. ZERWITZ: That is correct.
THE CHAIRMAN: That being the case, then the Board will consider that the DEPRM variance case has been completed.
Again, closing argument will be provided in the memos which are given to us in lieu of closing argument and, just for the record, since I presume Ms. West will not be joining us --
MS. WEST: With your permission, sir.
THE CHAIRMAN: With my approval, and thank you for your job well done. I would suggest that the memo include those criteria and law sections that you think are appropriate and to have the facts and circumstances applied to that law to the conclusion.
That being the case, what I think we'll do is adjourn now, we'll have a lunch break, and we'll come at

1:30, and at that time we'll begin the zoning variance case.

MS. WEST: One final matter, Mr. Chairman. If it please, sir, you have indicated a time frame. I would hope the Board's indulgance of at least thirty days, because I have a full pretty full plate as to the memos to be submitted.

THE CHAIRMAN: Why don't you give some feel for your calendar to Ms. Zerwitz. We can go off the record.

(Discussion held off the record.)

THE CHAIRMAN: We'll adjourn now.

(A luncheon recess was taken.)

* * * * *

AFTERNOON SESSION

THE CHAIRMAN: Let's go on the record. We are back in the afternoon session and we are here in Case 98-251-A, which is the zoning variance part of this case regarding the granting in part and denying in part of the request for zoning variance as a result of a March 13, 1998 Order of the Zoning Commissioner. Is it actually the Zoning Commissioner? All right.

If you folks want to have brief opening remarks, that certainly would be appropriate. We're here de novo on this, so it's your burden. Go ahead, please.

MS. ZERWITZ: Thank you, your Honor. If the Board pleases, this is a request for a zoning variance filed by Mr. and Mrs. Long. Mr. and Mrs. long own an undersized lot on waterfront property in Baltimore County.

They have appealed to the Board to grant them a variance to allow an undersized lot, a lot width of forty-three feet in lieu of fifty-five feet as well as to allow them to build a single family dwelling on the property, and they would like to have a ten-foot side yard setback in lieu of a twenty-five foot setback, and

approval to utilize the undersized lot for the purpose of building a family dwelling.

If your Honors please, it is our intention to present testimony through a surveyor as well as through a property owner that the property meets the criteria for a variance in that it is unique and that the denial of a variance would, in fact, cause them an undue hardship, that being the fact they would be unable to utilize the property for any purpose.

And for that reason, we would ask the Board to grant them a variance and allow them to build a single family dwelling on that property in accordance with the zoning regulations as well as the environmental regulations.

Additionally, we would also ask to be allowed to call witnesses out of order in that our surveyor needs to take his wife to the doctor.

THE CHAIRMAN: You go first anyway.

MR. WILLIAMS: We don't have any objection to that order of witnesses.

Mr. Chairman, members of the Board, to set this

matter in context, Mr. Long trades as Covanent Realty. He's not a beginner. He purchased some -- in 1987 -- some fifteen lots, and this is what we intend to prove, and I am sure Mr. Long will acknowledge the truth of this, some fifteen lots in the residue of a 1925 subdivision known as Annadale.

From those fifteen lots, he derived, in addition to his own lot, at least seven others. In laying it out, BPS Land Technology, the engineer, for some reason or other -- when these lot were platted in 1920, fifty foot lots were used -- today, as you know, the standard is fifty-five.

The evidence will show that lots coming from east to west on Annadale were created, sixty-six feet. I'm saying simply this. That it was Mr. Long's choice and it was his engineer's choice, BPS Land Technology, to reconstitute or resubdivide those lots in what every way he choose to lay it out.

In addition, Lot 31, which is shown on on the exhibit, including the plat of Annadale, and it's part of my Protestants' Exhibit 1, shows that the Lot 31

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originally was a fifty foot lot. It has a paper street fifteen feet in width called Tobasco Road next to it. And, very simply, the situation is this. Mr. Long has already derived at least eight lots from this.

This is the residue, what's left of 31. In addition, the stormwater inlet that we had so trouble with this morning appears to be located -- and I'm sure the surveyor can help us on that -- on Lot 31, and that further interferes.

I have serious doubt -- and we'll try to clarify, whether there's thirty-six feet available, in which case the case would have been filed wrong, or there is, indeed, forty-three feet available on Annadale Road. And it seems like every plan that I have seen in this particular case seems to have a different dimension. And I think you saw that this morning, that DEPRM had, they had two plans they testified to that varied quite a bit.

As the Board well knows, if Mr. Long created the circumstance, that's self-created hardship under Cromwell versus Ward, which I am so familiar with because I was counsel for Mr. Ward, the loser in that leading Maryland

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case.

I would sympathize if the facts were that Mr. Long only owned a lot or two here, but this isn't the case. Mr. Long could have started -- he could have started at Lot 31 and gone eastward with his subdivision, and that would have been -- there is least 296 feet. He could have gotten five lot in excess of fifty-five feet in width.

But for whatever reason, he chose not to do so, and he is back with Lot 31, the residue, which we think contains this stormwater easement, or drainage easement, and I call the attention of the Board to my Petitioners' Exhibit 1 that I was having so much difficulty with the witness.

It appears it shows the outfall, and the Board can see how it is graded. It's my belief, and we'll find out, that that grading was done in connection with the road improvements by Mr. Long and that outfall is seriously, if you notice, it sort of skews to the east, and it's really that simple. The Zoning Commissioner did not have the benefit of the whole story, and neither side

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were represented, and I am glad we have the opportunity to bring it all out this afternoon. Thank you.

THE CHAIRMAN: Thank you.

MS. ZERWITZ: Our first witness will be Mr. Thomas Phelps.

THOMAS PHELPS,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. ZERWITZ:

Q. Mr. Phelps, what is your occupation?

A. Land surveyor.

THE CHAIRMAN: Excuse me, please. Your full name and address, sir?

THE WITNESS: Thomas E. Phelps. P-h-e-l-p-s. 945 Barron Avenue.

MS. ZERWITZ: I'm sorry.

Q. As a land surveryor, what do you do, specifically?

A. Establish property lines, lay out homes, anything that goes along with getting building permits.

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Q. Can you be more specific?

A. We do the layout, all of the property lines for private homes. Also do building layouts and some stakeout for grading and work like this.

Q. Are you familiar with the property in the Annadale Road area of Baltimore County?

A. Yes, I am. I work down there quite often.

Q. And, specifically, are you familiar with the property at 3827 Annadale Road?

A. Yes, I am. I just did a boundary survery on that.

MS. ZERWITZ: If I may approach, I'd like to have this marked as Exhibit 1. I also have copies for the Board.

THE CHAIRMAN: Mr. Williams?

MR. WILLIAMS: I have no objection.

THE CHAIRMAN: This is a boundary survey of Long property dated 9-4-98, done by Thomas E. Phelps and Associates, and we will mark that as Petitioner -- this is your first exhibit -- Petitioner Exhibit No. 1.

Q. Mr. Phelps, I'm going to show you a copy of

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what's been marked Petitioner's 1. Can you identify this document?
A. Yes. This was made up in my office.
Q. Did you make this exhibit?
A. No, I didn't. It's an assistant who works with me.
Q. Did you have occasion to visit the property?
A. Yes. I was on the property when the boundaries were set up.
Q. So although you did not actually draft this document, you have personal knowledge of the information contained in the document?
A. Yes, I do.
Q. Is this a document that is kept in the ordinary course of your business as a surveyor?
A. Yes.
Q. You would have access to all records in your business?
A. Yes, I do.
Q. What's caused you to go out to the property on Annadale Road?

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A. Mr. Long called me -- I do a lot of his work -- and he asked me if I would do a boundary survey on his house and the adjacent lot, which is the lot in question.
Q. When you do a boundary survey, what exactly is it that you do?
A. We set property corners, either iron pins or PK nails, or cut in the concrete to identify the property.
Q. How did you do that in this instance?
A. We established some of the property that was existing, which I have have done a lot of work on the opposite side of the street from this, and by utilizing what I had in the area already, we went ahead and by using the plot plan and deed that were involved, we set this property up by two lots.
Q. Now, I am going to direct your attention to the figures on the map and ask you if you can elaborate where some of the different numbers come from. For example, did you actually do the measuring?
A. Yes, we did.
Q. What did you rely upon to obtain your figures?
A. We use electronic distameters.

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Q. What exactly is that?
A. That's a surveyors' instrument that will measure the distance between two points electronically.
Q. In this instance, what two points did you measure, let's say, for the top boundary?
A. If you're referring to along the roadside, we had had crossed the road from the other side to check it out, make sure in two different places, and took the distance between that. We established an existing property line on our side of the street, and worked from that back and set these property corners.
Q. You have different figures at the corners indicating the property?
A. Right.
Q. Can you explain to the Board why you obtained the different figures?
A. These are actually field measured distances that we found in the field for what was that part of the property. For instance, the depth of the lots, we set. If you look at the right-hand side along the road, we set at a point back a hundred feet, and it called for 110, but

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since it's in the water back in the marsh, we can't get in, so we set a pipe at a hundred.
The same with the other two lines. We turned field angles and set the points back so they would not be in the water, because you can't -- once they are in the water, you can't rely on them.
Q. Now, directing your attention to the area at the top, you have numbers and you have a dotted line. First of all, two dotted lines, a solid line, and then it's a dotted line?
A. Right.
Q. Do you want your original copy or --
A. I can tell.
Q. Can you tell the Board what these different lines symbolize?
A. Yes. By Mr. Long's deed, it called to the center line of that proposed road, which is not there, and that is a solid line where we put the property line.
Q. That's the 110 number?
A. Yes. The other two, the one to the right and the first one to the left are the fifteen foot, outside edges

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of the fifteen foot right-of-way. The other line was a line that I set in there. If this road was not there, his side yard would be a ten foot setback, and that's what the other line depicts.

Q. Now, how did you determine what was his property?

A. To the existing deeds and field researching the properties from I had the subdivision plat, and I had Frank Lee's plat which was a resubdivision of part of the property.

Q. And is it your standard practice to rely on that information when drawing property lines?

A. That, along with what I find in the field. If I find it's over into someone's house or there's an encroachment, I will note it on my drawings that there's an encroachment. But, otherwise, we have that plus the person's own deeds to rely on.

Q. Does this drawing fairly and accurately reflect the property line survey as you performed it on September 4, 1998?

A. Yes, it does.

Q. You took various width measurements also, is that

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correct?

A. Yes, I did.

Q. Can you explain to the Board what the two different width measurements symbolize?

A. As where?

Q. As Annadale Road side.

A. Along -- all right. The one distance, the 68.40 is for Lot 32. The other one, which is 45.12 is for Lot 31. And that goes to the center line of the road as his deed stated.

Q. The 7.67, what is that?

A. That would be the half of the fifteen foot right-of-way that's on Mr. Long's property.

Q. In your research as to that right-of-way -- strike that question.

When you were measuring the property including the right-of-way, did you see a drainage ditch our outfall?

A. Yes, I did.

Q. Did you indicate on your survey where that would be?

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A. No, I didn't. But it is almost directly under that property corner which is in the center line of the road, which would be the right-hand point I have marked there as IBS.

Q. Did you have occasion to measure the width of the property as it got close to the shoreline?

A. We did just as a check. We usually do that, but since it's on the water, we don't put a bearing and distance across the back of the property, unless the owner requests it.

Q. So then what would the furtheset width that you measured from the property?

A. I'm not exactly sure how much it was to the back.

Q. You did not record that, is that correct?

A. No.

Q. Did you have occasion also in your preparation to check the historical plat as far as what the original plat was?

A. From the 1921 plat?

Q. Yes.

A. Yes. I already had that in my possession

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because, as I say, I had done quite a bit of work. I had done work on lots 16 through 12, or 12 through 16 in there.

Q. And what, if anything, did the historical research tell you about the lots?

A. All these lots had been changed from the original plat. None of them were the same as they were originally.

So the only thing that held was the other end of the subdivision which is down by by Cove Road, that corner held because Cove Road goes down to service the other lot.

Q. Do you know whether the lot is the same length as it was back in 1925?

A. According to the figures that are on here, no. It's been shortened by about fifty or sixty feet due to the erosion, because the original plat calls for it to be 160 and 140, and both lines now are only 110 feet plus or minus two or three feet due to the water.

Q. Now, you indicated you're familiar with this because you did some work on other lots?

A. Yes, I did.

Q. Which other lots in the area did you do work on?

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A. I did some work directly across the road from Lot 32 all the way down to Cove Road, and also out onto North Point Road.
Q. So that would be Lots 15 through 12?
A. It would be 15 through 12. And, also, I just remembered, I had done ten, eleven and seven through nine.
Q. Do you recall what you had done for those properties?
A. Property lines and did house stake-outs for them.
Q. Do you know, does this property differ from the other property that you worked on?
A. No. They are all basically small lots with really large homes on them. They are basically built in there to within the legal side yard restrictions. The front and rear restrictions are not tight, but side yard are tight on all of them.
Q. Do you know from working on the lots how much land there is between the houses in the neighborhood?
A. Just approximately, it's twenty feet from house to house, which would be your two, ten foot side yard restrictions.

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Q. Do you know this, or are you assuming this?
A. No. I remember it from doing it. I had set them at ten foot. I used the property lines in many cases to lay the house out on a ten foot offset.
Q. Does the fact that this is waterfront property make it different from any of the other properties?
A. No. Outside of the fact you have the 100 foot building restriction line from the water, the other restrictions will hold for any D.R. 5.5 property, would be the same on this property, and your frontage is actually on the waterfront rather than on the street.
Q. Does that have any effect on the property?
A. Yes. It changed by that by -- I think it's five feet, because the rear yard is thirty feet, whereas the front yard on the street is twenty-five.
Q. So what effect does the fact this is waterfront property affect it as opposed to somebody else who wanted to build on a different lot?
A. In this case here, these -- this lot being only 45 feet across, you would have to back -- oh, since it's pie-shaped, you can back down to a distance where it's

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fifty-five feet wide and, from there, build your house from their own book, if you didn't have a 100 year floodplain problem.
Q. You also indicated that part of your job would be to also help people obtain variances?
A. Yes.
Q. If this property was not waterfront, as a surveyor, do you believe you would have been able to plot a house on this property?
A. At the back of the lot which is close to the water.
Q. So if this plot of land abutted two streets, could you have plotted out a house?
A. Yes. Actually, there are two factors that might have caused some problem, that being the existing side street, the paper street, and that changes the setback from ten feet to twenty five, because the zoning is now -- so that would cut down your ability to utilize that lot by quite a bit.
Q. Do you have any knowledge as to whether there is any intention to build a road on that paper road?

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A. No, I don't.
Q. Are you aware of any easements on the property?
A. Other than that half of a road, no.
Q. Are you aware whether there was a drainage easement on the property?
A. I did not see one on either the original plan or the resubdivision plat. There is none platted.
Q. Are those documents that you standardly check to see if there are any easements on the property?
A. Yes, I do.
Q. Would there be anyplace else for you to check to see if there was an easement?
A. I would also -- or if they had a title search, it should also show any easement.
Q. Did you do that in this case?
A. No. I didn't have the title report, and I did read the deed, and I didn't see any on the deeds for the property.
Q. Did you work with Mr. Long when he built his original house on Lot 32?
A. No, I did not.

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Q. Did you have any contact with Mr. Long prior to him asking you to do the boundary survey on this lot?
A. Yes, I did some work on North Point and several other small jobs.
Q. But not in relation to his house?
A. No.
Q. When you were -- did you help him do a layout for the house also?
A. No, I didn't.
Q. Did you help him in any way to get the building permit?
A. No.
Q. Other than performing the boundary line survey, did you do anything at all for him?
A. Not on this property, no.
MS. ZERWITZ: May I have the Court's indulgence, please?
Q. Did you have anything to do with the grading of the property? Does that fall within your purview at all?
A. Very seldom do we do any of that. What we do, we do show drainage lines alongside of the home, but as to

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which way the water is going to flow when it comes off --
Q. Did you do that in this case?
A. No. I had nothing to do with that. I had nothing to do with the site plan or grading plan at all.
Q. Would you have occasion to look into determining whether there's a drainage problem when doing a boundary line survey?
A. I looked at it and just as a normal walking over it. It's a normal thing to look at, see what it looks like. And I saw nothing that would prohibit putting a house on it.
Q. If you had seen something, what type of things would you have seen?
A. Well, if there were swales that were heavy swales across the property, you might have to go, well, environment -- not environment, but public works might require you to reroute the swales towards the water to keep the water away from the house.
Q. And you didn't see that at all in this case?
A. No. Overland flow quite often takes care of itself before it ever gets there.

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Q. In your opinion, what, if any, effect would the fact there was a drainage ditch on the end of the property line have?
A. If it was on the property line, you'd just have to make sure that you didn't interfere with it, didn't block it with your own grading around your own home.
Q. Is there somebody who would take care of that?
A. Builders would normally do it, and also the county public works would check it to make sure it was not happening to the property. They are very strict on grading plans, that you don't grade your property onto someone else's, or that you don't cause a backup.
MS. ZERWITZ: I have no further questions of this witness.
THE CHAIRMAN: Cross, Mr. Williams?
MR. WILLIAMS: Yes. Thank you.

CROSS EXAMINATION

BY MR. WILLIAMS:
Q. Mr. Phelps, you referred a couple times to a subdivision plat?
A. Yes.

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Q. Are you speaking about the first one, which is the Annadale subdivision?
A. The original subdivision, yes.
Q. Ms. Zerwitz has laid out on the table --
MS. ZERWITZ: If I could put this on the board? This is a bigger one.
MR. WILLIAMS: Sure. Thank you.
Q. Mr. Phelps, you also talked about a Frank Lee resubdivision plat?
A. Yes.
Q. Do you have your file with you, sir?
A. I do.
Q. Do you have that plan?
A. Yes, I do.
Q. If I could take a look at it, if I may? Thank you. I am going to come back to this in a minute. Did you have any occasion to look at any other subdivision plans, for instance, for Lot 32, 33, 34, 35 and 36?
A. Not at that time. I knew some of them had been changed from working in that area. But anything specifically on those lots, no.

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MR. WILLIAMS: I guess perhaps we should offer -- and there are several copies -- a copy of what has been referred to by Mr. Phelps as the Frank Lee resubdivision plat.

Do you have any extras of those? That's this document. I believe I have some, fortunately.

I'd offer this as Protestants' Exhibit No. 3, if there's no objection.

MS. ZERWITZ: Can I have one second, please, your Honor?

I would object to this. This is a copy of something that has various different handwritings on it.

I don't see where the witness can say he relied on this specific document or Frank Lee's plat. I think there are two different questions.

THE CHAIRMAN: So your objection is there is extraneous information on it?

MS. ZERWITZ: My objection is to this specific document.

THE CHAIRMAN: If there's a Frank Lee plot map -- do we have that from this morning?

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MR. WILLIAMS: I am looking at the one the witness has and it has the same handwritten notes on it.

THE CHAIRMAN: The original County No. 1, if I may, County No. 1, the Notification of Project Application, has a Frank Lee --

MR. WILLIAMS: This is another one.

THE CHAIRMAN: It may or may not. Do you want to take a look at it and figure out which one we are talking about?

THE WITNESS: This is a copy I worked off from part of --

MR. WILLIAMS: These notes that are on here --

THE CHAIRMAN: One at a time. But these notes on here in handwriting, those are not yours?

THE WITNESS: No, they are not.

Q. But you worked off this?

A. I worked off the parts that were set on here by Mr. Lee himself, which were on the original. This is extra. This was penciled in on another copy which I didn't have.

THE CHAIRMAN: Might I suggest to counsel if the problem is what's on -- just trying to move this along -- if the problem is not the lines that were written by the professionals, but the notes and things, why don't you just redact that copy, take one and cross things out.

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MR. WILLIAMS: I don't want to give up too easily on this.

Q. If I understand, when you worked on this, these notes were on there, is that correct?

A. No, they weren't.

Q. They weren't?

A. No.

Q. Do you have one?

A. This is a copy that I got afterwards.

Q. This is not --

A. Those notes, the work copy I worked from originally. Any pencil marks like that mean nothing.

Q. I think I asked if you had your file with you?

A. Well, I don't have anything else with me other than this here.

MR. WILLIAMS: I don't have any objection if you want to.

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THE CHAIRMAN: The objection from Ms. Zerwitz, to the extent she can engineer a copy that she thinks is acceptable -- and it's up to you and her -- so why don't you give her that and see.

MR. WILLIAMS: Why don't you take out --

THE WITNESS: The ones that were on there is that one and this one and this one. They were not there.

Q. (MS. ZERWITZ) So what's looks like different handwriting --

THE WITNESS: Forty-five twelve, thirty-nine, eight fifty-five and the sixty-eight forty.

Q. Were the other measurements on the original, is that your recollection?

A. Yes.

Q. (MR. WILLIAMS) Let me ask you something. Somebody -- I thought, if I understood you right, you said you were given one this morning, and that it had these?

A. Not this morning. I had talked to her client there the other day and he gave me this copy. They originally had a copy of this before I had. These figures were on here.

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Q. Those figures were on there when Mr. Long gave it to you?
A. The other day, yes.
Q. If you want to take them off one of the copies --
A. Thirty-nine eight fifty-five and the sixty-eight forty.
MR. WILLIAMS: So the Board knows what I'm talking about --
THE CHAIRMAN: I think we do. This is the only document --
MR. WILLIAMS: Does the Board have this in their file?
THE CHAIRMAN: I think the only Frank Lee, anything that we have is the one we made a refernce to just a moment ago.
MS. ZERWITZ: I think I might have an answer to the problem.
THE CHAIRMAN: Do you have a clean one?
MS. ZERWITZ: I think I do.
THE WITNESS: Yes. This is the same one here, because -- the only thing, this is what was on there,

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that -- see, these other figures were not there, and that's a hundred feet down the side and 300 on the other side. Yes, that's the original that we worked off from before these other figures were put on.
MR. WILILAMS: I am going to -- I still need the second one, so why don't we go ahead and take the numbers off, because you note this one and this one have -- now has a line that comes up this direction.
Q. (MS. ZERWITZ) Was that the line, dividing line there?
A. No. I put that on there.
Q. You put that?
A. I put that one on because that's when I set the boundary.
Q. (MR. WILLIAMS) Are you telling us you resubdivided those two lots?
A. No, no, no. They can't be.
THE CHAIRMAN: Okay, folks, why don't we come up with one version.
MR. WILLIAMS: There is actually two, but why don't you go ahead and take the --

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Q. (MS. ZERWITZ) This is yours, so this --
A. That one is as good as --
Q. (MR. WILLIAMS) I am going to put one up on the board for the Board do see it.
THE CHAIRMAN: What are you putting up, Mr. Williams?
MR. WILLIAMS: I think that I am putting up what I tried to offer as Protestants No. 3.
THE CHAIRMAN: Which includes things that this gentleman did not put on there?
MR. WILLIAMS: Right, but I'm not going to ask him about that.
THE CHAIRMAN: Well, I hope you're not going to move it as evidence, because we can't authenticate any of those things that are on it.
MR. WILLIAMS: Let me ask a couple questions. Maybe I can handle it that way.
Q. (MR. WILLIAMS) During your testimony, you stated that none of the lots in the subdivision, or most of the lots in the subdivision have been changed over the years, is that correct?

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A. Yes, there's quite a few of them changed. The ones along this side of the road have all been changed.
Q. When you say they all have been changed, I refer -- when you say this side of the road, I assume you're referring to Annadale Road?
A. Yes.
Q. Am I correct in saying what I said in my opening statement, that a series of four lots has been created along the south side of Annadale Road moving in a westward direction and that Lot 31 has been compressed, it's been detracted from?
A. I would say that was correct, yes. Because there were five lots and that cut it down to four, yes.
Q. And the Lot 31 that you see on the plat of Annadale -- is it protestants' or Petitioners' Exhibit No. 2?
THE CHAIRMAN: That piece of paper hasn't been put in or numbered or anything yet.
MR. WILLIAMS: I will put it in.
MS. ZERWITZ: No objection.
MR. WILLIAMS: Protestants No. 3.

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MS. WORRALL: A plat of Annadale -- and then on this one -- I have seen it both ways -- but this makes it two words, Plat of Anna Dale, dated April of 1925.

Q. So your testimony was that all of these lots 36, 35, 34, 33 and 32 have become four lots and, if I'm not mistaken, from your terms that I had trouble getting into evidence, the northwest corner of Lot 32 has moved westward and has taken part of Lot 31 and the subject property, is that correct?

A. Yes. That lot was originally fifty feet.

Q. Now, on the paper road, Tobasco Road, you said that Mr. Long's deed called to the middle of it?

A. Called to the center line.

Q. Called to the center line of it. Now, as surveyor, would you know whether the original subdivision plat, Protestants' Exhibit 3 of Annadale, or the deed prevails? As a surveyor, would you have that knowledge?

A. No. That goes to the court; has to be decided.

Q. Has it been usual in your experience to see people utilize or build over paper roads?

A. Not to build on it, but I have seen where people

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used it for their building restriction lines.

Q. To your knowledge, has Tobasco Road ever been closed?

A. That, I have no idea.

Q. Were you aware that Mr. Long filed a proceeding to close to Tobasco Road, and then abandoned that effort?

A. No.

MS. ZERWITZ: Objection.

THE CHAIRMAN: Sustained.

Q. So you have no knowledge of that?

MS. ZERWITZ: Objection.

THE CHAIRMAN: Sustained.

Q. On the location of the outfall, let me show you something.

MR. WILLIAMS: Maybe I have a better copy in Mr. Long's possession.

Q. What I am showing you is a part of Petitioner's Exhibit 1 for identification. It says owner/developer, Robert long, BPS Land Technology Sediment Control Plan Lot 10 throught 15.

Now, over here --

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MR. WILLIAMS: I am referring to the chart. It's the next to the last page, Mr. Chairman.

Q. I show you this. What does this appear to be? You see the outfall?

A. Right.

Q. What does this appear to be, do you know, sir?

MS. ZERWITZ: Objection.

THE CHAIRMAN: If he knows within his expertise.

A. There's two things it could be.

Q. What are the two things?

A. It could be an easement or it could be the right-of-way of the road.

Q. It could be the right-of-way? Okay.

A. Right. It was a fifteen-foot road, and that appears to be fifteen foot wide, so normally stormdrains easement are fifteen foot.

Q. But, of course, you're a surveyor and familiar with topographic lines. Do you see the topographic lines?

A. Uh-huh.

Q. Does that indicate a swale that runs sort of on a diagonal across one corner of Lot 31?

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A. It's a swale. I don't see where it's going that far across the line because I have, from my experience with these topos, and so on, that they're not accurate within five or ten feet.

Q. Do you think that was taken from a 200 scale topo?

A. That, I don't know. I have no idea, because I don't know who did the work.

MR. WILLIAMS: Just bear with me for a minute.

Q. You said you did not do a house layout or a building layout?

A. No, I did not.

Q. The boundary survey that you did -- I've got so many plans laying here.

MR. WILLIAMS: Did that come into i.d?

MS. WORRALL: Petitioner's No. 1.

Q. I think you indicated that, in the lower right-hand corner, Lot 32 is 68.40, is that correct?

A. Yes.

Q. Now, Mr. Phelps, if -- if -- just assume something for me for a moment -- if 7.67 feet is -- which

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is at the road -- is one-half of that Tobasco Road right-of-way?
A. It is.
Q. If that's not available, how much frontage is left?
A. Roughly, forty feet. I mean thirty-eight feet.
Q. Thank you. I know one more thing. Each time I have been out there, it's been good weather. Was it good weather when you were out there?
A. Yes. I don't work too much in the rain.
Q. Have you ever? That was my question. Have you seen this lot in the rain and the extent of water coverage?
A. No, I haven't.
MR. WILLIAMS: If the Board will bear with me for just a moment.
I have no further questions.
THE CHAIRMAN: Redirect.
MS. ZERWITZ: Thank you.
REDIRECT EXAMINATION
BY MS. ZERWITZ:

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Q. To your knowledge of how people obtain permits and everything, do you have any knowledge regarding county code and easements as to runoffs and drainage ditches?
A. No.
Q. So you don't know whether there is any code or any law regarding where runoff can flow from a drainage ditch?
A. Well, normal things, it has to go downhill, but you can redirect a stormdrain with improvements.
Q. Do you have any knowledge whether in this case the storm drainage has ever been redirected, or it's going down a hill?
A. No, I don't. I can't see that just from looking at it on the surface.
Q. What would have to be done to make that determination?
A. Well, actually, you'd have to find a person that did the redirection because, other than that, there's no way of telling.
Q. Do you know from your survey how this land was sloped?

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A. No, I can't tell that either without -- there could have been fill put in there on both sides of the ditch or on one side or anything.
MS. ZERWITZ: I have no further questions.
MR. WILLIAMS: I have no further questions.
THE CHAIRMAN: Thank you, Mr. Phelps. Your next witness.
MS. ZERWITZ: May Mr. Phelps be excused?
MR. WILLIAMS: As far as I am concerned, yes.
THE CHAIRMAN: Thank you, Mr. Phelps.
THE WITNESS: Thank you, sir.
MS. ZERWITZ: We would next call Mr. Robert Long.
ROBERT LONG,
having been called as a witness, was duly sworn and testified as follows:
DIRECT EXAMINATION
BY MS. ZERWITZ:
Q. Can you state your name and address?
A. My name is Robert Long. L-o-n-g. 3827 Annadale Road.
Q. How long have you lived at Annadale Road?

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A. Approximately ten or twelve years. I think it's been ten to twelve years.
Q. When you purchased your home on Annadale Road, did you just purchase your home, or can you tell the Board a little more how you came into this property?
A. Well, I purchased all the lots that have been talked about.
Q. Let's be a little more specific, if I may. What lots specifically do you recall that you purchased? Step down to the map.
A. I purchased Lot 31, 32, 33, 34, 35, 36, twelve, thirteen, fourteen, fifteen, ten, eleven, seven, eight and nine.
Q. When you purchased those lots, were they already divided into fifty-foot increments?
A. There was a recorded plat.
Q. So you purchased actually those lot numbers, is that correct?
A. Well, it said that -- the legal description said lots shown plus the acreage.
Q. What, if anything, did you -- why did you

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purchase those lots?
A. To build a house on it for myself.
Q. Was it originally your intention to build a house on the lot that you did?
A. No, it wasn't.
Q. Where did you originally intend to build your home?
A. I tried for, I guess, two or three months to try to build my house back up off near the end of the road, Annadale Road near Cove Road.
Q. What were you going to do with the rest of the lots?
A. I was going to do a minor subdivision, or resubdivision.
Q. How did you know how to do that?
A. Well, when first I got involved in it, I had no idea what was going on. I depended on surveyors and engineers to direct me. Basically, I knew I bought the whole parcel, and then I hired engineer to help me go through everything that I needed to do.
Q. When you intended originally to build your house,

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what lot specifically are we talking about?
A. I believe it was Lot 12 and 13. I can't see from here. I think you have a plat there. I'm pretty sure it ws right in that area here.
Q. Around Lot 13?
A. Around thirteen. We wanted to build a three-bedroom, two bath, split foyer. That was our original plans. And we asked the county to -- the sewer line was right here --
MS. ZERWITZ: Let the record reflect you're indicating the bottom of Annadale and Cove Road.
A. There was an existing manhole that stuck up. We wanted to tie into that because that was one of the things that they were concerned about, was the sewer, where there was a forty-eight inch main. They didn't want me to tie into that. I was going to tie into the manhole.
Q. Did there came a time you decided not to build on that property?
A. It wasn't my choice. It was basically I had sold my house. I was living in the city. We had to be out. And the county said the only way to get a building permit

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was to build close to the end of Annadale Road as possible, run a temporary water center service, and I had to put up a security deposit to run a sewer down.
But in the process, they went ahead and let me tie into the forty-eight inch main, because everybody else did. But this was not our first preferance.
Q. What, if anything, had been developed in that area at that point in time?
A. Lot 16 -- I'm sorry -- 26, 27, 28, 29, and 30. And 25, 24, 23, 22, 21, one, two and three. Four, five six. Twenty. Twenty-one. Eighteen. Seventeen. I'm sorry, seventeen wasn't developed. Twenty-one and eighteen.
Q. If you can recall.
A. I believe Mr. Matthai's house is here. Chuck Matthai's is one, but there was no house across the street from where my house is.
Q. Are you indicating, for the record, Lot 15 and 16 had not been developed?
A. No. Lot 16 and 17 had not been developed, or any of these.

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Q. When you built your home then on Lot 32, how did you come about building it on that particular lot?
A. Basically after going back and forth with a surveyor, I mean the engineer, and the county, and going back and forth because of the sewer problems and because there was no water in front of the house, they basically told me I had to build there where the temporary water service and send the water service past the house eventually, so they basically give me a break by letting me build right there. But it's not where I wanted, but that's where they permitted me to build.
Q. What was your intention with the remaining lots?
A. At that time, I had no idea what I was doing with it, because it was new to me. I knew I wanted to do a minor subdivision or resubdivision, do something with it, because I didn't need all that property, and that was really my main intention.
Q. Did there come a time you, in fact, did that?
A. After dealing with the county for about two and a half years, and going, well, the engineer, we finally decided to do what they call a resubdivision.

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Q. The house that you ultimately built, how did you come to build that house as far as the property lines are concerned?

A. I had a surveyor come out and lay out the property corners. He laid out the house corners. And basically the county told me that's where I had to build the house, because there was no water going through the property.

I guess the code, whatever, said you couldn't be too far away from the main water main, so they let me put a temporary water service in because of the hardship. My house in the city was sold and we had been going back and forth quite a while, trying to get a building permit, and they finally agreed to let me put the house there. I had no other choice.

Q. What, if anything -- did you have to get any special variance or permission to build the house as you did?

A. No, not then. I mean except for going through the county regulations. It wasn't a critical area. It was a lot of different things I had to do, but no variance or

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anything, no.

Q. Did there come a time you went to sell off some of the other lots?

A. Yes.

Q. What, if anything, did you do to facilitate that?

A. After going through everything and finally coming up with a game plan with the county, because it had been an old subdivision, it caused a lot of problems, and they agreeed to let me do a lot line adjustment by a metes and bounds description.

Q. What's that?

A. You're allowed under the County Code -- I don't know, but I was told to take and make four lots or small lots into bigger lots, to bring them up to code, and that's what we did. And Carl Richardson was involved in all that. And my house was already existing, built there, before we did any resubdivision.

Q. So you basically resubdivied your house?

A. Correct.

Q. What did you do to resubdivide the other lots?

A. Well, some of them we did a lot line adjustment,

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some we put two together, like where Joe and Patty's house is, we put two lots together. Next to him is Mr. Jones. We used those two lots and we had to do a T-turnaround, so they did, or easement for the T-turnaround. And then, on the waterfront lot, we did lot line adjustments by way of a metes and bounds description, just moved the property line around.

Q. By moving property lines around -- you originally had your house on Lot 32. What effect did that have on your lot your house was on? Did that change your property line?

A. Well, we couldn't change where my house sat. My house was already built before we could do a lot line adjustment, so we had x-amount of property to work with, and, you know, basically that's how all this has come about.

Q. From which direction looking at the row of lots your house is on, from what direction did you do your lot line adjustment? Which lot did you begin with?

A. Started with 33 and went down towards the water. I mean, went east, towards the east. I'm not sure whether

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they we did any lot line adjustment on the other side, non-waterfront. I don't think we did.

Q. Why did you start with Lot 33?

A. Because my house was built there. I had no other choice.

Q. Could you have started in the other direction?

A. We could have, but you still would have come out with the same amount of lots and same footage. You only have 200-some feet. I don't care if you divide it four ways, if you start at the other end, you're still going to have four or five lots.

But if we started at the other end, I still would have come up with the same amount of lots. I could have given myself more on the side yard.

Q. Were you aware when you redid the lots that Lot 31 was going to be smaller than the others?

A. I wasn't real sure because, when I did it at that point in time, the only thing I was concerned about was getting my house there and getting it built.

And I wasn't aware that, you know, this would have caused a problem, because when I originally built my

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house, I could have built a house next door to me. And because of all the zoning regulation have changed in the last ten years, or whatever --

Q. Let me back you up. You said you could have built the house next door to you. You could have built the house on --

A. On Lot 31.

Q. That's the one we are talking about today?

A. Right.

Q. Why didn't you originally build it on Lot 31?

A. Me and my wife had discuissed different things. We had talked about putting a garage up there. We talked about leaving it for possibly my mom to move next door.

We just left it open. We didn't know exactly what we wanted to do with it. And, you know, just really never thought about it, until recently.

Q. But were you aware when you readjusted the boundary lines, that became smaller than your other lots?

A. I wasn't really sure that it would have this effect.

Q. What lot do you own now?

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A. I own Lot 31, 32 and partial 33.

Q. How much of Lot 33 do you own?

A. I think it's about ten or twelve feet. And the reason why, it's because where the county wanted me to put my house.

Q. Who owns the rest of Lot 33?

A. My next door neighbor, Mr. Green.

MS. WORRALL: Who lives on Lot 34?

THE WITNESS: No ma'am. My house sits between here, and a piece of it goes into 33.

MS. WORRALL: Where's Mr. Green?

THE WITNESS: He's the rest of 33 and 34, because we got a lot line adjustment. I only own a little piece of 33. I think it's probably twelve feet. I actually get a separate tax bill for that.

Q. The balance of 33 is owned by a neighbor?

A. Yes.

Q. What is your intention to use Lot 31 for at this point?

A. At this point -- our original plan was I was going -- I tried to petition to close the road. I was

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going to build my mom a house next door.

That fell through because Mr. Woodell stopped it. And then the next step was to go through the minor subdivision or go through the variance, which I did. Me and my wife were going to sell our house and move next door and downsize because the house is four bedrooms, and it's only me and my wife and my daughter.

Q. What type story do you plan to build?

A. Three-bedroom, two-bath colonial. It's smaller. The house we are proposing to put up there is twenty-eight by twenty-eight. The house we live in is forty-six by twenty-eight with a two-car garage.

And the reason we were doing that, because my wife, with her job, we weren't sure what her future was going to be as far as she's going back to her normal job. And I was trying to protect, make sure we could -- you know, I could afford to take care of my family. I felt the downsizing was the best thing we could do, given the circumstances.

Q. How did you discover there was a problem building this house?

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A. Mr. Woodell come over and knocked on my door and screamed and yelled at my wife, saying for me to move my property lines and if it got legal, you know -- he scared my wife half to death.

He sat down on my front lawn, said he wasn't moving until I come there. And I actually had to call the police.

Q. Now, you are aware -- how large do you believe the lot needs to be for you to be able to build on the lot?

A. Well, with any variance, you need fifty-five feet in front of the house, with a variance, what the county will allow you to do.

Q. For you to build, is there a portion of the lot that's fifty-five feet?

A. Yes, there is.

Q. Where would that place your house?

A. Closer to the water. It would probably set it, I am going to say, approximately forty feet away from the road, maybe fifty. It would be near the edge of the water.

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Q. Have you thought about building your house there?
A. No, because you know, I wanted to build it closer to the road, because it would be better for the environment, plus that's what the county asked me to do when I went in for the original preliminary plans.
They said they would request for me to be as far away from the edge of the water as possible. And when that was done, it kicked me into a zoning variance.
Q. Are you familiar with the other lots in your development?
A. Yes, I am.
Q. Can you describe how your lot is in relation to the other lots?
A. My lot is pie-shaped, which is unique, because of the configuration of it being pie-shaped and sitting next to Tobasco Road.
Q. Let's go back to the pie-shape. What shape are the other lots?
A. You have -- most of them are fifty by -- I don't know what the lengths are. Fifty by one-forty by fifty. Some are a little bit narrower. It's a mixture.

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Q. But the width of your property is pie shaped?
A. Yes.
Q. When you built your house, did you narrow the property at all on Lot 31?
A. Well, what happened was when I built my house, because I needed ten foot off the property line, I had to move the property line around to skew it a little bit to get everything to straighten out.
Q. You narrowed it, but did you change the shape of it at all?
A. It narrowed it. It doesn't change. No. Well, the width of it changed it some more towards the front than it did towards the back. But, yes, it did change, but it's still pie-shaped. It was pie-shaped before I did anything. It's always been pie-shaped. You can see it on the pie-shape. It's fifty-one on the road and seventy-one on the water.
Q. What, if anything else, besides the pie-shape is different about your property?
A. It's next to Tobasco Road.
Q. What is Tobasco Road?

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A. It's a paper road.
Q. Why does that affect your property?
A. Because zoning says any road or paper road, you have to stay twenty-five foot off of it.
Q. What is that road used for, do you know?
A. Right now, it's not being used for anything. And according to the Zoning Commissioner and other people, it's never going to be developed, but they use it for a drainage easement.
Q. You said Tobasco Road is being used as a drainage easement?
A. Right.
Q. Where exactly is that easement?
A. The easement is actually in the center line of Tobasco Road. They approached Mr. Woodell to get an easement off him near the water and he wouldn't sign it.
When I petitioned the county to close the road, I had even proposed to put a path down towards the water, and Mr. Woodell would not. He was just so livid about me building a house next door. He just didn't want a house next door.

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Q. The drainage easement, is it on your property?
A. No, it's not. It's in Tobasco Road.
Q. But is part of Tobasco Road your property?
A. I own seven and a half feet of it, yes.
Q. So then do you own part of the drainage easement?
A. I own in fee, but the county has an easement to go through it, yes, they do have the easement. I physically own it, but the county has the right to run water across it, which I agreed to. I signed it.
Q. To the best of your knowledge, where does that water go from the easement?
A. Basically comes out of the end of the outlet pipe and goes down the easement somewhat and just goes into the water.
Q. Does any of it go across your property?
A. Some of it does, at the very end, all the way near the water. That's one of the reasons we -- you know, that's one of the things I want to straighten out, because it shouldn't be on my property. It should be in the easement.
Q. What else about your property is different from

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the other houses?
A. Topography.
Q. Such as?
A. The way it's sloped. Most of them around there -- well, it's on the water. It' just the whole circumstances. The property is different from everybody else's.
Q. Can you be a little more specific?
A. The shoreline. The topography is different than the rest of them.
Q. Could you -- again, I need you to be specific. What about the topography is different?
A. Just the way -- I don't know. The only thing I know, when I cut the grass, it's different than my lot next door and the lot up the street. It's just a little bit low. I guess the lot sits a little bit lower.
Q. Is there anything else about the topography?
A. That's about it.
Q. What else about the property?
A. Well, I am in real estate. There's a word, I can't think of what it is, but each property is unique in

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character. You cannot duplicate two pieces of property. You can't because of the location, and there's no two pieces of property that are exactly alike. I think there's a word for it. I can't remember what it is, but there's actually --
Q. What characteristics do the other lots have that yours doesn't?
A. It's next to the paper road, has an easement, it's pie-shaped. It's riprap. I have riprap shoreline where the rest doesn't.
Q. What's that?
A. It's a stone riprap, a stone preventment. I did that to protect the shoreline. It did have a lot of erosion. My property has eroded more than other property around.
Q. How do you know?
A. By the deed, and just by the mudflap in back of my house.
Q. How much of your property line has eroded over time?
A. I think it's probably about -- since I bought it,

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it hasn't been that much. But since 1925, it's approximately forty or fifty feet.
Q. If you were to build a house on this lot, what effect would it have on the waterway?
A. You mean the Bay?
Q. The Bay.
A. It wouldn't have any, because I am going to build it in such a manner the water will run across the grass. I have to meet DEPRMs requirements. As far as I know, it shouldn't have any.
Q. I am going to show you some pictures and ask you if you can identify them.
MS. ZERWITZ: I would have those marked as Petitioners' Exhibits 2A and B and C.
Q. I'm showing you what's been marked as Petitioners' 2A, B and C, and ask you to identify these?
A. That's next to my house, taken towards Annadale Road. It would be -- pardon. Can I see -- it would be in a northerly direction.
My back was towards the water, heading towards -- I am facing towards the drainage ditch. And that's Mr.

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Shanholtz's house.
Q. There's some posts in the photograph?
A. Uh-huh.
Q. Do you know what that post sympolizes?
A. That post there is a no trespassing sign that's actually in the center line of the road. Pretty sure. I'm not really exactly.
Q. Did you put that there?
A. It kept getting moved. Every time I put no trespassing signs, Mr. Woodell comes and they would be moved.
I don't know if he did it or his tenant, because Mr. Woodell doesn't live next door. But every time I turned around, my no trespassing signs come up missing.
Q. Can you identify what those are?
A. That shows the new lot, and these two here show where the corner of the house is going to be next to mine.
Q. For the record, you're identifying --
A. The two wooden posts, right. This one shows the paper road coming from the stormdrain, and that's Mr. Woodell's house over here, and that's facing, again,

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northerly, and the water is to the back of me.
Q. Who took these photographs?
A. I did.
Q. When did you?
A. Last summer.
Q. Do they fairly and accurately depict the status of the property at that time?
A. Absolutely.
Q. I'm also going to show you what's been marked for identification as Petitioner 2D. Can you identify that?
A. That's my house and shows the lot next door to mine, and I believe that's my dog.
Q. Did you take that photograph also?
A. Yes, I did.
Q. When did you take that?
A. Same time as I took these.
Q. Does that fairly and accurately reflect the lot at the time you took the picture?
A. Uh-huh.
Q. I show you picture Exhibit 2E and F and G and ask you to identify these pictures.

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A. This is showing the back of my back yard and showing the property corner of the new lot and showing riprap and my pier and shows the grass, the grass is in back of Mr. Green's lot, and shows there's no grass in back of my lot or the lot next door. And this is another lot showing -- I'm sorry. This is another picture showing off of my pier, my woodpile, and showing where the easement is for the road.

I have two-by-two's sticking up, yellow ribbons on them, so you can see them, and that's where the water comes down, and you can see, to show the riprap along the shoreline, and to show there's no grass or anything in back of my property. And this is another picture showing some grass -- well, there's a little bit of grass on my lot.

Q. Your lot, meaning Lot 32?
A. Right, 32, where my existing house is, the low-lying grass is good grass. The tall grass, they don't like. This low lying stuff, I guess it's -- I don't know, but this is good grass here, but this stuff is just basically imported from Europe and grows everywhere. At

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least, that's what I have learned.
MS. ZERWITZ: I'd like to have these marked collectively as Petitioners' 2A throught G.
Q. What is so important about the grasses and the water?
A. The fragmise (phonetic), that's the thing, they are really tall and have a whole bunch of -- they are not leaves, I guess, they are -- fragmise have no water quality. You have to actually get a permit to get rid of those. I think it's a low lying grass, good grass, where the crabs come in and should have -- and fish come in for habitat. The fragmise will grow anyplace. And I got into a conversation when doing my riprap with the Army Corp of Engineers and they say that that stuff will grow on top of a roof. This grows everyplace. It's imported from Europe for erosion control, and it's actually taken over.
W. What use is there for the lot at this point in time?
A. Besides cutting grass and paying taxes, that's about it right now.
Q. If this Board were to deny your request for a

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variance, what use would you have for the land?
A. Pay taxes on it and cut the grass.
Q. Would you able to build anything on it?
A. I believe I could put an addition on, but I would still need a variance for the critical area variance because I am still within the 100-foot buffer zone, but I wouldn't need a zoning variance because I can meet all the side yard.

I can build a bigger addition and not need a zoning variance, because of when you separate the two properties, it's -- it kicks a lot more regulations in.
Q. How would you respond to an allegation that, in fact, you created the smaller lot and, therefore, created your own problems?
A. I didn't do it. I was -- I had to basically build my house where the county told me to build it. Again, the water service stopped right there. It was only going to allow me temporary road and temporary water service to my house. That's the reason I built it there.

I don't know how long we went back and forth trying to build a house. But after awhile, you kind of

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give up. And my house in the city was sold, and I had to have a place to live.

And they give me a break by letting me build it there. It's creating some problems now.

Q. As far as the neighborhood is concerned, can you describe the houses in the neighborhood?

A. It's a mixture of older houses, big houses. You have some houses that are small, like Mr. Woodell's house is a real small house. It's probably only twenty foot wide. I'm guessing. All the way up to Joe and Patty's house, Ernstberger, which is probably seventy-five or eighty feet long, a two-story colonial with a two-car garage. You can go from one extreme to the other.

Q. Do you believe that your house will be consistent with the other houses in the neighborhood?

A. The house that I'm proposing to put on there will look exactly like Joe and Patty Ernstberger's, except it will be a whole lot smaller. It's going to have a small porch on the front.

Q. What about as far as close together are those houses in the neighborhood?

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A. They are ten feet -- well, twenty feet from house to house, and I will have twenty feet in between my house and the new house, and from my house to Mr. Woodell's would be approximately -- probably pretty close to forty feet, thirty-five to forty feet from the side of my existing house to Mr. Woodell's house.

Q. How did you figure that?

A. You have a paper road which is fifteen foot. You have a side yard setback of ten foot. Brings you up to twenty-five foot. And I am thinking he's probably ten foot off his property line. So I am going to say forty-five feet.

I know that the road is fifteen foot wide. My house is ten feet off the property line. How close his house is to the property line, I'm not sure, but I am guestimating ten feet.

Q. How close would you be to the water if you were to get the variance as requested?

A. Well, I'm trying to stay as far away from the water as I can. I think a hundred -- sixty feet -- I think it's sixty feet, going off the top of my head.

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Q. What impact do you believe that would have on the neighborhood and on the environment?

A. Building a new house there shouldn't have any, because, you know, we are going to run the downspouts down across the grass and, you know, we'll plant trees.

And I'm not doing anything more than basically -- like I said, I could build an addition there actually bigger than the new house I am proposing to do without a variance, but I still need a critical area variance because I am within the critical buffer zone.

Q. Are you aware of any problems in the neighborhood regarding drainage and sewerage?

A. The only drainage problem I know of -- only sewerage problem I know of, one of my neighbors had a problem with the house next door to him. The guy cleaned out for something and she was getting a lot of smells. And finally they did some kind of test and found out where it was coming from. Plus I think where the yeast company, they are getting some smells. That's the only thing I know of.

Q. Have you looked into whether an additional house

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in the neighborhood would have an effect on the sewerage problems?

A. I have a forty-eight inch sanatary sewer line through there that everybody else is hooked into, that you can build a VA Hospital and hook into. That's what one of the guys from public works said. It's big enough, you can walk through it.

Q. What about the drainage, do you believe there's a drainage problem in the neighborhood?

A. None that I know of, not on my property. I can't speak for other people.

MS. ZERWITZ: I have no further questions at this time, your Honor.

THE CHAIRMAN: Counsel.

MR. WILIAMS: Thank you.

CROSS EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Long, you bought the property, as you said, ten or twelve years ago, is that correct?

A. Yes.

Q. Was there anything to prevent you -- you said the

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county told you you had to be close. Did the county tell you you couldn't be on Lot 31, or anything of that sort? Why did you leave it open?

A. Because they told me that's where I had to put the house. Like I say, I originally planned to put it at the other end of the property. I was going to do a T-turnaround and a subdivision. I have a plat there. And they turned it down, said I had to take it and put it back there because of the water.

Q. My question is, was there anything to prevent you from using Lot 31 at that time?

A. They told me I couldn't build there, I had to put the house where it is because of the water. At that time, I was not that -- I didn't know that much what was going on. I basically did whatever the county told me to, and I was delayed. I got a building permit.

Q. If they told you that, then what makes you think they would let you build a house on it now?

A. Well, I didn't -- like I said, they told me I had to build a house there. I knew the lot was there. I didn't know what I was going to do with it.

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When I originally built my house, I had several different plans, and it didn't come up until my wife got hurt and things happened, what I was going to do with the property.

Q. Am I correct in saying that you developed something on the order of eight homesites including your own out of fifteen lots that you bought, is that a correct summary?

A. There is seven lots including mine, plus Lot 31.

Q. So it's seven out of fifteen plus Lot 31, is that correct?

A. Correct. There's eight total. My house is one of them, which makes seven. And Lot 31.

Q. You said you've worked with various engineers and all. Did you work with BPS Land Technology?

A. Yes.

Q. In connection with that, I refer you to Protestants' Exhibit 1. Is it Mr. Parr?

A. Tom Parr, I believe his name is. It's been awhile.

Q. Did he -- was this attached to Petitioners' 1? Is that Mr. Parr's work?

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A. I don't know. It could be. It kind of looks similar to something, but I'm not real sure.

Q. How far did your responsibility for road improvements or curb and gutter or anything of that sort extend? Where did you begin your work?

A. Wherever Annadale Road ended, all the way down to the T-turnaround.

Q. Did you place -- was it your responsibility to place an inlet on Lot 16?

A. It was already there. We just replaced it because it wasn't -- it was already existing and it was not -- it was not, I guess, to code, or wasn't to specifications, because it didn't have a number, but it was already there.

Q. In which direction does water flow on Annadale Road in a rainstorm?

A. It runs -- I mean, on my property, it runs down in between the house. And on the other side, I believe it runs across the road and down between the houses, and some goes that way and some goes that way. It goes all

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different directions.

Q. Is there a stormdrain up on this end of the -- east end of Annadale? Is that what I'm looking at?

A. That's not a stormdrain. Talking about this, I think it's a sanitary sewer. I originally wanted to build my house there, but because of that -- I was thinking I could tie into that.

Q. In your testimony, you acknowledged that there is a storm drainage easement and that's what Tobasco Road is used for, is that your understanding?

A. There's an easement on half of it, yes, half of Tobasco Road is -- yes. There's an easement. I signed an easement over. I had no other choice. The county said I had to do it. I said, Okay.

Q. So if you signed -- that would be the seven and a half feet on your side. That would -- subtract -- and that takes us down to thirty-six feet at the road?

A. I still own it. It's still mine. It's like giving someone an easement to bring a water service across. I still own it. It doesn't mean I give them the whole thing. They don't have even fee simple. They only

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have drainage and a utility easement.
Q. You sought to close Tobasco Road, is that correct, sir?
A. Correct.
Q. How did anybody stop you? Mr. Woodell or others, what stopped you from doing that?
A. Well, we got in there --
MS. ZERWITZ: Objection.
THE CHAIRMAN: She's objecting as to relevance.
MR. WILLIAMS: It was brought up.
THE CHAIRMAN: It was certainly mentioned on previous examination. It came up. He was asked on direct about it.
MS. ZERWITZ: He wasn't asked directly about the road closing.
THE CHAIRMAN: He was asked about the road, something pertaining to the road, and it's certainly relevant cross-examination. Whether or not it's going to make any difference or not is an entirely different question.
Q. When you say you got in there, did you actually

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go to a hearing?
A. Yes.
Q. Did you offer your evidence?
A. The only thing I did was I was directed by -- I think her name was Lois Bergmeister or Burgman -- I can't remember the lady's last name -- she gave me the paperwork to fill out to close the road.
Q. What was the decision issued in that, or did you abandon your --
A. A decision was rendered because at the hearing it got pretty hot and heavy because of Mr. Woodell. I had been cutting the grass. I didn't know any different until after I looked into it.
I had been cutting the grass and maintaining that whole road bed of Tobasco Road, and I thought I was entitled to the whole thing.
At that point and after I got into the gist of it, I found out he's entitled to half and I am entitled to half if the road is, indeed closed.
And I offered at that hearing if he agreed to let me close the orad, the only thing I wanted to --the road

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creat es a problem because of the twenty-five foot setbacks -- I could have closed the road, built my house, wouldn't need a zoning variance, and one of the things he said --
MS. ZERWITZ: I am going to object to that.
THE CHAIRMAN: You can't say what somebody else says.
A. All right. I had proposed -- can I say the reason why Mr. Woodell was there?
THE CHAIRMAN: You can say whatever you want, unless somebodys object.
A. The reason Mr. Woodell didn't -- I don't know why Mr. Woodell didn't want it closed. He said something about people having access to the water, and I had proposed to put a path down there to let people get down to the water in the easement. And, you know, until this day, I will still do that. You know, I'm not the oger Mr. Woodell puts me out to be.
Q. When you decided to build your house on part of the Lot 33, all of Lot 32 and part of Lot 31, was there anything that would have prevented you from going a little

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further to the east and leaving 31 in its original size or larger?
A. The county said that's where I had to put the house. I am going by what I was told, and the building permit, and I wasn't going to sit there and argue with them. My house was sold. I had to have someplace to live, and Ijust was glad I got a building permit.
Q. As a developer --
A. Wait a minute. I wasn't a developer at that time. I had just got into real estate, and I'm still kind of -- I don't know if I am a developer or not.
Q. Did you ever make an effort to include Lot 31 as a part of the resubdivision before, or was it -- was it included in your resubdivision?
A. No, it wasn't. The resubdivision was done, everything from my side of the house -- like I explained to you on the phone, my house has been there twelve years, ten or twelve years.
The resubdivision took place three or four years after my house was built, so I couldn't move my house. We had to work around my house.

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Q. If I understand you correctly, you got eight lots out of fifteen, and the only thing that you were left with was part of one lot which has a drainage easement on it, is that correct?

A. No, that's not correct. I'm left with the biggest part of Lot 31. There's only like three or four feet that, because of the lot line adjustment, that changed it. And the drainage easement is in Tobasco Road. It's not on Lot 31. That's where a lot of these problems come up. There's been a lot of mis-information given out.

Q. I don't want to belabor this, but I don't know which photograph -- it was A, B, or C. I'm referring to Petitioners' Exhibit 2A, and I believe you said that was a no trespassing sign?

A. I believe that's where my no trespassing sign had been. They come up missing, moved.

Q. Are you saying that that is not an accurate placement? That it should be further to the --

A. No. It's actually -- I think, and you're asking my from last summer, I believe it's actually more into the easement, because every time I put it outside the easement

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or right on edge of the easement, my signs kept coming up missing.

See, that's another thing. Everybody thinks I am trying to build a house in an easement. I'm not. Hopefully, it will get clarified today and all the neighbors will find out what the real truth was. We wouldn't be having these problems if they found out what the real truth was.

Q. Your surveryor didn't stake to Tobasco Road, or anything of that sort?

A. He staked -- he put property corners in where the property corners are. There's yellow pins there where these caps.

Q. You said that you could build an addition to your house and make use of Lot 31, is that correct?

A. Yes. Actually, I could build an addition larger than the house I am proposing to do.

Q. So you haven't lost all the use of Lot 31? You're not making that claim?

A. Well, it's sure not letting me do what I want to do. What's the sense of me putting a big addition on a

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house that's already too big for me?

I just said that to give you an idea of what the county regulations kicked me into. And, you know, if you think about it, my house is going to be smaller than a lot of people's garages around there.

Q. Is there anything that would prevent -- is your house for sale?

A. It's not now, no, it's not.

Q. It was for sale?

A. Yes. I couldn't sell it because of all the problems from the neighbors.

My house -- I believe my house has been stigmatized because of all this. Would you want to buy a house with all your neighbors in an uproar against something like this?

Q. Was there anything to prevent you from selling the house with Lot 31? Don't you think it would be worth more?

A. I am proposing to -- that's my option, and that's what I have said all along. If I can sell -- my first option was to build a house next door to my home. My

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second was to build a house for myself.

Now, I don't know what I want to do. I'm not sure if we are going to move next door. I don't know. The way the neighborhood is, the animosity and grief my family has went through, the stress and everything that my family went through, I don't know if we want to live there anymore, to be quite honest.

Q. Do you have any plans available with you today that shows the drainage easement? You said the county had you sign something. In connection with that signature, do you have a plat or anything that shows where that easement is?

A. There's a recorded -- I think she has -- I believe there is in a recorded easement, at least I signed it. I don't know if it's recorded or not.

MR. WILLIAMS: If the Board will bear with me for just a moment, I think we can clear this up.

Would you care to offer this?

MS. ZERWITZ: Sure.

MR. WILLIAMS: Is this Protestants' No. 3?

MS. ZERWITZ: Petitioners' No. 3, which would be

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the road map.
MR. WILLIAMS: Let me take it up to Ms. Worrall. I don't see a label on it. It's dated 5-8. It was signed by Dave Thomas in Public Works, 5-8-91. I think it's a road plan cross-section.
THE CHAIRMAN: Folks, I am going to have to interrupt you for a moment. One of your Board members has already reached a conflict in her schedule and she has to make a phone call.
MR. WILLIAMS: I will not be long.
THE CHAIRMAN: I don't want to limit you. Off the record.
(Discussion held off the record.)
THE CHAIRMAN: That was Petitioners' No. 3. The Board will take two minutes.
(A recess was taken.)
THE CHAIRMAN: Thank you. We're back on the record.
Q. Mr. Long, this is Petitioners' Exhibit No. 3. It's a road plan prepared by BPS Land Technolgoy that you brought with you here today?

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A. Yes. I believe so. It's one of many. It went back and forth so many different times, different changes.
Q. I direct your attention to Lot 31 with the outfall. It indicates a fifteen foot drainage?
A. It changed to seven and a half.
Q. It's your belief --
A. It was changed, because Mr. Woodell would not sign the easement. That's what I'm saying. I don't think this is the final one. It's just one of many.
You can see the files I've got over there. I was looking to see if I had the final one.
Q. There's seven and a half feet or fifteen foot wide. Is there any doubt in your mind there's a drainage and utility easement there?
A. I signed one. Whether it's recorded or not, I'm not sure.
Q. Is there any doubt whether there's a --
A I'm not proposing to put the house in the easement.
Q. I understand that.
A. I don't have the final one. I'm sorry. I

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probably do in that mess, but it would probably take me until tomorrow to find it.
Q. Did you hear me ask your surveyor if you take seven and a half feet off of -- I've got so many plans here too, its confusing me, no matter which one we use.
While looking for the exhibit, your surveryor had a plan that indicated about forty-five feet and that included seven and a half feet of Tobasco Road.
Now, if you can't use that seven and a half feet, is there any doubt in your mind you only have thirty-six or thirty-eight feet available?
A. I don't understand your question.
Q. If you can't use your seven and a half feet half have of Tobasco Road, or if it turns out that's the seven and a half feet that you signed away as a utility easement, then you do not have that to use as a part of that frontage, and you have maybe thirty-eight feet left?
A. At the road?
Q. At the road.
A. At the road, okay. We had this conversation before. We are talking about in front of the house?

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Q. No doubt, thirty-eight feet at the road, but yet on your plan, its dimension is forty-three feet?
A. That's including the road, which I own. Half the road I own in fee simple. I had a title search done, and they said I owned it.
MR. WILLIAMS: If the Board will bear with me just one minute.
Q. In connection with the road closing, did the road closing document indicate that you did or did not own that seven and a half feet?
A. As far as I know, they just just said they refused to close it. I know my title search revealed that I own seven and a half feet of it and I can get titled for the seven and a half feet, because that's one of the questions I had, who actually owned the road, half the road bed.
See, I thought I owned the whole thing, but after I spoke with the attorney, I only owned half.
Q. Just one or two last questions. The variance that you filed with the Zoning Commissioner and in front of the Board here today, you did those through Mr. Lee?

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A. Correct.
Q. The surveyor that appeared just a few minutea ago, he did not do that, is that correct?
A. You mean --
Q. He did not do those plans?
A. No. I did those.
MR. WILLIAMS: I have no further questions..
THE CHAIRMAN: Counsel?
MS. ZERWITZ: Thank you. Real breifly.

REDIRECT EXAMINATION

BY MS. ZERWITZ:

Q. Mr. Long, how did you determine the forty-three foot width of Annadale Road end of your property?
A. Well, basically when I got involved with it, I took Mr. Lee's survey and started seeing where I could fit the house.
And then once I basically went for the road closing, it was denied, then I went -- I was told to go for critical area variance, which was approved, and for the road closing, and I should be able to build the house.
Q. No. You misunderstood my question. How did you

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determine the width at the top of your property, or the Annadale Road property to be forty-three feet?
A. I took it at the original where the property line is, but the county does have a road widening easement thereby kicking it back another five feet. That's the discrepancy. If you take from the original right-of-way to the new right-of-way, that's why there's a difference of forty-three and forty-five.
Q. Now, I'm confused, because you just said there's a discrepancy of five feet. Now, you're telling me --
A. It's only a discrepancy of two feet, forty-three to forty-five.
Q. How did you determine -- how do you know where the two feet difference came from?
A. Because of the way the lot is shaped, the further you go to the water, the lot gets wider. And I measured right at the whole property line which, you know, that's where I got my measurement from.
Q. Do you know where Mr. Phelp's measured from?
A. He measured from the easement where -- the beginning of the road widening easement. That's where the

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difference is. It's only two feet difference between the forty-three and forty-five. I'm not an engineer. I was doing the best I could with what I had.
MS. WORRALL: Mr. Long, when you were talking about forty-three or forty-five, does that include the east portion of the paper road that you indicated?
A. Yes, ma'am.
MS. WORRALL: It includes -- the forty-three of forty-five includes that seven and a half feet?
THE WITNESS: Right, because I was told from my attorney that I owned an in fee simple. But, you know,, the reason I did it that way, because that's the way when I went in in for the hearing, that's the way the guy told me to do.
From what I understand, the zoning variance is in front of the house, not the road frontage. You have to have fifty-five feet at the front. The closer you get to the water, you can get fifty-five feet, but it kicks you back closer to the water.
And I got one regulation says I keep it this way and wouldn't tell me to keep it their way, and I just

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wanted to build the house -- I prefer to keep it closer to the road.
MS. WORRALL: My confusion is this exhibit, the Long property survey that Mr. Phelps did, shows a number of 45.12, the interior line, and shows 7.67, which is half your road easement going from that point to the IPS, center line of the road. 45.12 and 7.67 is 52, almost 53 at that point, if you count your half of the road, but this 45 goes from that little thing right there over there, right?
THE WITNESS: Yes, ma'am.
MS. WORRALL: So it's from the two different IPSs?
THE WITNESS: It's wider here. And if I wanted to, I could build a house back in here next to the water and wouldn't need a zoning variance, because -- but because of the critical area, that creates a hardship.
MS. WORRALL: Thank you.
THE CHAIRMAN: Anything else?
MS. ZERWITZ: No further questions.
THE CHAIRMAN: Mr. Williams?

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MR. WILLIASM: No, sir. Thank you.
THE CHAIRMAN: Thank you, Mr. Long. Counsel, anything else?
MS. ZERWITZ: That would be Petitioner's case.
THE CHAIRMAN: Mr. Williams?
MR. WILLIAMS: We were looking at that plan, we thought we had some material on the road closing that might shed some light on it, but we'll go ahead with Mr. Woodell.

M E L V I N C. W O O D E L L, JR.,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION.

BY MR. WILLIAMS:.

Q. Sir, state your name and address for the record, please.
A. My name is Melvin Woodell -- W-o-o-d-e-l-l -- and I live at 705 South 49th Street, and I own the property next to Tobasco Road, which is 3825 Annadale Road.
Q. Mr. Woodell, when did you purchase the property

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on Annadale Road?
A. The property on Annadale Road, I have owned probably -- for probably fifteen, eighteen years, in that area.
Q. That is 3825 Annadale Road?
A. Yes.
Q. The subject property is 3825A, is that correct?
A. Yes.
Q. Is your property fairly described as a small cottage shown in Petitioners' 2A, the photograph?
A. Yes, that is.
Q. What use do you make of that property?
A. That's a rental property. We used it in the summer when we first bought it, and then we decided to rent it about two years after we owned it.
Q. Do you know where your property line is? I am talking about against Lot 31.
A. It's not against Lot 31. It's against Tobasco Road. Tobasco Road has been there as long as I have been there.
Q. In Photograph 2A, I see a little chain link fence

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and then I see some -- a clothesline folded up outside of that. Is that part of your side yard?
A. That is all part of the side yard.
Q. Have you personally ever removed or moved a no trespassing sign of Mr. Long's? Just tell the Board.
A. I did move the no trespassing signs after the hearing for Tobasco Road, because since the point in time that he's moved there, he's denied anybody in the community access to the water.
The no trespassing signs have been up to my property line. We had the hearing. The Board said that Tobasco Road stays open. That is public accessibility to the water for the community.
MS. ZERWITZ: Objection. We don't have any documentation from the zoning hearing. I would object to anything he says.
THE CHAIRMAN: Sustained as to the road closing, or as to moving the signs, also sustained. It's not relevant to the hearing.
Q. Have you tried to be a good neighbor?
A. I have bent over backwards to Mr. Long.

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Q. What are your concerns about the possible use of this lot for another house on Annadale Road? Just tell the Board, if you would.
A. Well, concerns are, from day one, everybody in the community has been denied --
MS. ZERWITZ: Objection.
THE CHAIRMAN: What's your objection?
MS. ZERWITZ: Making comments like everybody in the neighborhood has been denied. This man uses this property for rental property. Unless he's here speaking for everybody in the neighborhood --
THE CHAIRMAN: Point well taken.
Q. Sir, you can tell us about your particular individual concerns, because you're the person testifying, and that's certainly relevant.
A. My concern is that he's put up no trespassing signs and denied myself or anyone else --
MS. ZERWITZ: Objection to the "anyone else."
THE CHAIRMAN: Strike that. Had denied you.
A. To access to Tobasco Road, and he's built the entire area up. He's made money off his investment.

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MS. ZERWITZ: Objection.
THE CHAIRMAN: Sustained. We have no information whether or not he's made money or not, and it's really not relevant to the issue.
Your concerns about his obtaining a variance is what we need to hear.
A. What I'm getting at is from all the development in the area, the drainage at this point comes down from the other side of the road, crosses through the drainage of Tobasco Road, which has been redone, you know, since he's owned the property, he had to redo it, I guess, to build the house, I would assume.
MS. ZERWITZ: Objection.
THE CHAIRMAN: As to why, sustained.
THE WITNESS: He redid it.
THE CHAIRMAN: So you have identified the drainage problem crossing Tobasco Road.
A. It's increased the, you know, the amount of water flowing down through there and the amount of erosion already, you know. And he wants to stick a house on top of that, you know, and take away filtration before it

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goes, you know, down to the water.
Q. Mr. Woodell, what can you tell us about the drainage from the drainage outlet which is the outfall shown on 2A? Tell us what happens in a significant rainstorm, if anything?
A. In a significant rainstorm is when you have all the water coming from all the areas collected to that drains on down to Tobasco, you know, water naturally spreads out and it filters over, you know, the whole lower ends of the property probably from midway down, you know, and that all occurred after, you know, his drain had been reworked to accommodate all the new construction.
MS. ZERWITZ: Objection.
THE CHAIRMAN: Sustained as to why, but since the construction.
A. Right, since the construction.
Q. Mr. Woodell, do you recall an incident with the county where you recall being asked by the county or anyone to dedicate part of the drainage easement to Baltimore County?
A. No. I talked to someone from the county.

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Q. Don't tell them what he said.
A. I talked to someone from the county years back. I don't even remember how many years back it was.
Q. Do you recall Mr. Long or Mr. Parr or any other engineer or representative on their behalf asking you to sign an easement?
A. No. I was asked to sign something, but not an easement.
Q. Do you have any other concerns about if another house is built on this lot?
A. That's my biggest concern, is with the drainage and the distances.
Q. What do you mean "the distances"?
A. Between the property from the drainage area. The house is basically going to be sitting right on top of Tobasco Road from what I see in the drawings, and, you know, seven and a half feet, he's using seven and a half feet for setbacks, so that leaves him three feet from off of his actual property line, actually two and a half feet, so, you know, that house is going to be sitting right down on top of Tobasco Road.

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MS. ZERWITZ: Objection.
THE CHAIRMAN: I will overrule that objection. It's his view.
Q. Notwithstanding the no trespassing signs, is Tobasco Road used for residents for water access, for people to go across?
A. They try. They have tried.
MR. WILLIAMS: I have no further questions.
THE CHAIRMAN Counsel?

CROSS EXAMINATION

BY MS. ZERWITZ:
Q. Mr. Woodell, you use the property as rental property?
A. Yes.
Q. How long have you been using it as rental property?
A. I'd estimate maybe ten to twelve years. That's just an estimation.
Q. So you really only use it for a vacation home? You've never used it while Mr. Long was there, is that a fair statement?

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A. No.
Q. No, it's not a fair statement?
A. No, I haven't used it as far as the water, you know, a summer place.
Q. Do you have long-term tenants or summer rental?
A. It's rented yearly.
Q. Is that a major source of your income?
A. I wouldn't say it's a major source of my income, but it's a source of income.
Q. You make money off the property above and beyond covering the mortgage payment, is that a fair statement?
A. Nothing to speak of.
Q. But do you make some money on the property?
A. Uh-huh.
Q. Is it a fair statement that if there is more development in the area, you would lose money -- you feel you would lose money on your rental property?
A. I don't think I'd lose money on rental property.
Q. You indicated things that occurred during the rainstorm. You don't live there, so you have never seen that?

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A. Yes, I have. I am down there. I maintain that property.
Q. How often do you go down to the property?
A. Anytime there is a problem.
Q. You said you were asked to sign something. Do you recall what it was you were asked to sign?
A. At a point in time I was asked to sign my rights to Tobasco Road over to Mr. Long.
Q. Have you ever -- you were never asked to sign it over to the county?
A. No. Mr. Long came to my house.
Q. But I'm asking, you've never been asked by anyone in Baltimore County to sign the property over to them?
A. I spoke to somebody about -- from the county, and they already -- the road -- the road was already a public road. I don't own it, so what can I sign over? That's exactly, you know, the way it stands.
If you don't own something, you can't sign it over to somebody, sign it over to anybody, can you?
Q. Your lot is pretty much the standard width of the other lots in the neighborhood?

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A. Excuse me?
Q. Your lot size, is that standard with the other lot sizes in the neighborhood?
A. In the older neighborhood, not in the new neighborhood. In the old neighborhood the houses that abut the water, the houses that go up to the water.
Q. That's what you are calling the old neighborhood?
A. If you come down Matthai, it would be the house to the right of Matthai, if you make a right on Annadale
Q. On your other side, how close are you to your neighbor? Do you know?
A. On the right side of the house?
Q. Yes.
A. Probably from their property line, probably, I would guess, fifteen, eighteen feet.
Q. You don't know? You're guessing?
A. Right. I don't have that right in front of me.
Q. This drainage pipe, do you know how big it is?
A. Which one we are speaking of?
Q. The one that you're concerned about.
A. The ones that comes across under the road?

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Q. Yes.
A. I don't know factually, but it's probably twenty-four to thirty inches in diameter.
Q. Is your sole concern here today the drainage easements? Is that primarily what your concern is?
A. That's one of my concerns.
Q. So that if you were to receive assurance that the drainage easements would not be affected by the new house, would that alleviate your concerns?
A. No. I said that's one.
MS. ZERWITZ: I have no further questions.
THE CHAIRMAN: Redirect?

REDIRECT EXAMINATION

BY MR. WILLIAMS:
Q. You said that's one of your concerns. Are there others?
A. The other one of the other concerns is, you know, he's putting a house up against closer to my property which, in turn, if I ever sold the property, I think it would devalue my property.
MS. WILILAMS: I have no further questions.

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Thank you.
THE CHAIRMAN: Recross?
MS. ZERWITZ: No.
THE CHAIRMAN: Thank you, Mr. Woodell.
MR. WILLIAMS: We have one last witness.
J O S E P H E R N S T B E R G E ER,
having been called as a witness, was duly sworn and testified as follows:
DIRECT EXAMINATION
BY MR. WILLIAMS:
Q. Please state your name and address, for the record.
A. My name is Joseph Ernstberger -- E-r-n-s-t-b-e-r-g-e-r. I live at 3830 Annadale Road.
Q. Mr. Ernstberger, how long have you lived at 3830 Annadale Road?
A. It's been approximately eight years.
Q. Are you the first owner?
A. Yes, the original owner, yes. We built the house.
Q. You built the house?

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A. Yes, we built the house after purchasing the property from Mr. and Mrs. Long.
Q. Do you live on -- I think the testimony was -- would it be accurate to say you're on Lots 14 and 15?
A. Yes, that is correct.
Q. From your home, can you see Lot 31?
A. Yes.
Q. Is it a short distance, or can you give us an idea?
A. Well, it's basically just across the left of the road and a little bit to the right of Mr. Long's property, but it's clearly visible from my front porch.
Q. You had told me that you had some concerns about storm drainage. Would you tell the Board, please --
A. Yes, I would.
Q. -- what your situation is?
A. I have been there the longest. I was -- actually, after Mr. and Mrs. Long, I was the first homeowner to purchase the property.
We actually purchased the property before the road was built and was granted a building permit based on

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that road being put in by Mr. long.
As such time our property was completed, before the road was even started, one day I was paged from my wife when I was down this Virginia, because the bulldozer were there and had dug into our front yard.
So I came home for the road widening. Being new to this, I had no idea. I looked at documents. I basically -- I tried to stop the -- I understand the contour, the front lawn that was already landscaped was being cut back fifteen feet with a natural four foot drop being put in. I was explained by Mr. Long and his engineer that this is the way the road had to be widened.
THE CHAIRMAN: Which road?
THE WITNESS: This is Annadale Road, which was nonexistant. Like I said, I was highly upset. I was worried about drainage, to begin with, and worried about the looks of my property, which was brand new.
I was assured that, by Mr. Long, that he would do whatever necessary to get it back to it original landscaping.
MS. ZERWITZ: I am going to object. I'm not sure

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what the relevance is to Mr. Long's variance.
THE CHAIRMAN: Well, this is between the two of them.
A. The relevance to the variance is what happened with the road.
THE CHAIRMAN: Are you going to withdraw the question?
MR. WILLIAMS: I think he's answered most of the question.
THE CHAIRMAN: I am going to strike it for the record anyway.
Q. Photograph 2C, is this your home on the left center of the picture?
A. Yes, sir.
Q. Is this -- on the very left, that is the Shanholtz home?
A. Right.
Q. Tell us what your experience has been with regard to stormwater? Just tell the Board.
A. Whenever there's a rain, whether it be a light rain or even worst case condition, a harder rain, the

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water lays directly in front of your property.
The way the road was designed, as I was speaking, with the hill put in, the road actually slopes towards our property away from the water. So there is a constant laying of water in front of our property. If we were to go there today, there would be spots of one or two inches of laying water --
MS. ZERWITZ: I object to the entire line of questioning. I don't see the relevance to Mr. Long's variance.
THE CHAIRMAN: Unless counsel is going to give me --
MR. WILLIAMS: I think Mr. Ernsteberger --
THE CHAIRMAN: Again, Mr. Williams, the comments made to this point, again, are about the road. Counsel is objecting that the road is not relevant to his requested variance, and I am going to sustain the objection, unless you can give me a reason why not.
MR. WILLIAMS: I think it's relevant, Mr. Chairman, because we are talking about drainage, and that's the point I am coming to.

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THE CHAIRMAN: I'm going to let you go just a little further for you to make the nexus between his drainage problems and Annadale Road and the drainage problems for the outcropping of whatever it is, and I will hear from you again.
Q. Do you understand what the Chairman said?
A. It gets right to that. Should I say my concerns would be better --
THE CHAIRMAN: Just continue.
A. My concern is --
Q. What connection is there, if any, between the drainage we have been talking about most of the afternoon on Annadale Road and the water?
A. The concern is that the Shanholtz property to the left, my left, is the inlet to the water that goes through the pipe and underneath Annadale Road and down this easement. If that was to be blocked in any way, it would increase the water flow coming to my property.
Since I have a problem now, I am concerned with how the problem will increase. And if any modifications are made to hinder the water flow under the street away

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from my property towards the creek, as it was originally designed --
MS. ZERWITZ: I renew my objection.
THE CHAIRMAN: I will overrule your objection based on that explanation.
Q. What, if any, use do you make of Tobasco Road's fifteen foot easement?
A. I have no use at this time due to the fact that as soon as that, as someone stated, there is no trespassing signs and at the very edge of Tobasco Road which connects to the water, which will be the ultimate use, Mr. Long has contunally dumped his trash and clippings there to block access.
MS. ZERWITZ: Objection.
THE CHAIRMAN: I will sustain that.
Q. Do you wish abscess?
A. Yes.
Q. Do you have any other concerns about any devaluation of your property?
A. Besides the drainage is the biggest concern, my concern with, there again, the property lines, with how

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everything is, and how close things are going to be to one another.
When I found out this was going on, I did some simple checking of deeds, and all those deeds are registered at six feet. Six times four is 263 from the overage 300. That leaves thirty-seven.
So I don't know where any of these numbers are coming from. I am going strictly by deed. And what I'm concerned is, the house that will be built, based on the information and the actual setbacks, would be closer than, when all is said and done, in you have four properties at six feet -- I'm not saying I'm a mathematician, but I know that only leaves thirty-seven up Tobasco Road, so I don't know how any document produced can say there is a forty-five foot, forty-three --
MS. ZERWITZ: Objection.
THE CHAIRMAN: Sustain the objection. He's not an engineer.
THE WITNESS: I understand that. I am just saying I did this research on my own.
Q. Do you know of any houses in the neighborhood

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that sit on a thirty-seven foot lot?
A. To my knowledge, no.
Q. Is there anything else?
A. Actually --
Q. Excuse me?
A. When we purchased our property, we do own lots 15 and 14, the reason being because --
MS. ZERWITZ: Objection.
THE CHAIRMAN: Let him answer and we'll see if the answer is relevant.
A. We owned the two lots based upon the fact fifty-five foot wide is what we were told we needed to build on, so we had to buy two lots in order to build.
THE CHAIRMAN: Now I'll sustain the objection and strike it
Q. What did you pay for your two lots, sir?
MS. ZERWITZ: objection.
THE CHAIRMAN: I will sustain that. Either he got a good deal or a bad deal.
Q. So your concern centers on the drainage?
A. Yes.

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Q. On the concerns about the deed frontages and width, is that correct?
A. Correct.
Q. And overcrowding?
A. Yes.
MR. WILLIAMS: I have no further questions.
THE CHAIRMAN: Cross?
MS. ZERWITZ: Yes, sir. Thank you.

CROSS EXAMINATION

BY MS. ZERWITZ:

Q. Mr. Ernstberger, the problem you have with the rainwater --
A. Yes.
Q. -- you indicated it lays in the front of your house?
A. Yes, ma'am.
Q. Do you have like a ditch or basin in the front of your yard where water collects?
A. Basically when the road was put in for Mr. Long's Public Works agreement, they sloped my front yard, which was flat, to come down to a slope to the road.

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And at that point, the road, instead of continuing, it actually has an uphill. So I have a hill off my property and a light hill from the road. Therefore, the water collects at the lowest level.
Q. Have you ever talked to the county about that?
A. Yes.
Q. It's your neighbor's property that actually the inlet --
A. It's all the property to the left of myself on the road that slopes down towards my property, yes.
Q. It's your concern that would increase the drainage problem?
A. Absolutely
Q. But you don't have an engineer to tell you this is going to occur, is that correct?
A. That is correct.
Q. If you were assured this would not -- the house was not being built on the drainage ditch and it would have no effect, would that alleviate your concerns?
A. That would depend. Shall I stipulate?
Q. No. You also indicated you were concerned about

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how close the property would be?
A. Yes.
Q. Aren't most of the houses in the old part of the neighborhood relatively close?
A. The old houses, yes. The development before, not Mr. Long's development, the other development, which was, I don't know how long that's been there, but all Mr. Long's development is not close together.
Q. But the other side, they are all close together?
A. I would not -- I would say. To my best knowledge, yes, just looking at them.
Q. So you haven't made a complete study of all the houses in the neighborhood?
A. No.
Q. So you don't know how close all the properties are, or how big all the lots are, is that a fair statement?
A. Of all the properties?
Q. Yes.
A. I know of property of Mr. Long's development, but not the old neighborhood.

Q. So when you say you don't know of any houses built on thirty-seven foot lots, you don't know of any, but it's possible?

A. In Mr. Long's development?

Q. In any part of the development.

A. Mr. Long's development, no.

MS. ZERWITZ: I have no further questions, your Honor.

MR. WILLIAMS: I have no further questions.

THE CHAIRMAN: Thank you, sir.

MR. WILLIAMS: Mr. Chairman, members of the Board, that's the protestants' case.

I would like to -- I don't think it's as much an exhibit as it is a trial memo, it's my brief to the to the Board dated January 13, 1988. It was marked as, I think, Protestants' No. 1 for identification. And I know you have given us the opportunity to file a further trial memo, but it's just my argument --

THE CHAIRMAN: Let me suggest to you since it's your argument and your case, you really should get them both at the same time. Why don't you incorporate them

into the memoranudm you're going to do?

MR. WILLIAMS: Did the Board want any short closing statement?

THE CHAIRMAN No. Let me explain to you what goes on. In lieu of any closing statement, I will ask you folks, and Ms. West, you will communicate with, to prepare memorandum as to the law in each of these variance requests, the burden of proof in each of these variance requests, the testimony that you believe supports your particular positions and as to each variance request and the conclusions you wish this Board to come to.

There is also the Motion to Dismiss. I would appreciate some separate discussion of the Motion to Dismiss and whether or not that's appropriate. To the extent you want to direct yourself and point the Board to the subpoenas, to the extent that you want to address yourselves to the issues of the subpoena, we have already ruled. We are not going to re-rule on it, but if you want the record to reflect, just in case somebody takes it upstairs, to reflect what the argument were, we have no objection to it, although I want you to understand we are

not going to revisit the Motion to Quash.

MR. WILLIAMS: Maybe one or two senteces o the Motion to Dismiss?

THE CHAIRMAN: Whatever you want.

MR. WILLIAMS: Mr. Woodell was present at the Zoning Commissioner's hearing. He noted the appeal.

THE CHAIRMAN: We're not going to deal with it now. In all good fairness, I would then have to allow counsel, and I'd rather we get a well-thought out statement of where you stand on it.

In terms of time, Ms. West said she needed at least thirty days.

MS. ZERWITZ: She and I spoke perpahs the beginning of March?

THE CHARIMAN: Why don't you folks pick a date, confirm it with the administrative staff. She will also then endeavor to pick a date for the open deliberation which will take place,hopefully, within a couple weeks after the memors are submitted, and at that time we'll openly deliberate the matter and generate a written opinion as to what conclusions we reach.

All right. Thank you all very much.

(Hearing concluded.)

* * * * *

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

B. GREEN

VERSUS CASE NO.

ELLEN AND TUCKER, CHARTERED

/ DECEMBER 17, 1999

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE:

THE HONORABLE J. NORRIS BYRNES, JUDGE

APPEARANCES

ON BEHALF OF THE PLAINTIFF:

K. DONALD PROCTOR, ESQUIRE

ON BEHALF OF THE DEFENDANT:

ALVIN FREDERICK, ESQUIRE
MATTHEW HANC ESQUIRE

REPORTED BY:
Rita M. E. Taggart
Official Court Reporter
402 Bosley Avenue, Room M-08
Towson, Maryland 21204

PROCEEDINGS

THE COURT: Okay, this is 3-C 99 8553. B. Green versus Ellen and Tucker, et al. We are here on the Defendant's motion to dismiss.

I think it would be helpful if we found out about those things upon which we agree because as I see this the area of dispute is very narrow. I mean, it really is very narrow. Do you agree with that, Mr. Proctor? Here's what I think --

MR. PROCTOR: I guess what --

THE COURT: Let me tell what you I think it is --

MR. PROCTOR: Yes.

THE COURT: -- rather than have --

MR. PROCTOR: Me guess.

THE COURT: -- have such a broad, open ended question like that.

Counsel, put your names on the record.

MR. PROCTOR: Donald Proctor on behalf of the Plaintiff, B. Green and Company.

MR. FREDERICK: Alvin Frederick and Matthew Ranck on behalf of the Defendants, Ellen and Tucker and Edward Tucker.

THE COURT: As a factual predicate to this Ellen and Tucker entered into a contract with Super Fresh to do certain things. Identify those --

MR. PROCTOR: Farm Fresh, Your Honor.

THE COURT: Thank you. Farm Fresh. I keep saying Super Fresh.

MR. PROCTOR: Super Fresh would be bothered by that.

THE COURT: They would be upset by me saying that since they're still doing quite well, I gather.

There was a letter agreement dealing with an audit for 1995, the same thing for 1994, and the third issue was what I'll call a coupon audit, is that a fair way to put it, for 1995?

MR. PROCTOR: Yes.

THE COURT: Okay. Those are the three things that Farm Fresh engaged Ellen and Tucker to do.

MR. PROCTOR: There was one other that was dealing with Rich Food with regard to sales.

THE COURT: When I go through all this, I don't see anything in writing about that.

MR. PROCTOR: No, there is no written engagement I don't believe that we are aware of. I know that the Defendants have stated that there is none.

MR. FREDERICK: That would be an accurate statement, Your Honor, although, Your Honor, I'm not sure we agree with Mr. Proctor's characterization that that would be a fourth element. We believe that the Court's assessment of the two engagements, for the audit and the coupon audit, would be the engagement.

THE COURT: What's the complaint say about that?

MR. PROCTOR: The complaint alleges that Ellen and Tucker were engaged some time before July of 1995 to participate and/or represent Farm Fresh in negotiations with Rich Food, and it further alleges that there were direct communications between Mr. Tucker and Ellen and Tucker and representatives of Rich Food on behalf of Farm Fresh, including specific proposals made by Rich Food in July of 1995 and September of 1995. We actually attached copies of a portion of those proposals

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to our responsive memoranda. There are letters from Rich Food addressed to Mr. Tucker dated respectively July 21, and September 21, 1995.

THE COURT: Okay. I don't know that philosophically that makes any difference. It may but I don't think so. So now common ground is this, that Farm Fresh had contractual arrangements with Tucker in at least three agreed upon areas and -- lets say four. We will bring into this mix the potential sale of the stores, some of the stores from Farm Fresh to Rich Food, and we'll even agree for our purposes today, I think we have to do this, that part of the process of the sale of those stores was to pay back the two million -- is it a two million dollar loan?

MR. PROCTOR: Yes.

THE COURT: -- to B. Green.

MR. PROCTOR: No, it was a stock option agreement, Your Honor. It wasn't a repayment of the loan. Mr. Milliman had a stock option agreement.

THE COURT: To buy the stock?

MR. PROCTOR: To buy B. Green stock, yes.

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THE COURT: All right.

MR. PROCTOR: There were also loans but they were not involved here.

THE COURT: All right. We can further agree there was no contract between B. Green and Ellen and Tucker?

MR. PROCTOR: No written agreement signed by --

THE COURT: I'm not going to dance around. There was no contract. If there was a contract, you point it out to me. You know, push has come to shove here this morning. I don't know what I'm going to do but one thing I don't want, I don't want any dancing on pins. If there is a contract, you tell me where it is.

MR. PROCTOR: I cannot point to a, to an agreement between B. Green and Company, and Ellen and Tucker.

THE COURT: I'm saying for purposes here this morning there was none, okay, because as I read this, the thrust of your argument is that B. Green is a third party beneficiary of the contract between Farm Fresh and Ellen and Tucker.

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MR. PROCTOR: Yes. And that under a, what I believe is the same analyses, there is an intimate nexus between those parties.

THE COURT: We are going to get to that. I don't want to jump ahead.

MR. PROCTOR: Okay. Very well, Your Honor.

THE COURT: I understand that and that's why I said it was philosophically simple. Either there is this nexus or there is not, and, if there is, the case goes forward, at least maybe all of it, and if there is not, it doesn't go forward. That's why I said that.

Let the record reflect Mr. Proctor is now nodding his head affirmatively.

MR. PROCTOR: Get the crick out of my neck I thought.

THE COURT: All right. Now, for me for background, B. Green sued Farm Fresh in 1995, was it?

MR. PROCTOR: In July of 1995. I believe it was filed on the 11th.

THE COURT: What did that suit say?

MR. PROCTOR: That suit said that, that

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management at Farm Fresh, specifically Mr. Milliman -- Mr. Millman was the Defendant in that case as well -- had refused to convene a board meeting, had refused to open the books of Farm Fresh to B. Green, and had self dealt with Farm Fresh.

THE COURT: With coupons?

MR. PROCTOR: There were a number of specific allegations, one of which was he had a favorable lease. Another one was that he had a noncompetition agreement and, yes, there was an allegation about the coupons.

Specific allegations about the coupons were about what is called the nickel in the industry, which is the handling fee, and Mr. Millman's position was he was handling all of the coupons for Farm Fresh and he, therefore, through this separate entity of his was entitled to keep that nickel. The coupons themselves are redeemed for typically fifty percent, so that this was only focused on what I allude to as the --

THE COURT: What happened to that lawsuit?

MR. PROCTOR: It's still pending, and

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actually counsel point out --
THE COURT: Why aren't, why aren't Ellen and Tucker in that lawsuit?
MR. PROCTOR: Well, there are a number of reasons I suppose, Your Honor. First of all, insofar as Farm Fresh is a Defendant in that case, it was a bankruptcy filed and any proceedings against Farm Fresh were stayed. That I think is a partial answer to that. I was not involved in that case until relatively recently, long after all of these events took place. It was handled by other counsel until then. There were active proceedings in that case up until the time of Farm Fresh's bankruptcy which was filed I believe on the 17th of November of 1995. So the Farm Fresh bankruptcy, it's filing resulted in an automatic stay of at least any proceedings in that case as against Farm Fresh.
THE COURT: When was this suit filed? This suit was filed in '99?
MR. PROCTOR: Yes. It was filed in September.
THE COURT: What does this suit say that Mr. Tucker -- talking in terms of the

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things alleged now -- what does this suit say about Ellen and Tucker -- let me put it another way. Doesn't this suit say that Ellen and Tucker didn't discover or knew about and didn't say all the things that are alleged as wrongs in the Baltimore City case?
MR. PROCTOR: No. I don't think that is correct.
THE COURT: What's different?
MR. PROCTOR: First is the check kite scheme. There was no allegation or knowledge of that and, indeed, we specifically allege that B. Green had no knowledge of that until, until some time in November of 1995. On the other hand, we do allege that --
THE COURT: So in November of '95, they know about the alleged check kite?
MR. PROCTOR: Had strong suspicion.
THE COURT: Call it alleged.
MR. PROCTOR: Had strong suspicions and reported it to the financial institutions involved, yes.
THE COURT: And the city suit was not amended?
MR. PROCTOR: No. With regard to that,

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the bankruptcy ensued shortly thereafter. Mr. Millman was indicted in due course and there is a stay in that proceeding entered into -- actually passed by Judge Kaplan staying proceedings until such time as Mr. Millman's criminal proceedings were complete.
THE COURT: Are they finished?
MR. PROCTOR: He pleaded guilty to one count of mail fraud last week. He is to be sentenced in March is my understanding. The sons-in-law had previously pleaded guilty but had not been sentenced because I gather they were offering evidence with regard to their former father-in-law. I get that information third hand though, so that's my understanding.
In response to your question though, what do we allege that was not alleged in the Baltimore City suit --
THE COURT: Because if there is nothing now don't limitations run?
MR. PROCTOR: Well, on limitations insofar as this case is concerned, we entered into a tolling agreement.
THE COURT: That's right, you did.
MR. PROCTOR: Limitations I don't

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believe is an issue here. I don't really --
THE COURT: That's right.
MR. FREDERICK: What Mr. Proctor says is accurate but the argument with regard to the city suit, it all relates to proximate cause, that is, for example, on the check kiting Mr. Proctor just mentioned to the Court, it's alleged in the complaint as a matter of fact that the way that this check kiting came to light is B. Green discovered it by virtue of the discovery they were doing in the dispute in Baltimore City; and, secondly, there is no loss that directly and proximately resulted to B. Green as a result of the check kite and B. Green is the one that then turned around and told the banks and the banks subsequently investigated, told Mr. Singer, who is corporate counsel to Farm Fresh, who told Ellen and Tucker and thereafter -- I believe that was on a Friday and on the following Monday, after spending a weekend of auditing, Ellen and Tucker confirmed that was, in fact, a check kite, but all of that was discovered through discovery in the city suit and the point of the city suit from our perspective is that there

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really isn't a proximate cause nexus even if you assume there is a duty, which I don't think there is one, for any loss that is attributable to the Plaintiff in this case.

MR. PROCTOR: The allegations are considerably broader than what Mr. Frederick would concede here, Your Honor. We allege that the 1995 audit by Ellen and Tucker of Farm Fresh began in early August of 1995.

THE COURT: Let's not go down that path, okay, because for my purposes I don't think I have to right now --

MR. PROCTOR: Very well.

THE COURT: -- you know. I mean, why do I need to go down there just as a matter of curiousity in that other suit?

MR. PROCTOR: Well, I'm still harkening back to your original question, which is what do we allege here that we didn't know about then --

THE COURT: Okay.

MR. PROCTOR: -- and we didn't know about check kiting until November. We allege that Ellen and Tucker should have known about it. It was obvious. It was in their work

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papers. They should have known about it as early, as early as August and, indeed, that Ellen and Tucker --

THE COURT: I'm going to assume they should have, okay. I think I have to do that. Do you agree with that?

MR. FREDERICK: For purposes of this proceeding, I agree with that, Your Honor.

THE COURT: Okay. You will pardon me if I don't know quite as much about this as you two or three.

MR. PROCTOR: Understandable.

THE COURT: All right. As I was saying earlier, philosophically, the thrust of the lawsuit is that B. Green was a third party beneficiary of contract between Ellen and Tucker and Farm Fresh --

MR. PROCTOR: Yes.

THE COURT: -- right? Okay, that's what you say?

MR. PROCTOR: That's correct.

THE COURT: Okay. Now, the law in that regard, the issue is discussed in Jacques versus First National Bank and has evolved from it. I mean in Maryland. I recognize this is

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Judge Cardozo a long time ago but I'm just talking about Maryland for now.

In its simplest form Jacques said when the failure to exercise due care, which you have alleged Ellen and Tucker failed to do, and it creates a risk of economic loss, which is what we have, no bodily injury involved here, Courts have generally required an imminent nexus between parties as a condition to imposition of tort liability, and it is satisfied by privity or it's equivalent, whatever that means. That's what we have to discuss this morning.

Do you agree with that?

MR. PROCTOR: I agree with that, yes, sir.

THE COURT: Isn't that where we are? Have I over simplified it?

MR. FREDERICK: No, Your Honor, that's step one, but there is also step two in the proximate cause, but I concur with what the Court has said.

THE COURT: Well --

MR. FREDERICK: Assuming the Court would find such a nexus, which I don't think

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exists, then there is still the secondary argument is what I'm saying.

THE COURT: I really have focussed on the primary argument. I have not focused entirely on the causation. Okay. Now, when we go from -- the next question I guess one would want to ask one's self when you are looking for privity or its equivalent is whether the intent to benefit actually existed, not whether there could have been an intent. There has to be an intent to benefit. We agree with that?

MR. PROCTOR: Well, Your Honor, I would say --

THE COURT: You would be hard pressed to disagree with it by the way.

MR. PROCTOR: We would -- I would say there are two different analyses. One is sort of third party liability. If you look back, Ultramares versus Touche of course was an accountant liability case and is still viable today.

THE COURT: Right.

MR. PROCTOR: The Courts still cite it, rely on it. That's where the concepts began.

THE COURT: Right. And they live

today, and as it has evolved, if it has, for example, the Credit Alliance case, which is a New York decision, which similarly involved Ultramares, and Glanzer versus Shepard, talks in terms of did the accountants have reason to rely. For example, did the accountants have reason to know that the, quote, third party was relying --

THE COURT: Say that again.

MR. PROCTOR: Did the accountants have reason to know that the accountants were relying here --

THE COURT: Start again.

MR. PROCTOR: I mis -- I'm misspeaking. Pardon me. Did the accountants have reason to know that the third party -- in this case B. Green --

THE COURT: Right.

MR. PROCTOR: -- was relying, which is perhaps saying the same thing Your Honor has said but it's from a slightly different perspective.

THE COURT: Well, it's a little different because it would seem to me that to satisfy that prong, that Farm Fresh and Ellen

and Tucker, the agreements they reached though in 1994/95, that those agreements, if, either expressly or if not expressly, almost expressly have to indicate in some way there was an intent by those two parties to benefit the shareholders. I mean, that's how I read this law. If you say I'm mistaken, I'm certainly willing to listen.

MR. PROCTOR: I don't want to unduly complicate this because I think I can establish that.

THE COURT: Okay.

MR. PROCTOR: But without unduly complicating it, I do think that we have got this parallel analysis that goes on in the cases. There is the third party beneficiary analysis, then there is the intimate nexus analysis --

THE COURT: Wait a minute.

MR. PROCTOR: -- which --

THE COURT: Educate me. I don't see any -- I thought what we are talking about was third party beneficiary and, you know, it says -- and how you, how you prove that was the intimate nexus or the intent. They're not

parallel at all I don't think. Let me ask.

MR. PROCTOR: Well --

THE COURT: What do you say? You both can speak, by the way. It doesn't bother me when there is no jury.

MR. FREDERICK: Thank you, Your Honor. I would agree with the Court. I think the point that drifts home is set out in -- I may mispronounce this -- the Goerlich case, which is G-o-e-r-l-i-c-h, v. Courtney Industries.

THE COURT: Did you ever look to see who the lawyer was on that, Courtney Industries?

MR. FREDERICK: It's A. Sing for Goerlich and Mr. Jablon and Howard Goldberg --

THE COURT: No.

MR. FREDERICK: What's listed?

THE COURT: Courtney Industries.

MR. FREDERICK: Courtney Industries.

THE COURT: It was Gerson Milliman, God rest his soul, and yours truly.

MR. FREDERICK: That's right.

MR. HANC: Your Honor, there was some -- I believe there were some other proceedings and this Goerlich versus Courtney is the legal

mal case that followed the other ones.

THE COURT: Yeah, right. Yeah. We actually tried that for a couple of days. What a mess.

MR. FREDERICK: What the Court says in Goerlich is where the party or third party can allege and prove that the client intended him to be a third party beneficiary of the attorney's services and where his interests are identical to those of the client, a suit for legal malpractice may be maintained by that third party.

Now, obviously that is a legal mal case. We are here on an accounting mal case, but the principle I believe is identical and I think it is exactly what Your Honor just said.

First of all, the issue is third party, and if you can have this intimate nexus, that's how you prove it, and I think Goerlich, this iteration of Goerlich lays out the road map for how you prove it. I think it highlights where we are in this case, those words, and where his interests are identical to those of the client.

MR. PROCTOR: Again, without unduly

complicating it, I am, I am prepared to assume for purposes of argument that that is a matter of proof but I researched that --

THE COURT: I'm just looking at the law.

MR. PROCTOR: Well --

THE COURT: I was surprised when you called it parallel. I don't see any parallel about it at all.

MR. PROCTOR: The only legal malpractice case -- of course this isn't legal malpractice, this is accounting malpractice. I make the point in my brief that there may be a difference but the only case I'm aware of that is a legal malpractice case that talks about the intimate nexus and privity or it's equivalent is Noble versus Bruce which was decided just last year, in the middle of last year and talks about that. I think the Court is trying to harmonize those concepts.

THE COURT: Well, it says what I just said. I just read that from Noble. Actually think it's really quoted from Flaherty but -- yeah, it is but I have Noble in front of me.

MR. FREDERICK: See who the lawyer was

on that one?

MR. PROCTOR: I know who the lawyer was on that one.

THE COURT: Now, Flaherty, quoting Flaherty and Noble, it says, in other words, an incidental benefit to nonclient will not impose a duty upon an attorney.

MR. PROCTOR: Right.

THE COURT: Now --

MR. PROCTOR: Right.

THE COURT: -- there's not any question, assuming all you say is correct in your lawsuit, that had Ellen and Tucker done all the things you say they should have done that there would have been a direct benefit to the corporation and certainly it would flow from that that there would have been a benefit to the shareholders. I mean, nobody can argue with that I don't think.

Let the record reflect that Mr. --

MR. FREDERICK: I'm agreeing with the Court.

THE COURT: Can you all leave your things for a minute? Let me take care of the violation.

MR. PROCTOR: Certainly.

(Whereupon, the Court handled an unrelated matter).

THE COURT: Where was I?

MR. FREDERICK: We were debating the nuance of third party beneficiary and --

THE COURT: Right.

MR. FREDERICK: -- and the intimate nexus issue.

THE COURT: Let me ask you this. What Mr. Proctor says in essence is, look, you know, whatever, whatever Ellen and Tucker do for Farm Fresh, they're doing for the stockholders. How do you separate the corporation from the stockholders? What's your response to that?

MR. FREDERICK: Well, that's colossally different.

THE COURT: Colossally different?

MR. FREDERICK: Yes, because he says not only whatever they do for the stockholders is the same, but he also says that his client is a creditor and a guarantor and I'll give you an example --

THE COURT: Well, okay, but I'm not going to --

MR. FREDERICK: I'll give you an example on the stockholders, Your Honor.

THE COURT: That's one -- I mean one. I'm not going to buy all that other. No offense.

MR. FREDERICK: Says whatever they do for me they do for stockholders and the, and the fourth item he suggests to you or B. Green suggests to you is, well, they also had this engagement to counsel Farm Fresh with regard to the sale of stores to Rich Food.

THE COURT: Right.

MR. FREDERICK: And, you know, this question of --

THE COURT: It goes a little further. He says counselling them for sale of the stores and, if that worked, the profits or proceeds from that were going to --

MR. FREDERICK: Pay off.

THE COURT: -- benefit B. Green by buying out the stock.

MR. FREDERICK: And I'll just use that as an example. Let's suppose that the accountant says this is a great deal for the corporation, but suppose Millman says, the

fifty percent stockholder says, well, wait a minute, this is not a great deal for me because I lose my sweetheart lease on the Hamilton Road property, which is alleged in the city lawsuit, and he also knows that he's got the coupon handling fee. So that's one stockholder. We got B. Green on one side saying, wait a minute, this is a great thing for me because we will get rid of some of these stores and then you, Millman, can buy me out, but then we get to an entirely different set of circumstances because if you look at that option agreement, which is attached as Exhibit 5 to Mr. Proctor's, I am sorry, B. Green's reply memorandum in opposition, it's the stockholder's agreement that talks about this option, Your Honor, for the two million dollars.

THE COURT: Yes.

MR. FREDERICK: That's an agreement between Millman individually and B. Green, not Farm Fresh.

THE COURT: That's true.

MR. FREDERICK: So where does the accountant fit in all this? The accountant agrees to terms and conditions of employment

with Farm Fresh and it's management.

In this case it is alleged that B. Green, a substantial stockholder, 49 percent, says to the accountant and the lawyer, Singer, tell us what is going on, and the lawyer for management says to the accountant, don't you dare speak and the accountant goes --

THE COURT: I was going to bring that up.

MR. FREDERICK: And the accountant goes to, first of all, B. Green and says management has told me to keep my lips sealed.

Now, if the accountant is in there representing everybody, what does he do, but if the accountant has been engaged by management to act for management and the corporation, the accountant does just what the accountant did here, listens to the directives of counsel for the entity and does what the entity says because the interests of the stockholders and the entity are not identical in this instance. I suspect they're not identical in many instances.

One example might be, Your Honor, suppose there is a different basis that one

stockholder has in the stock from another, and if there were to be a sale, one stockholder would benefit greatly from a tax perspective but the other stockholder might not. Where is the accountant to go? which is exactly why the accountant --

THE COURT: Say that again.

MR. FREDERICK: Suppose one stockholder has a significantly different basis in the stock that is owned so that if there is a sale there is going to be a much greater gain recognized whereas the other one would have no gain or perhaps even a loss. There is a huge difference in the interests of the stockholders to go forward. Yet what we have here is we have a situation where the engagements are abundantly clear. Even the coupon engagement is clear. In the coupon engagement Ellen and Tucker agrees to undertake an examination and present it but wouldn't go forward unless the stockholders agree, and why? Because if you look, at or about that time there is a lawsuit pending between one stockholder and another.

That raises another problem, Your Honor, which goes in line with Mr. Singer who

is corporate counsel telling Ellen and Tucker don't say anything to B. Green and the chronology of, and the request for information comes either before or after or both the filing of the lawsuit. So we have a situation where Farm Fresh is being sued by a stockholder and in addition Millman, the other fifty percent stockholder, is being sued, yet the accountant is supposed to act for everybody?

The accountant has foreseen this problem because the accountant has a contract that very narrowly limits its responsibilities. I think if we apply Maryland law, and there isn't any specific case I can cite to the Court that is an accounting malpractice case, but certainly the legal malpractice cases where this doctrine has been developed are consistent with the position that we advocate. There is no duty that flows from the accountant to the stockholder because the interests in this case are not the same but the interests I suspect in virtually every case are not the same.

It's best highlighted with the fact if this deal goes through, B. Green is going to

get two million dollars to be bought out and somehow or other the accountant is supposed to make sure the deal is going to go through. But when you look at the lawsuit that B. Green filed in Baltimore City, it becomes abundantly clear that nothing happens in this corporation without the fifty percent stockholder, Mr. Millman, agreeing, and B. Green, the 49 percent stockholder, and they only have 50 because there's another family member, a guy named -- I think it's Gallant. Is that right?

MR. PROCTOR: Yes.

THE COURT: Who?

MR. FREDERICK: A gentleman named Lewis Gallant.

THE COURT: I wasn't sure whether he was on Millman's side or --

MR. FREDERICK: No, he --

MR. PROCTOR: -- B. Green's side.

MR. FREDERICK: He's a B. Green family member. So in fairness, Your Honor, what we really have is we have a fifty-fifty situation, but as a matter of law we know that neither of them can do anything without the other. So to suggest that the accountant in this situation

can cause advice to be given that would result in a sale being made that would result in stores being spun off is in large measure just ignoring reality and it's a reality that was recognized by B. Green because B. Green went so far as to file a lawsuit in Baltimore City in July of 1995 bringing up a lot of problems and, in fact, uses the discovery devices available to it in that lawsuit to learn a lot of things, all of which are set forth in the complaint in this case.

Now, we believe that if this Court is going to apply the law and if this Court is convinced, as we think it should be, that the law as developed in the legal malpractice cases would apply in other professional malpractice actions, then there is no duty that arose here and there are no interests as -- Goerlich says it best -- there are no interests that are identical to that of the client. The client is the entity, the engagements are to the entity, management, Farm Fresh.

THE COURT: One of you leaped to your feet there. Something he said caused you to leap forward.

MR. PROCTOR: I thought I generally understood. I did try to get some attention, yes, Your Honor. I think Mr. Frederick misconstrues what our allegations are, particularly with regard to this engagement, Your Honor.

We don't say that Ellen and Tucker should have given particular advice to steer that transaction our way. All we say is that they should have communicated. They owed us a duty to simply tell us what was going on. We couldn't get it through Millman. They are independent certified public accountants. They owed --

THE COURT: Wait a minute. Where is there any evidence, where is there any law that says that? In other words, they are hired by the corporation and the corporation says this is what we want you to do, and what they set out to do is all legal. You have no allegation in here that Ellen and Tucker committed fraud.

MR. PROCTOR: Yes, we do.

THE COURT: Where? I didn't see that.

MR. PROCTOR: There is a deceit count, Your Honor, and we allege that Mr. Tucker

became aware sometime before, between August --

THE COURT: I thought you didn't.

MR. PROCTOR: -- and October of '95 --

THE COURT: Right, count five.

MR. PROCTOR: -- of the check kiting, yes. He became specifically aware of it and did not disclose it. But our focus in terms of disclosure is -- first of all, we assert that they owed us a duty. That duty springs we believe from --

THE COURT: Suppose you only owned one share?

MR. PROCTOR: If we owned one share and there hadn't been communications between us and the accountants and a history of the accountants acting on behalf of the shareholders, I think this would be a different case.

THE COURT: What, if any, history is there of the accountants acting on behalf of shareholders?

MR. PROCTOR: Here, Your Honor, if you will take a look at the cover sheet of each of their reports which we have attached to our memorandum, we incorporate those allegations in

our complaint. You will see that each of the annual reports -- for lack of a better term, it's under tab one -- is addressed to the Board of Directors and Stockholders of Farm Fresh Supermarkets of Maryland. It's obvious who Ellen and Tucker knew they were working for. This is a close corporation. Very closely held.

Under those circumstances I would respectfully suggest the interests of stockholders are identical to the interests of the corporation, at least insofar as the scope of the duties of Ellen and Tucker to audit the books and records of the entity with reasonable care within the standards of their profession.

With regard to the coupon audit, contrary to Mr. Frederick's assertions, there is a specific reference in the coupon audit engagement with regard to Ellen and Tucker requiring that stockholders agree that certain procedures adequately meet their need.

THE COURT: That's because they were fighting.

MR. FREDERICK: (Indicating affirmatively.)

THE COURT: I don't think that is --

MR. PROCTOR: I think it was because he --

THE COURT: He didn't want to get sued. That's all that was about. Come on, let's not --

MR. PROCTOR: Well, the allegations are that this coupon audit engagement came about because B. Green asked that it take place and there was a specific meeting between B. Green and Ellen and Tucker that took place immediately before their engagement was entered into. So the intimate nexus is there. I respectfully suggest that --

THE COURT: I'm not impressed by that one. I mean, here's a lawsuit out there, he's sued the other part of the corporation, Tucker is going to make -- try to help him out. He's saying in essence, look, I don't want to get caught in the middle of this contest.

MR. PROCTOR: Well, by taking sides, that's exactly what he let himself do. Had he maintained his independence and simply discharged his duties with reasonable care and then communicated information that he knew that

B. Green was entitled to and should have had in order to make any informed decision --

THE COURT: B. Green couldn't have done anything about it anyway.

MR. PROCTOR: About what, Your Honor?

THE COURT: What could B. Green do? They didn't own enough stock to do anything.

MR. PROCTOR: We could have sought a receivership under the corporate dissolution statutes.

THE COURT: If you had the other fellow agreeing with you.

MR. PROCTOR: No. Even though forty-nine percent of the shareholders were --

THE COURT: Fifty percent shareholders -- no, I don't want to do that.

MR. PROCTOR: Let met put it this way, Your Honor, if Ellen and Tucker had done what we say they should have done and disclosed the check kiting operation -- uncovered the check kiting operation in August, had they uncovered the coupon fraud in August, and had that information been taken to a Court, I would respectfully suggest with certified public accountants for the corporation having said we

have disclosed this, I think that it is extremely likely that a receiver would have been appointed under those circumstances.

THE COURT: Probably.

MR. PROCTOR: Under those circumstances, any receiver would have joined in the negotiations with regard to Rich Food and they would have moved forward in some way or alternatively --

THE COURT: I think you go a bridge too far there. You don't know that.

MR. PROCTOR: Well --

THE COURT: Now, you have a corporation in receivership. Now Rich Food is going to change the deal.

MR. PROCTOR: Well, a receiver is going to do what is best for the corporate entity, that's for sure.

THE COURT: There's an assumption that selling these stores was best.

MR. PROCTOR: We set forth a number of alternatives that could have been utilized, Your Honor. B. Green itself had substantial cash resources that it could have invested. B. Green could have reduced the amount under this

option agreement. It could have taken a million dollars instead of two million dollars. There are all kinds of ways a given --

THE COURT: I don't want to get into that.

MR. PROCTOR: Well, very well. I mean, obviously we have got to establish the existence of duty before we can go forward in this case.

Now, the existence of the duty we believe springs from -- is proven by the intimate nexus that has been alleged in the complaint. There were communications between B. Green and Ellen and Tucker. Ellen and Tucker knew that B. Green wanted information that they had. Ellen and Tucker had historically reported to the stockholders of which B. Green is a forty-nine percent member.

THE COURT: But does that create some duty just because they did it?

MR. PROCTOR: Well --

THE COURT: This is not a medical malpractice case.

MR. PROCTOR: What gives rise to the

duty, Your Honor, is under the case law --

THE COURT: It seems to me the duty is either there or it is not. You say, well, once they start reporting to the shareholders now they have a duty to the shareholders.

MR. PROCTOR: Well, I think what the case law says and I believe Your Honor has said this, if there is an intimate nexus that exists between, in this instance Ellen and Tucker and B. Green, that itself gives rise to the duty.

THE COURT: No, no, I don't think it quite does that. There has to be the next step, the intent to benefit.

MR. PROCTOR: And --

THE COURT: A direct intent to benefit.

MR. PROCTOR: -- and we believe that we have alleged a direct intent to benefit.

THE COURT: I thought about that. You know, we are standing here between the motion to dismiss and the motion for judgment, Mr. Frederick, and the trouble -- one of the problems I have when I look at it from your perspective is that -- I mean, the complaint says all these things. When I look at the case law, they say, look, if they say it, don't

dismiss it. It may be summary judgment material.

MR. FREDERICK: We are here on summary judgment, Your Honor. We filed in the alternative.

THE COURT: I saw that.

MR. FREDERICK: And we gave you the contracts.

THE COURT: Yeah.

MR. FREDERICK: And Mr. Proctor --

THE COURT: What's your response to what Mr. Proctor says about the fact that when they did the audits they reported not only to the Board of Directors but also to the shareholders?

MR. FREDERICK: Indulge me for a moment, Your Honor.

THE COURT: Okay.

MR. FREDERICK: It is imperative I believe to note that in this case there is nothing that the Plaintiffs did or were induced to do based upon a representation by the accountant. By that I mean, Your Honor, the Plaintiffs do not allege that they received accounting information, namely, the audit

reports and, therefore, decided that they would invest money in Farm Fresh, that they would buy stock in Farm Fresh or --

THE COURT: This is part of your causation.

MR. FREDERICK: It is but it also answers the question that Your Honor posed to me. They received as Mr. Proctor identifies -- again I think important from a procedural aspect, amplifies that this is, in fact, a summary judgment argument -- they receive these independent auditor's reports. So what? The contract that set forth the obligations of Ellen and Tucker to Farm Fresh specifically says that only they're responsible to Farm Fresh and its management, not the stockholders.

Mr. Proctor points to the coupon engagement and I think the Court fairly and correctly reads it but it also says that we are going to -- it says in the second paragraph we are going to review the accounting control system for handling the coupons to obtain an understanding of the design. Then it says, at the conclusion of the review we will be

available to discuss the operation of this system so that the stockholders can decide whether they want us to perform additional procedures, and then it says, before we provide any additional services we will require the stockholders to agree that the requested procedures adequately meet their needs. It is dated August 14, '95. That's about a month after the two stockholders are in a battle in the Circuit Court for Baltimore City.

The Court also asked Mr. Proctor, well, you couldn't have done it anyway because of the fifty percent stockholder and Mr. Proctor I think fairly told the Court no. Under certain circumstances we could have asked for a receiver.

Well, Your Honor, those certain circumstances are exactly what predicated B. Green filing their existing lawsuit. They got this information that they claim -- there is no issue before the Court. They asked the accountant for information. The accountants couldn't give them anything, the accountants clammed up. What do they do? They go to Court. They can't be relying on anything the

accountants are saying. They are just saying if the accountants had told us we would have done this, this, this and this. But they're already in Court, they're already there. They have got the perfect vehicle, they got service, they got discovery.

What is it that they want? They got breach of fiduciary duty claims in this thing, they want damages, they want the Court to give them an injunction.

THE COURT: Did they ask for a receiver?

MR. FREDERICK: They did not. I believe they ask for such other and further, but they don't ask for a receiver. But the truth of the matter is they have the opportunity and ability to get everything they want. They got their own accountants. They are getting the information. They are the ones that blew the whistle on the check kiting and we all know as a matter of law it's easy business to file an amendment to this or to go into the administrative Judge in Baltimore City and say, Your Honor, we need emergency relief. Their whole claim is timing, timing, timing. And

with regard to their damages, and the problem is they have got the whole world in their hands. They don't have any obligation on the part of the accountants. There is no duty from the accountants, and beyond that they know the accountants aren't going to tell them anything. They have taken affirmative action to avoid that problem, yet they stand before the Court and say, well now that Farm Fresh is bankrupt, and Mr. Millman pled guilty and is going to go up the river in the Federal Court, now we are going to go after the accountants because they owed us a duty because they sent us a letter once that said here's the annual report.

THE COURT: Going after the accountants' money.

MR. FREDERICK: Of course. Except they didn't buy their stock based on the annual report. The audit report, they didn't invest money based on that. They didn't do anything based on that, which is why I believe the Court should conclude that there is no duty.

I don't understand how sending a report with the annual audit at the direction of

management to the stockholders again --

THE COURT: Creates a duty.

MR. FREDERICK: Yeah. I don't see how it does, particularly when there is nothing that arose out of that mailing that is alleged as being wrong in this case. I can allege the moon is made out of green cheese and for purposes of the motion you got to accept it until the other side shows up and says here's a picture of the moon and here's the content of the moon and it isn't green cheese. At that point game changes. That is where we are here, Your Honor.

THE COURT: What about his argument that there is deceit?

MR. FREDERICK: Let me speak to that, Your Honor, because that, I can tell you from Mr. Tucker's point of view, that is extremely troubling.

THE COURT: I would imagine.

MR. FREDERICK: Here's the claim of deceit. The claim of deceit is somehow or other between August and October Mr. Tucker who is a certified public accountant learns that there is check kiting but doesn't tell

anybody. Now, that is their claim for fraud.
As I understand a claim for fraud --
THE COURT: Did he tell people?
MR. FREDERICK: No, he didn't tell anybody. That's their claim, okay, he knew about it and he didn't disclose it. Now, let's assume as we have to for the purposes of this motion, although I can assure the Court if we go further we will vehemently oppose this, but for purposes of this motion I got to accept that as true.
THE COURT: Yeah, and the rules -- don't the rules change a little bit with the nexus in --
MR. FREDERICK: Oh, for fraud --
THE COURT: -- fraud?
MR. FREDERICK: -- it's a whole new ball game, clear and convincing and it's got to be --
THE COURT: That's their proof but --
MR. FREDERICK: But they also have to plead it with particularity because we still have Read Drug versus Caldwell. The more complex we get in the --
THE COURT: Read drug versus Caldwell.

MR. FREDERICK: You got to remember that one.
THE COURT: Oh, my Heavens.
MR. PROCTOR: So do I.
THE COURT: A blast from the past.
MR. FREDERICK: Well, three of us would identify with that.
THE COURT: Is that still good law?
MR. PROCTOR: That was when there were demurrers.
MR. FREDERICK: I believe it is.
THE COURT: Yes.
MR. FREDERICK: I missed the demurrer days. But in terms of the fraud, where is the reliance? What did they do or not do based on the alleged -- and we have to take for truth for purposes of this hearing, failure of Mr. Tucker to communicate there was a check kite. There's no allegation of any loss to the company, and there is no allegation that they relied on it and did something or didn't do something.
But what we do have, Your Honor, is we have the affirmative allegation that they kept asking for information from the corporation,

from the corporation's lawyer, and from the corporation's accountants and they didn't get it. I don't see how the fraud count and the punitive damage claim survives.
THE COURT: I don't think the punitives would survive.
MR. FREDERICK: I don't see how the fraud claim would survive. It can't be a negligent misrepresentation because there's no duty. Assume that they're right, Tucker knew and he didn't speak, what did they do in reliance on that? There is no allegation. All they have --
THE COURT: I think he says if they knew they would have done something.
MR. PROCTOR: That's precisely correct, Your Honor. That's what we say is failure to disclose. Fraud is the affirmative wrongful, misleading --
MR. FREDERICK: If you got a duty to speak, and if you know, but what is it they could have done? There is no loss that is alleged. When they find out they go to the bank. The bank cut off the credit. The bank stopped the checking accounts. The supplier,

Rich Food, stops accepting them. They close down. What would they have done any differently? What difference would it make assume the worst? There is no reliance on that. My colleague probably wishes to say something more.
THE COURT: What do you want to say, Mr. Ranck?
MR. FREDERICK: More enlightening than me.
MR. RANCK: The most basic problem that I see with the fraud count, Your Honor, is this is not a case where the accountants lied to them and covered it up. This is not a case --
THE COURT: He's not saying they did.
MR. RANCK: I know. It's not a case where they simply denied providing information when they should have.
THE COURT: That's what he says.
MR. RANCK: Well, not quite. This is a case in which the accountants are asked for information and the accountants respond, we are sorry, we can't give you any information. Under those circumstances there can be no reliance.

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THE COURT: Because of Singer.
MR. RANCK: And because of Singer. You can't sit back when you know they're not giving you something, put aside all the duty arguments in the negligence counts, and just focus on the fraud. Whatever the case is, it's not a case where you can sit back and know they're not giving you information and then after the fact say we relied on the information we knew you weren't going to give us. For that reason there is no reliance.
Very quickly on the duty. Your Honor mentioned before we broke and you said a couple of times the intent to benefit must have actually existed. The comment I wrote down before we broke coming from Your Honor was the agreements must expressly or almost expressly say there was an intent to benefit the third parties.
In this case Your Honor has the contracts, and not only do they not expressly or almost expressly intend to benefit, they do the opposite. They say it's for management use only and they say this contract outlines our duties and obligations, if you have questions

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then call us.
MR. PROCTOR: Your Honor, on the issue of the contract, we should be given an opportunity to prove through the relationship and communications between the parties exactly what the intent to benefit was.
THE COURT: How would you do that?
MR. PROCTOR: I beg your pardon?
THE COURT: How would you do that?
MR. PROCTOR: We would depose -- we would present evidence through B. Green witnesses. We would --
THE COURT: Give me a for instance.
MR. PROCTOR: Well, there were regular communications for years between B. Green and Ellen and Tucker. We submit to you that rather than, as Mr., as Mr. Frederick suggests, that the independent auditors' reports are sent to shareholders is not because of direction of management because that is evidence of the existance of the relationship.
THE COURT: I get those things from shares of stock I own. I mean, you think I could sue Microsoft?
MR. PROCTOR: If you were similarly

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situated to Microsoft as B. Green is situated to Farm Fresh.
THE COURT: What's the difference?
MR. PROCTOR: Ellen and Tucker here -- it goes back to the intimacy of the relationship, and we should be given the --
THE COURT: Let's talk about that for a minute. It really comes back to the fact that you own so many shares.
MR. PROCTOR: Well, even --
THE COURT: Because if I own one share of Farm Fresh, I would be getting the same information that B. Green got. You know, when Tucker wrote those letters and sent the information out, B. Green would have gotten it, I would have gotten it.
MR. PROCTOR: Well, but in our case and the case of B. Green, there is another reason for Ellen and Tucker to know that we are specifically relying upon them to provide us with information that should be relevant to our dealings.
THE COURT: You keep saying that Ellen and Tucker knew. Let's say for instance that B. Green was relying, I'm not sure what you

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mean by that.
MR. PROCTOR: Well, from the totality of the circumstances a person reasonably situated, a reasonable person in the shoes of Mr. Tucker and Ellen and Tucker certainly had to know that B. Green, if it had relevant information to B. Green, and had that information been conveyed to B. Green, that B. Green would act thereon. If there is a duty to convey that information, then --
THE COURT: He's saying there isn't one.
MR. PROCTOR: Well, I understand that.
THE COURT: And --
MR. PROCTOR: But --
THE COURT: -- what I want to find out, how do you intend to prove something like that? Do you think you can call an expert witness to say that Tucker had all these responsibilities.
MR. PROCTOR: On some of the issues, yes. On issues related to they should have discovered, set aside for the moment Tucker's knowledge but focus only on the negligence, on the issue of negligence that they should have

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THE COURT: No, I'm not going to do that because you are going to take me off the ball.
MR. PROCTOR: I don't want to do that.
THE COURT: It could very well be that they were negligent. That is not the issue here. That is not the issue. They could have been negligent but the issue here is whether the negligence -- whether your clients can act on that negligence. That is the issue.
MR. PROCTOR: That's --
THE COURT: That's much different than whether they were negligent.
MR. PROCTOR: That's the path I was headed down, Your Honor, because the accounting standards say that if accountants obtain knowledge of illegal or fraudulent activity, then they have an express duty and obligation to convey that to the level above management, which in this case is the shareholders which is our client. So there is a duty --
THE COURT: I know that but then come back --
MR. PROCTOR: -- that springs from that.

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THE COURT: But that's one tiny little area. You are talking about check kiting.
MR. PROCTOR: I am talking about check kiting.
THE COURT: That's one tiny little area and their answer to that is, hey, wait a minute, there was no, there was no reliance on it anyway, plus there was no harm that came to anybody because when they did find out about it they stopped it.
MR. PROCTOR: They stopped it, Your Honor. They stopped it in November and the company went down the, first of all, down the tubes --
THE COURT: They stopped.
MR. PROCTOR: -- at that point.
THE COURT: They stopped it when they found out about it. So I don't follow that one. Where is that going? I'm not going to sit around for three months for a case over there. That's not going to get you anywhere.
MR. PROCTOR: Well, the issue is what --
THE COURT: Back to the duty. Assume they were negligent -- let's take the check

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kiting out of it because that's a little different. It's different. Let's say that they were negligent in some form or fashion. We still come back once again to whether they had an obligation to tell B. Green --
MR. PROCTOR: That's --
THE COURT: -- because there's no contract between them.
MR. PROCTOR: -- that --
THE COURT: I'm trying to find out from you what this intimate nexus is. What I'm trying to find out from you if there is a nexus. We have to concede they are shareholders, for Lord's sake, but --
MR. PROCTOR: But they are shareholders in a very closely held corporation.
THE COURT: Right, right.
MR. PROCTOR: They are shareholders in a corporation in which they had over a period of years had regular and open communications between the accountants and B. Green as a shareholder, giving rise to B. Green's expectation. I would respectfully suggest that, that Ellen and Tucker would convey to them information that was relevant to their

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position as a shareholder.
THE COURT: See, I don't think -- you're making a leap of faith there, it seems to me, that they had some expectation. Well, you know, they can have all the -- they can have great expectations but that doesn't create -- let me say this to you. I don't think that what B. Green expected matters one bit. When we talk about this as a legal issue, it doesn't matter what they expected. You know, either, either -- isn't it true that either there was an intent to directly benefit or there wasn't, and all the rest of it is window dressing?
MR. PROCTOR: Well, but part of that I respectfully suggest is whether there was an intent to directly benefit, is whether Ellen and Tucker in this instance had, itself had reason to know --
THE COURT: I'm back to --
MR. PROCTOR: -- to know that B. Green would rely on their action or inaction. And the Credit Alliance case, which is a New York decision which springs off of these same concepts talks about that.
THE COURT: I don't think I read that

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one. What does Ultramares say?
MR. PROCTOR: It talks about the intimacy, at least when read with Shepard. Glanzer versus Shepard talks about the intimacy of the relationship. What Ultramares was concerned about was --
THE COURT: Now, I think, Mr. Proctor -- now if I'm mistaken, I'll stand corrected -- they don't talk about the intimacy. They talk about the intent to benefit. In other words, in Glanzer they said that because there was intent -- that was the bean case, right?
MR. PROCTOR: Yes, the scale.
THE COURT: Scale.
MR. PROCTOR: Scale.
THE COURT: -- and that there was an intent there to benefit the purchaser, that that was the whole point, that the purchaser got what he bargained for.
What did Ultramares -- what was the bottom line on that one?
MR. PROCTOR: The distinction, I would respectfully suggest, between Ultramares is the person who was providing the services knew -- in Glanzer the person providing the services,

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the scale service weighing --
THE COURT: Right.
MR. PROCTOR: -- knew that that specific person was relying on the accuracy of his scales. The difficulty --
THE COURT: Okay, Mr. Proctor, I don't know if it is me. Maybe we will take a little recess here for a minute because we are going around a little in circles. I say that what the case says was that the arrangements between the owner of the scale and the scale fixer was to directly benefit the purchaser of the beans. That is what I thought Glanzer said.
MR. PROCTOR: I think maybe I'm saying the same thing --
THE COURT: I don't think you are.
MR. PROCTOR: -- in a different way.
THE COURT: I'm not sure you are, so let's --
MR. PROCTOR: Well, maybe one way to look is -- the way the cases have been construed, if you look at, if you look at Weisman versus Connors, which is a Maryland case which has construed it, and if you look at --

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THE COURT: I don't know Weisman either. What's Weisman?
MR. PROCTOR: It's Weisman versus Connors.
THE COURT: What kind of case?
MR. FREDERICK: Weisman is the one where the -- Weisman owns this Toyota dealership and lures Connors who was vice president of Ford Motor Company away from Ford.
THE COURT: Oh, oh, yeah.
MR. FREDERICK: But I think, Your Honor --
THE COURT: What's that have to do with this?
MR. FREDERICK: -- the easiest and the most direct --
MR. PROCTOR: I haven't finished.
THE COURT: Go ahead.
MR. FREDERICK: I think the easiest and the most direct way to deal with this is if the Court has Mr. Proctor's memorandum before it --
THE COURT: I do.
MR. FREDERICK: -- on page ten is the quote that Mr. Proctor recites.
THE COURT: Wait a minute, let me get

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there.
MR. FREDERICK: It's at the top of page ten, Your Honor. There's a quote that Mr. Proctor recites from the Credit Alliance Corporation case that he started out on, and he emphasizes that the accountants kind of know that the client is going to rely on him. It isn't in bold print in the quote but I would respectfully ask the Court to take a look at number two --
THE COURT: Yes, I see it.
MR. FREDERICK: -- in the furtherance of which a known party or parties was intended to rely, which takes us right back to where the Court was and I think amplifies the Court's earlier comment that we are not dealing with a parallel track on this intimate nexus stuff.
We need an intention on the part of the party retaining the professional to benefit some other party and that has to be clear and intended and that is what we are missing in this case.
THE COURT: What about Mr. Proctor's argument that, look, you know, maybe he doesn't say this but I say maybe it was Microsoft --

it's, you know, my pittance -- I'm not relying on anything their accountants do, when you are closely held that the rules change?

MR. FREDERICK: I think this case is a perfect example of why that is not the case because here you have two big time stockholders who are at war with one another in a lawsuit and we have corporate counsel saying to the accountant, you work for the company, here's your engagement letter, keep your mouth shut, and the accountant does what management tells it to do because that is where its contract is.

I don't think the contract law changes whether you are dealing with a nationally traded multi national corporation or a ma and pa operation, with two or three stockholders in a closely held corporation.

THE COURT: So the argument that it's between Microsoft's accountant and Microsoft, the relationship as a shareholder I would have with the accountant is really in the final analysis no different than the relationship B. Green had with Ellen and Tucker?

MR. FREDERICK: That would be our

argument, yes.

MR. PROCTOR: We of course take strong exception to that.

THE COURT: Let me get back to you. Actually I'm going to take a little break.

(Whereupon the Court recessed, following which the proceedings in this matter resumed:)

THE COURT: Well, I'm back. I don't know how refreshed I am.

MR. PROCTOR: I have I think clarified at least where I was coming from on --

THE COURT: Okay.

MR. PROCTOR: -- on Ultramares and Glanzer, Your Honor. The Court of Appeals in Weisman versus Connors, our Court of Appeals in Weisman versus Connors spoke of those cases and in those terms I believe and at pages 8 and 9 of our memorandum we quote somewhat extensively from Weisman where the Court characterizes what its interpretation of those cases is at least, which I suppose is even more relevant than what the cases said since that's now Maryland law.

THE COURT: It says the precontractual discussions between Weisman and Connors more

closely resembles the intimacy of the Glanzer parties than the remoteness of the Ultramares relationship.

MR. PROCTOR: Correct. And earlier the Court said, they say that --

THE COURT: There's foreseeability there, too.

MR. FREDERICK: There is --

MR. PROCTOR: Correct.

MR. FREDERICK: -- no written contract in this case, which takes it out of exactly where we are.

THE COURT: Yes, that's true.

MR. PROCTOR: Just because there is a written contract doesn't mean that can't be amplified and expanded on.

THE COURT: Here's another -- let me ask you this, see, because part of what I do is I sit here and stare out, is think in terms of how you are going to prove some of these things.

MR. PROCTOR: Yes.

THE COURT: So one of the things I gather you are going to want is parole evidence?

MR. PROCTOR: Yes, I'm going to want to depose the -- I'm going to want to depose the people at Ellen and Tucker. We have had the benefit of some of their records but we have never deposed them. We will. I'm going to want to depose Mr. Millman and which he'll be subject to once he's been sentenced and his sons-in-law as well as other employees of Farm Fresh.

THE COURT: You know, suppose Millman says, well, the whole idea was to benefit the stockholders?

MR. PROCTOR: He and B. Green.

THE COURT: Suppose he says that? Is that admissible evidence? I would tell you in my judgment right now it's not admissible. Certainly he can say he was in the deposition but when you come into Court and you say wasn't it the intent of -- when you contracted with Ellen and Tucker, wasn't one of the things you intended to do was to make sure that this all benefited the stockholders? I'll say that, by way of exaggeration, objection sustained.

MR. PROCTOR: Well, I can establish it by facts that relate to circumstances after

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that agreement was entered into, or by course of conduct that existed between the parties over, you know, a period of years. I think those things become admissible, and can be used to cast light on what the intent of Ellen and Tucker was in performing accounting services, not just audit services but accounting services for Farm Fresh. Their intent -- I try to -- I have avoided the analogy to lawyers in this matter, Your Honor, because I really do think --

THE COURT: It's not going to do you any good.

MR. PROCTOR: Excuse me?

THE COURT: It doesn't do you any good.

MR. PROCTOR: Well, I'm not so sure of that. If we put ourselves in the position we can relate to this perhaps as lawyers.

THE COURT: I'm not -- you meant lawyers -- some third party suing a lawyer?

MR. PROCTOR: Well, and I'm going to try and, I'm going to try and draw an analogy in that regard. If you have, if you have a lawyer instead of accountants who are represent, who are representing a close

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corporation, they all deal with each other on regular basis.

THE COURT: That would be -- they couldn't do that, okay. There is a lawyer --

MR. PROCTOR: If they do, and then something comes up such as management saying I don't want you talking to Joe anymore, stop it, and talk to me, I don't think a lawyer can just do that. The lawyer says no, that is what the independence is of a professional. The lawyer says no, I do have to talk to everybody.

THE COURT: Well, wait a minute, any lawyer that gets himself in that is looking for trouble.

MR. PROCTOR: Well, so is the accountant who gets himself in that looking for trouble. That's what happened to Ed Tucker and Ellen and Tucker. They took sides here. They took sides.

THE COURT: Oh, no, wait.

MR. PROCTOR: Refused to give us information.

THE COURT: See, I think you argue against yourself. They absolutely took sides because that's what they were paid to do.

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That's part of his argument. They took sides and that is the right thing to do. The wrong thing to do is what you just said, that you become all involved with everybody. That's the wrong thing to do as you have just pointed out.

MR. PROCTOR: All I'm looking for is information, Your Honor.

THE COURT: Can't have it.

MR. PROCTOR: I'm not looking for advice. I'm looking for discharge of their services in a full and fair --

THE COURT: All this information you want is information. You can't sue over that. We are wasting our time.

MR. PROCTOR: Well, I think we can sue over information if it is somebody who owes us a duty such as in a fiduciary relationship.

THE COURT: There's no fiduciary relationship between you and Ellen and Tucker.

MR. PROCTOR: Certainly there can be duties that arise in negligence --

THE COURT: Don't we always come back to that?

MR. PROCTOR: -- to convey information.

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THE COURT: We are back always to that little simple question, that is, is there a duty.

MR. PROCTOR: Of course.

THE COURT: And the only way there can be a duty is back to that little sentence that says -- may I read it again? Where is it? "In this regard, the test for third party recovery is whether the intent to benefit actually existed, not whether there could have been a, could have been an intent to benefit the third party, in other words, an incidental benefit to a nonclient will not impose the duty. "

And reading from the Noble opinion, in that case an attorney, they were quoting Flaherty --

MR. PROCTOR: And what Flaherty said again I suggest is that it only need be alleged. Now, I don't want to be cute about that but I think we can establish it by proof.

THE COURT: It does say that they must allege and prove a duty. That's what it says.

MR. PROCTOR: Proof comes at trial. The allegation is where we are, and granted they have moved for summary judgment, but there

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has been not one iota of discovery in this case and we haven't had -- we ought to have an opportunity to have it, I respectfully suggest. But we have alleged, we have alleged not only that the fact of the intent to benefit us but we have, again respectfully suggest, alleged facts to --

THE COURT: That's his motion.

MR. PROCTOR: -- substantiate that.

THE COURT: Takes you beyond the motion to dismiss. He concedes I would never grant a motion to dismiss here. If I do anything, it would be a summary judgment, except maybe with punitive, with regard to punitive damages. You are not serious about that I hope.

MR. PROCTOR: I think I am at least in the instance of the deceit claim. If Mr. Tucker knew, and we allege it and believe we can prove it, that he knew of the check kiting operation and did not disclose it --

THE COURT: I thought he did know about it and he stopped it.

MR. PROCTOR: No, no, Your Honor.

THE COURT: Who was the one reported it to the bank?

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MR. PROCTOR: My client.

THE COURT: How did they find out?

MR. PROCTOR: They got some records in early November in this Baltimore City proceeding.

THE COURT: Who prepared the records?

MR. PROCTOR: They were records that were produced by Farm Fresh.

THE COURT: In the case?

MR. PROCTOR: In the case, combined with records that came out of the two respective banks and you put them down side by side and your eyebrows go up. Our allegation is that Mr. Tucker knew about this as early as August. Sometime between August and October --

THE COURT: So.

MR. PROCTOR: -- he knew about it.

THE COURT: So what happened?

MR. PROCTOR: So what happened?

THE COURT: Yes.

MR. PROCTOR: Well, when it was ultimately discovered --

THE COURT: What are the elements of deceit?

MR. PROCTOR: Well, in this case it's a

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failure to disclose information known to the Defendant --

THE COURT: Right.

MR. PROCTOR: -- which the Defendant knows would have been relied upon and acted upon by the Plaintiff had it been disclosed. Reasonable reliance and damage. I think I covered all the elements.

MR. PROCTOR: The reliance factor when you are dealing with a failure to disclose, the reliance factor in a deceit claim has to be in the form of would they have acted had they been given that information. We have alleged that.

THE COURT: Okay. Yeah.

MR. FREDERICK: Your Honor, it is a material misstatement of fact made for purposes of causing someone to do or not do something that the person reasonably relies on it and they suffer a loss.

In this instance, they are told and they know when they file a lawsuit in July of, in July of '95, the accountant is going to tell them nothing because they have been directed by the management not to tell them anything, and the claim is that they would have done

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something.

Well, we know what they did when they found out. They told the bank. The bank cut off the accounts and all suppliers cut off everything and the company stopped. So is their claim that the company would have stopped three months earlier? It takes them back to where they are at the beginning. There isn't any reliance.

I think if you can focus this case, and the sentence Your Honor related at the start, again a few minutes ago, talks about other than an incidental benefit. I really think the best that B. Green is in this case is that incidental beneficiary. Yeah, they got these audit reports; yeah, there was some passing between the accountant and B. Green here and there and everywhere over the years, but are they an intended third party beneficiary? I submit to the Court as a matter of law they are not.

We have a contract that distinguishes this case from many of the others cited. We have my brother telling this Court, well, at least let me do discovery, and it is true in

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many of the cases that we rely on there is tons of discovery. If you look at the discovery that the Court's use in rendering their decision, the discovery is, oh, we didn't intend for them to benefit. We already have that in this case. We have that because we have the agreements and we have the lawsuit with the allegations.

I would submit to the Court that this isn't a close question but assume for the sake of argument it were, I would ask the Court to consider coming down in favor of the dismissal on behalf of these parties because if they are going to challenge the legal determination, they are going to do it ultimately. It's going to be the same argument regardless.

THE COURT: I can't dismiss it.

MR. FREDERICK: I think actually you can.

THE COURT: He's alleged -- he says I have alleged that there is this duty.

MR. FREDERICK: You can't dismiss it. You would have to enter summary judgment.

THE COURT: Okay. That's what I'm saying.

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MR. FREDERICK: We would urge you to enter summary judgment. If the parties are going to test that legal theory, let them test it now without encountering just scads of costs and expense.

THE COURT: There's something to be said for that.

MR. FREDERICK: Taking a heck of a lot of time. I think it's ultimately the legal issue that is going to be before the Court.

THE COURT: Yes.

MR. FREDERICK: It's before the Court now and I don't think there is a heck of a lot of fact dispute about it.

THE COURT: There aren't.

MR. FREDERICK: Take everything he says as true, we say so what, there is a contract. They're incidental beneficiaries as a matter of law and got this other lawsuit. They lose.

THE COURT: He says that you can't grant summary judgment yet, or ever actually, because I'm going to go out and take depositions and prove that this contract was more than it appears to be; that I'm going to go prove that they really did intend to benefit

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the shareholders. How he's going to do that I can't, I can't imagine --

MR. FREDERICK: One of the problems I have --

THE COURT: -- because I have problems when there -- well, I guess --

MR. FREDERICK: Your Honor, if the Court looks at the allegation that B. Green made in the Baltimore City case, it's clear there is no intent to benefit. They say these guys are stonewalling us, they won't give us any information. Mr. Proctor tells the Court we wanted information. There is no issue about that. If --

THE COURT: There's no issue, there's a duty, they had to give it to them, just that they wouldn't give it to them.

MR. FREDERICK: They weren't going to give it to them. There is no issue that Farm Fresh is intending to benefit B. Green with the services of the accountants. It's alleged in this lawsuit that the accountants at the direction of Mr. Singer, corporate counsel, stonewalled B. Green and wouldn't give them anything. And in the lawsuit they filed in

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Baltimore City the allegations are there and the inferences that can be reasonably drawn from that even in the light most favorable to the Plaintiff make it clear that there is no intention to benefit.

And if there was some discovery that truly was necessary in order for this Court to fairly resolve this motion, why do we not see an allegation of it and a request for continuance as the rule suggests? We don't because in this case it's unique. All of the information the Court needs to make a determination is before this Court and the issue is is B. Green an intended third party beneficiary of this nexus between Ellen and Tucker and Farm Fresh. If so, we get to the next question of proximate damages. If not, the case is over as a matter of law. We would respectfully urge the Court to conclude that this case should be dismissed and summary judgment entered.

THE COURT: What depositions do you say you need for this purpose?

MR. PROCTOR: Depositions of representatives of Ellen and Tucker.

Depositions of the Millman side, the Farm Fresh side I should say because beyond Millman and his sons-in-law there are employees of Farm Fresh, former employees of the Farm Fresh who could cast light on this subject and these engagement letters were signed by somebody other than them as a matter of fact.

THE COURT: See, I'm -- there's part of me that thinks that I should let you do some limited discovery on this issue, but not a lot. Yes.

MR. FREDERICK: But where is he going? He's going to depose Ellen and Tucker. They can't tell you what this intent was of --

THE COURT: The interesting thing is it really -- now, it comes down to parole evidence. So what he's going to try to do is prove -- he can't ask them what their intent was. He can ask them in deposition. Whether he could use it as evidence is another thing.

MR. FREDERICK: Your Honor, I'm --

THE COURT: But Mr. Proctor suggests to me that there is a course of conduct out there that would, that could lead the trier of fact to believe that B. Green was an intended

beneficiary of the contract between Farm Fresh and Ellen and Tucker. That is what he represents to me here.

MR. FREDERICK: Your Honor, what his clients said in the lawsuit and is generally estopped from retreating from is Plaintiff has repeatedly requested a meeting of Farm Fresh's stockholders and Board of Directors.

In advance of those requested meetings, Plaintiff has also requested access to certain financial information and other corporate documents. The Defendant Millman refuses to convene a meeting of Farm Fresh's Board of Directors or stockholders. Millman also refuses to provide Plaintiff with access to the corporate information and documents to which it is entitled under Maryland law.

Plaintiff files this suit seeking injunctive relief requiring the corporation to -- and it goes on.

THE COURT: I think that is the way it ought to be. That's the way life is between shareholders and corporate -- and directors but what I'm faced with -- you know, what I don't want, I don't want this case -- if it doesn't

go forward, I don't want anybody down the Court of Special Appeals, have them say to me, oh, well, look, before you did whatever it is you did, you should have done X, you know, then we come back here. That is what -- frankly, is what I'm thinking about.

MR. FREDERICK: I appreciate that, Your Honor, but the problem I have is with this lawsuit and these allegations --

THE COURT: But that's not part of the case.

MR. FREDERICK: Absolutely, it is. We have appended it.

THE COURT: Well, I know but --

MR. FREDERICK: It absolutely has to be, Your Honor.

MR. PROCTOR: That case didn't involve Ellen and Tucker, Your Honor. That case --

THE COURT: No, no, but it involves Millman.

MR. FREDERICK: It's Millman and Farm Fresh --

MR. PROCTOR: Yes, sir.

MR. FREDERICK: -- being sued by B. Green and it involves --

THE COURT: And it involves you or your client.

MR. PROCTOR: My client.

MR. FREDERICK: They're alleging that Millman --

THE COURT: He's --

MR. FREDERICK: -- and Farm Fresh have this intention to absolutely give B. Green nothing, which is totally consistent with where we are. They're not intended to benefit.

THE COURT: I understand, I understand, what he suggests is that B. Green says in that lawsuit that the responsibility lay with the corporation and it's directors, a proposition with which Ellen and Tucker agree; that he, that he now comes before a different Court and says, well, wait a minute, the responsibility was also with Ellen and Tucker. He can't do that because he's already said where it was. Is that right?

MR. PROCTOR: I think that's what they're suggesting but I don't agree that is necessarily what it says.

THE COURT: Mr. Proctor, here's the -- see, I keep thinking about how you are going to

go about this, how you are going to prove that they were a direct beneficiary, and --

MR. PROCTOR: Well, I hasten to add and also had an intimate nexus and relationship.

THE COURT: Listen, you are a smart man but I think you are missing the law on this one.

MR. PROCTOR: Well, --

THE COURT: I could be wrong but I thought --

MR. PROCTOR: Well --

THE COURT: -- if there is privity, if you have privity, then you can sue, then you have to prove this relationship. As I understand the law -- Mr. Rank, you can tell me if I'm wrong -- one of the ways you prove that is you were an intended beneficiary of the --

MR. PROCTOR: Well --

THE COURT: -- of the contracts?

MR. PROCTOR: You may be right, Your Honor. I think it can be read that if you have privity, or its equivalent, then you have the obligation. So --

THE COURT: Then you have to define equivalent. How do you get to equivalent?

MR. PROCTOR: The cases don't give us a whole lot of help in that regard.

THE COURT: I thought the way I stated it was the way you do that. Am I mistaken?

MR. PROCTOR: I don't think it's to -- Well, I would suggest that it is not to the exclusion of third party beneficiary relationships because the cases simply talk about a close intimate nexus and relationship, one in which the actor, the Defendant, has reason to believe that there is reliance and knows who the party is, knows they are relying on their actions and the like.

MR. RANC: Your Honor --

THE COURT: How do you get past what I have read twice?

MR. RANC: Your Honor, the only exception to the privity rule in Maryland in a professional liability case is specifically intended third party beneficiary rule. If you look at Weisman versus Connors, number one, that's not a professional liability case but, number two, there arc face to face, extensive face to face pre contract negotiations. No one can argue that Mr. Connors wasn't specifically

intended to benefit from what Mr. Weisman was telling him. It fits within the same rule.

The problem here is their own allegations in the case are that Farm Fresh did not intend to benefit B. Green. And that is evidenced in the allegations wherein they allege that Farm Fresh told the accountants not to give B. Green information. How can you go and try to prove an intent to benefit when one party to the contract says to the forming party don't give them the, don't give them the benefit of this bargain, do not do it. Don't give them the benefit, and the performing party complies. How can there in the face of that allegation, and that's in this case, I would suggest it's also in the city case, but that's in this case too -- how can they in the face of that allegation turn around and try to prove, well, Farm Fresh may have instructed them not to give us the benefit of the bargain but we were specifically intended to benefit.

THE COURT: What is your response to that?

MR. PROCTOR: Again, talking about there's been a long standing course of conduct,

there were direct communications between B. Green and Ellen and Tucker here which we allege. If there was a duty that existed, I'm hard put to understand how they can just all of a sudden say, oh, poof, it went away. In the first place --

THE COURT: Well, they don't agree that it ever existed.

MR. PROCTOR: Yeah, but I think if we can establish that it existed, then how do they just make it go away by saying, oh, well. I mean, every year in corporations all over the world, small, large or otherwise, accountants send information out to shareholders. I mean they just do.

THE COURT: You own ten shares of X, Y, Z corporation. Once a year here comes this audit, whatever, financial statement --

MR. PROCTOR: Uh-huh.

THE COURT: -- and the bigger the company the fancier the portfolio you get with all this glossy paper and things. Not that I have any. So there is communication between the accountants and the shareholders.

MR. PROCTOR: Actually that

communication isn't from the accountants. It comes from the corporation, Your Honor.

THE COURT: No, but it is information prepared -- look --

MR. PROCTOR: Well, that's a distinction that Ultramares made. That's just the distinction Ultramares made, that what I have just said, and the distinction we have is there was direct communication between Ellen and Tucker and our client. It wasn't a matter of information being provided to the corporation and then the corporation disseminating that.

THE COURT: Let's say that Tucker talked directly with B. Green and gave them information --

MR. PROCTOR: Over a --

THE COURT: -- over a three or four -- they weren't together that long.

MR. PROCTOR: -- period of time.

THE COURT: Then so whenever B. Green called up and said, you know, what's the bottom line, they say the bottom line is X. What's our debt? The debt is X. How are sales? The sales are fine, the sales are bad. Any time he

calls they answered the question. Let's assume all that. Then they get into this contest and Singer says, look, no more communication. We will deal with our shareholders. You are not going to deal with them. Whatever information B. Green is to get, we are going to decide what it is, which of course apparently in this case was none.

MR. PROCTOR: Exactly.

THE COURT: You think you could get up in front of a jury and say to them, look, you know, any time they called up they gave them that information. Any time they called up they gave them information. They mailed them things. They called them up on their own and volunteered that store number 22 was doing great. Ladies and gentlemen of the jury, when they did that, that created a duty. You can do that?

MR. PROCTOR: If that establishes the requisite intimate nexus, yes, I do. I do think so.

THE COURT: Who is going to decide that? The jury?

MR. PROCTOR: Obviously there will

probably be a preliminary decision by the Court as to whether there is sufficient evidence, more than that iota which to permit that, but I'm not sure that -- it seems to me, Your Honor -- obviously your perspective on this is somewhat different but assuming we can establish that, I again come back to the notion that Ellen and Tucker can't just make that go away --

THE COURT: Why not?

MR. PROCTOR: -- by saying -- because the duty is there, and if it exists, I don't think by listening to Mr. Singer they can make that duty go away if they have an obligation to shareholders.

THE COURT: If you concede the duty is not there in the contract when the contract was entered into, the letter agreement, there is nothing in there that creates a duty between Ellen and Tucker and B. Green.

MR. PROCTOR: Well, the contract talks about management, is what it does.

THE COURT: Okay. Management under some circumstances can constitute stockholders and the Board of Directors. We know without

any shadow of a doubt that that was not the case here, so let's not even start that way. One of your clients says that it was not that, because if it had been that, you wouldn't have needed the suit in the city.

MR. PROCTOR: Let me come back --

THE COURT: Show this thing was run by Millman lock, stock and barrel.

MR. PROCTOR: Let me come back to the point though that I made earlier this morning or began to make earlier this morning. It's this: Accountants, if they discover things out of the ordinary, for lack of a better term, such as the coupon issue, such as the check kiting issues, they then have an obligation to advise and convey that information to the level above, quote, management --

THE COURT: You told me that.

MR. PROCTOR: -- which would, which would be Mr. Green here and/or B. Green.

THE COURT: That's one of their professional responsibilities.

MR. PROCTOR: Yes. We can produce an expert. That gets into the area of expert testimony. We can produce expert testimony in

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that regard.
MR. FREDERICK: Your Honor, that speaks to the issue of breach of duty. It doesn't speak to the issue of the duty and it also doesn't deal with -- I mean, on the fraud allegation, we deal with the reliance as --
THE COURT: What I gather he is saying is that not withstanding the contractual relationship between Farm Fresh and Ellen and Tucker, Tucker discovers that the corporation is doing something illegal; that their obligation now is not to report it to the people who are doing the illegal activity but Mr. Proctor says that the law is, or their responsibility is to report it to a higher authority.
MR. FREDERICK: And I say accept that for purposes of this argument --
THE COURT: I don't know who the higher authority is in this case, by the way.
MR. FREDERICK: I think arguably it would be the other stockholder. I think that is a fair decision.
THE COURT: All right.
MR. FREDERICK: But I still say it

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makes no difference in this case because it really relates to count five, which is the deceit count, and there is no reliance, and it wouldn't have mattered in any event because there are no damages.
I don't think that in and of itself opens the door to the duty because what they are really saying in all of the other allegations is all these other things that you should have told us that you wouldn't tell us because, and they allege, because we wanted to you tell us. We asked the company, they wouldn't tell us. We asked the lawyer, he wouldn't tell us, and you tell us the lawyer told you not to tell us as well.
Your Honor raised the issue of their never having participated in management, and in paragraph 15 of their suit in the city they say on information and belief Millman and/or persons appointed by Millman have continued to manage, operate and make all executive decisions for Farm Fresh to the present date. Green has never actively participated in the management of Farm Fresh. So there is no issue. As a matter of fact, it's taken as

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proven for the purposes of this hearing that management is Millman.
The contract says the accountants are hired to serve management. The accountants serve management. They, in fact, tell the stockholder management tells us we can't tell you this.
The only argument he presents the Court is, okay, the check kite. I say the only issue on the check kite is they can't show any damages on it. They can't show any reliance on it because they file this suit saying we don't know anything anyway. They file the suit in July. They claim that Tucker knew about this in August. But that's the narrow argument they make and it doesn't get them to duty. It deals with breach of an alleged duty where you find some fraud. I don't believe that the fraud count stands on its own because of the pleading requirement. I think that is susceptible to a motion to dismiss. It certainly doesn't get them intended third party beneficiary status to the agreement between Ellen and Tucker and Farm Fresh. That's really what we have been talking about. I don't know what discovery they can

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do.
THE COURT: It's almost as if Mr. Proctor says in that regard that this is a brand new duty, not an old one, but one that springs to life as a result of, as a result of what they learned.
MR. FREDERICK: Go ahead.
MR. RANCK: Your Honor, one distinction has to be made, however. Mr. Proctor references the professional responsibilities and, as Mr. Frederick said, that speaks to the issue of breach.
When they learned that Millman is involved in something, what is their duty? Their duty is to report it to the next level. Well, the question is not that, is the duty. The question is to whom is that duty owed? That is still a duty owed to corporate entity if the next level Mr. Green was the director.
THE COURT: The fact he happens to be the reportee doesn't create a duty.
MR. RANCK: That's correct, Your Honor. I mean, it's still in his corporate capacity that the duty would be owed, and any claim for not doing that would be one by the

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corporation, not by B. Green, the shareholder.
THE COURT: Okay. What's your response to that one?
MR. PROCTOR: Again, my response is we are dealing with a close corporation. Mr. Green sits on the Board of Directors because he represents the interests of B. Green. B. Green is a shareholder holding forty-nine percent with a related entity holding one percent of the entity. The purpose of this rule is one of the standards of auditing that both parties have been talking about here, is to protect those interests.
THE COURT: But Mr. Ranck says to me Ellen and Tucker discover the kiting or they discover the coupon mishandling, and they discover that it is the corporation doing it in the form of Millman. He's the one doing it. Okay. So now Ellen and Tucker have a duty to go to a higher authority, as you put it.
MR. PROCTOR: Right.
THE COURT: We can all agree the higher authority in this case would be B. Green. Okay.
MR. PROCTOR: Yes.

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THE COURT: So its reported to B. Green. His argument is it's not reported to B. Green because Ellen and Tucker have a duty to B. Green. It's reported to B. Green because Ellen and Tucker have a duty to Farm Fresh and it so happens that B. Green is the higher authority. Doesn't create any duty. They just happen to be the person to whom Ellen and Tucker must report.
MR. PROCTOR: I think that is an awfully thin line to draw. The fact --
THE COURT: I don't agree. See, I don't agree.
MR. PROCTOR: The fact is --
THE COURT: See, I think you are trying to create a duty out of whole cloth because, trying to, because of the fact that B. Green owns forty-nine percent, they say this ought to be a real easy case, but because it's a close corporation and B. Green owns so much stock, the waters are muddied but really the rules don't change.
MR. PROCTOR: I don't think we ever thought it was a, quote, real easy case but --
THE COURT: I'm saying that's their

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position. They say you --
MR. PROCTOR: But --
THE COURT: -- they say that you are taking the muddy waters to create duties --
MR. PROCTOR: Well, the case law --
THE COURT: -- that don't exist.
MR. PROCTOR: At least we are dealing with intimacy of the nexus.
THE COURT: Let me think about it.
MR. PROCTOR: We are dealing with their contract and a course of duty and all those other things which -- a course of dealing is what I meant to say, and we think some discovery will cast light on this and support the allegations that are contained in the complaint.
THE COURT: Suppose I let you take a few depositions? Who would you take?
MR. PROCTOR: Already heard him.
THE COURT: Did he mutter?
MR. PROCTOR: He sort of.
MR. FREDERICK: Just a gasp, Your Honor. Just a gasp.
MR. PROCTOR: I would want to take Tucker.

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THE COURT: That wouldn't be hard to do.
MR. PROCTOR: I would want to take Street Bowman who was the second man at Ellen and Tucker in charge of this account.
I would want to take representatives of Farm Fresh. I don't think Millman would be terribly cooperative at least until he's sentenced, which isn't going to happen until March I'm told.
THE COURT: What you would ask him wouldn't have much to do with --
MR. PROCTOR: Well, he could -- I think he could testify as to the course of dealing as well.
THE COURT: Who is his lawyer?
MR. PROCTOR: It's somebody at Kramon and Graham.
MR. FREDERICK: Andy Graham.
THE COURT: Andy. I'm sure they have nol prossed all the other counts. They do that at the time of the guilty plea.
MR. PROCTOR: Yes.
THE COURT: Anything else against him?
MR. PROCTOR: I have seen --

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THE COURT: They probably reserve the damages --
MR. PROCTOR: -- for the record but --
THE COURT: -- or restitution.
MR. PROCTOR: -- but there are other -- there are -- there were other -- there were financial people at Farm Fresh.
THE COURT: I'm trying to find out who you would have that would shed light. Look, you know, to me this, as I said at the beginning of this, this is in my mind philosophically simple. It's a very narrow issue. It has to do with the duty. You are telling me -- see, I say -- I'm telling you right now I don't think the contract that is involved here constitutes -- when one reads that, that from it flows a duty from Ellen and Tucker to B. Green.
MR. PROCTOR: Uh-huh.
THE COURT: Okay. I don't believe that. So you're saying to me, okay, you don't agree with that but, okay, that's the where the Judge is now; Judge, there is more to it.
MR. PROCTOR: I want to create the totality to be able to bring before you the

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totality of the circumstances.
THE COURT: I'm trying to find out from you who could shed light on the corroboration of a duty that may have sprung to life after the written contract, not to alter its terms because that would -- it's pretty clear to me. I won't need parole evidence to tell me what that contract says.
What I'm suggesting is who would you want to say that the contract terms by conduct expanded beyond the writing to the ex -- to the point where a duty came to life between Tucker and B. Green?
MR. PROCTOR: Well, you know, let me point out one thing.
THE COURT: Because I think you and I have a philosophical difference about what the law is.
MR. PROCTOR: You know what, though, one thing that is particularly relevant -- I don't know why this didn't occur to me earlier.
THE COURT: Well, it's occurred to you now.
MR. PROCTOR: It's just occurred to me -- I'm refreshed -- if you take a look at the

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date of the contract for the 1995 year --
THE COURT: Wait a minute now. November 9th.
MR. PROCTOR: Well, no, it's the one that is dated September 29th.
THE COURT: What exhibit is that?
MR. PROCTOR: Well, this is theirs. Attached to their --
MR. FREDERICK: It's number 1 to --
MR. PROCTOR: -- memorandum. It's Exhibit 1.
THE COURT: Wait a minute. You are talking about --
MR. PROCTOR: It's their Defendant's Exhibit 1 attached to their memorandum, their memorandum and motion, dated September 29, 1995.
THE CLERK: Show him.
MR. PROCTOR: It's the audit engagement letter. The significant thing about it is while it's written by Ellen and Tucker on September 29th, 1995, it wasn't signed by Mr. Carter on behalf of the Farm Fresh until November 13th, 19995. None of this happened until after all the events that I'm complaining

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about.
MR. FREDERICK: I didn't hear the last thing you said.
MR. PROCTOR: I said none of it happened until after the event that I'm complaining about. You know, there was -- the relationship between the parties up virtually until the bankruptcy was filed weren't governed by this document that they say is so clear.
MR. FREDERICK: Your Honor, this is pretty easy. The first sentence to the letter says, this is to confirm our understanding and agreement, which demonstrates that even as late as November that is the understanding, and even more poignant, the preceding engagement letter is dated August 15, 1994, signed November 4, 1994. What we are talking about?
THE COURT: It says the same thing.
MR. FREDERICK: Exactly. Exactly. It's confirmation. The problem I have with this notion of the discovery, Your Honor, is this, the -- I've been sitting here trying to think what on earth is it that is going to be gained by this discovery other than I've got a client who is extremely upset by this, Mr.

Tucker, who is going to be subjected to I presume significant hours of deposition because the documents that relate to this and we have shared them with Mr. Proctor. The Court knows there's a cordial relationship between myself and Mr. Proctor.

THE COURT: Yes.

MR. FREDERICK: We have shared the documents but there are ten or twelve banker boxes of documents, work papers and the like.

THE COURT: If I did, I wouldn't let him go into all that just yet.

MR. FREDERICK: Your Honor, Mr. Proctor talks about and keeps pounding about this intimate nexus. I say for purposes of this motion assume everything they say is so, they would ask him for information, they would give it, they would ask him for information, they would get it, then take this with their allegations that at a time they set forth in their complaint the company turned off the information spicket, the company decided no information --

THE COURT: Yeah, I got it.

MR. FREDERICK: -- Springer --

THE COURT: I understand.

MR. FREDERICK: -- and at that point what is it they're going to learn? And it is not Ellin and Tucker's intent, it's the intent of Farm Fresh, and we have got this engagement letter that is executed in November of 1995 that confirms their understanding for the entire period.

I mean, if anything, I think the argument that Mr. Proctor just made to Your Honor amplifies the position taken by Ellin and Tucker. I know the Court's hesitancy but I also think that weighed in this discovery issue is they didn't come to you, Your Honor, when this motion was filed and say, we can't fairly defend a motion without some discovery. This is something that is referenced in one of Mr. Proctor's papers but he doesn't say please don't decide the motion in accord with rule, let me have discovery. It is said now when I think it's pretty clear where --

THE COURT: I'm just trying to figure out what could be --

MR. FREDERICK: -- there's no course of conduct.

THE COURT: See, I already believe that just because --

MR. FREDERICK: Your Honor, if I can, and I apologize for interrupting, but it's a thought that I think is important. That letter, the '95 letter that is signed in November of '95, what we know is in November of '95, everything had hit the crapper and it was all gone, and what we know with the signing of that letter by Farm Fresh in November of '95 is there had been no conduct that altered the intention of the parties because they confirmed and affirm the retention intended to benefit management by executing that document in November of 1995. That is what we know and that's what's before the Court.

THE COURT: You could argue they wanted to keep them in the fold.

MR. PROCTOR: Want to get the fees paid is what it was, Your Honor. Mr. Tucker wanted to get his fees paid, wanted that agreement confirmed because he knows they were headed down the tubes.

THE COURT: Well, so what?

MR. RANCK: But, Your Honor, if you

look at the prior --

THE COURT: I think he's talking about the guy from Farm Fresh signed it.

MR. FREDERICK: Exactly.

THE COURT: Not that Tucker sent it.

MR. RANCK: Mr. Proctor's argument is he would like discovery to see if there is a course of conduct which altered or changed maybe the contractual obligations, but if you look at the two letters, the two engagement letters together, we have a period spanning from August of '94 when the first one is sent by Ellin and Tucker to Farm Fresh that is signed in November, and then we have, we have from September '95 to November '95. So from August of '94 until November '95, the parties intention is reflected in the documents, because they are confirming their prior understanding, and if there was some change to that, it would be in the documents.

So not only do we have the September engagement letter but now we have up until the time everything does hit the crapper the confirmation that there's no specific intent to benefit anyone else.

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MR. PROCTOR: Now, Mr. Frederick complains that I didn't request earlier for discovery. Well, when they requested special assignment of this case, Your Honor, they wrote to Judge Turnbull and said -- one of the reasons they gave was that the claims raised in this case concern complicated and technical issues pertaining to accounting practice and standards. There is little doubt that this case is going to be extraordinarily complex and that discovery will be quite extensive.

THE COURT: Well, that's --

MR. PROCTOR: That was October 11th.

THE COURT: -- how you get --

MR. FREDERICK: On the issue of breach of duty we are going -- if we get that far, we are going to need to have an expert.

THE COURT: I mean, he's right, unless it ends now it's going to go on until I retire.

MR. PROCTOR: God forbid.

THE COURT: Now, you are telling me Tucker and Street Baldwin -- there is a grand old Baltimore County name.

MR. PROCTOR: Yes, Street Baldwin.

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That's a Harford County name through and through of course.

THE COURT: That's true. There is a Street Maryland, Baldwin.

MR. PROCTOR: Yes.

MR. RANCK: There is also a Jim Street who was at one time with Farm Fresh.

THE COURT: His grandfather or great grandfather was a big politico in Baltimore County.

MR. PROCTOR: Let me get my head back on straight here, Your Honor.

THE COURT: We were talking about who you wanted to depose. Now, you argue to me -- let me make sure we are on the same wavelength because I believe that the agreements as they stand don't convey benefit to B. Green, and, I mean, I'm willing to let you go down to the Court of Special Appeals on that, but, as I said earlier, I don't want them to say, oh, Judge, I think you should have let them take some discovery.

MR. PROCTOR: I want to take some discovery, is what I want to do.

THE COURT: I know. So it goes down there and comes back, then it goes back down again.

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MR. PROCTOR: Right.

THE COURT: I only want it to go there once. If I'm wrong, they can send it back and we will try the case, at least some of it.

MR. PROCTOR: As I said --

THE COURT: Now, so anyway, as I understand it, you're trying to prove, because I'm telling you I don't believe when it all started there was any duty, okay, I'm telling you that right now, when I look at this, so you're going to try to prove that over time because of the conduct of the parties, a duty arose and I'm asking you how you intend to do that.

MR. PROCTOR: And --

THE COURT: You are going to take --

MR. PROCTOR: -- over a period --

THE COURT: -- depositions, you are not going to get anywhere. You are going to take Street Baldwin's deposition, you are not going to get anywhere.

MR. PROCTOR: I'm going to take the deposition of representatives of Farm Fresh.

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THE COURT: Who for instance?

MR. PROCTOR: Well --

THE COURT: Has to be somebody in authority.

MR. PROCTOR: Yes.

THE COURT: I don't want the produce man, first of all.

MR. PROCTOR: Probably have trouble finding him now.

THE COURT: Whatever happened to these stores?

MR. PROCTOR: They were purchased by Rich Food in bankruptcy at bargain basement price because the company had been trashed by that point. We never had the opportunity to salvage the situation.

THE COURT: Now, you are using this suit as an opportunity to do that --

MR. PROCTOR: If they owed us a duty --

THE COURT: -- he said with a grin.

MR. PROCTOR: -- and they blew it, they ought to pay for it. That's the bottom line.

THE COURT: You would take Millman's deposition. Going to get nowhere with him of course. Who else?

MR. PROCTOR: Well, William Carter who I believe is one of his sons-in-law. He's the signatory --

THE COURT: He signed those agreements?

MR. PROCTOR: -- of these agreements, yes. That's correct. And there is a -- was -- there were a couple of -- well, as actually Mr. Ranck pointed out, one of the agreements was signed by Jim Street who was controller at that time of Farm Fresh.

THE COURT: Okay. Now, let me ask this, because I'm still thinking about it, what is it that you will ask them? In a light most favorable to you what would an answer to your questions be from one of the above that would say to you, Judge, see, until --

MR. PROCTOR: I guess -- can I --

THE COURT: Give me a great answer.

MR. PROCTOR: -- outline my own favorite testimony? Well, you know, beginning, Ellin and Tucker says this relationship began in 1990. Yeah, we had those agreements but we regularly communicated with the shareholders. We knew they relied on us, we knew --

THE COURT: You know that's not going to happen.

MR. PROCTOR: Well, you asked me to give --

THE COURT: I did ask you the question.

MR. PROCTOR: You gave me the opening.

THE COURT: Let me rephrase it. Something that you can reasonably expect to get.

MR. PROCTOR: Out of Tucker?

THE COURT: Out of anybody.

MR. PROCTOR: Well, I'll take the Farm Fresh people, that the financial information of the company was for the benefit of the shareholders, for example, and let me throw in a couple of other facts here, too, that are --

THE COURT: Okay.

MR. PROCTOR: -- that are set forth in that Baltimore City lawsuit and we carefully -- are careful in our allegations in this suit not to contradict any of that I don't believe. But there was a time in 19 -- I am not sure I have the precise date, it may have been early 1993 when Benjamin Green and the chief financial officer of B. Green and Company, his name is

Jessie Schwartz, were actaully appointed as officers of Farm Fresh.

THE COURT: Okay.

MR. PROCTOR: Millman, quote, retired. You recall the allegations that in spite of that Millman tried to continue to run the company. During that period of time the communications were directly at all times with the B. Green representative.

THE COURT: The relationship was completely different.

MR. PROCTOR: Well, yes, but that relationship continued we would suggest in art --

THE COURT: The relationship changed. It seems to me that B. Green could wear two hats. He could wear a shareholder and director hat and he reports to him as a director but not as a shareholder.

MR. PROCTOR: Well, it's -- you know, the -- you know, what testimony do I want? I want that there was a continuing relationship. It began in 1990. The relationship and the nexus between B. Green and Ellin and Tucker began then. It continued. They -- that Ellin

and Tucker knew, had reason to know that the B. Green shareholders relied upon the information supplied by Tucker, relied upon the fact that Tucker would make relevant information available to them.

THE COURT: People rely on Mr. Kaufman because they like Joe DeMagio, it didn't great any duty.

MR. PROCTOR: Well, it's almost in creating duties as those cases discuss --

THE COURT: Actually one of those football players got sued for hawking a product and the product wasn't any good, but they didn't win --

MR. PROCTOR: So --

THE COURT: -- because it was unreasonable. No, I think it was because -- I forget now.

MR. FREDERICK: Claimed he used it and he actually didn't and it just scared the endorsement entry to fair thee well.

THE COURT: Was it Johnny Unitas?

MR. FREDERICK: I don't think it was a local one.

THE CLERK: Nauman.

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THE COURT: I forget. Panty hose ripped.
THE CLERK: Joe Nameth.
MR. PROCTOR: That would have been Joe Nameth. But explore the facts and circumstances surrounding the relationship, Your Honor. I know what my client has told me and but --
THE COURT: Your client is going to say that they relied on what, on what Ellin and Tucker reported to the company.
MR. PROCTOR: And expected Ellin and Tucker to keep them apprized of anything that was material such as --
THE COURT: That's unreal. They're going to say, Judge, they can expect all they want, it doesn't create a duty. See, that's why I --
MR. PROCTOR: I disagree.
THE COURT: -- I keep coming back to that.
MR. PROCTOR: But, Your Honor, I -- again let me try to emphasize that --
THE COURT: If I over -- let me ask Mr. Frederick this. Is it your position either the

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duty was there or it wasn't and in your view it wasn't and no matter what they discover, it ain't going to change that fact?
MR. FREDERICK: Particularly in light of the confirmation of who was intended to benefit from the services in November of 1995, the last agreement. Nothing changed it and it doesn't matter what they ask.
THE COURT: Let me think about it.
MR. PROCTOR: Well, let me --
MR. FREDERICK: Your Honor --
THE COURT: Yeah.
MR. FREDERICK: -- at a minimum, Your Honor --
THE COURT: I'll give you the last word.
MR. PROCTOR: Thank you.
MR. FREDERICK: I would ask the Court, and I ask this as ernestly as I can, for Mr. Tucker for whom I have a great deal of empathy, if this Court is inclined to allow limited discovery, I would urge this Court to first grant our motion as to the count based on deceit. I don't want to beat a dead horse. The Court knows I'm opposed to discovery and

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knows why but at a minimum if the Court is going to do that, this is really taking a significant toll on Mr. Tucker and in his personal life. I don't believe there is any merit basis for, for all the reasons I have said.
THE COURT: That's the deceit count?
MR. PROCTOR: But we do argue, Your Honor, that we certainly don't concede that our deceit count is anything less than fully and well pleaded. My final comment, Your Honor --
THE COURT: Let's get the deceit --
MR. FREDERICK: We had him locked in, Judge.
MR. PROCTOR: I can make the point, Your Honor -- it's page 31, Your Honor.
THE COURT: Thank you.
MR. FREDERICK: Fiduciary duty which is punitive is the one count, 4 at 29, and then the fraud count with punitive follows.
THE COURT: Say it again.
MR. FREDERICK: Page 29, Your Honor, is the breach of fiduciary duty count which has the punitive allegation and then on page 31, the deceit count which also has the punitive

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allegation.
THE COURT: Well, let's look, let's take a quick look at this count for a minute. You say that they had a duty to make full disclosure to B. Green and Benjamin L. Green as B. Green's representative on the Board of Directors. You know, they did do -- they did that. They reported to management. Now, you know, what management does with it is something else again, but I don't believe anywhere in the world there is a duty for them to report individually to each member of the Board of Directors. I think that is frivolous.
MR. PROCTOR: Well, it depends on what needs to be reported, Your Honor. If indeed in accordance with our allegations Mr. Tucker had knowledge of the check kiting fraud in early August of 1995, setting aside what, you know what would have happened once it was discovered or anything else, that is significant information that he as an accountant had a duty, I respectfully suggest, to disclose to the shareholders and to the members of the Board of Directors.
I used that allegation about Mr. Green

simply to emphasize that Mr. Green's presence on the Board of Directors is directly related to and proportional to B. Green's interest as a shareholder in the company. This is a closely held company.

THE COURT: But I don't think I as the Judge can let myself be dragged down that road. I mean, he did have a duty to Green as a director. I don't think anybody argues with that.

MR. PROCTOR: And as a shareholder as well --

THE COURT: There's a big argument about that.

MR. PROCTOR: I believe. When we are dealing with, when we are dealing with --

THE COURT: And as a creditor he doesn't owe him any duty, as creditor, doesn't owe him any duty as a guarantor.

MR. PROCTOR: If Mr. Tucker -- if there were a duty owing as a shareholder or as a member of the Board and he is aware --

THE COURT: You think there was one as a member of the Board?

MR. PROCTOR: -- and he's aware that

they hold the capacity as creditor and or guarantor, I suggest --

THE COURT: You are just making this up as you go along here. You know, how are you going to back that up? With what authority?

MR. PROCTOR: Well, I don't have it at my fingertips, Your Honor, but I believe that there is authority out there on this point. But be that as it may --

THE COURT: That's incredible to me, that an accountant for a company owes duties to the creditors.

MR. PROCTOR: Ultramares -- rather, the Credit Alliance case I alluded to involved creditors of the company --

THE COURT: I didn't read that one.

MR. PROCTOR: -- and the New York Court held there was a duty flowing to the creditors from the accountants.

THE COURT: I don't know that case.

MR. FREDERICK: Your Honor, that is the quote I asked the Court to look at on page ten which says they got to be an intended third party beneficiary under the circumstance.

THE COURT: Always come back to that

issue.

MR. FREDERICK: Exactly. That's where it starts and ends.

MR. PROCTOR: Actually in the case of fraud, Your Honor, under Ultramares -- case is still recognized today -- the --

THE COURT: It changed.

MR. PROCTOR: -- the intimacy of the nexus changes and becomes much looser. It expands.

THE COURT: Mr. Frederick conceded that earlier. Well, I'm going to permit a limited discovery. Tucker Baldwin, Millman, Carter and Street. You can ask him about the relationship. Frankly, I have grave doubts whether you can create a doubt by asking all these questions but I'm taking the safer road, I confess it. And of course you can ask him about count four and five. The him in that sentence being Tucker.

MR. PROCTOR: Yes.

THE COURT: I want this on a short leash. Okay, you can take care of Tucker and Baldwin quickly, it seems to me. You call Mr. Graham up, see if he'll produce Millman before

sentencing. If he won't, he won't, but I want to hear back from you about that. Does this have a scheduling order in it yet?

MR. PROCTOR: No, sir.

THE COURT: I'm going to, since you fellows -- I'm not going to put a deadline on it but I expect it to be done quickly. I don't think either one of you disagree with that.

MR. PROCTOR: No. I mean, my client just as soon -- no.

MR. FREDERICK: Sooner than later. My client doesn't want to drag this out unnecessarily.

THE COURT: I think Mr. Frederick's right about the expense, because it could be a very, very expensive case.

MR. PROCTOR: We all know that.

THE COURT: Okay.

MR. FREDERICK: Your Honor, the discovery is to be limited?

THE COURT: To those five.

MR. FREDERICK: We are not getting into breaches and duties and any of those things, just as to whether or not there is a relationship?

THE COURT: Understanding that if he succeeds he's going to get to do them again.
MR. FREDERICK: Absolutely. Without prejudice to whatever happens thereafter.
THE COURT: Right.
MR. PROCTOR: Obviously that assumes that if I don't go into those areas, you are not going to be arguing them later --
MR. FREDERICK: Of course not.
MR. PROCTOR: -- through the course of discovery?
THE COURT: Either they are right as a matter of law or they're not is the way I see this.
MR. FREDERICK: I just don't want anybody to feel compelled to go through twelve boxes of work papers and say why did you put a particular mark on there and --
THE COURT: He's not going to do that.
MR. PROCTOR: I don't do that anyway.
MR. FREDERICK: Yeah, but he's got people working with him, Judge.
MR. PROCTOR: There are only about six boxes.
THE COURT: He doesn't have that Miles

and Stockbridge back-up anymore.
MR. PROCTOR: That's right. All that silly stuff.
THE COURT: Can't beckon all those associates like you can, not that you have.
Now, listen, you know, the pleadings are a pleasure to read. Grammatically correct. They are not repetitious. Makes my life easier and Ms. Hamil's life.
(Proceedings concluded)

REPORTER'S CERTIFICATE

I, Rita M. E. Taggart, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that I recorded stenographically the proceedings in the matter of B. Green and Company, Inc. V. Ellin and Tucker, et al on December 17, 1999.

I further certify that the aforegoing pages constitute the official transcript of proceedings as transcribed by me to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have hereunto subscribed my name this 25th day of January, 2000.

Rita M. E. Taggart
Official Court Reporter

DATE: January 25, 2000

BILL TO: K. Donald Proctor, Esquire

PAYEE: Rita Taggart
Official Court Reporter
401 Bosley Ave., M-08
Towson, Md. 21204

RE: Furnishing transcript of proceedings in the matter of B. Green v. Ellin and Tucker

Case No(s). 03c99008553

Presiding Judge(s): J. Norris Byrnes

Date of Proceedings: December 17, 1999

TOTAL CHARGE: $ 640.50

Rita Taggart
Official Court Reporter

(SHEET SE 2-G)

E39,000

E40,500

ALT 2 0

BL

BR

OLD

BR-IM

BL

NORTH

ANNADALE

AVE.

97-290-A

ANNADALE

72 BASE

D.R. 5.5

PIERS

PIERS

PIERS

SUBJECT SITE

PIER

TABASCO COVE

ERS

WALL

WALL

WALL

PIERS

D.R. 5.5

PIER

GROVE

BM

OLD BATTLE GROVE

98-251-A

BL

BATTLE

SE 3-G

BL

Copies of bills in XV662 file

POINT BLV

LIMIT OF DISTURBANCE

SILT FENCE

RD.

10' Driveway

SCE

Ex House #3827

EVNS OF WATER 58,750

58,750 W

Air Pollution Regu[illegible] for Controlling Excessive ABP (dust) on Activity of[illegible] which includes a copy of COMAR 10.18.06.03. I will contact the Bureau of Air Quality, Field Services Section (887-3775) at least three days prior to beginning work.

Patricia K Earnsberger
Joseph R Earnsberger Sr.

Signature of Owner/Developer | Title | Date

Print Name Joseph R Earnsberger Sr Patricia K Earnsberger

Total Distrubed Area = 19,800 S.F.± = .45 Ac.±

REVISIONS			
Date	Description	BY.	Designed By W.T.P.
			Drawned By K.P.
			Checked By SHO

OWNER/DEVELOPER

ROBERT LONG

3827 ANNADALE ROAD

BALTIMORE, MARYLAND 21222

388-1974

BPS/land technology inc.

Engineers & Surveyors

P.O. BOX 5614

Baltimore, Maryland

301-435-0800 21210

SEDIMENT CONTROL PLAN FOR LOTS 10 THRU. 15 ONLY

ANNADALE

LOTS 12 THRU 15

&

LOTS 31 THRU 36

ELECTION DISTRICT 15

SCALE: 1"=50'

RECEIVED

SEP 16 1991

DIVISION OF ENVIRONMENTAL MANAGEMENT

DATE: 5/17/91

...cing, grading, construc-
...e pursuant to this plan
...involved in this
...rtificate of Attendance
...s approved training
...: and erosion before
...certify that the site
...h working day, and that
...laced so as to insure
...are left in opera-
...he right of entry for
...Baltimore County Soil
...ervisors or their

Patricia K Earnsberger

...itle Date

Patricia K Earnsberger

Pet. # 1

BEAR CREEK

N

S03°31'59"W 103.03'

IPS 5' ⊕

IPS 7' ⊕

S02°45'44"W 103.09'

LOT 32

LOT 31

IPS

N14°49'22"E 100.00'

.01

.01

1.55

100.00'

110.00'

110.00'

S87°14'16"E 68.40'

TACK IN DRIVE

7.67'

15.12'

IPS

IPS

20'

ANNADALE ROAD

THIS DOES ▮▮▮ CONSTITUTE A PROPERTY LINE SURVEY.
THIS WILL CERTIFY THAT I HAVE LOCATED THE IMPROVEMENTS
ON THE ABOVE PROPERTY AS INDICATED.

STATE OF MARYLAND — THOMAS EDWARD PHELPS — No. 374 REGISTERED PROPERTY LINE SURVEYOR

THOMAS E. PHELPS AND ASSOCIATES, INC.
REGISTERED PROPERTY LINE SURVEYORS
945 BARRON AVENUE
BALTIMORE, MARYLAND 21221
OFFICE: (301) 574-6744

BOUNDARY SURVEY

LONG PROPERTY
3827 ANNADALE RD.
BALTIMORE COUNTY MD.

Plat Book 8 Folio 34

Scale 1"=20' Date 9-4-98

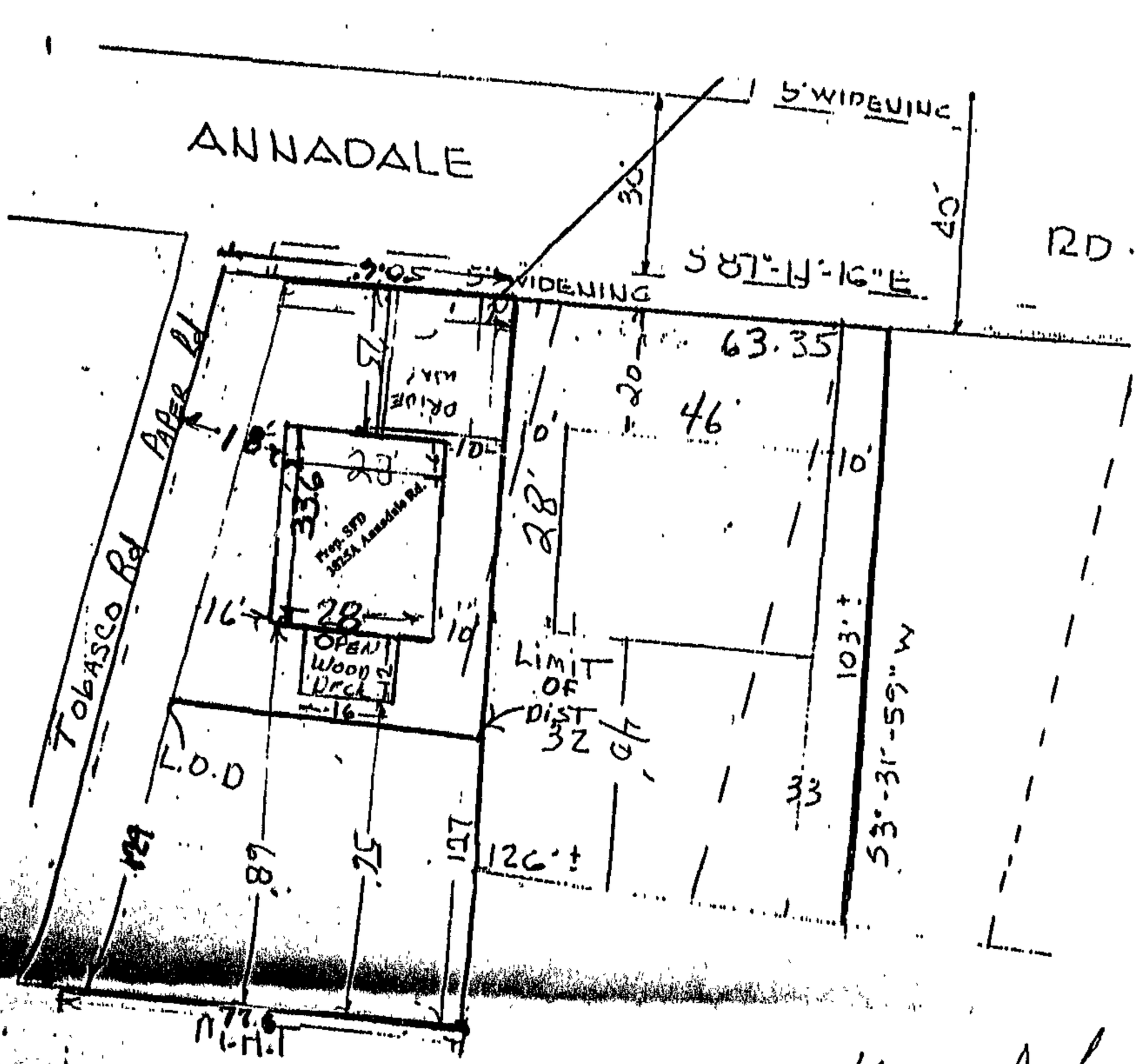
151344

Critical Area Notes
There shall be no cleaning, grading or disturbance of the 100 foot buffer, other than mowing, except as permitted by the Department of Environmental Protection and Residential Management (DEPRM)and the entire poperty is within the 100 foot buffer

Owners: Robert Long
3827 Annadale Rd.
Balto., MD 21222
(410) 388-1974

Critical Area Notes
Lot is 6,480 sq. ft.
The sum of all man-made impervious areas shall shall not exceed 25% of the lot.
Maximum impervious surface is 1,620sq. ft at 25%
Proposed impervious surface is 1,452sq. ft.
House is 952sq. ft. , Driveway is 500 sq. ft.
Location is in L.D.A.
Rooftop runoff from the dwelling shall be directed through downspouts and across the lawn

Zoning History Case #98-251-A
Granted March 13, 1998
43 feet in lieu of 55 feet
and 10 feet in lieu of 25 feet
Front lot width is 43 feet



LOTS 31-32 PART OF LOT 33
ANNADALE
PLAT BOOK 8-34
5TH, DISTRICT BALTIMORE CO, MARYLAND
SCALE 1"=30'
DATE 6-29-91

Frank S. Lee

FRANK S. LEE
1277 NICHOLSON AVE.

BALTIMORE, MD.

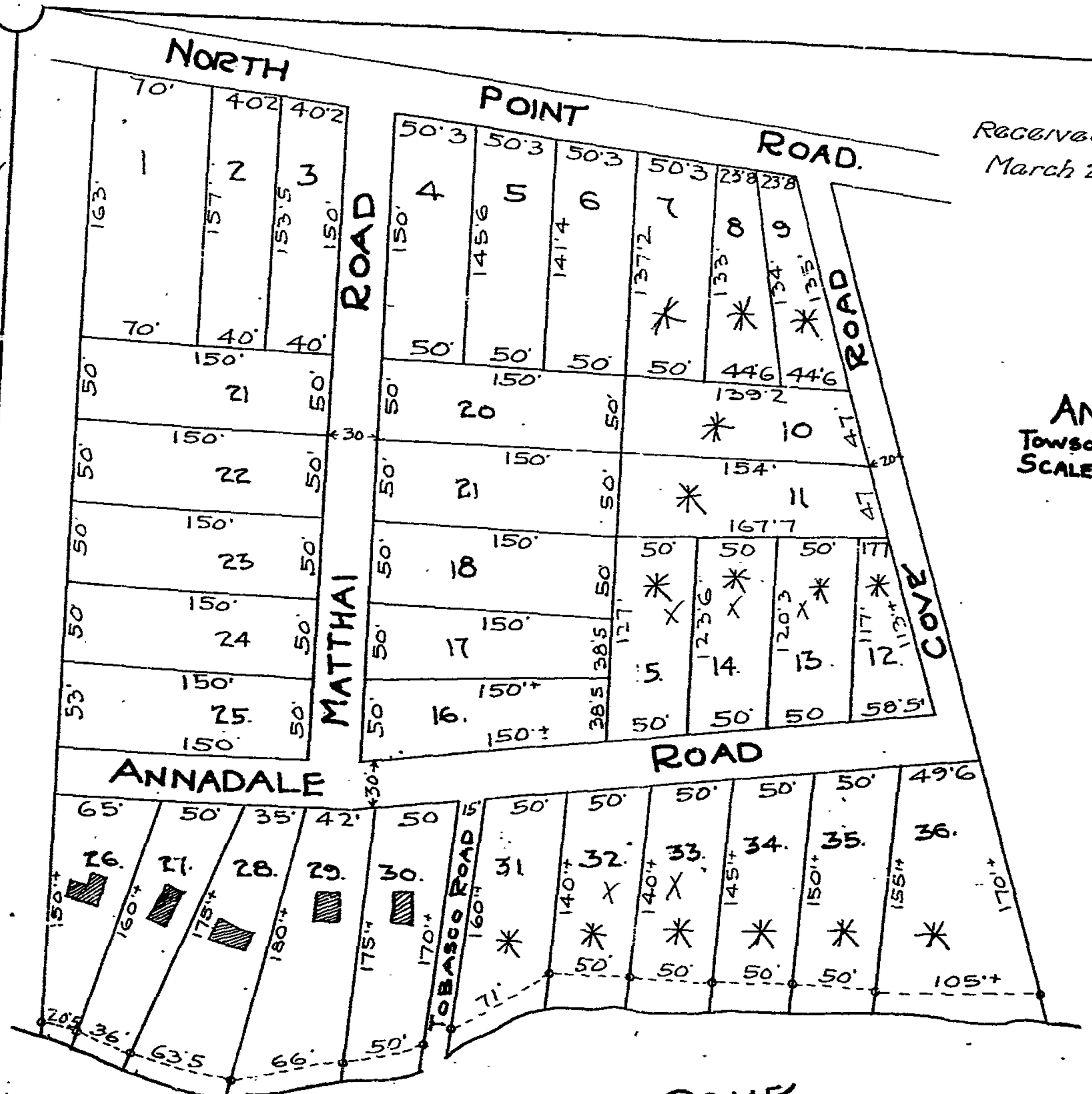
, Lots = 299.6 Front Footage

(1)

Received for Record
March 23, 1926 - 10³⁹ AM.

PLAT OF ANNA DALE

Towson, Md. Ap. 1 1925
SCALE: 1 INCH: 60 FEET
Benjamin O Brown
SURVEYOR.





OPT. FIREPLACE

RECEIVED
JAN 15 1998
OFFICE OF PLANNING

03-C99-6263

In the Matter of
Robert Long et ux

Neil Wadleigh
Wendy Jerauld

3825A Annadale Rd Dundalk
Woodall West Williams

In case 98-251-A

① 43' instead of 55' Granted
② Side yd setback 10' in lieu of 25' Granted
③ Pursuant to 304 = undersized lot Denied

In 87 Long purchased
15 Wks Wed 34 Thru 36
Route X662 - reconfigured 31 - Thru 36
~~30 296~~ 294

- Long took Lot ~~5~~ 31 a gain 7' to Lt 32
32 got part of 33
33 Thru 36 reconfigured

Density → if it or variance then could have built because waterside = 71'

Unclear
198/197
Ward
102/691

DPRM can't build within 100' of water.
" placed some restrictions

Long misrepresented footage along
Annadale Rd say 20' instead of 45'

Bd says 3 things make it uniquely
Shape Size - Slope
by it big deal

Long always
this by adding 7'
to Lot 32

reduced by
MR Long

3825A Annapolis Rd
Robert Long et ux

① Zoning Variance
② Critical Area Variance — case CBA-95-125
↳ COMAR 27.01.11
5 Criteria

① Special conditions peculiar to the land & literal enforcement of regs would result in unwarranted hardship.
Finding because of the "configuration" of the LA, dwelling must be built at least most N of the 100' buffer.
= hardship.

②
literal enforcement would deprive applicant of rts commonly enjoyed by other similar properties

③ Granting will in confer on the applicant a special privilege ~~in~~ enjoyed by others.
= Granting in this case = ~~in~~ sp privilege

④ variance ~~in~~ based upon ~~&~~ conditions or circumstances caused by applicant

⑤ - ~~in~~ adverse effect on water fish or wildlife etc.
satisfied by preserving trees

Condition - ~~in~~ closer than 25'
to mean H tide

In 1987 he when
he subdivided, he could
have built on the lot

93 DPRM = change does
could not bind in Dec 100' of water

Zervas says when house is built
it will be is such a
place on lot that width
of lot 55'

Mo to Dismiss - Woodell did
not identify himself called
himself "Concerned Citizens of
Annadale"

woodell was a party
Signed appeal then
perfected appeal on DCPRM

- Next W. says if there is
a remand, remand both,

Zoning - case 98-251-A
relief to Sec 1B02.3.C.1 of the
BCZR

Lot width of 43' in lieu of 55'
> side yard setback of 10' in lieu of 25'

Zoning to Property = Unique resulting
in hardship, practical difficulty
if denied.

Thomas E. Phelps

Woodell Lot 50'
Romeo Lot 52'
Chestnut Lot 35'

County #1

5986/1

CHESAPEAKE BAY CRITICAL AREA COMMISSION
45 CALVERT STREET, 2ND FLOOR
ANNAPOLIS, MD 21401

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: Balto. Co. Date: 7/14/97

Name of Project (site name, subdivision name, or other): Robert Long Property

Local case number: 97-16

Project location/Address: 3825 "A" Annabale Pl, Balt 21222

Tax map# 104 Block# 2 Lot# 31 Parcel# 271

Type of application: (Select all applicable)

- ☐ SUBDIVISION
- ☐ SITE PLAN
- ☑ VARIANCE:
  Buffer ✓ Slope__
  Imp.Surf.__ Other__
- ☐ SPECIAL EXCEPTION
- ☐ CONDITIONAL USE
- ☐ REZONING
- ☐ GRADING PERMIT
- ☐ BLDG PERMIT
- ☐ INTRAFAMILY
- ☐ GROWTH ALLOCATION
- ☐ OTHERS _____

Type of Project: (Select all applicable)

- ☑ RESIDENTIAL
- ☐ COMMERCIAL
- ☐ WATER DEPENDENT FACILITY/PIER/MARINA
- ☐ INDUSTRIAL
- ☐ MIXED USE
- ☐ REDEVELOPMENT
- ☐ SHORE EROSION PROTEC.
- ☐ AGRICULTURE
- ☐ OTHERS _____
  e.g. PUD

Current Use: (Select all applicable)

- ☐ COMMERCIAL
- ☑ RESIDENTIAL
- ☐ AGRICULTURE
- ☐ FOREST/BUFFER/WOODLAND
- ☐ INDUSTRIAL
- ☐ INSTITUTIONAL
- ☐ OPEN SPACE/RECRE.
- ☐ SURFACE MINING
- ☐ VACANT
- ☐ WATER DEPENDENT FACILITY/PIER/MARINA
- ☐ OTHERS _____

Describe Proposed use of project site: Construct a SFD within the 100' buffer to Piney Creek

SITE INVENTORY OF AREA ONLY IN THE CRITICAL AREA

TOTAL ACRES IN CRITICAL AREA: 0.16

IDA ACRES		AREA DISTURBED:	
LDA ACRES	0.16	# LOTS CREATED:	
RCA ACRES		# DWELLING UNITS:	
AGRICULTURAL LAND:			

EXISTING FOREST/WOODLAND/TREES: 1 FOREST/WOODLAND/TREES REMOVED: 0

FOREST/WOODLAND/TREES CREATED: 15% of lot

EXISTING IMPERVIOUS SURFACE: 0% PROPOSED IMPERVIOUS SURFACE: 25% max.

TOTAL IMPERVIOUS SURFACE:_____

GROWTH ALLOCATION DEDUCTED:_____

RCA to LDA:_____ RCA to IDA:_____ LDA to IDA:_____

Local Jurisdiction Contact person: Keith Kelley
Telephone number: 410-887-3730
Response from Commission required by: ASAP Hearing Date: —

1176

ADMINISTRATIVE VARIANCE APPLICATION - CHESAPEAKE BAY CRITICAL AREA REGULATIONS

Part A. Applicant/Property Owner Information.

Property Address 3825 A Annadale Road Subdivision Annadale Plat

Applicant(s) Robert & Rose Long Phone No. (410) 388-1974

Mailing Address 3827 Annadale Road

City Baltimore State MD Zip Code 21222

Property Owner(s) Robert & Rose Long Phone No. (410) 388-1974

Mailing Address 3827 Annadale Road

City Baltimore State MD Zip Code 21222

Part B. Property and Critical Area Information.

non-BMA

(NOTE: LEAVE BLANK. THIS BLOCK WILL BE FILLED IN BY DEPRM PERSONNEL)

Permit/SC No. _____ to construct a SFD within the 100' buffer to Bear Creek

CA Designation(s): ___ IDA ✓ LDA ___ RCA Acreage/Lot Size 7000 sq ft

Existing Impervious Surfaces 0 square ft. 0 percent of property

Proposed Impervious Surfaces 1750 square ft. 25 percent of property

Water: ___ private ✓ public Sewer: ___ private ✓ public

Waterfront? yes ✓ no ___ Waterbody Bear Creek

Is the proposed activity within the 100 foot buffer? yes ✓ no ___

Is the proposed activity within the limits of Habitat Protection Areas, tidal wetlands, or nontidal wetlands/associated buffers? yes ___ no ✓

If so, list type(s) _____

Is the proposed activity within forest or developed woodland? yes ___ no ✓

Variance Type(s): ___ impervious surface limit variance ✓ other variance

Section(s) of Code from which variance is being requested 26-445

Reviewer Keith Kelley Date 7/14/97

Part C. Project Description.

Briefly describe the proposed project or activity for which a variance is requested.

To construct a new home with in a 100 feet from M.H.T. Mean High Tide
Located in a LDA Lightly developed area

Part D. Alternates to Variance Request.

Briefly describe any alternates to requesting a variance which you considered, and why these alternates are not feasible.

NONE

Part E. Variance Provisions of the Critical Area Criteria (COMAR 27.01.11).

Briefly explain any special conditions or circumstances exist that are peculiar to the land or structure and how a literal enforcement of the provisions of the regulations relative to these conditions or circumstances would result in unwarranted hardship.

This should be granted because exsisting homes in the area are built with in the 100 foot buffer zone. This lot is recorded in a old plat in ~~1934~~ 1924 and would cause undo hardship.

Part E. Continued.

Briefly explain how a literal interpretation of the Critical Area regulations will deprive you (the property owner) of rights commonly enjoyed by other properties in similar areas within the Critical Area.

New homes have been constructed with in 100 foot buffer zone with in the last 3 or 4 years.

Briefly explain how granting of the variance will <u>not</u> confer upon you (the property owner) any special privilege that would be denied by the Critical Area regulations to other lands or structures within the Critical Area.

Because other variance's have been granted in the area with in the same recorded plat.

Briefly explain how the variance request is <u>not</u> based upon conditions or circumstances which are the result of actions by you (the property owner), and how the request does <u>not</u> arise from any condition related to land or building use, either permitted or non-conforming, on any neighboring property.

Part E. Continued.

Briefly describe how granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and how granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. Include any proposed mitigative measures to minimize impacts to these resources.

Will plant extra trees and plant vegatation in the drainage area and create non-tidal wetlands next to the proposed site.

Part F. Additional Information.

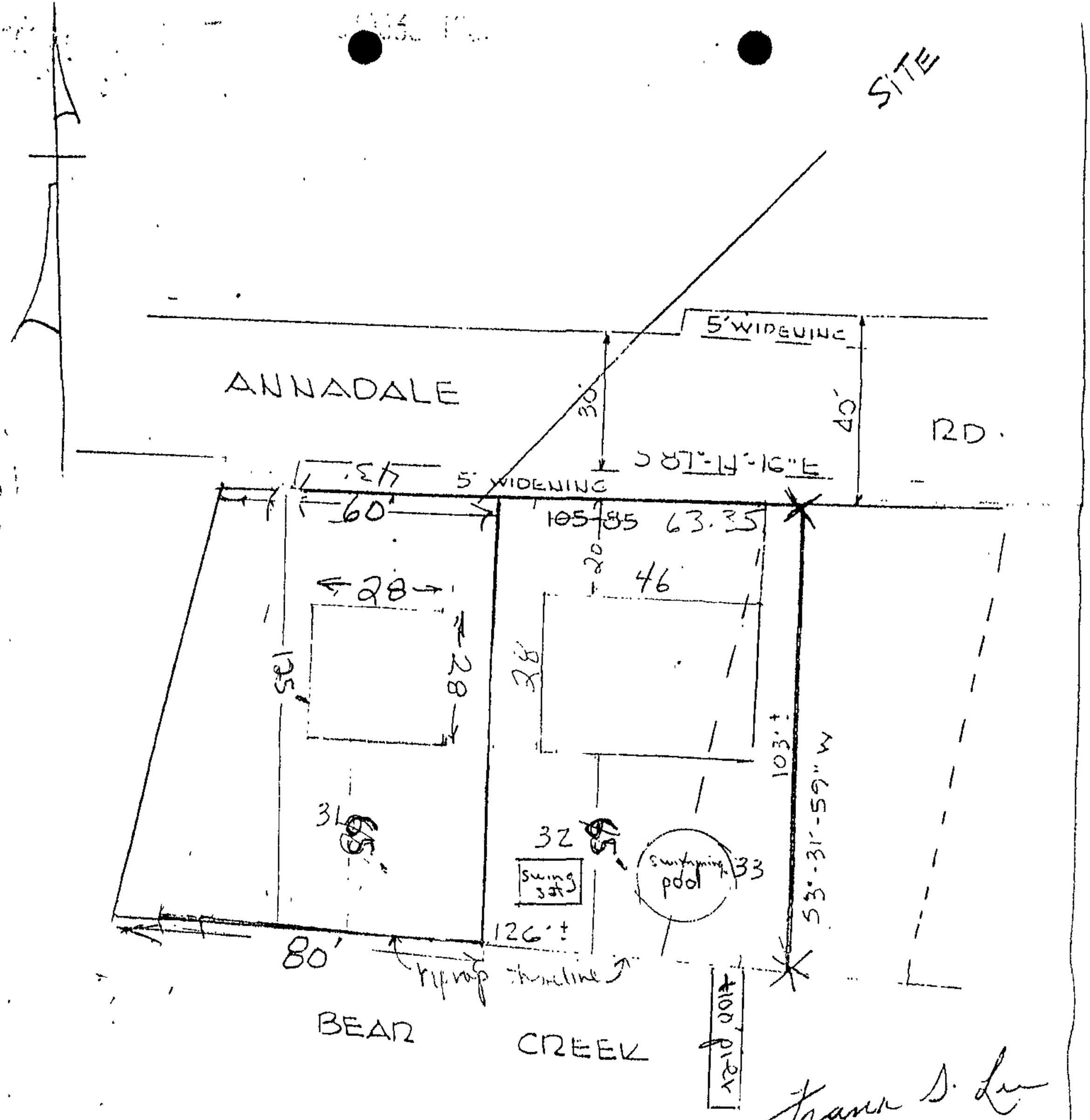
Use this space to provide any other information about the site or project pertinent to this variance request. Attach additional sheets if necessary.

Rose Long 6-18-97
Applicant Signature Date

Robert Long 6-18-97
Property Owner Signature Date

Applicant Signature 6-18-97
Date

Property Owner Signature 6-18-97
Date



LOT 31

ANNADALE

PLAT BOOK 8-34

15TH DISTRICT BALTIMORE CO., MARYLAND

SCALE 1"=30'

DATE 6-29-91

Frank S. Lee

STATE OF MARYLAND
FRANK S. LEE
No. 11
REGISTERED
PROPERTY LINE SURVEYOR

FRANK S. LEE
1277 NEIGHBORS AVE.
BALTIMORE, MD. 21237

Cty #2

Sec. 26-444. Management requirements and building setbacks for critical area resources.

(a) The habitat protection areas, buffers, wetlands, forests, developed woodlands, afforestation areas, reforestation areas, and wildlife corridors, and the floodplains, streams, stream channels, and shorelines contained therein shall be managed to enhance and maximize the unique value of these resources. Management includes specific limitations on alteration of the natural condition of these resources. The following practices and activities are restricted within the boundaries of the critical area resources listed above:

(1) Existing vegetation within the critical area resources shall not be disturbed. This includes, but is not limited to, disturbance by tree removal, shrub removal, clearing, mowing, burning, spraying and grazing;

(2) Soil disturbance shall not take place within the critical area resources by grading, stripping of topsoil, plowing, cultivating or other practices;

(3) Filling or dumping shall not occur within the critical area resources;

(4) Diking, ditching or draining shall not occur within the critical area resources;

(5) Structural shore erosion protection measures shall not be constructed or installed in the critical area resources except as provided pursuant to COMAR 27.01.04 and section 26-457 of the Code, and only as permitted by the department of environmental protection and resource management;

(6) New impervious surfaces shall not be placed within the critical area resources;

(7) Structures of any size shall not be placed within the critical area resources;

(8) Pesticides shall not be stored, used or applied within the critical area resources, except for the spot spraying of noxious weeds consistent with the recommendations of the University of maryland Cooperative Extension Service;

(9) Animals shall not be housed, grazed or otherwise maintained within the critical area resources;

(10) Motorized vehicles shall not be stored or operated within the critical area resources, except for maintenance and emergency use approved by the department of environmental protection and resource management; and

(11) Materials shall not be stored within the critical area resources.

(b) Standards for building setbacks in the critical area shall be as follows:

(1) At a minimum, the primary or principal structure on a parcel or lot shall be set back from the outer edge of the critical area easement or reservation containing areas listed in subsection (a) of this section as follows:

a. Residential dwellings, thirty-five (35) feet.

b. Commercial structures, twenty-five (25) feet.

c. Industrial structures, twenty-five (25) feet.

(2) The setback can include either private or public land or both. Appurtenant or accessory structures including roads and driveways, storm drainage, stormwater management facilities, utilities, recreational facilities, patios, etc., are permitted within the setback area.

(c) The director of the department of environmental protection and resource management may promulgate regulations which are not inconsistent with the provisions of this article and the provisions of title 2, article VIII of this Code, to address issues pertaining to the maintenance and modifications of existing facilities owned and operated by public service companies.

(Code 1978, § 22-208; Bill No. 18, 1990, § 2; Bill No. 8-96, § 4, 3-23-96)

Editor's note—Bill No. 8-96, § 4, adopted March 23, 1996, repealed and reenacted § 26-444. Formerly, such section pertained to procedure for reviewing findings plan and derived from the 1978 Code and Bill No. 18, 1990 (refer to history note).

Sec. 26-445. Scope and applicability of design requirements.

(a) The design standards and requirements set forth in this article are intended to assure that

the preparation and review of proposed development in the critical area is in compliance with the requirements specified in the critical area criteria (COMAR title 27, subtitle 01).

(b) Subject to the provisions of section 26-441, all development shall meet the standards and requirements contained in division 4, article V, of this title as well as the requirements of this article, and shall conform to the policy and intent of this Code.

(c) Notwithstanding section 26-207(a)(4), if a proposed development is exempted under section 26-171 or if a waiver to the hearing officer's hearing is granted pursuant to section 26-172(b), the director of the department of environmental protection and resource management may grant a special variance from the standards and regulations specified in article VIII of this title, in accordance with the regulations adopted by the critical area commission concerning variances as part of a local program development set forth in COMAR 27.01.11, and notification of project applications set forth in COMAR 27.03.01.

Notice of an applicant's variance proposal shall be published once in a paper of general circulation in the county fifteen (15) days prior to variance approval.

(d) In granting a request for a special variance in accordance with section 26-445(c), the director of the department of environmental protection and resource management may require site design and variance approval conditions, including mitigation, to minimize adverse impacts on water quality and fish, wildlife or plant habitat.

(e) Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decisions of the director of the department of environmental protection and resource management made in accordance with section 26-445(c) shall have the right to appeal the decision before the country board of appeals de novo.

(f) The director of the department of environmental protection and resource management may promulgate rules and regulations for the preparation and review of proposed development projects and other activities in the critical area pursuant to section 2-416 through 2-422 of this Code and consistent with the provisions of the critical area law and critical area criteria and in accordance with article 2, title VIII of this Code.
(Code 1978, § 22-209; Bill No. 222, 1992, § 1; Bill No. 120-93, 1993, §§ 1, 2; Bill No. 8-96, § 4, 3-23-96)

Sec. 26-446. Clustering.

Clustering, as defined in section 26-438, is the preferred method for designing residential development in the critical area and shall be used to minimize impervious surfaces and minimize destruction of forest and woodland vegetation unless it is demonstrably unfeasible or inappropriate for the site.
(Code 1978, § 22-210)

Sec. 26-447. Nontidal and tidal wetlands.

Dredging, filling, clearing or constructing shall not be permitted in any nontidal and tidal wetlands, except in accordance with sections 26-448 and sections 26-454 through 26-457 in this Code.
(Code 1978, § 22-211; Bill No. 18, 1990, § 2; Bill No. 8-96, § 4, 3-23-96)

Sec. 26-448. Nontidal wetland protection.

(a) A minimum twenty-five-foot buffer shall be maintained around all nontidal wetlands so that development or other activities will not adversely affect the wetlands or the wildlife contained therein.

(b) The hydrologic regime and water quality of nontidal wetlands shall be protected by minimizing the alterations as to the surface or subsurface flow of water into and from the wetlands, such as by:

(1) Maximizing the infiltration of water throughout the site, rather than concentrating flows into direct discharge points; and

(2) Decentralizing the discharge points if their use cannot be avoided for stormwater management.

(c) Development activities, including redevelopment activities, structures, parking areas and other impervious surfaces, mining and related facilities and septic systems, shall not be permitted in nontidal wetlands or nontidal wetland buffers.

Cty #3

§8-1810. Programs adopted by Commission.

(a) *When Commission to adopt program.*—If a local jurisdiction fails to notify the Commission that the local jurisdiction will develop a program, fails to submit a proposed program or changed proposal on time, or fails to obtain Commission approval of a proposed program or changed proposal that is submitted, the Commission shall prepare and adopt a program that satisfies the criteria adopted under §8-1808 of this subtitle for the part of the Chesapeake Bay Critical Area in that local jurisdiction.

(b) *Public hearing; Commission program to supercede local law.*—Where a local jurisdiction fails to adopt or obtain Commission approval of a program, the Commission shall adopt a program for that jurisdiction by adopting regulations in accordance with Title 2, Subtitle 5 (Joint Committee on Administrative, Executive, and Legislative Review) and Title 10, Subtitle 1 (Administrative Procedure Act) of the State Government Article. Before the full Commission adopts a program under this subsection, the Commission shall appoint a panel of 3 of the Commission's members to conduct in the affected jurisdiction at least 2 public hearings at least 10 days apart on the proposed program, for which 2 weeks notice shall be published in a newspaper of general circulation in the local jurisdiction. A program adopted by the Commission under this subsection shall supersede any inconsistent local laws, ordinances, or plans.

(c) *Local jurisdictions to enforce.*—If the Commission adopts a program for a local jurisdiction, the program shall be implemented and enforced by local authorities in the same manner as if the program had been adopted by the local jurisdiction itself.

(d) *Local program to supersede Commission program.*—If, at any time after the Commission has adopted a program for a local jurisdiction, the local jurisdiction submits an alternative program of its own that satisfies the criteria adopted under §8-1808 of this subtitle and is approved by the Commission, the alternative program supersedes the program adopted by the Commission.

§8-1811. Project approval.

(a) *Project consistent with program.*—From the effective date of a program approved or adopted by the Commission, a project approval that involves land located in the Chesapeake Bay Critical Area may not be granted unless the project approval is consistent and complies with the program.

(b) *Projects requiring notice to Commission.* — (1) The Commission shall adopt regulations identifying those classes of applications for project approval of which the Commission wishes to receive notice.

(2) From the date designated by the Commission in approving or adopting a program, an applicant for project approval or the local agency authorized to grant project approval on an application in any of the identified classes shall send to the Commission in accordance with the regulations and any other instructions of the Commission, a copy of every pending or new application for approval that is in any of the identified classes. Before the close of the next business day after receipt of a copy of an application from the applicant or the local approving authority, the Commission shall send written notice of receipt to the applicant and to the local approving authority. A failure of the Commission to send a timely notice shall render paragraph (3) of this subsection inapplicable as to that application.

(3) The local approving authority may not process an application of which a copy must be sent to the Commission until the local approving authority has received notice of receipt from the Commission, and any action of the local approving authority in violation of this paragraph shall be void.

§8-1812. Commission chairman; authority regarding judicial proceedings.

(a) *In general.* — After the Commission has approved or adopted a program, the chairman of the Commission has standing and the right an authority to initiate or intervene in any administrative, judicial, or other original proceeding or appeal in this State concerning a project approval in the Chesapeake Bay Critical Area. The chairman may exercise this intervention authority without first obtaining approval from the Commission, but the chairman shall send prompt written notice of any intervention or initiation of action under this section to each member of the Commission. The chairman shall withdraw the intervention or action initiated if, within 35 days after the date of the chairman's notice, at least 13 members indicate disapproval of the action, either in writing addressed to the chairman or by vote at a meeting of the Commission. A member representing the local jurisdiction affected by the chairman's intervention or action may request a meeting of the Commission to vote on the chairman's intervention or action.

(b) *Rules of procedure.* — Except as stated in this subtitle, the chairman is subject to general laws and rules of procedure that govern

Cty. #4

Title 27
CHESAPEAKE BAY CRITICAL AREA COMMISSION

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Chapter 11 Variances

Authority: Natural Resources Article, §8-1808(d), Annotated Code of Maryland

.01 Local Programs.

A. In the preparation of local programs, local jurisdictions shall make provision for the granting of variances to these criteria where, owing to special features of a site or other circumstances, local government implementation of this subtitle or a literal enforcement of provisions within the jurisdiction's Critical Area program would result in unwarranted hardship to an applicant. These variance provisions shall be designed in a manner consistent with the spirit and intent of this chapter and all local Critical Area program elements. The variance provisions shall, at a minimum, provide for the following:

(1) That findings are made by the local jurisdiction which demonstrate that special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program, would result in unwarranted hardship;

(2) That a literal interpretation of this subtitle or the local Critical Area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction;

(3) That the granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area;

(4) That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property;

(5) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will

be in harmony with the general spirit and intent of the Critical Area law and the regulations adopted in this subtitle; and

(6) That applications for a variance will be made in writing to the local approving authority with a copy provided to the Commission.

B. Local jurisdictions may establish additional, more restrictive standards for the granting of variances consistent with the intent and purposes of this subtitle and the approved local Critical Area program, and further, shall establish notification procedures to permit Commission review of findings made in the granting of variances.

C. Appeals from decisions concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of each local jurisdiction for variances. Variance decisions by local boards of appeal or the local legislative body may be appealed to the circuit court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation, or governmental agency, aggrieved or adversely affected by any decision made under this section, and the Chairman may appeal an action or decision even if the Chairman was not a party to or is not specifically aggrieved by the action or decision.

Administrative History

Effective date: May 13, 1986 (12:24 Md. R. 2352)

COMAR 14.15 became effective upon the enactment of Resolution No. 37 (SJ 9), Acts of 1986.

COMAR 14.15.11 recodified to COMAR 27.01.11 in August, 1992

Cty 45

KK
7/30/97

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410- 820-5093 FAX

REN SEREY
EXECUTIVE DIRECTOR
410-974-2418 /26
410-974-5338 FAX

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

WESTERN SHORE OFFICE
45 CALVERT ST., 2ND FLOOR
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

RECEIVED
JUL 30 1997
ENVIRONMENT

July 25, 1997

Mr. Keith Kelley
Department of Environmental Protection
and Resource Management
County Courts Building, 401 Bosley Avenue
Towson, Maryland 21204

Re: Long Property - Buffer Variance

Dear Mr. Kelley:

I have reviewed the above referenced variance request for a single family dwelling in the 100-foot Buffer. The applicant proposes to construct a 28' by 28' house within the Buffer on Bear Creek. The 0.16 acre grandfathered lot is located in a Limited Development Area and is not located in a mapped Buffer Management Area. Proposed impervious surfaces will be limited to 25% of the lot.

While the Commission staff does not oppose the granting of a variance for a single family dwelling on a grandfathered lot, we recommend that encroachment into the Buffer and imperious surfaces be minimized. We would support a variance to front yard setbacks. In addition, we recommend planting of native vegetation in the 100-foot Buffer at a ratio of 3:1 to mitigate for the area of new disturbance in the Buffer.

Thank you for the opportunity to comment on this application. Please include this letter as part of the record for the variance request. Please notify the Commission in writing of the decision made in this application.

Sincerely,

Susan McConville

Susan McConville
Natural Resources Planner

SM/jjd
cc: BC 388-97

Cty #7

BALTIMORE COUNTY

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

NOTICE OF GRANTING OF VARIANCE

ADDRESS:3825A Annadale Road

LEGAL OWNER: Mr. and Mrs. Robert Long

The Baltimore County Department of Environmental Protection and Resource Management, pursuant to Section 26-445(c) of the Baltimore County Code, hereby gives notice that a variance from Section 26-449 of the Code, Chesapeake Bay Critical Area Requirements, will be granted for the purpose of constructing a single-family dwelling within the 100 foot buffer to Bear Creek on the above referenced property. Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by this decision, may appeal to the Baltimore County Board of Appeals within forty-five (45) days from the date of this notice. Appeals must be made in writing, stating the reason for appeal, and must be mailed to Environmental Impact Review, Baltimore County Department of Environmental Protection and Resource Management, 401 Bosley Avenue, Suite 416, Towson, Maryland 21204. All appeals must be accompanied by a check for $75.00 payable to Baltimore County Government.

City #8

Baltimore County
Department of Environmental Protection
and Resource Management

BUREAU OF RESOURCE MANAGEMENT
AND ENGINEERING SERVICES
401 Bosley Avenue, Suite 416
Towson, Maryland 21204
410-887-3980
Fax: 410-887-4804

June 22, 1998

Mr. Robert Long
3827 Annadale Road
Baltimore, MD 21222

Re: 3825 A Annadale Road
Critical Area Administrative Variance

Dear Mr. Long:

This Department has received the copy of the Certificate of Publication which indicates that the "Notice of Granting of Variance" advertisement was published in the Avenue newspaper on February 26, 1998; and/or otherwise verified the publication of this advertisement. Additionally, we have received the signed copy of the variance approval letter and your revised plot plan showing all of the items listed in our variance approval letter.

In accordance with Section 26-445(c) of the Baltimore County Code, your variance to the Chesapeake Bay Critical Area Regulations for the purpose of constructing a single family dwelling (SFD) within the 100 foot buffer to Bear Creek on the referenced property became final on June 16 ,1998, the date which you submitted all variance approval documents. However, an aggrieved party will have thirty (30) calendar days after this date to appeal the Department's decision to the County Board of Appeals. As such, if you choose to begin with construction, sell the property, etc. during this time period, please be advised that you are proceeding at your own risk.

Please be advised that to obtain building permit approval you must submit the revised plot plan to the Department of Permits and Licenses with your permit application, or as a revision to any permit application which you have submitted previously for the proposed structure.

If you have any questions, please contact Mr. Keith Kelley at 410-887-3980.

Very truly yours,

Patricia M. Farr
Supervisor
Environment Impact Review

c: Susan McConville, CBCA

j:/caavcop.doc

Printed with Soybean Ink
on Recycled Paper

Cty. #9

Environmental Impact Review

June 23, 1998

Baltimore County Department of
Environmental Protection & Resource
Management

Re: 3825 A Annadale Rd.
Critical Area Administrative Variance

We would like to appeal the decision of granting a variance to build a house on this undersized lot.

The lot in question is grossly undersized and adjoins Tabasco Road. Tabasco Road is a paper road which has been turned into the drainage area from the newer part of our community, which goes directly into Tabasco Creek. Tabasco Creek already has enough pollution problems without putting another house on top of the drainage area, which will add to the pollution problem and further restrict the filtration of drainage from the newer community.

Allowing this construction would have a major impact on the wildlife that is left. Before the construction of the newer community we had an abundance of wildlife, since then the number has dropped greatly. This area and the adjoining paper road area are the only areas left for the wildlife. The only area left with high grass for nesting is adjoining this property. It is our fear that developing so close would further reduce our wildlife .

It is our opinion that the development of this property would have a total negative effect on our creek, wildlife, and our community as a whole.

. We the property owners of the community should have an opportunity to voice our concerns in this matter.

Please find enclosed a check for seventy-five dollars.

Send all correspondence to:

Melvin C. Woodell, Jr.
705 S. 49th Street
Baltimore, Md. 21224

Thank you in advance for your consideration in this matter.

Concerned citizens of Annadale





E. Long Property for Sale adjacent to Lot 31.

Plot. 2J

L. Outfall on Lot 31

PHOT. 21



Shanholtz Property



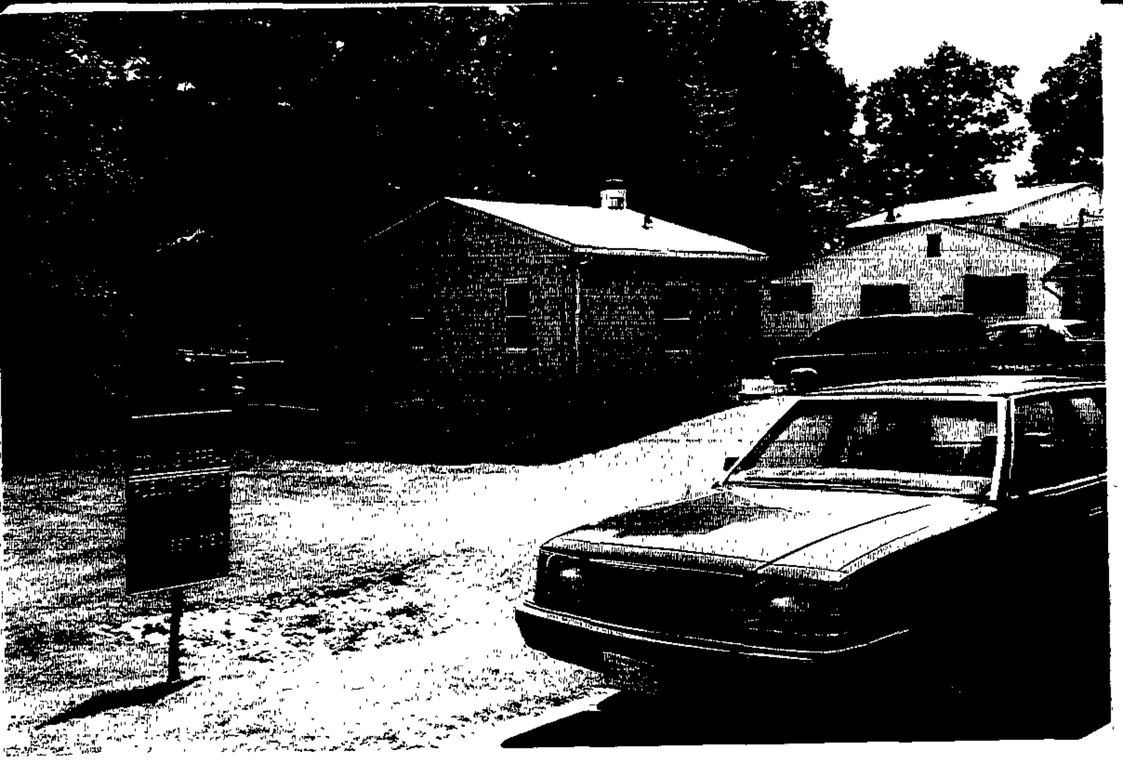
G. Looking across Lot at Long Property

PHOT. 2G



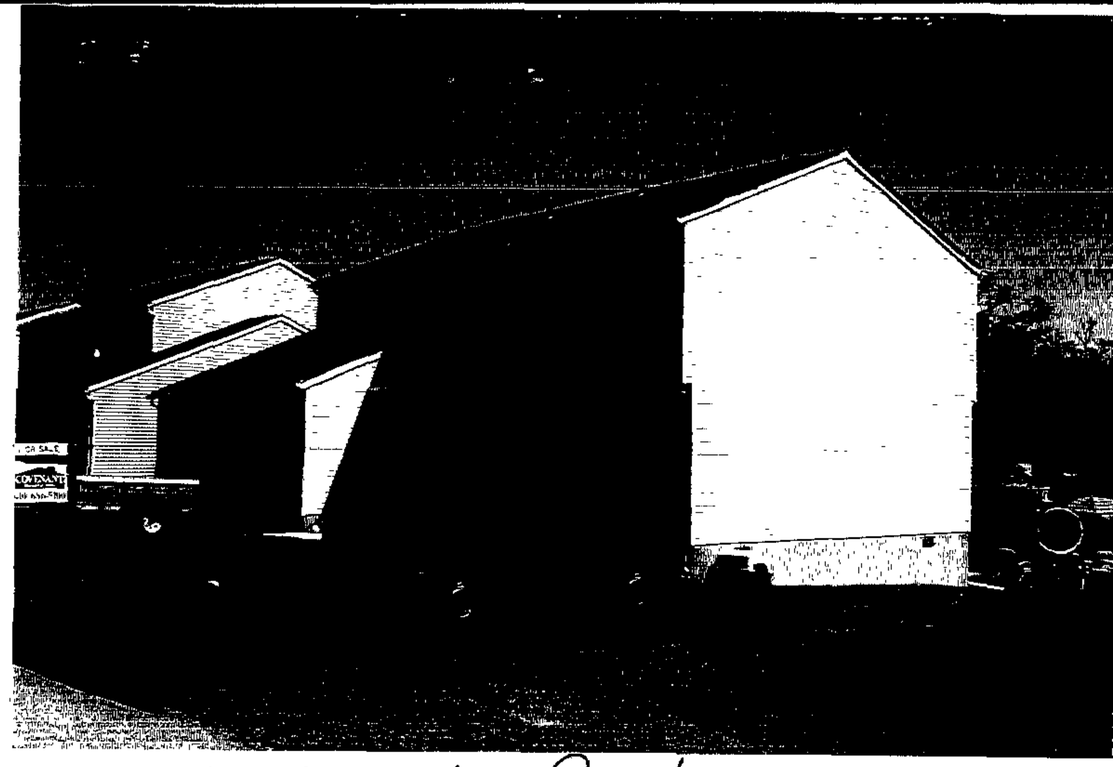
H. Looking east on Annadale from Lot 31

PHOT. 2H



E. E/S of Woodell Property

Pict. 2E



F. West side of Long Property

Pict. 2F



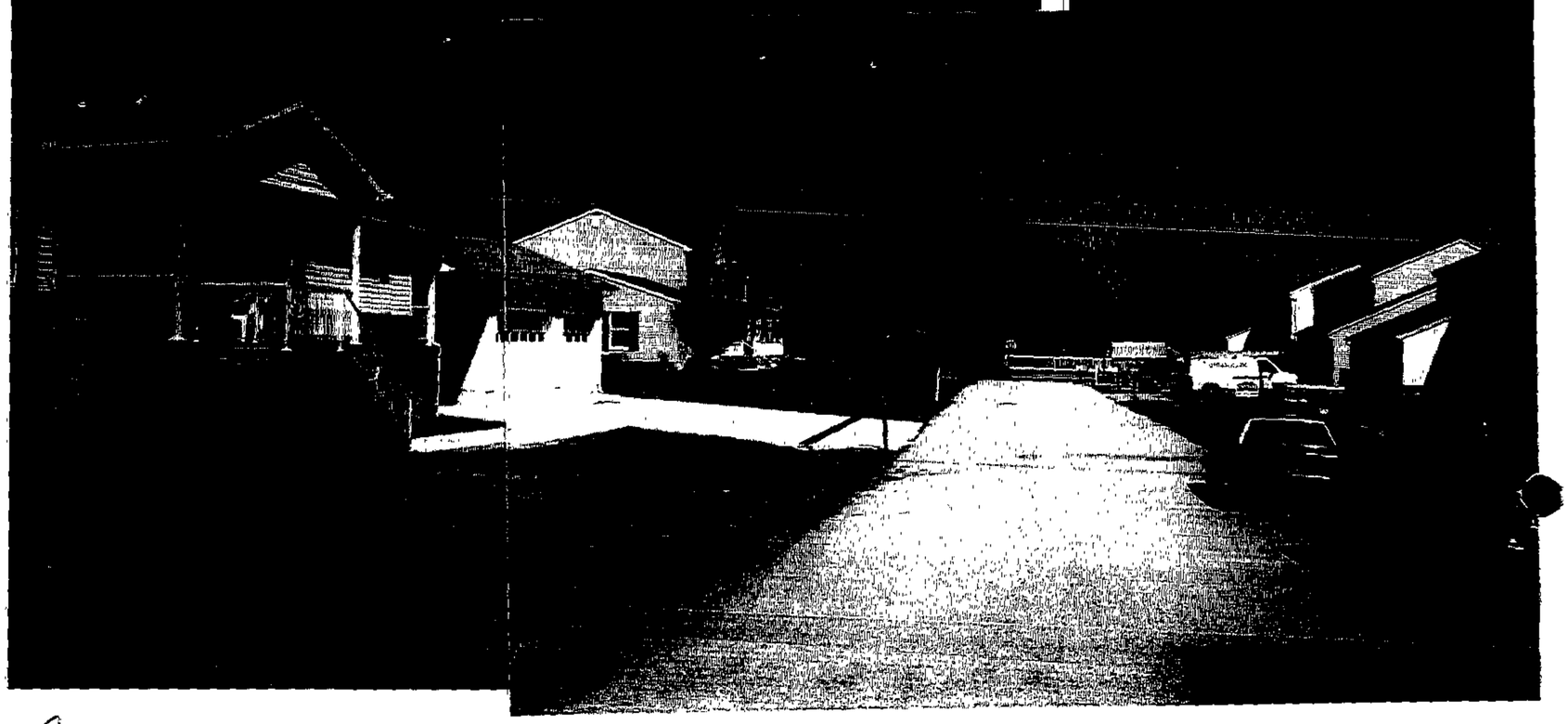
D. Woodell Property and 3823 Annadale Ave.

Pict. 2D



D. Looking north on Nathan Avenue from Annadale Ave.

PLOT. 2B



C. Looking east on Annadale from Nathan Ave.

PLOT. 2C



A. Looking from Annadale Ave., south at Tobacco Cove, Lot 31, Long Property, home and pier to left, Woodell property to right,

The Long Property, Lot 31, Annadale

Cases - 98-251-A (Zoning)
and
CBA-98-128

Lot. 31A

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

Case # 98-251-A
Robert Long, et ux

Petitioners 2A-2G
(7 photos)











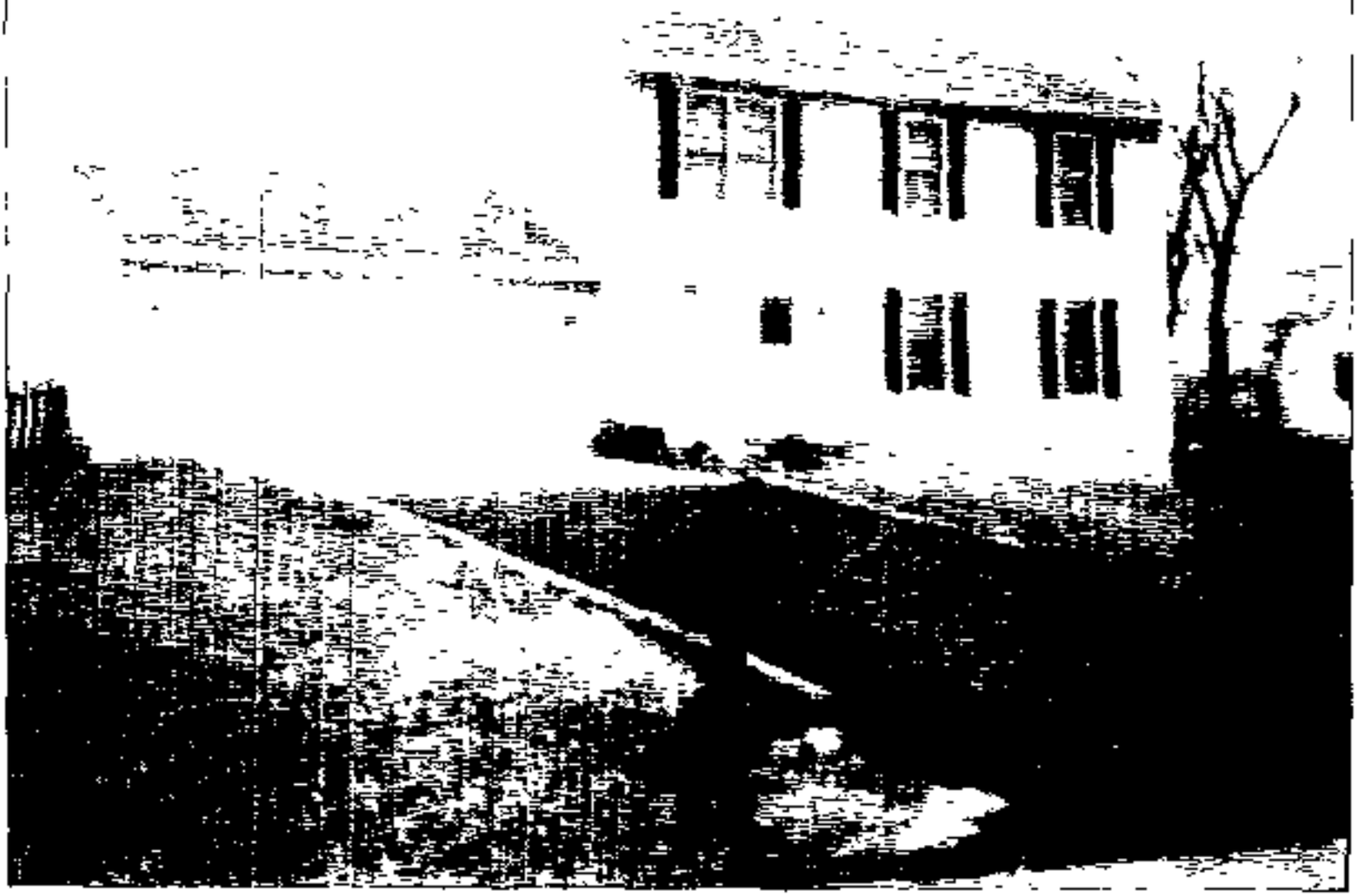
251

3821 Annadale Road
Baltimore, MD 21222

0950220

POLAROID®5

3831 Annadale Road
Baltimore, MD 21222



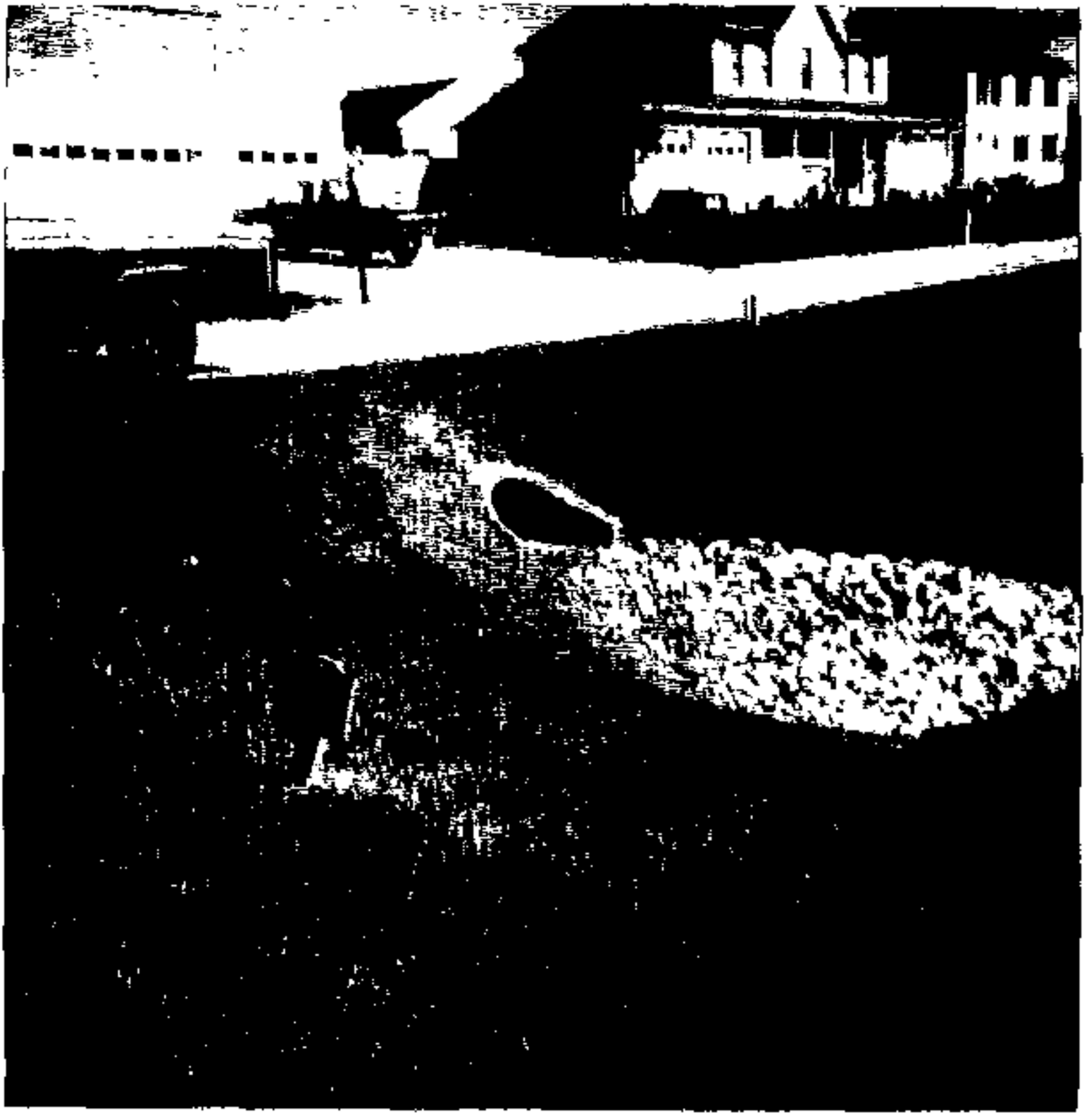
3828
~~3834~~ Annadale Road
Baltimore, MD 21222



3823 Annadale Road
Baltimore, MD 21222

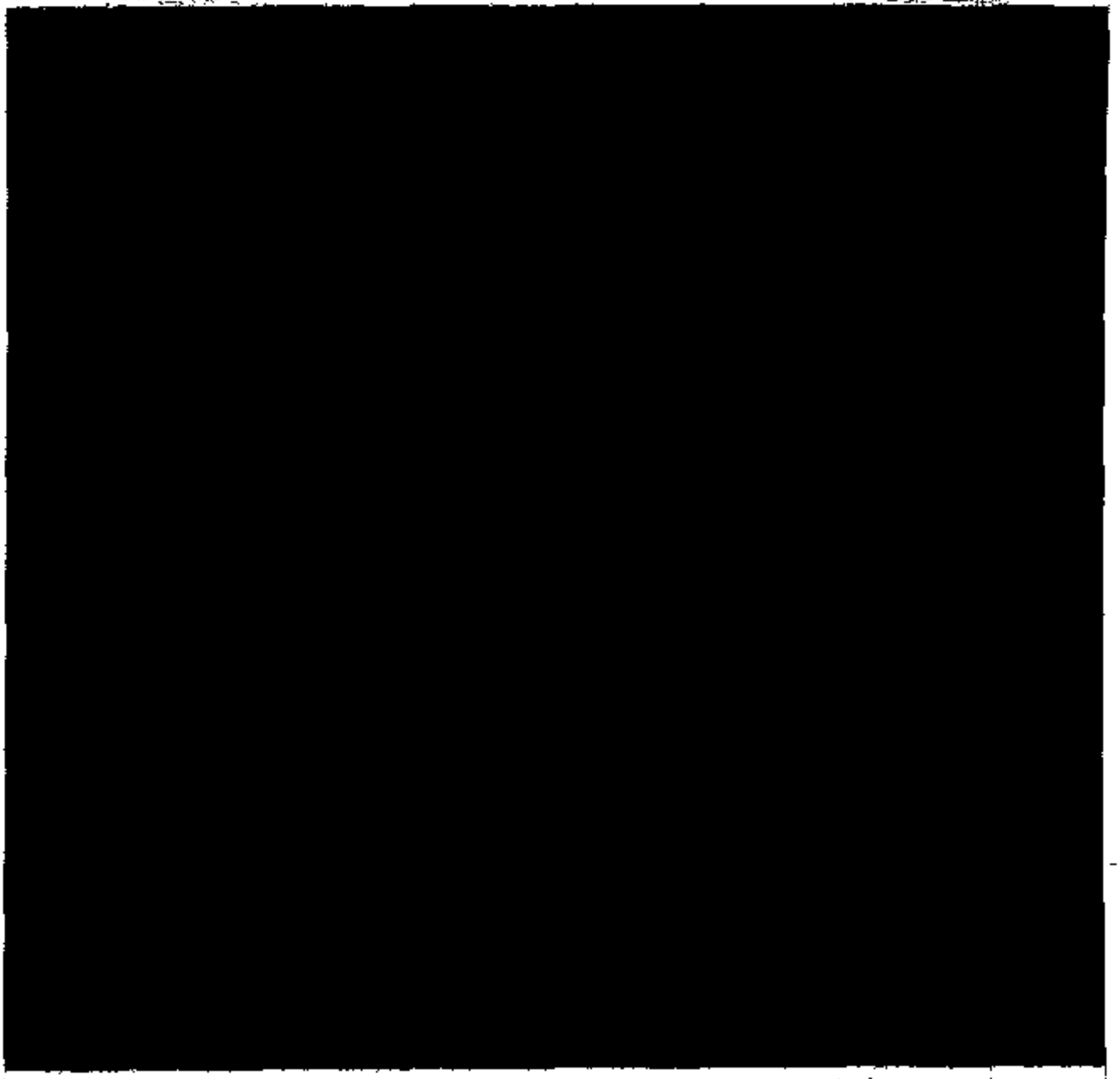
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POLAROID®5



From our yard

Holiday



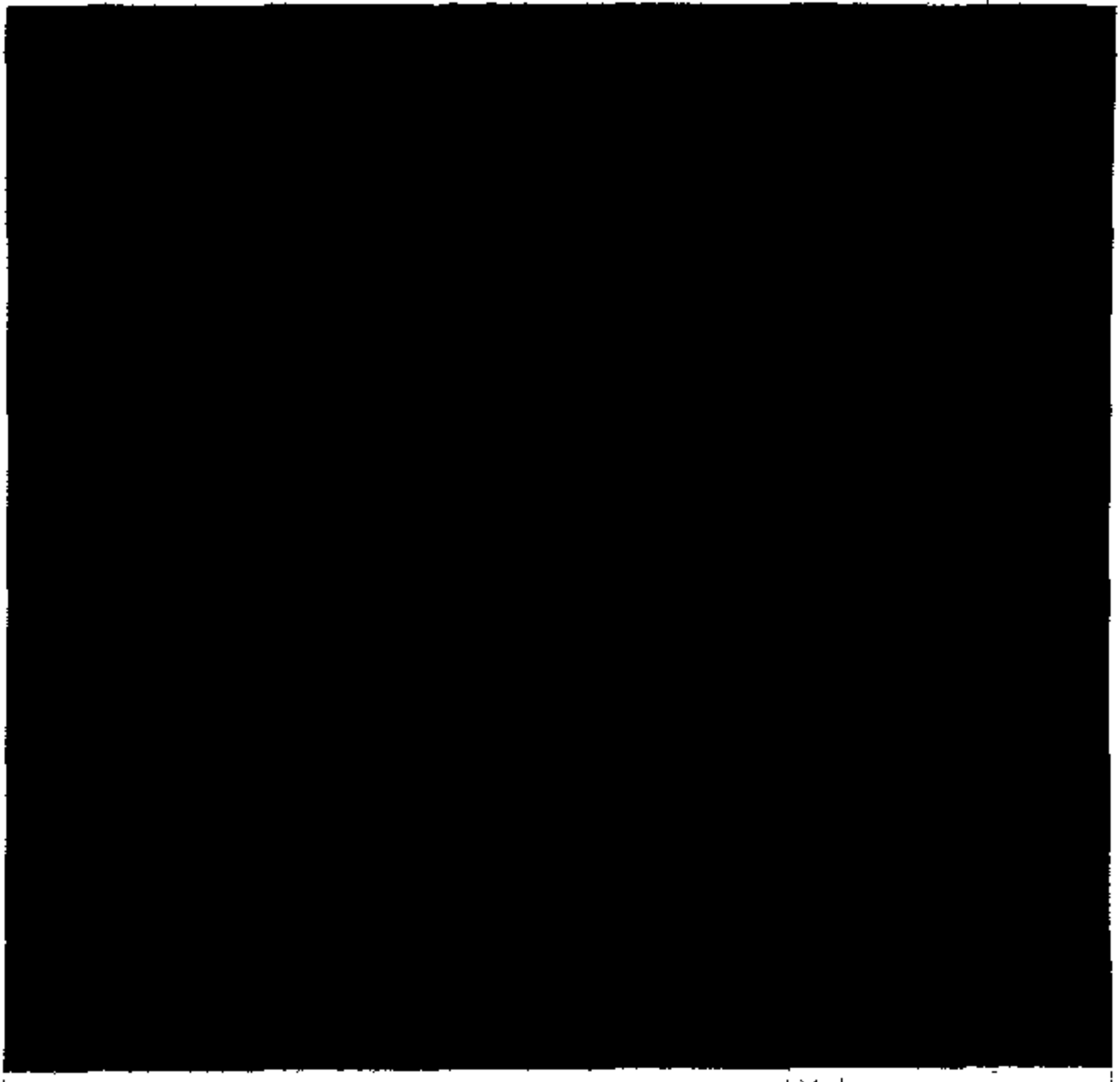
No Trespassing
Sign removed 10/21







10.2.1997 - debrie. en Tabasco Ed

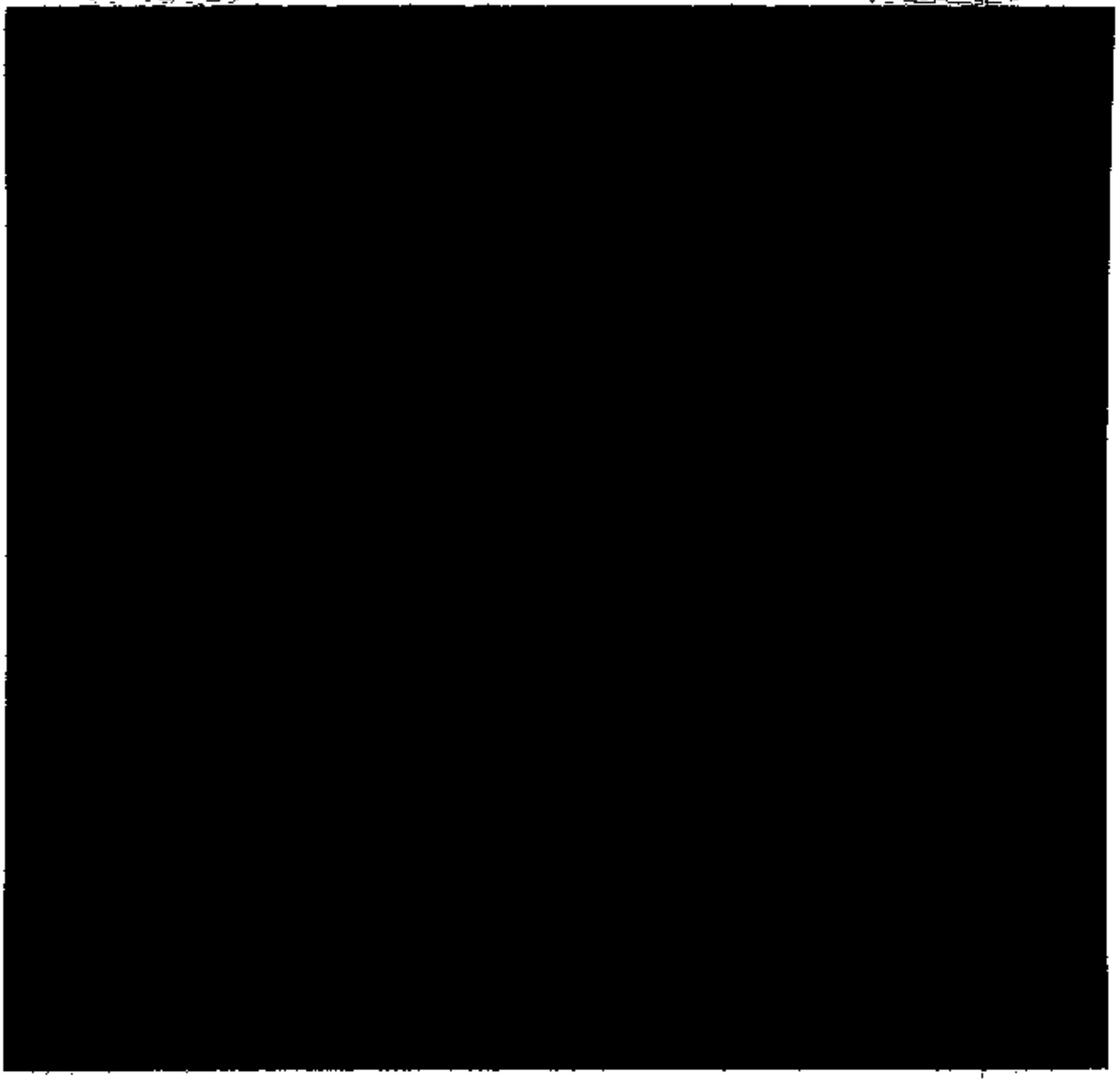


NO Trespassing
sign removed 10/21

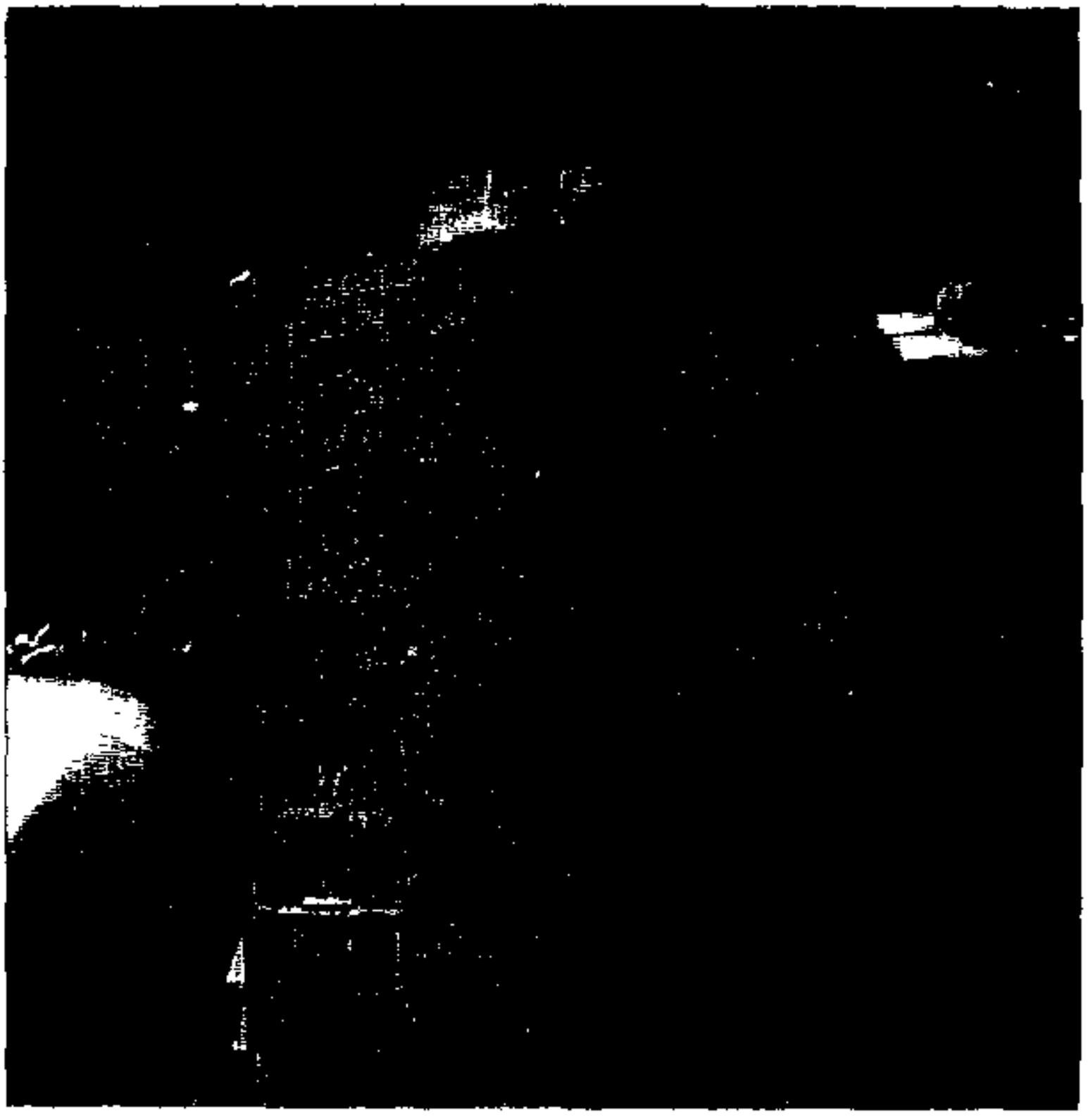




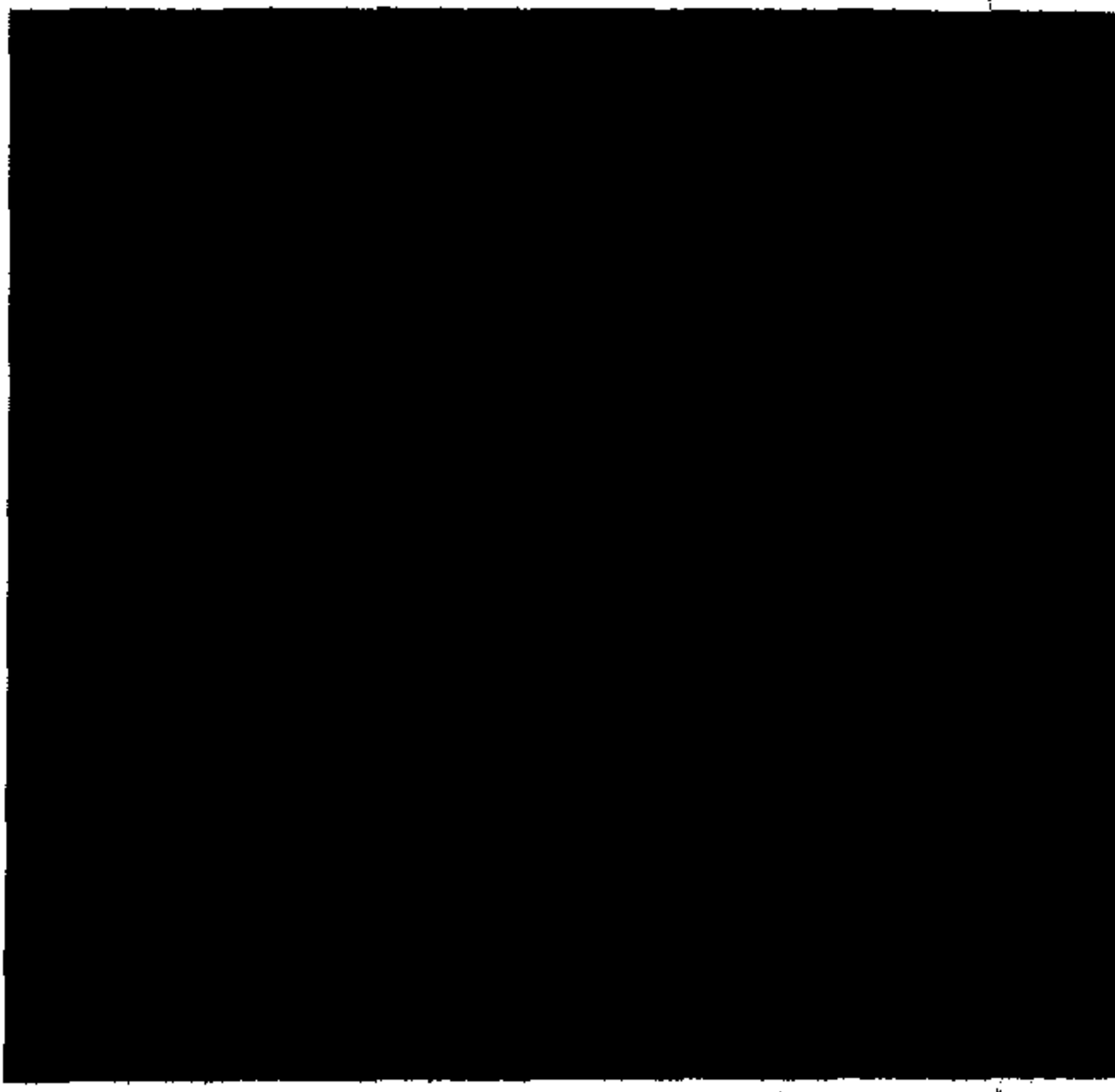
Truck parked in Front of Tabasco Rd



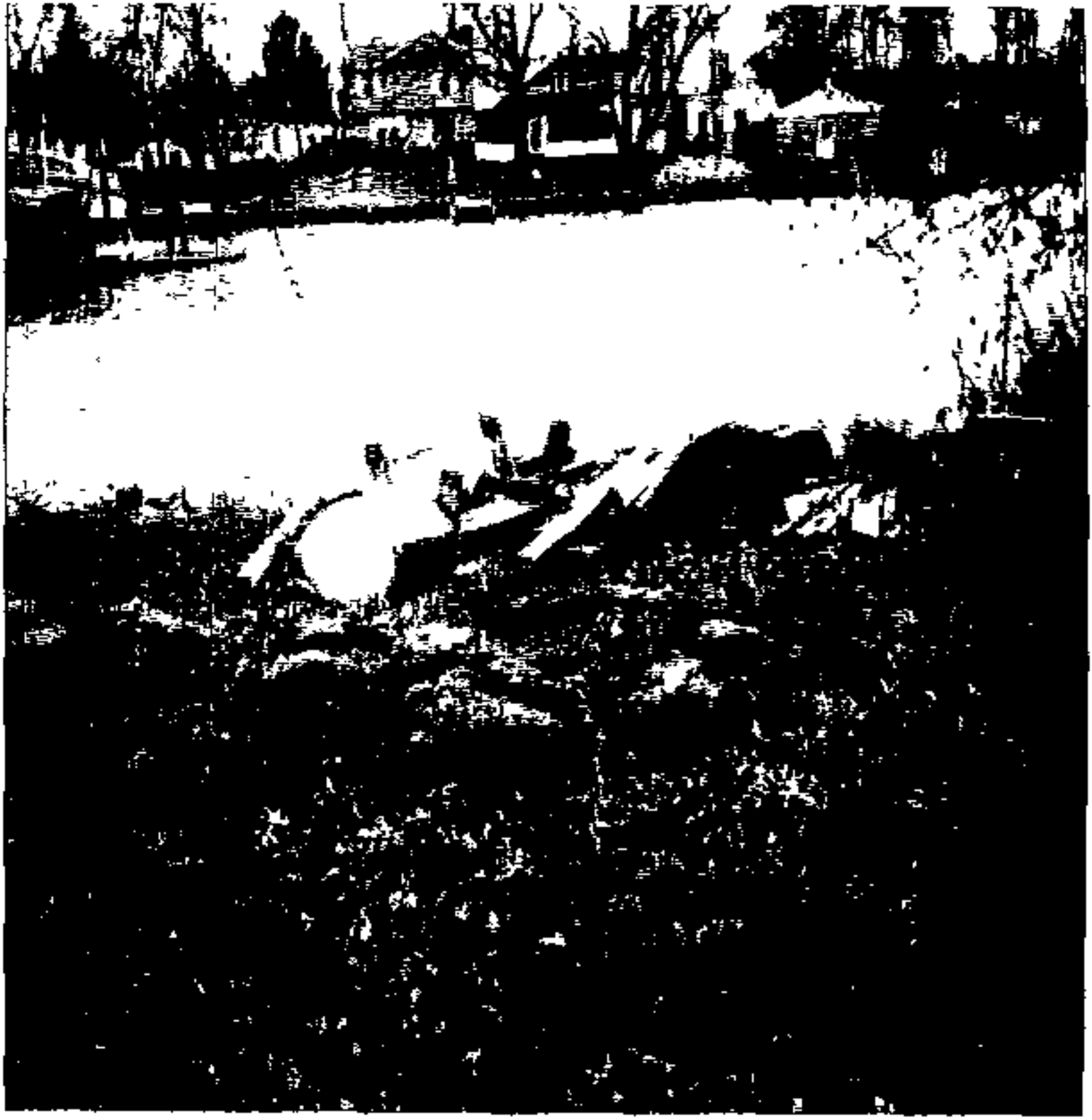
No Trespassing
Sign removed 10/21



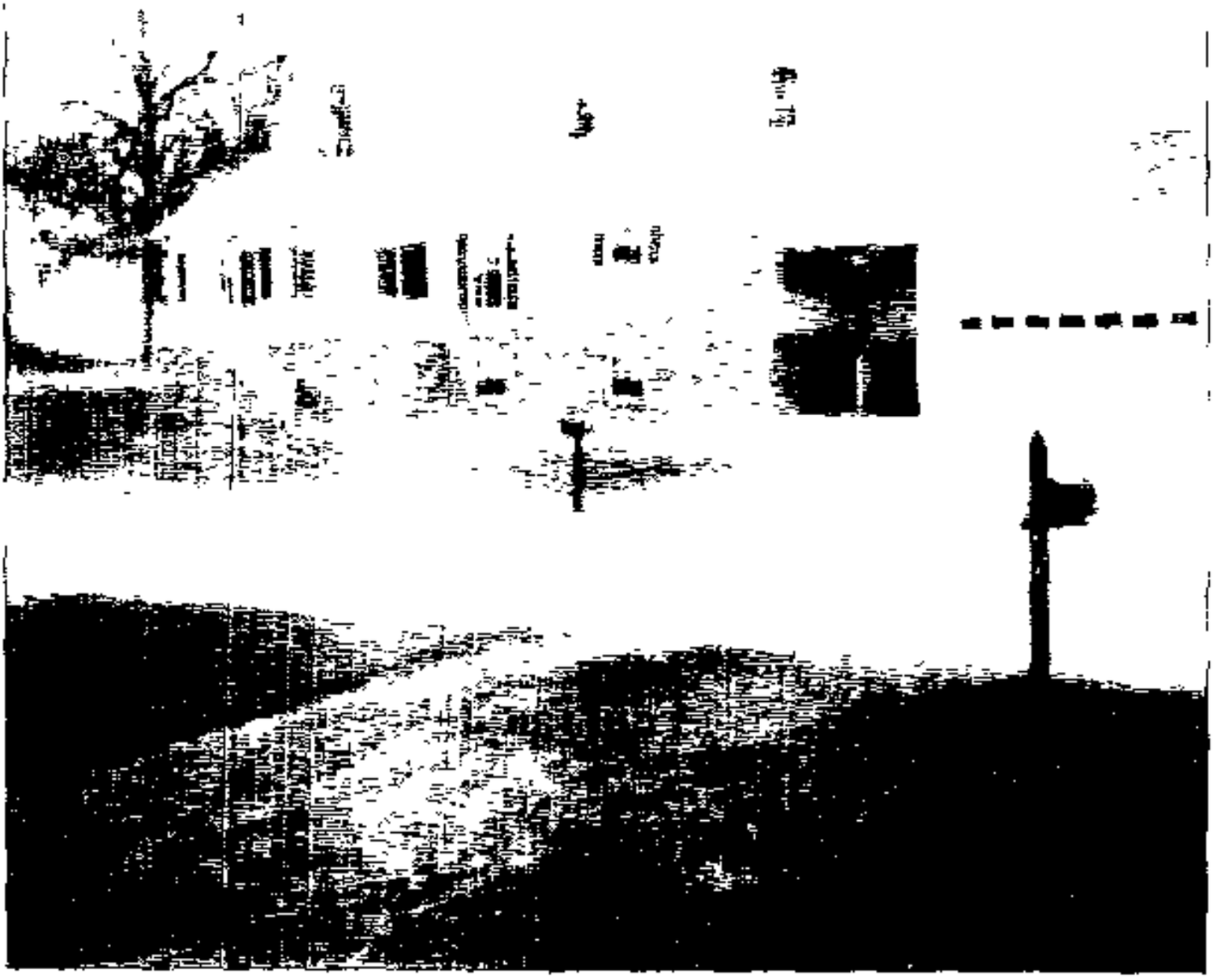
10/2/07 TABASCO Rd
FROM ANNADALE Rd



No Trespassing Signs removed 10/21







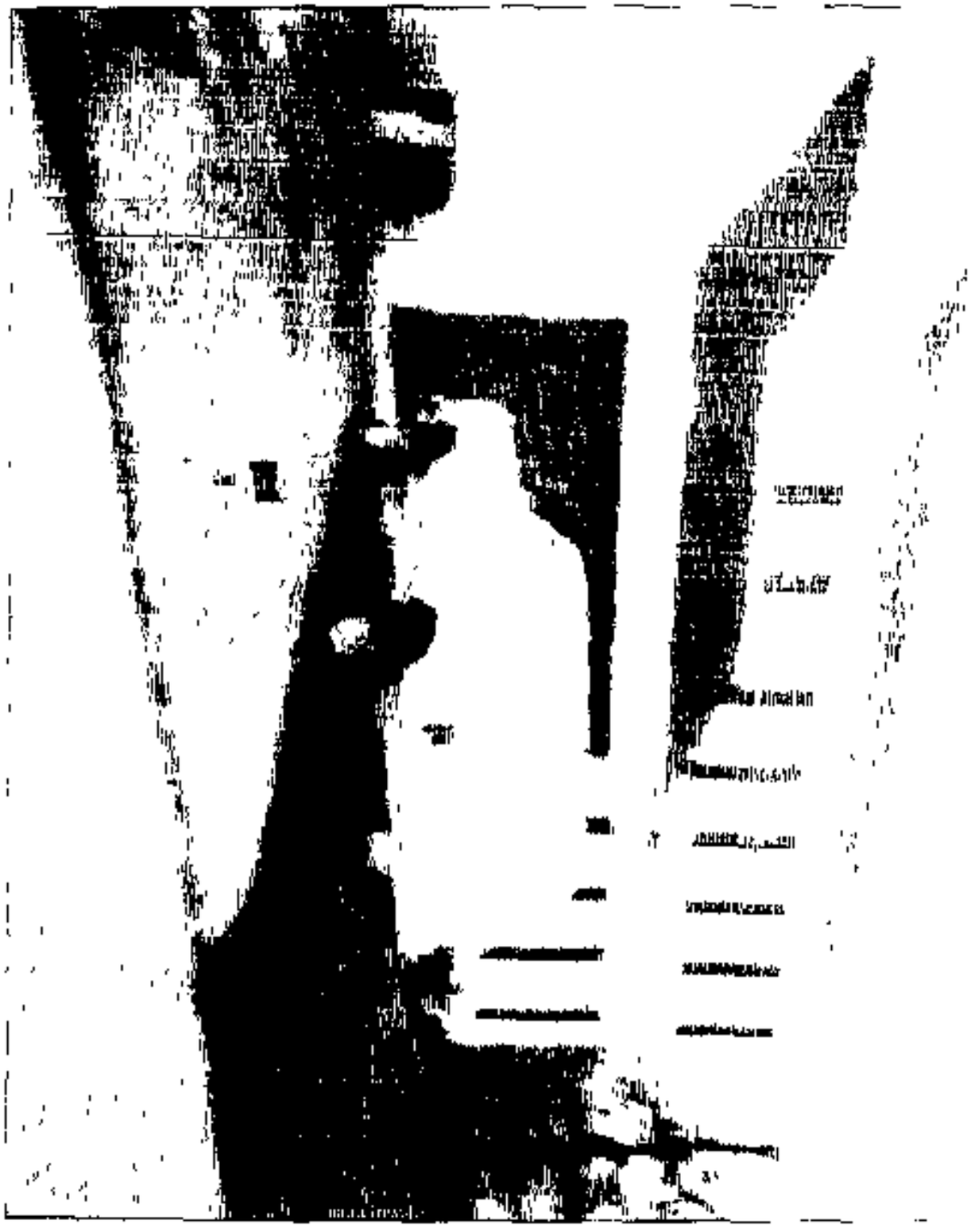
3820 Annadale Road
Baltimore, MD 21222



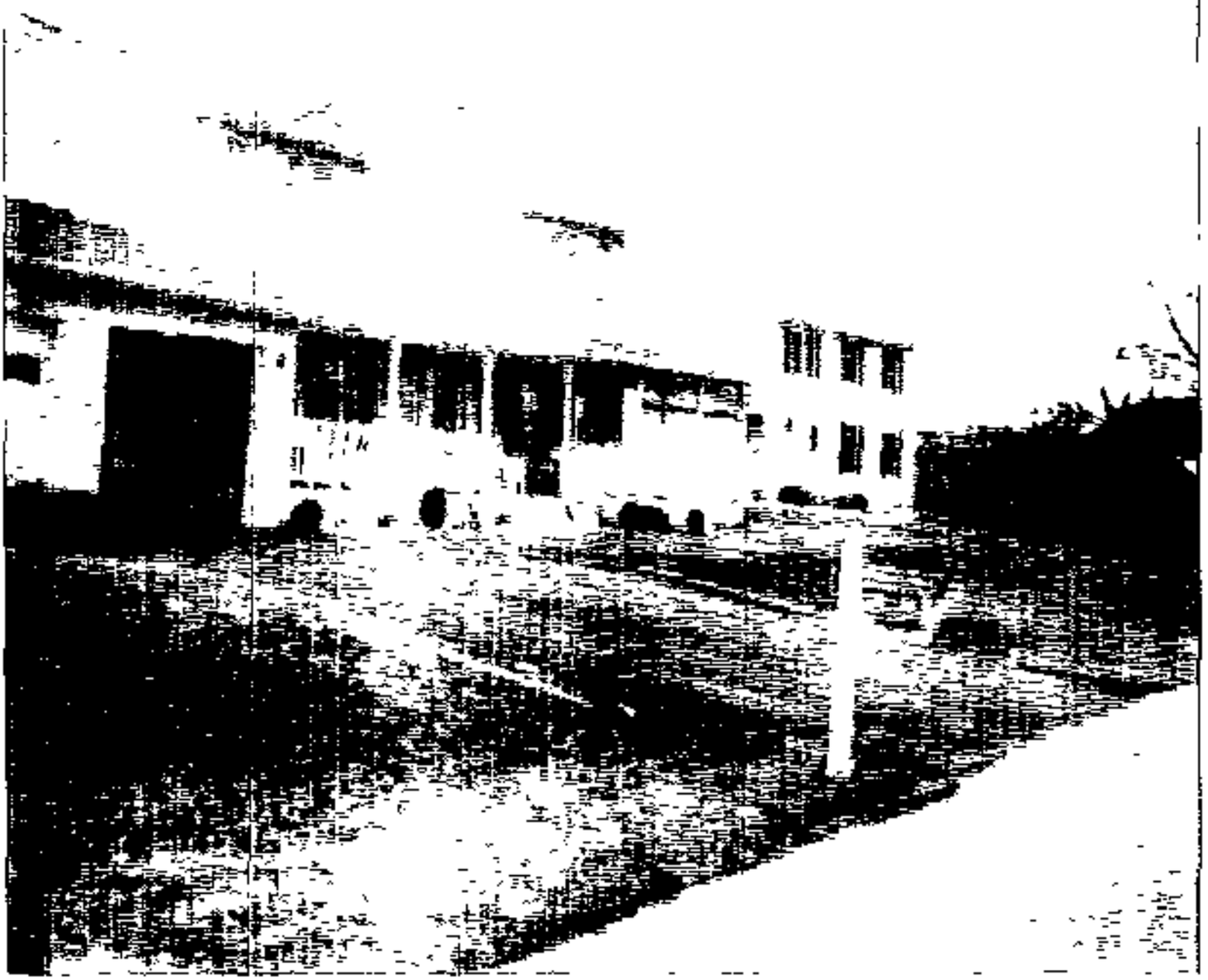
3825 Annadale Road
Baltimore, MD 21222

0950 2094

POLAROID 605



3827 Annadale Road
Baltimore, MD 21222



3830

3830 Annadale Road
Baltimore, MD 21222

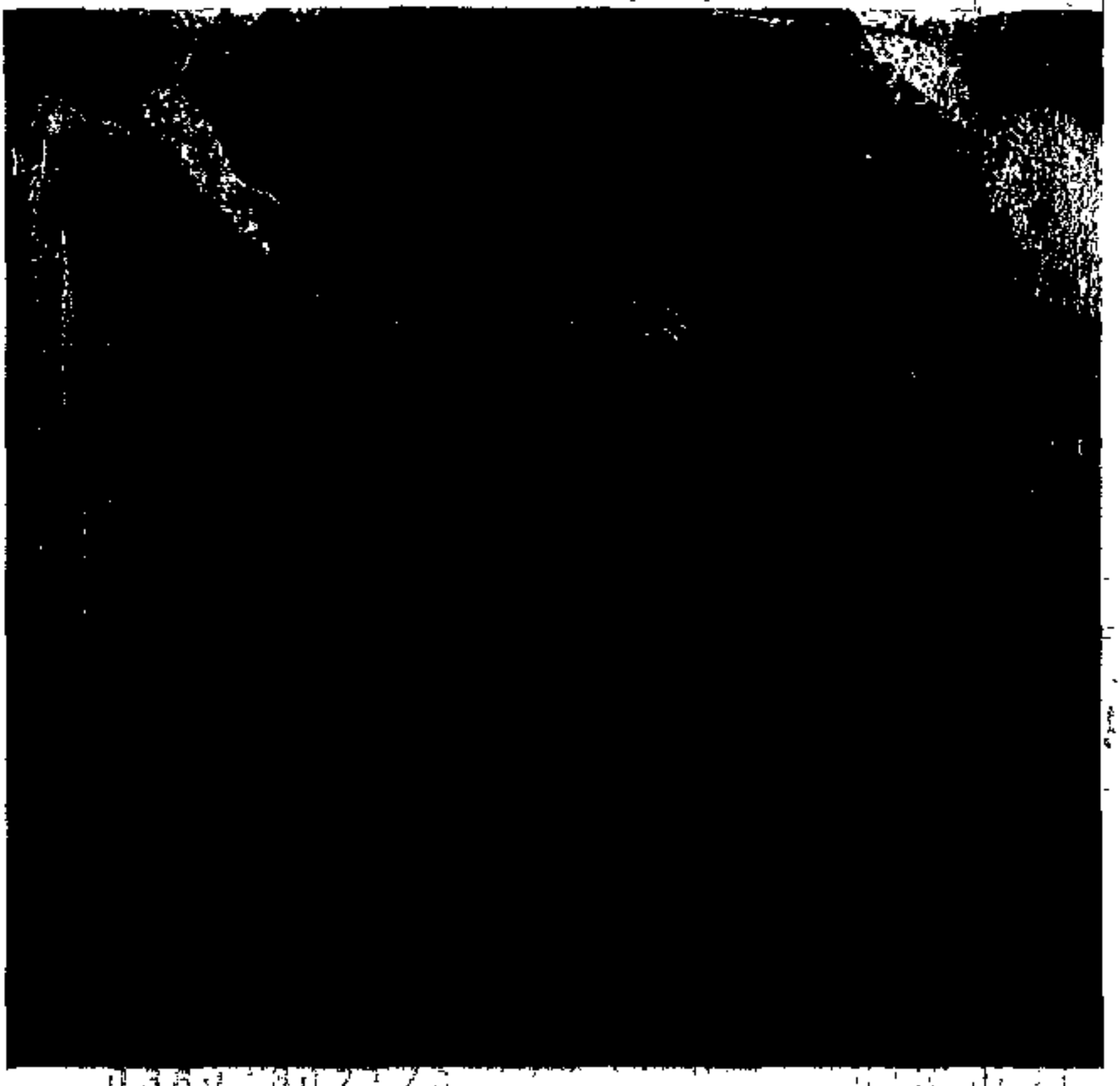
0950720940

POLAROID



25

East on Annadale Road





Weston Arsenal Rd

251

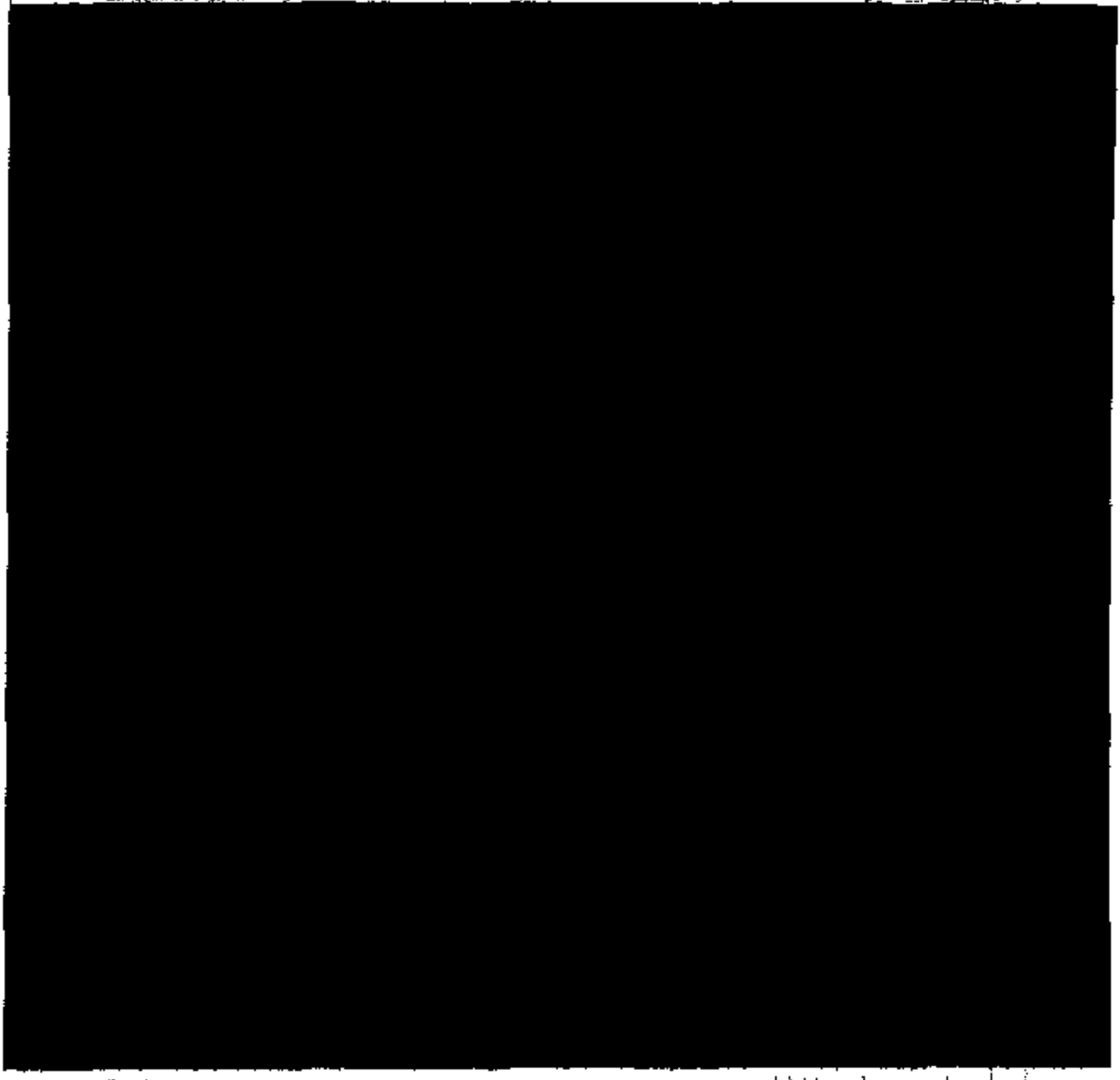


0950220940 4

POLAROID®5



NO Trespassing Sign
Debris Available



No Trespassing
Sign removed 10/21





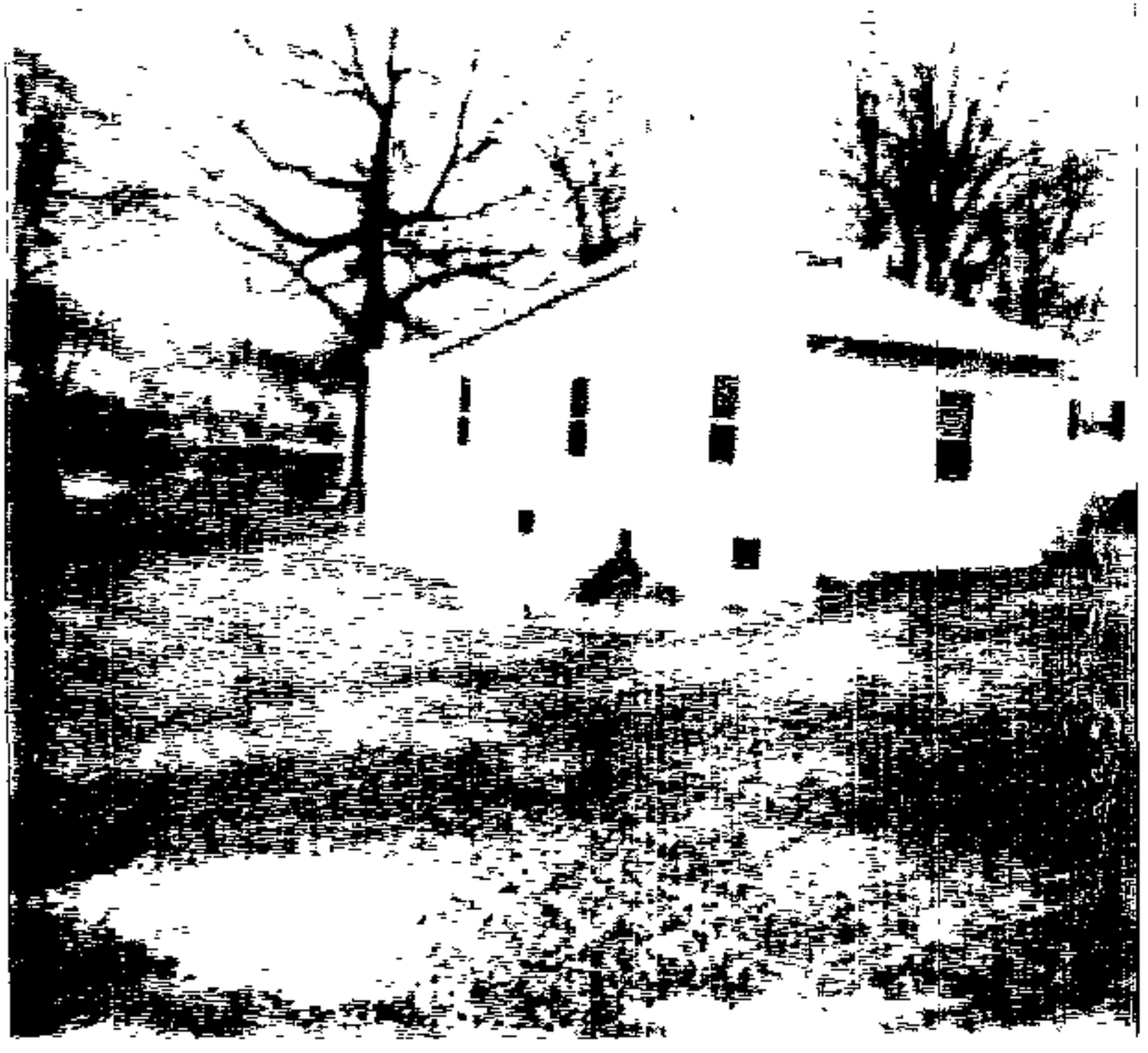
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3817 Annadale Road
Baltimore, MD 21222

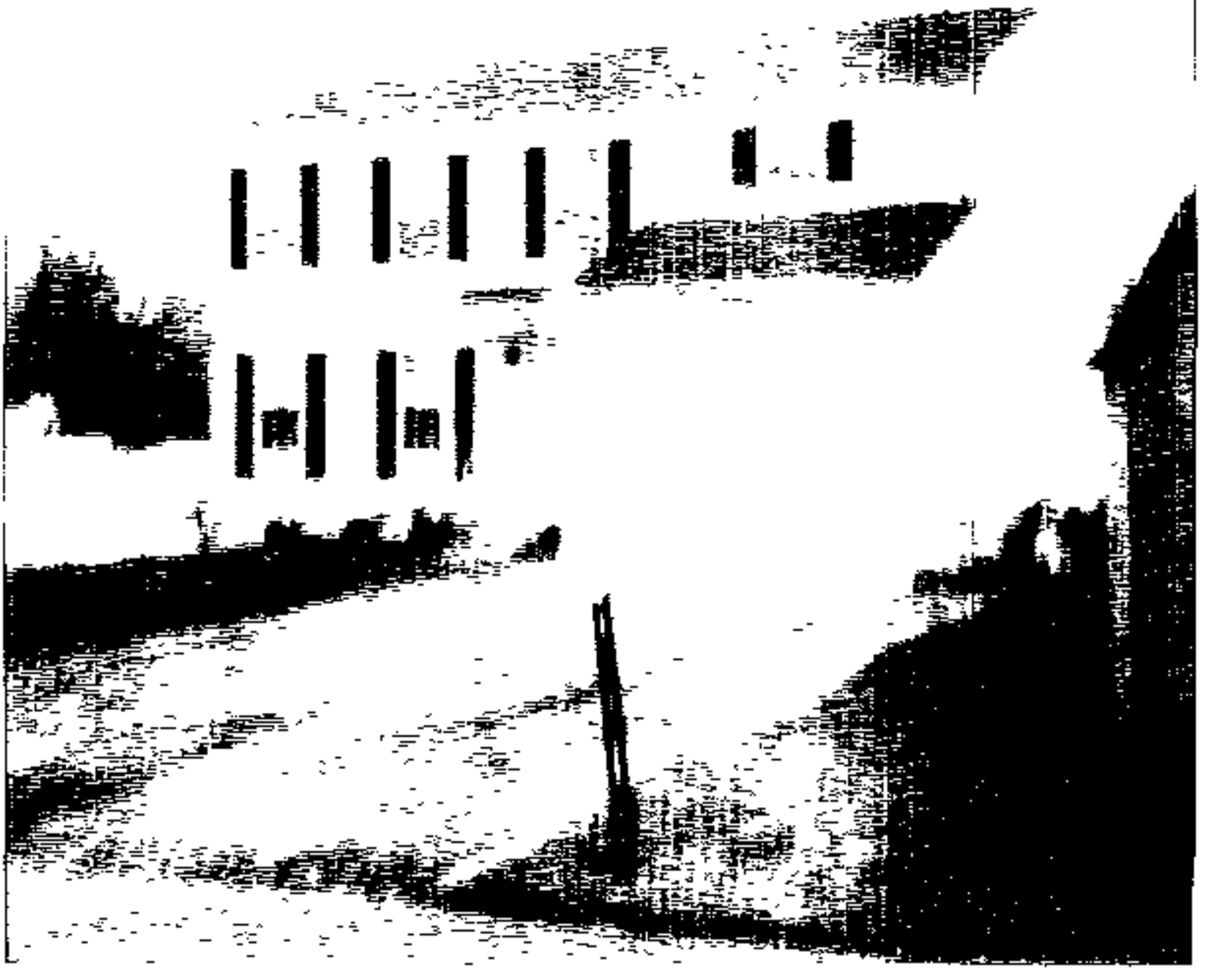
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POLAROID

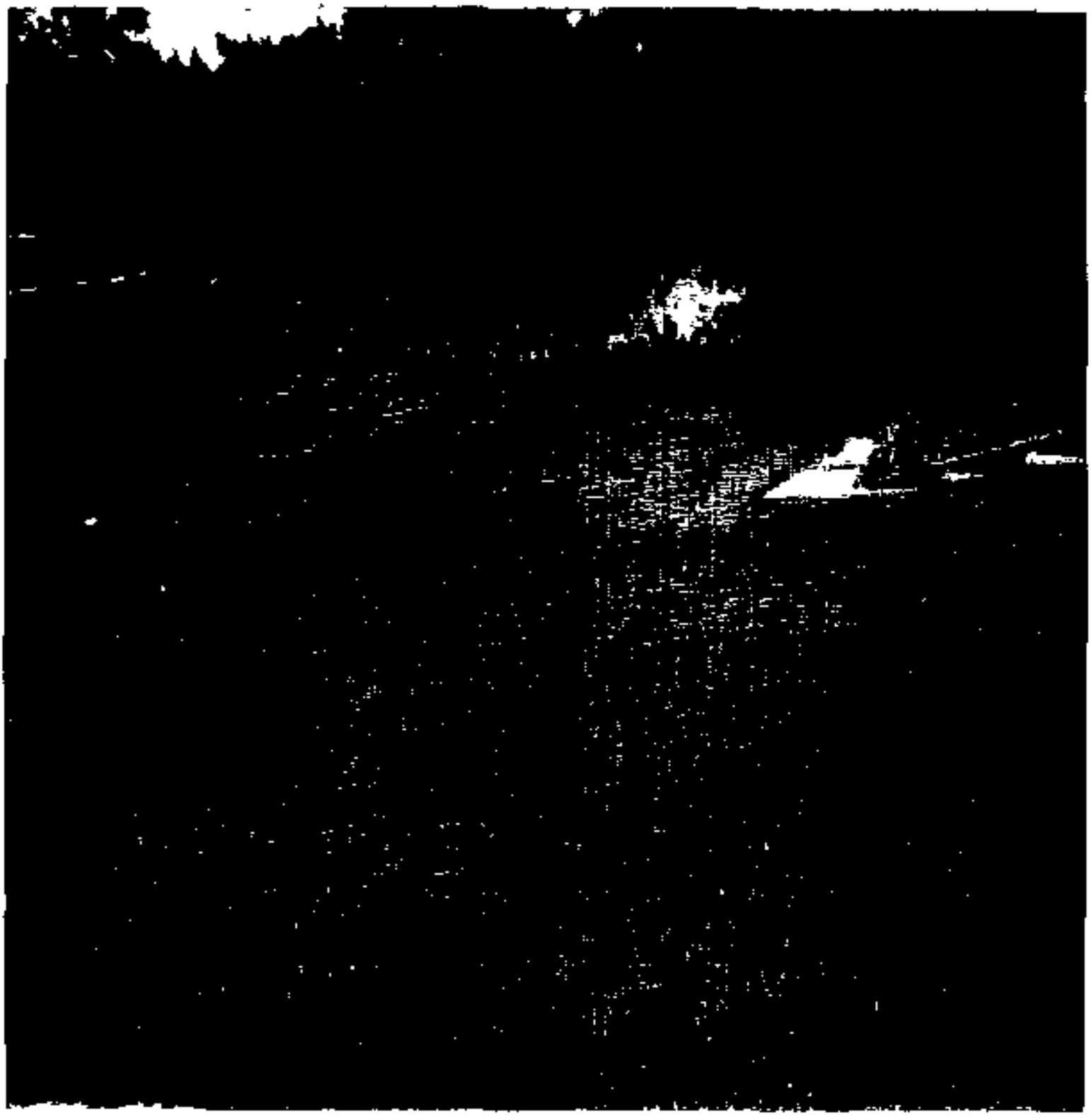




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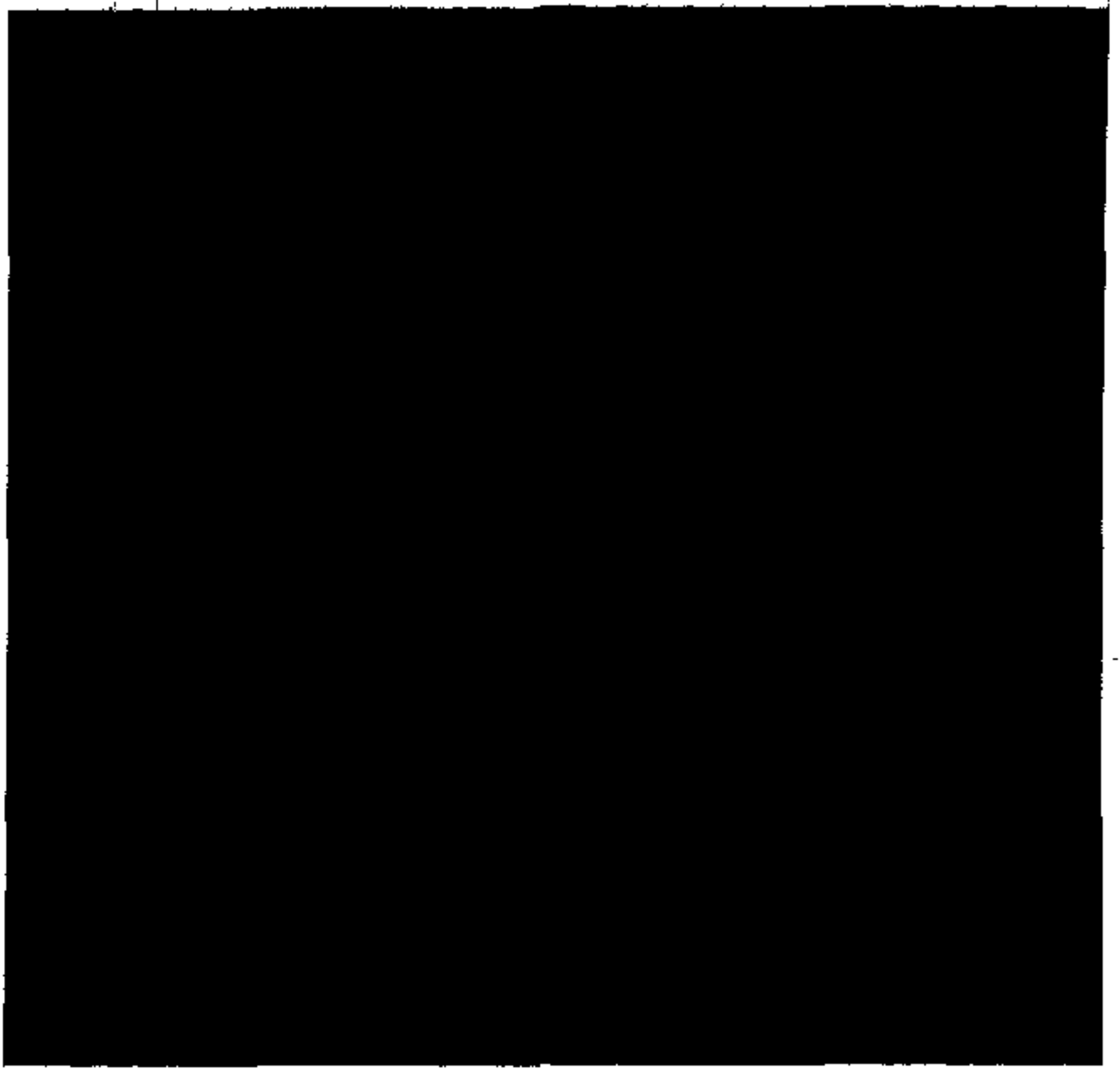


3835 Annadale Road
Baltimore, MD 21222



From annadale Rd

Tabloo Rd



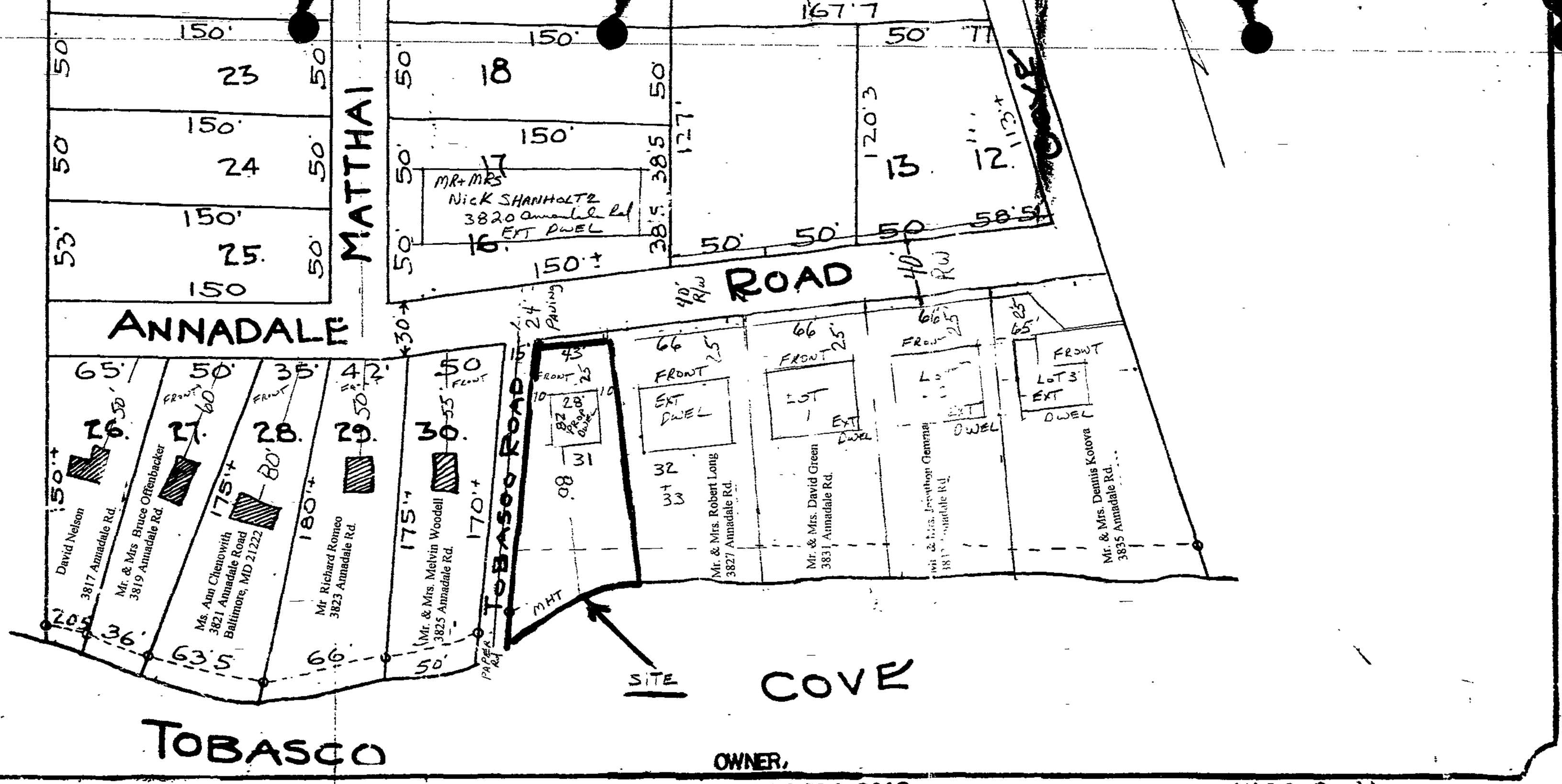
NO Trespassing
Signs removed 10/21

251

3819 Annadale Road
Baltimore, MD 21222

0950220940

POLAROID®5



LOCATION INFORMATION

Election District: 15th

Councilmanic District: 7

1"=200' scale map#: SE 3 G

Zoning: DR 5.5

Lot size: 186 acreage 8,130 square feet

	public	private
SEWER:	X	
WATER:	X	

	yes	no
Chesapeake Bay Critical Area:	X	

Prior Zoning Hearings: none

Zoning Office USE ONLY!

reviewed by:	ITEM #:	CASE#:
RT	251	

OWNER:
ROBERT LONG
3827 ANNADALE ROAD
BALTIMORE, MARYLAND 21222
388-1974

W.P.C.-B-34

95'

Lot No 1

Plat to accompany Petition for Zoning [x] Variance [x] Special Hearing

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

PROPERTY ADDRESS: 3825a Annadale Rd

Subdivision name: Annadale

plat book# 8 ,folio# 38 ,lot# 31 ,section

OWNER: Robert R. & Rose M. Long

A-126-89

Scale 1" = 60 ft.

45C3



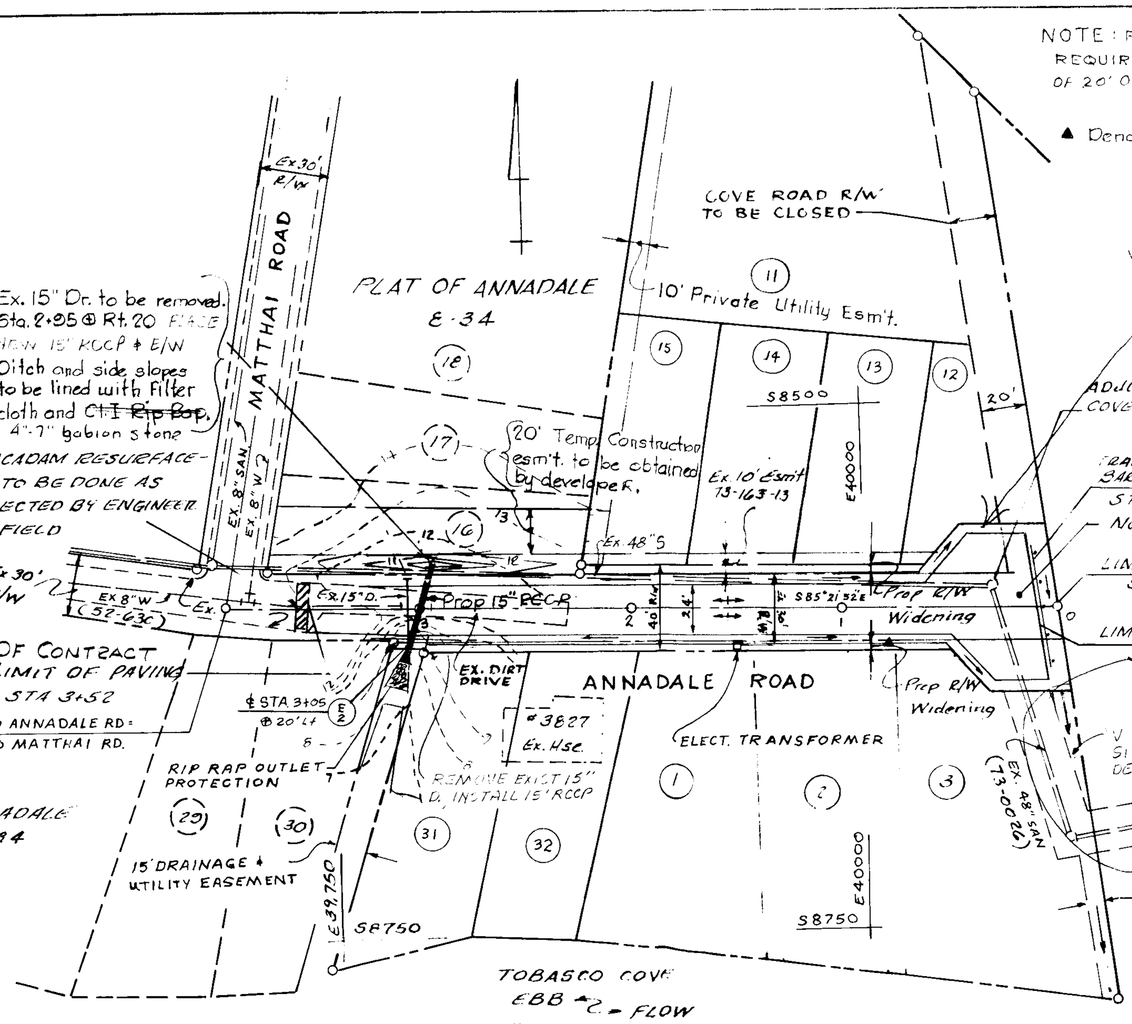
E-N'W
E-S'W

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS		
	BY	DATE

Topography Compiled By Photogrammetric Methods
ADRAMS AERIAL SURVEY CORP. LANSING MICH.

SCALE	LOCATION	SHEET
1" = 200'	NORTH POINT	S. E. 3-G
DATE OF PHOTOGRAPHY DEC. 1954		


NOTE: FULL TRENCH COMPACTION IS REQUIRED FOR A MINIMUM DISTANCE OF 20' ON EACH SIDE OF ALL CROSSINGS.
▲ Denotes Street Light (175 WMV)
Note:
Ex. 15" Dr. to be removed. Sta. 8+95 @ Rt. 20
NEW 15" RCCP + E/W
Ditch and side slopes to be lined with filter cloth and Cl I Rip Rap, 4'-7" Gabion Stone
MACADAM RESURFACING TO BE DONE AS DIRECTED BY ENGINEER IN FIELD
COVE ROAD R/W TO BE CLOSED
PLAT OF ANNADALE E.34
10' Private Utility Esm't.
20' Temp. Construction esm't. to be obtained by developer.
Ex. 10' Esmt 15.163.13
ADJUST EX. MANHOLE COVER TO PROP GRADE
TRAFFIC BARRIER W/BEAM GAGE, CURB, SHA STD. #300.61
STA C+09
NO PARKING
LIMIT OF CONTRACT STA 0+00
LIMIT OF PAVING STA C+16
Prop R/W Widening
Prop 15" RCCP
Ex 15" D.
Ex 30" R/W
Ex 8" W
Ex 8" San
Ex 8" W C.I.
MATTHAI ROAD
LIMIT OF CONTRACT
LIMIT OF PAVING
STA 3+52
℄ STA 3+90 ANNADALE RD
℄ STA 0+00 MATTHAI RD.
ANNADALE E-34
EX. DIRT DRIVE
ANNADALE ROAD
ELECT. TRANSFORMER
Ex. 48" S.
Ex. 48" SAN. (13.00 DIA.)
RIP RAP OUTLET PROTECTION
15' DRAINAGE + UTILITY EASEMENT
10' DRAINAGE + UTILITY EASEMENT
V. DITCH WITH 2:1 SIDE SLOPES, MIN. 1' DEEP
REMOVE EXIST 15" & INSTALL 15" RCCP
Ex. Hse. #3827
℄ STA 3+05 @ 20'-LT
TOBASCO COVE
EBB "C" FLOW
S 85°21'52" E 400.00
S 8750
E 39,750
E 40000
S 8500
Ex 10' Esmt 15.163.13
Ex 30' R/W
Ex 8" W
Ex 8" San
Ex 15" D.
Prop 15" RCCP
Prop R/W Widening
Ex 48" S.
Ex 48" SAN (13.00 DIA.)
Ex 8" W C.I.
Ex 8" San
Ex 8" W
Ex 8" San

3/16/00

98-251-A & CBA-98-128
ROBERT LONG PROPERTY
CCT AFFIRMS CBA
3/16/2000 (J. N. Byrnes, J)

PETITION OF:
MELVIN C. WOODELL, JR.
3825 ANNADALE ROAD
BALTIMORE, MD. 21221 *

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

OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washington Ave.,
Towson, MD. 21204 *

IN THE CASE OF: IN THE MATTER
ROBERT LONG, ET UX, FOR A ZONING *
VARIANCE ON PROPERTY LOCATED ON
THE S/S ANNADALE ROAD, 90' E OF C/L
MATTHAI ROAD (3825 ANNADALE ROAD) *
AND APPLICATION FOR CRITICAL AREA
VARIANCE AT 3825A ANNADALE RD.
15th ELECTION DISTRICT *
7th COUNCILMANIC DISTRICT

CASE NO. 98-251-A *
and CBA-98-128

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

CASE NO. 3-C-99-6263

00 MAR 20 AM 11:53
RECEIVED
COUNTY BOARD OF APPEALS

* * * * * * * * * * *

OPINION

This case involves two appeals in one record taken by Melvin C. Woodell, Jr. and others ("Appellants") from two decisions by the Baltimore County Board of Appeals. The first, case CBA- 98-128, involves the granting of a variance from a Chesapeake Bay critical area regulation to Mr. and Mrs. Robert Long ("Petitioners") by the Department of Environmental Protection and Resource Management ("DEPRM"). The variance permits the building of a single family dwelling within a 100 foot buffer to Tobasco Cove.[1]

---

[1]The August 13, 1997 letter from George G. Perdikakis, Director of DEPRM, makes reference to "Bear Creek." Tobasco Cove is off of Bear Creek.

FILED MAR 16 2000

The second case CBS-98-251-A involves the granting of two zoning variances. The first permits a lot 43 feet wide in lieu of the required 55 feet and the second a 10 foot side yard setback in lieu of the required 25 feet setback. The property is zoned DR5.5.

THE LAW

When reviewing decisions of an administrative body involving zoning matters, the test to be applied is whether the issue before the administrative body is "fairly debatable" which is to say whether the Board's determination is based upon evidence from which reasonable persons could come to different conclusions. *Sembly v. County Board of Appeals*, 269 Md. 177 (1973). For the decision to be fairly debatable, the administrative body must have "substantial evidence" on the record supporting its decision. *Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383 (1979).

THE FACTS

The property in question is located along Tobasco Cove, which is adjacent to Bear Creek in the Annadale sub-division. The original plat of Annadale was recorded among the Land Records of Baltimore County on March 23, 1926. There are a number of lots bordering Tobasco Cove of varying widths and depths.

In 1987, the Longs purchased, among other lots in the sub-division, lots 31 through 36. They re-configured the lots and turned the six lots into five. What had been lots 32 through 36 became four lots with widths of 66 feet. What had been lot 31 now has a width of 43 feet. It should be noted that in 1987 there were no Chesapeake Bay critical area regulations. Because the width of lot 31 increased to approximately 71 feet as it approached the water, a single family

dwelling could have been build on the lot. As noted, following the adoption of the Chesapeake Bay critical area regulations, no home could be built within 100 feet of Tobasco Cove without a critical area administrative variance.

There are five criteria listed in COMAR 27.01.11 that must be used in evaluating the variance request. All five must be satisfied in order to gain approval for the variance. The request was tentatively granted by the Baltimore County Department of Environmental Protection and Resource Management. Their letter of August 13, 1997 (County Exhibit No. 6) was admitted into evidence, and at the hearing before the Board, Mr. Keith Kelly testified in support of the variance. In its decision, the Board, by implication, adopted both the reasoning of the August 13, 1997 letter and Mr. Kelly's testimony. The August 13, 1997 letter reads as follows:

> Dear Mr. & Mrs. Long:
>
> The Department of Environmental Protection and Resource Management (DEPRM) has received your variance request to construct a single-family dwelling on a vacant lot in the 100 foot buffer to Bear Creek. The Director of DEPRM may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.
>
> The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. Due to the configuration of the lot, a majority of the dwelling must be built in the 100 foot buffer, or the lot would be unbuildable. Therefore, the hardship is warranted.
>
> The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. As stated above, there is no room to build a dwelling out of the 100 foot buffer. If the regulations were literally enforced, the applicant would not be able to build a dwelling on the property and would, thus, be deprived of a right commonly enjoyed by others.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. No special privileges will be conferred upon the applicant by the granting of this variance. Therefore, this criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. The variance is not based upon conditions or circumstances which were the result of your own actions, and this criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The granting of this variance will not adversely impact fish, wildlife, or plant habitat. Potential water quality impacts can be minimized through the planting of trees.

Based upon our review, it is this Department's findings that the first four of the above criteria have been met, and that the fifth criterion can be met by planting 1.5 inch caliper native deciduous trees, preferably on the waterward side of the proposed structure, at a rate of 3 trees for each 100 square feet of the proposed disturbance to occur within the 100 foot buffer. Therefore, the requested variance is hereby approved in accordance with Section 26-445 (c) of the Baltimore County Code with the following conditions:

1. The attached "Notice of Granting of Variance" must be published in The Avenue, The Dundalk Eagle or The Essex Times. Final variance approval cannot be granted until fifteen (15) calendar days after the notice has been published. A copy of the Certificate of Publication for the advertisement issued by the newspaper, or a copy of the advertisement from the paper must be submitted to this office prior to receiving final variance approval.

2. The sum of all man-made impervious areas shall not exceed 25% of the lot; including the development proposed as part of this variance request and any accessory uses or structures.

3. No accessory structures shall be placed on the property waterward of the proposed dwelling.

4. The proposed dwelling shall be placed as close to the road as

allowed by Baltimore County Zoning Regulations, and shall extend no closer than sixty-five (65) to mean high tide.

5. If all of the required mitigation cannot be accomplished onsite, the Department may accept a fee-in-lieu of mitigation at a rate of $1.20 per square feet of disturbance. Any fee-in-lieu payment shall be made prior to building permit issuance.

6. The above-referenced mitigation shall be completed within ninety (90) days of building permit issuance for the proposed dwelling.

7. Rooftop runoff shall be directed through downspouts and across the lawn.

8. Prior to receiving final variance approval, a revised plot plan which shows the following additional information must be submitted to this office:

a. the Limit of Disturbance (L.O.D.) as 15 feet from the proposed work,

b. location of proposed trees to be planted,

c. the 100 foot buffer limit,

d. a note stating, "There shall be no clearing, grading, or disturbance of the 100 foot buffer other than mowing, except as permitted by the Department of Environmental Protection and Resource Management (DEPRM)", and

e. the location of the driveway for the dwelling.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request.

Please sign the statement on the next page and then return a copy of the Certificate of Publication, the revised plot plan, and the letter to this Department c/o Ms. Patricia M. Farr of Environmental Impact Review. Failure to return a signed copy of this letter and the other two items may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have any questions regarding this project, please contact Mr. Keith Kelley at (410) 887-3980.

Sincerely,

George G. Perdikakis
Director

Final approval was granted on June 22, 1998 (County Exhibit No. 8). The only serious argument made by the protestants against the granting of the variance involves criterion number 4. It requires that the variance not be based upon conditions or circumstances which are the result of actions taken by the Longs. Appellants argue that Petitioners were the ones that reduced the width of the lot from 50 feet to 43 feet and thus caused a condition or circumstance requiring the variance. The short answer is that the width of the property is not and was not a concern of DEPRM. (Kelly, T. at p. 84-86). The Court finds that the issues involving the Critical Area administrative variance are, at a minimum, fairly debatable; and, further, that there was substantial evidence before the Board to support its conclusion. *See also White v. North*, 356 Md. 31, 33 (1999).

The Longs also sought relief from Sections 1 BO2.3.C.1. to permit a lot with a width of 43 feet in lieu of the required 55 feet, and a side yard setback of 10 feet in lieu of the required 25 feet. Section 307.1. of the Baltimore County Zoning Regulations sets out the criteria which must be met before an area variance may be granted.

The Board has the power to grant a variance "only in cases where special circumstances or conditions exist that are peculiar to the land . . . and where strict compliance with the zoning regulations . . . would result in practical difficulty or unreasonable hardship."

In addition, the variance "shall be granted only if in strict harmony with the spirit and intent of said . . . area . . . regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare." (BCZR 307.1)

A variance may only be granted after a two-step inquiry. There must be a determination of whether the subject property is unique and unusual in a manner different from the nature of the surrounding properties which would result in the zoning provision having a disproportionate impact on the property. *Cromwell v. Water*, 102 Md. App. 691 (1995). If indeed this is the case, the zoning authority must then determine whether the impact would result in an unreasonable hardship or practical difficulties.

In *North v. St. Mary's County*, 99 Md. App. 502 (1994), the Court of Special Appeals defined "uniqueness." The unique aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property:

> "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or nonaccess to navigable waters, practical restrictions imposed by abutting properties (such as obstructions), or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls. *Id.* at 514.

It is clear from the Board's opinion that it understood its role and it did, in fact, apply the correct standard. Both the Zoning Commissioner and the Board found that the existence of the paper street (Tobasco Road) adjacent to the property, the tapered nature of the property, the particular slope of the property, and that the property would meet the 55 foot requirement if the Longs could build the dwelling closer to the water as evidence that the property is unique.

The Board also found that the combination of the enactment of the critical area regulations

in 1993 combined with the zoning regulations rendered the property unbuildable without the variance. It also noted that there were other lots in the area with widths less than 43 feet. "In a given case, whether a property owner is being denied a reasonable and significant use initially will be a determination of the zoning agency, which we presume possesses the necessary expertise to decide what is reasonable and significant." *White*, 356 Md. at 49.

This Court finds that the issues involving the zoning variance are fairly debatable and that there was substantial evidence before the Board to support its decision. Accordingly, the decision will be affirmed.

It is so ORDERED this 15th day of March, 2000 in the Circuit Court for Baltimore County.

J. Norris Byrnes

J. NORRIS BYRNES

JNB:jla

3/23/99

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY *

PETITION OF: *
MELVIN C. WOODELL, JR. *
3825 ANNADALE ROAD
BALTIMORE, MD 21221 *

FOR JUDICIAL REVIEW OF THE DECISION OF * CIVIL
THE COUNTY BOARD OF APPEALS ACTION
OF BALTIMORE COUNTY * No. 3-C-99-6263
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204 *

IN THE CASE OF: IN THE MATTER *
ROBERT LONG, ET UX, FOR A ZONING
VARIANCE ON PROPERTY LOCATED ON THE *
S/S ANNADALE ROAD, 90' E OF C/L MATTHAI
ROAD (3825A ANNADALE ROAD) AND *
APPLICATION FOR CRITICAL AREA VARIANCE
AT 3825A ANNADALE ROAD *
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT *

CASE NO. 98-251-A *
and CBA-98-128
*
* * * * * * * * * * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT, AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence M. Stahl, Lynn Barranger, and Margaret Worrall, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS, DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT AND THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

No. 98-251-A

January 7, 1998	Petition for Variance filed by Robert and Rose Long, to permit a lot width of 43' in lieu of the required 55', a side yard setback of 10' ilo the required 25', and to approve the subject property as an undersized lot.

RECEIVED AND FILED
99 AUG 23 PM 3:16
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

February 5, 1998	Certificate of Posting.
February 5	Publication in newspaper.
February 7	Entry of Appearance filed by People's Counsel for Baltimore County.
February 12	ZAC Comments.
February 20	Hearing held on Petition for Variance by the Zoning Commissioner.
March 13	Order issued by the Zoning Commissioner in which the Petition for Variance was GRANTED with restrictions in part and DENIED in part.
April 7	Notice of Appeal filed by Melvin C. Woodell, Jr., et al

CBA-98-128

August 13, 1997	Letter from George G. Perdikakis, Director /DEPRM, to Mr and Mrs. Robert Long; request for administrative variance to construct a single-family dwelling on a vacant lot in the 100 foot buffer to Bear Creek is GRANTED.
April 7, 1998	Notice of Appeal filed by Melvin C. Woodell, Jr., et al (concerned property owners of Annadale), Appellants /Protestants.

98-251-A and CBA-98-128

August 27, 1998	Entry of Appearance filed by Newton A. Williams, Esquire, as counsel for Mr. Melvin Woodell, et al.
October 6	Motion for Dismissal filed by Robert Long.
October 9	Answer to Motion for Dismissal and for Postponement filed by Newton A. Williams, Esquire, on behalf of Melvin Woodell, et al.
October 26	Subpoenas served on Mr. & Mrs. Norris Shanholtz and Mrs. Annabelle Chenowith at the request of Robert Long.
November 4	Appellants' Motion to Quash Subpoenas filed by Newton A. Williams, Esquire, on behalf of Mr. & Mrs. Shanholtz, and Mrs. Chenowith.
January 13, 1999	Hearing held by the Board of Appeals.
March 1	Closing Memoranda filed by Wendy A. Zerwitz, Esquire, on behalf of Robert & Rose Long.

March 1, 1999	Hearing Memorandum (letter form) filed by Newton A. Williams, Esquire, on behalf of Melvin C. Woodell, Jr.
March 1	Memorandum of Baltimore County, Maryland filed by Virginia W. Barnhart, County Attorney and Nancy C. West, Assistant County Attorney.
March 18	Deliberation conducted by the Board of Appeals.
May 25	Opinion and Order issued by the Board; Appellant/Protestant's Motion to Quash Subpoenas is *GRANTED: Petitioners'* Motion to Dismiss is DENIED; decision of DEPRM granting request *for admin.* variance is AFFIRMED; Petitioners' requested admin. variance is GRANTED with conditions; and Petition for Variance is GRANTED with restrictions.
June 23	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Newton A. Williams, Esquire, on behalf of Melvin C. Woodell, Jr.
June 29	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
June 30	Certificate of Notice sent to interested parties.

Petitioner's Exhibit Nos. 1- 9/98 Property Survey by Thos. Phelps
2-Photographs
A-Next to house toward Annadale Rd -N
B-New lot -shows location of house
C-Paper Rd -looking north
D-Long's house
E-Back yd /pier Long House & rip rap
F-From pier showing easement for road
G-Showing grasses on lot
3-Plat 5-8-91 Annadale Rd extension

Protestant's Exhibit No. 1-Packet dated January 13, 1998
2-Photographs of Long Property
A-Lot 31
B-Looking north on Annadale Ave.
C-Looking east on Annadale Ave.
D-Woodell property & 3823
E-E/s of Woodell property
F-W/s of Long property
G-Looking across lot & Long property
H-Looking east on Annadale
I-Outfall on Lot 31
J-Long property for sale adj. Lot 31

3-Plat of Annadale -April, 1925

County's Exhibit No. 1-Critical area administrative variance application, dated 7/14/97
2-Section 26, 445 Balto. Cty. Code - Building within 100' buffer
3-Natural Resource Act - Md. Code -8-1811b(3)
4-COMAR 27-0111 Variance Process for CA
5-Letter July 25, 1997 to Kelley from Susan McConville CBCAC
6-Letter to Long from Perdikakis -8/13/97
7-Notice of granting of variance, notice of newspaper ad, plat plan - 3 pages
8-Final granting variance letter 6/22/98

August 23, 1999 Transcript of testimony filed.

August 23, 1999 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Respectfully submitted,

Charlotte E. Radcliffe

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

cc: Newton A. Williams, Esquire
Melvin C. Woodell, Jr.
Wendy A. Zerwitz, Esquire
Mr. & Mrs. Robert Long
People's Counsel for Baltimore County
Nancy C. West, Esquire
Virginia W. Barnhart, County Attorney

6/30/99

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY *

PETITION OF: *
MELVIN C. WOODELL, JR. *
3825 ANNADALE ROAD *
BALTIMORE, MD 21221 *

FOR JUDICIAL REVIEW OF THE DECISION OF * CIVIL
THE COUNTY BOARD OF APPEALS ACTION
OF BALTIMORE COUNTY * No. 3-C-99-6263
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204 *

IN THE CASE OF: IN THE MATTER *
ROBERT LONG, ET UX, FOR A ZONING
VARIANCE ON PROPERTY LOCATED ON THE *
S/S ANNADALE ROAD, 90' E OF C/L MATTHAI
ROAD (3825A ANNADALE ROAD) AND *
APPLICATION FOR CRITICAL AREA VARIANCE
AT 3825A ANNADALE ROAD *
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT *

CASE NO. 98-251-A *
and CBA-98-128
*

* * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Lawrence M. Stahl, Lynn Barranger, and Margaret Worrall, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Newton A. Williams, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., Suite 700 - Nottingham Centre, 502 Washington Ave., Towson, Maryland 21204, Counsel for Petitioner; Melvin C. Woodell, Jr., 3825 Annadale Road, Baltimore, Maryland 21222, Petitioner; Mr. and Mrs. Robert Long, 3827 Annadale Road, Baltimore, Maryland 21222, Property Owners; Wendy A. Zerwitz, Esquire, 600 Washington Avenue, Suite 310, Towson, Maryland 21204, Counsel for Property Owners; Nancy C. West, Assistant County Attorney, and Virginia W. Barnhart, County Attorney, 400 Washington Avenue, Towson, Maryland 21204.

RECEIVED AND FILED
99 JUN 30 PM 2:1[illegible]
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Charlotte E. Radcliffe

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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Newton A. Williams, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., Suite 700 - Nottingham Centre, 502 Washington Avenue, Towson, Maryland 21204, Counsel for Petitioner; Melvin C. Woodell, Jr., 3825 Annadale Road, Baltimore, Maryland 21221, Petitioner; Mr. and Mrs. Robert Long, 3827 Annadale Road, Baltimore, Maryland 21222, Property Owners; Wendy A. Zerwitz, Esquire, 600 Washington Avenue, Suite 310, Towson, Maryland 21204, Counsel for Property Owners; Nancy C. West, Assistant County Attorney, and Virginia W. Barnhart, County Attorney, 400 Washington Avenue, Towson, Maryland 21204, this 30th day of June, 1999.

Charlotte E. Radcliffe

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

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

June 30, 1999

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
520 Washington Avenue
Towson, MD 21204

RE: Civil Action No. 3-C-99-06263
ROBERT LONG, ET UX /LONG PROPERTY

Dear Mr. Williams:

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

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

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

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Melvin C. Woodell, Jr.

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

June 30, 1999

Wendy A. Zerwitz, Esquire
600 Washington Avenue, Suite 310
Towson, Maryland 21204

RE: Civil Action No. 3-C-99-06263
ROBERT LONG, ET UX /LONG PROPERTY

Dear Ms. Zerwitz:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on June 23, 1999, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-99-06263.

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

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

c: Mr. and Mrs. Robert Long
Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth
People's Counsel for Baltimore County
George Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller /Planning
Lawrence E. Schmidt /ZC
Arnold Jablon /PDM
Nancy C. West, Asst. Co. Atty
Virginia W. Barnhart, Co. Atty

Printed with Soybean Ink
on Recycled Paper

C-99-6263

PETITION OF:	Melvin C. Woodell, Jr. 3825 Annandale Road Baltimore, MD 21221	*	IN THE
		*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF		*	FOR
	County Board of Appeals of Baltimore County Old Courthouse, Room 49 400 Washington Avenue Towson, Maryland 21204 (410) 887-3180	*	BALTIMORE
		*	COUNTY
		*	
IN THE CASE OF:	IN THE MATTER OF THE APPLICATION OF ROBERT LONG, et ux, Petitioners FOR VARIANCES ON PROPERTY LOCATED ON THE S/S Annadale Rd. 90'E of C/L of Mathai Road, (3825A Annadale Road) 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT CASE NO. 98-251-A and CASE NO. CBA-98-128	*	CIVIL ACTION NO.

* * * * * * * * * * * *

Case: 99-C-99-006263
CF*Civil Fili 90.00
MLSC 10.00
Appearance*Fee 10.00
TOTAL $100.00

COMMENT:
Check for proceedings
Receipt #199900012766
Cashier ID: CSHR2AB60
06/23/99 3:55pm

RECEIVED
COUNTY BOARD OF APPEALS
99 JUN 29 AM 11:27

PETITION

MELVIN C. WOODELL, JR., Appellant who participated in the proceedings before the County Board of Appeals of Baltimore County, by Newton A. Williams, Esquire and Nolan, Plumhoff & Williams, Chartered, his attorneys, in accordance with Maryland Rule 7-202, hereby requests judicial review of the May 25, 1999 Decision of the County Board of Appeals of Baltimore County in the above-captioned matter, in both of the noted cases.

Newton A. Williams

Newton A. Williams
Nolan, Plumhoff & Williams, Chtd.
Suite 700 - Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(410) 823-7800

Attorneys for Appellants

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

RECEIVED AND FILED
99 JUN 23 PM 3:45
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

cc: ITPCC1 6/23/99

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 23 day of June, 1999, that a copy of the foregoing Petition was mailed, postage prepaid, to Wendy A. Zerwitz, 600 Washington Avenue, Suite 310, Towson, MD 21204; Virginia W. Barnhart, Esquire and Nancy C. West, Esquire, County Attorneys Office, Court House, Towson, MD 21204; and to Baltimore County People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, MD 21204; and to County Board of Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Room 49, Towson, MD 21204.

Newton A. Williams

Newton A. Williams

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-99-006263

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Rm 49
400 Washington Ave
Baltimore, MD 21204

1/25/99

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
ROBERT LONG, ET UX, FOR ZONING	*	COUNTY BOARD OF APPEALS
VARIANCE ON PROPERTY LOCATED		
ON THE S/S ANNADALE ROAD, 90'	*	OF
E OF CENTERLINE MATTHAI ROAD		
(3825A ANNADALE ROAD) AND	*	BALTIMORE COUNTY
APPLICATION FOR CRITICAL AREA		
VARIANCE /3825A ANNADALE ROAD	*	CASE NO. 98-251-A
15TH ELECTION DISTRICT		AND
7TH COUNCILMANIC DISTRICT	*	CASE NO. CBA-98-128

* * * * * * * * *

O P I N I O N

The matter 98-251-A comes before the Board of Appeals as an appeal of a decision by the Zoning Commissioner dated March 13, 1998, in which a Petition for Variance was granted, seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (BCZR) to permit a lot width of 43 feet in lieu of the required 55 feet, and a side yard setback of 10 feet in lieu of the required 25 feet for the subject property at 3825A Annadale Road, 15th Election District; 7th Councilmanic District. While the Zoning Commissioner denied the Petitioners' request to approve the subject property as an undersized lot, pursuant to Section 304 of the BCZR, this request was not before this Board on appeal.

A coordinate appeal comes before the Board (Case No. CBA-98-128) relative to the granting of an administrative variance on June 22, 1998, by the Department of Environmental Protection & Resource Management (DEPRM) and the Chesapeake Bay Critical Area Commission to construct a single-family dwelling within the 100-foot buffer.

The appeals were taken by Melvin C. Woodell, Jr., and "Concerned Property Owners of Annadale" on April 7, 1998, and June 23, 1998, respectively. Newton A. Williams, Esquire, represented the Appellants before the Board.

Counsel for the Petitioners /Property Owners, Mr. and Mrs. Robert Long, was Wendy A. Zerwitz, Esquire; Nancy C. West, Assistant County Attorney, appeared on behalf of Baltimore County. Ms. West indicated that she was present concerning the approval of the variance from the Chesapeake Bay Critical Area Commission to build within the critical area buffer.

The first order of business before the Board was a motion from Mr. Williams to quash subpoenas secured by Ms. Zerwitz on behalf of the Petitioners for the appearance of neighbors to the subject property. Ms. Zerwitz argued that the subpoenas and subsequent testimony were necessary in order to understand why the "Concerned Property Owners" mentioned in the appeal felt the need to protect their properties from the Petitioners' desire to build on his lot. Mr. Williams pointed out that the neighbors named in the subpoenas were not Appellants in this case. The Board found unanimously that Mr. Williams' motion should be granted as there would be ample opportunity to hear from any interested parties within the body of the hearing as well as an opportunity for Ms. Zerwitz to cross-examine them.

Ms. West, Counsel for Baltimore County, requested that the DEPRM appeal (Case No. CBA-98-128) be heard first as the County was participating only in that portion of the hearing. All parties agreed and the Board granted the request. Ms. West pointed out that the critical area appeal would be heard de novo and that the burden of proof lay with the County and the Petitioner. In opening statement, she argued that the Petitioners desired to build a

single-family dwelling within the 100-foot buffer and to do so required a variance. Provisions for such a variance are set out under COMAR Title 27. DEPRM determined that the subject property met the criteria for the variance and granted same.

On behalf of the Petitioners, Ms. Zerwitz concurred that the Longs had met all regulations for the requested variance. In opposition, Mr. Williams argued on behalf of the Protestant /Appellant, that DEPRM did not have all the facts they needed to come to an appropriate decision, and, if they had, the subject property would have failed to meet the burden of the criteria.

Ms. West called Keith Kelley to testify on behalf of Baltimore County. Mr. Kelley said that he had been employed with DEPRM for 18 years as a natural resource specialist. It is his duty to consider the environmental impact and oversee development within the Chesapeake Bay Critical Area. The subject property, Mr. Kelley explained, is located in Dundalk on Bear Creek. As is the usual procedure (County Exhibit #2), according to Mr. Kelley, the property owners applied for a critical area administrative variance for construction within the 100-foot buffer and submitted that application to DEPRM. Mr. Kelley made a site visit on July 14, 1997 (County Exhibit #1). His report was then sent for review to the Critical Area Commission in accordance with Maryland Code requirements (County Exhibit #3). Under the COMAR regulations, Title 27 (County Exhibit #4), there are five elements which must be satisfied for variance approval.

Mr. Kelley also testified that the Longs advertised the

variance request in area newspapers as required and submitted a revised site plan to comply with DEPRM's conditions (County Exhibit #7). On June 22, 1998, the final approval letter was issued (County Exhibit #8), and on June 23, 1998, the Appellant, Melvin Woodell, appealed DEPRM's decision.

In response to questions from Ms. West, Mr. Kelley testified that DEPRM does not "get involved in zoning issues," and that he did not appear at the hearing before the Zoning Commissioner on Case No. 98-251-A. He explained that he was not familiar with the history of the property and only makes determinations within the confines of the COMAR regulations which have been in effect since 1993.

On cross-examination by Mr. Williams, Mr. Kelley explained that stormwater outfall and water runoff from the street do not fall within the scope of his review since they are not natural resources. It is his duty to focus strictly on the environmental impact on the water quality of the Chesapeake Bay from the building and disturbance which would occur within the 100-foot buffer if a variance request is approved. He further offered that the site plan for the subject property falls well within the impervious surface limits.

Ms. West offered Mr. Kelley as an expert limited to Critical Area Commission review and the procedures and criteria relative to this subject. The Board accepted Mr. Kelley as an expert in this field.

The County rested their case with this single witness.

Counsel for the Appellant and County for the Petitioners offered no witnesses. The Board requested memorandums in lieu of closing arguments.

In her opening statement in Case No. 98-251-A, Counsel for the Petitioner, Wendy Zerwitz, Esquire, argued that the Longs own an undersized lot which will require a variance to permit a lot 43 feet wide in lieu of the required 55 feet and a 10-foot side yard setback in lieu of the required 25 feet in order to build a single-family dwelling. Ms. Zerwitz contended that the subject property is unique and that the Petitioners would suffer hardship and practical difficulty if such a variance were to be denied. Further, the site plan proposed meets the spirit and intent of the zoning regulations.

Attorney for the Appellant, Mr. Williams, argued that the Petitioners purchased 15 lots in 1987, the residue of the 1925 subdivision known as Annadale, which they configured to create larger lots 66 feet in width. Mr. Williams said that the property owners have chosen to configure the lots in this manner and thereby have created their own hardship and should be denied the requested variance.

The first witness for the Petitioner was Thomas E. Phelps, a land surveyor who testified that he is familiar with the Annadale subdivision, having completed the surveying of numerous lots along Annadale Road. He indicated that many of the older lots were small with "tight" side yards. The construction on the older lots was accomplished prior to the enactment of Critical Area regulations.

In his opinion it is the latter restriction which hampers the Petitioners because of the unusual shape of their lot which is narrower near the road and widens toward the water side. If there was no critical area limit, the proposed construction could be placed at the wider part of the lot and meet the frontage requirement of 55 feet.

Mr. Phelps also testified that the existing "paper" street, Tobasco Road, effectively separates the Petitioners' proposed dwelling from the Appellant's property line by 25 feet because the Longs' deed refers to ownership to the center line of Tobasco Road. He also said that he was unaware of any drainage easement and saw no reference to one in the deed which he reviewed for the Petitioners. On cross-examination by Mr. Williams, Mr. Phelps said that originally the subject lot was 50 feet wide, but that the adjoining lot, also owned by the Longs, had taken the northwest corner of this property in the reconfiguration of the original subdivision.

The Petitioner, Robert Long, was the next witness. Mr. and Mrs. Long have lived at 3827 Annadale Road for 10 to 12 years. When they purchased the lots originally, they had wanted to build at the corner of Cove and Annadale Roads, but had been unable to do so because of sewer requirements. Mr. Long testified that Baltimore County required him to build where he did because of the availability of public water and sewer. At that time no variance was needed because there were no critical area regulations.

In reconfiguring the remaining lots, Mr. Long testified that

the County required him to bring the lots up to the current code regulations. His house was already built at 3827 which left the subject property as the residue of the re-subdivision. When the lots were reconfigured, Mr. Long testified that the subject property was buildable under the regulations in effect at the time.

He further indicated that a portion of the lot meets the 55-foot requirement but it is within the 100-foot critical area buffer so he is required to build closer to the road where the lot is narrower. It is this "pie-shape" that makes the subject property unique. The other lots in the neighborhood are roughly rectangular. In addition, the subject property is adjacent to the paper road, Tobasco Road, and he testified that his lot is riprapped because of the drainage easement (Petitioners' Exhibit #3) which flows over Tobasco Road. The subject property is also lower in elevation than others in the neighborhood.

Without the variance, Mr. Long testified that the property would be unbuildable, although he could legally build an addition to his present house that would be larger than the single-family house which he proposes for the subject property.

The next witness was the Appellant, Melvin C. Woodell, Jr. Mr. Woodell lives at 705 S. 49th Street, Baltimore, but owns 3825 Annadale Road which he purchased 15 to 18 years ago and rents to a tenant. Mr. Woodell indicated that his concerns centered around Mr. Long denying him access to Tobasco Road and to drainage over the easement which could adversely impact water flow if the proposed dwelling is placed too close. On cross-examination, Mr.

Woodell testified that the neighbor on his other side was 15 to 18 feet away. He also felt that a house placed closer to his would overcrowd and devalue his property.

Joseph Ernstberger of 3830 Annadale Road, which is on the opposite side of the road from the subject property, also testified with concerns about stormwater flow and drainage. He said that he would like to have access to Bear Creek over Tobasco Road but he knows of no legal reason why he is entitled to that access.

Once again, the Board asked for memorandums in lieu of closing arguments.

In her memorandum, Ms. Zerwitz, Counsel for the Petitioner, moved to dismiss on the grounds that the Appellant in both Case No. 98-251-A and Case No. CBA-98-128 was identified only as "Concerned Property Owners of Annadale." She opined that Rule 3(a) of the Board of Appeals' Rules of Practice and Procedure specifically states that "[n]o appeal shall be entertained by the Board of Appeals unless the Notice of Appeal shall state the names and addresses of the persons taking the appeal."

The Board finds that the motion to dismiss on the failure to perfect the appeal is denied. First, the Board finds no evidence that this motion was brought forth within the hearing. Therefore, it was not presented in a timely matter, there was no opportunity for rebuttal, and the motion should be denied. Further, the Board finds that it is apparent that Mr. Woodell is the Appellant. His name and address appear on the letters of appeal; he signed the check for the appeals fee and his name and address appear on the

check; and he testified as the singular person appealing the issues. The addition of the appellation "Concerned Property Owners of Annadale" is confusing because no such entity appears to exist as a community group. If Mr. Woodell had not been present to speak for himself, the Board would have had to dismiss for failure of the Appellant to appear. Such is not the case, however, and the motion is denied.

With regard to Case No. CBA-98-128 regarding the DEPRM decision to grant an administrative variance to construct a single-family dwelling within the 100-foot critical area buffer, having individually reviewed their notes taken at the public hearing, and upon examination of the evidence produced, this Board concludes that all the requirements of COMAR 27.01.11 have been established by the Petitioner. A variance may be granted to the Chesapeake Bay Critical Area Regulations only as provided in accordance with the regulations specified in COMAR 27.01.11. Those Regulations require that all five of the designated criteria must be met. We turn our attention, therefore, to the five criteria as follows:

1. There must exist special conditions that are unusual or peculiar to the land or structure that make literal enforcement of the regulations an unwarranted hardship to the property owner.

Due to the unusual shape and topography of the lot, a majority of the dwelling must be built in the 100-foot buffer, or the lot would be unbuildable. This Board finds, therefore, that special conditions do exist and this criterion has been met by Petitioner.

2. A literal enforcement of the Regulations would

> deprive the property owner of rights commonly enjoyed by other property owners in the area of the critical region.

As stated above, there is no room to build a dwelling out of the 100-foot buffer. If the regulations were literally enforced, the Petitioner would not be able to build a dwelling on the property and would, therefore, be deprived of a right commonly enjoyed by others. Based on the testimony and evidence presented, this Board finds that Petitioner has met this criterion.

> 3. If a variance were granted, such action would not grant to the Appellants any special privileges that would be denied to other land or structures within the critical region.

We further find that no special conditions would be conferred upon the Petitioner by the granting of this variance. Therefore, this criterion has been met.

> 4. Any variance requested requires that the request is not based on conditions or circumstances that are the result of the Appellants' actions, or any conditions that related to land or building use (either permitted or nonconforming) on any neighboring property.

This Board concludes from the evidence and testimony that the variance is not based upon conditions or circumstances which were the result of Petitioners' own actions, and this criterion has been met.

> 5. The requested variance would not adversely impact water quality or adversely impact wildlife, fish or plant habitat within the critical region, and would be within the spirit and intent of the Critical Area requirements.

The evidence supports a finding that the granting of this variance

will not adversely impact fish, wildlife, or plant habitat. Potential water quality impacts can be minimized through the planting of trees.

We find that Petitioners have complied with all five of the above criteria necessary for the granting of this variance request. The Petitioners have therefore met their burden and the Board grants the request for variance from Section 26-499 of the Code, subject to the conditions imposed by DEPRM in their letter of August 13, 1997.

Moving on to Case No. 98-251-A, Section 307 of the BCZR permits granting of 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 peculiar to the land which is the subject of the variance requested, and where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship.

Under the Court of Special Appeals decision in Cromwell v. Ward, 102 Md.App. 691, 651 A.2d 424 (1995), which sets forth the legal standards under which a variance may be granted, the Board of Appeals, hearing the case de novo, is given the task of interpreting regulations and statutes where issues are debatable in the light of the law. The first burden on the Petitioner for variance is to prove that the property is unique. This standard must be met before other parts of the variance requirements can be properly considered.

The Board finds that there is substantial evidence that the

subject property is unique by virtue of its size, shape relative to other properties in the area, and its sloping nature. Due to the unique qualities of the subject property, the proposed dwelling could meet the 55-foot regulation if it were placed closer to the water; however, the Critical Area regulations render this option unacceptable.

As to the side yard setback, the property adjoins Tobasco Road, a paper road supporting a drainage easement which cannot be developed, another unusual factor. The Petitioner owns to the center line of this road. In effect, the proposed dwelling will be located some 40 feet from Appellant's house. The Appellant offered no concrete evidence to prove that this distance would adversely affect his enjoyment of his property.

The second prong under Cromwell v. Ward speaks to practical difficulty and undue hardship. It is clear to the Board from evidence and testimony that circumstance beyond the Petitioners' control created the lot as it presently exists. The combination of Critical Area regulations imposed in 1993 and zoning regulations relative to lot width and side yard setback render the subject property unbuildable without the variance requested.

Finally, any variance to the BCZR must comply with the spirit and intent of the regulations. While the Board acknowledges and understands the concerns of the Appellant, Mr. Woodell, and the neighbor, Mr. Ernstberger, about access to Bear Creek over Tobasco Road and flooding in the low-lying areas and street, the Board finds that these concerns are not relevant to the case in point.

There is no evidence presented that the neighbors have any legal access to Tobasco Road, and even if they did, the proposed construction would not change the use of the paper road as it presently exists. Similarly, there is no evidence that the drainage easement under Tobasco Road will be impacted in any way by the proposed dwelling. In building the proposed dwelling, the Petitioner must satisfy all standards set out by DEPRM and all other County agencies relating to stormwater outfall and runoff. The Board finds as a matter of fact that neither of these issues is sufficient to overcome our ruling that the request for variance meets the spirit and intent of the zoning regulations.

Therefore, the Petition for Variance seeking relief from Section 1B02.3.C.1 of the BCZR is granted.

O R D E R

THEREFORE, IT IS THIS 25th **day of** May **, 1999 by** the County Board of Appeals of Baltimore County

ORDERED that Appellant /Protestant's Motion to Quash Subpoenas be and the same is hereby **GRANTED**; and it is further

ORDERED that Petitioners' Motion to Dismiss be and the same is **DENIED**; and it is further

ORDERED that the decision of the Department of Environmental Protection & Resource Management (DEPRM) in Case No. CBA-98-128, granting Petitioners' request for administrative variance, be and is hereby **AFFIRMED**; and it is further

ORDERED that Petitioners' requested Administrative Variance to construct a single-family dwelling within the 100-foot buffer be

and is hereby **GRANTED**, subject to the following conditions:

1. The sum of all man-made impervious areas shall not exceed 25% of the lot; including the development proposed as part of this variance request and any accessory uses or structures.

2. No accessory structures shall be placed on the property waterward of the proposed dwelling.

3. The proposed dwelling shall be placed as close to the road as allowed by Baltimore County Zoning Regulations, and shall extend no closer than sixty-five (65) to mean high tide.

4. If all of the required mitigation cannot be accomplished on-site, the Department of Environmental Protection & Resource Management (DEPRM) may accept a fee-in-lieu of mitigation at a rate of $1.20 per square foot of disturbance. Any fee-in-lieu of payment shall be made prior to building permit issuance.

5. The above-referenced mitigation shall be completed within ninety (90) days of building permit issuance for the proposed dwelling.

6. Rooftop runoff shall be directed through downspouts and across the lawn.

7. Prior to receiving final variance approval, a revised plot plan which shows the following additional information shall be submitted to DEPRM:

   a. The Limit of Disturbance (L.O.D.) as 15 feet from the proposed work,

   b. Location of proposed trees to be planted,

   c. The 100-foot buffer limit,

   d. A note stating, "There shall be no clearing, grading, or disturbance of the 100-foot buffer other than mowing, except as permitted by DEPRM," and

   e. The location of the driveway for the dwelling;

and it is further

ORDERED that the Petition for Variance in Case No. 98-251-A to

permit a lot width of 43 feet in lieu of the required 55 feet, and a side yard setback of 10 feet in lieu of the required 25 feet for the subject property at 3825A Annadale Road be and is hereby **GRANTED**, subject to the following restrictions:

1. The Petitioners may apply for their building 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 the 30-day appeal period from the date of this Order has expired. If a Petition for Judicial Review is filed and this Order is reversed, the relief granted herein shall be rescinded.

2. Compliance with the Zoning Plans Advisory Committee comments submitted by DEPRM dated January 20, 1998 and the Bureau of Developer's Plans Review Division of the Department of Permits & Development Management dated January 26, 1998, copies of which are attached hereto and made a part hereof.

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

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, Panel Chairman

Lynn Barranger

Margaret Worrall

County Board of Appeals of Baltimore County

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

May 25, 1999

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
520 Washington Avenue
Towson, MD 21204

RE: In the Matter of Robert Long, et ux /Long Property
/Case No. 98-251-A and Case No. CBA-98-128

Dear Mr. Williams:

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, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** 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 for

Kathleen C. Bianco
Administrator

encl.

cc: Melvin C. Woodell, Jr.
Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth
Wendy A. Zerwitz, Esquire
Mr. and Mrs. Robert Long
Susan McConville
Chesapeake Bay Critical Areas Commission
People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
Virginia W. Barnhart, County Attorney

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on Recycled Paper

IN THE MATTER OF:	*	BEFORE THE
ROBERT LONG ET UX - Petitioners	*	COUNTY BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
	*	CASE NOS. 98-251-A and CBA-98-128

* * * * * * *

MEMORANDUM OF BALTIMORE COUNTY, MARYLAND

Baltimore County, Maryland, by Virginia W. Barnhart, County Attorney and Nancy C. West, Assistant County Attorney, hereby submits this Memorandum in order to assist the Board of Appeals (the "Board") in its consideration of the issues raised in the case involving the Chesapeake Bay Critical Area administrative variance. The above-captioned matter involves two cases which were consolidated before the Board, namely, 98-251-A, which involves an appeal from an Order of the Zoning Commissioner granting in part and denying in part a request relative to a Petition for a Zoning Variance and CBA-98-128 which involves an appeal from the Baltimore County Department of Permits and Development Management's ("The County" or "DEPRM") granting of an administrative variance from the Chesapeake Bay Critical Area regulations. At the conclusion of the testimony before the Board in the latter case, the parties were requested to submit Memoranda in lieu of closing argument. The issues addressed in this submittal are germane only to that case.

STATEMENT OF FACTS

Robert and Rose Long, his wife, ("the Longs") are owners of the property located at 3827 Annadale Road in the Dundalk section of Baltimore County. They requested an administrative variance from the Chesapeake Bay Critical Area regulations to construct a single family dwelling on a vacant lot in the 100-foot buffer to Bear Creek. (County Exhibit 1) The subject property is a waterfront lot consisting of approximately .186 acres which abuts Bear Creek in southeastern

Filed 3/01/99 C.B.A. /ccb

Baltimore County. Vehicular access to the site is by Annadale Road, which is located close to the intersection of North Point Boulevard and Old North Point Road. The property is roughly rectangular in shape, with a width of 43 feet along the property adjacent to the street, and tapering to a greater width along the waterfront.

The Longs acquired a portion of Lot 33, all of Lot 32, and the property identified as Lot 31 on the Annadale plat. (Protestants' Exhibit 3) Lot 32 and a portion of Lot 33 have been developed with a single family dwelling in which the Longs currently reside, known as 3827 Annadale Road. They wish to subdivide their property and develop Lot 31 with a single family dwelling which will be approximately 28 feet by 28 feet in dimension. The west side of the subject property abuts a 15-foot wide paper street, which is shown on the site plan as Tobasco Road. The effect of this 15-foot wide strip is significant in that it separates Lot 31 from Lot 30 by a distance of 15 feet. In order to move forward with the construction of their proposed dwelling, the Longs filed an administrative variance request with DEPRM to build within the 100-foot buffer to Bear Creek. (County Exhibit 1) After the appropriate review and consideration, the Director of DEPRM granted a variance to the Chesapeake Bay Critical Area regulations in accordance with the regulations adopted by the Chesapeake Bay Critical Area Commission concerning variances as set forth in the Code of Maryland Regulations ("COMAR"), Section 27.01.11. Melvin C. Woodell, Jr., et al (the "Appellants" or "Protestants"), noted an appeal of this grant of a variance to the Board of Appeals. It is within this context that the above proceedings arose.

ISSUE

WHETHER THE DECISION OF DEPRM TO GRANT A VARIANCE TO CONSTRUCT A SINGLE FAMILY DWELLING ON A VACANT LOT IN THE 100-FOOT BUFFER TO BEAR CREEK IS SUPPORTED BY SUBSTANTIAL AND COMPETENT EVIDENCE.

After the Longs submitted their application for an administrative variance from the Chesapeake Bay Critical Area regulations, (County Exhibit 1), it was forwarded to the Chesapeake Bay Critical Area Commission (the "Commission") as required by Section 8-1811(b)(3) of the Natural Resources Article of the Annotated Code of Maryland. Thereafter, Keith Kelley of DEPRM received a letter dated July 25, 1997 from Susan McConville in which she advised that the Commission did not oppose the granting of a variance but recommended that the encroachment into the buffer and impervious surfaces be minimized. Additionally, McConville recommended the planting of native vegetation in the 100-foot buffer at a ratio of 3:1 to mitigate for the area of new disturbance in the buffer. (County Exhibit 5) Kelley advised that this was standard protocol with regard to mitigation.

In the County's case-in-chief, Keith Kelley of DEPRM testified. Kelley has been a County employee for over 18 years and for the last 6 years has been a Natural Resource Specialist whose responsibilities include the development and review of Chesapeake Bay Critical Area projects. On an annual basis, he reviews approximately a dozen variance requests. He has been recognized by the Board as an expert witness with regard to the interpretation of the Chesapeake Bay Critical Area regulations.

Kelley testified that the County may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with the regulations adopted by the Critical Area Commission as set forth in COMAR 27.01.11. He opined that there are five criteria listed which are used to evaluate a variance request, namely:

> 1. That findings are made by the local jurisdiction which demonstrate that special conditions or circumstances exist that are

peculiar to the land or structure within the jurisdiction's Critical Area program, would result in unwarranted hardship;

2. That a literal interpretation of this subtitle or the local Critical Area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction;

3. That the granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area;

4. That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property;

5. That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations adopted in this subtitle.

With regard to the first criterion, Kelley noted that due to the configuration of the lot, a majority of the dwelling must be built within the 100-foot buffer or the lot would be unbuildable. Therefore, he deemed that the hardship was warranted.

With regard to the second criterion, Kelley emphasized that if the regulations were literally enforced, the Longs would not be able to build a dwelling on the property because there is no room to build it outside the 100-foot buffer zone. Therefore, they would be deprived of a right commonly enjoyed by other properties in similar areas within the Critical Area.

In reviewing the third criterion, Kelley opined that the granting of the variance would not confer any special privilege upon the Longs that would otherwise be denied to property owners of other lands or structures within the Critical Area.

Further, Kelley determined that the Longs had met the fourth criterion in that their request for a variance was not predicated upon any conditions or circumstances which are attributable to them nor did the request arise from any condition conforming on any neighboring property.

Finally, with regard to the fifth criterion, Kelley noted that the granting of the variance request would not adversely impact fish, wildlife, or plant habitat. He stated that potential water quality impacts could be minimized through the planting of trees. Specifically, he stated that this criterion could be met "by planting 1.5 inch caliper native deciduous trees, preferably on the waterward side of the proposed structure, at a rate of 3 trees for each 100 square feet of the proposed disturbance to occur within the 100-foot buffer." (County Exhibit 6)

In granting the requested variance, the County imposed additional site design and variance approval conditions. These conditions included:

1. An advertising requirement;

2. A requirement that the aggregate of all man-made impervious areas shall not exceed 25% of the lot;

3. An admonition that no accessory structures be placed on the property waterward of the proposed dwelling;

4. The proposed dwelling must be placed as close to the road as allowed by the Baltimore County Zoning Regulations but in no event to extend closer than 65 feet to mean high tide;

5. The County acknowledged that it would accept a fee-in-lieu of mitigation at a rate of $1.20 per square foot of disturbance;

6. The mitigation must be completed within 90 days of building permit issuance for the proposed dwelling;

7. Rooftop run-off shall be directed through downspouts and across the lawn;

8. DEPRM required additional information be submitted prior to granting final variance approval, i.e. a limit of disturbance as 15 feet from the proposed work; location of proposed

trees to be planted; the 100-foot buffer limit; the location of the driveway for the dwelling; and a note stating there would be no clearing, grading or disturbance of the 100-foot buffer other than mowing, except as permitted by DEPRM.

On cross examination, Kelley stated that he did not know where a swale was located on the property but that, in any event, because a swale is not a stream or wetland, it is not subject to review under the Chesapeake Bay Critical Area regulations. Additionally, he opined that the size of the lot is irrelevant because one is still the same distance from the water. Although it would affect the amount of impervious surface, the effect would be negligible.

On June 22, 1998, DEPRM acknowledged receipt of the requisite Certificate of Publication relative to the granting of the variance (County Exhibit 7) as well as a signed copy of the variance approval letter and a revised plot plan. Patricia M. Farr of the Environment Impact Review Division of DEPRM advised the Longs that their requested administrative variance became final on June 16, 1998, the date on which all variance approval documents were submitted for review to the County. (County Exhibit 8) Thereafter, Melvin C. Woodell et al duly noted their appeal.

Protestants averred a number of reasons for opposing DEPRM's decision to grant the variance on the undersized lot. In their letter dated June 23, 1998 to DEPRM, they stated that:

> Tabasco (sic) Road is a paper road which has been turned into the drainage area from the newer part of our community, which goes directly into Tabasco Creek. Tabasco Creek already has enough pollution problems without putting another house on top of the drainage area, which will add to the pollution problem and further restrict the filtration of drainage from the newer community.
>
> Allowing this construction would have a major impact on the wildlife that is left. Before the construction of the newer community we had an abundance of wildlife, since then the number has dropped greatly. This area and the adjoining paper road area are the only areas left for the wildlife. The only area left with high grass for nesting is

adjoining this property. It is our fear that developing so close would further reduce our wildlife.

It is our opinion that the development of this property would have a total negative effect on our creek, wildlife, and our community as a whole. (County Exhibit 9)

The Protestants offered no testimony to rebut that of the County's witness, Keith Kelley. The only documentary evidence submitted to support Protestants' claims of aggrievement were offered by the County in its case-in-chief. And their proferred reasons pale when viewed in light of the compelling reasons Kelley articulated for DEPRM's action.

CONCLUSION

It is clear that DEPRM's decision to grant the Longs an administrative variance to construct a single family dwelling on a vacant lot in the 100-foot buffer to Bear Creek comports with the stringent Chesapeake Bay Critical Area regulations and must be affirmed.

Respectfully submitted,

VIRGINIA W. BARNHART
County Attorney

NANCY C. WEST
Assistant County Attorney
Baltimore County Office of Law
400 Washington Avenue, 2nd Floor
Towson, Maryland 21204
410/887-4420

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 12 day of March, 1999, a copy of the foregoing Memorandum of Baltimore County, Maryland was mailed, postage prepaid, to: Newton A. Williams,

Esquire, Nolan, Plumhoff & Williams, Chartered, Suite 700, Nottingham Centre, 502 Washington Avenue, Towson, MD 21204-4528 and Wendy Anne Zerwitz, Esquire, 36 S. Dundalk Avenue, Baltimore, MD 21222.

NANCY C. WEST

3/1/99

IN THE MATTER OF: *ROBERT LONG, et ux*	*	*BEFORE THE*
	*	*BOARD OF APPEALS OF*
Petitioners	*	*BALTIMORE COUNTY*
RE: ZONING VARIANCE	*	*CASE NO. 98-251A*
RE: CRITICAL AREA VARIANCE	*	*CASE NO. CBA-98-128*

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CLOSING MEMORANDA

The above-captioned matters were called for a hearing before the Board of Appeals on January 13, 1999. The issues before the Board were Protestants' Motion to Quash Subpoenas which had been requested by Petitioners, Petitioners' Motion to Dismiss Appeal, and Protestants' Appeals from the granting of a zoning variance by the Zoning Commissioner allowing for a lot width of 43 feet in lieu of the required 55 feet and a side yard setback of 10 feet in lieu of the required 25 feet. Also appealed was a critical area variance by DEPRM which would allow Petitioners to build within the 100 foot buffer zone. Facts will be presented as they pertain to each argument.

The Board heard arguments regarding Protestants' Motion to Quash Subpoenas and granted same.

MOTION TO DISMISS

On or about April 7, 1998, a letter was sent to the County Board of Appeals appealing the March 13, 1998 decision of the zoning commissioner and on or about June 23, 1998 a letter was sent to the Baltimore County Department of Environmental

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COUNTY BOARD OF APPEALS
RECEIVED

Protection and Resource Management requesting an appeal of their decision to grant a crictical area variance. Both letters were signed "Concerned Property Owners of Annadale" and identified those persons filing the appeal as "concerned citizens of Annadale".[1]

In Protestants' response to the Motion to Dismiss they acknowledge that all Protestants were not listed on the Appeal, however, they argue that Petitioners had adequate notice as to their identities due to the fact that they were listed on the hearing assignment. The reason that they were listed on the hearing assignment was due to their request before the zoning commissioner to be notified of future proceedings and not because they were participants in this filing of an appeal.

The Board of Appeals, in promulgating its rules of practice and procedure set forth specific requirements for those individuals desiring to appear before it. Rule 3(a) specifically states that "[n]o appeal shall be entertained by the Board of Appeals unless the Notice of Appeal shall state the names and addresses of the persons taking such appeal". This rule does not provide for any exceptions such as if the persons taking the appeal appeared at a prior hearing. The rule does not allow for a cure for a defective appeal by subsequently identifying those persons who may have filed the appeal.

To interpret the meaning of Rule 3(a), this Board is

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[1]*The only individual identified in the letter is Melvin Woodell, Jr., and he is only identified as a mailing address for futre correspondence. (See Exhibit 1 & 2)*

governed by the rules of statutory construction. Rules, like statutes, should be interpreted according to their common and ordinary meaning so long as the words are not ambiguous. See County Council for Montgomery County v. Supervisor of Assessments of Montgomery County, et al 274 Md. 116, 332 A.2d. 879 (1975). In Rule 3a the word "shall" is used. "Shall" mandates that strict adherence to the plain language of the Rule is mandatory. As Protestants failed to follow the Rule, their Appeal must be dismissed.

Assuming arguendo, that Protestants' Appeal does not fail for the aforementioned reasons, it must still be dismissed. The letter of Appeal refers to those individuals taking the appeal as "Concerned Property Owners of Annadale", suggesting that the appeal was filed by a civic or improvement association. Clearly, the Protestants holding themselves out as a civic or improvement association for purposes of filing an appeal is not only misleading but also improper.

Under Rules 6 & 8 of the Board's Rules of Practice and Procedure, persons can appear before the Board and testify on behalf of a civic or improvement association, however, the rules set forth what is necessary before a person can testify on behalf of an association. No evidence was ever presented to suggest that "Concerned Property Owners of Annadale" is a legitimate civic or improvement association. However, assuming arguendo that a legitimate civic or improvement association existed, then this appeal must still be dismissed as well or the Protestants' testimony must be stricken because they failed to file the proper

procedure for appearing and testifying on behalf of that association. If an association exists, then the appeal must be dismissed or Protestants' testimony stricken, because they failed to follow the proper procedures for appearing and testifying on behalf of an association.

The Board has the right to enact its own rules for practice and procedure. Once it has done so, the burden is on the party, in this case the Protestants, to show why they should not be required to abide by those rules. In this case, the Board has set forth clear and precise rules, using plain and common language, to guide those individuals who wish to file an appeal or appear on behalf of a civic or improvement association. The rules clearly explain how this is to be done, without exception. Protestants did not follow the rule. Accordingly, Protestants' appeal must be dismissed.

EVIDENCE PRESENTED

Mr. & Ms. Robert Long, Petitioners, are the owners of a plot of land which is pie shaped. At the water's edge, Bear Creek, the land is approximately seventy-one (71) feet wide and at the other end, abutting Annadale Road, it is approximate 43 feet wide. The length of the plot of land, on the left side from the water's

edge, is 160 feet long and abuts Tabasco Road, a paper road with a drainage easement underneath, and 140 feet on the right abutting another plot owned by Mr. & Ms. Long.

Mr. & Ms. Long wish to build a house on this plot of land, however, due to the size and location of property, need a zoning variance to build on a lot approximately 43 feet wide instead of 55 feet wide, to have a side yard set back of 10 feet instead of 25 feet and a critical bay variance to build within the 100 feet buffer zone.

Addressing first the evidence regarding the critical bay variance, Petitioner called a witness from DEPRM, the agency which granted the critical bay administrative variance. Kieth Kelly, a natural resource specialist, testified that he visited the site on July 14, 1997 and prepared an application for submission to the Chesapeake Bay Critical Area Commission. When he visited the site, Mr. Kelly observed no vegetation or improvements to the property. As his purpose was to determine whether to recommend a variance to allow a house to be build with the 100 feet buffer zone was necessary, his primary concern was the distance from the water to the road. He observed that a house could not be built outside the buffer zone. In-fact, he observed that all of the homes already built were built inside the 100 foot buffer zone.

DEPRM determined that Petitioners met the criteria for a critical bay variance as set forth in COMAR 27.01.11. Specifically, they found that the lot would be unbuildable

without the variance because, due to the unique shape of the land, a majority of the house would have to be in the buffer zone and therefore clearly a hardship existed. They also determined that since others had built within the buffer zone, denial of a variance would deny Petitioners a right enjoyed by others in the community. They found no special privileges would be afforded to Petitioners if the variance was granted. The fourth criteria was met when it was determined that the need for the variance was based upon the affects of mother nature eroding away at the shore line and not by the actions of the Petitioners. The last criteria would be met if Petitioners planted trees in the buffer zone so as to minimize any adverse affect on the water, animals and plants.[2]

The next witness called was Thomas Phelps, a surveyor whose job it is to establish property lines, layout homes and do whatever is necessary to obtain building permits. Mr. Phelps testified that he was familiar with the Annadale area because he had done work for some of the other homeowners. He further testified that he observed Petitioners' property to be unique as compared to other lots in the area because of its shape and because of the water.

Based upon his survey, Mr. Phelps observed that if the part of Tabasco Road, the paper road, were to be included in the measuring of Petitioners' property, they would be able to obtain

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[2] *Petitioners agree that if critical Bay Administrative Variance is granted they will satify the request to plant trees.*

the necessary 25 foot side yard setback. Although his review of the plats did not reveal any drainage easement, if there were such an easement, he saw nothing which would indicate a problem if Petitioners were allowed to build a house on their lot.

Petitioner, Robert Long, testified that he purchased a number of lots in Annadale and then sold them off. He kept some of the lots, specifically, the one in question, lot 31, and the adjacent lot, lot 32. The vast majority of lots in the subdivision were 50 feet wide. Lot 31 originally was 50 feet wide on road side, and 71 feet wide at water's edge. When he went to build his house on lot 32, the county told him where to place the house, causing him to take part of the northwest corner of lot 31.

Petitioner testified that he wants the variances to build a single family dwelling, 28 feet x 28 feet, on lot 31. Due to the shape of the property, he could obtain the necessary 55 foot lot size but that would put him to close to the water. He believed it to be better for the environment if the house were built closer to the road. As to the side yard set back, the property adjoins Tabasco Road, a paper road which is never going to be developed. But for the paper road, Petitioner would have the necessary footage between himself and the lot on the other side, owned by Mr. Woodell and would not need the variance for the side yard setback. It is not Petitioners intent to build his house in the easement, it would be 10 feet away if the variance were to be granted and there would be 40 feet between himself and Mr.

Woodell's house. Without the variances, Petitioners cannot build a house on lot 31 and it is econically useless.

Two Protestants testified against the granting of Petitioners' request for variances. Melvin Woodell lives on lot 30, the lot on the other side of Tabasco Road. He testified that he was concerned about denial of access to Tabasco Road, drainage problems, as the drainage ditch crosses Tabasco Road, and possible increased erosion. He also conceded that he was concerned about how an additional house would affect the resale value of his property.

Joseph Ernstberger lives across the street and can see lot 31 from his house. He felt if Petitioner built a house on lot 31 it would limit his access to Tabasco Road as he uses that land for access to the water. He, also expressed concern regarding drainage problems on his property from storms as he felt a blockage would increase the problem. He had prior damage done to his property because of the widening of Annadale Road and he was concerned how close the new house would be to his house. Finally, he testified that it was not fair for Petitioners' Petition to be granted as he brought two lots to get the necessary lot size of 55 feet.[3]

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[3] *The record does not reflect whether or not Mr. Ernstberger ever considered applying for an appropriate variance.*

ARGUMENT

Cromwell v. Ward 102 Md.App.691,651 A.2d 424 (1995) is the seminal case for determining whether the granting of a variance is proper. The Court of Special Appeals has held that for a variance to be appropriate, it must be shown that the property is unique or unusual from the surrounding properties and the need for the variance must be based upon practical difficulties or unreasonable hardships not created by the landowner. Nowhere does Cromwell or any other case state the proposition that a variance should be denied if, as protestants suggest, it would keep others from enjoying the landowner's property. The fact that protestants use Tabasco Road, in essence trespassing on Petitioners' property, get to the water, is irrelevant and should not form a basis to deny the variances requested.

As to the drainage concerns, no evidence was presented that would suggest to this Board that allowing Petitioners to build a house would cause problems during a rainstorm, and there is nothing in the record to support Protestants testimony that the drainage easement would be blocked if Petitioner is allowed to build his house. The house will be 10 feet from the edge of Tabasco Road and the easement is in the middle, an additional 7 1/2 feet from the end of the proposed house. The only testimony regarding the drainage easement came from the surveyor Thomas Phelps who indicated that he did not find anything to indicate that a house on lot 31 would cause such a problem.

Protestants' other arguments to have the variance request

denied also are not supported by the evidence. In examining the testimony, and the reasons for opposing the building of a house on lot 31, the Board might consider Mr. Woodell's testimony that he was concerned about how this house would affect the resale value of his house and Mr. Ernstberger's testimony that he was required to purchase two lots 50 feet each to obtain the required lot size. This testimony might suggest that the only two (2) Protestants to testify against the proposed variance did so for their own personal agendas and not for the betterment of the communinty as a whole.

The only issue remaining for the Board to determine is whether Petitioners have met the burden of proving their property is unique or unusual and whether they have demonstrated that compliance with the zoning regulations would constitute a practical difficulty or unreasonable hardship. In other words, it must be proven by Petitioner that without the variances, their land is unsuitable for its proposed use. See North v. St. Mary's County, 99 Md. App. 502, 638 A.2d 1175 (1994)

As to the first prong, Petitioners' property is clearly unique. As was testified to by Kieth Kelly, Thomas Phelps and Robert Long and supported by the plat maps, all the other lots are rectangular in shape and almost all are 50 feet wide. Lot 31 is oddly shaped, being substantially wide at the water's edge even before approximately 7 feet were taken away from the northwest corner. Additionally, the property adjoins a paper road on one side and water on one side. The paper road narrows

the property. The shoreline, through erosion, has shortened the property line, and, while most lots are flat, the topography of lot 31 is unique in that it slopes. The shoreline also creates a whole other area of concern such that DEPRM was brought in to make sure the environment was protected. In fact, it is DEPRM who created part of Petitioners' quandary because, but for the 100 foot buffer zone setback, he has a portion of his property which would be wide enough to build a house. The shoreline, the topography, the shape of the property and the practical restrictions of abutting Tabasco Road are all inherent characteristics of this lot which are not found in other lots in Annadale. It is these characteristics which make the property unique and satisfy the first prong of the Cromwell v. Ward requirements. See Umerley v. Peoples' Counsel for Baltimore County 108 Md.App. 497, 672 A.2d 173 (1996).

After Petitioner have proven their property is unique, the second requirement is that they prove that the failure to grant them a variance will result in practical difficulties for them in the use and enjoyment of their property or will result in an unreasonable hardship. Without the variances, Petitioner cannot develop the lot or construct a single family dwelling. The lot, due to the zoning ordinances and critical bay requirements will be useless. The fact that Petitioners own the adjoining lot and could use both lots together to extend their existing house is irrelevant. Variances go to the property not the property's owner or the owners' personal circumstances or situation. Lot 31

is a separate parcel of land from Petitioners' other lots and should be considered separately.

In this case, the hardship derives from the fact that Lot 31 is an undersize lot and it is waterfront property. It is that the property is located in the Chesapeake Bay Critical area that created the hardship. As the property is tapered, it is wide enough near the water to build without a zoning variance. As DEPRM has specific requirements necessary to ensure that the environment is protected, that is what created the burden.

Protestants argue that if any hardship or practical difficulty exists, then it is self imposed. Clearly, Petitioners did not create the problem which resulted in the granting of the critical bay administrative variance. As to the zoning variance, Protestants' position that Petitioner created the lot size and therefore created his own problem is also not supported by evidence. Lot 31 was undersize to begin with, therefore the fact that Petitioner narrowed the northwest corner is inconsequential. The problem of the undersize lot would have existed even without Petitioner's actions.[4] *There is no evidence to support Protestants other claims that Petitioner's created the problem of Lot 31 by having the Annadale Subdivision re-subdivided.*

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[4] *The original lot size was in-fact 50 feet wide and less than the required footage for building a single family house.*

CONCLUSION

As Petitioner's property is unique and denial of the variance would cause him practical difficulty or undue hardship, this request for a zoning variance and a critical bay area administrative variance should be granted. There is no evidence that the difficulty or hardship was created by Petitioner. There is no evidence that the granting of the variances would negatively impact the community as a whole. As Petitioners have indicated a willingness to abide by any conditions set forth by DEPRM, their approval of a critical bay administrative variance was proper. There was no evidence admitted contrary to the position set forth by DEPRM. As Lot 31 is useless without the zoning variance the granting of same is also appropriate.

Petitioners pray this Board award them a variance from Baltimore County Zoning Regulations, Section 1B02.3.C.1, to permit a lot width less than the required 55 feet and a side yard setback of 10 feet in lieu of the required 25 feet and critical area administrative variance to allow them to construct a single family dwelling within the 100 foot buffer to Bear Creek.

Respectfully submitted,

WENDY A. ZERWITZ
38 S. Dundalk Avenue
Dundalk, Maryland 21222
Phone: (410) 288-9303
Attorney for Petitioners

APPENDIX

Rules of Practice and Procedure of County Board of Appeals

****

Rule 3. Appeals.

a. No appeal shall be entertained by the board of appeals unless the notice of appeal shall state the names and addresses of the persons taking such appeal.

b. An appeal may be withdrawn or dismissed at anytime prior to the conclusion of the hearing on said appeal.

c. Unless otherwise provided for by statute, all appeals to the board of appeals, subject to and limited by statutory authority to hear appeals, shall be made within thirty (30) days from the date of the final action appealed.

****

Rule 6. Appearances and practice before the board of appeals.

a. Any individual who is a party toa proceeding before the board may appear in his own behalf; and a member of a partnership may appear as representing said partnership if it is a party; a duly authorized officer of a corporation, trust or an association may appear as representing said body, if it is a party to the proceedings; and a duly authorized officer or an employee of any political subdivision or body or department may represent the same before the board.

b. Any party may be represented in any proceeding by an attorney-at-law admitted to practice before the Court of Appeals of Maryland.

c. No person shall appear before the board in a representative capacity, engage in practice, examine witnesses or otherwise act in a representative capacity except as provided in sections a. and b. above.

d. When an attorney wishes to appear in any proceeding in a representative capacity which involves a hearing before the county board of appeals, he shall file with the board a written notice of such appearance, which shall state his name, address, telephone number, and the names and addresses of the persons on

whose behalf he has entered his appearance.

****

Rule 8. Special rule pertaining to persons appearing before the board as representatives of civic or improvement associations.

a. Before any person shall testify on behalf of any civic or improvement association, it shall be shown that he has accurate knowledge of the number of members in the association and geographical limits of the association.

b. Before any person shall testify it shall also be shown that he is authorized to speak for and present the views of the civic or improvement association.

c. Such authorization shall consist of presenting at the hearing or prior thereto a resolution in duplicate duly adopted by the association at its annual meeting or first meeting of each year, signed by the president and attested by the secretary, providing that the responsibility for review and action on all zoning matters be placed in its board of directors or a duly elected zoning committee.

d. Before any such authorized person shall testify, it shall be shown by written affidavit in duplicate, signed by the president of the association and attested by the secretary, that he is currently a duly elected member of the board of directors or zoning committee of that association, or is an attorney appointed to represent the board of directors or zoning committee.

e. Before any such authorized person shall testify, a resolution stating the position of the association as adopted by the board of directors or zoning committee, signed by the president and attested by the secretary, shall also be produced in duplicate at the hearing.

****

LAW OFFICES
ZERWITZ & ZERWITZ

38 SOUTH DUNDALK AVENUE

DUNDALK, MARYLAND 21222

FAX (410) 288-9305

TELEPHONE (410) 288-9303

ARNOLD M. ZERWITZ
WENDY A. ZERWITZ

COUNSEL
LOUIS L. DEPAZZO

TOWSON OFFICE
600 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
FAX (410) 337-0975
TELEPHONE (410) 337-8600

March 1, 1999

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

Re: In the matter of Robert Long, et ux
Petitioners
Zoning Variance Case No. 98-251A
Critical Area Variance Case No. CBA-98-128

Dear Sir/Madam:

Enclosed, herewith, please find original and three (3) copies of Closing Memoranda in the above-captioned matter. Kindly file same.

Very truly yours,

WENDY A. ZERWITZ

WAZ/rml
Enclosures

cc: Mr. & Ms. Robert Long

cc: Newton A. Williams, Esquire
Nolan, Powhoff & Williams

cc: Nancy West, Esquire

99 MAR -1 PM 1:02

1/13/99

IN THE MATTER OF	*	BEFORE THE
LONG PROPERTY	*	BOARD OF APPEALS OF
	*	BALTIMORE COUNTY
RE: ZONING VARIANCE	*	CASE NO. 98-251A
RE: CRITICAL BAY AREA VARIANCE	*	CASE NO. CBA-98-128

****

NOTICE TO ENTER APPEARANCE

Dear Sir/Madam:

Please enter the appearance of WENDY A. ZERWITZ and ZERWITZ & ZERWITZ, Attorneys, on behalf of Mr. Robert Long, in the above-captioned matter.

WENDY A. ZERWITZ
38 S. Dundalk Avenue
Dundalk, Maryland 21222
Phone: 410-288-9303
Attorney for Robert Long

CERTIFICATION

I HEREBY CERTIFY, that on this 13th day of January, 1999, a copy of the foregoing was hand delivered to Virginia W. Barnhart, Esquire, 400 Washington Avenue, Towson, Maryland 21204 and Newton Williams, Esquire, Suite 700, Nottingham Center, 502 Washington Avenue, Towson, Maryland 21204.

WENDY A. ZERWITZ

11/11/98

IN THE MATTERS OF ROBERT LONG ET UX. ZONING VARIANCE LONG PROPERTY AND DEPRM DECISION FOR 3825A ANNADALE ROAD, 15TH ELECTION DISTRICT, 7TH COUNCILMANIC DIST.	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY CASE NO. 98-251-A AND CASE NO. CBA- 92-128

APPELLANTS' MOTION TO QUASH SUBPOENAS

Mr. and Mrs. Norris Shanholtz and Mrs. Annabelle Chenoweth, Appellants herein, by Newton A. Williams and Nolan, Plumhoff and Williams, their attorneys, moves to quash the Subpoenas served upon them, incorporated by reference herein and attached hereto, by Robert B. Long the Appellee for the following reasons:

1. The subpoenas were not properly served under the Board's Rules. See Rule 5,attached hereto and incorporated by reference herein. The subpoenas also do not comply with the provisions of Rule 5," a general statement as to purpose."

2. The materials requested are not relevant to this Variance and DEPRM case involving the Long property.

3. The subpoenas seek as to the Chenoweth Property at 3821 Annadale Road numerous plans, which if existent, are available from Baltimore County, as well as similar building permits, lists of improvements for the last three years, permits and size data for a gazebo, shed, boat lift and pier, none of which are in any way related to this case. The subtext being if you oppose my requests, I will cause you problems about your property and improvements.

4. The subpoenas seek as to the Shanholtz property at 3822 Annadale Road similar plans and permits as in 3, above, as well as driveway data and size. Again these materials are irrelevant to these cases, and the intent seems to be potentially extortionate.

5. The inquiry in these cases centers upon the Long, undersized, residue lot known as 3825A Annadale Road, and not upon details of the Shanholtz or Chenoweth properties, and hence the Appelle should be confined to materials and matters germane to the cases under appeal.

Accordingly, until the Board rules on these Motions to Quash and until properly served, the Appellees Chenoweth and the Shanholtzs will not answer or respond further to these subpoenas.

98 NOV -4 AM 10: 22
COUNTY BOARD OF APPEALS
RECEIVED

11/4/98

Newton A. Williams

Newton A. Williams

Nolan, Plumhoff & Williams

Nolan, Plumhoff and Williams
700 Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
410 823 7800
Attorneys for Appellees

Certification of Mailing

I hereby certify this 4th day of November 1998, that a copy of this Motion to Quash was mailed, postage prepaid, to the Appellee, Robert B. Long at 3825 Annadale Road, Baltimore, Md. 21222, and to William O. Jensen, Assistant County Attorney, Office of Law,Old Courthouse, Towson, Md. 21204.

Newton A. Williams

Newton A. Williams
Attorney for Appelees

10/2/98

IN THE MATTER OF THE

LONG PROPERTY

ANNADALE ROAD, 21222

BEFORE THE

COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

CASE NUMBER 98-251-A

CASE NUMBER CBA- 98-128

98 OCT -9 PM 3:53

ANSWER TO MOTION FOR DISMISSAL

AND FOR POSTPONEMENT

Mr. And Mrs. Mel Woodell, Mr. And Mrs. Norris Shanholtz, Mr. And Mrs, Joseph Erstberger, and Ms. Ann Chenoweth, Protestants and Appellants, by Newton A. Williams and Nolan, Plumhoff and Williams, their attorneys, for their answers herein to the above Motions respectfully say to the Board, as follows:

1. The Protestants and Appellants , hereinafter the Protestants, had perfected their appeal to the Board before we entered our appearance in the matter. Mr. Woodell remains the primary spokesperson for the Protestants, as at the Zoning Commissioner level where the Protestants were not represented by counsel. However, the Protestants were present at Zoning Commissioner hearing and several testifies and all noted their protestant status and requested notification os all action taken.

2. Our letter of August 25, 1998, to the Board attached to the Long Motion for Dismissal herein notes our appearance **for Mr. Woodell and others noted on your hearing assignments as protestants,** certainly adequate notice to Mr. Long and other counsel of our representation.

3. Mr. Long has also moved for postponement of the Thursday, October 29,1998, hearing date scheduled, a second hearing date assigned after the Protestants requested that the matter not be continued indefinitely.

4. Mr. Long at first requested a postponement until the end of the year or later based upon indefinite travel plans to which the Protestants objected. Now the Longs request a postponement on the basis of possible hand surgery for Mrs. Long. We would ask the Board to act on this request with the knowledge that the Protestants wish to have the matter heard in a timely and early fashion.

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

5. Further, the Protestants have difficultly in extending scheduling consideration to Mr. Long, when in the same Motion he seeks to have all of their appeals dismissed.

The Protestants respectfully represent that the perfected appeals should not be dismissed , and they await the ruling on Mr. Long's request for a postponement.

Newton A. Williams

Newton A. Williams
Nolan,Plumhoff and Williams
700 Nottingham Centre
502 Washington Ave.
Towson, Md 21204
410 823 7800
Attorneys for the Protestants

Certificate of Service

I HEREBY CERTIFY THAT ON THIS 8th DAY OF OCTOBER, 1998, A COPY OF THE FOREGOING ANSWER was mailed first class, postage prepaid to :

Robert Long
3827 Annadale Road
Baltimore, Md. 21222

William O. Jensen, Jr.
Assistant County Attorney
Office of Law
2nd Floor, Court House
Towson, Md. 21204

Peter J. Zimmerman, Esq.
Peoples Counsel
Basement, Court House
Towson, Maryland 21204

Susan McConville
Natural Resources Planner

State of Maryland
Chesapeake Bay Critical Areas Commission
45 Calvert Street, 2nd Floor
Annapolis, Md. 21401

10/5/98

TO WCH for file

IN THE MATTER OF	*	**BEFORE THE**
LONG PROPERTY	*	**BOARD OF APPEALS OF**
	*	**BALTIMORE COUNTY**
RE: ZONING VARIANCE	*	**Case No. 98-251A**
RE: CRITICAL BAY AREA VARIANCE	*	**Case No. CBA-98-128**

* * * * *

MOTION FOR DISMISSAL

I am respectfully requesting a dismissal, due to the fact that when the Notice of Appeals were filed, the names and addresses of the protestants were not stated (Reference Rule 3A), (See Attachments) and the Notice of Appeals was not signed . Also, the Concerned Citizens of Annadale are not a Civic nor an Improvement Association. Given the limited amount of time for the Board to render a decision, I am also requesting a postponement because my wife will possibly need surgery on one or both hands the last week of October, we are uncertain which day of the week it will be scheduled.

98 OCT -6 PM 2:11
COUNTY BOARD OF APPEALS
RECEIVED

Mr. Robert Long
3827 Annadale Road
Baltimore, MD 21222

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of October , 1998, a copy of the foregoing Motion for Dismissal was mailed first class, postage prepaid, to:

Newton A. Williams, Esq.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204-4528
Attorney for Appellant/Protestant

Susan McConville
Natural Resources Planner
State of Maryland
Chesapeake Bay Critical Area Commission
45 Calvert Street, 2nd Floor
Annapolis, Maryland 21401

William O. Jensen, Assistant County Attorney
Virginia W. Barnhart, County Attorney
Peoples Council for Baltimore County
George G. Perdiakis, Director/DEPRM
Patricia M. Farr/DEPRM
Pat Keller, Director/Planning & Zoning
Arnold Jablon, Director/PDM
Roy List/DEPRM
Lawrence E. Schmidt, Zoning Commissioner

Mr. Robert Long
3827 Annadale Road
Baltimore, MD 21222

RE: ZONING VARIANCE * **Case No. 98-251A**

RE: CRITICAL BAY AREA VARIANCE * **Case No. CBA-98-128**

* * * * *

MOTION FOR DISMISSAL

I am respectfully requesting a dismissal, due to the fact that when the Notice of Appeals were filed, the names and addresses of the protestants were not stated (Reference Rule 3A), (See Attachments) and the Notice of Appeals was not signed . Also, the Concerned Citizens of Annadale are not a Civic nor an Improvement Association. Given the limited amount of time for the Board to render a decision, I am also requesting a postponement because my wife will possibly need surgery on one or both hands the last week of October, we are uncertain which day of the week it will be scheduled.

Mr. Robert Long
3827 Annadale Road
Baltimore, MD 21222

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of October , 1998, a copy of the foregoing Motion for Dismissal was mailed first class, postage prepaid, to:

Newton A. Williams, Esq.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204-4528
Attorney for Appellant/Protestant

Susan McConville
Natural Resources Planner
State of Maryland
Chesapeake Bay Critical Area Commission
45 Calvert Street, 2nd Floor
Annapolis, Maryland 21401

98 OCT -6 PM 4:40

William O. Jensen, Assistant County Attorney
Virginia W. Barnhart, County Attorney
Peoples Council for Baltimore County
George G. Perdiakis, Director/DEPRM
Patricia M. Farr/DEPRM
Pat Keller, Director/Planning & Zoning
Arnold Jablon, Director/PDM
Roy List/DEPRM
Lawrence E. Schmidt, Zoning Commissioner

Mr. Robert Long
3827 Annadale Road
Baltimore, MD 21222

9/3/98

IN THE MATTER OF	*	BEFORE THE
LONG PROPERTY	*	BOARD OF APPEALS OF
RE: DEPRM DECISION-Grant of variance from Critical Area regulations by DEPRM	*	BALTIMORE COUNTY
	*	Case No. CBA-98-128

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of William O. Jensen, Jr., Assistant County Attorney on behalf of Baltimore County, Maryland in the above-captioned case. Please send all correspondence and notices in the above-captioned case to William O. Jensen, Jr.

WILLIAM O. JENSEN, JR.
Assistant County Attorney
Office of Law
2nd Floor, Court House
Towson, Maryland 21204
(410) 887-4420

ATTORNEY FOR BALTIMORE COUNTY, MARYLAND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2 day of August, 1998, a copy of the foregoing Entry of Appearance was mailed first class, postage prepaid, to:

Mr. and Mrs. Robert Long
3825A Annadale Road
Baltimore, Maryland 21222

Newton A. Williams, Esq.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204-4528
Attorney for Appellant/Protestant

Howard L. Alderman, Jr., Esq.
305 W. Chesapeake Avenue, Suite 113
Towson, Maryland 21204

Susan McConville
Natural Resources Planner
State of Maryland
Chesapeake Bay Critical Area Commission
45 Calvert Street, 2nd Floor
Annapolis, Maryland 21401

RECEIVED
BOARD OF APPEALS
98 SEP -3 AM 11:13
COUNTY

George G. Perdikakis, DEPRM
Patricia M. Farr, DEPRM
Roy List, DEPRM
Pat Keller, Director, Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director, PDM

WILLIAM O. JENSEN, JR.
Assistant County Attorney

C:\OFFICE\WPWIN\WOJ\PLEADS\LONG.APP
O/L File No.: 16,587-08
9/1/98

3/3/98

IN RE: PETITION FOR VARIANCE
S/S Annadale Road, 90' E of
the c/l of Matthai Road
(3825A Annadale Road)
15th Election District
7th Councilmanic District

Robert Long, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 98-251-A
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Robert B. and Rose M. Long. The Petitioners seek relief from Sections 1B02.3.C.1 and 304 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 43 feet in lieu of the required 55 feet, a side yard setback of 10 feet in lieu of the required 25 feet, and to approve the subject property as an undersized lot, pursuant to Section 304 of the B.C.Z.R., and any variances deemed necessary by the Zoning Commissioner. 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 Robert and Rose Long, property owners. Appearing as Protestants in the matter were Norris and Shirley Shanholtz, Ann Chenoweth, Joseph and Patricia Ernstberger, and Mel Woodell, Jr., all of whom own property nearby.

Testimony and evidence presented by the Petitioners revealed that the subject property is a waterfront lot which abuts Tobasco Creek in southeastern Baltimore County. The property consists of .186 acres in area, zoned D.R. 5.5, and is presently vacant. Vehicular access to the site is via Annadale Road, which is located not far from the intersection

ORDER RECEIVED FOR FILING
Date 3/3/98
By

of North Point Boulevard and Old North Point Road. The property is roughly rectangular in shape, with a width of 43 feet along the property adjacent to the street, and tapering to a greater width along the waterfront.

Mr. & Mrs. Long testified that they acquired the subject property approximately 12 years ago, at which time they purchased parts of three different lots as originally established in the plat of Annadale, which was recorded in the Land Records on March 23, 1926. The plat shows that the community was generally laid out with 50-foot wide lots. At that time, there were no zoning regulations in effect in Baltimore County, and thus, no requirement that the lots be of a specific width. The zoning regulations presently in effect require that a D.R. 5.5 lot be at least 55 feet wide.

In any event, Mr. & Mrs. Long apparently acquired a portion of Lot 33, all of Lot 32, and the subject property, identified as Lot 31 on the plat. Lot 32 and a portion of Lot 33 have been developed with a single family dwelling in which the Petitioners presently reside, known as 3827 Annadale Road. The Petitioners wish to subdivide their property and develop Lot 31 with a single family dwelling. As shown on the site plan, the proposed dwelling envelope will be 28 feet by 28 feet in dimension. The house will be set back a distance consistent with other houses in the neighborhood, in terms of the distance from both the water and roadway. It was noted that the house could be shifted closer towards the water to a location where the lot is wider. However, the Petitioners rejected this approach because they believe that construction closer to the water is environmentally improper and would be inconsistent with other houses in the neighborhood.

It is also of note that the west side of the subject property abuts a 15-foot wide paper street, which is shown on the site plan as Tobasco Road. However, it is evident that a permanent road will not be constructed, at least in the near future. The effect of this 15-foot wide strip is significant in that it separates Lot 31 from Lot 30 by a distance of 15 feet.

Additional testimony and evidence offered by the Petitioners is that they wish to live in a smaller house than their present dwelling at 3827 Annadale Road, and thus a smaller house is proposed for the subject property. The Petitioners contemplate selling their existing house and moving into the new dwelling upon completion of its construction. Lastly, they indicated that the Development Review Committee (DRC) had approved a lot line adjustment between Lots 31 and 32 in order to more appropriately configure the Petitioners' holdings.

Testimony in opposition to the Petitioners' request was received from Mr. Woodell and Ms. Shanholtz. The other Protestants who were present supported that testimony. The Protestants object to development of the lot for a variety of reasons. Several of the neighbors believe that their view of the water will be blocked by the proposed dwelling. Other reasons stated included the fear that the neighborhood would be overdeveloped and that public access to the water through the Tobasco Road right-of-way would be blocked. Concerns were also voiced for wildlife in the area, etc.

In addition to the testimony and evidence presented, I visited the neighborhood and walked the site. This inspection was of assistance to me in reaching a decision on this case. My inspection revealed that most of the houses in the area are quite close together. Many of the lots on Annadale Road which abut the water are 50 feet wide. The house styles

Received for filing
Date 3/13/95
By

are quite diverse; however, as previously stated, many of the dwellings are quite close to one another.

The Petitioners seek relief pursuant to both Sections 304 and 307 of the B.C.Z.R. Section 304 allows the property owner to build a single family dwelling on a lot of insufficient width, by right, if three conditions are met. Specifically, the Petitioner must show that he/she owns sufficient adjoining land to satisfy the width requirement, that the subject lot is part of a subdivision duly recorded in the Baltimore County Land Records prior to 1955, and, that no other variance relief is necessary. In this regard, the Petitioners are not eligible for relief pursuant to Section 304, in view of their ownership of adjacent property, and the fact that a variance from side yard setback requirements is also requested. Thus, this portion of the relief requested shall be denied. In the alternative, however, the Petitioners may be eligible for relief pursuant to Section 307. That Section allows the Petitioner to obtain a variance from height, setback, and other area requirements.

In my judgment, a variance pursuant to Section 307 of the B.C.Z.R. is warranted. I specifically find that this property is unique, by virtue of its configuration and location. The existence of the paper street (Tobasco Road) immediately adjacent to the subject property is one factor that supports the finding of uniqueness. Moreover, the taper of the property gives the lot an unusual shape. I also find that the Petitioners would suffer a practical difficulty if relief were denied. In such event, the lot could not be developed and used for a permissible purpose; i.e., the construction of a single family dwelling. Lastly, I find that there will be no detrimental impact if variance relief is granted. In this regard, I was greatly impressed during my site visit that the houses in

the neighborhood are close together and many are on 50-foot wide lots. In my judgment, the proposed house would not be out of character with the surrounding community.

As to the Protestants' concerns, they have no legitimate right to utilize the Petitioners' property for their own purposes. The Petitioners could construct an addition on their house, for example, which would block the Protestants' view. As owners of the property, the Petitioners have the right to utilize their property in any lawful manner which they deem appropriate. There are legitimate environmental concerns, however. In this regard, the property is located in the Chesapeake Bay Critical Area and is environmentally sensitive. For these reasons, I shall require the Petitioners comply with any and all requirements of the Department of Environmental Protection and Resource Management (DEPRM). That is, before any construction can be approved, or a building permit issued, the Petitioners must satisfy the standards set out by DEPRM or obtain a variance from those standards from that agency.

Lastly, I shall also require that the Petitioners submit building elevation drawings for the proposed structure to the Office of Planning for its review and approval to assure consistency with housing types and styles in the neighborhood. The Office of Planning shall only approve plans for a dwelling which will be compatible with others in the neighborhood.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 13th day of March, 1998 that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regula-

ORDER RECEIVED FOR FILING
Date 3/13/98
By

tions (B.C.Z.R.) to permit a lot width of 43 feet in lieu of the required 55 feet, and a side yard setback of 10 feet in lieu of the required 25 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building 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 the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) Compliance with the Zoning Plans Advisory Committee comments submitted by the Department of Environmental Protection and Resource Management (DEPRM), dated January 20, 1998, and the Bureau of Developer's Plans Review division of the Department of Permits and Development Management (DPDM), dated January 26, 1998, copies of which are attached hereto and made a part hereof.

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

IT IS FURTHER ORDERED that the Petition for Variance to approve the subject property as an undersized lot, pursuant to Section 304 of the B.C.Z.R., be and is hereby DENIED.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

Baltimore County
Zoning Commissioner
Office of Planning

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

March 13, 1998

Mr. & Mrs. Robert Long
3827 Annadale Road
Baltimore, Maryland 21222

RE: PETITION FOR VARIANCE
S/S Annadale Road, 90' E of the c/l of Matthai Road
(3825A Annadale Road)
15th Election District - 7th Councilmanic District
Robert Long, et ux - Petitioners
Case No. 98-251-A

Dear Mr. & Mrs. Long:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance has been granted in part and denied in part, 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,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Norris Shanholtz, 3822 Annadale Road, Baltimore, Md. 21222
Mr. & Mrs. Joseph Ernstberger, 3830 Annadale Road, Baltimore, Md.21222
Ms. Ann Chenoweth, 3821 Annadale Road, Baltimore, Md. 21222
Mr. Mel Woodell, Jr., 705 S. 49th Street, Baltimore, Md. 21224

Chesapeake Bay Critical Areas Commission
45 Calvert Street, 2nd Floor, Annapolis, Md. 21401

DEPRM; People's Counsel; Case Files

Printed with Soybean Ink
on Recycled Paper

CBCA

Petition for Variance

CRITICAL AREA

to the Zoning Commissioner of Baltimore County

for the property located at 3825A Annadale Road

which is presently zoned DR 5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1802.3C.1 & 304(BCZR) TO PERMIT A LOT WIDTH OF 43' IN LIEU OF THE REQUIRED 55', A DWELLING WITH A 10' SIDE YARD SETBACK IN LIEU OF THE REQUIRED 25' AND TO APPROVED AN UNDERSIZED LOT PER SECTION 304 WITH ANY VARIANCE DEEMED NECESSARY BY THE ZONING COMMISSIONER.

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

Undersized lot does not meet current zoning regulations. Owner does not own enough property on either side to meet current zoning regulations. We have been paying taxes on this property for 10 yrs. We would like to sell our house & move into a smaller house with a different floor plan next door.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser/Lessee

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address Phone No.

City State Zipcode

Legal Owner(s):

Robert Long
(Type or Print Name)

Signature

Rose Long
(Type or Print Name)

Signature

3827 Annadale Rd. (410) 388-1974
Address Phone No

Baltimore MD 21222
City State Zipcode

Name, Address and phone number of representative to be contacted.

Robert Long
Name

3827 Annadale Rd. (410) 388-1974
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates Next Two Months

ALL OTHER

REVIEWED BY: R.T. DATE 1-7-98

ITEM 251

UNDER RECEIVED Date By

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98-251-A

ZONING DESCRIPTION

Zoning Description For 3825A Annadale Road, Baltimore, MD 21222

Election District 15, Councilmatic District 7. Beginning at a point which fronts on the South Side of Annadale Rd. which is 40 ft. wide at a distance of 90 ft. East of the centerline of Matthai Rd. which is a 30 ft. right of way wide. Being lot #31 in the subdivision of Plat of Annadale as recorded in Baltimore County, Plat Book 8, Folio 34 containing 8,130 sq. ft. also known as 3825A Annadale Road and located in the 15th Election District and the 7th Councilmatic District.

ITEM 251

98-251-A

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 in Towson, Maryland on the property identified herein as follows:

Case: #98-251-A
3825A Annadale Road
(21222)
S/S Annadale Road, 90' E of centerline Matthai Road
15th Election District
7th Councilmanic District
Legal Owner(s):
Robert Long &
Rose Long

Variance: to permit a lot width of 43 feet in lieu of the required 55 feet, a dwelling with a 10-foot side yard setback in lieu of the required 25 feet and to approve an undersized lot with any variance deemed necessary by the zoning commissioner.

Hearing: Friday, February 20, 1998 at 10:00 a.m., in Room 407, County Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call (410) 887-3353.
(2) For information concerning the File and/or Hearing, Please Call (410) 887-3391.

2/026 Feb. 5 C204792

CERTIFICATE OF PUBLICATION

TOWSON, MD., 2-5, 1998

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 2-5, 1998.

THE JEFFERSONIAN,

A. Henrikson

LEGAL AD. - TOWSON

CERTIFICATE OF PUBLICATION

Office of

THE AVENUE

NEWSPAPER GROUP

442 Eastern Blvd
Baltimore, MD 21221

March 5, 1998

THIS IS TO CERTIFY, that the annexed advertisement of

Baltimore County Department of Enviromental Protection and Resource Management. Notice of variance for 3825A Annandale Road. Legal owner Mr. & Mrs. Robert Long.

1 x 3.0 = 3.0 inchès @ $12.45 or $37.35

was inserted in THE AVENUE and THE PERRY HALL/PARKVILLE AVENUE a weekly newspaper published in Baltimore County, Maryland once a week for 1 consecutive week(s) before the 28th day of February 1998; that is to say the same was inserted in the issue of February 26, 1998.

The Avenue, Inc.

Kenneth C. Coldwell

Publisher

BALTIMORE COUNTY
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
NOTICE OF GRANTING OF VARIANCE
ADDRESS: 3825A Annandale Road
LEGAL OWNER: Mr. & Mrs. Robert Long

The Baltimore County Department of Environmental Protection and Resource Management, pursuant to Section 26-445(c) of the Baltimore County Code, hereby gives notice that a variance from Section 26-449 of the Code, Chesapeake Bay Critical Area Requirements, will be granted for the purpose of constructing a single-family dwelling within the 100 foot buffer to Bear Creek on the above referenced property. Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by this decision, may appeal to the Baltimore County Board of Appeals within forty-five (45) days from the date of this notice. Appeals must be made in writing, stating the reason for appeal, and must be mailed to Environmental Impact Review, Baltimore County Department of Environmental Protection and Resource Management, 401 Bosley Avenue, Suite 416, Towson, Maryland 21204. All appeals must be accompanied by a check for $75.00 payable to Baltimore County Government.

CERTIFICATE OF POSTING

RE: Case No. 98-251-A
Petitioner/Developer:
(Robert Long)
Date of Hearing/Closing:
(Feb. 20, 1998)

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attention : Ms. Gwendolyn Stephens

Ladies and Gentleman:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 3825A Annadale Road Baltimore, Maryland 21222

The sign(s) were posted on Feb. 5, 1998
(Month, Day, Year)

Sincerely,

2/5/98
(Signature of Sign Poster & Date)

Thomas P. Ogle, Sr.

325 Nicholson Road

Baltimore, Maryland 21221

(410)-687-8405
(Telephone Number)

98-251-A

CERTIFICATE OF POSTING

RE: Case No.: 98-251-A

Petitioner /Developer:

ROBERT LONG

Date of Hearing/Closing:

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 3825A ANNADALE RD.

The sign(s) were posted on 5/6/98
(Month, Day, Year)

Sincerely,

Gary C Freund 5/6/98
Signature of Sign Poster and Date

GARY C. FREUND
Printed Name

Address

City, State, Zip Code

Telephone Number

BALTIMORE COUNTY, MAI
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

AND

No. 04450

DATE 1-7-98

ACCOUNT R001-6150

Pet. Variance

AMOUNT $ 50.00

RECEIVED FROM: Robert Long

FOR: VARIANCE & UNDERSIZED LOT
3925 A Annabelle Rd
98-251-A

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
1/07/1998 1/07/1998 09:58:16
REG: WS03 CASHIER UNIT 03 DAWN R
5 MISCELLANEOUS CASH RECEIPT
Receipt # 051073
CK NO. 004861
50.00 CHECK
Baltimore County, Maryland

98-251-A

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 107

DATE 4/7/98

ACCOUNT R001-6150

AMOUNT $ 210.00

RECEIVED FROM: Melvin C. Woodell, Jr.

FOR: Appeal 98-251-A

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
4/07/1998 4/07/1998 14:56:26
REG: WS04 CASHIER UNIT 03 DAWN R
5 MISCELLANEOUS CASH RECEIPT
Receipt # 052262
CK NO. 051072
210.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 042078

DATE April 7, 1998 ACCOUNT _____

AMOUNT $ 75.00

RECEIVED FROM: Melvin C. Woodell Jr.

FOR: Critical Area Variance

3825A Annadale Road.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

MELVIN C. WOODELL JR.
705 S. 49TH STREET
BALTIMORE, MD 21224

494

65-40/521
BRANCH 61

4-7 19 96

PAY TO THE ORDER OF Balto. County Government $ 45.00

Forty-five ——— XX/100 DOLLARS

First National Bank of Maryland
SALISBURY, MARYLAND ACCOUNTING CENTER 1078

FOR Fee Annual Appraisal Melvin C. Woodell

⑆052100408⑆ 112601741 0494

©HARLAND 1992

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Aven
Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring 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 (responsibility of which, lies with the petitioner/applicant) 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 advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

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.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 251

Petitioner: ROBERT LONG

Location: 3825A Annadale Rd, BALTO. MD. 2122

PLEASE FORWARD ADVERTISING BILL TO:

NAME: ROBERT LONG

ADDRESS: 3827 Annadale Rd. Balto MD 2122

PHONE NUMBER: 410 - 388 - 1974

AJ:ggs

(Revised 09/24/96)

98-251-A

Printed with Soybean Ink

Exhibit B

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than _____.

Format for Sign Printing, Black Letters on White Background:

ITEM 251

ZONING NOTICE

Case No.: 98-251A

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: _____

DATE AND TIME: _____

REQUEST: VARIANCE TO PERMIT A LOT LOT WIDTH OF 43' IN LIEU OF THE REQUIRED 55'; A DWELLING WITH A 10' SIDE YARD SETBACK IN LIEU OF THE REQUIRED 25' AND TO APPROVED AN UNDERSIZED LOT PER SECTION 304 WITH ANY OTHER VARIANCES DEEMED NECESSARY BY THE ZONING COMMISSIONER.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

9/96
post.4.doc

TO: PATUXENT PUBLISHING COMPANY
February 5, 1998 Issue - Jeffersonian

Please forward billing to:
Robert Long 410-388-1974
3827 Annadale Road
Baltimore, MD 21222

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 in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-251-A
3825A Annadale Road (21222)
S/S Annadale Road, 90' E of centerline Matthai Road
15th Election District - 7th Councilmanic District
Legal Owner: Robert Long & Rose Long

Variance to permit a lot width of 43 feet in lieu of the required 55 feet, a dwelling with a 10-foot side yard setback in lieu of the required 25 feet and to approve an undersized lot with any variance deemed necessary by the zoning commissioner.

HEARING: Friday, February 20, 1998 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 410-887-3391.

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

January 15, 1998

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 in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-251-A
3825A Annadale Road (21222)
S/S Annadale Road, 90' E of centerline Matthai Road
15th Election District - 7th Councilmanic District
Legal Owner: Robert Long & Rose Long

Variance to permit a lot width of 43 feet in lieu of the required 55 feet, a dwelling with a 10-foot side yard setback in lieu of the required 25 feet and to approve an undersized lot with any variance deemed necessary by the zoning commissioner.

HEARING: Friday, February 20, 1998 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

c: Robert & Rose Long

NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY FEBRUARY 5, 1998.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3391.

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

July 7, 1998

NOTICE OF ASSIGNMENT

CASE #: 98-251-A

IN THE MATTER OF: ROBERT LONG, ET UX -Petitioners
3825A Annadale Road 15th E; 7th C

Petition for Variance GRANTED in part; DENIED in part by Z.C.

ASSIGNED FOR: TUESDAY, AUGUST 25, 1998 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

cc: Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)

Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Petitioners : Mr. and Mrs. Robert Long

Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

July 30, 1998

AMENDED NOTICE OF ASSIGNMENT

CASE #: 98-251-A **IN THE MATTER OF:** ROBERT LONG, ET UX -Petitioners
3825A Annadale Road 15th E; 7th C

Petition for Variance GRANTED in part; DENIED in part by Z.C.

AND

CASE #: CBA-98-128 **IN THE MATTER OF:** LONG PROPERTY /DEPRM Decision
3825A Annadale Road 15th E; 7th C

Grant of variance from Critical Area regulations by DEPRM

NOTE: This Notice has been amended to include Case No. CBA-98-128; no change in date or time of hearing.

ASSIGNED FOR: **TUESDAY, AUGUST 25, 1998 at 10:00 a.m.**

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

PP'd 8/19/98 Long Due addl. by appellant. reason request. Ltr dspsn to parties 8/19/98

Kathleen C. Bianco
Administrator

cc: Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)

Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Petitioners : Mr. and Mrs. Robert Long
Newton A. Williams
Howard L. Alderman, Jr.
Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

August 19, 1998

NOTICE OF POSTPONEMENT

CASE #: 98-251-A — **IN THE MATTER OF:** ROBERT LONG, ET UX -Petitioners
3825A Annadale Road 15th E; 7th C

Petition for Variance GRANTED in part; DENIED in part by Z.C.

AND

CASE #: CBA-98-128 — **IN THE MATTER OF:** LONG PROPERTY /DEPRM Decision
3825A Annadale Road 15th E; 7th C

Grant of variance from Critical Area regulations by DEPRM

which was scheduled for hearing on August 25, 1998 has been **POSTPONED** at the request of Petitioner /Property Owner, and without objection by counsel for Appellant /Protestant; to be reassigned a new date upon request of either party.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Protestant: Newton A. Williams, Esquire
Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)

Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Petitioners : Mr. and Mrs. Robert Long

Howard L. Alderman, Jr.
Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney
William O. Jensen, Jr., Assistant County Attorney

10/29/98

Cancelled to @ 11 a.m.

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County Board of Appeals of Baltimore County

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

ppd to 11/17/98 @ 11:00 am

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

August 31, 1998

NOTICE OF REASSIGNMENT

CASE #: 98-251-A — **IN THE MATTER OF:** ROBERT LONG, ET UX -Petitioners
3825A Annadale Road 15th E; 7th C

Petition for Variance GRANTED in part; DENIED in part by Z.C.

AND

CASE #: CBA-98-128 — **IN THE MATTER OF:** LONG PROPERTY /DEPRM Decision
3825A Annadale Road 15th E; 7th C

Grant of variance from Critical Area regulations by DEPRM

which had been postponed from the previously scheduled date of 8/25/98 has been reassigned a date for hearing; and has been

REASSIGNED FOR: **THURSDAY, OCTOBER 29, 1998 @ 11:00 a.m.**

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Protestant: Newton A. Williams, Esquire
Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)

Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Petitioners : Mr. and Mrs. Robert Long

Howard L. Alderman, Jr.
Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
William O. Jensen, Jr., Assistant County Attorney
Virginia W. Barnhart, County Attorney

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NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MD 21285-6754

William O Jensen Jr
Room 202, Old Courthouse
400 Washington Avenue
Towson MD 21204

Assignment Date: 04/02/98

Case Title: Baltimore County Md VS Godlewski Et Al
Case No: 03-C-91-113747 CD

The above case has been assigned to the CIVIL STANDARD TRACK. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1.	Motions to Dismiss under MD. Rule 2-322(b) are due by.....	04/17/98
2.	*Plaintiff's Expert Reports or* Md.Rule2-402(e)(1) Disclosures...	07/01/98
3.	Defendant's Expert Reports or Md.Rule2-402(e)(1)Disclosures....	07/31/98
4.	Joinder of Additional Parties Deadline is.....	07/31/98
	Dismissal Notice for unserved defendants (Md.Rule2-507(B))....	07/31/98
	Discovery must by completed by.....	09/14/98
7.	All Motions (excluding Motions in Limine) are due by.....	09/29/98
8.	ADR Deadline Date is.....	09/29/98
9.	Settlement Conference is.....	
10.	Deadline/Exchange list of all exhib. and copies of paper exhib.	11/02/98
11.	Deadline for Motions in Limine incl. objections to exhibits is.	11/12/98
	(Note: Documents will be deemed authentic if objection is not filed)	
12.	TRIAL DATE is.....	11/17/98
	Civil Jury Trial; Start Time: 09:30AM; To Be Assigned; 1-2 DAYS MERITS NOTE; AGREED DATE.	

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponements must be submitted in writing with a copy to all counsel/parties involved. All requests for postponements of cases filed after October 1, 1994 must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue October 20, 1998

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 98-251-A

IN THE MATTER OF: ROBERT LONG, ET UX -Petitioners
3825A Annadale Road 15th E; 7th C

Petition for Variance GRANTED in part; DENIED in part by Z.C.

AND

CASE #: CBA-98-128

IN THE MATTER OF: LONG PROPERTY /DEPRM Decision
3825A Annadale Road 15th E; 7th C

Grant of variance from Critical Area regulations by DEPRM

which was reassigned for hearing to 10/29/98 has been **POSTPONED** at the request of Petitioners; and has been

REASSIGNED FOR: **TUESDAY, NOVEMBER 17, 1998 @ 10:00 a.m.**

PLEASE NOTE: ORAL ARGUMENT ON PETITIONERS' MOTION TO DISMISS WILL BE RECEIVED AT THE START OF HEARING ON 11/17/98; ALL PARTIES SHALL BE READY TO PROCEED ON THE MERITS ON THAT DAY SHOULD THE MOTION BE DENIED OR NOT IMMEDIATELY RULED UPON.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Protestant: Newton A. Williams, Esquire
Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)

Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Petitioners : Mr. and Mrs. Robert Long

Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
William O. Jensen, Jr., Assistant County Attorney
Virginia W. Barnhart, County Attorney

pp'd to 1/13/99 @ req. of h.o. - given 11/17/98

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County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue November 2, 1998

SECOND NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 98-251-A **IN THE MATTER OF:** ROBERT LONG, ET UX -Petitioners
3825A Annadale Road 15th E; 7th C
Petition for Variance GRANTED in part; DENIED in part by Z.C.

AND

CASE #: CBA-98-128 **IN THE MATTER OF:** LONG PROPERTY /DEPRM Decision
3825A Annadale Road 15th E; 7th C
Grant of variance from Critical Area regulations by DEPRM

which was postponed to 11/17/98 at request of Petitioner is **POSTPONED** at the request of Baltimore County Office of Law due to jury trial conflict; and has been

REASSIGNED FOR: **WEDNESDAY, JANUARY 13, 1999 @ 10:00 a.m.**

PLEASE NOTE: ORAL ARGUMENT ON PETITIONERS' MOTION TO DISMISS WILL BE RECEIVED AT THE START OF HEARING ON 1/13/99; ALL PARTIES SHALL BE READY TO PROCEED ON THE MERITS ON THAT DAY SHOULD THE MOTION BE DENIED OR NOT IMMEDIATELY RULED UPON.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Protestant: Newton A. Williams, Esquire
Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)

Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Petitioners : Mr. and Mrs. Robert Long

Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
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Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
William O. Jensen, Jr., Assistant County Attorney
Virginia W. Barnhart, County Attorney

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on Recycled Paper

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

January 20, 1999

NOTICE OF DELIBERATION:

IN THE MATTER OF:
ROBERT LONG, ET UX -Petitioners
Case No. 98-251-A and Case No. CBA-98-128

The subject matter, having been heard by the Board of Appeals on January 13, 1999, has been assigned the following date and time for public deliberation:

DATE AND TIME : Thursday, March 18, 1999 at 9:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

NOTE: Closing Memos are due from Counsel on Monday, March 1, 1999 (Original and three (3) copies).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Protestant: Newton A. Williams, Esquire
Appellant /Protestant : Melvin C. Woodell, Jr.
(Concerned Property Owners of Annadale)
Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth

Counsel for Petitioners : Wendy A. Zerwitz, Esquire
Petitioners : Mr. and Mrs. Robert Long

Susan McConville
Chesapeake Bay Critical Areas Commission

People's Counsel for Baltimore County
George G. Perdikakis, Director /DEPRM
Patricia M. Farr /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
Virginia W. Barnhart, County Attorney

Copies to: L.B.W.

Printed with Soybean Ink
on Recycled Paper

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

February 12, 1998

Mr. and Mrs. Robert Long
3827 Annadale Road
Baltimore, MD 21222

RE: Item No.: 251
Case No.: 98-251-A
Petitioner: Robert Long, et ux

Dear Mr. and Mrs. Long:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on January 7, 1998.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (410-887-3391).

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)

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on Recycled Paper

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Management

Date: January 26, 1998

FROM: Robert W. Bowling, Chief
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for January 26, 1998
Item No. 251

The Bureau of Developer's Plans Review has reviewed the subject zoning item. The property to be developed is located adjacent to tidewater. The Developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.

In conformance with Federal Flood Insurance requirements, the first floor or basement floor must be at least 1 foot over the flood plain elevation in all construction. The minimum flood protection elevation for this site is 10.4 feet. The first floor elevation must be greater than 10.4 feet or a waiver is required.

RWB:HJO:jrb

cc: File

ORDER RECEIVED FOR FILING
Date 3/13/98
By [signature]

ZONE0126.251

Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary

Parker F. Williams
Administrator

Ms. Roslyn Eubanks
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County 1/16/98
Item No. 251 RT

Dear Ms. Eubanks:

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 affected by any State Highway Administration projects.

Please contact Larry Gredlein at 410-545-5606 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Cindy M. Wolf

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

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
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

January 28, 1998

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

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF January 20, 1998

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.

8. The Fire Marshal's Office has no comments at this time.
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

249, 250, 251, 252, 254, 255, 256, and 258

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

RECEIVED
JAN 30 1998
PDM

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on Recycled Paper

2/20
Ko

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Dept. of Permits & Development Management

DATE: January 29, 1998

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: Zoning Advisory Petitions

The Planning Office has no comments on the following petition (s):

Item No. 251 and 264

If there should be any questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 410-887-3495.

Prepared by: Jeffrey W. Long

Division Chief: Carl L. Kerns

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\NOCOM\251.DOC

CBA 98-128

DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND RESOURCE MANAGEMENT
INTEROFFICE CORRESPONDENCE

TO: Kathleen Bianco
Administrator
Baltimore County Board of Appeals

FROM: Patricia M. Farr PMF
Program Supervisor
Environmental Impact Review

DATE: July 17, 1998

SUBJECT: Robert Long Property
3825A Annadale Road

Mr. Melvin C. Woodell, Jr., an aggrieved party has filed an appeal in accordance with Section 26-445(e) of the Baltimore County Code from the decision of the Department of Environmental Protection and Resource Management to approved a variance from provisions of the Chesapeake Bay Critical Area regulations on the above referenced property. At this time I am forwarding a copy of their appeal to you, along with a receipt for their $75.00 check to cover the cost of the appeal. The appeal was received within the allotted 30 day appeal period.

If you have any questions, I can be reached at 410-887-3980.

PMF/KDK

Attachments

c: Ms. Susan McConville, CBCA
Office of Law

kdk#3/long.doc

TRUE COPY TEST

DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION & RESOURCE MANAGEMENT

98 JUL 20 PM 5:20

COUNTY BOARD OF APPEALS
RECEIVED

DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND RESOURCE MANAGEMENT
INTEROFFICE CORRESPONDENCE

TO: Kathleen Bianco, Administrator
Baltimore County Board of Appeals

DATE: August 2, 1999

FROM: Patricia M. Farr, Program Supervisor
Environmental Impact Review

SUBJECT: Robert Long Property
3825A Annadale Road
CBA-98-128

The Director of this Department has signed the copy of the cover sheet contained within the submitted packet, certifying that the packet originated from this office. The entire packet is being returned to you, per your request.

If you have any questions, please contact me at 410-887-3980.

pmfdoc7\longcba.doc

RECEIVED
BALTIMORE COUNTY BOARD OF APPEALS
AUG -5 PM 3:28

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

DATE: January 20, 1998

To: Arnold L. Jablon

From: Bruce Seeley BS/gp

Subject: Zoning Item #251

Long Property (Robert), 3825 A Annadale Road

Zoning Advisory Committee Meeting of December 29, 1997

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

_____ The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

_____ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code.)

_____ Development of this property must comply with the Forest Conservation Regulations (Sections 14-401 through 14-422 of the Baltimore County Code), if the property is being subdivided according to the Development Regulations.

__X__ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

KK:GP:sp

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: L. Stahl
L. Barranger
M. Worrall

DATE: March 2, 1999

FROM: Kathi

SUBJECT: Case No. 98-251-A and CBA-98-128 /Robert Long, et ux

The subject matter has been scheduled for public deliberation on Thursday, March 18, 1999 at 9:00 a.m. A copy of that Notice of Deliberation was mailed to you on January 20, 1999. Attached are the following documents filed by Counsel with regard to this case:

1. Closing Memoranda filed by Wendy A. Zerwitz, Esquire, on behalf of Petitioners (Robert Long, et ux);

2. Hearing Memorandum (in the form of a letter with attachments) filed by Newton A. Williams, Esquire, on behalf of Appellant /Protestant (Melvin Woodell, Jr.); and

3. Memorandum of Baltimore County, Maryland, filed by Nancy C. West, Assistant County Attorney, as to the issues raised in CBA-98-128 involving Chesapeake Bay Critical Area administrative variance.

Should you have any questions regarding the above, or need any additional information, please call me.

kathi

Attachments

2/20

RE: PETITION FOR VARIANCE 3825A Annadale Road, S/S Annadale Rd, 90' E of c/l Matthai Rd 15th Election District, 7th Councilmanic	*	BEFORE THE ZONING COMMISSIONER
	*	OF BALTIMORE COUNTY
Robert and Rose Long Petitioners	*	CASE NO. 98-251-A

* * * * * * * * * * * * *

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

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 1998, a copy of the foregoing Entry of Appearance was mailed to Robert and Rose Long, 3827 Annadale Road, Baltimore, MD 21222, Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

B A L T I M O R E C O U N T Y, M A R Y L A N D

Inter-Office Correspondence

TO: George Perdikakis, Director **DATE:** July 19, 1999
Department of Environmental Protection
and Resource Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Certified Copies - Robert Long Property /CBA-98-128
Petition for Judicial Review filed in Circuit Court

Please certify the attached packet (cover sheet only!) which originated from your office, and return same to this office as soon as possible. The Board will, in turn, forward the certified sets of documents to the Circuit Court along with the Board's file.

Thank you for your immediate attention to this matter.

Attachments

/cer

RECEIVED
JUL 2 6 99
DEPRM
ADMINISTRATION

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Permits & Development Management

DATE: April 19, 2000

FROM: Charlotte E. Radcliffe
County Board of Appeals

Picked up
By John Almond

SUBJECT: Closed Files:

Case No. 97-556-XA /AT&T Wireless Services
98-251-X /Robert Long, et ux

Since the above captioned cases have been completed in the upper courts, we are hereby closing and returning herewith, our case files along with the original record which was returned to the Board's office by John Almond, Records Manager /CCt.

Attachments: (File Nos. 97-556-XA w/ large exhibit & 98-251-X)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: George G. Perdikakis /DEPRM **DATE:** April 27, 2000
Department of Environmental
Protection and Resource Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: CBA-98-128 /Long Property (also zoning case 98-251-A)
3825A Annadale Road, Balto., MD 21222
(Appeal filed in the Court of Special Appeals 4/14/00)

The record in the above captioned matter was previously returned to the Board initiating our closing this case by memo of April 19, 2000.

We have been advised by the property owner that a last minute appeal was filed in the Court of Special Appeals. The original record will be forwarded once again to the Circuit Court for Baltimore County, and the Board of Appeals' case file will remain open until the case is completed in the upper courts.

c: Nancy West

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: L. Stahl
L. Barranger
M. Worrall

DATE: March 2, 1999

FROM: Kathi

SUBJECT: Case No. 98-251-A and CBA-98-128 /Robert Long, et ux

The subject matter has been scheduled for public deliberation on Thursday, March 18, 1999 at 9:00 a.m. A copy of that Notice of Deliberation was mailed to you on January 20, 1999. Attached are the following documents filed by Counsel with regard to this case:

1. Closing Memoranda filed by Wendy A. Zerwitz, Esquire, on behalf of Petitioners (Robert Long, et ux);

2. Hearing Memorandum (in the form of a letter with attachments) filed by Newton A. Williams, Esquire, on behalf of Appellant /Protestant (Melvin Woodell, Jr.); and

3. Memorandum of Baltimore County, Maryland, filed by Nancy C. West, Assistant County Attorney, as to the issues raised in CBA-98-128 involving Chesapeake Bay Critical Area administrative variance.

Should you have any questions regarding the above, or need any additional information, please call me.

kathi

Attachments

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

April 9, 1998

Mr. and Mrs. Robert Long
3827 Annadale Road
Baltimore, MD 21222

RE: Petition for Zoning Variance
Case No.: 98-251-A
3825A Annadale Road
15c7
Robert Long, et ux - Petitioners

Dear Mr. and Mrs. Long:

Please be advised that an appeal of the above referenced case was filed in this office on April 7, 1998 by the concerned property owners of Annadale, c/o Melvin C. Woodell, Jr. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call the Board of Appeals at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:rye

c: Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth
Chesapeake Bay Critical Areas Commission
People's Counsel

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on Recycled Paper

APPEAL

Petition for Zoning Variance
S/S Annadale Road, 90' E of centerline Matthai Road
(3825A Annadale Road)
15th Election District - 7th Councilmanic District
Robert Long, et ux - Petitioners
Case Number: 98-251-A

98 APR 15 PM 6:24
RECEIVED
COUNTY BOARD OF APPEALS

✓ Petition for Variance

✓ Description of Property

✓ Certificate of Posting

✓ Certificate of Publication

✓ Entry of Appearance of People's Counsel

✓ Zoning Advisory Committee Comments

✓ Petitioners and Protestants Sign-In Sheets

✓ Petitioners' Exhibit: 1 - Plat to Accompany Petition for Zoning Variance

✓ Undersized Lot Form with Attachment (Approved on 2/6/98 by Ervin McDaniel, Office of Planning and Community Conservation

✓ Letter from George G. Perdikakis, Director of the Department of Environmental Protection and Resource Management, to Mr. and Mrs. Robert Long, dated August 13, 1997

✓ Twenty-seven Photographs not Marked as Exhibits

✓ Zoning Commissioner's Order dated March 13, 1998 (Granted in Part, Denied in Part)

✓ Notice of Appeal received on April 7, 1998 from the concerned property owners of Annadale, c/o Melvin C. Woodell, Jr. (No signatures on appeal letter.)

c: Mr. and Mrs. Robert Long, 3827 Annadale Road, Baltimore, MD 21222 ✓ E
Mr. and Mrs. Norris Shanholtz, 3822 Annadale Road, Baltimore, MD 21222
Mr. and Mrs. Joseph Ernstberger, 3830 Annadale Road, Baltimore, MD 21222
Ms. Ann Chenoweth, 3821 Annadale Road, Baltimore, MD 21222
✱ Mr. Mel Woodell, Jr., 705 S. 49th Street, Baltimore, MD 21224
Chesapeake Bay Critical Areas Commission, 45 Calvert Street, 2nd Floor, ~~Baltimore~~ Annapolis, Maryland 21401
DEPRM
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, Chtd.
Ste. 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204-4528

ENTERED APPEARANCE 8-25-98
for Melvin Woodell, et al
Appellants / PROTESTANTS

Counsel for Property Owner (Long):
Wendy A. Zerwitz, Esquire
38 S. Dundalk Avenue
Dundalk, MD 21222

Case No. 98-251-A — VAR -To permit lot width of 43' in lieu of required 55; side yard setback of 10' in lieu of 25'; approval of undersized lot.

3/13/98 -Z.C.'s Order in which Petition for Variance was GRANTED in part and DENIED in part.

and CBA-98-128 — DEPRM grant of critical areas variance -Long Property

---

4/15/98 -Letter from Robert and Rose Long -- requesting hearing as soon as possible due to financial constraints and arranged financing for the sale of present home and construction of new home on property which is the subject of this appeal. (Variance granted by ZC; appealed by neighboring property owner; file not received by Board to date.)

5/12/98 - Notice of Assignment for hearing scheduled for Tuesday, August 25, 1998 at 10:00 a.m. sent to following:

Melvin C. Woodell, Jr.
(Concerned Property Owners
of Annadale)
Mr. and Mrs. Norris Shanholtz
Mr. and Mrs. Joseph Ernstberger
Ms. Ann Chenoweth
Mr. and Mrs. Robert Long
Newton A. Williams
Howard L. Alderman, Jr.
Susan McConville
Chesapeake Bay Critical Areas Commission
People's Counsel for Baltimore County
Patricia M. Farr /DEPRM
George G. Perdikakis, Director /DEPRM
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

7/30/98 -Amended Notice of Assignment sent to parties; no change in date or time of hearing; Amended to include Case No. CBA-98-128 /Long Property (appeal from granting of DEPRM critical area variance) only. Amended notice sent to all parties listed above.

8/13/98 -FAX copy of letter from N. Williams to H. Alderman re suggested continuance for possible meeting and settlement regarding above matter scheduled for 8/25/98.

8/19/98 -FAX letter from Robert Long; requesting continuance of hearing scheduled for 8/25/98; time to meet with counsel (appearance to be entered) and unavailability of counsel on set date, as well as wife's injuries.
- FAX letter from N. Williams - entering appearance on behalf of Mr. Woodell, Appellant, and indicating no objection to the granting of this requested continuance.
-- Notice of PP sent to parties (and by FAX to Messrs. Alderman, Long, Williams, and Woodell). To be reset upon request.

8/26/98 -Letter dated 8/25/98 by FAX from N. Williams; entering appearance on behalf of Mr. Woodell and others noted in hearing assignment as protestants; also requesting that matter be scheduled for hearing in the course of the Board's docket.

8/31/98 -Notice of Reassignment sent to parties; matter reassigned for hearing on Thursday, October 29, 1998 at 11:00 a.m.

See page 2 for continuation

9/01/98 -FAX letter from H. Alderman (hard copy received 9/02/98); as of the writing of the instant letter, Mr. Alderman nor any member of Levin & Gann has entered appearance in either variance case or DEPRM case re Long property. Will advise per Rule 6.d should his firm be retained as counsel in these matters.

10/06/98 -Motion for Dismissal filed by Robert Long, Petitioner. Also requests postponement from 10/29/98 hearing (wife scheduled for hand surgery). Awaiting response from N. Williams.

10/09/98 -Answer to Motion for Dismissal and for Postponement filed by N. Williams, Esquire, on behalf of M/M Woodell, M/M Shanholtz, M/M Erstberger, and Ms. Chenoweth - and opposing request for postponement.

10/19/98 -T/C to both Petitioners and Counsel for Protestants; postponement will be granted and reassigned to Tuesday, November 17, 1998 at 10:00. Argument on Motion to Dismiss to be received first; parties to be ready to proceed on merits 11/17/98 should the Board deny the Motion or hold it sub curia and decide all issues at the conclusion of the case on the merits. No further postponements will be granted.

10/20/98 -Notice of PP and Reassignment to parties; rescheduled to Tuesday, November 17, 1998 at 10:00 a.m. As indicated above, argument on Motion first; then proceed on merits if necessary. Noted on Notice that **no further postponements will be granted** in this matter.

10/30/98 -Letter from B. Jensen; requesting postponement from 11/17/98 hearing date; he has a jury trial on that date.

11/02/98 -T/C to N. Williams, Counsel for Protestants, and R. Long regarding Mr. Jensen's request; postponement to be granted and reassigned to Wednesday, January 13, 1999 at 10:00 a.m.; notice sent this date. (FAX copy to Mr. Williams and to Mr. Long).

11/04/98 -Appellants' Motion to Quash Subpoenas filed by Newton A. Williams, Esquire on behalf of Mr. and Mrs. Shanholtz and Mrs. Chenoweth.

11/04/98 -Letter from Rev. and Mrs. Shanholtz regarding subpoenas and lack of possession /location of documents requested.

1/13/99 -Hearing concluded in both DEPRM appeal and zoning variance appeal; Memos due from counsel Monday, 3/01/99; deliberation to be scheduled shortly thereafter. Notice of Deliberation to be sent to parties when scheduled. (L.B.W.) Wendy A. Zerwitz, Esquire, entered her appearance on behalf of Robert Long, Petitioner /property owner.

1/20/99 -Notice of Deliberation sent to parties; scheduled for Thursday, March 18, 1999 at 9:00 a.m. Copy to L.B.W.

3/01/99 Memos filed: Zerwitz 3/01/99
Williams 3/01/99
West 3/01/99

3/02/99 -Copies of Memos to L.B.W.

3/18/99 -Deliberation concluded; Petition for Variance GRANTED with restrictions as to compliance with DEPRM requirements; Critical Area Variance GRANTED with conditions imposed by DEPRM; Motion to Quash granted; Motion to Dismiss DENIED. Order to be issued; appellate period to run from date of written Order.

Long Property 98-251-A /ZC

CBA-98-128 /DEPRM

Civil Action No. 3-C-99-006263

January 7, 1998 Petition for Variance filed by Robert and Rose Long, to permit a lot width of 43' in lieu of the required 55', a sd yd setback of 10' ilo 25', and to approve the subject property as an undersized lot.

February 20 Hearing held on Petition for Variance by the Zoning Commissioner.

March 13 Order issued by the ZC in which the Petition for Variance was GRANTED w/ restrctns. in pt & DENIED in pt.

April 7 Notice of Appeal filed by Melvin C. Woodell, Jr., et al

CBA-98-128

August 13, 1997 Letter from George G. Perdikakis, Director /DEPRM, to Mr and Mrs. Robert Long; request for admin. variance to construct a single-family dwelling on a vacant lot in the 100 foot buffer to Bear Creek is GRANTED.

April 7, 1998 Notice of Appeal filed by Melvin C. Woodell, Jr., et al (concerned property owners of Annadale), Appellants /Protestants.

98-251-A and CBA-98-128

August 27, 1998 Entry of Appearance filed by Newton A. Williams, Esquire, as counsel for Mr. Melvin Woodell, et al.

October 6 Motion for Dismissal filed by Robert Long.

October 9 Answer to Motion for Dismissal and for Postponement filed by Newton A. Williams, Esquire, on behalf of Melvin Woodell, et al.

October 26 Subpoenas served on Mr. & Mrs. Norris Shanholtz and Mrs. Annabelle Chenowith (request of Robert Long.

November 4 Appellants' Motion to Quash Subpoenas filed by Newton A. Williams, Esquire, on behalf of Mr. & Mrs. Shanholtz, and Mrs. Chenowith.

January 13, 1999 Hearing held by the Board of Appeals.

March 1 Closing Memoranda filed by Wendy A. Zerwitz, Esquire, on behalf of Robert & Rose Long.

March 1 Hearing Memorandum (letter) filed by Newton A. Williams, Esquire, on behalf of Melvin C. Woodell, Jr.

March 1 Memorandum of Baltimore County, MD filed by Virginia W. Barnhart, C.A. and Nancy C. West, Asst. Co. Atty.

March 18 Deliberation conducted by the Board of Appeals.

May 25 Opinion and Order issued by the Board; Appellant/Protestant's Motion to Quash Subpoenas is GRANTED: Petitioners' Motion to Dismiss is DENIED; decision of DEPRM granting request for admin. variance is AFFIRMED; Petitioners' requested admin. variance is GRANTED with conditions; and Petition for Variance is GRANTED with restrictions.

June 23 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Newton A. Williams, Esquire, on behalf of Melvin C. Woodell, Jr.

June 23 Copy of Petition for Judicial Review rec'd by the Board of Appeals from the Circuit Court.

June 30 Certificate of Notice sent to interested parties.

August 23, 1999 Transcript of testimony and Record of Proceedings filed in the Circuit Court for Baltimore County.

March 16, 2000 Opinion of the CCt issued; decision of the CBA is AFFIRMED (Judge Byrnes).

April 14, 2000 Notice of Appeal filed in the CCt by Melvin Woodell, Jr. (Protestant).

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

10/24/00

Case Number: 03-C-99-006263 AE
Date Filed: 06/24/1999
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter Of: Robert Long

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C99006263V01
Administrative Agency	CBA-98-128

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
RES	001	Long, Robert		CT DO 03/16/00	06/24/99
		Attorney: 0800233 Zerwitz, Wendy A Zerwitz & Zerwitz 38 South Dundalk Avenue Dundalk, MD 21222 (410)288-9303		07/09/99	
PET	001	Woodell, Melvin C, Jr		CT DO 03/16/00	06/24/99
		Mail: 3825 Annandale Road Baltimore, MD 21221	06/24/99		
		Attorney: 0017486 Williams, Newton A Nolan, Plumhoff & Williams, Chartered 502 Washington Avenue Suite 700 Towson, MD 21204-5340		06/24/99	

(410)823-7800

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ITP	001	County Board Of Appeals Of Baltimore County		CT DO 03/16/00	06/24/99
Mail		Old Courthouse Rm 49	06/24/99		
		400 Washington Ave			
		Baltimore, MD 21204			

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day Of Rslt	By	ResultDt	Jdg T	Notice	Rec User ID
01/10/00	09:30A	02Q	yes	CIVI	S		JNB	01 /01 CON	C	01/10/00	JNB P	Y	KLS
Stenographer(s): Rita M. Taggart													
01/10/00	09:30A	02Q	yes	MOTN	S		TBA	01 /01 CON	C	03/16/00	P	12/30/99	CAH

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	06/24/99	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review	06/24/99	06/24/99	PET001	TBA		03/16/00	JM PH
0001001	Answer	07/08/99	07/09/99	RES001	TBA		03/16/00	MJ PH
0002000	Certificate Of Notice	07/01/99	07/01/99	000	TBA		03/16/00	JH PH
0003000	Cross-Petition for Judicial Review	07/08/99	07/09/99	RES001	TBA		03/16/00	MJ PH
0004000	Transcript of Record from Adm Agency *	08/23/99	08/25/99	ITP001	TBA		03/16/00	DFF PH
0005000	Notice of Transcript of Record Sent	08/25/99	08/25/99	ITP001	TBA		08/25/99	DFF DFF
0006000	Notice of Transcript of Record Sent	08/25/99	08/25/99	PET001	TBA		08/25/99	DFF DFF
0007000	Notice of Transcript of Record Sent	08/25/99	08/25/99	RES001	TBA		08/25/99	DFF DFF
0008000	Memorandum in support of appeal	09/23/99	09/24/99	PET001	TBA		09/24/99	PH PH

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0008001	Answer	10/29/99	10/29/99	RES001	TBA		03/16/00	DR PH
0009000	Scheduling Order	10/14/99	10/14/99	000	TBA		10/14/99	KLS KLS
0010000	Cross-Appellee's Memorandum in Support of Administrative Appeal	10/29/99	10/29/99	RES001	TBA		10/29/99	DR DR
0011000	Motion for Compensation for Defense of Unjustified Proceeding, filed in Bad Faith	11/30/99	12/02/99	PET001	TBA		03/16/00	MJ PH
0011001	Response to Appellant's Motion for Compensation for Defense of Unjustified Proceeding, filed in bad Faith	12/13/99	12/15/99	RES001	TBA		03/16/00	AR PH
0012000	Hearing Notice	12/30/99	12/30/99	000	TBA		12/30/99	CAH CAH
0013000	Open Court Proceeding January 10, 2000. Hon. J. Norris Byrnes. Hearing had re: Petition for Judicial Review. Opinion and Order to be filed.	01/10/00	01/10/00	000	TBA		03/16/00	GI PH
0014000	Order affirming decision	03/16/00	03/16/00	000	JNB	Granted	03/16/00	PH PH
0015000	Docket entries sent to Board of Education-Baltimore County	03/17/00	03/17/00	000	TBA			CAM CAM
0016000	Notice of Appeal to COSA (11/54)**	04/14/00	04/14/00	PET001	TBA			PH PH
0017000	Pre Trial Hearing Letter Issued	04/17/00	04/17/00	000	TBA		04/17/00	AJ AJ
0018000	Order to proceed w/out prehearing conf. * (James R Eyler, Judge). (11/54).	05/16/00	05/17/00	000	TBA			DFF DFF
0019000	Original Record sent to COSA OF MARYLAND BY CERTIFIED MAIL NUMBER Z 010 930 874, ONE VOLUME AND ONE LARGE ENVELOPE (EXHIBIT - BOX 165).	07/06/00	07/06/00	000	TBA			AJ AJ
0020000	Mandate from the COSA dismissing appeal	10/24/00	10/24/00	000	TBA			PH PH

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	06/23/00	365	no	no	DAAA	D	000	000
1ANS	1st Answer Tickle	CLOSED	07/08/99	0	no	no	DANS	D	001	001
SLTR	Set List For Trial	DONE	07/08/99	0	yes	yes	1ANS	T	001	001

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
SLMR	Set List For Motions	CANCEL	12/22/99	22	no	no	DANS	D	000	000
XPU	Exhibit Pickup Notic	CLOSED	05/15/00	30	no	no			000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 County Board Of Appeals Of Ba								
000		B	returned to zoanin		0			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 10/14/99 Order Date : 10/14/99
Start Date : 10/14/99 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		10/29/99	03/16/00	CLOSED
All Motions (excluding Motions in Limine		12/03/99	03/16/00	CLOSED
TRIAL DATE is	01/10/00	01/12/00	01/10/00	REACHED

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F M O T I O N S H E A R I N G

Case Number: 03-C-99-006263
Administrative Agency : CBA-98-128
C I V I L

In The Matter Of: Robert Long

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

TO: County Board Of Appeals Of Baltimore County
Old Courthouse Rm 49
400 Washington Ave
Baltimore, MD 21204

This case has been assigned a hearing on all open motions on:

CIRCUIT COURT FOR BALTIMORE COUNTY
County Courts Building
401 Bosley Avenue
Towson, Maryland 21285-6754

Court date:
January 10, 2000
At: 09:30 AM
Motion Hearing (Civil)
1/2 HOUR MOTION SAME DAY AS TRIAL

PLEASE NOTE: If you desire to submit prior to this hearing date, please contact the Motion Assignment Clerk. A total of no more that one-half hour is allotted for a hearing on "Motion Days". If motions will take more than one-half hour, please contact the Motion Assignment Clerk for reassignment.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

A court reporter will not be present at the motion hearing unless specifically requested. Requests for reporters should be directed to the Motion Assignment Clerk. All requests for a postponement **MUST BE MADE IN WRITING AS SOON AS POSSIBLE**. This should be directed to the Motion Assignment Clerk with a copy to all counsel. Claim of not receiving this notice will not constitute reason for postponement.

Please refer to Information Desk for Court Room Designation.

Assignment Clerk: Harris Christina

Assignment Office Phone: (410)-887-2660

Date Issued: 12/30/99

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F R E C O R D

Case Number: 03-C-99-006263
Administrative Agency : CBA-98-128
C I V I L

In The Matter Of: Robert Long

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 23rd day of August, 1999.

Suzanne Mensh
Clerk of the Circuit Court, per D. F.

Date issued: 08/25/99

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Rm 49
400 Washington Ave
Baltimore, MD 21204

RECEIVED
COUNTY BOARD OF APPEALS
99 AUG 26 PM 5:13

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

03/17/00

Case Number: 03-C-99-006263 AE
Date Filed: 06/24/1999
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter Of: Robert Long

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C99006263V01
Administrative Agency	CBA-98-128

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
RES	001	Long, Robert		CT DO 03/16/00	06/24/99
		Attorney: 0800233 Zerwitz, Wendy A		07/09/99	
		Zerwitz & Zerwitz			
		38 South Dundalk Avenue			
		Dundalk, MD 21222			
		(410)288-9303			
PET	001	Woodell, Melvin C, Jr		CT DO 03/16/00	06/24/99
		Mail: 3825 Annandale Road	06/24/99		
		Baltimore, MD 21221			
		Attorney: 0017486 Williams, Newton A		06/24/99	
		Nolan, Plumhoff & Williams, Chartered			
		502 Washington Avenue			
		Suite 700			
		Towson, MD 21204-5340			

Circuit Court for BALTIMORE COUNTY
City or County

CIVIL---NON-DOMESTIC CASE INFORMATION REPORT

Directions:

Plaintiff: *This Information Report must be completed and attached to the complaint filed with the Clerk of the Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111. A copy must be included for each defendant to be served.*

Defendant: *You must file an Information Report as required by Rule 2-323(h).*

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER TO RESPONSE.

FORM FILED BY: ☐ PLAINTIFF ☐ DEFENDANT CASE NUMBER: ~~A~~ 98-251-A + CBA-98-128

CASE NAME: Robert Long, 3825A Annadale Rd. (Plaintiff) v. N/A (Defendant)

JURY DEMAND: ☐ Yes ☑ No Anticipated length of trial: 3 hours or _____ days

RELATED CASE PENDING? ☐ Yes ☑ No If yes, Case #(s), if known: N/A.

HAS ALTERNATIVE DISPUTE RESOLUTION (ADR): Been Tried? ☐ Yes ☑ No

Requested? ☐ Yes ☑ No

If yes, specify: _____

Special Requirements? ☐ Interpreter/communication impairment

N/A ☐ Other ADA accommodation: _____

NATURE OF ACTION
(CHECK ONE BOX)

TORTS
- ☐ Motor Tort
- ☐ Premises Liability
- ☐ Assault & battery
- ☐ Product Liability
- ☐ Professional Malpractice
- ☐ Wrongful Death
- ☐ Business & Commercial
- ☐ Libel & Slander
- ☐ False Arrest/Imprisonment
- ☐ Nuisance
- ☐ Toxic Torts
- ☐ Fraud
- ☐ Malicious Prosecution
- ☐ Lead Paint
- ☐ Asbestos
- ☐ Other _____

LABOR
- ☐ Workers' Comp.
- ☐ Wrongful Discharge
- ☐ EEO
- ☐ Other _____

CONTRACTS
- ☐ Insurance
- ☐ Confessed Judgment
- ☐ Other _____

REAL PROPERTY
- ☐ Judicial Sale
- ☐ Condemnation
- ☐ Landlord/Tenant
- ☐ Other _____

OTHER
- ☐ Civil Rights
- ☐ Environmental
- ☐ ADA
- ☑ Other Judicial Review

DAMAGES/RELIEF

A. TORTS

Actual Damages
- ☐ Under $7,500
- ☐ $7,500 - $50,000
- ☐ $50,000 - $100,000
- ☐ Over $100,000

- ☐ Medical Bills $_____
- ☐ Property Damages $_____
- ☐ Wage Loss $_____

B. CONTRACTS
- ☐ Under $10,000
- ☐ $10,000 - $20,000
- ☐ Over $20,000

C. NONMONETARY RELIEF
- ☐ Declaratory Judgment
- ☐ Injunction
- ☑ Other Judicial Review Board of Appeals

TRACK REQUEST

With the exception of Baltimore County, Baltimore City, and Prince George's County, please fill in the estimated LENGTH OF TRIAL. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.

- ☐ *½ day of trial or less*
- ☐ *1 day of trial time*
- ☐ *2 days of trial time*
- ☐ *3 days of trial time*
- ☐ *More than 3 days of trial time*

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY, PLEASE SEE REVERSE SIDE OF FORM FOR INSTRUCTIONS.

Date: June 23, 1999 *Signature:* Newton A. Williams

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY, PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

CIRCUIT COURT FOR BALTIMORE CITY (check only one)

☐ Expedited	Trial 60 to 120 days from notice. Non-jury matters.
☐ Standard-Short	Trial seven months from Defendant's response. Includes torts with actual damages up to $7,500; contract claims up to $20,000; condemnations; injunctions and declaratory judgments.
☑ Standard-Medium	Trial 12 months from Defendant's response. Includes torts with actual damages of $7,500 and under $50,000, and contract claims over $20,000.
☐ Standard-Complex	Trial 18 months from Defendant's response. Includes complex cases requiring prolonged discovery with actual damages in excess of $50,000.
☐ Lead Paint	Trial per model order.
☐ Asbestos	Events and deadlines set by individual judge.
☐ Protracted Cases	Complex cases designated by the Administrative Judge.

CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

☐ TRACK I	Cases having Judicially-assessed values under $25,000.
☐ TRACK II	Cases having Judicially-assessed values greater than $25,000 but not complex litigation.
☐ TRACK III	Non-Jury.
☐ TRACK IV	Statutory Priority Jury Track.
☐ TRACK V	Complex Litigation (Business, Tort, Orphan's Court Appeals).

LIABILITY FACTORS

- ☐ Rear-end
- ☐ Slip and Fall
- ☐ Intersection
- ☐ Changing Lanes
- ☐ Left-hand Turn
- ☐ Other: _____

INJURY FACTORS

- ☐ Soft Tissue
- ☐ Broken Bones
- ☐ Joint Damages (knee, ankle, etc.)
- ☐ Herniated Disk
- ☐ Severe Head Injury
- ☐ Other: _____

CIRCUIT COURT FOR BALTIMORE COUNTY

☑ Expedited (Trial Date-90 days)	Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
☐ Standard (Trial Date-240 days)	Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, Intentional Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
☐ Extended Standard (Trial Date-345 days)	Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of $100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
☐ Complex (Trial Date-450 days)	Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

County Board of Appeals of Baltimore County

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

July 15, 1998

TO: Robert Long 410/388/1610 (FAX)

FROM: Kathleen Bianco /Board of Appeals
Telephone 410-887-3180

RE: Subpoena Forms

Per our telephone conversation, attached are copies of two subpoena forms which may be used to subpoena witnesses to testify before the Board. Also attached is a copy of the affidavit to be filed upon service of the subpoena (when using private process server in lieu of the County Sheriff's Office). As I explained, in order for the Sheriff to serve a subpoena, that office requires a minimum of 5 business days prior to the hearing.

Upon completion of the subpoena form, you would then come in to our office to have the subpoena stamped in and signed, and, depending upon the time frame and your choice, either the Sheriff or a server of your choosing would actually serve the subpoena.

Please call me with any questions.

Kathi Bianco

Printed with Soybean Ink
on Recycled Paper

IN THE MATTER OF	*	**BEFORE**
ROBERT LONG, ET UX	*	**BALTIMORE COUNTY BOARD**
ZONING VARIANCE	*	**OF APPEALS**
LONG PROPERTY/DEPRM	*	**OF BALTIMORE COUNTY**
DECISION FOF 3825A	*	**CASE NO. 98-251A and**
ANNADALE ROAD, 15th E	*	**CASE NO. CBA-92-128**
7th C	*	

* * * * * * * * * * * *

98 OCT 26 PM 2:59

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: **Mrs. Annabelle Chenowith**
3821 Annadale Road
Baltimore, County MD 21222

YOU ARE HEREBY COMMANDED TO: **Personally Appear and Produce**

Documents and/or objects; in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on Tuesday the 17th day of November, 1998 at 10:00 a.m.

YOU ARE COMMANDED TO PRODUCE THE FOLLOWING DOCUMENTS OR OBJECTS FOR 3821 ANNADALE ROAD, BALTIMORE, MD 21222:

1. **All Approved Site Plans, Grading Studies, Flood Plain Certification From Baltimore County**
2. **All Building Permits Issued From Baltimore County, Electrical, Plumbing, Building Additions**
3. **Detailed Lists of All Improvements for the Past Three (3) Years**
4. **All Approved Permits for Gazebo, Shed, Boat Lift and Pier From Baltimore County**
5. **Any Documentation Stating the Size of the Gazebo, Shed, Boat Lift and Pier**
6. **Any Documents for Variances or Waivers for the Gazebo and Shed in the 100 ft. Buffer Zone.**
7. **Any Documents Related to Any Variances or Waivers Approved or Denied by Baltimore County**

Subpoena Requested By:

Robert B. Long, 3827 Annadale Road, Baltimore, Maryland 21222

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

Charlotte E. Radcliffe
County Board of Appeals
Baltimore County

IN THE MATTER OF	*	**BEFORE**
ROBERT LONG, ET UX	*	**BALTIMORE COUNTY BOARD**
ZONING VARIANCE	*	**OF APPEALS**
LONG PROPERTY/DEPRM	*	**OF BALTIMORE COUNTY**
DECISION FOF 3825A	*	**CASE NO. 98-251A and**
ANNADALE ROAD, 15th E	*	**CASE NO. CBA-92-128**
7th C	*	

* * * * * * * * * * * * *

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: **Mr. & Mrs. Norris Shanholtz**
3822 Annedale Road
Baltimore, County MD 21222

YOU ARE HEREBY COMMANDED TO: Personally Appear and Produce

Documents and/or objects; in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on Tuesday the 17th day of November, 1998 at 10:00 a.m.

YOU ARE COMMANDED TO PRODUCE THE FOLLOWING DOCUMENTS OR OBJECTS FOR 3822 ANNADALE ROAD, BALTIMORE, MD 21222:

1. All Approved Site Plans, Grading Studies, Flood Plain Certification From Baltimore County
2. All Building Permits Issued From Baltimore County, Electrical, Plumbing, Building Additions
3. Detailed Lists of All Improvements for the Past Three (3) Years
4. All Surveys and All Documentation From Baltimore County to Change the Storm Drain in Front of 3822 Annadale Road
5. All Permits for Driveway From Baltimore County
6. Any Documentation Stating the Size of the Driveway
7. Any Documents Related to Any Variances or Waivers Approved or Denied by Baltimore County

Subpoena Requested By:

Robert B. Long, 3827 Annedale Road, Baltimore, Maryland 21222

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

Charlotte E. Radcliffe
County Board of Appeals
Baltimore County

98 OCT 26 PM 2:49

IN THE MATTER OF	*	BEFORE
ROBERT LONG,ET UX	*	BALTIMORE COUNTY BOARD
ZONING VARIANCE	*	OF APPEALS
LONG PROPERTY/DEPRM	*	OF BALTIMORE COUNTY
DECISION FOR 3825A	*	CASE NO. 98-251A and
ANNADALE ROAD, 15th E	*	CASE NO. CBA-98-128
7th C	*	

* * * * * * * * * *

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: Custodian of Records of Zoning for Baltimore County

YOU ARE HEREBY COMMANDED TO: Personally Appear and Produce

Documents and/or objects; in Room 48, Basement, Old Courthouse, 400 Washington Avenue,

Towson, MD 21204 on Wednesday the 13th day of January, 1992 at 10:00 a.m.

YOU ARE COMMANDED TO PRODUCE THE FOLLOWING DOCUMENTS OR OBJECTS FOR ZONING VARIANCE CASE THAT WAS HEARD BEFORE THE ZONING COMMISSIONER ON FEBRUARY 20, 1998 at 10:00 a.m.:

GENERAL STATEMENT: The Purpose of this Subpoena is to Have a True Copy of the Previous Zoning Hearing Case No.98-251a to be Submitted as Evidence Before the Board of Appeals.

1. To Produce a Copy of the Tape from the Hearing on February 20, 1998

2. All Transcripts of the Hearing on February 20, 1998.

Subpoena Requested By:

Robert B. Long, 3827 Annadale Road, Baltimore, Maryland 21222

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

Charlotte E. Radcliffe

County Board Of Appeals
Baltimore County

98 DEC 28 AM 12:33

IN THE MATTER OF ROBERT LONG,ET UX ZONING VARIANCE LONG PROPERTY/DEPRM DECISION FOR 3825A ANNADALF ROAD, 15th E 7th C	*	BEFORE BALTIMORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 98-251A and CASE NO. CBA-98-128

98 OCT 28 PM 2:04

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: Custodian of Records of Zoning for Baltimore County

YOU ARE HEREBY COMMANDED TO: Personally Appear and Produce

Documents and/or objects; in Room 48, Basement, Old Courthouse, 400 Washington Avenue,

Towson, MD 21204 on Tuesday the 17th day of November, 1998 at 10:00 a.m.

YOU ARE COMMANDED TO PRODUCE THE FOLLOWING DOCUMENTS OR OBJECTS FOR ZONING VARIANCE CASE THAT WAS HEARD BEFORE THE ZONING COMMISSIONER ON FEBRUARY 20, 1998 at 10:00 a.m.:

1. To Produce a Copy of the Tape from the Hearing on February 20, 1998

2. All Transcripts of the Hearing on February 20, 1998.

Subpoena Requested By:

Robert B. Long, 3827 Annadale Road, Baltimore, Maryland 21222

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

Charlotte E. Radcliffe
County Board Of Appeals
Baltimore County

Sent By: COVENANT REALTY,INC. 410 10/28/98 2:36PM Job 517 Page 2/2

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Robert Long, et ux /Long Property
Case No. 98-251-A and Case No. CBA-98-128

DATE : Thursday, March 18, 1998

BOARD /PANEL : Lawrence M. Stahl (LMS)
Margaret Worrall (MW)
Lynn Barranger (LB)

SECRETARY : Kathleen C. Bianco
Administrator

PURPOSE: To deliberate Case No. 98-251-A (Robert Long, et ux) and Case No. CBA-98-128 (Long Property). Heard before the Board on January 13, 1999.

The Board, having convened for public deliberation as scheduled, and upon deliberation between panel members, reached the following decision:

Issues to be highlighted:

1) Two Motions /Motion to Quash subpoenas
Motion to Dismiss Appeal (not filed appropriately)

2) Merits of the case /DEPRM variance

3) Zoning Variance

As to (1) above, ruling made from the bench on date of hearing as to Motion to Quash -granted (to be mentioned in Board's final written Opinion).

As to determination that appeal was filed properly - not raised during hearing but filed preliminarily; who are appellants /name and addresses per Board's rules.

Motion to Dismiss is DENIED by unanimous decision; only Appellant recognized is Mr. Woodell; no "concerned citizens" recognized. Mr. Woodell did include check; his name and his address; "feeling aggrieved" gives right to appeal. He testified in singular; appeared at hearing; was the only Appellant in this matter. Moved forward on the merits.

As to (2) above, DEPRM decision /Critical Area variance

Kelly's testimony cited and discussed; met criteria for granting of DEPRM variance -- odd-shaped lot; fit in with neighborhood; no special privilege; not based on "after fact"; does not affect fish, plants, etc. DEPRM imposed conditions; to be imposed by CBA in written Opinion /Order; Variance to be granted with restrictions.

As to (3) above, zoning variance

Per Cromwell v. Ward -- it is unique; then on to practical difficulty and unreasonable hardship; then spirit and intent.

Unique -- cited testimony received; shape of lot, topography and slope; as it exists, it is unique.

Practical Difficulty or Unreasonable Hardship -- not self-imposed because at time of building his home, front foot was 50' and not 55'; law was later changed; could have built house on this lot after building his house (located at the direction of the County); requirements later changed; now he cannot build without variance. Not self-imposed but change in law.

Spirit and Intent -- Concerns raised by Appellant re drainage; erosion taking away filtration; access to Tabasco Road.

SWM issues - must be dealt with prior to issuance of permit -- DEPRM must be satisfied; no expert testimony opposed to this; only testimony of Phelps who saw no problems. Acknowledged concerns relative to drainage; unrebutted testimony as to drainage; conditioned to meet all requirements by DEPRM.

Paper road issue -- No use of Tabasco Road but would like to; nothing different. Would not be built over.

The Board's unanimous decision based on testimony and evidence produced at hearing and after public deliberation is that the Petition for Variance is GRANTED, with restrictions as to compliance with DEPRM requirements; Critical Area variance via DEPRM is GRANTED, with conditions imposed by DEPRM in its original grant of said variance relief; Motion to Quash granted; Motion to Dismiss DENIED.

Written Opinion and Order to be issued by the Board as required by statute. Appellate period to run from date of written Order; anyone feeling aggrieved by the Board's decision may appeal to Circuit Court.

~~~~~~~~~~~~~~~~~~~~

NOTE: This document confirms for the file that public deliberation was held this date in the subject matter and a final decision rendered in which the requested variance relief was granted; DEPRM variance relief GRANTED.

Respectfully submitted,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator
~~~~~~~~~~~~~~~~~~~~

Baltimore County
Department of Environmental Protection
and Resource Management

BUREAU OF RESOURCE MANAGEMENT
AND ENGINEERING SERVICES
401 Bosley Avenue, Suite 416
Towson, Maryland 21204
(410) 887-3768
Fax: (410) 887-4804

August 13, 1997

Mr. and Mrs. Robert Long
3827 Annadale Road
Baltimore, Maryland 21222

Re: 3825A Annadale Road
Critical Area Administrative Variance

Dear Mr. and Mrs. Long:

The Department of Environmental Protection and Resource Management (DEPRM) has received your variance request to construct a single-family dwelling on a vacant lot in the 100 foot buffer to Bear Creek. The Director of DEPRM may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. Due to the configuration of the lot, a majority of the dwelling must be built in the 100 foot buffer, or the lot would be unbuildable. Therefore, the hardship is warranted.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. As stated above, there is no room to build a dwelling out of the 100 foot buffer. If the regulations were literallly enforced, the applicant would not be able to build a dwelling on the property and would, thus, be deprived of a right commonly enjoyed by others.

Printed with Soybean Ink
on Recycled Paper

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. No special privileges will be conferred upon the applicant by the granting of this variance. Therefore, this criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. The variance is not based upon conditions or circumstances which were the result of your own actions, and this criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The granting of this variance will not adversely impact fish, wildlife, or plant habitat. Potential water quality impacts can be minimized through the planting of trees.

Based upon our review, it is this Department's findings that the first four of the above criteria have been met, and that the fifth criterion can be met by planting 1.5 inch caliper native deciduous trees, preferably on the waterward side of the proposed structure, at a rate of 3 trees for each 100 square feet of the proposed disturbance to occur within the 100 foot buffer. Therefore, the requested variance is hereby approved in accordance with Section 26-445(c)of the Baltimore County Code with the following conditions:

1. The attached "Notice of Granting of Variance" must be published in The Avenue, The Dundalk Eagle or The Essex Times. Final variance approval cannot be granted until fifteen (15) calendar days after the notice has been published. A copy of the Certificate of Publication for the advertisement issued by the newspaper, or a copy of the advertisement from the paper must be submitted to this office prior to receiving final variance approval.

2. The sum of all man-made impervious areas shall not exceed 25% of the lot; including the development proposed as part of this variance request and any accessory uses or structures.

3. No accessory structures shall be placed on the property waterward of the proposed dwelling.

4. The proposed dwelling shall be placed as close to the road as allowed by Baltimore County Zoning Regulations, and shall extend no closer than sixty-five (65) to mean high tide.

5. If all of the required mitigation cannot be accomplished onsite, the Department may accept a fee-in-lieu of mitigation at a rate of $1.20 per square feet of disturbance. Any fee-in-lieu payment shall be made prior to building permit issuance.

6. The above-referenced mitigation shall be completed within ninety (90) days of building permit issuance for the proposed dwelling.

7. Rooftop runoff shall be directed through downspouts and across the lawn.

8. Prior to receiving final variance approval, a revised plot plan which shows the following additional information must be submitted to this office:

    a. the Limit of Disturbance (L.O.D.) as 15 feet from the proposed work,

    b. location of proposed trees to be planted,

    c. the 100 foot buffer limit,

    d. a note stating, "There shall be no clearing, grading, or disturbance of the 100 foot buffer other than mowing, except as permitted by the Department of Environmental Protection and Resource Management (DEPRM)", and

    e. the location of the driveway for the dwelling.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request.

Please sign the statement on the next page and then return a copy of the Certificate of Publication, the revised plot plan, and the letter to this Department c/o Ms. Patricia M. Farr of Environmental Impact Review. Failure to return a signed copy of this letter and the other two items may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Mr. Keith Kelley at (410) 887-3980.

Sincerely,

George G. Perdikakis /TRV

George G. Perdikakis
Director

GGP/KK

c: Ms. Susan McConville, CBCA Commission
Ms. Patricia M. Farr

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Chesapeake Bay Critical Area regulations.

_____ _____

Signature Date Signature Date

kdk#1/long.doc

Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
410-887-4420
Fax: 410-296-0931

October 28, 1998

Ms. Kathleen C. Bianco
Legal Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

98 OCT 30 AM 11:03

RE: Robert Long
Case No. CBA-98-128
O/L File No. 16,587-08

Dear Mrs. Bianco:

I am writing this letter to advise that I will be trying condemnation jury trial on Tuesday, November 17, 1998 at 10:00 A.M. See attached Scheduling Order.

Please reschedule the above-referenced case in the ordinary course of scheduling.

Thank you very much for your cooperation in this matter.

Very truly yours,

WILLIAM O. JENSEN, JR.
Assistant County Attorney

WOJ,JR:ak

Enc.

cc:Enc.: Mr. and Mrs. Robert Long
Newton A. Williams, Esq.
People's Counsel for Baltimore County
cc: Susan McConville, CBCAC
George Perdikakis, DEPRM
Patricia M. Farr, DEPRM
Roy List, DEPRM
Pat Keller, Director, Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director, PDM

Come visit the County's Website at **www.co.ba.md.us**

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County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

October 23, 1998

Mr. Joseph Ernstberger
3830 Annadale Road
Baltimore, MD 21222

RE: Case No. 98-251-A and
Case No. CBA-98-128 /Long Property

Dear Mr. Ernstberger:

As promised in our telephone conversation this afternoon, enclosed is a copy of the Motion for Dismissal filed by Mr. Long in the subject matter, as well as a copy of Mr. Williams' Answer to that Motion.

Should you have any further questions, please call me at 410-887-3180.

Sincerely yours,

E/ 10/23/98

Kathleen C. Bianco
Administrator

Enclosures (2)

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on Recycled Paper

INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM

TO: Director, Office of Planning & Community Conservation
Attn: Ervin McDaniel
County Courts Bldg, Rm 406
401 Bosley Av
Towson, MD 21204

B_____
Permit Number

FROM: Arnold Jablon, Director, Department of Permits & Development Management

RE: **Undersized Lots**

Pursuant to Section 304.2(Baltimore County Zoning Regulations) effective June 25, 1992; this office is requesting recommendations and comments from the Office of Planning & Community Conservation prior to this office's approval of a dwelling permit.

MINIMUM APPLICANT SUPPLIED INFORMATION:

☐ Robert B. & Rose M. Long 3827 Annadale Rd. (410) 388-1974
Print Name of Applicant — Address — Telephone Number

☐ **Lot Address** 3825A Annadale Rd. **Election District** 15 **Council District** 7 **Square Feet** 8,130

Lot Location: N E S W (side) / corner of Annadale Rd. (street), 75 **feet from** N E S W corner of Matthai (street)

Land Owner Robert B. & Rose M. Long **Tax Account Number** 1522000000226

Address 3827 Annadale Road **Telephone Number** (410) 388-1974
Baltimore, MD 21222

☐ **CHECKLIST OF MATERIALS:** to be submitted for design review by the Office of Planning & Community Conservation

	PROVIDED? YES	NO
1. This **Recommendation Form** *(3 copies)*	✓	___
2. **Permit Application**	___	___
3. **Site Plan**		
Property *(3 copies)*	✓	___
Topo Map (available in Rm 206 C.O.B.) *(2 copies)* (please label site clearly)	✓	___
4. **Building Elevation Drawings**	✓	___
5. **Photographs** (please label all photos clearly)		
Adjoining Buildings	✓	___
Surrounding Neighborhood	___	___

Residential Processing Fee Paid
Codes 030 & 080 ($85)
Accepted by RT
ZADM
Date_____

#251

TO BE FILLED IN BY THE OFFICE OF PLANNING & COMMUNITY CONSERVATION ONLY!!

RECOMMENDATIONS/COMMENTS:

☒ **Approval** ☐ **Disapproval** ☐ Approval conditioned on required modifications of the permit to conform with the following recommendations:

Signed by: Ervin McDaniel
for the Director, Office of Planning & Community Conservation

Date: 2/6/98

RECEIVED
JAN 15 1998
OFFICE OF PLANNING

Revised 9/5/95

SCHEDULED DATES, CERTIFICATE OF FILING AND POSTING
FOR A BUILDING PERMIT APPLICATION PURSUANT TO SECTION 304.2
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

The application for your proposed Building Permit Application has been accepted for filing by KT on 1-7-98 Date (A).

A sign indicating the proposed Building must be posted on the property for fifteen (15) days before a decision can be rendered. The cost of filing is $50.00 and posting $35.00; total $85.00.

In the absence of a request for public hearing during the 15-day posting period, a decision can be expected within approximately four weeks. However, if a valid demand is received by the closing date, then the decision shall only be rendered after the required public special hearing.

*SUGGESTED POSTING DATE 1-20-98 D (15 Days Before C)

DATE POSTED _____

HEARING REQUESTED-YES ____NO ____-DATE _____

CLOSING DAY (LAST DAY FOR HEARING DEMAND) 2-3-98 C (B-3 Work Days)

TENTATIVE DECISION DATE Feb. 5, 1998 B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

District _____

Location of property: _____

_____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

SCHEDULED DATES, CERTIFICATE OF FILING AND POSTING
FOR A BUILDING PERMIT APPLICATION PURSUANT TO SECTION 304.2
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

The application for your proposed Building Permit Application has been accepted for filing by PIT on 1-7-98 (A).
Date

A sign indicating the proposed Building must be posted on the property for fifteen (15) days before a decision can be rendered. The cost of filing is $50.00 and posting $35.00; total $85.00.

In the absence of a request for public hearing during the 15-day posting period, a decision can be expected within approximately four weeks. However, if a valid demand is received by the closing date, then the decision shall only be rendered after the required public special hearing.

*SUGGESTED POSTING DATE 1-20-98 D (15 Days Before C)

DATE POSTED _____

HEARING REQUESTED-YES ____ NO ____ -DATE _____

CLOSING DAY (LAST DAY FOR HEARING DEMAND) 2-3-98 C (B-3 Work Days)

TENTATIVE DECISION DATE Feb. 5, 1998 B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

District _____

Location of property: _____

_____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

Newton A. Williams

DIRECT DIAL:
(410) 823-7856

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
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502 WASHINGTON AVENUE
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TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

January 13, 1998

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

98 JAN -1 PM 2:45

Dear Members of the Board:

RE: The Long Property, 3825 A, Annadale Road
Zoning variances and DEPRM variances
Board of Appeals, Wednesday, January 13, 1999
Case No. 99-251 -A and Case No. CBA-98-128

With the indulgence of The Board and for the Board's guidance, we respectfully offer the following Hearing Memorandum in the form of a letter.

The variances requested by Mr. and Mrs. Robert Long for this matter should be denied for the following reasons, hereinafter set out.The facts are not as were understood by the Zoning Commissioner in this case. Briefly, the sequence is broadly as follows:

1987 LONG PURCHASE OF 15 ANNADALE 50 FOOT LOTS

1. In December of 1987, the Longs purchased some fifteen(15) lots in the old subdivision of Annadale from a Mr. Mathai, including Lots 7,8,9,10, 11, 12, 13, 14, 15, 31,32, 33, 34 35 and 36. These were 50 foot lots dating to April, 1925, when the original Annadale subdivision was laid out in 50 foot lots, there being few if any subdivision requirements in this early time, some 73 years ago. Mr. and Mrs. Long are not beginners in this area of subdivision. They trade as Covenant Realty, Inc., from the adjacent lot, their home 3827 Annadale Road.

LONG RESUBDIVISION

2. Subsequently, the Longs resubdivided these lots in Subdivision X. 662, into a lesser number of lots. In fact, on the waterfront lots, they chose to begin at the east end of the tract, that is with Lot 36, making that lot and each one to the west a 66-foot lot. Lot 31 is the residue, and it was reduced from 50 feet in width on the Annadale Road frontage to at best 43 feet on this new road. At the time this was done, they had at

least 299.46 feet of frontage to work with, and they could have created five lots of 55feet in width or more. However, they did not do so, but chose to create four, 66 foot wide lots and the residue of Lot 31was reduced from 50 feet to 43 feet of road frontage. This is certainly **self created hardship**, and as such they should not be allowed to create a very undersized lot now claiming hardship. The Longs and their engineers made a decision as to how to proceed and they should not now complain of it, and they should certainly not be allowed to profit from it, particularly when their own home lot next door is 66 feet in width.

EAST END START COMPRESSES LOT 31

3. In like manner, they chose to start on the east end of the former Mathai Property with the 66-foot wide lots, instead of starting on the west end with no variances required had 55 foot lots been used ,by starting on the west end the variances are pushed against the present neighbors, or across the street from them.

LOT 31 STORM WATER OUTFALL

4. This subdivision was done by BPS Land Technology, and Lot 31 reduced area was shown on the enclosed Sediment Control Plan for a storm water outfall on Lot 31 and the bed of Tobasco Road. It is clear that the grass area is being used for water quality and a drainage swale. Thus, this Lot 31 is not available for residential purposes due to its present use for a swale and water quality purposes. It should have never been granted the DEPRM variance.

ZONING DECISION UNAWARE OF SUBDIVISION

5. The sum and substance of the matter are that the Zoning Commissioner did not have the full story available when he decided this case. The Board has the advantage of the full subdivision history to consider.

NEIGHBOR'S OPPOSITION REASONABLE

6. The neighbors are not being unreasonable in opposing this effort to squeeze out the last dollar available from this area, particularly when an n excellent return has already been obtained. Lot 31 was further reduced by the Longs own chosen subdivision plan by their engineers at BPS Land Technology.

VARIANCE REQUIREMENTS NOT MET

7. As the Board is well aware, the leading Maryland case of Cromwell v. Ward, 651 A. 2d 42,102 Md. App. 691, (1995) does not allow variances to be granted unless stringent requirements are met. They have not been met here, and cannot be met here by the Longs. See also Anderson V. Board of Appeals of Chesapeake Beach, 322 A2d 220, 22 M. App. 28 (1974).

SECTION 307 REQUIREMENTS UNMET

8. Section 307 of the Baltimore County Zoning Regulations sets out the statutory

requirements for the granting of variances from the Regulations. Among other requirements is a requirement that a variance be granted "only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request." Also, practical difficulty or unreasonable hardship must be shown by the petitioner. This Lot 31 is not unique and its further reduced width is the result of subdivision decisions made by the Longs and their engineers. Formerly Lot 31 was 50 feet in width, now. It is only 43 feet at the street due to a decision to make lots 32 to 36 wider, namely four lots of 66 feet in width.

VARIANCES SHOULD NOT BE GRANTED

9. For these reasons, the variances should not be granted by the Board, and we are confident that the Board upon review will agree.

10. Please find enclosed the **marked subdivision plat**, as well as the **Sediment Control** Plan for review by the Board.

Respectfully submitted,

Newton A. Williams

Newton A. Williams
Nolan, Plumhoff and Williams
502 Washington Ave.
Towson, Md. 21204
Attorneys for the Protestants

Fax CC:
Mr. and Mrs. Melvin Woodell
fax 410 288 6237

Newton A. Williams

DIRECT DIAL:
(410) 823-7856

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
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502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765

JAMES D NOLAN
(RETIRED 1980)

J EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

TELECOPY COVER PAGE

August 13, 1998

CLIENT/MATTER:5986\1

TO: Howard Alderman, Esq.
FIRM: Levin and Gann
FAX NO :410 296 2801 PHONE NO. 410 321 0600
NUMBER OF PAGES (INCLUDING COVER SHEET):

Howard:

:

RE: Tobasco Road Closing appeal , CBA 98-105,
Dismissed for failure to perfect appeal,and
Robert Long, et ux 3825A Annadale Road,
98 251 A, and CBA 98 251A,
Tuesday, August 25, 1998, 10:00 A. M.,
Suggested Continuance for possible meeting and settlement

In response to your call yesterday, I am posing the request to discuss the matter if there is any room for settlement. By a copy of this fax I am asking for a prompt reply from the Woodells.

Proposal will save everyone's time, money and may allow the parties to work it out if there is any middle ground. I do not know .

All please review and advise promptly. Thanks.

Newton

Mr. and Mrs. Melvin C. Woodell, Jr., 705 S. 49th St , 21224, Fax 410 288 6237, Phone 410 285 4455
Nancy West , Esq., Office of Law, Fax 410 296 0931, Phone 410 887 4420

Kathleen C. Bianco, Board of Appeals, Fax 410 887 3182, Phone 410 887 3180

IF FOR ANY REASON YOU NEED TO CONTACT US, PLEASE CALL

Newton Williams ,NPW OR MARCIE At 410-823-7800

.wpdnewfax2998

CONFIDENTIALITY NOTICE

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Newton A. Williams

DIRECT DIAL:
(410) 823-7856

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email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

August 25, 1998

Mrs. Kathleen Bianco
Baltimore County Board of Appeals
Court House
Towson, Md. 21204

BY Fax and By Mail
410 887 3182

Dear Mrs. Bianco:

RE: Mr. And Mrs. Robert Long
3825A Annadale Road
98 251 A and CBA 98 128
Scheduled Hearing, Tuesday,
August 25, 1998

Confirming my several calls and my recent letter to the Board, please enter the appearance of myself and our firm on behalf of Mr. Melvin Woodell and others noted on your hearing assignment as protestants.

As previously noted, we have received Mr. Long's fax requesting a postponement for the reasons noted therein. We are agreeable to this request. However, Mr. Woodell and others do not want to let the matter drag on indefinitely, and we therefore ask that the matter be assigned a new hearing date in the course of the Board's docket.

Also, by a copy of this fax we are asking if Howard Alderman, Esq. is entering his appearance in the case.

Thanking you and the Board for your attention to these matters, I am

Respectfully,

Newton A. Williams

Fax CC: Mr. Melvin Woodell, fax 410 288 6237
Howard Alderman, Esq. 410 296 2801
Mr. Robert Long 410 388 1610

RECEIVED
COUNTY BOARD OF APPEALS
98 AUG 27 PM 12: 37

Newton A. Williams

DIRECT DIAL:
(410) 823-7856

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JAMES D. NOLAN
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(1940-1988)

RALPH E. DEITZ
(1918-1990)

TELECOPY COVER PAGE

SEPTEMBER 21, 1998, TO MR. LONG: Mr. WOODELL AND HIS NEIGHBORS ON THE ENCLOSED NOTICE DO NOT WANT THE CASE CONTINUED. WE ARE COMMUNICATING THIS OPPOSITION TO THE BOARD OF APPEALS. NEWTON A. WILLIAMS
BOARD OF APPEALS 410 887 3182

DATE: September 15, 1998 CLIENT MATTER NO: 5986\01

TO: Robert Long
FIRM: Covenant Realty
RE: Annadale Road Case
FAX TELEPHONE NUMBER: 410 388 1610 PHONE: 410 388 1974
TOTALS NUMBER OF PAGES (INCLUDING COVER SHEET): Two + 3 Notices
FROM: **Newton A. Williams**

Mr. Long:

Thank you for the Elevation sketch of yesterday. By a CC of this fax, it is being sent to Mr. Woodell and his neighbors for their review. I can repeat that they are all opposed to any new house on Lot 31, but I do not know their feelings about a proposed addition to your existing house. As soon as I have heard from them , we will be in touch.

Sincerely,

Newton A. Williams

FAX CC:
Melvin C. Woodell, FAX 410 I288 6237

RECEIVED
COUNTY BOARD OF APPEALS
98 SEP 22 AM 8:22

Newton A. Williams

DIRECT DIAL:
(410) 823-7855

Law Offices
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Web: www.nolanplumhoff.com

JAMES D NOLAN
(RETIRED 1990)

J EARLE PLUMHOFF
(1940-1986)

RALPH E DEITZ
(1918-1990)

October 19, 1998

Mrs. Kathy Bianco
County Board of Appeals
Courthouse
Towson, Md. 21204

Board Fax 410 887 3182

Dear Mrs. Bianco:

Thanks for your call re proposed rescheduling of the Long case to Tuesday, November 17, 1998, at 10 A.M..

I have added it to my schedule, and I am checking with Mr. Woodell and the other protestants / appellants to make sure they can make it and to mark their calendars.

Also, by Fax, I am checking with Mr. LONG as to his availability , as a courtesy to him and to aid the Board.

Thanking you and the Board for this date, and to make sure all understand it is to consider Mr. Long's Motion to Dismiss, and the merits if one or more appellants are retained.

With best regards, I am

Respectfully,

Newton A. Williams

Fax CC: Mr. Mel Woodell 410 288 6237
Mr. Robert Long 410 388 1610

98 OCT 19 PM 2:14

Newton A. Williams

DIRECT DIAL:
(410) 823-7856

Law Offices
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TELEFAX: (410) 296-2765

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

TELECOPY COVER PAGE

DATE: May 17, 1999 CLIENT MATTER NO: NAW 5986-01

TO: Wendy Zerwitz, Esq.

FIRM: Zerwitz and Zerwitz

RE:Long Variance Cases 98 251 -A, CBA -98-112

FAX TELEPHONE NUMBER: 410 288 9305 PHONE: 410 2988 9303

TELEPHONE NUMBER TO CONFIRM RECEIPT: 410 Same

TOTALS NUMBER OF PAGES (INCLUDING COVER SHEET): Eight

FROM: **Newton A. Williams**

Ms Zerwitz:

The Board staff tells us that the Long Opinion is now in draft form. We all await the formal Opinion with interest. Thanks to the Board Staff.

Sincerely,

Newton A. Williams

Board of Appeals, 410 887 3182

Mr. and Mrs. Mel Woodell, fax 410 288 6237

Nancy West, Esq. County Attorneys Office, fax 410 296 0931

99 MAY 17 PM 12:15
COUNTY BOARD OF APPEALS
BALTIMORE COUNTY

BALTIMORE OFFICE
MERCANTILE BANK & TRUST BUILDING
TWO HOPKINS PLAZA
9TH FLOOR
BALTIMORE, MARYLAND 21201
410-539-3700
TELECOPIER 410-625-9050

HOWARD L. ALDERMAN, JR.
halderman@counsel.com

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
SUITE 113
TOWSON, MARYLAND 21204
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

September 1, 1998

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME	TELEFAX NO.
Ms. Kathleen Bianco	410.887.3182
Mr. and Mr. Robert Long	410.388.1610
Newton A. Williams, Esquire	410.296.2765

FROM: HOWARD L. ALDERMAN, JR., ESQUIRE

NUMBER OF PAGES [INCLUDING THIS COVER PAGE]: 2

CLIENT/MATTER: Case Nos. CBA 98-128 & 98-251-A

COMMENTS: **Our response to Newton's 8/25/98 letter follows. Thanks.**

[X] ORIGINAL TO FOLLOW VIA MAIL ***TO MS. BIANCO ONLY***

[X] ORIGINAL WILL NOT BE MAILED ***TO ANY OTHER RECIPIENT***

**If you do not receive all of the pages indicated above, please call 321-0600 as soon as possible.
My return FAX Number is (410) 296-2801.**

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BALTIMORE, MARYLAND 21201
410-539-3700
TELECOPIER 410-625-9050

LAW OFFICES
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A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

HOWARD L. ALDERMAN, JR.
halderman@counsel.com

September 1, 1998

RECEIVED
BOARD OF APPEALS
COUNTY
98 SEP -2 PM 1:33

VIA TELEFAX & U.S. MAIL

Ms. Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
401 Washington Avenue, Old Court House
Towson, Maryland 21204

RE: Mr. and Mrs. Robert Long
Case Nos. CBA 98-128 and 98-251-A

Dear Ms. Bianco:

I am in receipt of a copy of a letter, dated August 25, 1998, from Newton A. Williams, Esquire to you regarding his entry of appearance on behalf of his clients in the above-referenced cases. In that correspondence, Mr. Williams inquired as to whether I was "entering my appearance in the case [*sic*]", presumably on behalf of Mr. and Mrs. Long.

I am writing to advise the Board and all persons concerned with the above-referenced cases that, as of this writing, neither I, this firm, nor any member of this firm have entered an appearance in either of the referenced cases. Should we be retained in the future to provide representation to one or more of the parties in the referenced cases, please be assured that Board Rule 6.d will be followed explicitly.

Thank you and the Board for your courtesies in these matters. Should you or any member of the Board desire additional information in this regard, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
c (***via telefax only***): Mr. and Mrs. Robert Long @ 410.388.1610
(***via telefax only***): Newton A. Williams, Esquire @ 410.296.2765

NEW HOPE LIGHTHOUSE

Pastor Nick Shanholtz Sr.

3033 Eastern Avenue

Baltimore Maryland 21224

(410) 388-2306

Received 11/04/98 C.B.A. ltr

November 2, 1998
3822 Annadale Rd.
Balto., MD 21222

Dear Sir,

I am writing this letter after my telephone conversation with Kathy Bianco this morning.

This letter is concerning subpoena's that we received and also Mrs. Annabelle Chenowith from Robert Long. We are very upset as to the commands that we are required to produce.

We were not properly served, and all this information is not in our possession. It is in the possession of Baltimore County and or our builder.

When our house was built three years ago, our builders (Tanner Bros.) had the county men down on many occasions. Concerning the storm drain in the front, the county man explained to the Tanners exactly how it had to be done. We happened to be at the house on that occasion.

NEW HOPE LIGHTHOUSE
Pastor Nick Shanholtz Sr.
3033 Eastern Avenue
Baltimore Maryland 21224
(410) 388-2306

We believed all the rules or specifications were followed.

So Kathy said it would be beneficial for us to write a letter and also including copies of the subpoena's.

We appreciate anything you could help us with. Our hearts are very grieved that things would have to come to this.

Sincerely
Ben. & Mrs. Nick Shanholtz, Sr.
(Norris)

April 15, 1998

Ms. Kathleen Bianco
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
Towson, MD 21204

Dear Ms. Bianco,

This letter is in response to the conversation that we had today regarding our zoning variance. We were granted the variance on March 13, 1998 and found out today that it has been appealed. We have not yet received notification in the mail but we went to the county today and found out there. We are requesting that this hearing be held as soon as possible due to the fact that my wife was hurt at work and we need to downsize to a smaller home. The house that we live in now is to large for us to take care of, it is creating a financial burden because we went from two paychecks to one paycheck. We want to build a much smaller home next to ours so that we can still stay in the area, our daughter attends Sparrows Point Middle School and we don't want to have to move her into a new school. This has been and is very hard on our whole family as we feel that our lives are on hold at this point. That is why we need to have this hearing very quickly.

We are in the process of selling our existing home while the interest rates are low and we have already arranged financing and we will be in a real mess if the interest rates go up. This is the prime to sell our existing home and build right next door.

It is of the utmost importance that we have this hearing as soon as possible. The longer it takes the worse our financial hardship will be.

Should you have any questions please call me at (410) 388-1974.

Sincerely,

Robert & Rose Long

RECEIVED
COUNTY BOARD OF APPEALS
98 APR 15 PM 3:08

Sent by: COVENANT REALTY,INC. 410 04/15/98 12:32PM Job 103 Page 1/1

August 19, 1998

Baltimore County Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Case #:98-251-A
Case #:CBA-98-128

Dear Ms Bianco.

We need to postpone the above case numbers because of the following reasons:

1. I have been speaking with Howard Alderman about representing me and because of his schedule and mine we have not had an opportunity to meet. He is unable to meet with me until after the 25th of August.

2. It is very important that my wife be at the hearing and she can not be there due to her being injured at work and she is receiving intense physical therapy and has doctor appointments and therapy which are conflicting and we did not know until this week that there would be a problem.

I apologize to the Board of Appeals for giving such a short notice.

Should you need to contact me, I can be reached at (410) 388-1974 or (410) 336-5100.

Thank you for your time and cooperation.

Sincerely,

Robert Long

RL:rl

cc: Newton A. Williams, Attorney for Melvin Woodell, Faxed 8/19/98
Kathleen C. Bianco, Faxed 8/19/98
Melvin Woodell, etal

RECEIVED
COUNTY BOARD OF APPEALS
98 AUG 19 AM 9:43

September 10, 1998

Ms. Kathleen Bianco
County Board of Appeals of Baltimore County
Old Court House
Room 49
400 Washington Avenue
Towson, MD 21204

RE: Case # 98-251A
Case # CBA-98-128

Dear Ms. Bianco,

We are requesting a postponement until the month of December, because of my schedule I will not be available from October 29th to the end of November.

Should you have any questions regarding this matter, please call me at (410) 388 1974 or (410) 336-5100.

Sincerely,

Robert Long

RL:rl

Sent by: COVENANT REALTY,INC. 410 09/15/98 2:23PM Job 441 Page 1/1

TO: **Ms. Kathleen Bianco**
Baltimore County Board of Appeals

Fax#: **(410) 887-3182**

FROM: **Robert Long**

Fax#: **(410) 388-1610**
Home#: **(410) 388-1974**

Ms. Bianco:

Please look over the attached Subpoena's and Affidavit's and let me know if they are ok. I will be using a private processor.

Thank you for all of your help and cooperation.

Sincerely,

Robert Long

Robert Long

TO: **Ms. Kathleen Bianco**
Baltimore County Board of Appeals

Fax#: **(410) 887-3182**

FROM: **Robert Long**

Fax#: **(410) 388-1610**
Home#: **(410) 388-1974** - T/C FOR Pick up 12/28 @ 12:30pm.

98 DEC 28 PM 12:3
COUNTY BOARD OF APPEALS
RECEIVED
(illegible)

Ms. Bianco:

Please look over the attached Subpoena's and Affidavit's and let me know if they are ok. I will be using a private processor.

Also, I can pick these up on Monday at your office. You do not need to mail them back to me.

Have a great Holiday!

Thank you for all of your help and cooperation.

Sincerely,

Robert Long

Robert Long

DEC-23-1998 11:01 ENGINEERING & CAP. IMPR. P.01

10/28/98

Mrs. Bianco:

Here is another Subpoena
that I need signed.

Thank you

Robert Long

(410) 547-3182

(410) 385-1610 Fax
385-1974 Phone

Robert Long

410-336-5180 Fax phone # Long

Sent by: COVENANT REALTY,INC. 410 10/28/98 2:36PM Job 517 Page 1/2

STATE OF MARYLAND
COUNTY OF ANNE ARUNDEL
RECEIVED
98 OCT 28 PM 2:47
CLERK'S OFFICE

2:04 (Time Subpoena was signed)

4/7/98
&
WCR

To: Pos
4/8/98 ua

County Board of Appeals

April 7, 1998

Re: PETITION FOR VARIANCE
S/S Annadale Rd. 90' E of the c/l of Matthai Rd.
(3825A Annadale Road)
15th Election District - 7th Councilmanic District
Robert Long, et ux - Petitioners
Case No. 98-251-A

We the concerned citizens of Annadale would at this time like to appeal the decision of March 13, 1998 concerning the above case.

Send all correspondence to:

Melvin C. Woodell, Jr.
705 S. 49th Street
Baltimore, Md. 21224

Thank you in advance for your consideration in this matter.

Concerned Property Owners of Annadale

RECEIVED
APR - 7 1998
98-13.59
PDM

RECEIVED APR 0 7 1998

Environmental Impact Review

April 7, 1998

Baltimore County Department of
Environmental Protection & Resource
Management

Re: 3825 A Annadale Rd.
Critical Area Administrative Variance

We would like to appeal the decision of granting a variance to build a house on this undersized lot.

The lot in question is grossly undersized and adjoins Tabasco Road. Tabasco Road is a paper road which has been turned into the drainage area from the newer part of our community, which goes directly into Tabasco Creek. Tabasco Creek already has enough pollution problems without putting another house on top of the drainage area, which will add to the pollution problem and further restrict the filtration of drainage from the newer community.

Allowing this construction would have a major impact on the wildlife that is left. Before the construction of the newer community we had an abundance of wildlife, since then the number has dropped greatly. This area and the adjoining paper road area are the only areas left for the wildlife. The only area left with high grass for nesting is adjoining this property. It is our fear that developing so close would further reduce our wildlife .

It is our opinion that the development of this property would have a total negative effect on our creek, wildlife, and our community as a whole.

We the property owners of the community should have an opportunity to voice our concerns in this matter.

Please find enclosed a check for seventy-five dollars.

Send all correspondence to:

advertised
2/25/98

Melvin C. Woodell, Jr.
705 S. 49th Street
Baltimore, Md. 21224

Thank you in advance for your consideration in this matter.

Concerned citizens of Annadale

Environmental Impact Review

June 23, 1998

Baltimore County Department of
Environmental Protection & Resource
Management

Re: 3825 A Annadale Rd.
Critical Area Administrative Variance

We would like to appeal the decision of granting a variance to build a house on this undersized lot.

The lot in question is grossly undersized and adjoins Tabasco Road. Tabasco Road is a paper road which has been turned into the drainage area from the newer part of our community, which goes directly into Tabasco Creek. Tabasco Creek already has enough pollution problems without putting another house on top of the drainage area, which will add to the pollution problem and further restrict the filtration of drainage from the newer community.

Allowing this construction would have a major impact on the wildlife that is left. Before the construction of the newer community we had an abundance of wildlife, since then the number has dropped greatly. This area and the adjoining paper road area are the only areas left for the wildlife. The only area left with high grass for nesting is adjoining this property. It is our fear that developing so close would further reduce our wildlife .

It is our opinion that the development of this property would have a total negative effect on our creek, wildlife, and our community as a whole.

We the property owners of the community should have an opportunity to voice our concerns in this matter.

Please find enclosed a check for seventy-five dollars.

Send all correspondence to:

Melvin C. Woodell, Jr.
705 S. 49th Street
Baltimore, Md. 21224

Thank you in advance for your consideration in this matter.

Concerned citizens of Annadale

Environmental Impact Review

June 23, 1998

Baltimore County Department of
Environmental Protection & Resource
Management

Attention: Keith Kelly

Re: 3825 A Annadale Rd.
Critical Area Administrative Variance

As per our phone conversation of June 23, 1998 please find enclosed copy of the original appeal and appeal renewal. Check was submitted with the original appeal dated April 7, 1998.

Copy of receipt that check was submitted on April 7, 1998 with letter is also enclosed.

Melvin C. Woodell, Jr.

February 18, 1998

To whom it may concern,

We are writing this letter to state our opposition to Case # 98-251-A, which would allow a home to be built on a 43' wide parcel of land in lieu of the required 55'wide. We oppose this for several reasons, and we will list some below:

1) When we purchased our property now known as 3830 Annadale road, we were made to buy 2 parcels of land in order to receive a permit to build, due to the fact that each lot was only 50' wide. By doing this we now are forced to pay front footage taxes on 100' and water and sewer connections on 2 lots, even though we will never be able to put a second home on our lot.

2) When Mr. Long designed the road and had the road put in, the contractors totally destroyed the Landscape of our front yard, and never repaired it to our satisfaction. Now whenever it rains, we have large puddles of water that stay in front of our property. This again is caused by the poor design of the Drainage. We are extremely concerned that a new dwelling built on this property will make the Drainage problem worse. due to the fact that the main drain dumps onto this property, and into the waterway. If this drain is removed we will have more water laying in front of our home. This would not be fair.

3) There is currently an easement on this property, which allows our children to go to the waterfront to fish or feed the waterfowl. If this house is built, our children would be cut off from one of the most enjoyable parts of living in a waterfront community.

Please understand that we are not opposed to growth, however we are opposed to someone gaining at another persons loss, and we feel that allowing a dwelling to be built on this lot will definitely cause us undue hardships. We apologize for not being able to attend this meeting, however we are both hard-working, tax-paying citizens who get limited vacation days, and we try to spend those days with our children.

Sincerely,

Joseph R Ernstberger Sr

Patricia K. Ernstberger

Mr. and Mrs. Joseph Ernstberger
3830 Annadale Road
Baltimore, Maryland 21222
410-477-3721

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Norris Shanholtz Sr	3822 Annadale Rd. #21222
Shirley Shanholtz	3822 Annadale Rd. #21222
David Kenneth	3821 Annadale Rd 21222
[redacted]	
Joseph Ernstberger	3830 Annadale Rd.
Patricia Ernstberger	3830 Annadale Rd.
Mel Woodall Jr.	205 S. 49th St. 21224

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Robert Long	3827 Annandale Rd
Rose Long	" "

Printed with Soybean Ink
on Recycled Paper

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF	*	COUNTY BOARD OF APPEALS
ROBERT LONG, ET UX, FOR	*	OF
ZONING VARIANCE ON PROPERTY	*	BALTIMORE COUNTY
LOCATED ON THE S/S ANNADALE	*	Case NO. 98-251-A
ROAD, 90' E OF CENTERLINE	*	AND
MATTHAI ROAD	*	CASE NO. CBA-98-128
(3825A ANNADALE ROAD)	*	
APPLICATION FOR CRITICAL	*	January 13, 1999
AREA VARIANCE /3825A	*	
ANNADALE ROAD	*	
15TH ELECTION DISTRICT	*	
7TH COUNCILMANIC DISTRICT	*	

ORIGINAL

* * * * *

The above-entitled matter came on hearing

before the Baltimore County Board of Appeals at the Old

Courthouse, 400 Washington Avenue, Towson, Maryland 21204

at 10 a.m., January 13, 1999.

* * * * *

Reported by:

C.E. Peatt

BOARD MEMBERS:

LAWRENCE M. STAHL, Panel Chairman
LYNN BARRANGER
MARGARET WORRALL

APPEARANCES:

WENDY A. ZERWITZ, Esquire
On behalf of Petitioners/
Property Owners

NANCY C. WEST, Esquire
On behalf of Baltimore County

NEWTON A WILLIAMS, Esquire
On behalf of Appellants/Protestants

P R O C E E D I N G S

THE CHAIRMAN: Good morning, everyone. This is the meeting of January 13, 1999, of the County Board of Appeals for Baltimore County.

We're here for two matters, 98-251-A, which is the matter of Robert Long, et ux, petitioner, at the address of 3825A Annadale Road in the 15th Election District and 7th Councilmanic District.

We are here regarding the granting in part of a variance petition and the denial in part of a vaiance petition by the Zoning Commissioner.

We're also hearing Case No. CBA-98-128, which is also the matter of Robert Long property, same address, same election and councilmanic district, on the issue of the grant of a variance from the critical area regulations by DEPRM.

Counsel, before we do anything else, for the record, please?

MR. WILLIAMS: Good morning. Newton A. Williams, 502 Washington Avenue, Towson 21204, appearing on behalf of Mr. and Mrs. Woodell, who are the owners of the

property known as Lot 3825 Annadale Road, and it adjoins the subject property on the other side of a paper street call Tobasco Road, and also here own behalf of Mr. and Mrs. Ernstberger, in the first row here.

MS. WEST: If it please the Board, Nancy West, from the county law office on behalf of the county with regard to one case only, that is, CBA-98-128, and that would be the matter which pertains to the Chesapeake Bay critical areas administrative variance.

MS. ZERWITZ: For the record, Wendy Zerwitz, on behalf of Robert Long, property owner, of 3827 Annadale Road, Baltimore 21222.

THE CHAIRMAN: I would state, for the record, Ms. Zerwitz is new in the matter. She has filed and entered into the record a notice to enter her appearance on behalf of Mr. Long.

MS. ZERWITZ: Thank you.

MS. WEST: Excuse me.

THE CHAIRMAN: Ms. West?

MS. WEST: For the record, I should said my entry of appearance is because of the withdrawal of appearance

which had not been formally done of William O. Jenson, a former member of my office who recently retired, and I received this case yesterday afternoon.

THE CHAIRMAN: Congratulations. The record should reflect we have had a previous discussion with counsel in chambers, and we are going to proceed preliminarily in the following way.

We have two separate matters arising, separate issues and separate questions of fact. We also have two motions that have been filed. One is a Motion to Dismiss the matter, I think, mostly as it relates to the DEPRM case, and also a Motion to Quash subpoenas, that is, to refuse to allow the subpoenas to be given force and effect.

We have determined that, based upon the length of the cases and based upon the facts presented, apparently by both sides, that we'll proceed in the following manner.

We'll hear today, now, the Motion to Quash the subpoenas, becuse that affects the carrying out of any trial that we would have.

We'll hear, very briefly, argument from each

Page 6

counsel, if they chose to, and we'll in open session rule as to whether or not the subpoenas are valid or should be, in fact, quashed.

Having done that, we'll hear both cases, that is, we'll hear all the witnesses for each side in both of those cases.

We will hold the Motion to Dismiss sub curia, sub curia meaning, for those of you who are guests today, that we'll not rule on the Motion to Dismiss until the conclusion of the case when the Board is ready to render a decision.

We do this in order that justice moves as quickly as possible, and I note that this case has been postponed on a number of occassions, and, frankly, with new counsel coming in today, I want to thank both counsel who are new in the case for not asking us the hard question of, Well, I've just got to request another postponement to get my case together.

I appreciate the fact it's very difficult to do that on one day's notice, having been put in that position myself any number of times.

Page 7

What we'll do is, at the conclusion of all the evidence, as is the normal procedure of this Board, in liew of, instead of closing aguments, we will receive brief memoranda from counsel which will lay out not only the facts as they were presented, but the applicable law and standards of review of this Board. And that those memos will include a discussion based on case law or argument or precedent of any kind as to whether or not the Motion to Dismiss should or should not be granted,, depending on whose memo it is, and we will then issue in the course of our normal procedure an opinion and written opinion as to all matters.

If we were to dismiss, to grant the Motion to Dismiss, this will end the opinion there, obviously. If we rule that the Motion to Dismiss should be denied, then we'll have already heard the evidence and we'll be able to rule on the merits of the case itself.

So that, one way or the other, we'll hear everything today and resolve everything today. And then, if somebody needs to take an appeal, they have the entire package to do so and we don't wind up having possibly an appeal overturned on some preliminary action and then have to come back at some future day and hear the case at that point.

Page 8

So we are going to get everything done in one day and, hopefully, move on and resolve the case, because I think that the ultimate resolution is in the best interests of all parties concerned.

Okay. Having said that, there is one more procedural matter after we rule on that and, Ms. West, you will put that on the record when we get to that point in terms of the order of witnesses.

MS. WEST: Yes, sir, certainly.

THE CHAIRMAN: What we are going to do now, we have read the Motion to Quash filed by the appellant, and we'll now hear some brief argument as to the Motion to Quash. Mr. Williams.

MR. WILLIAMS: Mr. Chairman, members of the Board, in order to help you to understand this, I have a legal memo that I prepared.

I have given a copy to Ms. Zerwitz and given a copy to Ms. West, and I'd like to give it to the Board

Page 9

because it has some attachments on it that are in the Board's file and that will help you to sort of understand what I am speaking about.

THE CHAIRMAN: Does the county have any comments?

MS. WEST: I haven't had a chance to review it.

MR. WILLIAMS: I hope the Board, and I know they will, look at the substance of it later.

I would ask the Board to look at it because it explains where people live, or we can put something on the board, but I would just like to have something to give the Board some context.

THE CHAIRMAN: That's fine with me. This is for the variance? This is not for the Motion to Quash?

MR. WILLIAMS: This is for the variance, but the reason I am going to put -- I need my motion right here, and I am trying to stand where everybody can see me.

MS. ZERWITZ: Your Honor, I'm sorry, I am going to object to the introduction of Mr. Williams' memo. We are dealing with so many -- the memo goes to the heart of the hearing.

THE CHAIRMAN: That was the point of my question

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as I began to look at that. I have no objection to it coming in, if it's all right with counsel, not as to the merits of the case, but as a quick thanking you for your highlighted headlines of each paragraph. I don't particularly see anything here that goes to the question of the subpoenas.

MR. WILLIAMS: I'm not asking you to look at it for that purpose. If you look at the attachments to it --

THE CHAIRMAN: Okay. In the sense of your argument, okay, we'll do that, so he has to put the things in so we can look at the map that's connected.

MR. WILLIAMS: That's what I'm trying do do.

MS: WEST: Are we marking that for identification?

THE CHAIRMAN: Why don't we mark this for identification. And let me suggest you move it as evidence when we get to that point in the case.

MR. WILLIAMS: That's fine.

THE CHAIRMAN: Just give it a number now, so that would be Protestants No. 1.

MR. WILLIAMS: It is strictly for identification.

Page 11

THE CHAIRMAN: Absolutely.

MR. WILLIAMS: I'd just like to give the Board a very short introduction so it puts it a little bit in context. We're down on the North Point peninsula. North Point Road is at the top to the north. Matthai Road runs essentially north and south, and it tees into Annadale Road at the -- just short of the water.

This is a subdivision that goes back to 1925. we are dealing with Lot 31 here. And if the Board sees the paper street marked Tobasco -- not Tobasco -- Tobasco Road, Lot 31, is the lot in question we are dealing with. Mr. Woodell's property is 3825 immediately to the left. It's Lot 30. Mr. Long's property is 38 -- I'm sorry, what is your address?

ROBERT LONG. 3827.

MR. WILIAMS: Thank you, sir. Lot 32. Now, I won't say anything more about that. I just wanted to set the stage.

There were other people in the case, but the two subpoenas in question, one goes to Mr. and Mrs. Norris Shanholtz. The Shanholtz live here at the northeast

Page 12

corner of Annadale Road, 3822 Annadale Road. The Cheneweths live at 3821 Annadale Road, which is the house immediately to the east of the Shanholtz on the north -- on the north side of the road. I'd like to point out -- excuse me -- identify the lot numbers. The Shanholtz live on sixteen and seventeen, and that is 3822. And the Ernstbergers -- correct me if I am wrong -- live on lots five and fourteen --

VOICE: Fifteen.

MR. WILLIAMS: I'm sorry. The one on my thing just says five, for some reason. Fourteen and fifteen, and that is known as 3821 and 3830.

I think they're wrong in the subpoenas then. That's where I got the information. But let me -- the Chenoweths -- where do the Chenoweths live?

VOICE: 3821.

MR. WILLIAMS: The bottom line. I am trying to cut to the case here. The bottom line is these people are not here as protestants this morning, neither Mr. and Mrs. Shanholtz nor Mr. and Mrs. Cheneweth.

The material requested all relates, if the Board

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can see items one through seven, the approved site plan, building permit, detailed list of all improvements, all permits for driveways, size of the driveway, to my view, and the similar things as to the Chenowoths, it has nothing to do with this case.

And I said, I said in item number four of my Motion to Quash, that I felt that it could give the appearance of being somewhat threatening or extortioning on the part of the petitioner, and, if so, he, to that extent has succeeded, because these people are not here.

Now, if Mr. Long --

MS. ZERWITZ: Objection.

THE CHAIRMAN Sustained.

MR. WILLIAMS: I had said it appears.

THE CHAIRMAN: Sustained.

MR. WILLIAMS: These people are not here. Mr. Long still feels he needs this information to try this case. I believe that the Board is entitled to an explanation of how it would be relevant and how it would bear, but these people, neither the Shanholtzs nor the Chenoweths are here. Now, that's all I have to say,

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except thank you, your Honor.

MS. ZERWITZ: Briefly, in response, this is a very small, as in size, neighborhood. Houses are very close together. As the evidence will come forth to support, the houses are on small lots, not a lot of room between houses. And there is also an allegation, at least being made by the protestants, if an additional house were built in the neighbohood, there would be problems.

We believe for that reason we should be entitled to know where these people are coming from? What's their background in the neighborhood? What have they done to their property? They may have also caused problems by virtue of their own development on these lots.

And to say they can come foward today and say Mr. Long shouldn't be able to use his property for his own enjoyment, where they have been able to do so on their own property, I would just suggest the Court would gain from knowing their background as to what they have done to their own use and enjoyment of their property, and that's why the subpoenas were issued, so more information can be determined and facilitate the questions to find out what

Page 15

made these people have to protest the entire neighborhood as a whole. Thank you.

THE CHAIRMAN: Thank you. Ms. West?

MS. WEST: Very, briefly, I think, first of all, we join Ms. Zerwitz in her comments. Additionally, we would note that a number, a bulk of the information requested does seem to be germain to the matter before the Board with regard to not only the zoning variance, but with regard to the Chesapeak Bay critical area administrative variance that was requested and, for that reason, I would ask the Board deny that Motion to Quash.

THE CHAIRMAN: Okay. We're going to do this off the top of our head. Obviously, we're treating that as a motion that needs to be publicly deliberated in public.

(Public Deliberation from the Bench.)

* * * * *

Page 16

THE CHAIRMAN: Now, I will say this, procedurally. That was a public deliberation. We'll go ahead now, subject to any other motion at this point. Certainly our ruling relative to the subpoenas, just so there no question about what's appealable when we ruled on the subpoenas, we'll ultimately issue a written opinion. We will note in the written opinion that we had this discussion, because, certainly, the Motion to Quash is in the record and we'll make that ruling part of of that written opinion, albeit a brief one, so that should there be an appeal on the entire case, that certainly that's a relevant issue for an appellate court and the Circuit Court to review in terms of whether it was appropriate for us to do it or not.

MS. ZERWITZ: Thank you.

THE CHAIRMAN: So your appeal doesn't begin from today. It begins like, everything else in the case, thirty days from the written opinion.

All right. Having resolved that, Ms. West, are you going to favor us with a suggestion for procedure?

MS. WEST: Yes. Thank you. And once again

Page 17

begging your indulgance, as you stated earlier, your Honor, this is a consolidated matter with regard to two cases, one the zoning variance case as well as what I'm going to refer to as, just for ease of reference as well as clarity, the DEPRM variance, which is the Cheasapeke Bay critical administrative variance.

Since the county is only going to be participating as to the latter case involving the DEPRM variance, we respectfully request with regard to proceeding here today that we be allowed to move forward, and with regard to the order of proof, while it's different from the burden of proof, we be allowed as the county to put its witness on so that we can complete the entire case in context administratively so the Board would know what action it is the county took from which these protestants are objecting and noted an appeal.

I would note for the record, that with regard to the DEPRM appeal, that matter is referred to in Title 26, specifically Section 26-445(e), which grants any person or persons either jointly or severally the right to note an appeal to this Board from any decision made relative to

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the DEPRM variance.

They would have that right to note an appeal to the Board, and that section specifically provides that the right of appeal before this Board would be de novo.

So if one looks at that particular provision, and in concert with the Board's Rules of Practice And procedures, specifically those that are contained in Appendix C of the County Code, specifically Rule 7, 7(d), which provides that except as otherwise may be provided by statute, and it's not provided in the statute, the protestants of the action shall have the burden of proof. So, legally, the burden of proof in this case would be upon Mr. Long as well as the county to demonstrate the reasons for taking the action they took.

However, that doesn't affect the order of proof and, normally, given the fact the appeal was taken by the community protestants in the case, the order of proof would be upon them.

But I respectfully ask the Board's indulgance as a matter just for ease of clarity and trying to set the administrative background, the context, if the county were

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to put its case in chief on first, and we only have one witness, and that would probably create a lot less confusion because of the two appeals that were taken.

And I have discussed this matter with Ms. Zerwitz and Mr. Williams, and they have no objection to our proceeding in this manner.

Also, it would enable me -- I do have three people here from the Department of Environmental Protection and Resource Management, whom I only anticipate calling one, but at least that would allow us to conclude that portion of the consolidated appeal, and with the Board's permission, the witnesses could be excused as opposed to staying here all day since they're not going to participate in the zoning appeal.

THE CHAIRMAN: I have no objection.

MS. ZERWITZ: No objection.

MR. WILLIAMS: I have no objection.

THE CHAIRMAN: What we'll do is present that witness, and then we'll go back to the normal burden of proof after that presentation.

Okay. That being the case, let's have some

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brief, if you want, brief opening statements as to the issues in the case in chief, cases in chief.

For clarity, let's go left to right. Okay, Mr. Williams, briefly.

MR. WILLIAMS: Thank you very. Mr. Chairman, members of the Board I am -- in order, and I will offer this at the appropriate time. Does the Board -- because I got this out of the Board's file -- does the Board have the notification of the project application? I have copies if the Board would like.

THE CHAIRMAN: If you already have copies, why don't you present them at the appropriate time.

MR. WILLIAMS: Does the Board have that in its file, the source of my item, Chesapeake Bay Critical Area Commission notification of project application and subsequently --

MS. WEST: We anticipated, Mr. Williams, introducing that in our case in chief.

THE CHAIRMAN: I don't see it listed.

MS. WEST: Everything you're showing me, I will introduce.

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MR. WILLIAMS: I want to keep my copies straight so now I am down to six. I'd just like to say, very briefly, if the Board will compare the zoning variance request plan and that in my -- it's in the Board's file and also it's part of my Protestants' Exhibit 1 for identification -- that shows the zoning request, shows the dimension forty-three feet. I have some question about that, and we'll get to that.

What was ruled on by Baltimore County, by DEPRM, and DEPRM had only to work with what it was shown -- I'm not impuning DEPRM in any way -- it shows on the attachment to the notification of project application, it shows a lot sixty feet in width, which of necessity would include the entire bed of Tobasco Road in order to get to that.

So my point is this. What DEPRM was shown and what they ruled on is not what the zoning case contains. It is a wider lot. So now, for whatever purposes that may be, essentially we are dealing with DEPRM was looking at one thing, and that's all they had to look at.

And, by the way, I believe their action came

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prior to the Zoning Commissioner's action. And the zoning case deals with another. And and more than that, I will say, in the course of the case, I remind the Board DEPRM was not shown the fact that there is a stormwater outfall on this lot. Mr. Long alluded to it in the course of the exchange that we had. DEPRM didn't have the whole story. That's my point.

THE CHAIRMAN: Ms. West.

MS. WEST: Thank you, Mr. Chair. Just very briefly, the property which is the subject matter of this proceedings is a waterfront lot which abuts Tobasco Creek in southeastern Baltimore County.

It's presently vacant. And the property owner who's here before you today, Mr. Long and his wife, are seeking to construct a single family dwelling on this vacant lot, and it's in the 100-foot buffer to Bear Creek.

And the reason that's significant is because normally you can't build in the 100-foot buffer unless you come and get an administrative variance and that's the gravemens of what's before the Board with regard to the DEPRM variance.

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There are certain regulations that DEPRM looks at. They are established by the Chesapeake Bay Critical Area Commission. Those regulations are contained in COMAR, which is the Code of Maryland Regulations, and it's specifically -- there's a section, Title 27, which has the criteria, sets forth five separate criteria. That's what the Board is going to hear today.

What the testimony of Keith Kelley, who's an employee of the Baltimore County Department of Environmental Protection and Resource Management who will testify as to what those criteria are and how Mr. Long met those criteria and ultimately granted an administrative variance, and at the appropriate time we'll be introducing the relevant correspondence, the law, the administrative paperwork germane to that. But to put it in context, that would be the county's participation with regard to the DEPRM variance.

THE CHAIRMAN: Thank you. Ms. Zerwitz?

MS. ZERWITZ: Thank you, your Honor. In response, if your Honors please, we have a piece of property that we are dealing with which is actually

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pie-shaped. It's not a perfect square. There are places where the property becomes bigger, and as it gets to the 100-foot buffer, it becomes much larger, and it's because of the 100-foot buffer zone that the variance for the variance aspects of the case is necessary.

We'll present evidence to this Court regarding the size of the property both through the property owner as well as the surveyor that will talk about the size of the property and different points in the property and why the issue of it being waterfront and Bear Creekis both relevant and necessary to his applying for the variance, and we'll present evidence to that effect through DEPRM, and DEPRM came out and did their five step criteria, made their determination, Mr. Long abided, has done what they have asked him to do, and, as such, we believe once he has met the environmental concerns, the request for a variance should follow suit. Thank you.

THE CHAIRMAN: Let me ask you a question. Procedurally, we do have two cases, obviously, two sets of criteria, one eminating from the Count Code, one eminating from COMAR.

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Is it the intention of counsel to present witnesses and testimony separately for both, or are your witnesses such that you can put them on and be able to deal with issues relevant to both variance requests?

Let me hear from counsel. We can do the DEPRM, finish the DEPRM, and then start the regular zoning case, at which point Ms. West --

MS. WEST: Can recuse herself.

THE CHAIRMAN: -- absent herself along with her witness, and then we'll be down to you two who can go to the zoning case. Not probably the best way to proceed.

MR. WILLIAMS: Whatever the Board would like to do, I think it makes the most sense.

THE CHAIRMAN: Just particularly because the county is not involved in both cases, let's get the county's case involvement done.

MS. WEST: Certainly, I want to say, for the record, my witnesses will be available for recall, if you want to bring them back.

THE CHAIRMAN: That's up to counsel. So let's do it that way, because I noticed everybody opted essentially

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to talk about the DEPRM case, so let's do the DEPRM case first, and then we'll go from there. Your first witness?

MS. WEST: Thank you, sir. We'll be calling to the stand Keith Kelley, please.

KEITH KELLEY,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. WEST:

Q. Good morning, Mr. Kelley. Would you state your name, and spell your last name, for the record.

A. My name is Keith David Kelley. K-e-l-l-e-y.

Q. Mr. Kelley, you're employed by the Baltimore County Department of Environmental Protection and Resource Management, sir?

A. That is correct.

Q. How long have you been a county employee?

A. Eighteen years.

Q. Have all those eighteen years been with the Department of Environmental Protection and Resource Management?

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A. Yes, they have.

Q. What is your current position, sir?

A. Natural Resource Specialist in the section of the environmental impact review.

Q. What are your duties and responsibilities with regard to that position, Mr. Kelley?

A. I receive development and permit review of projects in the Chesapeake Bay critical area. That's a line defined as a thousand feet from the Bay or any of it tributaries.

Q. Are you familiar with the property known as 3825A Annadale Road?

A. Yes, I am.

Q. Where's that located, sir. What part of the Baltimore County?

A. Down in the Dundalk area of Baltimore County, southeast Baltimore County.

Q. Do you know who the property owners are?

A. Robert and Rose Long.

Q. How did that particular property come to your attention?

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A. Through a critical administrative variance application.

Q. Is that something for which you would be responsible in your current position?

A. That is correct.

Q. Can you explain to us what exactly a critical area administrative variance is? Let me strike that question and ask you this. Why don't we do it by way of the application.

I am going to ask the Board to mark for identification as County Exhibit 1 --

MR. WILLIAMS: I have extra copies of that, if the Board would like, so the Board members can follow along as we go through.

THE CHAIRMAN: Do you want to offer them through Ms. West?

MS. WEST: Off the record.

(Discussion held off the record.)

THE CHAIRMAN: Okay. We have a document entitled Notification of Project Application, of a number of pages, and we'll note that as County Exhibit No. 1.

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Q. Mr. Kelley, if you will, sir, can you identify that, for the record, what's been identified or marked for identification as County Exhibit 1?

A. Yes, I can. In front of me I have an application submitted by Robert Long for building a house in the one-hundred foot buffer to Bear Creek.

Q. What's the date on that, sir?

A. Mr. and Mrs. Long signed it on June 18, 1997. We received it --

Q. You say the 18th. My copy looks like the 14th.

A. 18th. And we received it on June 19, 1997.

Q. Just out of curiosity, there's a date here 7-14-97 on the cover sheet?

A. That is when I made the site visit and processed the variance.

Q. Does it identify the name of the project, the address?

A. Yes.

Q. I'm sorry. This particular exhibit is several pages, so I apologize. Does the cover sheet identify the property location and the project?

A. Yes, it does.
Q. What is that address, sir?
A. 3825A Annadale Road.
Q. Once again, that's in the Dundalk section of Baltimore County?
A. Correct.
Q. That would be zone 22?
A. Correct.
Q. Now, referring your attention, please, to the second page of the application, does that specifically identify what they're seeking in terms of relief from the department? What they're asking for you to do?
A. Yes.
Q. What does it ask for?
A. Under Part C, to construct a new home within the 100 feet from mean high tide.
Q. What exactly is the problem here, Mr. Kelley? Why did they have to come in for a DEPRM variance, a Chesapeake Bay critical administrative variance?
A. They need the variance because they are proposing to build within a hundred feet of the mean high tide, and

in this case of Bear Creek.
Q. That would be prohibited generally without getting a variance from your office?
A. Correct.
Q. What's normally required when somebody comes in to make application for a variance, what's the procedure?
A. They submit an application to us. We make a site visit. And then we send a copy of the variance application down to the Chesapeake Bay Critical Area Commission for their review.
Q. You have admitted by virtue of this application the Longs did, in fact, submit this application. Did you undertake your customary review?
A. Yes, I did.
Q. And then you conducted a site visit?
A. Correct, on July 14, 1997.
Q. What, if anything, did you observe upon your site visit?
A. I just observed the waterfront lot, manicured lawn with stone shoreline. No vegetation. No improvements on the property.

Q. Did you have a conversation with the property owners at the time of your site visit?
A. I don't recall. I don't believe so.
Q. Other than what you described, is there anything else unusual that you noticed about the lot you think is relevant?
A. To the variance --
Q. Yes.
A. -- application? No.
Q. Can you describe the lot in reference to the surrounding property?
A. It's one of the few unimproved lots in the neighborhood. There are all single family homes surrounding this property on fairly small lots, less than a quarter-acre size.
Q. So once you got the final paperwork from the Longs and you went down and, I believe, inspected the place, you indicated you sent the application along to the Chesapeake Bay Critical Areas Commission, correct?
A. I attached the cover letter dated July 14, 1997, entitled Notification of Project Application.

Q. Is that your writing on the face of this application, Mr. Kelley?
A. Yes, it is.
Q. And that's your signature at the bottom where it says contact person?
A. Correct.
Q. What happened after that? Did you get a response from the Commission in regard to this application?
A. Yes, I did.
Q. Let me just, preliminarily, if I may, ask if you can identify for the record -- and I guess we can take judicial notice of this --
THE CHAIRMAN: But it should have a place in the file, so let's give it a number.
Q. Can you identify what's going to be marked as County No. 2 for i.d., for the record?
A. Yes. That's Section 26-445 in the Baltimore County Code.
Q. What does that section, Mr. Kelley, pertain to?
A. That pertains to building within the hundred foot buffer, and that's the variance process.

Q. That's part of the administrative process regarding a variance?

A. Yes.

MS. WEST: We would like to have that marked as County No. 2.

THE CHAIRMAN: So noted.

MS. WEST: I would like to mark this as Exhibit No. 3.

Q. I'm going to show you, Mr. Kelley, what's been marked as County No. 3 and ask you to identify that for the record.

A. That's the natural resource article.

Q. That would be of the Annotated Code of Maryland?

A. Correct. 8-1811(b)(3) states that the local approving authority may not process an application of which a copy must be sent to the Commission until the local approving authority has received notice of receipt from the Commission, and any action of the local approving authority in violation of this paragraph shall be void.

We have to wait for the Commission to respond to the application before we can make a decision.

MS. WEST: I note for the record this is a redacted section out of the Natural Resources Article of the Annotated Code of Maryland, previously referring to page 21, 8-1811(b)(3), which Mr. Kelley has referenced.

THE CHAIRMAN: Okay. Noted as County Exhibit No. 3.

Q. Mr. Kelley, once again, I'm showing you what's going to be marked for identification as County Exhibit 4, and ask you if you can identify that, for the record, please?

A. Yes, I can. That is the COMAR. Excuse me.

Q. Certainly.

A. COMAR 27.

Q. Title 27?

A. Title 27.01.11, and it explains the variance process which for Chesapeake Bay critical area --

Q. Would it be fair to state the variance procedures, the criteria that the county follows, that specifically with the Department of Environmental Protection and Resource Management is codified here, which Title 27 of COMAR, the Code of Maryland, regulations?

A. That is correct.

Q. And that would be what you would look to to determine whether or not the applicant has met the variance procedure and is complying?

A. Yes.

Q. Okay, Mr. Kelley, you said you sent this packet you referred to earlier, the application, along with your cover sheet to the Chesapeake Bay Critical Areas Commission that would be in conformance with the performance of the law. What, if anything, happened after that?

A. I received correspondence from the Commission on July 30 of 1997. Their letter was dated July 25, 1997 from Susan McConville, who's the natural resource planner, basically stating that they support variance approval with certain conditions.

Q. I show you --

MS. WEST: Once again, this is going to be marked as County Exhibit 5. I want to say, for the record, the witness does have the originals of all these in his file, if counsel would like to review them, but we'll be

submitting copies and we will be providing counsel with copies of everything.

THE CHAIRMAN; So noted.

MS. WEST: I ask that the Board mark that for identification, which I think we're up to five?

THE CHAIRMAN: Five, yes.

Q. Referring your attention, once again, Mr. Kelley, to that Exhibit No. 5, you stated that's a letter you received from the Commission, Chesapeake Bay Critical Area Commission relative to this matter. And what did it state?

A. That is the letter I received, and it basically supported the variance with conditions such as keep encroachment in the buffer to a minimum, and some planting requirements, native vegetation in the 100-foot buffer to mitigate for new disturbance in the 100-foot buffer.

Q. What did you do after receiving that letter?

A. I prepared a variance approval letter for my supervisor to address to Mr. Long.

MS. WEST: I ask the Board to mark that for identification as County Exhibit -- I believe we're now at

six, Mr. Chair?

THE CHAIRMAN: Yes.

Q. Would you identify this, for the record, please?

A. That's the tentative approval letter sent to Mr. Long with the date of August 13, 1997.

Q. Who's the signatory on that letter?

A. George Perdikakis, the director of DEPRM.

Q. You, if fact, prepared that letter for his signature?

A. Yes.

Q. You authored this letter?

A. Correct.

Q. What exactly does this letter say?

A. That Mr. Long meets all five criteria based in COMAR 27, Title 27, and that the variance is approved, and then there are certain conditions to be met such as advertising in the newspaper.

Q. Since this letter, in effect, is the crux of the variance request, let's talk it.

Did this letter in some detail -- you said it references the criteria. Let's talk about the criteria.

Can you tell the Board what those five criteria are?

A. Sure. The first criterion requires that special conditions exist on the property that are peculiar to the land or structure. In this case, the majority of the property is in the 100-foot buffer. That hardship would be unwarranted, that is to say, the lot would be unbuildable if we didn't allow encroachment in the 100-foot buffer.

Q. So Mr. Long meets the first criteria, namely, there was a hardship that would result if, in fact, he were denied the right to build?

A That is correct.

Q. What is the second criteria?

A. The criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by others in similar areas of the critical area.

Q. What exactly does that mean?

A. That there's no room to build outside the 100-foot buffer, and that the flavor of the neighbor, all

the other homes are encroaching into the 100-foot buffer.

Q. So it was your considered opinion, in fact, he had complied, or this particular scenario as decribed in the application by you, complied with that criteria?

A. That is correct.

Q. How about the third criterion, can you please tell us about that?

A. The third criterion requires that granting of a variance would not confer upon the applicant any special privilege that would be denied to others.

No special privileges were conferred to Mr. Long in this case. Therefore, the criterion has been met.

Q. Now, why did you determine no special privilege would be conferred?

A. It didn't matter if someone else owned the property, I would have approved the third criterion. It wasn't arbitrary or capricious dealing with Mr. Long.

Q. How about the fourth criteria, can you tell us what the fourth criteria is?

A. It requires that a variance is not based upon conditions or circumstances that were the result of

actions by the applicant, nor does the request arise from any condition related to land or building use, either permitted or non-conforming, on any neighboring property.

The variance is not based upon conditions or circumstances which are the result of Mr. Long's actions such as building a structure and then coming in after the fact for a variance.

Q. To your knowledge, the lot has not been built on as of this time?

A. To my knowledge, it's still unimproved.

Q. Once again, your review was based upon the information that was submitted in the application by the Longs?

A. That is correct.

Q. Did you, in fact, verify that information on your site visit?

A. Yes. I filled out Part B on the part of the application. It's the bottom of the first page that was done on July 14, 1997, on the field trip.

Q. Okay. How about the fifth criteria?

A. The fifth criterion requires that granting of the

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variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the critical area, and that granting of the variance will be in harmony with the general spirit and intent of the critical area regulations.

The granting of this variance will not adversely impact fish, wildlife or plant habitat. Potential water quality impacts can be minimized through the planting of trees. That was one of the conditions.

Q. So this letter was prepared under the direction of George Perdikakis who signed it, and it was mailed to the property owner, and the property owner met all five criteria?

A. Yes.

Q. Doesn't the letter indicate that, on page two, that the department felt the first four conditiions were met, and the fifth one could be met with certain conditions?

A. That is correct.

Q. What was that condition with regard to the fifth criteria?

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A. Planting of trees in the buffer.

Q. Were there any other requirements for the granting of this variance?

A. Yes, there was. The attached note of granting a variance had to appear in one of the local newspapers. Mr. Long had to sign the bottom of the August 13, 1997, letter and submit a copy to us, and also submit a revised plot plan.

Q. Was that, in fact, done, to your knowledge?

A. Yes, it was.

MS. WEST: I ask this be marked for identification, as I think we are up to seven?

MS. WORRALL: Yes.

THE CHAIRMAN: So noted.

Q. I show you what's marked for identification as County No. 7, and ask you to identify that for the record.

A. That was the attachment to the tentative granting of the variance. It was the filed notice of granting of variance.

Q. What is that, Mr. Kelley?

A. In a nutshell, it's the advertisement that Mr. Long had to advertise in one of the local newspapers down in the southeast portion of Baltimore County.

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Q. Is that one of the code requirements? Let me withdraw that question and ask, did that enable Mr. Long to comply with one of the criteria that the property be advertised?

A. Yes.

Q. Who prepared that?

A. DEPRM did.

Q. Would you have prepared that?

A. Yes.

Q. Or someone else under your guidance?

A. I prepared it.

Q. Was that mailed to Mr. Long?

A. That is correct. It was attached to the tentative granting of the variance letter.

Q. He would have been required to advertise that in a local newspaper of general circulation?

A. Correct.

Q. Let me refer your attention to page two of that exhibit and ask you to identify that, for the record.

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A. That's the copy of the article that appeared in The Avenue, and it was the attached -- it's a receipt from The Avenue stating that the notice of granting of variance was advertised in the newspaper.

Q. Can you tell us when that was advertised? Did the Certificate of Publication indicate when it was advertised?

A. February 26, 1998.

Q. Is the requirement only it be advertised for one week as opposed to successive weeks?

A. It just need to appear in one of the local newspapers one time.

Q. Is it your testimony that the copy of this affixed to this page, in fact, comports with the text of the first page that you prepared?

A. Yes, it does.

Q. Finally, referring your attention, sir, to page three of that exhibit, I ask you to identify that for the record.

A. That is the plot plan of Lot 31, which is 3825A Annadale.

Q. Would that be the vacant lot?
A. That's the vacant lot. The plot plan was attached to the variance application.
Q. Look at the note on that. Did you prepare this, Mr. Kelley?
A. No, I did not. That, I assume, that was prepared by Robert Long, or his engineer.
Q. You're saying that because it appears to be sealed?
A. That is correct. Frank Lee.
Q. And is it customary, once it is sealed, you accept that?
A. Yes, I do.
Q. And how about those notes at the top of that page, what refers to critical area notes, zoning history case, that sort of thing, did you prepare that?
A. No, I did not.
Q. That would be part of the plat that was submitted under seal?
A. Correct, by Frank Lee.
MS. WEST: Just so the record is really clean, I

ask be marked for identification as County Exhibit -- I believe No. 8.
Q. I ask if you can identify this, for the record, Mr. Kelley, please?
A. That is the final granting of variance letter we sent to Mr. Robert Long on June 22, 1988, after he met all the conditions set forth in the tentative approval letter we sent out.
Q. So that when you said, "tentative letter," that would have been August of 1997?
A. August 13, 1997 was the four-page letter signed by George Perdikakis.
Q. So this letter, in fact, is notification to the property owner he's complied with those requirements,and you verified, additionally, the ad was published in accordance with code requirements, correct?
A. Correct.
Q. Who's the signature on that letter?
A. Patricia Farr.
Q. Who's Patricia Farr?
A. She's my immediate supervisor.

Q. She signed that letter?
A. Yes, she did.
Q. That would have been dated June 22, 1998?
A. That is correct.
Q. Mr. Kelley, how many critical area administrative variances do you process during the course of a year?
A. Approximately one dozen.
Q. Have you ever been accepted by the Board of Appeals as an expert witness relative to this matter, that is, the review and grant of an administrative variance in the Chesapeake Bay critical areas?
A. Yes, I have.
MS. WEST: Just a few more questions, if the Board will bear with me. If I may have Exhibit 1, again?
Q. I refer your attention to Exhibit 1, the original application which also contains your site visit. I refer you to page two of that exhibit.
I want to talk a little bit about the information you obtained when you go to the property, when you actually go out to visit the site.
What is your purpose with regard to the

information you're trying to obtain in the application?
A. We identify any natural resources, be it a stream, wetlands, tributary to the Bay, and any existing impervious surfaces and any forest on site.
Q. Did you actually verify the information contained in the application submitted by the property owner with regard to lot size?
A. No, I do not. At this time of building permit, I try to go do a cross-reference in the records.
Q. Do you customarily accept their information contained in the application as true and accurate with regard to lot size?
A. That is correct.
Q. Did there come a time, Mr. Kelley, when you received a notice of intent to file an appeal from the decision you had rendered in this matter?
A. That is correct.
MS. WEST: This is County 9, I believe.
Q. Mr. Kelley, I ask you to identify what's been marked for identification as County Exhibit 9. Can you identify that, for the record, sir?

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A. That was Melvin Woodell's appeal of the granting of the variance by DEPRM, dated June 23, 1988.
Q. Did you, in fact, receive that in your office?
A. Yes.
Q. What did you do as a result of receiving that correspsondence?
A. Prepared an interoffice correspondence to Kathleen Bianco, notifying her of the appeal.
Q. Is there anything else in your file that's relevant to this particular matter here today, Mr. Kelley, you'd like to apprise the Board of?
A. I think that's it. No.
MS. WEST: If the Board will indulge me for a moment, I don't want to belabor this --
THE CHAIRMAN: A lot of paper.
MS. WEST: Thank you, sir. I feel like I'm seeing this for the first time myself, most of it.
Q. Mr. Kelley, are you familiar with the Zoning Commissioner's decision in this matter relative to the zoning variance?
A. No, I'm not.

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Q. Did you participate in that proceeding?
A. No, I didn't.
Q. Is it customary for your office to get involved in that when there is essentially a variance request for a property?
A. No.
Q. Did you have any conversations with Susan McConville, who's the natural resource planner at the Chesapeake Bay Critical Areas Commission about this matter?
A. I don't recall, but she did send me a letter.
Q. So your file would reflect you have that piece of correspondence, but that's all you would have?
A. Correct.
Q. Have you ever had any conversations with Mr. Long about this matter?
A. Several times, yes.
Q. That would be prior to the granting of the variance?
A. During the processing of the variance. I don't have any dates. I don't keep records of my telephone

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conversations.
Q. That would be customary for you to do that, to have conversations with individuals who are making applications for a variance?
A. Correct. They ask, you know, Have you heard from the Commission? Questions like that. Where does my variance stand? Stuff like that.
Q. Just a few more questions, Mr. Kelley. Earlier in these proceedings the protestants' counsel, Mr. Williams, Newton Williams, in his argument to the Board has made some comments about the property, and in the exhibit which has been at this point just marked for identification, the January 13, 1998 letter, he has given some background on the property in paragraph one.
He talks about when the Longs purchased the property, the lots. He makes some references to the Annadale subdivision.
Are you at all familiar with the history of this particular subdivision?
A. No, I'm not.
Q. Normally, it wouldn't be within your baliwick to

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do that kind of historical research with regard to a variance application, would it?
A. That is correct, it would not.
Q. You would accept what the applicant has submitted to you as true and accurate with regard to the property?
A. Yes.
Q. As far as land records, would there be any kind of certification, survey, that sort of thing?
A. Correct.
Q. In fact, you did have something under seal that was submitted?
A. Yes, I did.
Q. From Frank Lee?
A. That is correct,
MS. WEST: That would be the county's case. Thank you.
THE CHAIRMAN: Ms. Zerwitz, why don't we have you, if you have any questions you want to ask, go next. Essentially, you folks are on the same side, so that Mr. Williams can have a unified cross-examination.
MS. ZERWITZ: Thank you, your Honor.

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CROSS EXAMNATION

BY MS. ZERWITZ:

Q. Mr. Kelley, you indicated that the site plan that was submitted to you under seal by Frank Lee was the one you relied upon.

How much of an effect on your decision was the size of the lot? If you understand my question.

A. I tried to field truth the plot plan.

Q. What does that mean, "field truth"?

A. I make a site visit to see that what was put on paper is, indeed, the truth. My main investigation centered on how wide the lot was, that is to say, from the water to the road, and can the house fit outside the 100-foot buffer, measured from mean high tide.

Q. Did you do into the meaurements yourself, or did you rely on the site plan?

A. I did a measurement myself.

Q. Based on that measurement, it was your determination as to whether the house could be outside the 100-foot buffer zone?

A. I didn't determine -- I couldn't -- I was getting

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about 125 feet from road to mean high tide.

Q. Now, you also indicated criteria number two, you testified, that there was no room to build another home. Did you observe this yourself?

A. Yes.

Q. Specifically which houses -- can you recall how many houses were inside the buffer zone?

A. They read from the two -- all the waterfront homes, that is, like Lot 32 through -- I think Mr. Long has three neighbors to his left as you're looking in his front door, and they were all within within a 100-foot buffer.

Q. As to your indication of criterion number four, that the conditions were not based upon actions of the applicant, what do you rely upon to make that determination? What type of conditions would you have relied upon?

A. Pretty much, you know, as mother nature, the property, where it's at, and it was meted out as such, and it's a small lot.

A reason to disapprove a variance would be after

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the fact, like a variance is a self-inflicted hardship, such as someone builds a structure and then comes in for an after-the-fact variance.

Q. Going back to your last comment from the effect of mother nature, what effect has the water had on this property, if any? Are you aware of any effect the natural water has had on this property?

A. No, I'm not.

Q. Other than conversations regarding when was the variance coming through, what's the status, things like that, did you and Mr. Long ever discuss the lot size at all?

A. I don't recall.

Q. Did you recall any conversation regarding Tobasco Road?

A. No, I do not.

Q. The letter that was sent to you by Susan McConville indicated that the Commission had made certain recommendations in that letter. Would you have conveyed this information to Mr. Long?

A. Yes, I would, in our approval for granting of the

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variance approval type letter.

Q. Do you recall doing that in this case?

A. Yes.

Q. As a result of that comment, did you observe Mr. Long to do anything, or was anything done to the property?

A. Nothing was required as of yet. Any trees that had to be planted had to be done prior to use and occupancy permit.

Q. If the letter also indicates the Commission supported a variance to a front yard setback, would you have conveyed that information to Mr. Long?

A. As part of the variance -- what they were saying is they preferred the house to be built as close to the road as possible and we would try to keep as much out of the 100-foot buffer with respect to the zoning setbacks.

Q. Would you have told Mr. Long how to do that, or just conveyed the information to him?

A. I just would have conveyed the information to him.

Q. You testified that you did not participate in the hearing before the Zoning Commissioner, but were you aware

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that was going on?
A. Yes, I was.
Q. And at any point in time, did you give Mr. Long any information or present him with anything to present at that hearing?
A. No.
Q. Did you ever discuss anything with him with regard to that hearing?
A. I knew the issues involved.
Q. Did it have any effect on you?
A. No.
Q. Other than looking at the neighboring property to see as far as the houses and buffer zone, did you have occasion to observe anything else about the other property in relation to Mr. Long's property?
A. No, not other than to see the character of the neighborhood. All the homes were built within a 100-foot buffer.
Q. Was that the only character in particular that you took note of about the neighborhood?
A. Nothing that stands out.

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MS. ZERWITZ: May I have the Court's indulgance, please?
Q. Are you aware to what the regulations as previously moved into evidence as COMAR, from the Maryland Code, are you aware as to when those laws went into effect?
A. I believe around 1993.
MS. ZERWITZ: I have no further questions, your Honor.
THE CHAIRMAN: MR. Williams.
MR. WILLIAMS: Thank you. I think I have some photographs, and I think it will help everyone understand the matter better.
I would offer these photographs and I will show them, of course,to counsel.
THE CHAIRMAN: Mr. Williams, how are we going to know -- somebody has to testify to when they were taken, right?
MS. WEST: Unless you're going to testify, unless they are going to stipulate?
MR. WILLIAMS: You know, I can put Mr. Woodell on. I will mark them for identification and have them authenticated by Mr. Woodell. I took the photographs.

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THE CHAIRMAN: That's fine. It's just that the niceties have to be observed.
MR. WILLIAMS: I prefer that -- I think it's one thing to be talking about -- I took them at the best time of the year. You'll see they are very attractive neighborhoods.
THE CHAIRMAN: Counsel, does anybody have any objection to the photographs, their authenticity?
MS. WEST: I'd like him to show them to the witness, and then I'd feel more comfortable.
MR. WILLIAMS: I will give the Board a copy and mark these Protestants No. 2 for identification. Off the record.
(Discussion held off the record.).
THE CHAIRMAN: We are back on the record.
MR. WILLIAMS: Did you want to ask the witness about the photographs?
MS. WEST: Let me show these to Wendy.
THE CHAIRMAN: Mr. Williams, why don't you simply

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ask the witness if they appear to represent that which they are supposed to be, and I will ask counsel again if they will stipulate.
MS. WEST: I wanted to give Ms. Zerwitz an opportunity to reply.
THE CHAIRMAN: If you want to join us up here to verify, you can have a moment together over these with Mr. Long.

CROSS EXAMINATION

BY MR. WILLIAMS:
Q. Mr. Kelley, I have shown you and you have seen, I believe you have the originals -- I'm sorry. They are over there. Let me get you another set.
THE CHAIRMAN: Off the record.
(Discussion held off the record.)
THE CHAIRMAN: Back on the record.
MS. WEST: If I may, for the record, Mr. Williams can elicit from the witness's testimony, he can authenticate they fairly and accurately depict the premises as he views them. I don't have a problem with them.

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MS. ZERWITZ: After reviewing them with Mr. Long, we don't have any objection.
MR. WILLIAMS: Thank you.
THE CHAIRMAN: Based on the same qualification that the witness can identify them and they are fair and accurate representations.
MS. ZERWITZ: Yes.
Q. Mr. Kelley, I have shown you the photographs, and they may be petitioners -- or Protestants' No. 2 --
THE CHAIRMAN: We'll give them a number, but let him authenticate them first.
MR. WILLIAMS: Excuse me, Mr. Chairman. Exhibit 1 that was just marked for identification, that hasn't been moved into evidence?
THE CHAIRMAN: Exhibit 1 hasn't, but using that number, I am going to make this Exhibit 2, and we'll admit it too since it's been authenticated.
MS. WILLIAMS: Thank you, sir.
Q. Mr. Kelley, have you had an opportunity to review what's been offered as Protestants' Exhibit 2?
A. Yes, I have.

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Q. Do they fairly and accurately represent the Annadale neighborhood as you saw it when you were out there, I believe in June of 1997?
A. That is correct.
MR. WILLIAMS: We would offer these as Protestants' Exhibit No. 2.
THE CHAIRMAN: Let's take them one at a time. Make them 2A, B, C, so we know what we are talking about.
MS. ZERWITZ: I do have a question. Are we moving all the photographs? Because I don't believe this witness can testify to all the information contained in all the photographs.
THE CHAIRMAN: He's simply having identified those are the photographs that fairly and accurately represent what's on the photographs.
MS. ZERWITZ: But there are certain photographs I don't believe he would have had any reason to look at.
MS. WEST: The problem I have, there's handwriting on here by Mr. Williams, that's his handwriting, and I want to make sure this witness can, in fact, cooroborate what's written is there with regard to

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the prospective on this. I don't have a problem with the photographs, per se.
THE CHAIRMAN: Why don't we do it this way? The photographs that will come into the record are the photographs that past muster.
MS. WEST: Fine.
Q. Mr. Kelley --
MR. WILLIAMS: Thank you for your help, Ms. West.
Q. -- I refer you to photograph two. I am going to call it two, and I realize it's for identification, and I ask you if you can tell us what that is and if that's what you saw in the field?
A. That's a picture of Lot 31, owned by Robert and Rose Long. That's the lot I processed the variance.
THE CHAIRMAN: So 2A, we would admit.
Q. Do you see the zoning appeal public hearing sign in the photograph?
A. Yes.
Q. Now, photograph 2B --
MS. WEST: Excuse me. So we can do this in context, with all due respect, if you get him to

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corroborate what you have got written down under the pictures, so when I come and cross -- it's very confusing to do these photographs.
THE CHAIRMAN: As a practical matter, if he wants, we'll cross those out. Mr. Kelley, when you look at these pictures, if you can also say that the description is an accurate one, and if you can't, then we'll take the wording out of it.
THE WITNESS: The wording matches the pictures in the first picture.
THE CHAIRMAN: So 2A is admitted.
Q. Mr. Kelley, now I refer you to photograph 2B, and my caption sayes that's looking north on Matthai Avenue from Annadale Avenue. Would you be familiar with that?
A. Mr. Long's house would be over here?
Q. This -- yes, it would. This is the one we're are referring to.
MS. WEST: Which is B?
A. Yes, I agree with that.
THE CHAIRMAN: We'll accept B.
Q. Now, photograph C, that's my caption, and it says

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it is looking east on Annadale from Matthai Avenue. Once again, is that what you saw in the field? Can you identify that from your field visit?

A. I have one question. Is it Mr. Long's house over here?

Q. Yes, it is.

A. Well, this is C. What happened to B?

Q. It's on the same sheet. I'm sorry. I always have trouble with photographs when there's a whole bunch loose.

MS. WORRALL: C is is looking east.

THE CHAIRMAN: East on Annadale.

MR. WILLIAMS: I thought I gave a set up there?

THE CHAIRMAN: Yes, we have a copy.

MR. WILLIAMS: I thought I had a set for everyone. I will try and do it slower on the second page. If I understand the witness correctly, he said B was what he saw in the field and the labeling was accurate?

THE CHAIRMAN: B and C are acceptable.

Q. Now, in the next page, this is a panaramic photograph, 2D, and I ask you if you can identify those

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properties, Mr. Kelley?

A. It's acceptable.

Q. Pardon me?

A. Mr. Woodell's property to the right.

Q. Right.

A. Of Lot 31 as you're looking at the water, and I don't know the neighbor on the other side of Mr. Woodell, but the labeling 3823 Annadale matches what's shown on the house, which you're saying the number actually --

Q. Yours is out of order.

MS. WORRALL: That's what I'm trying to find out. I don't seem to have any D. I go to E and F.

THE CHAIRMAN: Here, you can use my copy.

MS. WILLIAMS: I was having trouble with my copier.

MS. WORRALL: There it is.

MR. WILLIAMS: Somehow it got out of order. Mr. Kelley indicated that the house on the left is the Woodell property.

Q. Is that correct?

A. That is correct.

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Q. And you said the 3823, that the address on the house matches the label?

A. Correct.

THE CHAIRMAN: So we'll accept D.

MR. WILLIAMS: I hope they are in the right order.

Q. Photograph 2E just says east side of the Woodell property. And you can see the zoning appeal sign there in the picture, can you not?

A. Yes.

Q. So photograph 2E is what you saw in the field, and is that accurate?

A. That is correct.

THE CHAIRMAN: Accepted.

Q. Photograph F, the west side of the Long property, that's where you asked me before is that Mr. Long's house?

A. That is correct.

THE CHAIRMAN: So E and F are admitted.

Q. Now, photograph I --

THE CHAIRMAN: What happened to G?

Q. Photograph I --

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THE CHAIRMAN: So we're skipping G and H?

MS. WEST: Here's G and H.

MR. WILLIAMS: I apologize. I don't know what happened to my copier. Thank you.

Q. Photograph G says looking across the lot at the Long property. Is that what you saw in the field, sir?

A. That is correct.

Q. And photograph H, once again, looking east on Annadale from Lot 31?

A. That is correct.

Q. That's the end of Mr. Long's house?

A. Yes.

THE CHAIRMAN: G and H are accepted.

Q. Now, go to I and J. I will straighten it out. I is titled outfall on Lot 31. Can you identify that outfall from your visit?

A. Yes, I can.

Q. J is entitled inlet on the Shanholtz property. Did you have occasion to trace the source of the water that comes out from the outfall?

A. No, I didn't. I'm not familiar with the

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photograph J.
THE CHAIRMAN: We will excise I.
THE WITNESS: I is acceptable.
THE CHAIRMAN: J. I'm sorry.
Q. And K, that's --
MS. WEST: If we can, let's give that to the Board to excise or redact.
MR. WILLIAMS: It's the one on the right.
THE CHAIRMAN: We'll give that back to Mr. Williams.
Q. Photograph K, the Long property adjacent to Lot 31?
A. Yes, that is correct. Accepted.
THE CHAIRMAN: All right.
MR. WILLIAMS: Thank you very much.
THE CHAIRMAN: Now, we are going to redo the letters --
MS. WORRALL: So the last one becomes J.
MR. WILLIAMS: So it's 2A through J? I am talking about the labeling.
THE CHAIRMAN: 2A, so that's Petitioners' 2A

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through J. Let's give Ms. Worrall a second.
MS. WEST: That's 2A through --
THE CHAIRMAN: Through J.
MR. WILLIAMS: J was eliminated, and H. I beg your pardon. K became J.
MS. ZERWITZ: Can I ask one more question for cross-examination of the photographs before they are admitted?
THE CHAIRMAN Sure. This would be the appropriate time.

FURTHER CROSS EXAMINATION

BY MS. ZERWITZ:
Q. I have a quick question for you regarding the photographs. You indicated you do agree with them from your observation, or your didn't observe them? The comments placed, specifically referring to 2A and 2I which show an outlet -- do you still have the pictures before you?
A. No, I do not.
Q. The editorialization provided by counsel indicates that that outlet was on Lot 31. You indicated

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that you agreed, from your observation.
Are you agreeing that's something you observed, or are you agreeing that that outlet is actually on Lot 31? Do you understand my question?
A. I agreed I observed an outfall.
Q. But do you have any independent knowledge whether that's on the lot or not?
A. That is correct, I do not know if it's on Lot 31 or the adjacent lot.
MS. ZERWITZ: Based on that question, your Honor, I would object to those photographs which show the outlet.
THE CHAIRMAN: Which are specifically?
MS. ZERWITZ: Specifically, that would be 2A, which is the panaramic series of photographs, and 2I.
MS. WEST: I would concur, because the witness can't authenticate it.
THE CHAIRMAN: I am going to rule. I am going to agree with the request that those not be admitted at this time, until you present a witness in your case who can, in fact, authenticate it.
I don't want to change the numbers again,

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anticipating one of the witnesses in this case will be able to authenticate it. So, under the circumstances, I am going to leave A and I in the numbering system, but at the moment they are only procedurally for identification purposes.
MS. ZERWITZ: Thank you.
THE CHAIRMAN: Subject to further testimony.
MR. WILLIAMS: I don't have any objection.

FURTHER CROSS EXAMINATION

BY MR. WILLIAMS:
Q. Mr. Kelley, when you went out to the property, was the property staked in any way for you? Were there surveyor stakes or flags, anything of that sort?
A. I don't recall.
Q. When you measured from the water to the road, how did you determine, you know, where you were? This goes to Ms. Zertitz's question. In other words, how did you identify Lot 31 in the field?
A. I basically took measurements off of what I thought was the edge of Lot 32. The shoreline and the road aren't what I call undulating, so measurements from

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the mean high tide to the edge of Annadale Road should be approximately the same as Lot 31, or if I was off a little bit on Lot 30 or Lot 32, it should be about the same distance.

Q. If an outfall were on the property, would that make a difference in your finding?

A. No, it would not.

Q. It would not?

A. I would check to see if it was a stream or a wetlands. I did identify some sort of swale there. If it was not a natural resource, it wouldn't be part of my review.

Q. I think one of your criteria says water quality, is that correct?

A. That's correct. Criterion number five, I believe.

Q. If that culvert and that outfall were carrying stormwater across the street, under Annadale Road, would it be important for water quality purposes that it filter across a lawn before it reaches the creek?

A. I would say so, yes.

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Q. If it turns out to be on Lot 31, are you allowed to build, under your regulations, over an outfall or over a swale?

A. They are not a part of my regulations. I wouldn't have a say in the matter. I believe that would be a public works issue over at ZADM.

Q. Let me ask you this. I am going to show you part of Protestants' Exhibit 1 that was marked for identification and it is part of a stormwater or sediment control plan.

MR. WILLIAMS: If the Board has it?

Q. Do you see Lot 31 on there?

A. Yes, I do.

Q. Do you see that, at least on this one, at least on this plan, part of Mr. Long's house appears to intrude into Lot 31? Just asking what he sees.

A. From this photograph, it appears, or this plot plan, or whatever.

Q. Are you familiar with reading county plats and materials?

A. Somewhat.

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Q. On the left-hand side of that, of that sediment control plan, or a portion of it, do you see the outfall up near the street?

A. Yes, I do.

Q. Does it appear that that outfall is in a defined easement area?

MS. WEST: Objection.

MS. ZERWITZ: Objection.

MR. WILLIAMS: The man is an expert witness for the county.

MS. WEST: We haven't qualified him as to causation. If you want to accept him, we'll submit.

THE CHAIRMAN: Hold off for a second. He's the county's witness. The county has not offered him as an expert. It's really not your call since he's not your witness.

Does the county wish to offer the witness as an expert, subject to stipulation by the parties or voir dire?

MS. WEST: Let me converse with Ms. Zerwitz for a moment.

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MS. WEST: It's my understanding Mr. Kelley is customarily offered as an expert on Chesapeake Bay critical areas review as a natural resource specialist.

He's not an engineer. So if they want to stipulate to that, I have no problem, but he's not an engineer.

So with that caveat, we agree he'd be offered for that purpose.

THE CHAIRMAN: For the process and procedures of the critical area, the Chesapeake Bay critical area?

MS. WEST: I want Mr. Kelley to cooroborate that, because I met him for the first time today.

MR. WILLIAMS: I'd like to make sure what that means.

THE CHAIRMAN: First of all, I think they have to offer him as an expert witness for the criteria that he's testified. He's testified already, and there's been no objection, his testimony is in, whether he's an expert or not. Okay.

It's be be given the weight the Board feels his testimony deserved. If they are going to offer him as an

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expert in Chesapeake Bay critical areas, issues and procedures, and you want to object to the characterization limited to that, then we can stop for a moment and you can voir dire him and give us your objection.

But it's up to them to limit and define that area which they determin to offer him as an expert, and they can make it as wide or as narrow as counsel thinks is appropriate.

MS. WEST: We are not trying to paint with a broad brush here, because we feel he should be limited to that, unless he can advise me othewise at the present time to that, but he's not an engineer.

So if he is asking questions that require that expertise, he doesn't have it.

THE CHAIRMAN: So you're offering him within a very narrow area of expertise that involves the granting, the procedures and processing and criteria in the granting of the Chesapeake Bay critical area?

THE WITNESS: That's correct, I'm not an engineer.

MS. WEST: With all due respect to the witness --

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THE CHAIRMAN: You're offering him for that limited purpose. Mr. Williams, are you objecting to his being made an expert to that limited definition?

MR. WILLIAMS: No. I would just say to the Board that here's a man that deals with the Chesapeake Bay Critical Areas Commission.

I am asking him about water -- I am asking him about drainage, I am asking him about drainage swales.

THE CHAIRMAN: Which he may or may not be able to answer you, based upon his knowledge and expertise. That has nothing to to with the question I'm asking. Are you accepting him on the basis he's being offered?

MR. WILLIAMS: Yes.

THE CHAIRMAN: The record will reflect Mr. Kelley who has appeared before this Board and has been qualified as an expert previously is an expert in Chesapeake Bay critical areas variance procedures, processes and criterion, and the Board accepts him as such.

Now, if you want to ask him questions, he has to respond whether he believes it's his area of expertise or not.

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Q. Mr. Kelley, in connection with your evaluation of critical area requests for a variance, which you said were about a dozen a year, do you look at such things as stormwater drainage, that type of thing?

A. No, I do not.

Q. You do not?

A. No.

Q. I understand you're not an engineer, but I refer you to Protestants' Exhibit 1 for identification, the manner in which Lot 31 and the adjacent lot, the south Lot 30 are graded. What does that indicate to you?

MS. WEST: Objection.

MS. ZERWITZ: Objection. Foundation of knowledge. He's already said he doesn't deal with it.

THE CHAIRMAN: I will grant the objection. No one has laid any expertise or basis for that.

Q. I ask you if those contours -- I am an attorney and I can read a contour map. I ask you if those contours appear to indicate a drainage swale which runs across the property, Lot 31?

MR. ZERWITZ: I object to the entire question.

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Is Mr. Williams telling the witness what the map shows?

THE CHAIRMAN: I'll grant the objection. Rephrase the question.

Q. You show a drainage swale on the property?

A. Yes, I do.

Q. Okay. Do you see -- and the grading indicates what?

MS. ZERWITZ: Objection. If he knows. He still hasn't laid the foundation as to how he would know this.

MR. WILLIAMS: Just for the weight the Board will give it.

Q. Are you telling the Board if there's a recorded existing drainage swale on Lot 31, that that makes no difference in granting and allowing the ability to build over this lot?

A. If there's a recorded easement, a non-disturbanced area, this is the first time I have seen this.

Q. I understand.

A. I wasn't aware of any easement, recorded easement or paper road there.

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Q. (MS. WEST) This is your first knowledge?
A. Yes.
Q. (MR. WILLIAMS) If this is a recorded easement from the left-hand side of Exhibit 1 for identification, would that possibly make a difference to DEPRM's conclusions?
A. I would say not.
Q. Would DEPRM allow regrading of this lot, or did you contemplate that in connection with the granting of the variance?
A. No, I did not.
Q. I notice that in the application for the variance, Protestants' Exhibit No. -- County Exhibit No. 1 -- that's a plan by Mr. Lee -- it shows a lot of sixty feet in width, is that correct?
A. That is correct.
Q. Eighty feet in width off the water of Bear Creek?
A. That is correct.
Q. Now, County Exhibit No. 7, again by Mr. Frank Lee, is a somewhat different plan. Is there a reason for that? Which plan did the county -- here, I will be glad

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to loan you mine. Which plan did the county act upon?
A. I acted upon the plot plan submitted with the variance application.
THE CHAIRMAN: No. 1?
MR. WILLIAMS: Protestants -- yes. County --
THE CHAIRMAN: County Exhibit No. 1?
THE WITNESS: I don't know the exact number.
THE CHAIRMAN: The plan attached to the Notification of Project?
THE WITNESS: That is correct.
Q. Do you owe -- I've got to get seven back. Do you know why a different plan was published in the newspaper? Is that the usual process?
MS. WEST: Objection. That's speculative. How does he know?
THE CHAIRMAN: In which case, certainly, he can say he doesn't know.
A. The plan doesn't advertise in the newspaper verbiage of the granting of the notice variance. I don't know why the two plans don't describe --
Q. I'm not trying to embarrass you, Mr. Kelley. I

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don't envy your position. Do you know -- it says critical area notes at the top and zoning history. It appears to me this plan came later.
I took this out of the Board's file. Maybe I am doing you a service. I thought it was connected to the publication. So it's your testimony that you don't publish a plan in the newspaper?
A. Correct.
MR. WILLIAMS: This was attached to County Exhibit 7 --
MS. WEST: Certainly was, Mr. Williams.
MR. WILLIAMS: That was somewhat misleading.
Q. You said that lot width is of some interest. If it would turn out the lot was smaller than sixty feet, as reviewed, would that make a difference?
A. The width? No. Just the length of the lot from the road to the water. The side dimensions are different. That has to do with the maximum allowed impervious service per lot.
Q. So if it was less in width, the total lot area was less, the impervious surface area allowed would be

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less?
A. That is correct.
MR. WILLIAMS: Excuse me just a moment. I have no further questions.
THE CHAIRMAN: Redirect?
REDIRECT EXAMINATION
BY MS. WEST:
Q. Just so we are clear, for the record, Mr. Kelley, your testimony is that you, in fact, relied upon the plot plan that was attached to Exhibit 1 which was shown to you earlier, that is Exhibit 1, the original application of the property owner, in making your determination as to compliance with the criterion regarding the variance, is that correct?
A. That is correct.
Q. And Mr. Williams, on cross-examination, had asked you some questions about Exhibit 1 versus Exhibit 7, namely, the plats that were attached. Is there, in fact, a disparity between what's depicted on that plat versus Exhibit 1 and 7?
A. That is correct.

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Q. Would that change your opinion here today with regard to the decision you made with granting the variance?
A. No, it would not.
Q. Why is that, Mr. Kelley?
A. Again, the disparity was lot width, not the length, length being from Bear Creek to Annadale Road. At the time of a building permit, if there was a disparity and I found out the lot size was less, then there would be a less allowable impervious surface for a lot, for that lot.
Q. So do you customarily only look at the length, what the distance is between the actual waterfront, waterway, what have you, to the road, is that what you are looking at at that time?
A. In this case, yes. A variance is needed for building in the 100-foot buffer or exceeding impervious surface limits.
They were both staying under the impervious surface limit. Thus, I was just reviewing this variance for distance to the water.

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Q. So the fact they intended to stay under the impervious surface limits, it's for that reason you weren't concerned with width of the lot, your focus was strictly on the length of the distance to the waterway?
A. Correct.
Q. Had you had that piece of information at the time of your initial review, would that have caused you to make more of an inquiry with regard to this matter?
A. No, it would not.
MS. WEST: Thank you.
FURTHER CROSS EXAMAMINATION
BY MS. ZERWITZ:
Q. In regard to -- you indicated the impervious surface limits, he intended to stay under that. What would cause you to have concern regarding the surface limit? What type of things would come under your jurisdiction?
A. The law states that you cannot -- there's been an amendment since then, but normally lots less than a half acre, which is the case, can't exceed twenty-five percent impervious surface. Impervious surfaces are surfaces that

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rain hits and cannot penetrate the ground, such as footprints of the house, swimming pools, sheds, sidewalks, most driveways.
Q. Regardless of width of the lot size, his intention would not have affected that?
A. I believe he was well within his impervious surface limits.
MS. ZERWITZ: I have no further questions.
THE CHAIRMAN: Recross?
MR. WILLIAMS: No, sir.
THE CHAIRMAN: Thank you, Mr. Kelley. May counsel approach the Bench for a movement?
MS. WEST: Thank you, Mr. Kelley.
(Discussion at Bench, off the record.)
MS. WEST: If it please the Board, I have had an opportunity to confer with my client as well as with Ms. Zerwitz, and my understanding is that at this juncture, as well as given our sidebar with your Honors with regard for the proceeding in this matter, that there is not to be any further witness testimony or documentary evidence with regard to the DEPRM variance, that is, the Chesapeake Bay

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critical area administrative variance.
The county at this time would rest its case. We have no further witnesses. And my understanding, neither does Ms. Zerwitz nor Mr. Williams.
MR. WILLIAMS: That is correct.
MS. ZERWITZ: That is correct.
THE CHAIRMAN: That being the case, then the Board will consider that the DEPRM variance case has been completed.
Again, closing argument will be provided in the memos which are given to us in lieu of closing argument and, just for the record, since I presume Ms. West will not be joining us --
MS. WEST: With your permission, sir.
THE CHAIRMAN: With my approval, and thank you for your job well done. I would suggest that the memo include those criteria and law sections that you think are appropriate and to have the facts and circumstances applied to that law to the conclusion.
That being the case, what I think we'll do is adjourn now, we'll have a lunch break, and we'll come at

1:30, and at that time we'll begin the zoning variance case.

MS. WEST: One final matter, Mr. Chairman. If it please, sir, you have indicated a time frame. I would hope the Board's indulgance of at least thirty days, because I have a full pretty full plate as to the memos to be submitted.

THE CHAIRMAN: Why don't you give some feel for your calendar to Ms. Zerwitz. We can go off the record.

(Discussion held off the record.)

THE CHAIRMAN: We'll adjourn now.

(A luncheon recess was taken.)

* * * * *

AFTERNOON SESSION

THE CHAIRMAN: Let's go on the record. We are back in the afternoon session and we are here in Case 98-251-A, which is the zoning variance part of this case regarding the granting in part and denying in part of the request for zoning variance as a result of a March 13, 1998 Order of the Zoning Commissioner. Is it actually the Zoning Commissioner? All right.

If you folks want to have brief opening remarks, that certainly would be appropriate. We're here de novo on this, so it's your burden. Go ahead, please.

MS. ZERWITZ: Thank you, your Honor. If the Board pleases, this is a request for a zoning variance filed by Mr. and Mrs. Long. Mr. and Mrs. long own an undersized lot on waterfront property in Baltimore County.

They have appealed to the Board to grant them a variance to allow an undersized lot, a lot width of forty-three feet in lieu of fifty-five feet as well as to allow them to build a single family dwelling on the property, and they would like to have a ten-foot side yard setback in lieu of a twenty-five foot setback, and

approval to utilize the undersized lot for the purpose of building a family dwelling.

If your Honors please, it is our intention to present testimony through a surveyor as well as through a property owner that the property meets the criteria for a variance in that it is unique and that the denial of a variance would, in fact, cause them an undue hardship, that being the fact they would be unable to utilize the property for any purpose.

And for that reason, we would ask the Board to grant them a variance and allow them to build a single family dwelling on that property in accordance with the zoning regulations as well as the environmental regulations.

Additionally, we would also ask to be allowed to call witnesses out of order in that our surveyor needs to take his wife to the doctor.

THE CHAIRMAN: You go first anyway.

MR. WILLIAMS: We don't have any objection to that order of witnesses.

Mr. Chairman, members of the Board, to set this

matter in context, Mr. Long trades as Covanent Realty. He's not a beginner. He purchased some -- in 1987 -- some fifteen lots, and this is what we intend to prove, and I am sure Mr. Long will acknowledge the truth of this, some fifteen lots in the residue of a 1925 subdivision known as Annadale.

From those fifteen lots, he derived, in addition to his own lot, at least seven others. In laying it out, BPS Land Technology, the engineer, for some reason or other -- when these lot were platted in 1920, fifty foot lots were used -- today, as you know, the standard is fifty-five.

The evidence will show that lots coming from east to west on Annadale were created, sixty-six feet. I'm saying simply this. That it was Mr. Long's choice and it was his engineer's choice, BPS Land Technology, to reconstitute or resubdivide those lots in what every way he choose to lay it out.

In addition, Lot 31, which is shown on on the exhibit, including the plat of Annadale, and it's part of my Protestants' Exhibit 1, shows that the Lot 31

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originally was a fifty foot lot. It has a paper street fifteen feet in width called Tobasco Road next to it. And, very simply, the situation is this. Mr. Long has already derived at least eight lots from this.

This is the residue, what's left of 31. In addition, the stormwater inlet that we had so trouble with this morning appears to be located -- and I'm sure the surveyor can help us on that -- on Lot 31, and that further interferes.

I have serious doubt -- and we'll try to clarify, whether there's thirty-six feet available, in which case the case would have been filed wrong, or there is, indeed, forty-three feet available on Annadale Road. And it seems like every plan that I have seen in this particular case seems to have a different dimension. And I think you saw that this morning, that DEPRM had, they had two plans they testified to that varied quite a bit.

As the Board well knows, if Mr. Long created the circumstance, that's self-created hardship under Cromwell versus Ward, which I am so familiar with because I was counsel for Mr. Ward, the loser in that leading Maryland

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case.

I would sympathize if the facts were that Mr. Long only owned a lot or two here, but this isn't the case. Mr. Long could have started -- he could have started at Lot 31 and gone eastward with his subdivision, and that would have been -- there is least 296 feet. He could have gotten five lot in excess of fifty-five feet in width.

But for whatever reason, he chose not to do so, and he is back with Lot 31, the residue, which we think contains this stormwater easement, or drainage easement, and I call the attention of the Board to my Petitioners' Exhibit 1 that I was having so much difficulty with the witness.

It appears it shows the outfall, and the Board can see how it is graded. It's my belief, and we'll find out, that that grading was done in connection with the road improvements by Mr. Long and that outfall is seriously, if you notice, it sort of skews to the east, and it's really that simple. The Zoning Commissioner did not have the benefit of the whole story, and neither side

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were represented, and I am glad we have the opportunity to bring it all out this afternoon. Thank you.

THE CHAIRMAN: Thank you.

MS. ZERWITZ: Our first witness will be Mr. Thomas Phelps.

THOMAS PHELPS,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. ZERWITZ:

Q. Mr. Phelps, what is your occupation?

A. Land surveyor.

THE CHAIRMAN: Excuse me, please. Your full name and address, sir?

THE WITNESS: Thomas E. Phelps. P-h-e-l-p-s. 945 Barron Avenue.

MS. ZERWITZ: I'm sorry.

Q. As a land surveryor, what do you do, specifically?

A. Establish property lines, lay out homes, anything that goes along with getting building permits.

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Q. Can you be more specific?

A. We do the layout, all of the property lines for private homes. Also do building layouts and some stakeout for grading and work like this.

Q. Are you familiar with the property in the Annadale Road area of Baltimore County?

A. Yes, I am. I work down there quite often.

Q. And, specifically, are you familiar with the property at 3827 Annadale Road?

A. Yes, I am. I just did a boundary survery on that.

MS. ZERWITZ: If I may approach, I'd like to have this marked as Exhibit 1. I also have copies for the Board.

THE CHAIRMAN: Mr. Williams?

MR. WILLIAMS: I have no objection.

THE CHAIRMAN: This is a boundary survey of Long property dated 9-4-98, done by Thomas E. Phelps and Associates, and we will mark that as Petitioner -- this is your first exhibit -- Petitioner Exhibit No. 1.

Q. Mr. Phelps, I'm going to show you a copy of

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what's been marked Petitioner's 1. Can you identify this document?
A. Yes. This was made up in my office.
Q. Did you make this exhibit?
A. No, I didn't. It's an assistant who works with me.
Q. Did you have occasion to visit the property?
A. Yes. I was on the property when the boundaries were set up.
Q. So although you did not actually draft this document, you have personal knowledge of the information contained in the document?
A. Yes, I do.
Q. Is this a document that is kept in the ordinary course of your business as a surveyor?
A. Yes.
Q. You would have access to all records in your business?
A. Yes, I do.
Q. What's caused you to go out to the property on Annadale Road?

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A. Mr. Long called me -- I do a lot of his work -- and he asked me if I would do a boundary survey on his house and the adjacent lot, which is the lot in question.
Q. When you do a boundary survey, what exactly is it that you do?
A. We set property corners, either iron pins or PK nails, or cut in the concrete to identify the property.
Q. How did you do that in this instance?
A. We established some of the property that was existing, which I have have done a lot of work on the opposite side of the street from this, and by utilizing what I had in the area already, we went ahead and by using the plot plan and deed that were involved, we set this property up by two lots.
Q. Now, I am going to direct your attention to the figures on the map and ask you if you can elaborate where some of the different numbers come from. For example, did you actually do the measuring?
A. Yes, we did.
Q. What did you rely upon to obtain your figures?
A. We use electronic distameters.

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Q. What exactly is that?
A. That's a surveyors' instrument that will measure the distance between two points electronically.
Q. In this instance, what two points did you measure, let's say, for the top boundary?
A. If you're referring to along the roadside, we had had crossed the road from the other side to check it out, make sure in two different places, and took the distance between that. We established an existing property line on our side of the street, and worked from that back and set these property corners.
Q. You have different figures at the corners indicating the property?
A. Right.
Q. Can you explain to the Board why you obtained the different figures?
A. These are actually field measured distances that we found in the field for what was that part of the property. For instance, the depth of the lots, we set. If you look at the right-hand side along the road, we set at a point back a hundred feet, and it called for 110, but

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since it's in the water back in the marsh, we can't get in, so we set a pipe at a hundred.
The same with the other two lines. We turned field angles and set the points back so they would not be in the water, because you can't -- once they are in the water, you can't rely on them.
Q. Now, directing your attention to the area at the top, you have numbers and you have a dotted line. First of all, two dotted lines, a solid line, and then it's a dotted line?
A. Right.
Q. Do you want your original copy or --
A. I can tell.
Q. Can you tell the Board what these different lines symbolize?
A. Yes. By Mr. Long's deed, it called to the center line of that proposed road, which is not there, and that is a solid line where we put the property line.
Q. That's the 110 number?
A. Yes. The other two, the one to the right and the first one to the left are the fifteen foot, outside edges

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of the fifteen foot right-of-way. The other line was a line that I set in there. If this road was not there, his side yard would be a ten foot setback, and that's what the other line depicts.

Q. Now, how did you determine what was his property?

A. To the existing deeds and field researching the properties from I had the subdivision plat, and I had Frank Lee's plat which was a resubdivision of part of the property.

Q. And is it your standard practice to rely on that information when drawing property lines?

A. That, along with what I find in the field. If I find it's over into someone's house or there's an encroachment, I will note it on my drawings that there's an encroachment. But, otherwise, we have that plus the person's own deeds to rely on.

Q. Does this drawing fairly and accurately reflect the property line survey as you performed it on September 4, 1998?

A. Yes, it does.

Q. You took various width measurements also, is that

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correct?

A. Yes, I did.

Q. Can you explain to the Board what the two different width measurements symbolize?

A. As where?

Q. As Annadale Road side.

A. Along -- all right. The one distance, the 68.40 is for Lot 32. The other one, which is 45.12 is for Lot 31. And that goes to the center line of the road as his deed stated.

Q. The 7.67, what is that?

A. That would be the half of the fifteen foot right-of-way that's on Mr. Long's property.

Q. In your research as to that right-of-way -- strike that question.

When you were measuring the property including the right-of-way, did you see a drainage ditch our outfall?

A. Yes, I did.

Q. Did you indicate on your survey where that would be?

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A. No, I didn't. But it is almost directly under that property corner which is in the center line of the road, which would be the right-hand point I have marked there as IBS.

Q. Did you have occasion to measure the width of the property as it got close to the shoreline?

A. We did just as a check. We usually do that, but since it's on the water, we don't put a bearing and distance across the back of the property, unless the owner requests it.

Q. So then what would the furtheset width that you measured from the property?

A. I'm not exactly sure how much it was to the back.

Q. You did not record that, is that correct?

A. No.

Q. Did you have occasion also in your preparation to check the historical plat as far as what the original plat was?

A. From the 1921 plat?

Q. Yes.

A. Yes. I already had that in my possession

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because, as I say, I had done quite a bit of work. I had done work on lots 16 through 12, or 12 through 16 in there.

Q. And what, if anything, did the historical research tell you about the lots?

A. All these lots had been changed from the original plat. None of them were the same as they were originally.

So the only thing that held was the other end of the subdivision which is down by by Cove Road, that corner held because Cove Road goes down to service the other lot.

Q. Do you know whether the lot is the same length as it was back in 1925?

A. According to the figures that are on here, no. It's been shortened by about fifty or sixty feet due to the erosion, because the original plat calls for it to be 160 and 140, and both lines now are only 110 feet plus or minus two or three feet due to the water.

Q. Now, you indicated you're familiar with this because you did some work on other lots?

A. Yes, I did.

Q. Which other lots in the area did you do work on?

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A. I did some work directly across the road from Lot 32 all the way down to Cove Road, and also out onto North Point Road.
Q. So that would be Lots 15 through 12?
A. It would be 15 through 12. And, also, I just remembered, I had done ten, eleven and seven through nine.
Q. Do you recall what you had done for those properties?
A. Property lines and did house stake-outs for them.
Q. Do you know, does this property differ from the other property that you worked on?
A. No. They are all basically small lots with really large homes on them. They are basically built in there to within the legal side yard restrictions. The front and rear restrictions are not tight, but side yard are tight on all of them.
Q. Do you know from working on the lots how much land there is between the houses in the neighborhood?
A. Just approximately, it's twenty feet from house to house, which would be your two, ten foot side yard restrictions.

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Q. Do you know this, or are you assuming this?
A. No. I remember it from doing it. I had set them at ten foot. I used the property lines in many cases to lay the house out on a ten foot offset.
Q. Does the fact that this is waterfront property make it different from any of the other properties?
A. No. Outside of the fact you have the 100 foot building restriction line from the water, the other restrictions will hold for any D.R. 5.5 property, would be the same on this property, and your frontage is actually on the waterfront rather than on the street.
Q. Does that have any effect on the property?
A. Yes. It changed by that by -- I think it's five feet, because the rear yard is thirty feet, whereas the front yard on the street is twenty-five.
Q. So what effect does the fact this is waterfront property affect it as opposed to somebody else who wanted to build on a different lot?
A. In this case here, these -- this lot being only 45 feet across, you would have to back -- oh, since it's pie-shaped, you can back down to a distance where it's

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fifty-five feet wide and, from there, build your house from their own book, if you didn't have a 100 year floodplain problem.
Q. You also indicated that part of your job would be to also help people obtain variances?
A. Yes.
Q. If this property was not waterfront, as a surveyor, do you believe you would have been able to plot a house on this property?
A. At the back of the lot which is close to the water.
Q. So if this plot of land abutted two streets, could you have plotted out a house?
A. Yes. Actually, there are two factors that might have caused some problem, that being the existing side street, the paper street, and that changes the setback from ten feet to twenty five, because the zoning is now -- so that would cut down your ability to utilize that lot by quite a bit.
Q. Do you have any knowledge as to whether there is any intention to build a road on that paper road?

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A. No, I don't.
Q. Are you aware of any easements on the property?
A. Other than that half of a road, no.
Q. Are you aware whether there was a drainage easement on the property?
A. I did not see one on either the original plan or the resubdivision plat. There is none platted.
Q. Are those documents that you standardly check to see if there are any easements on the property?
A. Yes, I do.
Q. Would there be anyplace else for you to check to see if there was an easement?
A. I would also -- or if they had a title search, it should also show any easement.
Q. Did you do that in this case?
A. No. I didn't have the title report, and I did read the deed, and I didn't see any on the deeds for the property.
Q. Did you work with Mr. Long when he built his original house on Lot 32?
A. No, I did not.

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Q. Did you have any contact with Mr. Long prior to him asking you to do the boundary survey on this lot?
A. Yes, I did some work on North Point and several other small jobs.
Q. But not in relation to his house?
A. No.
Q. When you were -- did you help him do a layout for the house also?
A. No, I didn't.
Q. Did you help him in any way to get the building permit?
A. No.
Q. Other than performing the boundary line survey, did you do anything at all for him?
A. Not on this property, no.
MS. ZERWITZ: May I have the Court's indulgence, please?
Q. Did you have anything to do with the grading of the property? Does that fall within your purview at all?
A. Very seldom do we do any of that. What we do, we do show drainage lines alongside of the home, but as to

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which way the water is going to flow when it comes off --
Q. Did you do that in this case?
A. No. I had nothing to do with that. I had nothing to do with the site plan or grading plan at all.
Q. Would you have occasion to look into determining whether there's a drainage problem when doing a boundary line survey?
A. I looked at it and just as a normal walking over it. It's a normal thing to look at, see what it looks like. And I saw nothing that would prohibit putting a house on it.
Q. If you had seen something, what type of things would you have seen?
A. Well, if there were swales that were heavy swales across the property, you might have to go, well, environment -- not environment, but public works might require you to reroute the swales towards the water to keep the water away from the house.
Q. And you didn't see that at all in this case?
A. No. Overland flow quite often takes care of itself before it ever gets there.

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Q. In your opinion, what, if any, effect would the fact there was a drainage ditch on the end of the property line have?
A. If it was on the property line, you'd just have to make sure that you didn't interfere with it, didn't block it with your own grading around your own home.
Q. Is there somebody who would take care of that?
A. Builders would normally do it, and also the county public works would check it to make sure it was not happening to the property. They are very strict on grading plans, that you don't grade your property onto someone else's, or that you don't cause a backup.
MS. ZERWITZ: I have no further questions of this witness.
THE CHAIRMAN: Cross, Mr. Williams?
MR. WILLIAMS: Yes. Thank you.

CROSS EXAMINATION

BY MR. WILLIAMS:
Q. Mr. Phelps, you referred a couple times to a subdivision plat?
A. Yes.

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Q. Are you speaking about the first one, which is the Annadale subdivision?
A. The original subdivision, yes.
Q. Ms. Zerwitz has laid out on the table --
MS. ZERWITZ: If I could put this on the board? This is a bigger one.
MR. WILLIAMS: Sure. Thank you.
Q. Mr. Phelps, you also talked about a Frank Lee resubdivision plat?
A. Yes.
Q. Do you have your file with you, sir?
A. I do.
Q. Do you have that plan?
A. Yes, I do.
Q. If I could take a look at it, if I may? Thank you. I am going to come back to this in a minute. Did you have any occasion to look at any other subdivision plans, for instance, for Lot 32, 33, 34, 35 and 36?
A. Not at that time. I knew some of them had been changed from working in that area. But anything specifically on those lots, no.

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MR. WILLIAMS: I guess perhaps we should offer -- and there are several copies -- a copy of what has been referred to by Mr. Phelps as the Frank Lee resubdivision plat.

Do you have any extras of those? That's this document. I believe I have some, fortunately.

I'd offer this as Protestants' Exhibit No. 3, if there's no objection.

MS. ZERWITZ: Can I have one second, please, your Honor?

I would object to this. This is a copy of something that has various different handwritings on it.

I don't see where the witness can say he relied on this specific document or Frank Lee's plat. I think there are two different questions.

THE CHAIRMAN: So your objection is there is extraneous information on it?

MS. ZERWITZ: My objection is to this specific document.

THE CHAIRMAN: If there's a Frank Lee plot map -- do we have that from this morning?

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MR. WILLIAMS: I am looking at the one the witness has and it has the same handwritten notes on it.

THE CHAIRMAN: The original County No. 1, if I may, County No. 1, the Notification of Project Application, has a Frank Lee --

MR. WILLIAMS: This is another one.

THE CHAIRMAN: It may or may not. Do you want to take a look at it and figure out which one we are talking about?

THE WITNESS: This is a copy I worked off from part of --

MR. WILLIAMS: These notes that are on here --

THE CHAIRMAN: One at a time. But these notes on here in handwriting, those are not yours?

THE WITNESS: No, they are not.

Q. But you worked off this?

A. I worked off the parts that were set on here by Mr. Lee himself, which were on the original. This is extra. This was penciled in on another copy which I didn't have.

THE CHAIRMAN: Might I suggest to counsel if the problem is what's on -- just trying to move this along -- if the problem is not the lines that were written by the professionals, but the notes and things, why don't you just redact that copy, take one and cross things out.

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MR. WILLIAMS: I don't want to give up too easily on this.

Q. If I understand, when you worked on this, these notes were on there, is that correct?

A. No, they weren't.

Q. They weren't?

A. No.

Q. Do you have one?

A. This is a copy that I got afterwards.

Q. This is not --

A. Those notes, the work copy I worked from originally. Any pencil marks like that mean nothing.

Q. I think I asked if you had your file with you?

A. Well, I don't have anything else with me other than this here.

MR. WILLIAMS: I don't have any objection if you want to.

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THE CHAIRMAN: The objection from Ms. Zerwitz, to the extent she can engineer a copy that she thinks is acceptable -- and it's up to you and her -- so why don't you give her that and see.

MR. WILLIAMS: Why don't you take out --

THE WITNESS: The ones that were on there is that one and this one and this one. They were not there.

Q. (MS. ZERWITZ) So what's looks like different handwriting --

THE WITNESS: Forty-five twelve, thirty-nine, eight fifty-five and the sixty-eight forty.

Q. Were the other measurements on the original, is that your recollection?

A. Yes.

Q. (MR. WILLIAMS) Let me ask you something. Somebody -- I thought, if I understood you right, you said you were given one this morning, and that it had these?

A. Not this morning. I had talked to her client there the other day and he gave me this copy. They originally had a copy of this before I had. These figures were on here.

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Q. Those figures were on there when Mr. Long gave it to you?
A. The other day, yes.
Q. If you want to take them off one of the copies --
A. Thirty-nine eight fifty-five and the sixty-eight forty.
MR. WILLIAMS: So the Board knows what I'm talking about --
THE CHAIRMAN: I think we do. This is the only document --
MR. WILLIAMS: Does the Board have this in their file?
THE CHAIRMAN: I think the only Frank Lee, anything that we have is the one we made a refernce to just a moment ago.
MS. ZERWITZ: I think I might have an answer to the problem.
THE CHAIRMAN: Do you have a clean one?
MS. ZERWITZ: I think I do.
THE WITNESS: Yes. This is the same one here, because -- the only thing, this is what was on there,

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that -- see, these other figures were not there, and that's a hundred feet down the side and 300 on the other side. Yes, that's the original that we worked off from before these other figures were put on.
MR. WILILAMS: I am going to -- I still need the second one, so why don't we go ahead and take the numbers off, because you note this one and this one have -- now has a line that comes up this direction.
Q. (MS. ZERWITZ) Was that the line, dividing line there?
A. No. I put that on there.
Q. You put that?
A. I put that one on because that's when I set the boundary.
Q. (MR. WILLIAMS) Are you telling us you resubdivided those two lots?
A. No, no, no. They can't be.
THE CHAIRMAN: Okay, folks, why don't we come up with one version.
MR. WILLIAMS: There is actually two, but why don't you go ahead and take the --

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Q. (MS. ZERWITZ) This is yours, so this --
A. That one is as good as --
Q. (MR. WILLIAMS) I am going to put one up on the board for the Board do see it.
THE CHAIRMAN: What are you putting up, Mr. Williams?
MR. WILLIAMS: I think that I am putting up what I tried to offer as Protestants No. 3.
THE CHAIRMAN: Which includes things that this gentleman did not put on there?
MR. WILLIAMS: Right, but I'm not going to ask him about that.
THE CHAIRMAN: Well, I hope you're not going to move it as evidence, because we can't authenticate any of those things that are on it.
MR. WILLIAMS: Let me ask a couple questions. Maybe I can handle it that way.
Q. (MR. WILLIAMS) During your testimony, you stated that none of the lots in the subdivision, or most of the lots in the subdivision have been changed over the years, is that correct?

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A. Yes, there's quite a few of them changed. The ones along this side of the road have all been changed.
Q. When you say they all have been changed, I refer -- when you say this side of the road, I assume you're referring to Annadale Road?
A. Yes.
Q. Am I correct in saying what I said in my opening statement, that a series of four lots has been created along the south side of Annadale Road moving in a westward direction and that Lot 31 has been compressed, it's been detracted from?
A. I would say that was correct, yes. Because there were five lots and that cut it down to four, yes.
Q. And the Lot 31 that you see on the plat of Annadale -- is it protestants' or Petitioners' Exhibit No. 2?
THE CHAIRMAN: That piece of paper hasn't been put in or numbered or anything yet.
MR. WILLIAMS: I will put it in.
MS. ZERWITZ: No objection.
MR. WILLIAMS: Protestants No. 3.

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MS. WORRALL: A plat of Annadale -- and then on this one -- I have seen it both ways -- but this makes it two words, Plat of Anna Dale, dated April of 1925.

Q. So your testimony was that all of these lots 36, 35, 34, 33 and 32 have become four lots and, if I'm not mistaken, from your terms that I had trouble getting into evidence, the northwest corner of Lot 32 has moved westward and has taken part of Lot 31 and the subject property, is that correct?

A. Yes. That lot was originally fifty feet.

Q. Now, on the paper road, Tobasco Road, you said that Mr. Long's deed called to the middle of it?

A. Called to the center line.

Q. Called to the center line of it. Now, as surveyor, would you know whether the original subdivision plat, Protestants' Exhibit 3 of Annadale, or the deed prevails? As a surveyor, would you have that knowledge?

A. No. That goes to the court; has to be decided.

Q. Has it been usual in your experience to see people utilize or build over paper roads?

A. Not to build on it, but I have seen where people

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used it for their building restriction lines.

Q. To your knowledge, has Tobasco Road ever been closed?

A. That, I have no idea.

Q. Were you aware that Mr. Long filed a proceeding to close to Tobasco Road, and then abandoned that effort?

A. No.

MS. ZERWITZ: Objection.

THE CHAIRMAN: Sustained.

Q. So you have no knowledge of that?

MS. ZERWITZ: Objection.

THE CHAIRMAN: Sustained.

Q. On the location of the outfall, let me show you something.

MR. WILLIAMS: Maybe I have a better copy in Mr. Long's possession.

Q. What I am showing you is a part of Petitioner's Exhibit 1 for identification. It says owner/developer, Robert long, BPS Land Technology Sediment Control Plan Lot 10 throught 15.

Now, over here --

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MR. WILLIAMS: I am referring to the chart. It's the next to the last page, Mr. Chairman.

Q. I show you this. What does this appear to be? You see the outfall?

A. Right.

Q. What does this appear to be, do you know, sir?

MS. ZERWITZ: Objection.

THE CHAIRMAN: If he knows within his expertise.

A. There's two things it could be.

Q. What are the two things?

A. It could be an easement or it could be the right-of-way of the road.

Q. It could be the right-of-way? Okay.

A. Right. It was a fifteen-foot road, and that appears to be fifteen foot wide, so normally stormdrains easement are fifteen foot.

Q. But, of course, you're a surveyor and familiar with topographic lines. Do you see the topographic lines?

A. Uh-huh.

Q. Does that indicate a swale that runs sort of on a diagonal across one corner of Lot 31?

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A. It's a swale. I don't see where it's going that far across the line because I have, from my experience with these topos, and so on, that they're not accurate within five or ten feet.

Q. Do you think that was taken from a 200 scale topo?

A. That, I don't know. I have no idea, because I don't know who did the work.

MR. WILLIAMS: Just bear with me for a minute.

Q. You said you did not do a house layout or a building layout?

A. No, I did not.

Q. The boundary survey that you did -- I've got so many plans laying here.

MR. WILLIAMS: Did that come into i.d?

MS. WORRALL: Petitioner's No. 1.

Q. I think you indicated that, in the lower right-hand corner, Lot 32 is 68.40, is that correct?

A. Yes.

Q. Now, Mr. Phelps, if -- if -- just assume something for me for a moment -- if 7.67 feet is -- which

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is at the road -- is one-half of that Tobasco Road right-of-way?
A. It is.
Q. If that's not available, how much frontage is left?
A. Roughly, forty feet. I mean thirty-eight feet.
Q. Thank you. I know one more thing. Each time I have been out there, it's been good weather. Was it good weather when you were out there?
A. Yes. I don't work too much in the rain.
Q. Have you ever? That was my question. Have you seen this lot in the rain and the extent of water coverage?
A. No, I haven't.
MR. WILLIAMS: If the Board will bear with me for just a moment.
I have no further questions.
THE CHAIRMAN: Redirect.
MS. ZERWITZ: Thank you.
REDIRECT EXAMINATION
BY MS. ZERWITZ:

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Q. To your knowledge of how people obtain permits and everything, do you have any knowledge regarding county code and easements as to runoffs and drainage ditches?
A. No.
Q. So you don't know whether there is any code or any law regarding where runoff can flow from a drainage ditch?
A. Well, normal things, it has to go downhill, but you can redirect a stormdrain with improvements.
Q. Do you have any knowledge whether in this case the storm drainage has ever been redirected, or it's going down a hill?
A. No, I don't. I can't see that just from looking at it on the surface.
Q. What would have to be done to make that determination?
A. Well, actually, you'd have to find a person that did the redirection because, other than that, there's no way of telling.
Q. Do you know from your survey how this land was sloped?

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A. No, I can't tell that either without -- there could have been fill put in there on both sides of the ditch or on one side or anything.
MS. ZERWITZ: I have no further questions.
MR. WILLIAMS: I have no further questions.
THE CHAIRMAN: Thank you, Mr. Phelps. Your next witness.
MS. ZERWITZ: May Mr. Phelps be excused?
MR. WILLIAMS: As far as I am concerned, yes.
THE CHAIRMAN: Thank you, Mr. Phelps.
THE WITNESS: Thank you, sir.
MS. ZERWITZ: We would next call Mr. Robert Long.
ROBERT LONG,
having been called as a witness, was duly sworn and testified as follows:
DIRECT EXAMINATION
BY MS. ZERWITZ:
Q. Can you state your name and address?
A. My name is Robert Long. L-o-n-g. 3827 Annadale Road.
Q. How long have you lived at Annadale Road?

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A. Approximately ten or twelve years. I think it's been ten to twelve years.
Q. When you purchased your home on Annadale Road, did you just purchase your home, or can you tell the Board a little more how you came into this property?
A. Well, I purchased all the lots that have been talked about.
Q. Let's be a little more specific, if I may. What lots specifically do you recall that you purchased? Step down to the map.
A. I purchased Lot 31, 32, 33, 34, 35, 36, twelve, thirteen, fourteen, fifteen, ten, eleven, seven, eight and nine.
Q. When you purchased those lots, were they already divided into fifty-foot increments?
A. There was a recorded plat.
Q. So you purchased actually those lot numbers, is that correct?
A. Well, it said that -- the legal description said lots shown plus the acreage.
Q. What, if anything, did you -- why did you

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purchase those lots?
A. To build a house on it for myself.
Q. Was it originally your intention to build a house on the lot that you did?
A. No, it wasn't.
Q. Where did you originally intend to build your home?
A. I tried for, I guess, two or three months to try to build my house back up off near the end of the road, Annadale Road near Cove Road.
Q. What were you going to do with the rest of the lots?
A. I was going to do a minor subdivision, or resubdivision.
Q. How did you know how to do that?
A. Well, when first I got involved in it, I had no idea what was going on. I depended on surveyors and engineers to direct me. Basically, I knew I bought the whole parcel, and then I hired engineer to help me go through everything that I needed to do.
Q. When you intended originally to build your house,

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what lot specifically are we talking about?
A. I believe it was Lot 12 and 13. I can't see from here. I think you have a plat there. I'm pretty sure it ws right in that area here.
Q. Around Lot 13?
A. Around thirteen. We wanted to build a three-bedroom, two bath, split foyer. That was our original plans. And we asked the county to -- the sewer line was right here --
MS. ZERWITZ: Let the record reflect you're indicating the bottom of Annadale and Cove Road.
A. There was an existing manhole that stuck up. We wanted to tie into that because that was one of the things that they were concerned about, was the sewer, where there was a forty-eight inch main. They didn't want me to tie into that. I was going to tie into the manhole.
Q. Did there came a time you decided not to build on that property?
A. It wasn't my choice. It was basically I had sold my house. I was living in the city. We had to be out. And the county said the only way to get a building permit

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was to build close to the end of Annadale Road as possible, run a temporary water center service, and I had to put up a security deposit to run a sewer down.
But in the process, they went ahead and let me tie into the forty-eight inch main, because everybody else did. But this was not our first preferance.
Q. What, if anything, had been developed in that area at that point in time?
A. Lot 16 -- I'm sorry -- 26, 27, 28, 29, and 30. And 25, 24, 23, 22, 21, one, two and three. Four, five six. Twenty. Twenty-one. Eighteen. Seventeen. I'm sorry, seventeen wasn't developed. Twenty-one and eighteen.
Q. If you can recall.
A. I believe Mr. Matthai's house is here. Chuck Matthai's is one, but there was no house across the street from where my house is.
Q. Are you indicating, for the record, Lot 15 and 16 had not been developed?
A. No. Lot 16 and 17 had not been developed, or any of these.

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Q. When you built your home then on Lot 32, how did you come about building it on that particular lot?
A. Basically after going back and forth with a surveyor, I mean the engineer, and the county, and going back and forth because of the sewer problems and because there was no water in front of the house, they basically told me I had to build there where the temporary water service and send the water service past the house eventually, so they basically give me a break by letting me build right there. But it's not where I wanted, but that's where they permitted me to build.
Q. What was your intention with the remaining lots?
A. At that time, I had no idea what I was doing with it, because it was new to me. I knew I wanted to do a minor subdivision or resubdivision, do something with it, because I didn't need all that property, and that was really my main intention.
Q. Did there come a time you, in fact, did that?
A. After dealing with the county for about two and a half years, and going, well, the engineer, we finally decided to do what they call a resubdivision.

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Q. The house that you ultimately built, how did you come to build that house as far as the property lines are concerned?

A. I had a surveyor come out and lay out the property corners. He laid out the house corners. And basically the county told me that's where I had to build the house, because there was no water going through the property.

I guess the code, whatever, said you couldn't be too far away from the main water main, so they let me put a temporary water service in because of the hardship. My house in the city was sold and we had been going back and forth quite a while, trying to get a building permit, and they finally agreed to let me put the house there. I had no other choice.

Q. What, if anything -- did you have to get any special variance or permission to build the house as you did?

A. No, not then. I mean except for going through the county regulations. It wasn't a critical area. It was a lot of different things I had to do, but no variance or

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anything, no.

Q. Did there come a time you went to sell off some of the other lots?

A. Yes.

Q. What, if anything, did you do to facilitate that?

A. After going through everything and finally coming up with a game plan with the county, because it had been an old subdivision, it caused a lot of problems, and they agreeed to let me do a lot line adjustment by a metes and bounds description.

Q. What's that?

A. You're allowed under the County Code -- I don't know, but I was told to take and make four lots or small lots into bigger lots, to bring them up to code, and that's what we did. And Carl Richardson was involved in all that. And my house was already existing, built there, before we did any resubdivision.

Q. So you basically resubdivied your house?

A. Correct.

Q. What did you do to resubdivide the other lots?

A. Well, some of them we did a lot line adjustment,

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some we put two together, like where Joe and Patty's house is, we put two lots together. Next to him is Mr. Jones. We used those two lots and we had to do a T-turnaround, so they did, or easement for the T-turnaround. And then, on the waterfront lot, we did lot line adjustments by way of a metes and bounds description, just moved the property line around.

Q. By moving property lines around -- you originally had your house on Lot 32. What effect did that have on your lot your house was on? Did that change your property line?

A. Well, we couldn't change where my house sat. My house was already built before we could do a lot line adjustment, so we had x-amount of property to work with, and, you know, basically that's how all this has come about.

Q. From which direction looking at the row of lots your house is on, from what direction did you do your lot line adjustment? Which lot did you begin with?

A. Started with 33 and went down towards the water. I mean, went east, towards the east. I'm not sure whether

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they we did any lot line adjustment on the other side, non-waterfront. I don't think we did.

Q. Why did you start with Lot 33?

A. Because my house was built there. I had no other choice.

Q. Could you have started in the other direction?

A. We could have, but you still would have come out with the same amount of lots and same footage. You only have 200-some feet. I don't care if you divide it four ways, if you start at the other end, you're still going to have four or five lots.

But if we started at the other end, I still would have come up with the same amount of lots. I could have given myself more on the side yard.

Q. Were you aware when you redid the lots that Lot 31 was going to be smaller than the others?

A. I wasn't real sure because, when I did it at that point in time, the only thing I was concerned about was getting my house there and getting it built.

And I wasn't aware that, you know, this would have caused a problem, because when I originally built my

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house, I could have built a house next door to me. And because of all the zoning regulation have changed in the last ten years, or whatever --

Q. Let me back you up. You said you could have built the house next door to you. You could have built the house on --

A. On Lot 31.

Q. That's the one we are talking about today?

A. Right.

Q. Why didn't you originally build it on Lot 31?

A. Me and my wife had discuissed different things. We had talked about putting a garage up there. We talked about leaving it for possibly my mom to move next door.

We just left it open. We didn't know exactly what we wanted to do with it. And, you know, just really never thought about it, until recently.

Q. But were you aware when you readjusted the boundary lines, that became smaller than your other lots?

A. I wasn't really sure that it would have this effect.

Q. What lot do you own now?

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A. I own Lot 31, 32 and partial 33.

Q. How much of Lot 33 do you own?

A. I think it's about ten or twelve feet. And the reason why, it's because where the county wanted me to put my house.

Q. Who owns the rest of Lot 33?

A. My next door neighbor, Mr. Green.

MS. WORRALL: Who lives on Lot 34?

THE WITNESS: No ma'am. My house sits between here, and a piece of it goes into 33.

MS. WORRALL: Where's Mr. Green?

THE WITNESS: He's the rest of 33 and 34, because we got a lot line adjustment. I only own a little piece of 33. I think it's probably twelve feet. I actually get a separate tax bill for that.

Q. The balance of 33 is owned by a neighbor?

A. Yes.

Q. What is your intention to use Lot 31 for at this point?

A. At this point -- our original plan was I was going -- I tried to petition to close the road. I was

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going to build my mom a house next door.

That fell through because Mr. Woodell stopped it. And then the next step was to go through the minor subdivision or go through the variance, which I did. Me and my wife were going to sell our house and move next door and downsize because the house is four bedrooms, and it's only me and my wife and my daughter.

Q. What type story do you plan to build?

A. Three-bedroom, two-bath colonial. It's smaller. The house we are proposing to put up there is twenty-eight by twenty-eight. The house we live in is forty-six by twenty-eight with a two-car garage.

And the reason we were doing that, because my wife, with her job, we weren't sure what her future was going to be as far as she's going back to her normal job. And I was trying to protect, make sure we could -- you know, I could afford to take care of my family. I felt the downsizing was the best thing we could do, given the circumstances.

Q. How did you discover there was a problem building this house?

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A. Mr. Woodell come over and knocked on my door and screamed and yelled at my wife, saying for me to move my property lines and if it got legal, you know -- he scared my wife half to death.

He sat down on my front lawn, said he wasn't moving until I come there. And I actually had to call the police.

Q. Now, you are aware -- how large do you believe the lot needs to be for you to be able to build on the lot?

A. Well, with any variance, you need fifty-five feet in front of the house, with a variance, what the county will allow you to do.

Q. For you to build, is there a portion of the lot that's fifty-five feet?

A. Yes, there is.

Q. Where would that place your house?

A. Closer to the water. It would probably set it, I am going to say, approximately forty feet away from the road, maybe fifty. It would be near the edge of the water.

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Q. Have you thought about building your house there?
A. No, because you know, I wanted to build it closer to the road, because it would be better for the environment, plus that's what the county asked me to do when I went in for the original preliminary plans.
They said they would request for me to be as far away from the edge of the water as possible. And when that was done, it kicked me into a zoning variance.
Q. Are you familiar with the other lots in your development?
A. Yes, I am.
Q. Can you describe how your lot is in relation to the other lots?
A. My lot is pie-shaped, which is unique, because of the configuration of it being pie-shaped and sitting next to Tobasco Road.
Q. Let's go back to the pie-shape. What shape are the other lots?
A. You have -- most of them are fifty by -- I don't know what the lengths are. Fifty by one-forty by fifty. Some are a little bit narrower. It's a mixture.

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Q. But the width of your property is pie shaped?
A. Yes.
Q. When you built your house, did you narrow the property at all on Lot 31?
A. Well, what happened was when I built my house, because I needed ten foot off the property line, I had to move the property line around to skew it a little bit to get everything to straighten out.
Q. You narrowed it, but did you change the shape of it at all?
A. It narrowed it. It doesn't change. No. Well, the width of it changed it some more towards the front than it did towards the back. But, yes, it did change, but it's still pie-shaped. It was pie-shaped before I did anything. It's always been pie-shaped. You can see it on the pie-shape. It's fifty-one on the road and seventy-one on the water.
Q. What, if anything else, besides the pie-shape is different about your property?
A. It's next to Tobasco Road.
Q. What is Tobasco Road?

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A. It's a paper road.
Q. Why does that affect your property?
A. Because zoning says any road or paper road, you have to stay twenty-five foot off of it.
Q. What is that road used for, do you know?
A. Right now, it's not being used for anything. And according to the Zoning Commissioner and other people, it's never going to be developed, but they use it for a drainage easement.
Q. You said Tobasco Road is being used as a drainage easement?
A. Right.
Q. Where exactly is that easement?
A. The easement is actually in the center line of Tobasco Road. They approached Mr. Woodell to get an easement off him near the water and he wouldn't sign it.
When I petitioned the county to close the road, I had even proposed to put a path down towards the water, and Mr. Woodell would not. He was just so livid about me building a house next door. He just didn't want a house next door.

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Q. The drainage easement, is it on your property?
A. No, it's not. It's in Tobasco Road.
Q. But is part of Tobasco Road your property?
A. I own seven and a half feet of it, yes.
Q. So then do you own part of the drainage easement?
A. I own in fee, but the county has an easement to go through it, yes, they do have the easement. I physically own it, but the county has the right to run water across it, which I agreed to. I signed it.
Q. To the best of your knowledge, where does that water go from the easement?
A. Basically comes out of the end of the outlet pipe and goes down the easement somewhat and just goes into the water.
Q. Does any of it go across your property?
A. Some of it does, at the very end, all the way near the water. That's one of the reasons we -- you know, that's one of the things I want to straighten out, because it shouldn't be on my property. It should be in the easement.
Q. What else about your property is different from

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the other houses?
A. Topography.
Q. Such as?
A. The way it's sloped. Most of them around there -- well, it's on the water. It' just the whole circumstances. The property is different from everybody else's.
Q. Can you be a little more specific?
A. The shoreline. The topography is different than the rest of them.
Q. Could you -- again, I need you to be specific. What about the topography is different?
A. Just the way -- I don't know. The only thing I know, when I cut the grass, it's different than my lot next door and the lot up the street. It's just a little bit low. I guess the lot sits a little bit lower.
Q. Is there anything else about the topography?
A. That's about it.
Q. What else about the property?
A. Well, I am in real estate. There's a word, I can't think of what it is, but each property is unique in

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character. You cannot duplicate two pieces of property. You can't because of the location, and there's no two pieces of property that are exactly alike. I think there's a word for it. I can't remember what it is, but there's actually --
Q. What characteristics do the other lots have that yours doesn't?
A. It's next to the paper road, has an easement, it's pie-shaped. It's riprap. I have riprap shoreline where the rest doesn't.
Q. What's that?
A. It's a stone riprap, a stone preventment. I did that to protect the shoreline. It did have a lot of erosion. My property has eroded more than other property around.
Q. How do you know?
A. By the deed, and just by the mudflap in back of my house.
Q. How much of your property line has eroded over time?
A. I think it's probably about -- since I bought it,

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it hasn't been that much. But since 1925, it's approximately forty or fifty feet.
Q. If you were to build a house on this lot, what effect would it have on the waterway?
A. You mean the Bay?
Q. The Bay.
A. It wouldn't have any, because I am going to build it in such a manner the water will run across the grass. I have to meet DEPRMs requirements. As far as I know, it shouldn't have any.
Q. I am going to show you some pictures and ask you if you can identify them.
MS. ZERWITZ: I would have those marked as Petitioners' Exhibits 2A and B and C.
Q. I'm showing you what's been marked as Petitioners' 2A, B and C, and ask you to identify these?
A. That's next to my house, taken towards Annadale Road. It would be -- pardon. Can I see -- it would be in a northerly direction.
My back was towards the water, heading towards -- I am facing towards the drainage ditch. And that's Mr.

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Shanholtz's house.
Q. There's some posts in the photograph?
A. Uh-huh.
Q. Do you know what that post sympolizes?
A. That post there is a no trespassing sign that's actually in the center line of the road. Pretty sure. I'm not really exactly.
Q. Did you put that there?
A. It kept getting moved. Every time I put no trespassing signs, Mr. Woodell comes and they would be moved.
I don't know if he did it or his tenant, because Mr. Woodell doesn't live next door. But every time I turned around, my no trespassing signs come up missing.
Q. Can you identify what those are?
A. That shows the new lot, and these two here show where the corner of the house is going to be next to mine.
Q. For the record, you're identifying --
A. The two wooden posts, right. This one shows the paper road coming from the stormdrain, and that's Mr. Woodell's house over here, and that's facing, again,

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northerly, and the water is to the back of me.
Q. Who took these photographs?
A. I did.
Q. When did you?
A. Last summer.
Q. Do they fairly and accurately depict the status of the property at that time?
A. Absolutely.
Q. I'm also going to show you what's been marked for identification as Petitioner 2D. Can you identify that?
A. That's my house and shows the lot next door to mine, and I believe that's my dog.
Q. Did you take that photograph also?
A. Yes, I did.
Q. When did you take that?
A. Same time as I took these.
Q. Does that fairly and accurately reflect the lot at the time you took the picture?
A. Uh-huh.
Q. I show you picture Exhibit 2E and F and G and ask you to identify these pictures.

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A. This is showing the back of my back yard and showing the property corner of the new lot and showing riprap and my pier and shows the grass, the grass is in back of Mr. Green's lot, and shows there's no grass in back of my lot or the lot next door. And this is another lot showing -- I'm sorry. This is another picture showing off of my pier, my woodpile, and showing where the easement is for the road.

I have two-by-two's sticking up, yellow ribbons on them, so you can see them, and that's where the water comes down, and you can see, to show the riprap along the shoreline, and to show there's no grass or anything in back of my property. And this is another picture showing some grass -- well, there's a little bit of grass on my lot.

Q. Your lot, meaning Lot 32?
A. Right, 32, where my existing house is, the low-lying grass is good grass. The tall grass, they don't like. This low lying stuff, I guess it's -- I don't know, but this is good grass here, but this stuff is just basically imported from Europe and grows everywhere. At

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least, that's what I have learned.
MS. ZERWITZ: I'd like to have these marked collectively as Petitioners' 2A throught G.
Q. What is so important about the grasses and the water?
A. The fragmise (phonetic), that's the thing, they are really tall and have a whole bunch of -- they are not leaves, I guess, they are -- fragmise have no water quality. You have to actually get a permit to get rid of those. I think it's a low lying grass, good grass, where the crabs come in and should have -- and fish come in for habitat. The fragmise will grow anyplace. And I got into a conversation when doing my riprap with the Army Corp of Engineers and they say that that stuff will grow on top of a roof. This grows everyplace. It's imported from Europe for erosion control, and it's actually taken over.
W. What use is there for the lot at this point in time?
A. Besides cutting grass and paying taxes, that's about it right now.
Q. If this Board were to deny your request for a

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variance, what use would you have for the land?
A. Pay taxes on it and cut the grass.
Q. Would you able to build anything on it?
A. I believe I could put an addition on, but I would still need a variance for the critical area variance because I am still within the 100-foot buffer zone, but I wouldn't need a zoning variance because I can meet all the side yard.

I can build a bigger addition and not need a zoning variance, because of when you separate the two properties, it's -- it kicks a lot more regulations in.
Q. How would you respond to an allegation that, in fact, you created the smaller lot and, therefore, created your own problems?
A. I didn't do it. I was -- I had to basically build my house where the county told me to build it. Again, the water service stopped right there. It was only going to allow me temporary road and temporary water service to my house. That's the reason I built it there.

I don't know how long we went back and forth trying to build a house. But after awhile, you kind of

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give up. And my house in the city was sold, and I had to have a place to live.

And they give me a break by letting me build it there. It's creating some problems now.

Q. As far as the neighborhood is concerned, can you describe the houses in the neighborhood?

A. It's a mixture of older houses, big houses. You have some houses that are small, like Mr. Woodell's house is a real small house. It's probably only twenty foot wide. I'm guessing. All the way up to Joe and Patty's house, Ernstberger, which is probably seventy-five or eighty feet long, a two-story colonial with a two-car garage. You can go from one extreme to the other.

Q. Do you believe that your house will be consistent with the other houses in the neighborhood?

A. The house that I'm proposing to put on there will look exactly like Joe and Patty Ernstberger's, except it will be a whole lot smaller. It's going to have a small porch on the front.

Q. What about as far as close together are those houses in the neighborhood?

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A. They are ten feet -- well, twenty feet from house to house, and I will have twenty feet in between my house and the new house, and from my house to Mr. Woodell's would be approximately -- probably pretty close to forty feet, thirty-five to forty feet from the side of my existing house to Mr. Woodell's house.

Q. How did you figure that?

A. You have a paper road which is fifteen foot. You have a side yard setback of ten foot. Brings you up to twenty-five foot. And I am thinking he's probably ten foot off his property line. So I am going to say forty-five feet.

I know that the road is fifteen foot wide. My house is ten feet off the property line. How close his house is to the property line, I'm not sure, but I am guestimating ten feet.

Q. How close would you be to the water if you were to get the variance as requested?

A. Well, I'm trying to stay as far away from the water as I can. I think a hundred -- sixty feet -- I think it's sixty feet, going off the top of my head.

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Q. What impact do you believe that would have on the neighborhood and on the environment?

A. Building a new house there shouldn't have any, because, you know, we are going to run the downspouts down across the grass and, you know, we'll plant trees.

And I'm not doing anything more than basically -- like I said, I could build an addition there actually bigger than the new house I am proposing to do without a variance, but I still need a critical area variance because I am within the critical buffer zone.

Q. Are you aware of any problems in the neighborhood regarding drainage and sewerage?

A. The only drainage problem I know of -- only sewerage problem I know of, one of my neighbors had a problem with the house next door to him. The guy cleaned out for something and she was getting a lot of smells. And finally they did some kind of test and found out where it was coming from. Plus I think where the yeast company, they are getting some smells. That's the only thing I know of.

Q. Have you looked into whether an additional house

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in the neighborhood would have an effect on the sewerage problems?

A. I have a forty-eight inch sanatary sewer line through there that everybody else is hooked into, that you can build a VA Hospital and hook into. That's what one of the guys from public works said. It's big enough, you can walk through it.

Q. What about the drainage, do you believe there's a drainage problem in the neighborhood?

A. None that I know of, not on my property. I can't speak for other people.

MS. ZERWITZ: I have no further questions at this time, your Honor.

THE CHAIRMAN: Counsel.

MR. WILIAMS: Thank you.

CROSS EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Long, you bought the property, as you said, ten or twelve years ago, is that correct?

A. Yes.

Q. Was there anything to prevent you -- you said the

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county told you you had to be close. Did the county tell you you couldn't be on Lot 31, or anything of that sort? Why did you leave it open?

A. Because they told me that's where I had to put the house. Like I say, I originally planned to put it at the other end of the property. I was going to do a T-turnaround and a subdivision. I have a plat there. And they turned it down, said I had to take it and put it back there because of the water.

Q. My question is, was there anything to prevent you from using Lot 31 at that time?

A. They told me I couldn't build there, I had to put the house where it is because of the water. At that time, I was not that -- I didn't know that much what was going on. I basically did whatever the county told me to, and I was delayed. I got a building permit.

Q. If they told you that, then what makes you think they would let you build a house on it now?

A. Well, I didn't -- like I said, they told me I had to build a house there. I knew the lot was there. I didn't know what I was going to do with it.

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When I originally built my house, I had several different plans, and it didn't come up until my wife got hurt and things happened, what I was going to do with the property.

Q. Am I correct in saying that you developed something on the order of eight homesites including your own out of fifteen lots that you bought, is that a correct summary?

A. There is seven lots including mine, plus Lot 31.

Q. So it's seven out of fifteen plus Lot 31, is that correct?

A. Correct. There's eight total. My house is one of them, which makes seven. And Lot 31.

Q. You said you've worked with various engineers and all. Did you work with BPS Land Technology?

A. Yes.

Q. In connection with that, I refer you to Protestants' Exhibit 1. Is it Mr. Parr?

A. Tom Parr, I believe his name is. It's been awhile.

Q. Did he -- was this attached to Petitioners' 1? Is that Mr. Parr's work?

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A. I don't know. It could be. It kind of looks similar to something, but I'm not real sure.

Q. How far did your responsibility for road improvements or curb and gutter or anything of that sort extend? Where did you begin your work?

A. Wherever Annadale Road ended, all the way down to the T-turnaround.

Q. Did you place -- was it your responsibility to place an inlet on Lot 16?

A. It was already there. We just replaced it because it wasn't -- it was already existing and it was not -- it was not, I guess, to code, or wasn't to specifications, because it didn't have a number, but it was already there.

Q. In which direction does water flow on Annadale Road in a rainstorm?

A. It runs -- I mean, on my property, it runs down in between the house. And on the other side, I believe it runs across the road and down between the houses, and some goes that way and some goes that way. It goes all

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different directions.

Q. Is there a stormdrain up on this end of the -- east end of Annadale? Is that what I'm looking at?

A. That's not a stormdrain. Talking about this, I think it's a sanitary sewer. I originally wanted to build my house there, but because of that -- I was thinking I could tie into that.

Q. In your testimony, you acknowledged that there is a storm drainage easement and that's what Tobasco Road is used for, is that your understanding?

A. There's an easement on half of it, yes, half of Tobasco Road is -- yes. There's an easement. I signed an easement over. I had no other choice. The county said I had to do it. I said, Okay.

Q. So if you signed -- that would be the seven and a half feet on your side. That would -- subtract -- and that takes us down to thirty-six feet at the road?

A. I still own it. It's still mine. It's like giving someone an easement to bring a water service across. I still own it. It doesn't mean I give them the whole thing. They don't have even fee simple. They only

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have drainage and a utility easement.
Q. You sought to close Tobasco Road, is that correct, sir?
A. Correct.
Q. How did anybody stop you? Mr. Woodell or others, what stopped you from doing that?
A. Well, we got in there --
MS. ZERWITZ: Objection.
THE CHAIRMAN: She's objecting as to relevance.
MR. WILLIAMS: It was brought up.
THE CHAIRMAN: It was certainly mentioned on previous examination. It came up. He was asked on direct about it.
MS. ZERWITZ: He wasn't asked directly about the road closing.
THE CHAIRMAN: He was asked about the road, something pertaining to the road, and it's certainly relevant cross-examination. Whether or not it's going to make any difference or not is an entirely different question.
Q. When you say you got in there, did you actually

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go to a hearing?
A. Yes.
Q. Did you offer your evidence?
A. The only thing I did was I was directed by -- I think her name was Lois Bergmeister or Burgman -- I can't remember the lady's last name -- she gave me the paperwork to fill out to close the road.
Q. What was the decision issued in that, or did you abandon your --
A. A decision was rendered because at the hearing it got pretty hot and heavy because of Mr. Woodell. I had been cutting the grass. I didn't know any different until after I looked into it.
I had been cutting the grass and maintaining that whole road bed of Tobasco Road, and I thought I was entitled to the whole thing.
At that point and after I got into the gist of it, I found out he's entitled to half and I am entitled to half if the road is, indeed closed.
And I offered at that hearing if he agreed to let me close the orad, the only thing I wanted to --the road

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creat es a problem because of the twenty-five foot setbacks -- I could have closed the road, built my house, wouldn't need a zoning variance, and one of the things he said --
MS. ZERWITZ: I am going to object to that.
THE CHAIRMAN: You can't say what somebody else says.
A. All right. I had proposed -- can I say the reason why Mr. Woodell was there?
THE CHAIRMAN: You can say whatever you want, unless somebodys object.
A. The reason Mr. Woodell didn't -- I don't know why Mr. Woodell didn't want it closed. He said something about people having access to the water, and I had proposed to put a path down there to let people get down to the water in the easement. And, you know, until this day, I will still do that. You know, I'm not the oger Mr. Woodell puts me out to be.
Q. When you decided to build your house on part of the Lot 33, all of Lot 32 and part of Lot 31, was there anything that would have prevented you from going a little

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further to the east and leaving 31 in its original size or larger?
A. The county said that's where I had to put the house. I am going by what I was told, and the building permit, and I wasn't going to sit there and argue with them. My house was sold. I had to have someplace to live, and Ijust was glad I got a building permit.
Q. As a developer --
A. Wait a minute. I wasn't a developer at that time. I had just got into real estate, and I'm still kind of -- I don't know if I am a developer or not.
Q. Did you ever make an effort to include Lot 31 as a part of the resubdivision before, or was it -- was it included in your resubdivision?
A. No, it wasn't. The resubdivision was done, everything from my side of the house -- like I explained to you on the phone, my house has been there twelve years, ten or twelve years.
The resubdivision took place three or four years after my house was built, so I couldn't move my house. We had to work around my house.

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Q. If I understand you correctly, you got eight lots out of fifteen, and the only thing that you were left with was part of one lot which has a drainage easement on it, is that correct?

A. No, that's not correct. I'm left with the biggest part of Lot 31. There's only like three or four feet that, because of the lot line adjustment, that changed it. And the drainage easement is in Tobasco Road. It's not on Lot 31. That's where a lot of these problems come up. There's been a lot of mis-information given out.

Q. I don't want to belabor this, but I don't know which photograph -- it was A, B, or C. I'm referring to Petitioners' Exhibit 2A, and I believe you said that was a no trespassing sign?

A. I believe that's where my no trespassing sign had been. They come up missing, moved.

Q. Are you saying that that is not an accurate placement? That it should be further to the --

A. No. It's actually -- I think, and you're asking my from last summer, I believe it's actually more into the easement, because every time I put it outside the easement

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or right on edge of the easement, my signs kept coming up missing.

See, that's another thing. Everybody thinks I am trying to build a house in an easement. I'm not. Hopefully, it will get clarified today and all the neighbors will find out what the real truth was. We wouldn't be having these problems if they found out what the real truth was.

Q. Your surveryor didn't stake to Tobasco Road, or anything of that sort?

A. He staked -- he put property corners in where the property corners are. There's yellow pins there where these caps.

Q. You said that you could build an addition to your house and make use of Lot 31, is that correct?

A. Yes. Actually, I could build an addition larger than the house I am proposing to do.

Q. So you haven't lost all the use of Lot 31? You're not making that claim?

A. Well, it's sure not letting me do what I want to do. What's the sense of me putting a big addition on a

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house that's already too big for me?

I just said that to give you an idea of what the county regulations kicked me into. And, you know, if you think about it, my house is going to be smaller than a lot of people's garages around there.

Q. Is there anything that would prevent -- is your house for sale?

A. It's not now, no, it's not.

Q. It was for sale?

A. Yes. I couldn't sell it because of all the problems from the neighbors.

My house -- I believe my house has been stigmatized because of all this. Would you want to buy a house with all your neighbors in an uproar against something like this?

Q. Was there anything to prevent you from selling the house with Lot 31? Don't you think it would be worth more?

A. I am proposing to -- that's my option, and that's what I have said all along. If I can sell -- my first option was to build a house next door to my home. My

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second was to build a house for myself.

Now, I don't know what I want to do. I'm not sure if we are going to move next door. I don't know. The way the neighborhood is, the animosity and grief my family has went through, the stress and everything that my family went through, I don't know if we want to live there anymore, to be quite honest.

Q. Do you have any plans available with you today that shows the drainage easement? You said the county had you sign something. In connection with that signature, do you have a plat or anything that shows where that easement is?

A. There's a recorded -- I think she has -- I believe there is in a recorded easement, at least I signed it. I don't know if it's recorded or not.

MR. WILLIAMS: If the Board will bear with me for just a moment, I think we can clear this up.

Would you care to offer this?

MS. ZERWITZ: Sure.

MR. WILLIAMS: Is this Protestants' No. 3?

MS. ZERWITZ: Petitioners' No. 3, which would be

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the road map.
MR. WILLIAMS: Let me take it up to Ms. Worrall. I don't see a label on it. It's dated 5-8. It was signed by Dave Thomas in Public Works, 5-8-91. I think it's a road plan cross-section.
THE CHAIRMAN: Folks, I am going to have to interrupt you for a moment. One of your Board members has already reached a conflict in her schedule and she has to make a phone call.
MR. WILLIAMS: I will not be long.
THE CHAIRMAN: I don't want to limit you. Off the record.
(Discussion held off the record.)
THE CHAIRMAN: That was Petitioners' No. 3. The Board will take two minutes.
(A recess was taken.)
THE CHAIRMAN: Thank you. We're back on the record.
Q. Mr. Long, this is Petitioners' Exhibit No. 3. It's a road plan prepared by BPS Land Technolgoy that you brought with you here today?

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A. Yes. I believe so. It's one of many. It went back and forth so many different times, different changes.
Q. I direct your attention to Lot 31 with the outfall. It indicates a fifteen foot drainage?
A. It changed to seven and a half.
Q. It's your belief --
A. It was changed, because Mr. Woodell would not sign the easement. That's what I'm saying. I don't think this is the final one. It's just one of many.
You can see the files I've got over there. I was looking to see if I had the final one.
Q. There's seven and a half feet or fifteen foot wide. Is there any doubt in your mind there's a drainage and utility easement there?
A. I signed one. Whether it's recorded or not, I'm not sure.
Q. Is there any doubt whether there's a --
A I'm not proposing to put the house in the easement.
Q. I understand that.
A. I don't have the final one. I'm sorry. I

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probably do in that mess, but it would probably take me until tomorrow to find it.
Q. Did you hear me ask your surveyor if you take seven and a half feet off of -- I've got so many plans here too, its confusing me, no matter which one we use.
While looking for the exhibit, your surveryor had a plan that indicated about forty-five feet and that included seven and a half feet of Tobasco Road.
Now, if you can't use that seven and a half feet, is there any doubt in your mind you only have thirty-six or thirty-eight feet available?
A. I don't understand your question.
Q. If you can't use your seven and a half feet half have of Tobasco Road, or if it turns out that's the seven and a half feet that you signed away as a utility easement, then you do not have that to use as a part of that frontage, and you have maybe thirty-eight feet left?
A. At the road?
Q. At the road.
A. At the road, okay. We had this conversation before. We are talking about in front of the house?

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Q. No doubt, thirty-eight feet at the road, but yet on your plan, its dimension is forty-three feet?
A. That's including the road, which I own. Half the road I own in fee simple. I had a title search done, and they said I owned it.
MR. WILLIAMS: If the Board will bear with me just one minute.
Q. In connection with the road closing, did the road closing document indicate that you did or did not own that seven and a half feet?
A. As far as I know, they just just said they refused to close it. I know my title search revealed that I own seven and a half feet of it and I can get titled for the seven and a half feet, because that's one of the questions I had, who actually owned the road, half the road bed.
See, I thought I owned the whole thing, but after I spoke with the attorney, I only owned half.
Q. Just one or two last questions. The variance that you filed with the Zoning Commissioner and in front of the Board here today, you did those through Mr. Lee?

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A. Correct.
Q. The surveyor that appeared just a few minutea ago, he did not do that, is that correct?
A. You mean --
Q. He did not do those plans?
A. No. I did those.
MR. WILLIAMS: I have no further questions..
THE CHAIRMAN: Counsel?
MS. ZERWITZ: Thank you. Real breifly.

REDIRECT EXAMINATION

BY MS. ZERWITZ:

Q. Mr. Long, how did you determine the forty-three foot width of Annadale Road end of your property?
A. Well, basically when I got involved with it, I took Mr. Lee's survey and started seeing where I could fit the house.
And then once I basically went for the road closing, it was denied, then I went -- I was told to go for critical area variance, which was approved, and for the road closing, and I should be able to build the house.
Q. No. You misunderstood my question. How did you

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determine the width at the top of your property, or the Annadale Road property to be forty-three feet?
A. I took it at the original where the property line is, but the county does have a road widening easement thereby kicking it back another five feet. That's the discrepancy. If you take from the original right-of-way to the new right-of-way, that's why there's a difference of forty-three and forty-five.
Q. Now, I'm confused, because you just said there's a discrepancy of five feet. Now, you're telling me --
A. It's only a discrepancy of two feet, forty-three to forty-five.
Q. How did you determine -- how do you know where the two feet difference came from?
A. Because of the way the lot is shaped, the further you go to the water, the lot gets wider. And I measured right at the whole property line which, you know, that's where I got my measurement from.
Q. Do you know where Mr. Phelp's measured from?
A. He measured from the easement where -- the beginning of the road widening easement. That's where the

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difference is. It's only two feet difference between the forty-three and forty-five. I'm not an engineer. I was doing the best I could with what I had.
MS. WORRALL: Mr. Long, when you were talking about forty-three or forty-five, does that include the east portion of the paper road that you indicated?
A. Yes, ma'am.
MS. WORRALL: It includes -- the forty-three of forty-five includes that seven and a half feet?
THE WITNESS: Right, because I was told from my attorney that I owned an in fee simple. But, you know,, the reason I did it that way, because that's the way when I went in in for the hearing, that's the way the guy told me to do.
From what I understand, the zoning variance is in front of the house, not the road frontage. You have to have fifty-five feet at the front. The closer you get to the water, you can get fifty-five feet, but it kicks you back closer to the water.
And I got one regulation says I keep it this way and wouldn't tell me to keep it their way, and I just

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wanted to build the house -- I prefer to keep it closer to the road.
MS. WORRALL: My confusion is this exhibit, the Long property survey that Mr. Phelps did, shows a number of 45.12, the interior line, and shows 7.67, which is half your road easement going from that point to the IPS, center line of the road. 45.12 and 7.67 is 52, almost 53 at that point, if you count your half of the road, but this 45 goes from that little thing right there over there, right?
THE WITNESS: Yes, ma'am.
MS. WORRALL: So it's from the two different IPSs?
THE WITNESS: It's wider here. And if I wanted to, I could build a house back in here next to the water and wouldn't need a zoning variance, because -- but because of the critical area, that creates a hardship.
MS. WORRALL: Thank you.
THE CHAIRMAN: Anything else?
MS. ZERWITZ: No further questions.
THE CHAIRMAN: Mr. Williams?

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MR. WILLIASM: No, sir. Thank you.
THE CHAIRMAN: Thank you, Mr. Long. Counsel, anything else?
MS. ZERWITZ: That would be Petitioner's case.
THE CHAIRMAN: Mr. Williams?
MR. WILLIAMS: We were looking at that plan, we thought we had some material on the road closing that might shed some light on it, but we'll go ahead with Mr. Woodell.

M E L V I N C. W O O D E L L, JR.,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION.

BY MR. WILLIAMS:.

Q. Sir, state your name and address for the record, please.
A. My name is Melvin Woodell -- W-o-o-d-e-l-l -- and I live at 705 South 49th Street, and I own the property next to Tobasco Road, which is 3825 Annadale Road.
Q. Mr. Woodell, when did you purchase the property

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on Annadale Road?
A. The property on Annadale Road, I have owned probably -- for probably fifteen, eighteen years, in that area.
Q. That is 3825 Annadale Road?
A. Yes.
Q. The subject property is 3825A, is that correct?
A. Yes.
Q. Is your property fairly described as a small cottage shown in Petitioners' 2A, the photograph?
A. Yes, that is.
Q. What use do you make of that property?
A. That's a rental property. We used it in the summer when we first bought it, and then we decided to rent it about two years after we owned it.
Q. Do you know where your property line is? I am talking about against Lot 31.
A. It's not against Lot 31. It's against Tobasco Road. Tobasco Road has been there as long as I have been there.
Q. In Photograph 2A, I see a little chain link fence

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and then I see some -- a clothesline folded up outside of that. Is that part of your side yard?
A. That is all part of the side yard.
Q. Have you personally ever removed or moved a no trespassing sign of Mr. Long's? Just tell the Board.
A. I did move the no trespassing signs after the hearing for Tobasco Road, because since the point in time that he's moved there, he's denied anybody in the community access to the water.
The no trespassing signs have been up to my property line. We had the hearing. The Board said that Tobasco Road stays open. That is public accessibility to the water for the community.
MS. ZERWITZ: Objection. We don't have any documentation from the zoning hearing. I would object to anything he says.
THE CHAIRMAN: Sustained as to the road closing, or as to moving the signs, also sustained. It's not relevant to the hearing.
Q. Have you tried to be a good neighbor?
A. I have bent over backwards to Mr. Long.

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Q. What are your concerns about the possible use of this lot for another house on Annadale Road? Just tell the Board, if you would.
A. Well, concerns are, from day one, everybody in the community has been denied --
MS. ZERWITZ: Objection.
THE CHAIRMAN: What's your objection?
MS. ZERWITZ: Making comments like everybody in the neighborhood has been denied. This man uses this property for rental property. Unless he's here speaking for everybody in the neighborhood --
THE CHAIRMAN: Point well taken.
Q. Sir, you can tell us about your particular individual concerns, because you're the person testifying, and that's certainly relevant.
A. My concern is that he's put up no trespassing signs and denied myself or anyone else --
MS. ZERWITZ: Objection to the "anyone else."
THE CHAIRMAN: Strike that. Had denied you.
A. To access to Tobasco Road, and he's built the entire area up. He's made money off his investment.

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MS. ZERWITZ: Objection.
THE CHAIRMAN: Sustained. We have no information whether or not he's made money or not, and it's really not relevant to the issue.
Your concerns about his obtaining a variance is what we need to hear.
A. What I'm getting at is from all the development in the area, the drainage at this point comes down from the other side of the road, crosses through the drainage of Tobasco Road, which has been redone, you know, since he's owned the property, he had to redo it, I guess, to build the house, I would assume.
MS. ZERWITZ: Objection.
THE CHAIRMAN: As to why, sustained.
THE WITNESS: He redid it.
THE CHAIRMAN: So you have identified the drainage problem crossing Tobasco Road.
A. It's increased the, you know, the amount of water flowing down through there and the amount of erosion already, you know. And he wants to stick a house on top of that, you know, and take away filtration before it

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goes, you know, down to the water.
Q. Mr. Woodell, what can you tell us about the drainage from the drainage outlet which is the outfall shown on 2A? Tell us what happens in a significant rainstorm, if anything?
A. In a significant rainstorm is when you have all the water coming from all the areas collected to that drains on down to Tobasco, you know, water naturally spreads out and it filters over, you know, the whole lower ends of the property probably from midway down, you know, and that all occurred after, you know, his drain had been reworked to accommodate all the new construction.
MS. ZERWITZ: Objection.
THE CHAIRMAN: Sustained as to why, but since the construction.
A. Right, since the construction.
Q. Mr. Woodell, do you recall an incident with the county where you recall being asked by the county or anyone to dedicate part of the drainage easement to Baltimore County?
A. No. I talked to someone from the county.

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Q. Don't tell them what he said.
A. I talked to someone from the county years back. I don't even remember how many years back it was.
Q. Do you recall Mr. Long or Mr. Parr or any other engineer or representative on their behalf asking you to sign an easement?
A. No. I was asked to sign something, but not an easement.
Q. Do you have any other concerns about if another house is built on this lot?
A. That's my biggest concern, is with the drainage and the distances.
Q. What do you mean "the distances"?
A. Between the property from the drainage area. The house is basically going to be sitting right on top of Tobasco Road from what I see in the drawings, and, you know, seven and a half feet, he's using seven and a half feet for setbacks, so that leaves him three feet from off of his actual property line, actually two and a half feet, so, you know, that house is going to be sitting right down on top of Tobasco Road.

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MS. ZERWITZ: Objection.
THE CHAIRMAN: I will overrule that objection. It's his view.
Q. Notwithstanding the no trespassing signs, is Tobasco Road used for residents for water access, for people to go across?
A. They try. They have tried.
MR. WILLIAMS: I have no further questions.
THE CHAIRMAN Counsel?

CROSS EXAMINATION

BY MS. ZERWITZ:
Q. Mr. Woodell, you use the property as rental property?
A. Yes.
Q. How long have you been using it as rental property?
A. I'd estimate maybe ten to twelve years. That's just an estimation.
Q. So you really only use it for a vacation home? You've never used it while Mr. Long was there, is that a fair statement?

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A. No.
Q. No, it's not a fair statement?
A. No, I haven't used it as far as the water, you know, a summer place.
Q. Do you have long-term tenants or summer rental?
A. It's rented yearly.
Q. Is that a major source of your income?
A. I wouldn't say it's a major source of my income, but it's a source of income.
Q. You make money off the property above and beyond covering the mortgage payment, is that a fair statement?
A. Nothing to speak of.
Q. But do you make some money on the property?
A. Uh-huh.
Q. Is it a fair statement that if there is more development in the area, you would lose money -- you feel you would lose money on your rental property?
A. I don't think I'd lose money on rental property.
Q. You indicated things that occurred during the rainstorm. You don't live there, so you have never seen that?

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A. Yes, I have. I am down there. I maintain that property.
Q. How often do you go down to the property?
A. Anytime there is a problem.
Q. You said you were asked to sign something. Do you recall what it was you were asked to sign?
A. At a point in time I was asked to sign my rights to Tobasco Road over to Mr. Long.
Q. Have you ever -- you were never asked to sign it over to the county?
A. No. Mr. Long came to my house.
Q. But I'm asking, you've never been asked by anyone in Baltimore County to sign the property over to them?
A. I spoke to somebody about -- from the county, and they already -- the road -- the road was already a public road. I don't own it, so what can I sign over? That's exactly, you know, the way it stands.
If you don't own something, you can't sign it over to somebody, sign it over to anybody, can you?
Q. Your lot is pretty much the standard width of the other lots in the neighborhood?

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A. Excuse me?
Q. Your lot size, is that standard with the other lot sizes in the neighborhood?
A. In the older neighborhood, not in the new neighborhood. In the old neighborhood the houses that abut the water, the houses that go up to the water.
Q. That's what you are calling the old neighborhood?
A. If you come down Matthai, it would be the house to the right of Matthai, if you make a right on Annadale
Q. On your other side, how close are you to your neighbor? Do you know?
A. On the right side of the house?
Q. Yes.
A. Probably from their property line, probably, I would guess, fifteen, eighteen feet.
Q. You don't know? You're guessing?
A. Right. I don't have that right in front of me.
Q. This drainage pipe, do you know how big it is?
A. Which one we are speaking of?
Q. The one that you're concerned about.
A. The ones that comes across under the road?

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Q. Yes.
A. I don't know factually, but it's probably twenty-four to thirty inches in diameter.
Q. Is your sole concern here today the drainage easements? Is that primarily what your concern is?
A. That's one of my concerns.
Q. So that if you were to receive assurance that the drainage easements would not be affected by the new house, would that alleviate your concerns?
A. No. I said that's one.
MS. ZERWITZ: I have no further questions.
THE CHAIRMAN: Redirect?

REDIRECT EXAMINATION

BY MR. WILLIAMS:
Q. You said that's one of your concerns. Are there others?
A. The other one of the other concerns is, you know, he's putting a house up against closer to my property which, in turn, if I ever sold the property, I think it would devalue my property.
MS. WILILAMS: I have no further questions.

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Thank you.
THE CHAIRMAN: Recross?
MS. ZERWITZ: No.
THE CHAIRMAN: Thank you, Mr. Woodell.
MR. WILLIAMS: We have one last witness.
J O S E P H E R N S T B E R G E ER,
having been called as a witness, was duly sworn and testified as follows:
DIRECT EXAMINATION
BY MR. WILLIAMS:
Q. Please state your name and address, for the record.
A. My name is Joseph Ernstberger -- E-r-n-s-t-b-e-r-g-e-r. I live at 3830 Annadale Road.
Q. Mr. Ernstberger, how long have you lived at 3830 Annadale Road?
A. It's been approximately eight years.
Q. Are you the first owner?
A. Yes, the original owner, yes. We built the house.
Q. You built the house?

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A. Yes, we built the house after purchasing the property from Mr. and Mrs. Long.
Q. Do you live on -- I think the testimony was -- would it be accurate to say you're on Lots 14 and 15?
A. Yes, that is correct.
Q. From your home, can you see Lot 31?
A. Yes.
Q. Is it a short distance, or can you give us an idea?
A. Well, it's basically just across the left of the road and a little bit to the right of Mr. Long's property, but it's clearly visible from my front porch.
Q. You had told me that you had some concerns about storm drainage. Would you tell the Board, please --
A. Yes, I would.
Q. -- what your situation is?
A. I have been there the longest. I was -- actually, after Mr. and Mrs. Long, I was the first homeowner to purchase the property.
We actually purchased the property before the road was built and was granted a building permit based on

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that road being put in by Mr. long.
As such time our property was completed, before the road was even started, one day I was paged from my wife when I was down this Virginia, because the bulldozer were there and had dug into our front yard.
So I came home for the road widening. Being new to this, I had no idea. I looked at documents. I basically -- I tried to stop the -- I understand the contour, the front lawn that was already landscaped was being cut back fifteen feet with a natural four foot drop being put in. I was explained by Mr. Long and his engineer that this is the way the road had to be widened.
THE CHAIRMAN: Which road?
THE WITNESS: This is Annadale Road, which was nonexistant. Like I said, I was highly upset. I was worried about drainage, to begin with, and worried about the looks of my property, which was brand new.
I was assured that, by Mr. Long, that he would do whatever necessary to get it back to it original landscaping.
MS. ZERWITZ: I am going to object. I'm not sure

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what the relevance is to Mr. Long's variance.
THE CHAIRMAN: Well, this is between the two of them.
A. The relevance to the variance is what happened with the road.
THE CHAIRMAN: Are you going to withdraw the question?
MR. WILLIAMS: I think he's answered most of the question.
THE CHAIRMAN: I am going to strike it for the record anyway.
Q. Photograph 2C, is this your home on the left center of the picture?
A. Yes, sir.
Q. Is this -- on the very left, that is the Shanholtz home?
A. Right.
Q. Tell us what your experience has been with regard to stormwater? Just tell the Board.
A. Whenever there's a rain, whether it be a light rain or even worst case condition, a harder rain, the

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water lays directly in front of your property.
The way the road was designed, as I was speaking, with the hill put in, the road actually slopes towards our property away from the water. So there is a constant laying of water in front of our property. If we were to go there today, there would be spots of one or two inches of laying water --
MS. ZERWITZ: I object to the entire line of questioning. I don't see the relevance to Mr. Long's variance.
THE CHAIRMAN: Unless counsel is going to give me --
MR. WILLIAMS: I think Mr. Ernsteberger --
THE CHAIRMAN: Again, Mr. Williams, the comments made to this point, again, are about the road. Counsel is objecting that the road is not relevant to his requested variance, and I am going to sustain the objection, unless you can give me a reason why not.
MR. WILLIAMS: I think it's relevant, Mr. Chairman, because we are talking about drainage, and that's the point I am coming to.

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THE CHAIRMAN: I'm going to let you go just a little further for you to make the nexus between his drainage problems and Annadale Road and the drainage problems for the outcropping of whatever it is, and I will hear from you again.
Q. Do you understand what the Chairman said?
A. It gets right to that. Should I say my concerns would be better --
THE CHAIRMAN: Just continue.
A. My concern is --
Q. What connection is there, if any, between the drainage we have been talking about most of the afternoon on Annadale Road and the water?
A. The concern is that the Shanholtz property to the left, my left, is the inlet to the water that goes through the pipe and underneath Annadale Road and down this easement. If that was to be blocked in any way, it would increase the water flow coming to my property.
Since I have a problem now, I am concerned with how the problem will increase. And if any modifications are made to hinder the water flow under the street away

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from my property towards the creek, as it was originally designed --
MS. ZERWITZ: I renew my objection.
THE CHAIRMAN: I will overrule your objection based on that explanation.
Q. What, if any, use do you make of Tobasco Road's fifteen foot easement?
A. I have no use at this time due to the fact that as soon as that, as someone stated, there is no trespassing signs and at the very edge of Tobasco Road which connects to the water, which will be the ultimate use, Mr. Long has contunally dumped his trash and clippings there to block access.
MS. ZERWITZ: Objection.
THE CHAIRMAN: I will sustain that.
Q. Do you wish abscess?
A. Yes.
Q. Do you have any other concerns about any devaluation of your property?
A. Besides the drainage is the biggest concern, my concern with, there again, the property lines, with how

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everything is, and how close things are going to be to one another.
When I found out this was going on, I did some simple checking of deeds, and all those deeds are registered at six feet. Six times four is 263 from the overage 300. That leaves thirty-seven.
So I don't know where any of these numbers are coming from. I am going strictly by deed. And what I'm concerned is, the house that will be built, based on the information and the actual setbacks, would be closer than, when all is said and done, in you have four properties at six feet -- I'm not saying I'm a mathematician, but I know that only leaves thirty-seven up Tobasco Road, so I don't know how any document produced can say there is a forty-five foot, forty-three --
MS. ZERWITZ: Objection.
THE CHAIRMAN: Sustain the objection. He's not an engineer.
THE WITNESS: I understand that. I am just saying I did this research on my own.
Q. Do you know of any houses in the neighborhood

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that sit on a thirty-seven foot lot?
A. To my knowledge, no.
Q. Is there anything else?
A. Actually --
Q. Excuse me?
A. When we purchased our property, we do own lots 15 and 14, the reason being because --
MS. ZERWITZ: Objection.
THE CHAIRMAN: Let him answer and we'll see if the answer is relevant.
A. We owned the two lots based upon the fact fifty-five foot wide is what we were told we needed to build on, so we had to buy two lots in order to build.
THE CHAIRMAN: Now I'll sustain the objection and strike it
Q. What did you pay for your two lots, sir?
MS. ZERWITZ: objection.
THE CHAIRMAN: I will sustain that. Either he got a good deal or a bad deal.
Q. So your concern centers on the drainage?
A. Yes.

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Q. On the concerns about the deed frontages and width, is that correct?
A. Correct.
Q. And overcrowding?
A. Yes.
MR. WILLIAMS: I have no further questions.
THE CHAIRMAN: Cross?
MS. ZERWITZ: Yes, sir. Thank you.

CROSS EXAMINATION

BY MS. ZERWITZ:

Q. Mr. Ernstberger, the problem you have with the rainwater --
A. Yes.
Q. -- you indicated it lays in the front of your house?
A. Yes, ma'am.
Q. Do you have like a ditch or basin in the front of your yard where water collects?
A. Basically when the road was put in for Mr. Long's Public Works agreement, they sloped my front yard, which was flat, to come down to a slope to the road.

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And at that point, the road, instead of continuing, it actually has an uphill. So I have a hill off my property and a light hill from the road. Therefore, the water collects at the lowest level.
Q. Have you ever talked to the county about that?
A. Yes.
Q. It's your neighbor's property that actually the inlet --
A. It's all the property to the left of myself on the road that slopes down towards my property, yes.
Q. It's your concern that would increase the drainage problem?
A. Absolutely
Q. But you don't have an engineer to tell you this is going to occur, is that correct?
A. That is correct.
Q. If you were assured this would not -- the house was not being built on the drainage ditch and it would have no effect, would that alleviate your concerns?
A. That would depend. Shall I stipulate?
Q. No. You also indicated you were concerned about

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how close the property would be?
A. Yes.
Q. Aren't most of the houses in the old part of the neighborhood relatively close?
A. The old houses, yes. The development before, not Mr. Long's development, the other development, which was, I don't know how long that's been there, but all Mr. Long's development is not close together.
Q. But the other side, they are all close together?
A. I would not -- I would say. To my best knowledge, yes, just looking at them.
Q. So you haven't made a complete study of all the houses in the neighborhood?
A. No.
Q. So you don't know how close all the properties are, or how big all the lots are, is that a fair statement?
A. Of all the properties?
Q. Yes.
A. I know of property of Mr. Long's development, but not the old neighborhood.

Q. So when you say you don't know of any houses built on thirty-seven foot lots, you don't know of any, but it's possible?

A. In Mr. Long's development?

Q. In any part of the development.

A. Mr. Long's development, no.

MS. ZERWITZ: I have no further questions, your Honor.

MR. WILLIAMS: I have no further questions.

THE CHAIRMAN: Thank you, sir.

MR. WILLIAMS: Mr. Chairman, members of the Board, that's the protestants' case.

I would like to -- I don't think it's as much an exhibit as it is a trial memo, it's my brief to the to the Board dated January 13, 1988. It was marked as, I think, Protestants' No. 1 for identification. And I know you have given us the opportunity to file a further trial memo, but it's just my argument --

THE CHAIRMAN: Let me suggest to you since it's your argument and your case, you really should get them both at the same time. Why don't you incorporate them

into the memoranudm you're going to do?

MR. WILLIAMS: Did the Board want any short closing statement?

THE CHAIRMAN No. Let me explain to you what goes on. In lieu of any closing statement, I will ask you folks, and Ms. West, you will communicate with, to prepare memorandum as to the law in each of these variance requests, the burden of proof in each of these variance requests, the testimony that you believe supports your particular positions and as to each variance request and the conclusions you wish this Board to come to.

There is also the Motion to Dismiss. I would appreciate some separate discussion of the Motion to Dismiss and whether or not that's appropriate. To the extent you want to direct yourself and point the Board to the subpoenas, to the extent that you want to address yourselves to the issues of the subpoena, we have already ruled. We are not going to re-rule on it, but if you want the record to reflect, just in case somebody takes it upstairs, to reflect what the argument were, we have no objection to it, although I want you to understand we are

not going to revisit the Motion to Quash.

MR. WILLIAMS: Maybe one or two senteces o the Motion to Dismiss?

THE CHAIRMAN: Whatever you want.

MR. WILLIAMS: Mr. Woodell was present at the Zoning Commissioner's hearing. He noted the appeal.

THE CHAIRMAN: We're not going to deal with it now. In all good fairness, I would then have to allow counsel, and I'd rather we get a well-thought out statement of where you stand on it.

In terms of time, Ms. West said she needed at least thirty days.

MS. ZERWITZ: She and I spoke perpahs the beginning of March?

THE CHARIMAN: Why don't you folks pick a date, confirm it with the administrative staff. She will also then endeavor to pick a date for the open deliberation which will take place,hopefully, within a couple weeks after the memors are submitted, and at that time we'll openly deliberate the matter and generate a written opinion as to what conclusions we reach.

All right. Thank you all very much.

(Hearing concluded.)

* * * * *

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

B. GREEN

VERSUS CASE NO.

ELLEN AND TUCKER, CHARTERED

/ DECEMBER 17, 1999

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE:

THE HONORABLE J. NORRIS BYRNES, JUDGE

APPEARANCES

ON BEHALF OF THE PLAINTIFF:

K. DONALD PROCTOR, ESQUIRE

ON BEHALF OF THE DEFENDANT:

ALVIN FREDERICK, ESQUIRE
MATTHEW HANC ESQUIRE

REPORTED BY:
Rita M. E. Taggart
Official Court Reporter
402 Bosley Avenue, Room M-08
Towson, Maryland 21204

PROCEEDINGS

THE COURT: Okay, this is 3-C 99 8553. B. Green versus Ellen and Tucker, et al. We are here on the Defendant's motion to dismiss.

I think it would be helpful if we found out about those things upon which we agree because as I see this the area of dispute is very narrow. I mean, it really is very narrow. Do you agree with that, Mr. Proctor? Here's what I think --

MR. PROCTOR: I guess what --

THE COURT: Let me tell what you I think it is --

MR. PROCTOR: Yes.

THE COURT: -- rather than have --

MR. PROCTOR: Me guess.

THE COURT: -- have such a broad, open ended question like that.

Counsel, put your names on the record.

MR. PROCTOR: Donald Proctor on behalf of the Plaintiff, B. Green and Company.

MR. FREDERICK: Alvin Frederick and Matthew Ranck on behalf of the Defendants, Ellen and Tucker and Edward Tucker.

THE COURT: As a factual predicate to this Ellen and Tucker entered into a contract with Super Fresh to do certain things. Identify those --

MR. PROCTOR: Farm Fresh, Your Honor.

THE COURT: Thank you. Farm Fresh. I keep saying Super Fresh.

MR. PROCTOR: Super Fresh would be bothered by that.

THE COURT: They would be upset by me saying that since they're still doing quite well, I gather.

There was a letter agreement dealing with an audit for 1995, the same thing for 1994, and the third issue was what I'll call a coupon audit, is that a fair way to put it, for 1995?

MR. PROCTOR: Yes.

THE COURT: Okay. Those are the three things that Farm Fresh engaged Ellen and Tucker to do.

MR. PROCTOR: There was one other that was dealing with Rich Food with regard to sales.

THE COURT: When I go through all this, I don't see anything in writing about that.

MR. PROCTOR: No, there is no written engagement I don't believe that we are aware of. I know that the Defendants have stated that there is none.

MR. FREDERICK: That would be an accurate statement, Your Honor, although, Your Honor, I'm not sure we agree with Mr. Proctor's characterization that that would be a fourth element. We believe that the Court's assessment of the two engagements, for the audit and the coupon audit, would be the engagement.

THE COURT: What's the complaint say about that?

MR. PROCTOR: The complaint alleges that Ellen and Tucker were engaged some time before July of 1995 to participate and/or represent Farm Fresh in negotiations with Rich Food, and it further alleges that there were direct communications between Mr. Tucker and Ellen and Tucker and representatives of Rich Food on behalf of Farm Fresh, including specific proposals made by Rich Food in July of 1995 and September of 1995. We actually attached copies of a portion of those proposals

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to our responsive memoranda. There are letters from Rich Food addressed to Mr. Tucker dated respectively July 21, and September 21, 1995.

THE COURT: Okay. I don't know that philosophically that makes any difference. It may but I don't think so. So now common ground is this, that Farm Fresh had contractual arrangements with Tucker in at least three agreed upon areas and -- lets say four. We will bring into this mix the potential sale of the stores, some of the stores from Farm Fresh to Rich Food, and we'll even agree for our purposes today, I think we have to do this, that part of the process of the sale of those stores was to pay back the two million -- is it a two million dollar loan?

MR. PROCTOR: Yes.

THE COURT: -- to B. Green.

MR. PROCTOR: No, it was a stock option agreement, Your Honor. It wasn't a repayment of the loan. Mr. Milliman had a stock option agreement.

THE COURT: To buy the stock?

MR. PROCTOR: To buy B. Green stock, yes.

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THE COURT: All right.

MR. PROCTOR: There were also loans but they were not involved here.

THE COURT: All right. We can further agree there was no contract between B. Green and Ellen and Tucker?

MR. PROCTOR: No written agreement signed by --

THE COURT: I'm not going to dance around. There was no contract. If there was a contract, you point it out to me. You know, push has come to shove here this morning. I don't know what I'm going to do but one thing I don't want, I don't want any dancing on pins. If there is a contract, you tell me where it is.

MR. PROCTOR: I cannot point to a, to an agreement between B. Green and Company, and Ellen and Tucker.

THE COURT: I'm saying for purposes here this morning there was none, okay, because as I read this, the thrust of your argument is that B. Green is a third party beneficiary of the contract between Farm Fresh and Ellen and Tucker.

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MR. PROCTOR: Yes. And that under a, what I believe is the same analyses, there is an intimate nexus between those parties.

THE COURT: We are going to get to that. I don't want to jump ahead.

MR. PROCTOR: Okay. Very well, Your Honor.

THE COURT: I understand that and that's why I said it was philosophically simple. Either there is this nexus or there is not, and, if there is, the case goes forward, at least maybe all of it, and if there is not, it doesn't go forward. That's why I said that.

Let the record reflect Mr. Proctor is now nodding his head affirmatively.

MR. PROCTOR: Get the crick out of my neck I thought.

THE COURT: All right. Now, for me for background, B. Green sued Farm Fresh in 1995, was it?

MR. PROCTOR: In July of 1995. I believe it was filed on the 11th.

THE COURT: What did that suit say?

MR. PROCTOR: That suit said that, that

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management at Farm Fresh, specifically Mr. Milliman -- Mr. Millman was the Defendant in that case as well -- had refused to convene a board meeting, had refused to open the books of Farm Fresh to B. Green, and had self dealt with Farm Fresh.

THE COURT: With coupons?

MR. PROCTOR: There were a number of specific allegations, one of which was he had a favorable lease. Another one was that he had a noncompetition agreement and, yes, there was an allegation about the coupons.

Specific allegations about the coupons were about what is called the nickel in the industry, which is the handling fee, and Mr. Millman's position was he was handling all of the coupons for Farm Fresh and he, therefore, through this separate entity of his was entitled to keep that nickel. The coupons themselves are redeemed for typically fifty percent, so that this was only focused on what I allude to as the --

THE COURT: What happened to that lawsuit?

MR. PROCTOR: It's still pending, and

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actually counsel point out --
THE COURT: Why aren't, why aren't Ellen and Tucker in that lawsuit?
MR. PROCTOR: Well, there are a number of reasons I suppose, Your Honor. First of all, insofar as Farm Fresh is a Defendant in that case, it was a bankruptcy filed and any proceedings against Farm Fresh were stayed. That I think is a partial answer to that. I was not involved in that case until relatively recently, long after all of these events took place. It was handled by other counsel until then. There were active proceedings in that case up until the time of Farm Fresh's bankruptcy which was filed I believe on the 17th of November of 1995. So the Farm Fresh bankruptcy, it's filing resulted in an automatic stay of at least any proceedings in that case as against Farm Fresh.
THE COURT: When was this suit filed? This suit was filed in '99?
MR. PROCTOR: Yes. It was filed in September.
THE COURT: What does this suit say that Mr. Tucker -- talking in terms of the

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things alleged now -- what does this suit say about Ellen and Tucker -- let me put it another way. Doesn't this suit say that Ellen and Tucker didn't discover or knew about and didn't say all the things that are alleged as wrongs in the Baltimore City case?
MR. PROCTOR: No. I don't think that is correct.
THE COURT: What's different?
MR. PROCTOR: First is the check kite scheme. There was no allegation or knowledge of that and, indeed, we specifically allege that B. Green had no knowledge of that until, until some time in November of 1995. On the other hand, we do allege that --
THE COURT: So in November of '95, they know about the alleged check kite?
MR. PROCTOR: Had strong suspicion.
THE COURT: Call it alleged.
MR. PROCTOR: Had strong suspicions and reported it to the financial institutions involved, yes.
THE COURT: And the city suit was not amended?
MR. PROCTOR: No. With regard to that,

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the bankruptcy ensued shortly thereafter. Mr. Millman was indicted in due course and there is a stay in that proceeding entered into -- actually passed by Judge Kaplan staying proceedings until such time as Mr. Millman's criminal proceedings were complete.
THE COURT: Are they finished?
MR. PROCTOR: He pleaded guilty to one count of mail fraud last week. He is to be sentenced in March is my understanding. The sons-in-law had previously pleaded guilty but had not been sentenced because I gather they were offering evidence with regard to their former father-in-law. I get that information third hand though, so that's my understanding.
In response to your question though, what do we allege that was not alleged in the Baltimore City suit --
THE COURT: Because if there is nothing now don't limitations run?
MR. PROCTOR: Well, on limitations insofar as this case is concerned, we entered into a tolling agreement.
THE COURT: That's right, you did.
MR. PROCTOR: Limitations I don't

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believe is an issue here. I don't really --
THE COURT: That's right.
MR. FREDERICK: What Mr. Proctor says is accurate but the argument with regard to the city suit, it all relates to proximate cause, that is, for example, on the check kiting Mr. Proctor just mentioned to the Court, it's alleged in the complaint as a matter of fact that the way that this check kiting came to light is B. Green discovered it by virtue of the discovery they were doing in the dispute in Baltimore City; and, secondly, there is no loss that directly and proximately resulted to B. Green as a result of the check kite and B. Green is the one that then turned around and told the banks and the banks subsequently investigated, told Mr. Singer, who is corporate counsel to Farm Fresh, who told Ellen and Tucker and thereafter -- I believe that was on a Friday and on the following Monday, after spending a weekend of auditing, Ellen and Tucker confirmed that was, in fact, a check kite, but all of that was discovered through discovery in the city suit and the point of the city suit from our perspective is that there

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really isn't a proximate cause nexus even if you assume there is a duty, which I don't think there is one, for any loss that is attributable to the Plaintiff in this case.

MR. PROCTOR: The allegations are considerably broader than what Mr. Frederick would concede here, Your Honor. We allege that the 1995 audit by Ellen and Tucker of Farm Fresh began in early August of 1995.

THE COURT: Let's not go down that path, okay, because for my purposes I don't think I have to right now --

MR. PROCTOR: Very well.

THE COURT: -- you know. I mean, why do I need to go down there just as a matter of curiousity in that other suit?

MR. PROCTOR: Well, I'm still harkening back to your original question, which is what do we allege here that we didn't know about then --

THE COURT: Okay.

MR. PROCTOR: -- and we didn't know about check kiting until November. We allege that Ellen and Tucker should have known about it. It was obvious. It was in their work

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papers. They should have known about it as early, as early as August and, indeed, that Ellen and Tucker --

THE COURT: I'm going to assume they should have, okay. I think I have to do that. Do you agree with that?

MR. FREDERICK: For purposes of this proceeding, I agree with that, Your Honor.

THE COURT: Okay. You will pardon me if I don't know quite as much about this as you two or three.

MR. PROCTOR: Understandable.

THE COURT: All right. As I was saying earlier, philosophically, the thrust of the lawsuit is that B. Green was a third party beneficiary of contract between Ellen and Tucker and Farm Fresh --

MR. PROCTOR: Yes.

THE COURT: -- right? Okay, that's what you say?

MR. PROCTOR: That's correct.

THE COURT: Okay. Now, the law in that regard, the issue is discussed in Jacques versus First National Bank and has evolved from it. I mean in Maryland. I recognize this is

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Judge Cardozo a long time ago but I'm just talking about Maryland for now.

In its simplest form Jacques said when the failure to exercise due care, which you have alleged Ellen and Tucker failed to do, and it creates a risk of economic loss, which is what we have, no bodily injury involved here, Courts have generally required an imminent nexus between parties as a condition to imposition of tort liability, and it is satisfied by privity or it's equivalent, whatever that means. That's what we have to discuss this morning.

Do you agree with that?

MR. PROCTOR: I agree with that, yes, sir.

THE COURT: Isn't that where we are? Have I over simplified it?

MR. FREDERICK: No, Your Honor, that's step one, but there is also step two in the proximate cause, but I concur with what the Court has said.

THE COURT: Well --

MR. FREDERICK: Assuming the Court would find such a nexus, which I don't think

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exists, then there is still the secondary argument is what I'm saying.

THE COURT: I really have focussed on the primary argument. I have not focused entirely on the causation. Okay. Now, when we go from -- the next question I guess one would want to ask one's self when you are looking for privity or its equivalent is whether the intent to benefit actually existed, not whether there could have been an intent. There has to be an intent to benefit. We agree with that?

MR. PROCTOR: Well, Your Honor, I would say --

THE COURT: You would be hard pressed to disagree with it by the way.

MR. PROCTOR: We would -- I would say there are two different analyses. One is sort of third party liability. If you look back, Ultramares versus Touche of course was an accountant liability case and is still viable today.

THE COURT: Right.

MR. PROCTOR: The Courts still cite it, rely on it. That's where the concepts began.

THE COURT: Right. And they live

today, and as it has evolved, if it has, for example, the Credit Alliance case, which is a New York decision, which similarly involved Ultramares, and Glanzer versus Shepard, talks in terms of did the accountants have reason to rely. For example, did the accountants have reason to know that the, quote, third party was relying --

THE COURT: Say that again.

MR. PROCTOR: Did the accountants have reason to know that the accountants were relying here --

THE COURT: Start again.

MR. PROCTOR: I mis -- I'm misspeaking. Pardon me. Did the accountants have reason to know that the third party -- in this case B. Green --

THE COURT: Right.

MR. PROCTOR: -- was relying, which is perhaps saying the same thing Your Honor has said but it's from a slightly different perspective.

THE COURT: Well, it's a little different because it would seem to me that to satisfy that prong, that Farm Fresh and Ellen

and Tucker, the agreements they reached though in 1994/95, that those agreements, if, either expressly or if not expressly, almost expressly have to indicate in some way there was an intent by those two parties to benefit the shareholders. I mean, that's how I read this law. If you say I'm mistaken, I'm certainly willing to listen.

MR. PROCTOR: I don't want to unduly complicate this because I think I can establish that.

THE COURT: Okay.

MR. PROCTOR: But without unduly complicating it, I do think that we have got this parallel analysis that goes on in the cases. There is the third party beneficiary analysis, then there is the intimate nexus analysis --

THE COURT: Wait a minute.

MR. PROCTOR: -- which --

THE COURT: Educate me. I don't see any -- I thought what we are talking about was third party beneficiary and, you know, it says -- and how you, how you prove that was the intimate nexus or the intent. They're not

parallel at all I don't think. Let me ask.

MR. PROCTOR: Well --

THE COURT: What do you say? You both can speak, by the way. It doesn't bother me when there is no jury.

MR. FREDERICK: Thank you, Your Honor. I would agree with the Court. I think the point that drifts home is set out in -- I may mispronounce this -- the Goerlich case, which is G-o-e-r-l-i-c-h, v. Courtney Industries.

THE COURT: Did you ever look to see who the lawyer was on that, Courtney Industries?

MR. FREDERICK: It's A. Sing for Goerlich and Mr. Jablon and Howard Goldberg --

THE COURT: No.

MR. FREDERICK: What's listed?

THE COURT: Courtney Industries.

MR. FREDERICK: Courtney Industries.

THE COURT: It was Gerson Milliman, God rest his soul, and yours truly.

MR. FREDERICK: That's right.

MR. HANC: Your Honor, there was some -- I believe there were some other proceedings and this Goerlich versus Courtney is the legal

mal case that followed the other ones.

THE COURT: Yeah, right. Yeah. We actually tried that for a couple of days. What a mess.

MR. FREDERICK: What the Court says in Goerlich is where the party or third party can allege and prove that the client intended him to be a third party beneficiary of the attorney's services and where his interests are identical to those of the client, a suit for legal malpractice may be maintained by that third party.

Now, obviously that is a legal mal case. We are here on an accounting mal case, but the principle I believe is identical and I think it is exactly what Your Honor just said.

First of all, the issue is third party, and if you can have this intimate nexus, that's how you prove it, and I think Goerlich, this iteration of Goerlich lays out the road map for how you prove it. I think it highlights where we are in this case, those words, and where his interests are identical to those of the client.

MR. PROCTOR: Again, without unduly

complicating it, I am, I am prepared to assume for purposes of argument that that is a matter of proof but I researched that --

THE COURT: I'm just looking at the law.

MR. PROCTOR: Well --

THE COURT: I was surprised when you called it parallel. I don't see any parallel about it at all.

MR. PROCTOR: The only legal malpractice case -- of course this isn't legal malpractice, this is accounting malpractice. I make the point in my brief that there may be a difference but the only case I'm aware of that is a legal malpractice case that talks about the intimate nexus and privity or it's equivalent is Noble versus Bruce which was decided just last year, in the middle of last year and talks about that. I think the Court is trying to harmonize those concepts.

THE COURT: Well, it says what I just said. I just read that from Noble. Actually think it's really quoted from Flaherty but -- yeah, it is but I have Noble in front of me.

MR. FREDERICK: See who the lawyer was

on that one?

MR. PROCTOR: I know who the lawyer was on that one.

THE COURT: Now, Flaherty, quoting Flaherty and Noble, it says, in other words, an incidental benefit to nonclient will not impose a duty upon an attorney.

MR. PROCTOR: Right.

THE COURT: Now --

MR. PROCTOR: Right.

THE COURT: -- there's not any question, assuming all you say is correct in your lawsuit, that had Ellen and Tucker done all the things you say they should have done that there would have been a direct benefit to the corporation and certainly it would flow from that that there would have been a benefit to the shareholders. I mean, nobody can argue with that I don't think.

Let the record reflect that Mr. --

MR. FREDERICK: I'm agreeing with the Court.

THE COURT: Can you all leave your things for a minute? Let me take care of the violation.

MR. PROCTOR: Certainly.

(Whereupon, the Court handled an unrelated matter).

THE COURT: Where was I?

MR. FREDERICK: We were debating the nuance of third party beneficiary and --

THE COURT: Right.

MR. FREDERICK: -- and the intimate nexus issue.

THE COURT: Let me ask you this. What Mr. Proctor says in essence is, look, you know, whatever, whatever Ellen and Tucker do for Farm Fresh, they're doing for the stockholders. How do you separate the corporation from the stockholders? What's your response to that?

MR. FREDERICK: Well, that's colossally different.

THE COURT: Colossally different?

MR. FREDERICK: Yes, because he says not only whatever they do for the stockholders is the same, but he also says that his client is a creditor and a guarantor and I'll give you an example --

THE COURT: Well, okay, but I'm not going to --

MR. FREDERICK: I'll give you an example on the stockholders, Your Honor.

THE COURT: That's one -- I mean one. I'm not going to buy all that other. No offense.

MR. FREDERICK: Says whatever they do for me they do for stockholders and the, and the fourth item he suggests to you or B. Green suggests to you is, well, they also had this engagement to counsel Farm Fresh with regard to the sale of stores to Rich Food.

THE COURT: Right.

MR. FREDERICK: And, you know, this question of --

THE COURT: It goes a little further. He says counselling them for sale of the stores and, if that worked, the profits or proceeds from that were going to --

MR. FREDERICK: Pay off.

THE COURT: -- benefit B. Green by buying out the stock.

MR. FREDERICK: And I'll just use that as an example. Let's suppose that the accountant says this is a great deal for the corporation, but suppose Millman says, the

fifty percent stockholder says, well, wait a minute, this is not a great deal for me because I lose my sweetheart lease on the Hamilton Road property, which is alleged in the city lawsuit, and he also knows that he's got the coupon handling fee. So that's one stockholder. We got B. Green on one side saying, wait a minute, this is a great thing for me because we will get rid of some of these stores and then you, Millman, can buy me out, but then we get to an entirely different set of circumstances because if you look at that option agreement, which is attached as Exhibit 5 to Mr. Proctor's, I am sorry, B. Green's reply memorandum in opposition, it's the stockholder's agreement that talks about this option, Your Honor, for the two million dollars.

THE COURT: Yes.

MR. FREDERICK: That's an agreement between Millman individually and B. Green, not Farm Fresh.

THE COURT: That's true.

MR. FREDERICK: So where does the accountant fit in all this? The accountant agrees to terms and conditions of employment

with Farm Fresh and it's management.

In this case it is alleged that B. Green, a substantial stockholder, 49 percent, says to the accountant and the lawyer, Singer, tell us what is going on, and the lawyer for management says to the accountant, don't you dare speak and the accountant goes --

THE COURT: I was going to bring that up.

MR. FREDERICK: And the accountant goes to, first of all, B. Green and says management has told me to keep my lips sealed.

Now, if the accountant is in there representing everybody, what does he do, but if the accountant has been engaged by management to act for management and the corporation, the accountant does just what the accountant did here, listens to the directives of counsel for the entity and does what the entity says because the interests of the stockholders and the entity are not identical in this instance. I suspect they're not identical in many instances.

One example might be, Your Honor, suppose there is a different basis that one

stockholder has in the stock from another, and if there were to be a sale, one stockholder would benefit greatly from a tax perspective but the other stockholder might not. Where is the accountant to go? which is exactly why the accountant --

THE COURT: Say that again.

MR. FREDERICK: Suppose one stockholder has a significantly different basis in the stock that is owned so that if there is a sale there is going to be a much greater gain recognized whereas the other one would have no gain or perhaps even a loss. There is a huge difference in the interests of the stockholders to go forward. Yet what we have here is we have a situation where the engagements are abundantly clear. Even the coupon engagement is clear. In the coupon engagement Ellen and Tucker agrees to undertake an examination and present it but wouldn't go forward unless the stockholders agree, and why? Because if you look, at or about that time there is a lawsuit pending between one stockholder and another.

That raises another problem, Your Honor, which goes in line with Mr. Singer who

is corporate counsel telling Ellen and Tucker don't say anything to B. Green and the chronology of, and the request for information comes either before or after or both the filing of the lawsuit. So we have a situation where Farm Fresh is being sued by a stockholder and in addition Millman, the other fifty percent stockholder, is being sued, yet the accountant is supposed to act for everybody?

The accountant has foreseen this problem because the accountant has a contract that very narrowly limits its responsibilities. I think if we apply Maryland law, and there isn't any specific case I can cite to the Court that is an accounting malpractice case, but certainly the legal malpractice cases where this doctrine has been developed are consistent with the position that we advocate. There is no duty that flows from the accountant to the stockholder because the interests in this case are not the same but the interests I suspect in virtually every case are not the same.

It's best highlighted with the fact if this deal goes through, B. Green is going to

get two million dollars to be bought out and somehow or other the accountant is supposed to make sure the deal is going to go through. But when you look at the lawsuit that B. Green filed in Baltimore City, it becomes abundantly clear that nothing happens in this corporation without the fifty percent stockholder, Mr. Millman, agreeing, and B. Green, the 49 percent stockholder, and they only have 50 because there's another family member, a guy named -- I think it's Gallant. Is that right?

MR. PROCTOR: Yes.

THE COURT: Who?

MR. FREDERICK: A gentleman named Lewis Gallant.

THE COURT: I wasn't sure whether he was on Millman's side or --

MR. FREDERICK: No, he --

MR. PROCTOR: -- B. Green's side.

MR. FREDERICK: He's a B. Green family member. So in fairness, Your Honor, what we really have is we have a fifty-fifty situation, but as a matter of law we know that neither of them can do anything without the other. So to suggest that the accountant in this situation

can cause advice to be given that would result in a sale being made that would result in stores being spun off is in large measure just ignoring reality and it's a reality that was recognized by B. Green because B. Green went so far as to file a lawsuit in Baltimore City in July of 1995 bringing up a lot of problems and, in fact, uses the discovery devices available to it in that lawsuit to learn a lot of things, all of which are set forth in the complaint in this case.

Now, we believe that if this Court is going to apply the law and if this Court is convinced, as we think it should be, that the law as developed in the legal malpractice cases would apply in other professional malpractice actions, then there is no duty that arose here and there are no interests as -- Goerlich says it best -- there are no interests that are identical to that of the client. The client is the entity, the engagements are to the entity, management, Farm Fresh.

THE COURT: One of you leaped to your feet there. Something he said caused you to leap forward.

MR. PROCTOR: I thought I generally understood. I did try to get some attention, yes, Your Honor. I think Mr. Frederick misconstrues what our allegations are, particularly with regard to this engagement, Your Honor.

We don't say that Ellen and Tucker should have given particular advice to steer that transaction our way. All we say is that they should have communicated. They owed us a duty to simply tell us what was going on. We couldn't get it through Millman. They are independent certified public accountants. They owed --

THE COURT: Wait a minute. Where is there any evidence, where is there any law that says that? In other words, they are hired by the corporation and the corporation says this is what we want you to do, and what they set out to do is all legal. You have no allegation in here that Ellen and Tucker committed fraud.

MR. PROCTOR: Yes, we do.

THE COURT: Where? I didn't see that.

MR. PROCTOR: There is a deceit count, Your Honor, and we allege that Mr. Tucker

became aware sometime before, between August --

THE COURT: I thought you didn't.

MR. PROCTOR: -- and October of '95 --

THE COURT: Right, count five.

MR. PROCTOR: -- of the check kiting, yes. He became specifically aware of it and did not disclose it. But our focus in terms of disclosure is -- first of all, we assert that they owed us a duty. That duty springs we believe from --

THE COURT: Suppose you only owned one share?

MR. PROCTOR: If we owned one share and there hadn't been communications between us and the accountants and a history of the accountants acting on behalf of the shareholders, I think this would be a different case.

THE COURT: What, if any, history is there of the accountants acting on behalf of shareholders?

MR. PROCTOR: Here, Your Honor, if you will take a look at the cover sheet of each of their reports which we have attached to our memorandum, we incorporate those allegations in

our complaint. You will see that each of the annual reports -- for lack of a better term, it's under tab one -- is addressed to the Board of Directors and Stockholders of Farm Fresh Supermarkets of Maryland. It's obvious who Ellen and Tucker knew they were working for. This is a close corporation. Very closely held.

Under those circumstances I would respectfully suggest the interests of stockholders are identical to the interests of the corporation, at least insofar as the scope of the duties of Ellen and Tucker to audit the books and records of the entity with reasonable care within the standards of their profession.

With regard to the coupon audit, contrary to Mr. Frederick's assertions, there is a specific reference in the coupon audit engagement with regard to Ellen and Tucker requiring that stockholders agree that certain procedures adequately meet their need.

THE COURT: That's because they were fighting.

MR. FREDERICK: (Indicating affirmatively.)

THE COURT: I don't think that is --

MR. PROCTOR: I think it was because he --

THE COURT: He didn't want to get sued. That's all that was about. Come on, let's not --

MR. PROCTOR: Well, the allegations are that this coupon audit engagement came about because B. Green asked that it take place and there was a specific meeting between B. Green and Ellen and Tucker that took place immediately before their engagement was entered into. So the intimate nexus is there. I respectfully suggest that --

THE COURT: I'm not impressed by that one. I mean, here's a lawsuit out there, he's sued the other part of the corporation, Tucker is going to make -- try to help him out. He's saying in essence, look, I don't want to get caught in the middle of this contest.

MR. PROCTOR: Well, by taking sides, that's exactly what he let himself do. Had he maintained his independence and simply discharged his duties with reasonable care and then communicated information that he knew that

B. Green was entitled to and should have had in order to make any informed decision --

THE COURT: B. Green couldn't have done anything about it anyway.

MR. PROCTOR: About what, Your Honor?

THE COURT: What could B. Green do? They didn't own enough stock to do anything.

MR. PROCTOR: We could have sought a receivership under the corporate dissolution statutes.

THE COURT: If you had the other fellow agreeing with you.

MR. PROCTOR: No. Even though forty-nine percent of the shareholders were --

THE COURT: Fifty percent shareholders -- no, I don't want to do that.

MR. PROCTOR: Let met put it this way, Your Honor, if Ellen and Tucker had done what we say they should have done and disclosed the check kiting operation -- uncovered the check kiting operation in August, had they uncovered the coupon fraud in August, and had that information been taken to a Court, I would respectfully suggest with certified public accountants for the corporation having said we

have disclosed this, I think that it is extremely likely that a receiver would have been appointed under those circumstances.

THE COURT: Probably.

MR. PROCTOR: Under those circumstances, any receiver would have joined in the negotiations with regard to Rich Food and they would have moved forward in some way or alternatively --

THE COURT: I think you go a bridge too far there. You don't know that.

MR. PROCTOR: Well --

THE COURT: Now, you have a corporation in receivership. Now Rich Food is going to change the deal.

MR. PROCTOR: Well, a receiver is going to do what is best for the corporate entity, that's for sure.

THE COURT: There's an assumption that selling these stores was best.

MR. PROCTOR: We set forth a number of alternatives that could have been utilized, Your Honor. B. Green itself had substantial cash resources that it could have invested. B. Green could have reduced the amount under this

option agreement. It could have taken a million dollars instead of two million dollars. There are all kinds of ways a given --

THE COURT: I don't want to get into that.

MR. PROCTOR: Well, very well. I mean, obviously we have got to establish the existence of duty before we can go forward in this case.

Now, the existence of the duty we believe springs from -- is proven by the intimate nexus that has been alleged in the complaint. There were communications between B. Green and Ellen and Tucker. Ellen and Tucker knew that B. Green wanted information that they had. Ellen and Tucker had historically reported to the stockholders of which B. Green is a forty-nine percent member.

THE COURT: But does that create some duty just because they did it?

MR. PROCTOR: Well --

THE COURT: This is not a medical malpractice case.

MR. PROCTOR: What gives rise to the

duty, Your Honor, is under the case law --

THE COURT: It seems to me the duty is either there or it is not. You say, well, once they start reporting to the shareholders now they have a duty to the shareholders.

MR. PROCTOR: Well, I think what the case law says and I believe Your Honor has said this, if there is an intimate nexus that exists between, in this instance Ellen and Tucker and B. Green, that itself gives rise to the duty.

THE COURT: No, no, I don't think it quite does that. There has to be the next step, the intent to benefit.

MR. PROCTOR: And --

THE COURT: A direct intent to benefit.

MR. PROCTOR: -- and we believe that we have alleged a direct intent to benefit.

THE COURT: I thought about that. You know, we are standing here between the motion to dismiss and the motion for judgment, Mr. Frederick, and the trouble -- one of the problems I have when I look at it from your perspective is that -- I mean, the complaint says all these things. When I look at the case law, they say, look, if they say it, don't

dismiss it. It may be summary judgment material.

MR. FREDERICK: We are here on summary judgment, Your Honor. We filed in the alternative.

THE COURT: I saw that.

MR. FREDERICK: And we gave you the contracts.

THE COURT: Yeah.

MR. FREDERICK: And Mr. Proctor --

THE COURT: What's your response to what Mr. Proctor says about the fact that when they did the audits they reported not only to the Board of Directors but also to the shareholders?

MR. FREDERICK: Indulge me for a moment, Your Honor.

THE COURT: Okay.

MR. FREDERICK: It is imperative I believe to note that in this case there is nothing that the Plaintiffs did or were induced to do based upon a representation by the accountant. By that I mean, Your Honor, the Plaintiffs do not allege that they received accounting information, namely, the audit

reports and, therefore, decided that they would invest money in Farm Fresh, that they would buy stock in Farm Fresh or --

THE COURT: This is part of your causation.

MR. FREDERICK: It is but it also answers the question that Your Honor posed to me. They received as Mr. Proctor identifies -- again I think important from a procedural aspect, amplifies that this is, in fact, a summary judgment argument -- they receive these independent auditor's reports. So what? The contract that set forth the obligations of Ellen and Tucker to Farm Fresh specifically says that only they're responsible to Farm Fresh and its management, not the stockholders.

Mr. Proctor points to the coupon engagement and I think the Court fairly and correctly reads it but it also says that we are going to -- it says in the second paragraph we are going to review the accounting control system for handling the coupons to obtain an understanding of the design. Then it says, at the conclusion of the review we will be

available to discuss the operation of this system so that the stockholders can decide whether they want us to perform additional procedures, and then it says, before we provide any additional services we will require the stockholders to agree that the requested procedures adequately meet their needs. It is dated August 14, '95. That's about a month after the two stockholders are in a battle in the Circuit Court for Baltimore City.

The Court also asked Mr. Proctor, well, you couldn't have done it anyway because of the fifty percent stockholder and Mr. Proctor I think fairly told the Court no. Under certain circumstances we could have asked for a receiver.

Well, Your Honor, those certain circumstances are exactly what predicated B. Green filing their existing lawsuit. They got this information that they claim -- there is no issue before the Court. They asked the accountant for information. The accountants couldn't give them anything, the accountants clammed up. What do they do? They go to Court. They can't be relying on anything the

accountants are saying. They are just saying if the accountants had told us we would have done this, this, this and this. But they're already in Court, they're already there. They have got the perfect vehicle, they got service, they got discovery.

What is it that they want? They got breach of fiduciary duty claims in this thing, they want damages, they want the Court to give them an injunction.

THE COURT: Did they ask for a receiver?

MR. FREDERICK: They did not. I believe they ask for such other and further, but they don't ask for a receiver. But the truth of the matter is they have the opportunity and ability to get everything they want. They got their own accountants. They are getting the information. They are the ones that blew the whistle on the check kiting and we all know as a matter of law it's easy business to file an amendment to this or to go into the administrative Judge in Baltimore City and say, Your Honor, we need emergency relief. Their whole claim is timing, timing, timing. And

with regard to their damages, and the problem is they have got the whole world in their hands. They don't have any obligation on the part of the accountants. There is no duty from the accountants, and beyond that they know the accountants aren't going to tell them anything. They have taken affirmative action to avoid that problem, yet they stand before the Court and say, well now that Farm Fresh is bankrupt, and Mr. Millman pled guilty and is going to go up the river in the Federal Court, now we are going to go after the accountants because they owed us a duty because they sent us a letter once that said here's the annual report.

THE COURT: Going after the accountants' money.

MR. FREDERICK: Of course. Except they didn't buy their stock based on the annual report. The audit report, they didn't invest money based on that. They didn't do anything based on that, which is why I believe the Court should conclude that there is no duty.

I don't understand how sending a report with the annual audit at the direction of

management to the stockholders again --

THE COURT: Creates a duty.

MR. FREDERICK: Yeah. I don't see how it does, particularly when there is nothing that arose out of that mailing that is alleged as being wrong in this case. I can allege the moon is made out of green cheese and for purposes of the motion you got to accept it until the other side shows up and says here's a picture of the moon and here's the content of the moon and it isn't green cheese. At that point game changes. That is where we are here, Your Honor.

THE COURT: What about his argument that there is deceit?

MR. FREDERICK: Let me speak to that, Your Honor, because that, I can tell you from Mr. Tucker's point of view, that is extremely troubling.

THE COURT: I would imagine.

MR. FREDERICK: Here's the claim of deceit. The claim of deceit is somehow or other between August and October Mr. Tucker who is a certified public accountant learns that there is check kiting but doesn't tell

anybody. Now, that is their claim for fraud.
As I understand a claim for fraud --
THE COURT: Did he tell people?
MR. FREDERICK: No, he didn't tell anybody. That's their claim, okay, he knew about it and he didn't disclose it. Now, let's assume as we have to for the purposes of this motion, although I can assure the Court if we go further we will vehemently oppose this, but for purposes of this motion I got to accept that as true.
THE COURT: Yeah, and the rules -- don't the rules change a little bit with the nexus in --
MR. FREDERICK: Oh, for fraud --
THE COURT: -- fraud?
MR. FREDERICK: -- it's a whole new ball game, clear and convincing and it's got to be --
THE COURT: That's their proof but --
MR. FREDERICK: But they also have to plead it with particularity because we still have Read Drug versus Caldwell. The more complex we get in the --
THE COURT: Read drug versus Caldwell.

MR. FREDERICK: You got to remember that one.
THE COURT: Oh, my Heavens.
MR. PROCTOR: So do I.
THE COURT: A blast from the past.
MR. FREDERICK: Well, three of us would identify with that.
THE COURT: Is that still good law?
MR. PROCTOR: That was when there were demurrers.
MR. FREDERICK: I believe it is.
THE COURT: Yes.
MR. FREDERICK: I missed the demurrer days. But in terms of the fraud, where is the reliance? What did they do or not do based on the alleged -- and we have to take for truth for purposes of this hearing, failure of Mr. Tucker to communicate there was a check kite. There's no allegation of any loss to the company, and there is no allegation that they relied on it and did something or didn't do something.
But what we do have, Your Honor, is we have the affirmative allegation that they kept asking for information from the corporation,

from the corporation's lawyer, and from the corporation's accountants and they didn't get it. I don't see how the fraud count and the punitive damage claim survives.
THE COURT: I don't think the punitives would survive.
MR. FREDERICK: I don't see how the fraud claim would survive. It can't be a negligent misrepresentation because there's no duty. Assume that they're right, Tucker knew and he didn't speak, what did they do in reliance on that? There is no allegation. All they have --
THE COURT: I think he says if they knew they would have done something.
MR. PROCTOR: That's precisely correct, Your Honor. That's what we say is failure to disclose. Fraud is the affirmative wrongful, misleading --
MR. FREDERICK: If you got a duty to speak, and if you know, but what is it they could have done? There is no loss that is alleged. When they find out they go to the bank. The bank cut off the credit. The bank stopped the checking accounts. The supplier,

Rich Food, stops accepting them. They close down. What would they have done any differently? What difference would it make assume the worst? There is no reliance on that. My colleague probably wishes to say something more.
THE COURT: What do you want to say, Mr. Ranck?
MR. FREDERICK: More enlightening than me.
MR. RANCK: The most basic problem that I see with the fraud count, Your Honor, is this is not a case where the accountants lied to them and covered it up. This is not a case --
THE COURT: He's not saying they did.
MR. RANCK: I know. It's not a case where they simply denied providing information when they should have.
THE COURT: That's what he says.
MR. RANCK: Well, not quite. This is a case in which the accountants are asked for information and the accountants respond, we are sorry, we can't give you any information. Under those circumstances there can be no reliance.

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THE COURT: Because of Singer.
MR. RANCK: And because of Singer. You can't sit back when you know they're not giving you something, put aside all the duty arguments in the negligence counts, and just focus on the fraud. Whatever the case is, it's not a case where you can sit back and know they're not giving you information and then after the fact say we relied on the information we knew you weren't going to give us. For that reason there is no reliance.
Very quickly on the duty. Your Honor mentioned before we broke and you said a couple of times the intent to benefit must have actually existed. The comment I wrote down before we broke coming from Your Honor was the agreements must expressly or almost expressly say there was an intent to benefit the third parties.
In this case Your Honor has the contracts, and not only do they not expressly or almost expressly intend to benefit, they do the opposite. They say it's for management use only and they say this contract outlines our duties and obligations, if you have questions

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then call us.
MR. PROCTOR: Your Honor, on the issue of the contract, we should be given an opportunity to prove through the relationship and communications between the parties exactly what the intent to benefit was.
THE COURT: How would you do that?
MR. PROCTOR: I beg your pardon?
THE COURT: How would you do that?
MR. PROCTOR: We would depose -- we would present evidence through B. Green witnesses. We would --
THE COURT: Give me a for instance.
MR. PROCTOR: Well, there were regular communications for years between B. Green and Ellen and Tucker. We submit to you that rather than, as Mr., as Mr. Frederick suggests, that the independent auditors' reports are sent to shareholders is not because of direction of management because that is evidence of the existance of the relationship.
THE COURT: I get those things from shares of stock I own. I mean, you think I could sue Microsoft?
MR. PROCTOR: If you were similarly

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situated to Microsoft as B. Green is situated to Farm Fresh.
THE COURT: What's the difference?
MR. PROCTOR: Ellen and Tucker here -- it goes back to the intimacy of the relationship, and we should be given the --
THE COURT: Let's talk about that for a minute. It really comes back to the fact that you own so many shares.
MR. PROCTOR: Well, even --
THE COURT: Because if I own one share of Farm Fresh, I would be getting the same information that B. Green got. You know, when Tucker wrote those letters and sent the information out, B. Green would have gotten it, I would have gotten it.
MR. PROCTOR: Well, but in our case and the case of B. Green, there is another reason for Ellen and Tucker to know that we are specifically relying upon them to provide us with information that should be relevant to our dealings.
THE COURT: You keep saying that Ellen and Tucker knew. Let's say for instance that B. Green was relying, I'm not sure what you

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mean by that.
MR. PROCTOR: Well, from the totality of the circumstances a person reasonably situated, a reasonable person in the shoes of Mr. Tucker and Ellen and Tucker certainly had to know that B. Green, if it had relevant information to B. Green, and had that information been conveyed to B. Green, that B. Green would act thereon. If there is a duty to convey that information, then --
THE COURT: He's saying there isn't one.
MR. PROCTOR: Well, I understand that.
THE COURT: And --
MR. PROCTOR: But --
THE COURT: -- what I want to find out, how do you intend to prove something like that? Do you think you can call an expert witness to say that Tucker had all these responsibilities.
MR. PROCTOR: On some of the issues, yes. On issues related to they should have discovered, set aside for the moment Tucker's knowledge but focus only on the negligence, on the issue of negligence that they should have

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THE COURT: No, I'm not going to do that because you are going to take me off the ball.
MR. PROCTOR: I don't want to do that.
THE COURT: It could very well be that they were negligent. That is not the issue here. That is not the issue. They could have been negligent but the issue here is whether the negligence -- whether your clients can act on that negligence. That is the issue.
MR. PROCTOR: That's --
THE COURT: That's much different than whether they were negligent.
MR. PROCTOR: That's the path I was headed down, Your Honor, because the accounting standards say that if accountants obtain knowledge of illegal or fraudulent activity, then they have an express duty and obligation to convey that to the level above management, which in this case is the shareholders which is our client. So there is a duty --
THE COURT: I know that but then come back --
MR. PROCTOR: -- that springs from that.

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THE COURT: But that's one tiny little area. You are talking about check kiting.
MR. PROCTOR: I am talking about check kiting.
THE COURT: That's one tiny little area and their answer to that is, hey, wait a minute, there was no, there was no reliance on it anyway, plus there was no harm that came to anybody because when they did find out about it they stopped it.
MR. PROCTOR: They stopped it, Your Honor. They stopped it in November and the company went down the, first of all, down the tubes --
THE COURT: They stopped.
MR. PROCTOR: -- at that point.
THE COURT: They stopped it when they found out about it. So I don't follow that one. Where is that going? I'm not going to sit around for three months for a case over there. That's not going to get you anywhere.
MR. PROCTOR: Well, the issue is what --
THE COURT: Back to the duty. Assume they were negligent -- let's take the check

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kiting out of it because that's a little different. It's different. Let's say that they were negligent in some form or fashion. We still come back once again to whether they had an obligation to tell B. Green --
MR. PROCTOR: That's --
THE COURT: -- because there's no contract between them.
MR. PROCTOR: -- that --
THE COURT: I'm trying to find out from you what this intimate nexus is. What I'm trying to find out from you if there is a nexus. We have to concede they are shareholders, for Lord's sake, but --
MR. PROCTOR: But they are shareholders in a very closely held corporation.
THE COURT: Right, right.
MR. PROCTOR: They are shareholders in a corporation in which they had over a period of years had regular and open communications between the accountants and B. Green as a shareholder, giving rise to B. Green's expectation. I would respectfully suggest that, that Ellen and Tucker would convey to them information that was relevant to their

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position as a shareholder.
THE COURT: See, I don't think -- you're making a leap of faith there, it seems to me, that they had some expectation. Well, you know, they can have all the -- they can have great expectations but that doesn't create -- let me say this to you. I don't think that what B. Green expected matters one bit. When we talk about this as a legal issue, it doesn't matter what they expected. You know, either, either -- isn't it true that either there was an intent to directly benefit or there wasn't, and all the rest of it is window dressing?
MR. PROCTOR: Well, but part of that I respectfully suggest is whether there was an intent to directly benefit, is whether Ellen and Tucker in this instance had, itself had reason to know --
THE COURT: I'm back to --
MR. PROCTOR: -- to know that B. Green would rely on their action or inaction. And the Credit Alliance case, which is a New York decision which springs off of these same concepts talks about that.
THE COURT: I don't think I read that

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one. What does Ultramares say?
MR. PROCTOR: It talks about the intimacy, at least when read with Shepard. Glanzer versus Shepard talks about the intimacy of the relationship. What Ultramares was concerned about was --
THE COURT: Now, I think, Mr. Proctor -- now if I'm mistaken, I'll stand corrected -- they don't talk about the intimacy. They talk about the intent to benefit. In other words, in Glanzer they said that because there was intent -- that was the bean case, right?
MR. PROCTOR: Yes, the scale.
THE COURT: Scale.
MR. PROCTOR: Scale.
THE COURT: -- and that there was an intent there to benefit the purchaser, that that was the whole point, that the purchaser got what he bargained for.
What did Ultramares -- what was the bottom line on that one?
MR. PROCTOR: The distinction, I would respectfully suggest, between Ultramares is the person who was providing the services knew -- in Glanzer the person providing the services,

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the scale service weighing --
THE COURT: Right.
MR. PROCTOR: -- knew that that specific person was relying on the accuracy of his scales. The difficulty --
THE COURT: Okay, Mr. Proctor, I don't know if it is me. Maybe we will take a little recess here for a minute because we are going around a little in circles. I say that what the case says was that the arrangements between the owner of the scale and the scale fixer was to directly benefit the purchaser of the beans. That is what I thought Glanzer said.
MR. PROCTOR: I think maybe I'm saying the same thing --
THE COURT: I don't think you are.
MR. PROCTOR: -- in a different way.
THE COURT: I'm not sure you are, so let's --
MR. PROCTOR: Well, maybe one way to look is -- the way the cases have been construed, if you look at, if you look at Weisman versus Connors, which is a Maryland case which has construed it, and if you look at --

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THE COURT: I don't know Weisman either. What's Weisman?
MR. PROCTOR: It's Weisman versus Connors.
THE COURT: What kind of case?
MR. FREDERICK: Weisman is the one where the -- Weisman owns this Toyota dealership and lures Connors who was vice president of Ford Motor Company away from Ford.
THE COURT: Oh, oh, yeah.
MR. FREDERICK: But I think, Your Honor --
THE COURT: What's that have to do with this?
MR. FREDERICK: -- the easiest and the most direct --
MR. PROCTOR: I haven't finished.
THE COURT: Go ahead.
MR. FREDERICK: I think the easiest and the most direct way to deal with this is if the Court has Mr. Proctor's memorandum before it --
THE COURT: I do.
MR. FREDERICK: -- on page ten is the quote that Mr. Proctor recites.
THE COURT: Wait a minute, let me get

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there.
MR. FREDERICK: It's at the top of page ten, Your Honor. There's a quote that Mr. Proctor recites from the Credit Alliance Corporation case that he started out on, and he emphasizes that the accountants kind of know that the client is going to rely on him. It isn't in bold print in the quote but I would respectfully ask the Court to take a look at number two --
THE COURT: Yes, I see it.
MR. FREDERICK: -- in the furtherance of which a known party or parties was intended to rely, which takes us right back to where the Court was and I think amplifies the Court's earlier comment that we are not dealing with a parallel track on this intimate nexus stuff.
We need an intention on the part of the party retaining the professional to benefit some other party and that has to be clear and intended and that is what we are missing in this case.
THE COURT: What about Mr. Proctor's argument that, look, you know, maybe he doesn't say this but I say maybe it was Microsoft --

it's, you know, my pittance -- I'm not relying on anything their accountants do, when you are closely held that the rules change?

MR. FREDERICK: I think this case is a perfect example of why that is not the case because here you have two big time stockholders who are at war with one another in a lawsuit and we have corporate counsel saying to the accountant, you work for the company, here's your engagement letter, keep your mouth shut, and the accountant does what management tells it to do because that is where its contract is.

I don't think the contract law changes whether you are dealing with a nationally traded multi national corporation or a ma and pa operation, with two or three stockholders in a closely held corporation.

THE COURT: So the argument that it's between Microsoft's accountant and Microsoft, the relationship as a shareholder I would have with the accountant is really in the final analysis no different than the relationship B. Green had with Ellen and Tucker?

MR. FREDERICK: That would be our

argument, yes.

MR. PROCTOR: We of course take strong exception to that.

THE COURT: Let me get back to you. Actually I'm going to take a little break.

(Whereupon the Court recessed, following which the proceedings in this matter resumed:)

THE COURT: Well, I'm back. I don't know how refreshed I am.

MR. PROCTOR: I have I think clarified at least where I was coming from on --

THE COURT: Okay.

MR. PROCTOR: -- on Ultramares and Glanzer, Your Honor. The Court of Appeals in Weisman versus Connors, our Court of Appeals in Weisman versus Connors spoke of those cases and in those terms I believe and at pages 8 and 9 of our memorandum we quote somewhat extensively from Weisman where the Court characterizes what its interpretation of those cases is at least, which I suppose is even more relevant than what the cases said since that's now Maryland law.

THE COURT: It says the precontractual discussions between Weisman and Connors more

closely resembles the intimacy of the Glanzer parties than the remoteness of the Ultramares relationship.

MR. PROCTOR: Correct. And earlier the Court said, they say that --

THE COURT: There's foreseeability there, too.

MR. FREDERICK: There is --

MR. PROCTOR: Correct.

MR. FREDERICK: -- no written contract in this case, which takes it out of exactly where we are.

THE COURT: Yes, that's true.

MR. PROCTOR: Just because there is a written contract doesn't mean that can't be amplified and expanded on.

THE COURT: Here's another -- let me ask you this, see, because part of what I do is I sit here and stare out, is think in terms of how you are going to prove some of these things.

MR. PROCTOR: Yes.

THE COURT: So one of the things I gather you are going to want is parole evidence?

MR. PROCTOR: Yes, I'm going to want to depose the -- I'm going to want to depose the people at Ellen and Tucker. We have had the benefit of some of their records but we have never deposed them. We will. I'm going to want to depose Mr. Millman and which he'll be subject to once he's been sentenced and his sons-in-law as well as other employees of Farm Fresh.

THE COURT: You know, suppose Millman says, well, the whole idea was to benefit the stockholders?

MR. PROCTOR: He and B. Green.

THE COURT: Suppose he says that? Is that admissible evidence? I would tell you in my judgment right now it's not admissible. Certainly he can say he was in the deposition but when you come into Court and you say wasn't it the intent of -- when you contracted with Ellen and Tucker, wasn't one of the things you intended to do was to make sure that this all benefited the stockholders? I'll say that, by way of exaggeration, objection sustained.

MR. PROCTOR: Well, I can establish it by facts that relate to circumstances after

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that agreement was entered into, or by course of conduct that existed between the parties over, you know, a period of years. I think those things become admissible, and can be used to cast light on what the intent of Ellen and Tucker was in performing accounting services, not just audit services but accounting services for Farm Fresh. Their intent -- I try to -- I have avoided the analogy to lawyers in this matter, Your Honor, because I really do think --

THE COURT: It's not going to do you any good.

MR. PROCTOR: Excuse me?

THE COURT: It doesn't do you any good.

MR. PROCTOR: Well, I'm not so sure of that. If we put ourselves in the position we can relate to this perhaps as lawyers.

THE COURT: I'm not -- you meant lawyers -- some third party suing a lawyer?

MR. PROCTOR: Well, and I'm going to try and, I'm going to try and draw an analogy in that regard. If you have, if you have a lawyer instead of accountants who are represent, who are representing a close

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corporation, they all deal with each other on regular basis.

THE COURT: That would be -- they couldn't do that, okay. There is a lawyer --

MR. PROCTOR: If they do, and then something comes up such as management saying I don't want you talking to Joe anymore, stop it, and talk to me, I don't think a lawyer can just do that. The lawyer says no, that is what the independence is of a professional. The lawyer says no, I do have to talk to everybody.

THE COURT: Well, wait a minute, any lawyer that gets himself in that is looking for trouble.

MR. PROCTOR: Well, so is the accountant who gets himself in that looking for trouble. That's what happened to Ed Tucker and Ellen and Tucker. They took sides here. They took sides.

THE COURT: Oh, no, wait.

MR. PROCTOR: Refused to give us information.

THE COURT: See, I think you argue against yourself. They absolutely took sides because that's what they were paid to do.

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That's part of his argument. They took sides and that is the right thing to do. The wrong thing to do is what you just said, that you become all involved with everybody. That's the wrong thing to do as you have just pointed out.

MR. PROCTOR: All I'm looking for is information, Your Honor.

THE COURT: Can't have it.

MR. PROCTOR: I'm not looking for advice. I'm looking for discharge of their services in a full and fair --

THE COURT: All this information you want is information. You can't sue over that. We are wasting our time.

MR. PROCTOR: Well, I think we can sue over information if it is somebody who owes us a duty such as in a fiduciary relationship.

THE COURT: There's no fiduciary relationship between you and Ellen and Tucker.

MR. PROCTOR: Certainly there can be duties that arise in negligence --

THE COURT: Don't we always come back to that?

MR. PROCTOR: -- to convey information.

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THE COURT: We are back always to that little simple question, that is, is there a duty.

MR. PROCTOR: Of course.

THE COURT: And the only way there can be a duty is back to that little sentence that says -- may I read it again? Where is it? "In this regard, the test for third party recovery is whether the intent to benefit actually existed, not whether there could have been a, could have been an intent to benefit the third party, in other words, an incidental benefit to a nonclient will not impose the duty. "

And reading from the Noble opinion, in that case an attorney, they were quoting Flaherty --

MR. PROCTOR: And what Flaherty said again I suggest is that it only need be alleged. Now, I don't want to be cute about that but I think we can establish it by proof.

THE COURT: It does say that they must allege and prove a duty. That's what it says.

MR. PROCTOR: Proof comes at trial. The allegation is where we are, and granted they have moved for summary judgment, but there

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has been not one iota of discovery in this case and we haven't had -- we ought to have an opportunity to have it, I respectfully suggest. But we have alleged, we have alleged not only that the fact of the intent to benefit us but we have, again respectfully suggest, alleged facts to --

THE COURT: That's his motion.

MR. PROCTOR: -- substantiate that.

THE COURT: Takes you beyond the motion to dismiss. He concedes I would never grant a motion to dismiss here. If I do anything, it would be a summary judgment, except maybe with punitive, with regard to punitive damages. You are not serious about that I hope.

MR. PROCTOR: I think I am at least in the instance of the deceit claim. If Mr. Tucker knew, and we allege it and believe we can prove it, that he knew of the check kiting operation and did not disclose it --

THE COURT: I thought he did know about it and he stopped it.

MR. PROCTOR: No, no, Your Honor.

THE COURT: Who was the one reported it to the bank?

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MR. PROCTOR: My client.

THE COURT: How did they find out?

MR. PROCTOR: They got some records in early November in this Baltimore City proceeding.

THE COURT: Who prepared the records?

MR. PROCTOR: They were records that were produced by Farm Fresh.

THE COURT: In the case?

MR. PROCTOR: In the case, combined with records that came out of the two respective banks and you put them down side by side and your eyebrows go up. Our allegation is that Mr. Tucker knew about this as early as August. Sometime between August and October --

THE COURT: So.

MR. PROCTOR: -- he knew about it.

THE COURT: So what happened?

MR. PROCTOR: So what happened?

THE COURT: Yes.

MR. PROCTOR: Well, when it was ultimately discovered --

THE COURT: What are the elements of deceit?

MR. PROCTOR: Well, in this case it's a

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failure to disclose information known to the Defendant --

THE COURT: Right.

MR. PROCTOR: -- which the Defendant knows would have been relied upon and acted upon by the Plaintiff had it been disclosed. Reasonable reliance and damage. I think I covered all the elements.

MR. PROCTOR: The reliance factor when you are dealing with a failure to disclose, the reliance factor in a deceit claim has to be in the form of would they have acted had they been given that information. We have alleged that.

THE COURT: Okay. Yeah.

MR. FREDERICK: Your Honor, it is a material misstatement of fact made for purposes of causing someone to do or not do something that the person reasonably relies on it and they suffer a loss.

In this instance, they are told and they know when they file a lawsuit in July of, in July of '95, the accountant is going to tell them nothing because they have been directed by the management not to tell them anything, and the claim is that they would have done

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something.

Well, we know what they did when they found out. They told the bank. The bank cut off the accounts and all suppliers cut off everything and the company stopped. So is their claim that the company would have stopped three months earlier? It takes them back to where they are at the beginning. There isn't any reliance.

I think if you can focus this case, and the sentence Your Honor related at the start, again a few minutes ago, talks about other than an incidental benefit. I really think the best that B. Green is in this case is that incidental beneficiary. Yeah, they got these audit reports; yeah, there was some passing between the accountant and B. Green here and there and everywhere over the years, but are they an intended third party beneficiary? I submit to the Court as a matter of law they are not.

We have a contract that distinguishes this case from many of the others cited. We have my brother telling this Court, well, at least let me do discovery, and it is true in

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many of the cases that we rely on there is tons of discovery. If you look at the discovery that the Court's use in rendering their decision, the discovery is, oh, we didn't intend for them to benefit. We already have that in this case. We have that because we have the agreements and we have the lawsuit with the allegations.

I would submit to the Court that this isn't a close question but assume for the sake of argument it were, I would ask the Court to consider coming down in favor of the dismissal on behalf of these parties because if they are going to challenge the legal determination, they are going to do it ultimately. It's going to be the same argument regardless.

THE COURT: I can't dismiss it.

MR. FREDERICK: I think actually you can.

THE COURT: He's alleged -- he says I have alleged that there is this duty.

MR. FREDERICK: You can't dismiss it. You would have to enter summary judgment.

THE COURT: Okay. That's what I'm saying.

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MR. FREDERICK: We would urge you to enter summary judgment. If the parties are going to test that legal theory, let them test it now without encountering just scads of costs and expense.

THE COURT: There's something to be said for that.

MR. FREDERICK: Taking a heck of a lot of time. I think it's ultimately the legal issue that is going to be before the Court.

THE COURT: Yes.

MR. FREDERICK: It's before the Court now and I don't think there is a heck of a lot of fact dispute about it.

THE COURT: There aren't.

MR. FREDERICK: Take everything he says as true, we say so what, there is a contract. They're incidental beneficiaries as a matter of law and got this other lawsuit. They lose.

THE COURT: He says that you can't grant summary judgment yet, or ever actually, because I'm going to go out and take depositions and prove that this contract was more than it appears to be; that I'm going to go prove that they really did intend to benefit

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the shareholders. How he's going to do that I can't, I can't imagine --

MR. FREDERICK: One of the problems I have --

THE COURT: -- because I have problems when there -- well, I guess --

MR. FREDERICK: Your Honor, if the Court looks at the allegation that B. Green made in the Baltimore City case, it's clear there is no intent to benefit. They say these guys are stonewalling us, they won't give us any information. Mr. Proctor tells the Court we wanted information. There is no issue about that. If --

THE COURT: There's no issue, there's a duty, they had to give it to them, just that they wouldn't give it to them.

MR. FREDERICK: They weren't going to give it to them. There is no issue that Farm Fresh is intending to benefit B. Green with the services of the accountants. It's alleged in this lawsuit that the accountants at the direction of Mr. Singer, corporate counsel, stonewalled B. Green and wouldn't give them anything. And in the lawsuit they filed in

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Baltimore City the allegations are there and the inferences that can be reasonably drawn from that even in the light most favorable to the Plaintiff make it clear that there is no intention to benefit.

And if there was some discovery that truly was necessary in order for this Court to fairly resolve this motion, why do we not see an allegation of it and a request for continuance as the rule suggests? We don't because in this case it's unique. All of the information the Court needs to make a determination is before this Court and the issue is is B. Green an intended third party beneficiary of this nexus between Ellen and Tucker and Farm Fresh. If so, we get to the next question of proximate damages. If not, the case is over as a matter of law. We would respectfully urge the Court to conclude that this case should be dismissed and summary judgment entered.

THE COURT: What depositions do you say you need for this purpose?

MR. PROCTOR: Depositions of representatives of Ellen and Tucker.

Depositions of the Millman side, the Farm Fresh side I should say because beyond Millman and his sons-in-law there are employees of Farm Fresh, former employees of the Farm Fresh who could cast light on this subject and these engagement letters were signed by somebody other than them as a matter of fact.

THE COURT: See, I'm -- there's part of me that thinks that I should let you do some limited discovery on this issue, but not a lot. Yes.

MR. FREDERICK: But where is he going? He's going to depose Ellen and Tucker. They can't tell you what this intent was of --

THE COURT: The interesting thing is it really -- now, it comes down to parole evidence. So what he's going to try to do is prove -- he can't ask them what their intent was. He can ask them in deposition. Whether he could use it as evidence is another thing.

MR. FREDERICK: Your Honor, I'm --

THE COURT: But Mr. Proctor suggests to me that there is a course of conduct out there that would, that could lead the trier of fact to believe that B. Green was an intended

beneficiary of the contract between Farm Fresh and Ellen and Tucker. That is what he represents to me here.

MR. FREDERICK: Your Honor, what his clients said in the lawsuit and is generally estopped from retreating from is Plaintiff has repeatedly requested a meeting of Farm Fresh's stockholders and Board of Directors.

In advance of those requested meetings, Plaintiff has also requested access to certain financial information and other corporate documents. The Defendant Millman refuses to convene a meeting of Farm Fresh's Board of Directors or stockholders. Millman also refuses to provide Plaintiff with access to the corporate information and documents to which it is entitled under Maryland law.

Plaintiff files this suit seeking injunctive relief requiring the corporation to -- and it goes on.

THE COURT: I think that is the way it ought to be. That's the way life is between shareholders and corporate -- and directors but what I'm faced with -- you know, what I don't want, I don't want this case -- if it doesn't

go forward, I don't want anybody down the Court of Special Appeals, have them say to me, oh, well, look, before you did whatever it is you did, you should have done X, you know, then we come back here. That is what -- frankly, is what I'm thinking about.

MR. FREDERICK: I appreciate that, Your Honor, but the problem I have is with this lawsuit and these allegations --

THE COURT: But that's not part of the case.

MR. FREDERICK: Absolutely, it is. We have appended it.

THE COURT: Well, I know but --

MR. FREDERICK: It absolutely has to be, Your Honor.

MR. PROCTOR: That case didn't involve Ellen and Tucker, Your Honor. That case --

THE COURT: No, no, but it involves Millman.

MR. FREDERICK: It's Millman and Farm Fresh --

MR. PROCTOR: Yes, sir.

MR. FREDERICK: -- being sued by B. Green and it involves --

THE COURT: And it involves you or your client.

MR. PROCTOR: My client.

MR. FREDERICK: They're alleging that Millman --

THE COURT: He's --

MR. FREDERICK: -- and Farm Fresh have this intention to absolutely give B. Green nothing, which is totally consistent with where we are. They're not intended to benefit.

THE COURT: I understand, I understand, what he suggests is that B. Green says in that lawsuit that the responsibility lay with the corporation and it's directors, a proposition with which Ellen and Tucker agree; that he, that he now comes before a different Court and says, well, wait a minute, the responsibility was also with Ellen and Tucker. He can't do that because he's already said where it was. Is that right?

MR. PROCTOR: I think that's what they're suggesting but I don't agree that is necessarily what it says.

THE COURT: Mr. Proctor, here's the -- see, I keep thinking about how you are going to

go about this, how you are going to prove that they were a direct beneficiary, and --

MR. PROCTOR: Well, I hasten to add and also had an intimate nexus and relationship.

THE COURT: Listen, you are a smart man but I think you are missing the law on this one.

MR. PROCTOR: Well, --

THE COURT: I could be wrong but I thought --

MR. PROCTOR: Well --

THE COURT: -- if there is privity, if you have privity, then you can sue, then you have to prove this relationship. As I understand the law -- Mr. Rank, you can tell me if I'm wrong -- one of the ways you prove that is you were an intended beneficiary of the --

MR. PROCTOR: Well --

THE COURT: -- of the contracts?

MR. PROCTOR: You may be right, Your Honor. I think it can be read that if you have privity, or its equivalent, then you have the obligation. So --

THE COURT: Then you have to define equivalent. How do you get to equivalent?

MR. PROCTOR: The cases don't give us a whole lot of help in that regard.

THE COURT: I thought the way I stated it was the way you do that. Am I mistaken?

MR. PROCTOR: I don't think it's to -- Well, I would suggest that it is not to the exclusion of third party beneficiary relationships because the cases simply talk about a close intimate nexus and relationship, one in which the actor, the Defendant, has reason to believe that there is reliance and knows who the party is, knows they are relying on their actions and the like.

MR. RANC: Your Honor --

THE COURT: How do you get past what I have read twice?

MR. RANC: Your Honor, the only exception to the privity rule in Maryland in a professional liability case is specifically intended third party beneficiary rule. If you look at Weisman versus Connors, number one, that's not a professional liability case but, number two, there arc face to face, extensive face to face pre contract negotiations. No one can argue that Mr. Connors wasn't specifically

intended to benefit from what Mr. Weisman was telling him. It fits within the same rule.

The problem here is their own allegations in the case are that Farm Fresh did not intend to benefit B. Green. And that is evidenced in the allegations wherein they allege that Farm Fresh told the accountants not to give B. Green information. How can you go and try to prove an intent to benefit when one party to the contract says to the forming party don't give them the, don't give them the benefit of this bargain, do not do it. Don't give them the benefit, and the performing party complies. How can there in the face of that allegation, and that's in this case, I would suggest it's also in the city case, but that's in this case too -- how can they in the face of that allegation turn around and try to prove, well, Farm Fresh may have instructed them not to give us the benefit of the bargain but we were specifically intended to benefit.

THE COURT: What is your response to that?

MR. PROCTOR: Again, talking about there's been a long standing course of conduct,

there were direct communications between B. Green and Ellen and Tucker here which we allege. If there was a duty that existed, I'm hard put to understand how they can just all of a sudden say, oh, poof, it went away. In the first place --

THE COURT: Well, they don't agree that it ever existed.

MR. PROCTOR: Yeah, but I think if we can establish that it existed, then how do they just make it go away by saying, oh, well. I mean, every year in corporations all over the world, small, large or otherwise, accountants send information out to shareholders. I mean they just do.

THE COURT: You own ten shares of X, Y, Z corporation. Once a year here comes this audit, whatever, financial statement --

MR. PROCTOR: Uh-huh.

THE COURT: -- and the bigger the company the fancier the portfolio you get with all this glossy paper and things. Not that I have any. So there is communication between the accountants and the shareholders.

MR. PROCTOR: Actually that

communication isn't from the accountants. It comes from the corporation, Your Honor.

THE COURT: No, but it is information prepared -- look --

MR. PROCTOR: Well, that's a distinction that Ultramares made. That's just the distinction Ultramares made, that what I have just said, and the distinction we have is there was direct communication between Ellen and Tucker and our client. It wasn't a matter of information being provided to the corporation and then the corporation disseminating that.

THE COURT: Let's say that Tucker talked directly with B. Green and gave them information --

MR. PROCTOR: Over a --

THE COURT: -- over a three or four -- they weren't together that long.

MR. PROCTOR: -- period of time.

THE COURT: Then so whenever B. Green called up and said, you know, what's the bottom line, they say the bottom line is X. What's our debt? The debt is X. How are sales? The sales are fine, the sales are bad. Any time he

calls they answered the question. Let's assume all that. Then they get into this contest and Singer says, look, no more communication. We will deal with our shareholders. You are not going to deal with them. Whatever information B. Green is to get, we are going to decide what it is, which of course apparently in this case was none.

MR. PROCTOR: Exactly.

THE COURT: You think you could get up in front of a jury and say to them, look, you know, any time they called up they gave them that information. Any time they called up they gave them information. They mailed them things. They called them up on their own and volunteered that store number 22 was doing great. Ladies and gentlemen of the jury, when they did that, that created a duty. You can do that?

MR. PROCTOR: If that establishes the requisite intimate nexus, yes, I do. I do think so.

THE COURT: Who is going to decide that? The jury?

MR. PROCTOR: Obviously there will

probably be a preliminary decision by the Court as to whether there is sufficient evidence, more than that iota which to permit that, but I'm not sure that -- it seems to me, Your Honor -- obviously your perspective on this is somewhat different but assuming we can establish that, I again come back to the notion that Ellen and Tucker can't just make that go away --

THE COURT: Why not?

MR. PROCTOR: -- by saying -- because the duty is there, and if it exists, I don't think by listening to Mr. Singer they can make that duty go away if they have an obligation to shareholders.

THE COURT: If you concede the duty is not there in the contract when the contract was entered into, the letter agreement, there is nothing in there that creates a duty between Ellen and Tucker and B. Green.

MR. PROCTOR: Well, the contract talks about management, is what it does.

THE COURT: Okay. Management under some circumstances can constitute stockholders and the Board of Directors. We know without

any shadow of a doubt that that was not the case here, so let's not even start that way. One of your clients says that it was not that, because if it had been that, you wouldn't have needed the suit in the city.

MR. PROCTOR: Let me come back --

THE COURT: Show this thing was run by Millman lock, stock and barrel.

MR. PROCTOR: Let me come back to the point though that I made earlier this morning or began to make earlier this morning. It's this: Accountants, if they discover things out of the ordinary, for lack of a better term, such as the coupon issue, such as the check kiting issues, they then have an obligation to advise and convey that information to the level above, quote, management --

THE COURT: You told me that.

MR. PROCTOR: -- which would, which would be Mr. Green here and/or B. Green.

THE COURT: That's one of their professional responsibilities.

MR. PROCTOR: Yes. We can produce an expert. That gets into the area of expert testimony. We can produce expert testimony in

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that regard.
MR. FREDERICK: Your Honor, that speaks to the issue of breach of duty. It doesn't speak to the issue of the duty and it also doesn't deal with -- I mean, on the fraud allegation, we deal with the reliance as --
THE COURT: What I gather he is saying is that not withstanding the contractual relationship between Farm Fresh and Ellen and Tucker, Tucker discovers that the corporation is doing something illegal; that their obligation now is not to report it to the people who are doing the illegal activity but Mr. Proctor says that the law is, or their responsibility is to report it to a higher authority.
MR. FREDERICK: And I say accept that for purposes of this argument --
THE COURT: I don't know who the higher authority is in this case, by the way.
MR. FREDERICK: I think arguably it would be the other stockholder. I think that is a fair decision.
THE COURT: All right.
MR. FREDERICK: But I still say it

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makes no difference in this case because it really relates to count five, which is the deceit count, and there is no reliance, and it wouldn't have mattered in any event because there are no damages.
I don't think that in and of itself opens the door to the duty because what they are really saying in all of the other allegations is all these other things that you should have told us that you wouldn't tell us because, and they allege, because we wanted to you tell us. We asked the company, they wouldn't tell us. We asked the lawyer, he wouldn't tell us, and you tell us the lawyer told you not to tell us as well.
Your Honor raised the issue of their never having participated in management, and in paragraph 15 of their suit in the city they say on information and belief Millman and/or persons appointed by Millman have continued to manage, operate and make all executive decisions for Farm Fresh to the present date. Green has never actively participated in the management of Farm Fresh. So there is no issue. As a matter of fact, it's taken as

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proven for the purposes of this hearing that management is Millman.
The contract says the accountants are hired to serve management. The accountants serve management. They, in fact, tell the stockholder management tells us we can't tell you this.
The only argument he presents the Court is, okay, the check kite. I say the only issue on the check kite is they can't show any damages on it. They can't show any reliance on it because they file this suit saying we don't know anything anyway. They file the suit in July. They claim that Tucker knew about this in August. But that's the narrow argument they make and it doesn't get them to duty. It deals with breach of an alleged duty where you find some fraud. I don't believe that the fraud count stands on its own because of the pleading requirement. I think that is susceptible to a motion to dismiss. It certainly doesn't get them intended third party beneficiary status to the agreement between Ellen and Tucker and Farm Fresh. That's really what we have been talking about. I don't know what discovery they can

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do.
THE COURT: It's almost as if Mr. Proctor says in that regard that this is a brand new duty, not an old one, but one that springs to life as a result of, as a result of what they learned.
MR. FREDERICK: Go ahead.
MR. RANCK: Your Honor, one distinction has to be made, however. Mr. Proctor references the professional responsibilities and, as Mr. Frederick said, that speaks to the issue of breach.
When they learned that Millman is involved in something, what is their duty? Their duty is to report it to the next level. Well, the question is not that, is the duty. The question is to whom is that duty owed? That is still a duty owed to corporate entity if the next level Mr. Green was the director.
THE COURT: The fact he happens to be the reportee doesn't create a duty.
MR. RANCK: That's correct, Your Honor. I mean, it's still in his corporate capacity that the duty would be owed, and any claim for not doing that would be one by the

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corporation, not by B. Green, the shareholder.
THE COURT: Okay. What's your response to that one?
MR. PROCTOR: Again, my response is we are dealing with a close corporation. Mr. Green sits on the Board of Directors because he represents the interests of B. Green. B. Green is a shareholder holding forty-nine percent with a related entity holding one percent of the entity. The purpose of this rule is one of the standards of auditing that both parties have been talking about here, is to protect those interests.
THE COURT: But Mr. Ranck says to me Ellen and Tucker discover the kiting or they discover the coupon mishandling, and they discover that it is the corporation doing it in the form of Millman. He's the one doing it. Okay. So now Ellen and Tucker have a duty to go to a higher authority, as you put it.
MR. PROCTOR: Right.
THE COURT: We can all agree the higher authority in this case would be B. Green. Okay.
MR. PROCTOR: Yes.

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THE COURT: So its reported to B. Green. His argument is it's not reported to B. Green because Ellen and Tucker have a duty to B. Green. It's reported to B. Green because Ellen and Tucker have a duty to Farm Fresh and it so happens that B. Green is the higher authority. Doesn't create any duty. They just happen to be the person to whom Ellen and Tucker must report.
MR. PROCTOR: I think that is an awfully thin line to draw. The fact --
THE COURT: I don't agree. See, I don't agree.
MR. PROCTOR: The fact is --
THE COURT: See, I think you are trying to create a duty out of whole cloth because, trying to, because of the fact that B. Green owns forty-nine percent, they say this ought to be a real easy case, but because it's a close corporation and B. Green owns so much stock, the waters are muddied but really the rules don't change.
MR. PROCTOR: I don't think we ever thought it was a, quote, real easy case but --
THE COURT: I'm saying that's their

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position. They say you --
MR. PROCTOR: But --
THE COURT: -- they say that you are taking the muddy waters to create duties --
MR. PROCTOR: Well, the case law --
THE COURT: -- that don't exist.
MR. PROCTOR: At least we are dealing with intimacy of the nexus.
THE COURT: Let me think about it.
MR. PROCTOR: We are dealing with their contract and a course of duty and all those other things which -- a course of dealing is what I meant to say, and we think some discovery will cast light on this and support the allegations that are contained in the complaint.
THE COURT: Suppose I let you take a few depositions? Who would you take?
MR. PROCTOR: Already heard him.
THE COURT: Did he mutter?
MR. PROCTOR: He sort of.
MR. FREDERICK: Just a gasp, Your Honor. Just a gasp.
MR. PROCTOR: I would want to take Tucker.

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THE COURT: That wouldn't be hard to do.
MR. PROCTOR: I would want to take Street Bowman who was the second man at Ellen and Tucker in charge of this account.
I would want to take representatives of Farm Fresh. I don't think Millman would be terribly cooperative at least until he's sentenced, which isn't going to happen until March I'm told.
THE COURT: What you would ask him wouldn't have much to do with --
MR. PROCTOR: Well, he could -- I think he could testify as to the course of dealing as well.
THE COURT: Who is his lawyer?
MR. PROCTOR: It's somebody at Kramon and Graham.
MR. FREDERICK: Andy Graham.
THE COURT: Andy. I'm sure they have nol prossed all the other counts. They do that at the time of the guilty plea.
MR. PROCTOR: Yes.
THE COURT: Anything else against him?
MR. PROCTOR: I have seen --

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THE COURT: They probably reserve the damages --
MR. PROCTOR: -- for the record but --
THE COURT: -- or restitution.
MR. PROCTOR: -- but there are other -- there are -- there were other -- there were financial people at Farm Fresh.
THE COURT: I'm trying to find out who you would have that would shed light. Look, you know, to me this, as I said at the beginning of this, this is in my mind philosophically simple. It's a very narrow issue. It has to do with the duty. You are telling me -- see, I say -- I'm telling you right now I don't think the contract that is involved here constitutes -- when one reads that, that from it flows a duty from Ellen and Tucker to B. Green.
MR. PROCTOR: Uh-huh.
THE COURT: Okay. I don't believe that. So you're saying to me, okay, you don't agree with that but, okay, that's the where the Judge is now; Judge, there is more to it.
MR. PROCTOR: I want to create the totality to be able to bring before you the

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totality of the circumstances.
THE COURT: I'm trying to find out from you who could shed light on the corroboration of a duty that may have sprung to life after the written contract, not to alter its terms because that would -- it's pretty clear to me. I won't need parole evidence to tell me what that contract says.
What I'm suggesting is who would you want to say that the contract terms by conduct expanded beyond the writing to the ex -- to the point where a duty came to life between Tucker and B. Green?
MR. PROCTOR: Well, you know, let me point out one thing.
THE COURT: Because I think you and I have a philosophical difference about what the law is.
MR. PROCTOR: You know what, though, one thing that is particularly relevant -- I don't know why this didn't occur to me earlier.
THE COURT: Well, it's occurred to you now.
MR. PROCTOR: It's just occurred to me -- I'm refreshed -- if you take a look at the

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date of the contract for the 1995 year --
THE COURT: Wait a minute now. November 9th.
MR. PROCTOR: Well, no, it's the one that is dated September 29th.
THE COURT: What exhibit is that?
MR. PROCTOR: Well, this is theirs. Attached to their --
MR. FREDERICK: It's number 1 to --
MR. PROCTOR: -- memorandum. It's Exhibit 1.
THE COURT: Wait a minute. You are talking about --
MR. PROCTOR: It's their Defendant's Exhibit 1 attached to their memorandum, their memorandum and motion, dated September 29, 1995.
THE CLERK: Show him.
MR. PROCTOR: It's the audit engagement letter. The significant thing about it is while it's written by Ellen and Tucker on September 29th, 1995, it wasn't signed by Mr. Carter on behalf of the Farm Fresh until November 13th, 19995. None of this happened until after all the events that I'm complaining

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about.
MR. FREDERICK: I didn't hear the last thing you said.
MR. PROCTOR: I said none of it happened until after the event that I'm complaining about. You know, there was -- the relationship between the parties up virtually until the bankruptcy was filed weren't governed by this document that they say is so clear.
MR. FREDERICK: Your Honor, this is pretty easy. The first sentence to the letter says, this is to confirm our understanding and agreement, which demonstrates that even as late as November that is the understanding, and even more poignant, the preceding engagement letter is dated August 15, 1994, signed November 4, 1994. What we are talking about?
THE COURT: It says the same thing.
MR. FREDERICK: Exactly. Exactly. It's confirmation. The problem I have with this notion of the discovery, Your Honor, is this, the -- I've been sitting here trying to think what on earth is it that is going to be gained by this discovery other than I've got a client who is extremely upset by this, Mr.

Tucker, who is going to be subjected to I presume significant hours of deposition because the documents that relate to this and we have shared them with Mr. Proctor. The Court knows there's a cordial relationship between myself and Mr. Proctor.

THE COURT: Yes.

MR. FREDERICK: We have shared the documents but there are ten or twelve banker boxes of documents, work papers and the like.

THE COURT: If I did, I wouldn't let him go into all that just yet.

MR. FREDERICK: Your Honor, Mr. Proctor talks about and keeps pounding about this intimate nexus. I say for purposes of this motion assume everything they say is so, they would ask him for information, they would give it, they would ask him for information, they would get it, then take this with their allegations that at a time they set forth in their complaint the company turned off the information spicket, the company decided no information --

THE COURT: Yeah, I got it.

MR. FREDERICK: -- Springer --

THE COURT: I understand.

MR. FREDERICK: -- and at that point what is it they're going to learn? And it is not Ellin and Tucker's intent, it's the intent of Farm Fresh, and we have got this engagement letter that is executed in November of 1995 that confirms their understanding for the entire period.

I mean, if anything, I think the argument that Mr. Proctor just made to Your Honor amplifies the position taken by Ellin and Tucker. I know the Court's hesitancy but I also think that weighed in this discovery issue is they didn't come to you, Your Honor, when this motion was filed and say, we can't fairly defend a motion without some discovery. This is something that is referenced in one of Mr. Proctor's papers but he doesn't say please don't decide the motion in accord with rule, let me have discovery. It is said now when I think it's pretty clear where --

THE COURT: I'm just trying to figure out what could be --

MR. FREDERICK: -- there's no course of conduct.

THE COURT: See, I already believe that just because --

MR. FREDERICK: Your Honor, if I can, and I apologize for interrupting, but it's a thought that I think is important. That letter, the '95 letter that is signed in November of '95, what we know is in November of '95, everything had hit the crapper and it was all gone, and what we know with the signing of that letter by Farm Fresh in November of '95 is there had been no conduct that altered the intention of the parties because they confirmed and affirm the retention intended to benefit management by executing that document in November of 1995. That is what we know and that's what's before the Court.

THE COURT: You could argue they wanted to keep them in the fold.

MR. PROCTOR: Want to get the fees paid is what it was, Your Honor. Mr. Tucker wanted to get his fees paid, wanted that agreement confirmed because he knows they were headed down the tubes.

THE COURT: Well, so what?

MR. RANCK: But, Your Honor, if you

look at the prior --

THE COURT: I think he's talking about the guy from Farm Fresh signed it.

MR. FREDERICK: Exactly.

THE COURT: Not that Tucker sent it.

MR. RANCK: Mr. Proctor's argument is he would like discovery to see if there is a course of conduct which altered or changed maybe the contractual obligations, but if you look at the two letters, the two engagement letters together, we have a period spanning from August of '94 when the first one is sent by Ellin and Tucker to Farm Fresh that is signed in November, and then we have, we have from September '95 to November '95. So from August of '94 until November '95, the parties intention is reflected in the documents, because they are confirming their prior understanding, and if there was some change to that, it would be in the documents.

So not only do we have the September engagement letter but now we have up until the time everything does hit the crapper the confirmation that there's no specific intent to benefit anyone else.

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MR. PROCTOR: Now, Mr. Frederick complains that I didn't request earlier for discovery. Well, when they requested special assignment of this case, Your Honor, they wrote to Judge Turnbull and said -- one of the reasons they gave was that the claims raised in this case concern complicated and technical issues pertaining to accounting practice and standards. There is little doubt that this case is going to be extraordinarily complex and that discovery will be quite extensive.

THE COURT: Well, that's --

MR. PROCTOR: That was October 11th.

THE COURT: -- how you get --

MR. FREDERICK: On the issue of breach of duty we are going -- if we get that far, we are going to need to have an expert.

THE COURT: I mean, he's right, unless it ends now it's going to go on until I retire.

MR. PROCTOR: God forbid.

THE COURT: Now, you are telling me Tucker and Street Baldwin -- there is a grand old Baltimore County name.

MR. PROCTOR: Yes, Street Baldwin.

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That's a Harford County name through and through of course.

THE COURT: That's true. There is a Street Maryland, Baldwin.

MR. PROCTOR: Yes.

MR. RANCK: There is also a Jim Street who was at one time with Farm Fresh.

THE COURT: His grandfather or great grandfather was a big politico in Baltimore County.

MR. PROCTOR: Let me get my head back on straight here, Your Honor.

THE COURT: We were talking about who you wanted to depose. Now, you argue to me -- let me make sure we are on the same wavelength because I believe that the agreements as they stand don't convey benefit to B. Green, and, I mean, I'm willing to let you go down to the Court of Special Appeals on that, but, as I said earlier, I don't want them to say, oh, Judge, I think you should have let them take some discovery.

MR. PROCTOR: I want to take some discovery, is what I want to do.

THE COURT: I know. So it goes down there and comes back, then it goes back down again.

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MR. PROCTOR: Right.

THE COURT: I only want it to go there once. If I'm wrong, they can send it back and we will try the case, at least some of it.

MR. PROCTOR: As I said --

THE COURT: Now, so anyway, as I understand it, you're trying to prove, because I'm telling you I don't believe when it all started there was any duty, okay, I'm telling you that right now, when I look at this, so you're going to try to prove that over time because of the conduct of the parties, a duty arose and I'm asking you how you intend to do that.

MR. PROCTOR: And --

THE COURT: You are going to take --

MR. PROCTOR: -- over a period --

THE COURT: -- depositions, you are not going to get anywhere. You are going to take Street Baldwin's deposition, you are not going to get anywhere.

MR. PROCTOR: I'm going to take the deposition of representatives of Farm Fresh.

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THE COURT: Who for instance?

MR. PROCTOR: Well --

THE COURT: Has to be somebody in authority.

MR. PROCTOR: Yes.

THE COURT: I don't want the produce man, first of all.

MR. PROCTOR: Probably have trouble finding him now.

THE COURT: Whatever happened to these stores?

MR. PROCTOR: They were purchased by Rich Food in bankruptcy at bargain basement price because the company had been trashed by that point. We never had the opportunity to salvage the situation.

THE COURT: Now, you are using this suit as an opportunity to do that --

MR. PROCTOR: If they owed us a duty --

THE COURT: -- he said with a grin.

MR. PROCTOR: -- and they blew it, they ought to pay for it. That's the bottom line.

THE COURT: You would take Millman's deposition. Going to get nowhere with him of course. Who else?

MR. PROCTOR: Well, William Carter who I believe is one of his sons-in-law. He's the signatory --

THE COURT: He signed those agreements?

MR. PROCTOR: -- of these agreements, yes. That's correct. And there is a -- was -- there were a couple of -- well, as actually Mr. Ranck pointed out, one of the agreements was signed by Jim Street who was controller at that time of Farm Fresh.

THE COURT: Okay. Now, let me ask this, because I'm still thinking about it, what is it that you will ask them? In a light most favorable to you what would an answer to your questions be from one of the above that would say to you, Judge, see, until --

MR. PROCTOR: I guess -- can I --

THE COURT: Give me a great answer.

MR. PROCTOR: -- outline my own favorite testimony? Well, you know, beginning, Ellin and Tucker says this relationship began in 1990. Yeah, we had those agreements but we regularly communicated with the shareholders. We knew they relied on us, we knew --

THE COURT: You know that's not going to happen.

MR. PROCTOR: Well, you asked me to give --

THE COURT: I did ask you the question.

MR. PROCTOR: You gave me the opening.

THE COURT: Let me rephrase it. Something that you can reasonably expect to get.

MR. PROCTOR: Out of Tucker?

THE COURT: Out of anybody.

MR. PROCTOR: Well, I'll take the Farm Fresh people, that the financial information of the company was for the benefit of the shareholders, for example, and let me throw in a couple of other facts here, too, that are --

THE COURT: Okay.

MR. PROCTOR: -- that are set forth in that Baltimore City lawsuit and we carefully -- are careful in our allegations in this suit not to contradict any of that I don't believe. But there was a time in 19 -- I am not sure I have the precise date, it may have been early 1993 when Benjamin Green and the chief financial officer of B. Green and Company, his name is

Jessie Schwartz, were actaully appointed as officers of Farm Fresh.

THE COURT: Okay.

MR. PROCTOR: Millman, quote, retired. You recall the allegations that in spite of that Millman tried to continue to run the company. During that period of time the communications were directly at all times with the B. Green representative.

THE COURT: The relationship was completely different.

MR. PROCTOR: Well, yes, but that relationship continued we would suggest in art --

THE COURT: The relationship changed. It seems to me that B. Green could wear two hats. He could wear a shareholder and director hat and he reports to him as a director but not as a shareholder.

MR. PROCTOR: Well, it's -- you know, the -- you know, what testimony do I want? I want that there was a continuing relationship. It began in 1990. The relationship and the nexus between B. Green and Ellin and Tucker began then. It continued. They -- that Ellin

and Tucker knew, had reason to know that the B. Green shareholders relied upon the information supplied by Tucker, relied upon the fact that Tucker would make relevant information available to them.

THE COURT: People rely on Mr. Kaufman because they like Joe DeMagio, it didn't great any duty.

MR. PROCTOR: Well, it's almost in creating duties as those cases discuss --

THE COURT: Actually one of those football players got sued for hawking a product and the product wasn't any good, but they didn't win --

MR. PROCTOR: So --

THE COURT: -- because it was unreasonable. No, I think it was because -- I forget now.

MR. FREDERICK: Claimed he used it and he actually didn't and it just scared the endorsement entry to fair thee well.

THE COURT: Was it Johnny Unitas?

MR. FREDERICK: I don't think it was a local one.

THE CLERK: Nauman.

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THE COURT: I forget. Panty hose ripped.
THE CLERK: Joe Nameth.
MR. PROCTOR: That would have been Joe Nameth. But explore the facts and circumstances surrounding the relationship, Your Honor. I know what my client has told me and but --
THE COURT: Your client is going to say that they relied on what, on what Ellin and Tucker reported to the company.
MR. PROCTOR: And expected Ellin and Tucker to keep them apprized of anything that was material such as --
THE COURT: That's unreal. They're going to say, Judge, they can expect all they want, it doesn't create a duty. See, that's why I --
MR. PROCTOR: I disagree.
THE COURT: -- I keep coming back to that.
MR. PROCTOR: But, Your Honor, I -- again let me try to emphasize that --
THE COURT: If I over -- let me ask Mr. Frederick this. Is it your position either the

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duty was there or it wasn't and in your view it wasn't and no matter what they discover, it ain't going to change that fact?
MR. FREDERICK: Particularly in light of the confirmation of who was intended to benefit from the services in November of 1995, the last agreement. Nothing changed it and it doesn't matter what they ask.
THE COURT: Let me think about it.
MR. PROCTOR: Well, let me --
MR. FREDERICK: Your Honor --
THE COURT: Yeah.
MR. FREDERICK: -- at a minimum, Your Honor --
THE COURT: I'll give you the last word.
MR. PROCTOR: Thank you.
MR. FREDERICK: I would ask the Court, and I ask this as ernestly as I can, for Mr. Tucker for whom I have a great deal of empathy, if this Court is inclined to allow limited discovery, I would urge this Court to first grant our motion as to the count based on deceit. I don't want to beat a dead horse. The Court knows I'm opposed to discovery and

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knows why but at a minimum if the Court is going to do that, this is really taking a significant toll on Mr. Tucker and in his personal life. I don't believe there is any merit basis for, for all the reasons I have said.
THE COURT: That's the deceit count?
MR. PROCTOR: But we do argue, Your Honor, that we certainly don't concede that our deceit count is anything less than fully and well pleaded. My final comment, Your Honor --
THE COURT: Let's get the deceit --
MR. FREDERICK: We had him locked in, Judge.
MR. PROCTOR: I can make the point, Your Honor -- it's page 31, Your Honor.
THE COURT: Thank you.
MR. FREDERICK: Fiduciary duty which is punitive is the one count, 4 at 29, and then the fraud count with punitive follows.
THE COURT: Say it again.
MR. FREDERICK: Page 29, Your Honor, is the breach of fiduciary duty count which has the punitive allegation and then on page 31, the deceit count which also has the punitive

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allegation.
THE COURT: Well, let's look, let's take a quick look at this count for a minute. You say that they had a duty to make full disclosure to B. Green and Benjamin L. Green as B. Green's representative on the Board of Directors. You know, they did do -- they did that. They reported to management. Now, you know, what management does with it is something else again, but I don't believe anywhere in the world there is a duty for them to report individually to each member of the Board of Directors. I think that is frivolous.
MR. PROCTOR: Well, it depends on what needs to be reported, Your Honor. If indeed in accordance with our allegations Mr. Tucker had knowledge of the check kiting fraud in early August of 1995, setting aside what, you know what would have happened once it was discovered or anything else, that is significant information that he as an accountant had a duty, I respectfully suggest, to disclose to the shareholders and to the members of the Board of Directors.
I used that allegation about Mr. Green

simply to emphasize that Mr. Green's presence on the Board of Directors is directly related to and proportional to B. Green's interest as a shareholder in the company. This is a closely held company.

THE COURT: But I don't think I as the Judge can let myself be dragged down that road. I mean, he did have a duty to Green as a director. I don't think anybody argues with that.

MR. PROCTOR: And as a shareholder as well --

THE COURT: There's a big argument about that.

MR. PROCTOR: I believe. When we are dealing with, when we are dealing with --

THE COURT: And as a creditor he doesn't owe him any duty, as creditor, doesn't owe him any duty as a guarantor.

MR. PROCTOR: If Mr. Tucker -- if there were a duty owing as a shareholder or as a member of the Board and he is aware --

THE COURT: You think there was one as a member of the Board?

MR. PROCTOR: -- and he's aware that

they hold the capacity as creditor and or guarantor, I suggest --

THE COURT: You are just making this up as you go along here. You know, how are you going to back that up? With what authority?

MR. PROCTOR: Well, I don't have it at my fingertips, Your Honor, but I believe that there is authority out there on this point. But be that as it may --

THE COURT: That's incredible to me, that an accountant for a company owes duties to the creditors.

MR. PROCTOR: Ultramares -- rather, the Credit Alliance case I alluded to involved creditors of the company --

THE COURT: I didn't read that one.

MR. PROCTOR: -- and the New York Court held there was a duty flowing to the creditors from the accountants.

THE COURT: I don't know that case.

MR. FREDERICK: Your Honor, that is the quote I asked the Court to look at on page ten which says they got to be an intended third party beneficiary under the circumstance.

THE COURT: Always come back to that

issue.

MR. FREDERICK: Exactly. That's where it starts and ends.

MR. PROCTOR: Actually in the case of fraud, Your Honor, under Ultramares -- case is still recognized today -- the --

THE COURT: It changed.

MR. PROCTOR: -- the intimacy of the nexus changes and becomes much looser. It expands.

THE COURT: Mr. Frederick conceded that earlier. Well, I'm going to permit a limited discovery. Tucker Baldwin, Millman, Carter and Street. You can ask him about the relationship. Frankly, I have grave doubts whether you can create a doubt by asking all these questions but I'm taking the safer road, I confess it. And of course you can ask him about count four and five. The him in that sentence being Tucker.

MR. PROCTOR: Yes.

THE COURT: I want this on a short leash. Okay, you can take care of Tucker and Baldwin quickly, it seems to me. You call Mr. Graham up, see if he'll produce Millman before

sentencing. If he won't, he won't, but I want to hear back from you about that. Does this have a scheduling order in it yet?

MR. PROCTOR: No, sir.

THE COURT: I'm going to, since you fellows -- I'm not going to put a deadline on it but I expect it to be done quickly. I don't think either one of you disagree with that.

MR. PROCTOR: No. I mean, my client just as soon -- no.

MR. FREDERICK: Sooner than later. My client doesn't want to drag this out unnecessarily.

THE COURT: I think Mr. Frederick's right about the expense, because it could be a very, very expensive case.

MR. PROCTOR: We all know that.

THE COURT: Okay.

MR. FREDERICK: Your Honor, the discovery is to be limited?

THE COURT: To those five.

MR. FREDERICK: We are not getting into breaches and duties and any of those things, just as to whether or not there is a relationship?

THE COURT: Understanding that if he succeeds he's going to get to do them again.
MR. FREDERICK: Absolutely. Without prejudice to whatever happens thereafter.
THE COURT: Right.
MR. PROCTOR: Obviously that assumes that if I don't go into those areas, you are not going to be arguing them later --
MR. FREDERICK: Of course not.
MR. PROCTOR: -- through the course of discovery?
THE COURT: Either they are right as a matter of law or they're not is the way I see this.
MR. FREDERICK: I just don't want anybody to feel compelled to go through twelve boxes of work papers and say why did you put a particular mark on there and --
THE COURT: He's not going to do that.
MR. PROCTOR: I don't do that anyway.
MR. FREDERICK: Yeah, but he's got people working with him, Judge.
MR. PROCTOR: There are only about six boxes.
THE COURT: He doesn't have that Miles

and Stockbridge back-up anymore.
MR. PROCTOR: That's right. All that silly stuff.
THE COURT: Can't beckon all those associates like you can, not that you have.
Now, listen, you know, the pleadings are a pleasure to read. Grammatically correct. They are not repetitious. Makes my life easier and Ms. Hamil's life.
(Proceedings concluded)

REPORTER'S CERTIFICATE

I, Rita M. E. Taggart, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that I recorded stenographically the proceedings in the matter of B. Green and Company, Inc. V. Ellin and Tucker, et al on December 17, 1999.

I further certify that the aforegoing pages constitute the official transcript of proceedings as transcribed by me to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have hereunto subscribed my name this 25th day of January, 2000.

Rita M. E. Taggart
Official Court Reporter

DATE: January 25, 2000

BILL TO: K. Donald Proctor, Esquire

PAYEE: Rita Taggart
Official Court Reporter
401 Bosley Ave., M-08
Towson, Md. 21204

RE: Furnishing transcript of proceedings in the matter of B. Green v. Ellin and Tucker

Case No(s). 03c99008553

Presiding Judge(s): J. Norris Byrnes

Date of Proceedings: December 17, 1999

TOTAL CHARGE: $ 640.50

Rita Taggart
Official Court Reporter

(SHEET SE 2-G)

E39,000

E40,500

ALT 2 0

BL

BR

OLD

BR-IM

BL

NORTH

ANNADALE

AVE.

97-290-A

ANNADALE

72 BASE

D.R. 5.5

PIERS

PIERS

PIERS

SUBJECT SITE

PIER

TABASCO COVE

ERS

WALL

WALL

WALL

PIERS

D.R. 5.5

PIER

GROVE

BM

OLD BATTLE GROVE

98-251-A

BL

BATTLE

SE 3-G

BL

Copies of bills in XV662 file

POINT BLV

LIMIT OF DISTURBANCE

SILT FENCE

RD.

10' Driveway

SCE

Ex House #3827

EVNS OF WATER 58,750

58,750 W

Air Pollution Regu[illegible] for Controlling Excessive ABP (dust) on Activity of[illegible] which includes a copy of COMAR 10.18.06.03. I will contact the Bureau of Air Quality, Field Services Section (887-3775) at least three days prior to beginning work.

Patricia K Earnsberger
Joseph R Earnsberger Sr.

Signature of Owner/Developer | Title | Date

Print Name Joseph R Earnsberger Sr Patricia K Earnsberger

Total Distrubed Area = 19,800 S.F.± = .45 Ac.±

REVISIONS			
Date	Description	BY.	Designed By W.T.P.
			Drawned By K.P.
			Checked By SHO

OWNER/DEVELOPER

ROBERT LONG

3827 ANNADALE ROAD

BALTIMORE, MARYLAND 21222

388-1974

BPS/land technology inc.

Engineers & Surveyors

P.O. BOX 5614

Baltimore, Maryland

301-435-0800 21210

SEDIMENT CONTROL PLAN FOR LOTS 10 THRU. 15 ONLY

ANNADALE

LOTS 12 THRU 15

&

LOTS 31 THRU 36

ELECTION DISTRICT 15

SCALE: 1"=50'

RECEIVED

SEP 16 1991

DIVISION OF ENVIRONMENTAL MANAGEMENT

DATE: 5/17/91

...cing, grading, construc-
...e pursuant to this plan
...involved in this
...rtificate of Attendance
...s approved training
...: and erosion before
...certify that the site
...h working day, and that
...laced so as to insure
...are left in opera-
...he right of entry for
...Baltimore County Soil
...ervisors or their

Patricia K Earnsberger

...itle Date

Patricia K Earnsberger

Pet. # 1

BEAR CREEK

N

S03°31'59"W 103.03'

IPS 5' ⊕

IPS 7' ⊕

S02°45'44"W 103.09'

LOT 32

LOT 31

IPS

N14°49'22"E 100.00'

.01

.01

1.55

100.00'

110.00'

110.00'

S87°14'16"E 68.40'

TACK IN DRIVE

7.67'

15.12'

IPS

IPS

20'

ANNADALE ROAD

THIS DOES ▮▮▮ CONSTITUTE A PROPERTY LINE SURVEY.
THIS WILL CERTIFY THAT I HAVE LOCATED THE IMPROVEMENTS
ON THE ABOVE PROPERTY AS INDICATED.

STATE OF MARYLAND — THOMAS EDWARD PHELPS — No. 374 REGISTERED PROPERTY LINE SURVEYOR

THOMAS E. PHELPS AND ASSOCIATES, INC.
REGISTERED PROPERTY LINE SURVEYORS
945 BARRON AVENUE
BALTIMORE, MARYLAND 21221
OFFICE: (301) 574-6744

BOUNDARY SURVEY

LONG PROPERTY
3827 ANNADALE RD.
BALTIMORE COUNTY MD.

Plat Book 8 Folio 34

Scale 1"=20' Date 9-4-98

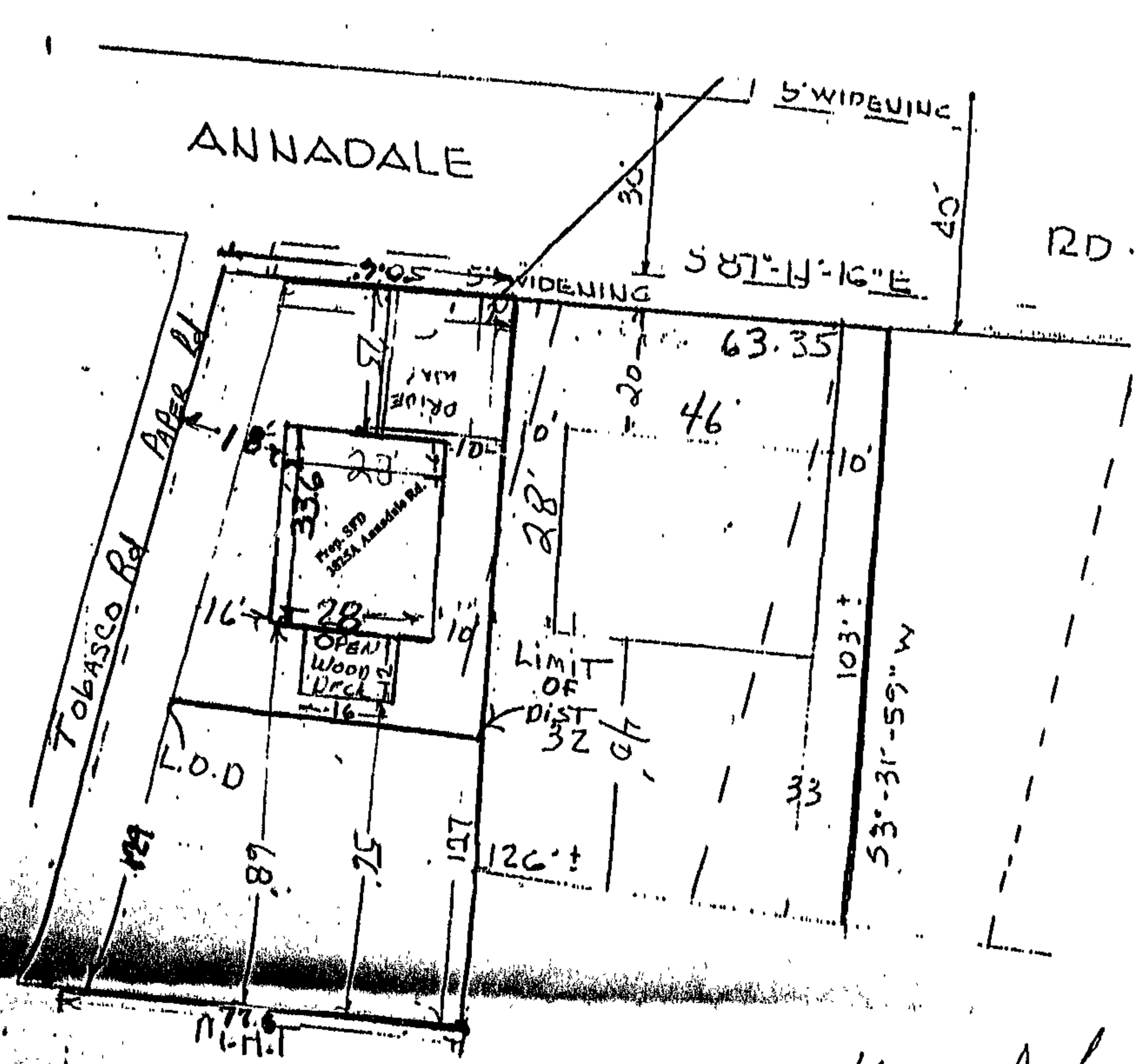
151344

Critical Area Notes
There shall be no cleaning, grading or disturbance of the 100 foot buffer, other than mowing, except as permitted by the Department of Environmental Protection and Residential Management (DEPRM)and the entire poperty is within the 100 foot buffer

Owners: Robert Long
3827 Annadale Rd.
Balto., MD 21222
(410) 388-1974

Critical Area Notes
Lot is 6,480 sq. ft.
The sum of all man-made impervious areas shall shall not exceed 25% of the lot.
Maximum impervious surface is 1,620sq. ft at 25%
Proposed impervious surface is 1,452sq. ft.
House is 952sq. ft. , Driveway is 500 sq. ft.
Location is in L.D.A.
Rooftop runoff from the dwelling shall be directed through downspouts and across the lawn

Zoning History Case #98-251-A
Granted March 13, 1998
43 feet in lieu of 55 feet
and 10 feet in lieu of 25 feet
Front lot width is 43 feet



LOTS 31-32 PART OF LOT 33
ANNADALE
PLAT BOOK 8-34
5TH, DISTRICT BALTIMORE CO, MARYLAND
SCALE 1"=30'
DATE 6-29-91

Frank S. Lee

FRANK S. LEE
1277 NICHOLSON AVE.

BALTIMORE, MD.

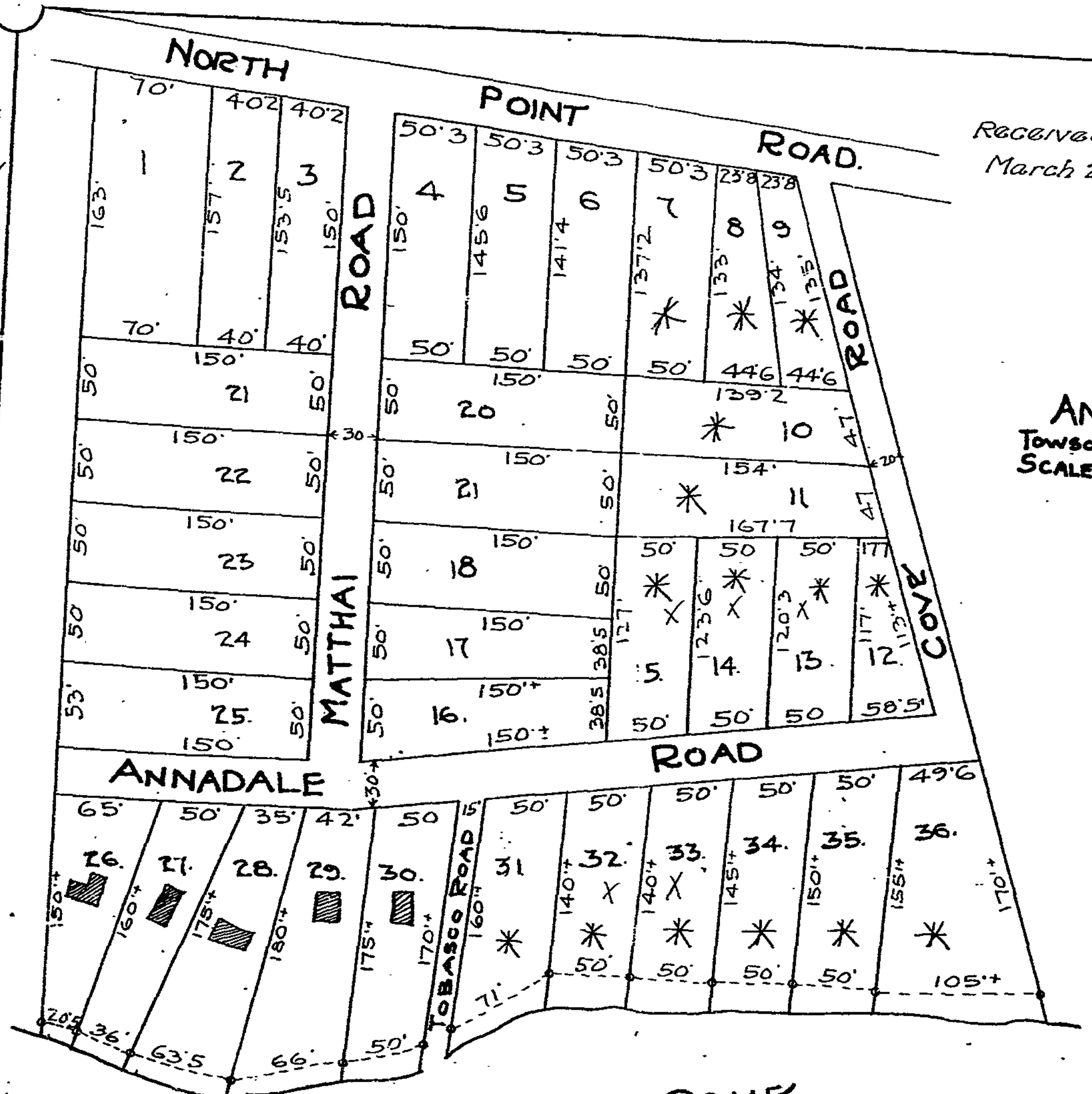
, Lots = 299.6 Front Footage

(1)

Received for Record
March 23, 1926 - 10³⁹ AM.

PLAT OF ANNA DALE

Towson, Md. Ap. 1 1925
SCALE: 1 INCH: 60 FEET
Benjamin O Brown
SURVEYOR.





OPT. FIREPLACE

RECEIVED
JAN 15 1998
OFFICE OF PLANNING

03-C99-6263

In the Matter of
Robert Long et ux

Neil Wadleigh
Wendy Jerauld

3825A Annadale Rd Dundalk
Woodall West Williams

In case 98-251-A

① 43' instead of 55' Granted
② Side yd setback 10' in lieu of 25' Granted
③ Pursuant to 304 = undersized lot Denied

In 87 Long purchased
15 Wks Wed 34 Thru 36
Route X662 - reconfigured 31 - Thru 36
~~30 296~~ 294

- Long took Lot ~~5~~ 31 a gain 7' to Lt 32
32 got part of 33
33 Thru 36 reconfigured

Density → if it or variance then could have built because waterside = 71'

Unclear
198/197
Ward
102/691

DPRM can't build within 100' of water.
" placed some restrictions

Long misrepresented footage along
Annadale Rd say 20' instead of 45'

Bd says 3 things make it uniquely
Shape Size - Slope
by it big deal

Long always
this by adding 7'
to Lot 32

reduced by
MR Long

3825A Annapolis Rd
Robert Long et ux

① Zoning Variance
② Critical Area Variance — case CBA-95-125
↳ COMAR 27.01.11
5 Criteria

① Special conditions peculiar to the land & literal enforcement of regs would result in unwarranted hardship.
Finding because of the "configuration" of the LA, dwelling must be built at least most N of the 100' buffer.
= hardship.

②
literal enforcement would deprive applicant of rts commonly enjoyed by other similar properties

③ Granting will in confer on the applicant a special privilege ~~in~~ enjoyed by others.
= Granting in this case = ~~in~~ sp privilege

④ variance ~~in~~ based upon ~~&~~ conditions or circumstances caused by applicant

⑤ - ~~in~~ adverse effect on water fish or wildlife etc.
satisfied by preserving trees

Condition - ~~in~~ closer than 25'
to mean H tide

In 1987 he when
he subdivided, he could
have built on the lot

93 DPRM = change does
could not bind in Dec 100' of water

Zervas says when house is built
it will be is such a
place on lot that width
of lot 55'

Mo to Dismiss - Woodell did
not identify himself called
himself "Concerned Citizens of
Annadale"

woodell was a party
Signed appeal then
perfected appeal on DCPRM

- Next W. says if there is
a remand, remand both,

Zoning - case 98-251-A
relief to Sec 1B02.3.C.1 of the
BCZR

Lot width of 43' in lieu of 55'
> side yard setback of 10' in lieu of 25'

Zoning to Property = Unique resulting
in hardship, practical difficulty
if denied.

Thomas E. Phelps

Woodell Lot 50'
Romeo Lot 52'
Chestnut Lot 35'

County #1

5986/1

CHESAPEAKE BAY CRITICAL AREA COMMISSION
45 CALVERT STREET, 2ND FLOOR
ANNAPOLIS, MD 21401

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: Balto. Co. Date: 7/14/97

Name of Project (site name, subdivision name, or other): Robert Long Property

Local case number: 97-16

Project location/Address: 3825 "A" Annabale Pl, Balt 21222

Tax map# 104 Block# 2 Lot# 31 Parcel# 271

Type of application: (Select all applicable)

- ☐ SUBDIVISION
- ☐ SITE PLAN
- ☑ VARIANCE:
  Buffer ✓ Slope__
  Imp.Surf.__ Other__
- ☐ SPECIAL EXCEPTION
- ☐ CONDITIONAL USE
- ☐ REZONING
- ☐ GRADING PERMIT
- ☐ BLDG PERMIT
- ☐ INTRAFAMILY
- ☐ GROWTH ALLOCATION
- ☐ OTHERS _____

Type of Project: (Select all applicable)

- ☑ RESIDENTIAL
- ☐ COMMERCIAL
- ☐ WATER DEPENDENT FACILITY/PIER/MARINA
- ☐ INDUSTRIAL
- ☐ MIXED USE
- ☐ REDEVELOPMENT
- ☐ SHORE EROSION PROTEC.
- ☐ AGRICULTURE
- ☐ OTHERS _____
  e.g. PUD

Current Use: (Select all applicable)

- ☐ COMMERCIAL
- ☑ RESIDENTIAL
- ☐ AGRICULTURE
- ☐ FOREST/BUFFER/WOODLAND
- ☐ INDUSTRIAL
- ☐ INSTITUTIONAL
- ☐ OPEN SPACE/RECRE.
- ☐ SURFACE MINING
- ☐ VACANT
- ☐ WATER DEPENDENT FACILITY/PIER/MARINA
- ☐ OTHERS _____

Describe Proposed use of project site: Construct a SFD within the 100' buffer to Piney Creek

SITE INVENTORY OF AREA ONLY IN THE CRITICAL AREA

TOTAL ACRES IN CRITICAL AREA: 0.16

IDA ACRES		AREA DISTURBED:	
LDA ACRES	0.16	# LOTS CREATED:	
RCA ACRES		# DWELLING UNITS:	
AGRICULTURAL LAND:			

EXISTING FOREST/WOODLAND/TREES: 1 FOREST/WOODLAND/TREES REMOVED: 0

FOREST/WOODLAND/TREES CREATED: 15% of lot

EXISTING IMPERVIOUS SURFACE: 0% PROPOSED IMPERVIOUS SURFACE: 25% max.

TOTAL IMPERVIOUS SURFACE:_____

GROWTH ALLOCATION DEDUCTED:_____

RCA to LDA:_____ RCA to IDA:_____ LDA to IDA:_____

Local Jurisdiction Contact person: Keith Kelley
Telephone number: 410-887-3730
Response from Commission required by: ASAP Hearing Date: —

1176

ADMINISTRATIVE VARIANCE APPLICATION - CHESAPEAKE BAY CRITICAL AREA REGULATIONS

Part A. Applicant/Property Owner Information.

Property Address 3825 A Annadale Road Subdivision Annadale Plat

Applicant(s) Robert & Rose Long Phone No. (410) 388-1974

Mailing Address 3827 Annadale Road

City Baltimore State MD Zip Code 21222

Property Owner(s) Robert & Rose Long Phone No. (410) 388-1974

Mailing Address 3827 Annadale Road

City Baltimore State MD Zip Code 21222

Part B. Property and Critical Area Information.

non-BMA

(NOTE: LEAVE BLANK. THIS BLOCK WILL BE FILLED IN BY DEPRM PERSONNEL)

Permit/SC No. _____ to construct a SFD within the 100' buffer to Bear Creek

CA Designation(s): ___ IDA ✓ LDA ___ RCA Acreage/Lot Size 7000 sq ft

Existing Impervious Surfaces 0 square ft. 0 percent of property

Proposed Impervious Surfaces 1750 square ft. 25 percent of property

Water: ___ private ✓ public Sewer: ___ private ✓ public

Waterfront? yes ✓ no ___ Waterbody Bear Creek

Is the proposed activity within the 100 foot buffer? yes ✓ no ___

Is the proposed activity within the limits of Habitat Protection Areas, tidal wetlands, or nontidal wetlands/associated buffers? yes ___ no ✓

If so, list type(s) _____

Is the proposed activity within forest or developed woodland? yes ___ no ✓

Variance Type(s): ___ impervious surface limit variance ✓ other variance

Section(s) of Code from which variance is being requested 26-445

Reviewer Keith Kelley Date 7/14/97

Part C. Project Description.

Briefly describe the proposed project or activity for which a variance is requested.

To construct a new home with in a 100 feet from M.H.T. Mean High Tide
Located in a LDA Lightly developed area

Part D. Alternates to Variance Request.

Briefly describe any alternates to requesting a variance which you considered, and why these alternates are not feasible.

NONE

Part E. Variance Provisions of the Critical Area Criteria (COMAR 27.01.11).

Briefly explain any special conditions or circumstances exist that are peculiar to the land or structure and how a literal enforcement of the provisions of the regulations relative to these conditions or circumstances would result in unwarranted hardship.

This should be granted because exsisting homes in the area are built with in the 100 foot buffer zone. This lot is recorded in a old plat in ~~1934~~ 1924 and would cause undo hardship.

Part E. Continued.

Briefly explain how a literal interpretation of the Critical Area regulations will deprive you (the property owner) of rights commonly enjoyed by other properties in similar areas within the Critical Area.

New homes have been constructed with in 100 foot buffer zone with in the last 3 or 4 years.

Briefly explain how granting of the variance will <u>not</u> confer upon you (the property owner) any special privilege that would be denied by the Critical Area regulations to other lands or structures within the Critical Area.

Because other variance's have been granted in the area with in the same recorded plat.

Briefly explain how the variance request is <u>not</u> based upon conditions or circumstances which are the result of actions by you (the property owner), and how the request does <u>not</u> arise from any condition related to land or building use, either permitted or non-conforming, on any neighboring property.

Part E. Continued.

Briefly describe how granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and how granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. Include any proposed mitigative measures to minimize impacts to these resources.

Will plant extra trees and plant vegatation in the drainage area and create non-tidal wetlands next to the proposed site.

Part F. Additional Information.

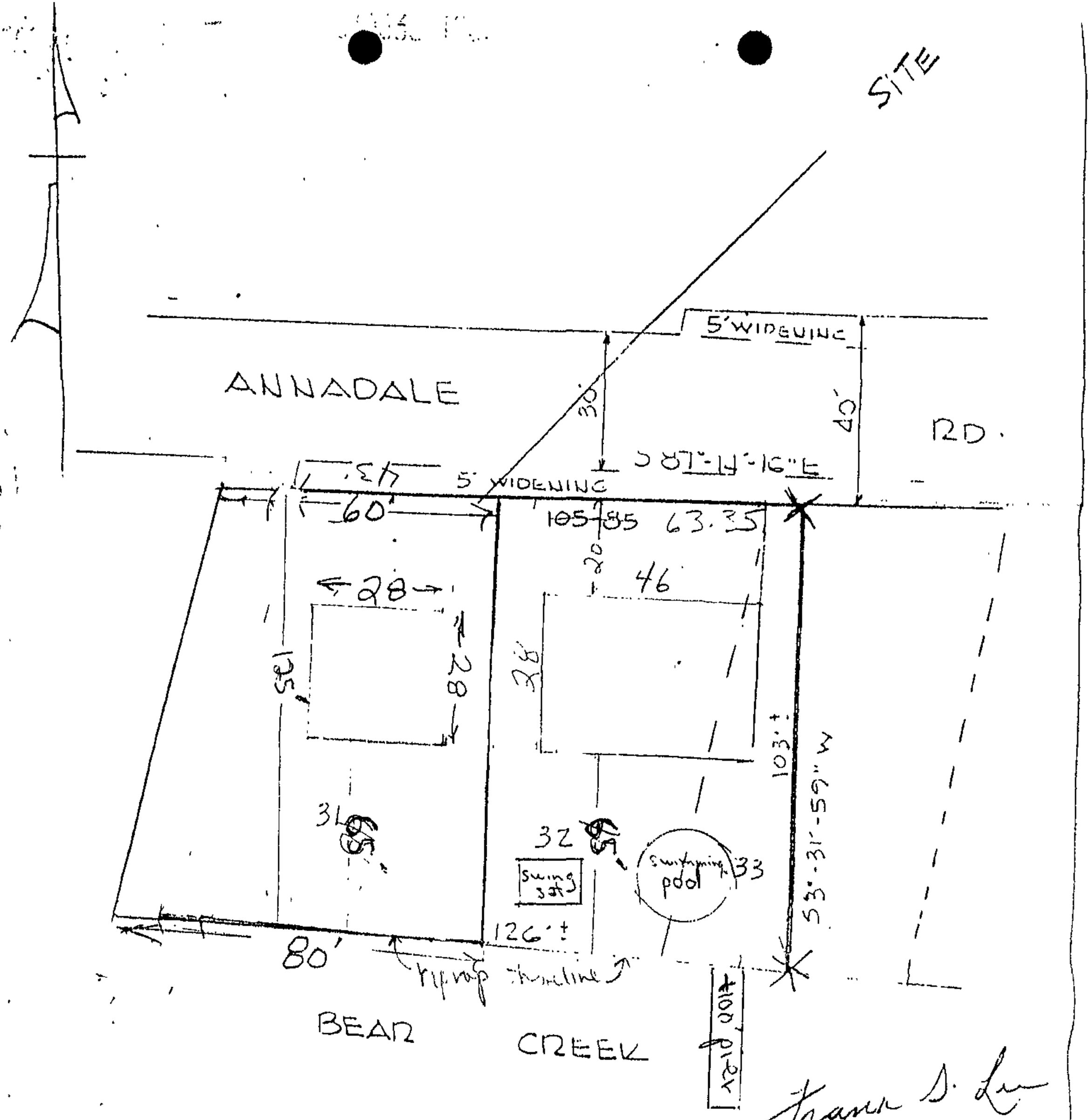
Use this space to provide any other information about the site or project pertinent to this variance request. Attach additional sheets if necessary.

Rose Long 6-18-97
Applicant Signature Date

Robert Long 6-18-97
Property Owner Signature Date

Applicant Signature 6-18-97
Date

Property Owner Signature 6-18-97
Date



LOT 31

ANNADALE

PLAT BOOK 8-34

15TH DISTRICT BALTIMORE CO., MARYLAND

SCALE 1"=30'

DATE 6-29-91

Frank S. Lee

STATE OF MARYLAND
FRANK S. LEE
No. 11
REGISTERED
PROPERTY LINE SURVEYOR

FRANK S. LEE
1277 NEIGHBORS AVE.
BALTIMORE, MD. 21237

Cty #2

Sec. 26-444. Management requirements and building setbacks for critical area resources.

(a) The habitat protection areas, buffers, wetlands, forests, developed woodlands, afforestation areas, reforestation areas, and wildlife corridors, and the floodplains, streams, stream channels, and shorelines contained therein shall be managed to enhance and maximize the unique value of these resources. Management includes specific limitations on alteration of the natural condition of these resources. The following practices and activities are restricted within the boundaries of the critical area resources listed above:

(1) Existing vegetation within the critical area resources shall not be disturbed. This includes, but is not limited to, disturbance by tree removal, shrub removal, clearing, mowing, burning, spraying and grazing;

(2) Soil disturbance shall not take place within the critical area resources by grading, stripping of topsoil, plowing, cultivating or other practices;

(3) Filling or dumping shall not occur within the critical area resources;

(4) Diking, ditching or draining shall not occur within the critical area resources;

(5) Structural shore erosion protection measures shall not be constructed or installed in the critical area resources except as provided pursuant to COMAR 27.01.04 and section 26-457 of the Code, and only as permitted by the department of environmental protection and resource management;

(6) New impervious surfaces shall not be placed within the critical area resources;

(7) Structures of any size shall not be placed within the critical area resources;

(8) Pesticides shall not be stored, used or applied within the critical area resources, except for the spot spraying of noxious weeds consistent with the recommendations of the University of maryland Cooperative Extension Service;

(9) Animals shall not be housed, grazed or otherwise maintained within the critical area resources;

(10) Motorized vehicles shall not be stored or operated within the critical area resources, except for maintenance and emergency use approved by the department of environmental protection and resource management; and

(11) Materials shall not be stored within the critical area resources.

(b) Standards for building setbacks in the critical area shall be as follows:

(1) At a minimum, the primary or principal structure on a parcel or lot shall be set back from the outer edge of the critical area easement or reservation containing areas listed in subsection (a) of this section as follows:

a. Residential dwellings, thirty-five (35) feet.

b. Commercial structures, twenty-five (25) feet.

c. Industrial structures, twenty-five (25) feet.

(2) The setback can include either private or public land or both. Appurtenant or accessory structures including roads and driveways, storm drainage, stormwater management facilities, utilities, recreational facilities, patios, etc., are permitted within the setback area.

(c) The director of the department of environmental protection and resource management may promulgate regulations which are not inconsistent with the provisions of this article and the provisions of title 2, article VIII of this Code, to address issues pertaining to the maintenance and modifications of existing facilities owned and operated by public service companies.

(Code 1978, § 22-208; Bill No. 18, 1990, § 2; Bill No. 8-96, § 4, 3-23-96)

Editor's note—Bill No. 8-96, § 4, adopted March 23, 1996, repealed and reenacted § 26-444. Formerly, such section pertained to procedure for reviewing findings plan and derived from the 1978 Code and Bill No. 18, 1990 (refer to history note).

Sec. 26-445. Scope and applicability of design requirements.

(a) The design standards and requirements set forth in this article are intended to assure that

the preparation and review of proposed development in the critical area is in compliance with the requirements specified in the critical area criteria (COMAR title 27, subtitle 01).

(b) Subject to the provisions of section 26-441, all development shall meet the standards and requirements contained in division 4, article V, of this title as well as the requirements of this article, and shall conform to the policy and intent of this Code.

(c) Notwithstanding section 26-207(a)(4), if a proposed development is exempted under section 26-171 or if a waiver to the hearing officer's hearing is granted pursuant to section 26-172(b), the director of the department of environmental protection and resource management may grant a special variance from the standards and regulations specified in article VIII of this title, in accordance with the regulations adopted by the critical area commission concerning variances as part of a local program development set forth in COMAR 27.01.11, and notification of project applications set forth in COMAR 27.03.01.

Notice of an applicant's variance proposal shall be published once in a paper of general circulation in the county fifteen (15) days prior to variance approval.

(d) In granting a request for a special variance in accordance with section 26-445(c), the director of the department of environmental protection and resource management may require site design and variance approval conditions, including mitigation, to minimize adverse impacts on water quality and fish, wildlife or plant habitat.

(e) Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decisions of the director of the department of environmental protection and resource management made in accordance with section 26-445(c) shall have the right to appeal the decision before the country board of appeals de novo.

(f) The director of the department of environmental protection and resource management may promulgate rules and regulations for the preparation and review of proposed development projects and other activities in the critical area pursuant to section 2-416 through 2-422 of this Code and consistent with the provisions of the critical area law and critical area criteria and in accordance with article 2, title VIII of this Code.
(Code 1978, § 22-209; Bill No. 222, 1992, § 1; Bill No. 120-93, 1993, §§ 1, 2; Bill No. 8-96, § 4, 3-23-96)

Sec. 26-446. Clustering.

Clustering, as defined in section 26-438, is the preferred method for designing residential development in the critical area and shall be used to minimize impervious surfaces and minimize destruction of forest and woodland vegetation unless it is demonstrably unfeasible or inappropriate for the site.
(Code 1978, § 22-210)

Sec. 26-447. Nontidal and tidal wetlands.

Dredging, filling, clearing or constructing shall not be permitted in any nontidal and tidal wetlands, except in accordance with sections 26-448 and sections 26-454 through 26-457 in this Code.
(Code 1978, § 22-211; Bill No. 18, 1990, § 2; Bill No. 8-96, § 4, 3-23-96)

Sec. 26-448. Nontidal wetland protection.

(a) A minimum twenty-five-foot buffer shall be maintained around all nontidal wetlands so that development or other activities will not adversely affect the wetlands or the wildlife contained therein.

(b) The hydrologic regime and water quality of nontidal wetlands shall be protected by minimizing the alterations as to the surface or subsurface flow of water into and from the wetlands, such as by:

(1) Maximizing the infiltration of water throughout the site, rather than concentrating flows into direct discharge points; and

(2) Decentralizing the discharge points if their use cannot be avoided for stormwater management.

(c) Development activities, including redevelopment activities, structures, parking areas and other impervious surfaces, mining and related facilities and septic systems, shall not be permitted in nontidal wetlands or nontidal wetland buffers.

Cty #3

§8-1810. Programs adopted by Commission.

(a) *When Commission to adopt program.*—If a local jurisdiction fails to notify the Commission that the local jurisdiction will develop a program, fails to submit a proposed program or changed proposal on time, or fails to obtain Commission approval of a proposed program or changed proposal that is submitted, the Commission shall prepare and adopt a program that satisfies the criteria adopted under §8-1808 of this subtitle for the part of the Chesapeake Bay Critical Area in that local jurisdiction.

(b) *Public hearing; Commission program to supercede local law.*—Where a local jurisdiction fails to adopt or obtain Commission approval of a program, the Commission shall adopt a program for that jurisdiction by adopting regulations in accordance with Title 2, Subtitle 5 (Joint Committee on Administrative, Executive, and Legislative Review) and Title 10, Subtitle 1 (Administrative Procedure Act) of the State Government Article. Before the full Commission adopts a program under this subsection, the Commission shall appoint a panel of 3 of the Commission's members to conduct in the affected jurisdiction at least 2 public hearings at least 10 days apart on the proposed program, for which 2 weeks notice shall be published in a newspaper of general circulation in the local jurisdiction. A program adopted by the Commission under this subsection shall supersede any inconsistent local laws, ordinances, or plans.

(c) *Local jurisdictions to enforce.*—If the Commission adopts a program for a local jurisdiction, the program shall be implemented and enforced by local authorities in the same manner as if the program had been adopted by the local jurisdiction itself.

(d) *Local program to supersede Commission program.*—If, at any time after the Commission has adopted a program for a local jurisdiction, the local jurisdiction submits an alternative program of its own that satisfies the criteria adopted under §8-1808 of this subtitle and is approved by the Commission, the alternative program supersedes the program adopted by the Commission.

§8-1811. Project approval.

(a) *Project consistent with program.*—From the effective date of a program approved or adopted by the Commission, a project approval that involves land located in the Chesapeake Bay Critical Area may not be granted unless the project approval is consistent and complies with the program.

(b) *Projects requiring notice to Commission.* — (1) The Commission shall adopt regulations identifying those classes of applications for project approval of which the Commission wishes to receive notice.

(2) From the date designated by the Commission in approving or adopting a program, an applicant for project approval or the local agency authorized to grant project approval on an application in any of the identified classes shall send to the Commission in accordance with the regulations and any other instructions of the Commission, a copy of every pending or new application for approval that is in any of the identified classes. Before the close of the next business day after receipt of a copy of an application from the applicant or the local approving authority, the Commission shall send written notice of receipt to the applicant and to the local approving authority. A failure of the Commission to send a timely notice shall render paragraph (3) of this subsection inapplicable as to that application.

(3) The local approving authority may not process an application of which a copy must be sent to the Commission until the local approving authority has received notice of receipt from the Commission, and any action of the local approving authority in violation of this paragraph shall be void.

§8-1812. Commission chairman; authority regarding judicial proceedings.

(a) *In general.* — After the Commission has approved or adopted a program, the chairman of the Commission has standing and the right an authority to initiate or intervene in any administrative, judicial, or other original proceeding or appeal in this State concerning a project approval in the Chesapeake Bay Critical Area. The chairman may exercise this intervention authority without first obtaining approval from the Commission, but the chairman shall send prompt written notice of any intervention or initiation of action under this section to each member of the Commission. The chairman shall withdraw the intervention or action initiated if, within 35 days after the date of the chairman's notice, at least 13 members indicate disapproval of the action, either in writing addressed to the chairman or by vote at a meeting of the Commission. A member representing the local jurisdiction affected by the chairman's intervention or action may request a meeting of the Commission to vote on the chairman's intervention or action.

(b) *Rules of procedure.* — Except as stated in this subtitle, the chairman is subject to general laws and rules of procedure that govern

Cty. #4

Title 27
CHESAPEAKE BAY CRITICAL AREA COMMISSION

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Chapter 11 Variances

Authority: Natural Resources Article, §8-1808(d), Annotated Code of Maryland

.01 Local Programs.

A. In the preparation of local programs, local jurisdictions shall make provision for the granting of variances to these criteria where, owing to special features of a site or other circumstances, local government implementation of this subtitle or a literal enforcement of provisions within the jurisdiction's Critical Area program would result in unwarranted hardship to an applicant. These variance provisions shall be designed in a manner consistent with the spirit and intent of this chapter and all local Critical Area program elements. The variance provisions shall, at a minimum, provide for the following:

(1) That findings are made by the local jurisdiction which demonstrate that special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program, would result in unwarranted hardship;

(2) That a literal interpretation of this subtitle or the local Critical Area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction;

(3) That the granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area;

(4) That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property;

(5) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will

be in harmony with the general spirit and intent of the Critical Area law and the regulations adopted in this subtitle; and

(6) That applications for a variance will be made in writing to the local approving authority with a copy provided to the Commission.

B. Local jurisdictions may establish additional, more restrictive standards for the granting of variances consistent with the intent and purposes of this subtitle and the approved local Critical Area program, and further, shall establish notification procedures to permit Commission review of findings made in the granting of variances.

C. Appeals from decisions concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of each local jurisdiction for variances. Variance decisions by local boards of appeal or the local legislative body may be appealed to the circuit court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation, or governmental agency, aggrieved or adversely affected by any decision made under this section, and the Chairman may appeal an action or decision even if the Chairman was not a party to or is not specifically aggrieved by the action or decision.

Administrative History

Effective date: May 13, 1986 (12:24 Md. R. 2352)

COMAR 14.15 became effective upon the enactment of Resolution No. 37 (SJ 9), Acts of 1986.

COMAR 14.15.11 recodified to COMAR 27.01.11 in August, 1992

Cty 45

KK
7/30/97

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410- 820-5093 FAX

REN SEREY
EXECUTIVE DIRECTOR
410-974-2418 /26
410-974-5338 FAX

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

WESTERN SHORE OFFICE
45 CALVERT ST., 2ND FLOOR
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

RECEIVED
JUL 30 1997
ENVIRONMENT

July 25, 1997

Mr. Keith Kelley
Department of Environmental Protection
and Resource Management
County Courts Building, 401 Bosley Avenue
Towson, Maryland 21204

Re: Long Property - Buffer Variance

Dear Mr. Kelley:

I have reviewed the above referenced variance request for a single family dwelling in the 100-foot Buffer. The applicant proposes to construct a 28' by 28' house within the Buffer on Bear Creek. The 0.16 acre grandfathered lot is located in a Limited Development Area and is not located in a mapped Buffer Management Area. Proposed impervious surfaces will be limited to 25% of the lot.

While the Commission staff does not oppose the granting of a variance for a single family dwelling on a grandfathered lot, we recommend that encroachment into the Buffer and imperious surfaces be minimized. We would support a variance to front yard setbacks. In addition, we recommend planting of native vegetation in the 100-foot Buffer at a ratio of 3:1 to mitigate for the area of new disturbance in the Buffer.

Thank you for the opportunity to comment on this application. Please include this letter as part of the record for the variance request. Please notify the Commission in writing of the decision made in this application.

Sincerely,

Susan McConville

Susan McConville
Natural Resources Planner

SM/jjd
cc: BC 388-97

Cty #7

BALTIMORE COUNTY

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

NOTICE OF GRANTING OF VARIANCE

ADDRESS:3825A Annadale Road

LEGAL OWNER: Mr. and Mrs. Robert Long

The Baltimore County Department of Environmental Protection and Resource Management, pursuant to Section 26-445(c) of the Baltimore County Code, hereby gives notice that a variance from Section 26-449 of the Code, Chesapeake Bay Critical Area Requirements, will be granted for the purpose of constructing a single-family dwelling within the 100 foot buffer to Bear Creek on the above referenced property. Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by this decision, may appeal to the Baltimore County Board of Appeals within forty-five (45) days from the date of this notice. Appeals must be made in writing, stating the reason for appeal, and must be mailed to Environmental Impact Review, Baltimore County Department of Environmental Protection and Resource Management, 401 Bosley Avenue, Suite 416, Towson, Maryland 21204. All appeals must be accompanied by a check for $75.00 payable to Baltimore County Government.

City #8

Baltimore County
Department of Environmental Protection
and Resource Management

BUREAU OF RESOURCE MANAGEMENT
AND ENGINEERING SERVICES
401 Bosley Avenue, Suite 416
Towson, Maryland 21204
410-887-3980
Fax: 410-887-4804

June 22, 1998

Mr. Robert Long
3827 Annadale Road
Baltimore, MD 21222

Re: 3825 A Annadale Road
Critical Area Administrative Variance

Dear Mr. Long:

This Department has received the copy of the Certificate of Publication which indicates that the "Notice of Granting of Variance" advertisement was published in the Avenue newspaper on February 26, 1998; and/or otherwise verified the publication of this advertisement. Additionally, we have received the signed copy of the variance approval letter and your revised plot plan showing all of the items listed in our variance approval letter.

In accordance with Section 26-445(c) of the Baltimore County Code, your variance to the Chesapeake Bay Critical Area Regulations for the purpose of constructing a single family dwelling (SFD) within the 100 foot buffer to Bear Creek on the referenced property became final on June 16 ,1998, the date which you submitted all variance approval documents. However, an aggrieved party will have thirty (30) calendar days after this date to appeal the Department's decision to the County Board of Appeals. As such, if you choose to begin with construction, sell the property, etc. during this time period, please be advised that you are proceeding at your own risk.

Please be advised that to obtain building permit approval you must submit the revised plot plan to the Department of Permits and Licenses with your permit application, or as a revision to any permit application which you have submitted previously for the proposed structure.

If you have any questions, please contact Mr. Keith Kelley at 410-887-3980.

Very truly yours,

Patricia M. Farr
Supervisor
Environment Impact Review

c: Susan McConville, CBCA

j:/caavcop.doc

Printed with Soybean Ink
on Recycled Paper

Cty. #9

Environmental Impact Review

June 23, 1998

Baltimore County Department of
Environmental Protection & Resource
Management

Re: 3825 A Annadale Rd.
Critical Area Administrative Variance

We would like to appeal the decision of granting a variance to build a house on this undersized lot.

The lot in question is grossly undersized and adjoins Tabasco Road. Tabasco Road is a paper road which has been turned into the drainage area from the newer part of our community, which goes directly into Tabasco Creek. Tabasco Creek already has enough pollution problems without putting another house on top of the drainage area, which will add to the pollution problem and further restrict the filtration of drainage from the newer community.

Allowing this construction would have a major impact on the wildlife that is left. Before the construction of the newer community we had an abundance of wildlife, since then the number has dropped greatly. This area and the adjoining paper road area are the only areas left for the wildlife. The only area left with high grass for nesting is adjoining this property. It is our fear that developing so close would further reduce our wildlife .

It is our opinion that the development of this property would have a total negative effect on our creek, wildlife, and our community as a whole.

. We the property owners of the community should have an opportunity to voice our concerns in this matter.

Please find enclosed a check for seventy-five dollars.

Send all correspondence to:

Melvin C. Woodell, Jr.
705 S. 49th Street
Baltimore, Md. 21224

Thank you in advance for your consideration in this matter.

Concerned citizens of Annadale





E. Long Property for Sale adjacent to Lot 31.

Plot. 2J

L. Outfall on Lot 31

PHOT. 21



Shanholtz Property



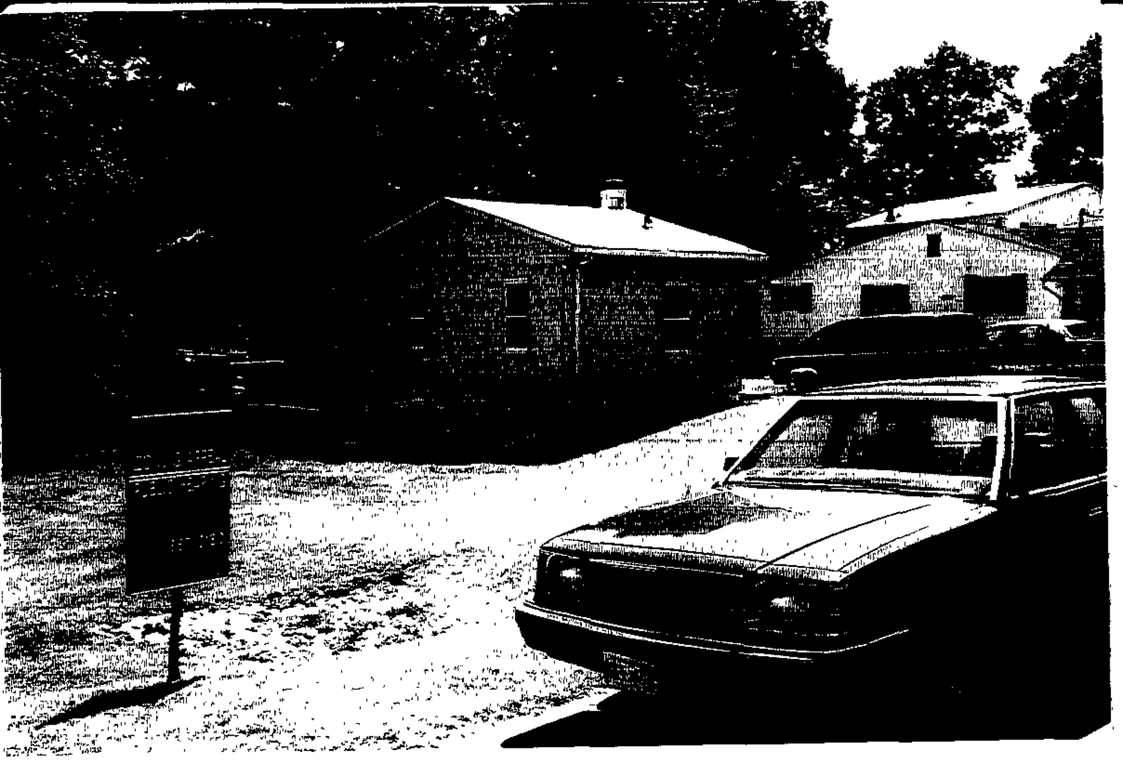
G. Looking across Lot at Long Property

PHOT. 2G



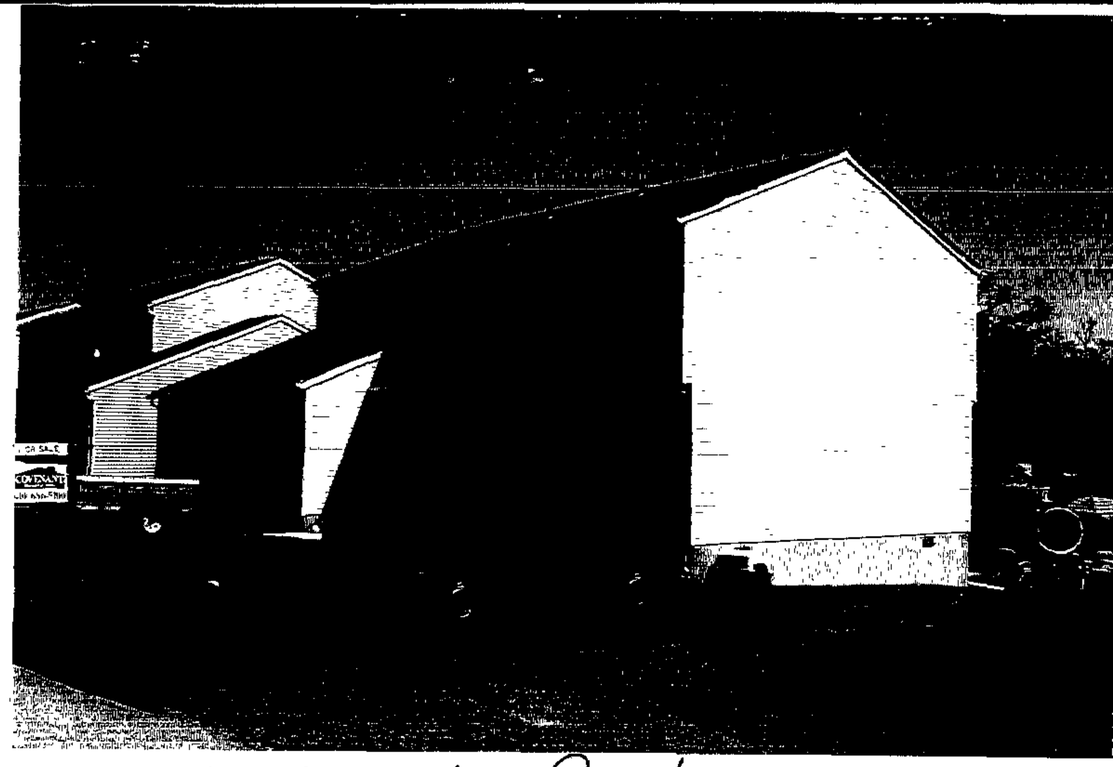
H. Looking east on Annadale from Lot 31

PHOT. 2H



E. E/S of Woodell Property

Pict. 2E



F. West side of Long Property

Pict. 2F



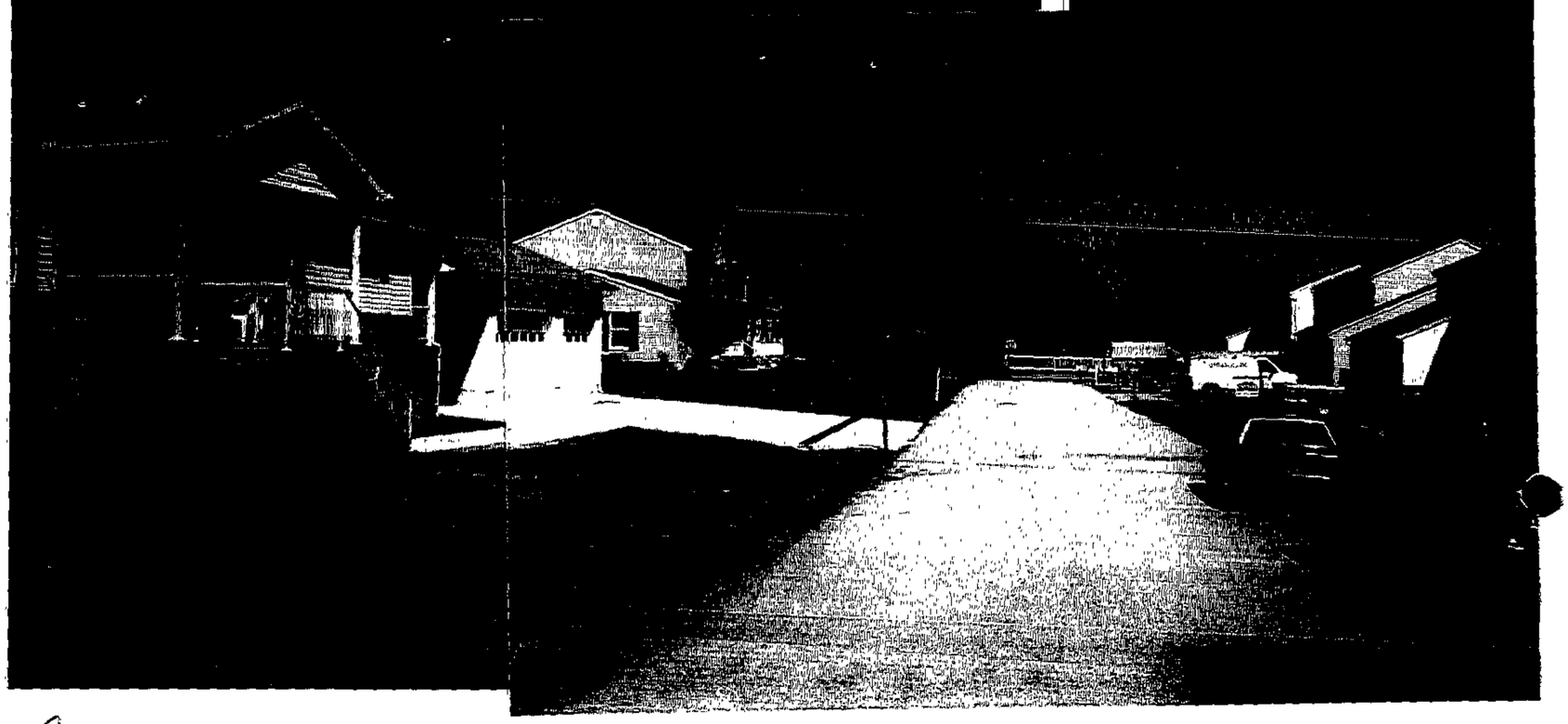
D. Woodell Property and 3823 Annadale Ave.

Pict. 2D



D. Looking north on Nathan Avenue from Annadale Ave.

PLOT. 2B



C. Looking east on Annadale from Nathan Ave.

PLOT. 2C



A. Looking from Annadale Ave., south at Tobacco Cove, Lot 31, Long Property, home and pier to left, Woodell property to right,

The Long Property, Lot 31, Annadale

Cases - 98-251-A (Zoning)
and
CBA-98-128

Lot. 31A

photographs

Case 98-051-A

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

Case # 98-251-A
Robert Long, et ux

Petitioners 2A-2G
(7 photos)











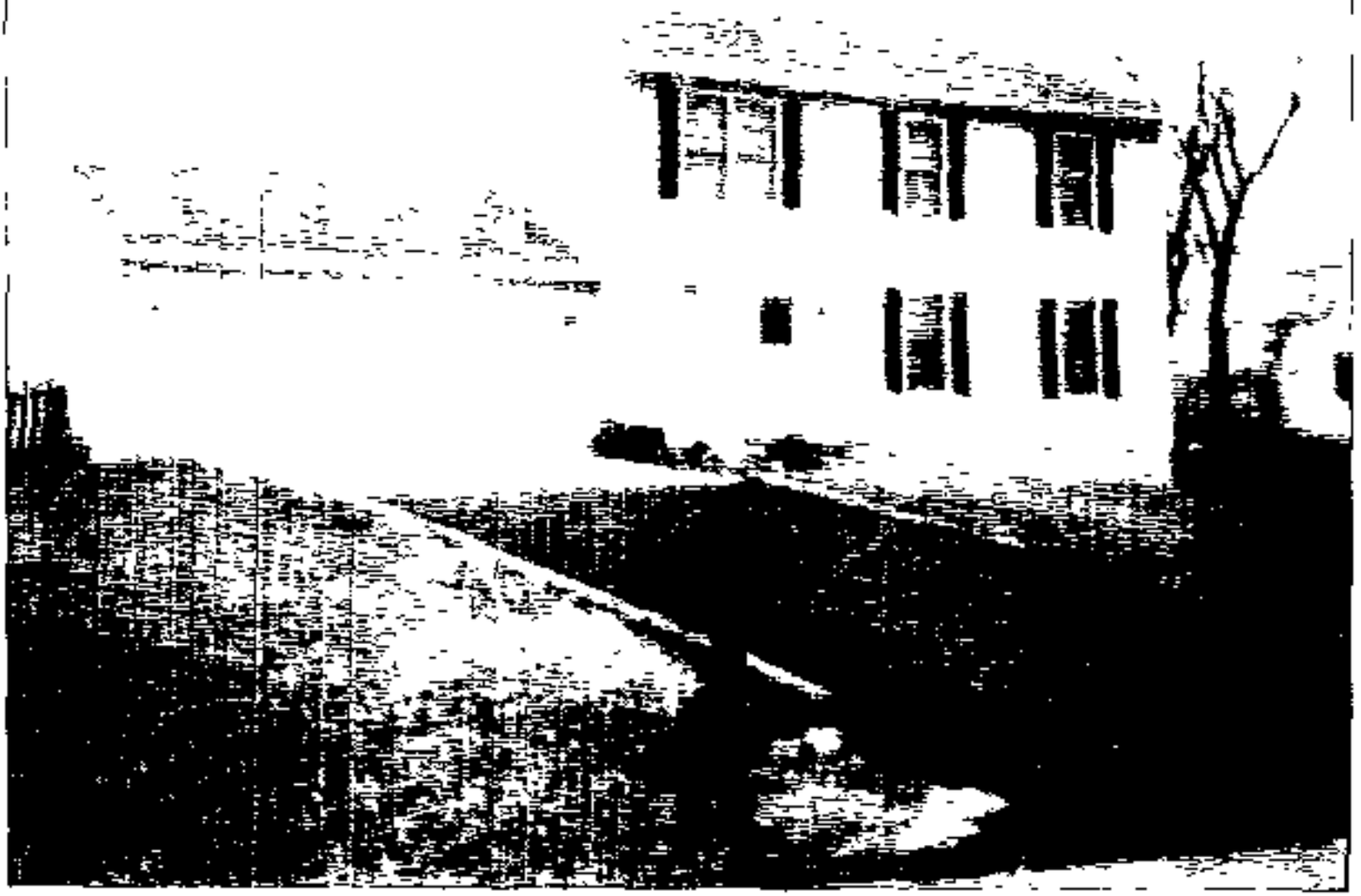
251

3821 Annadale Road
Baltimore, MD 21222

0950220

POLAROID®5

3831 Annadale Road
Baltimore, MD 21222



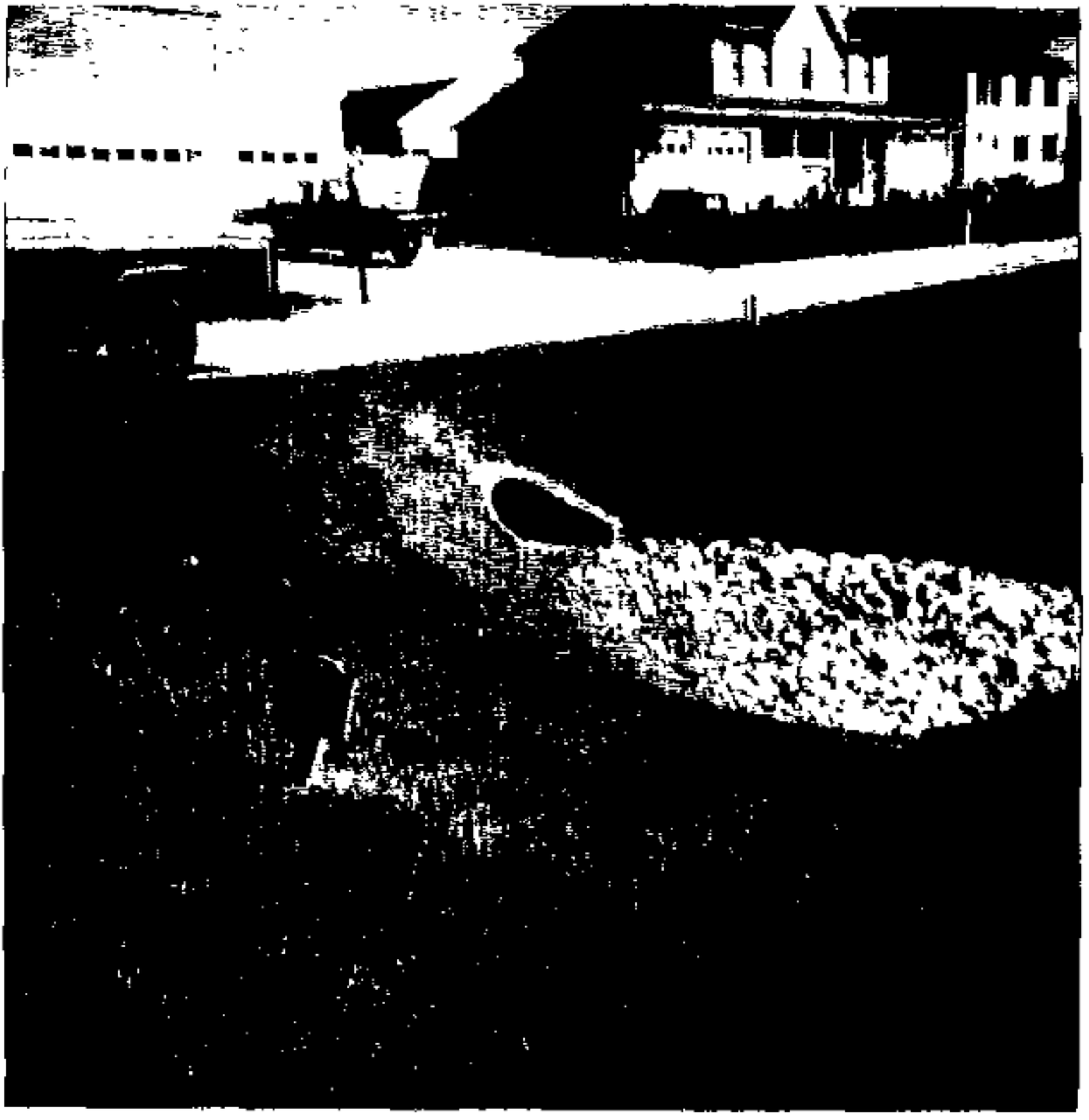
3828
~~3834~~ Annadale Road
Baltimore, MD 21222



3823 Annadale Road
Baltimore, MD 21222

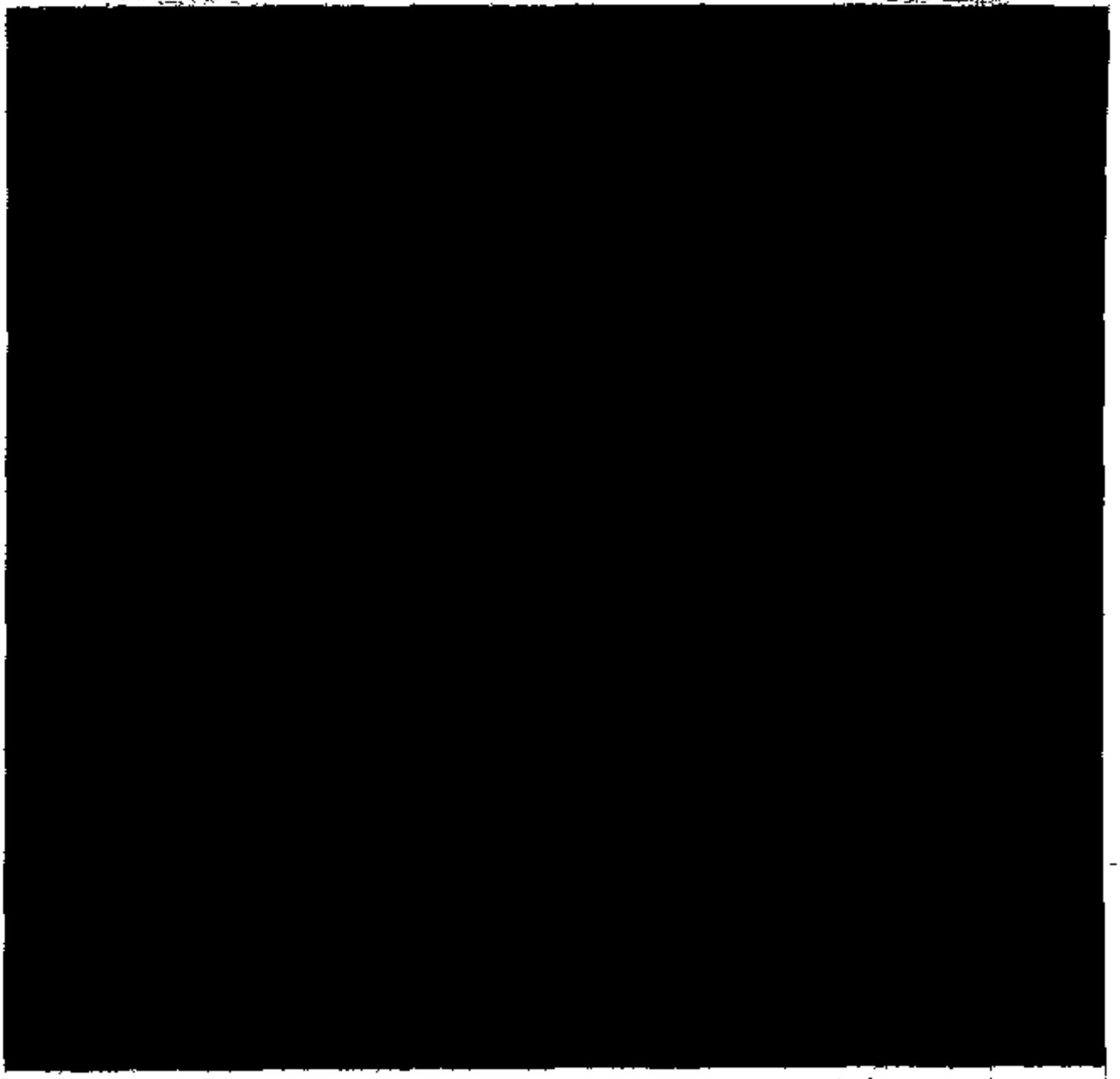
09502209 4 0

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From our yard

Holiday



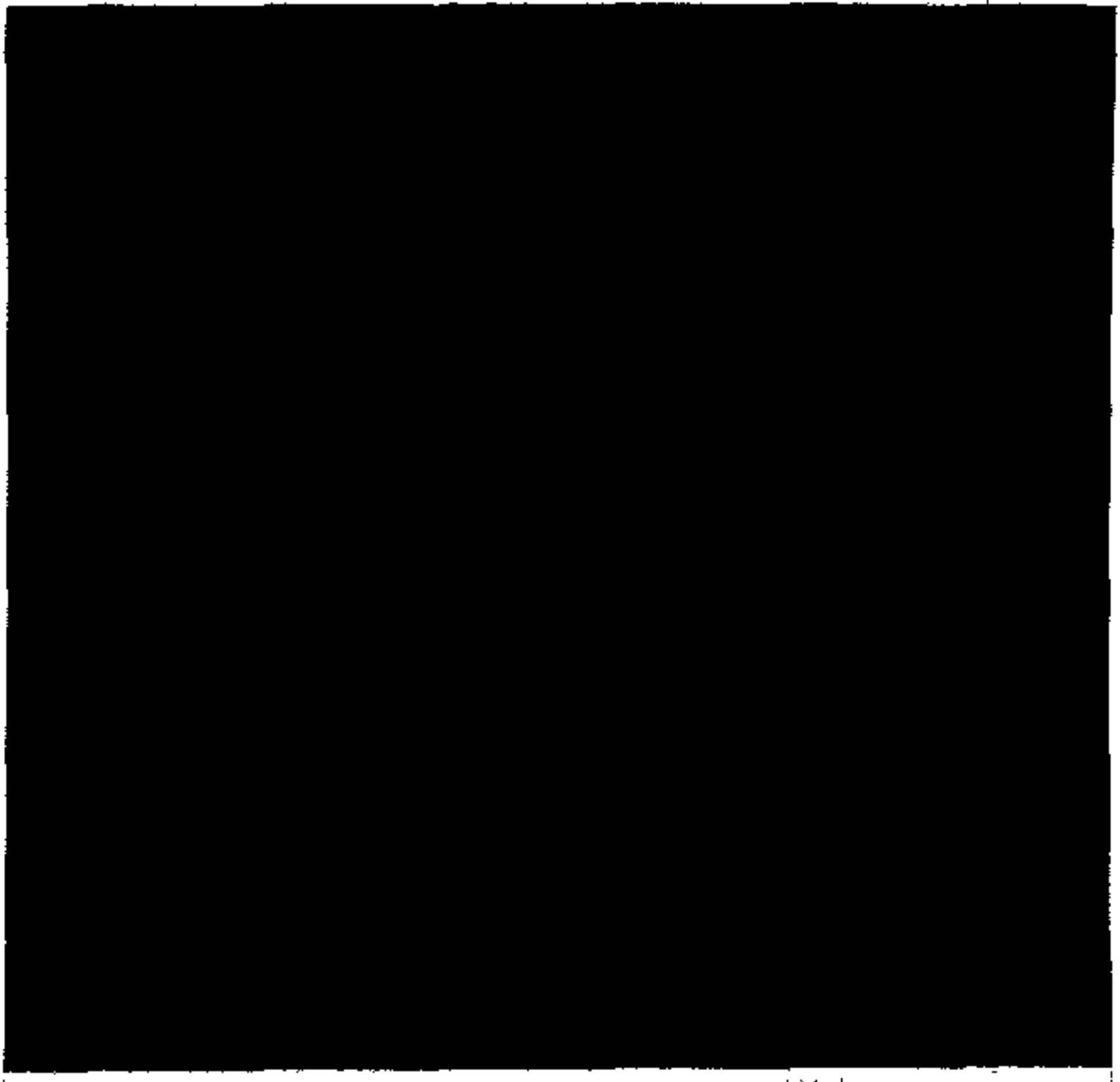
No Trespassing
Sign removed 10/21







10.2.1997 - debrie. en Tabasco Ed

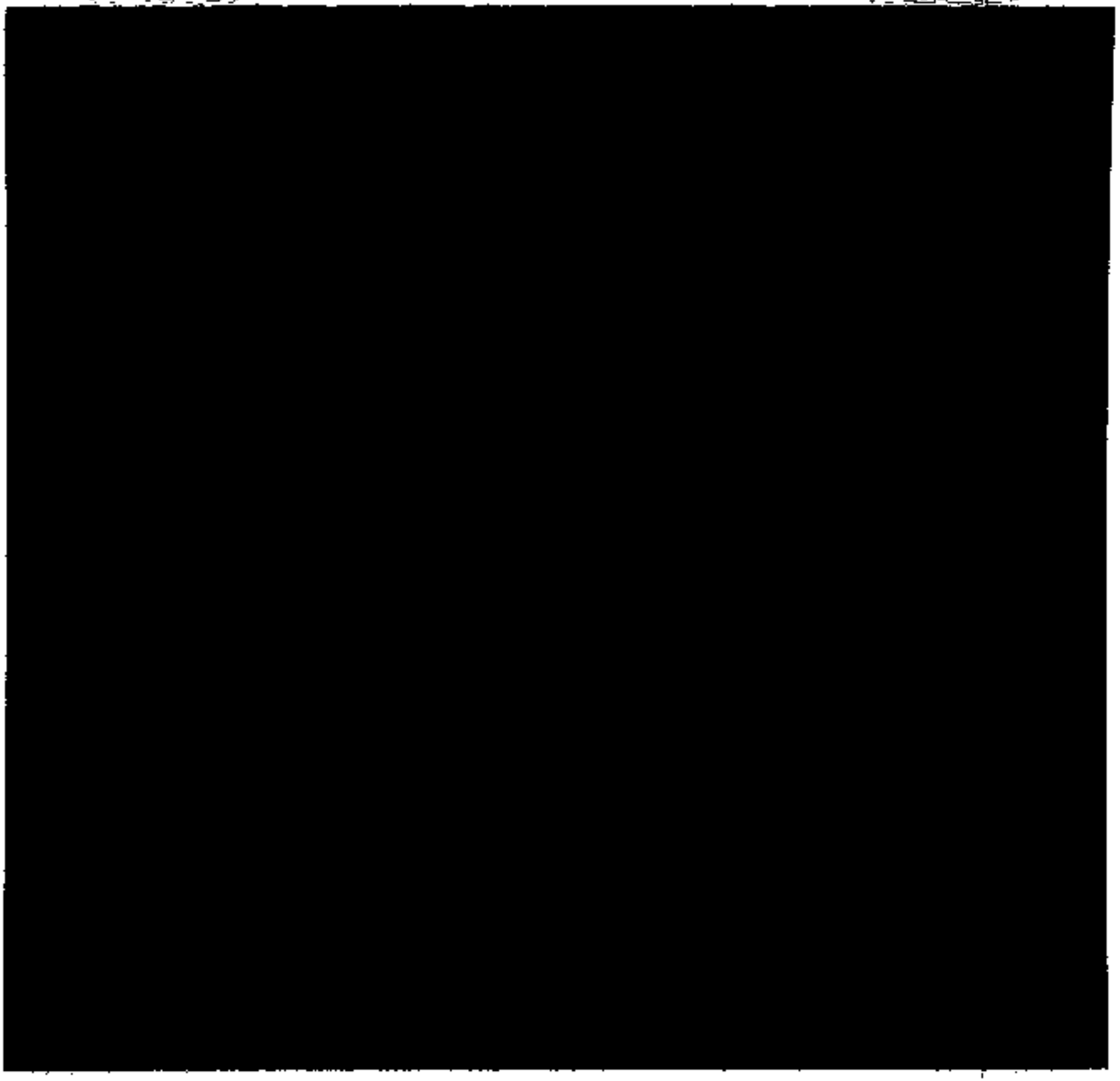


NO Trespassing
sign removed 10/21

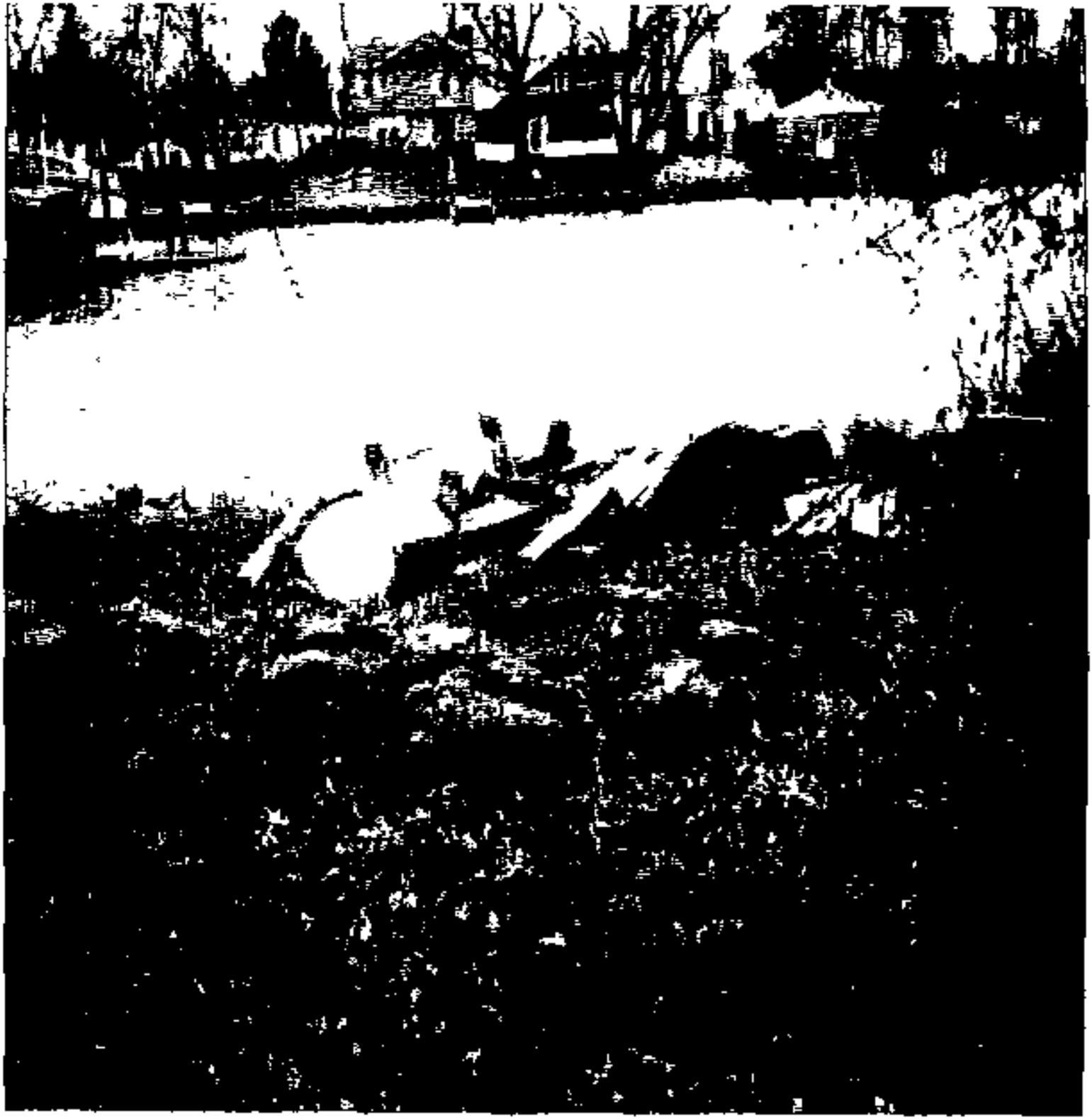




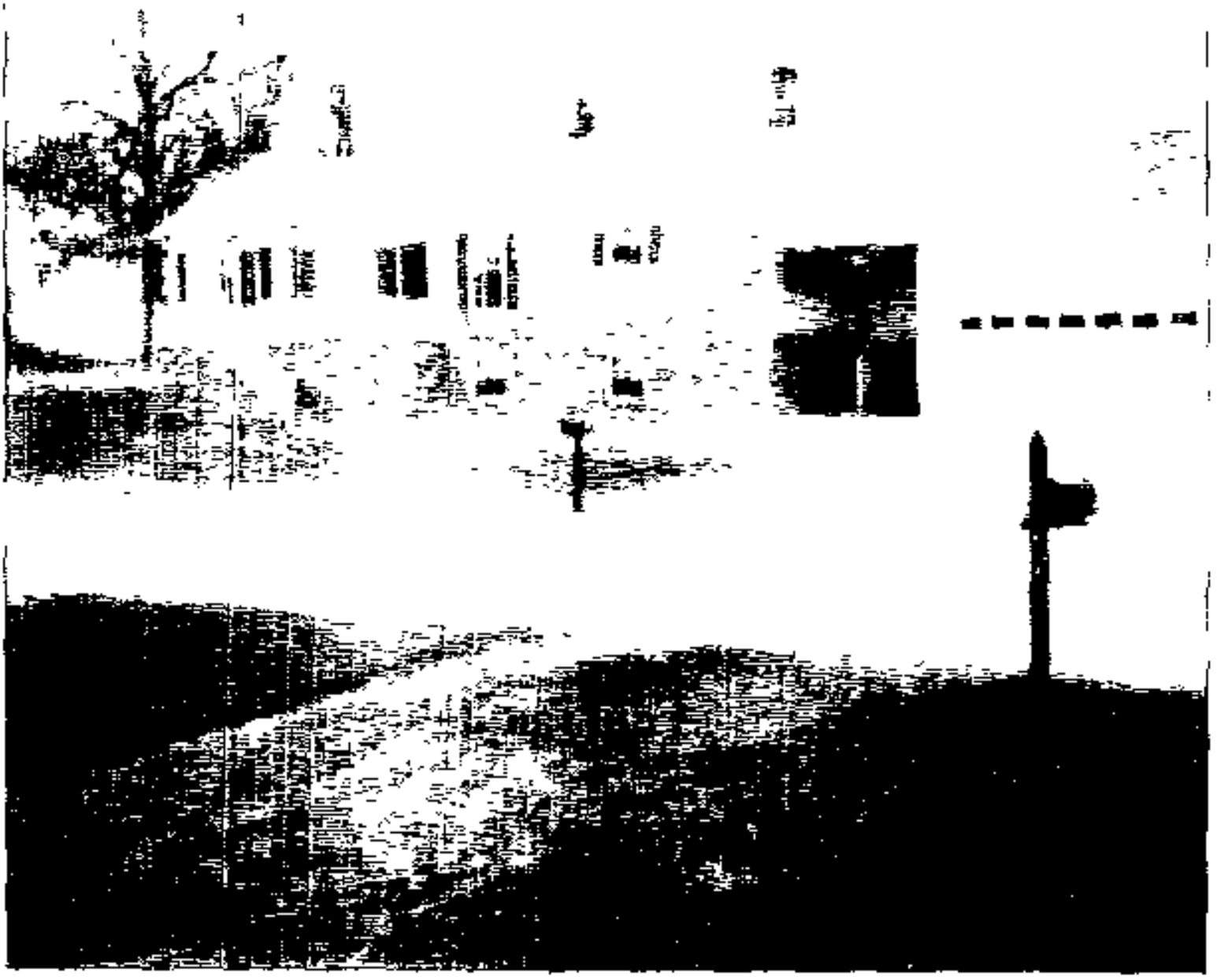
Truck parked in Front of Tabasco Rd



No Trespassing
Sign removed 10/21







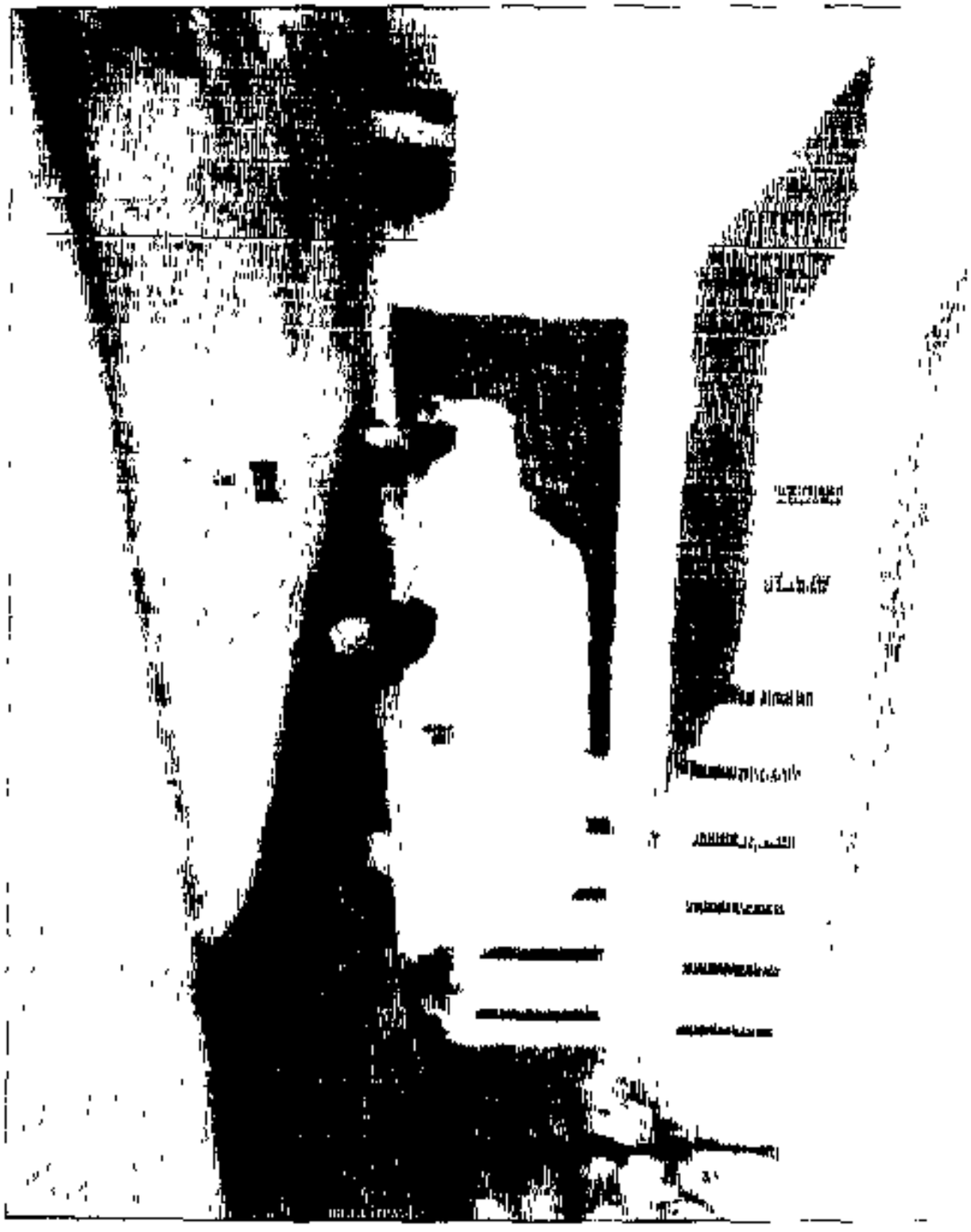
3820 Annadale Road
Baltimore, MD 21222



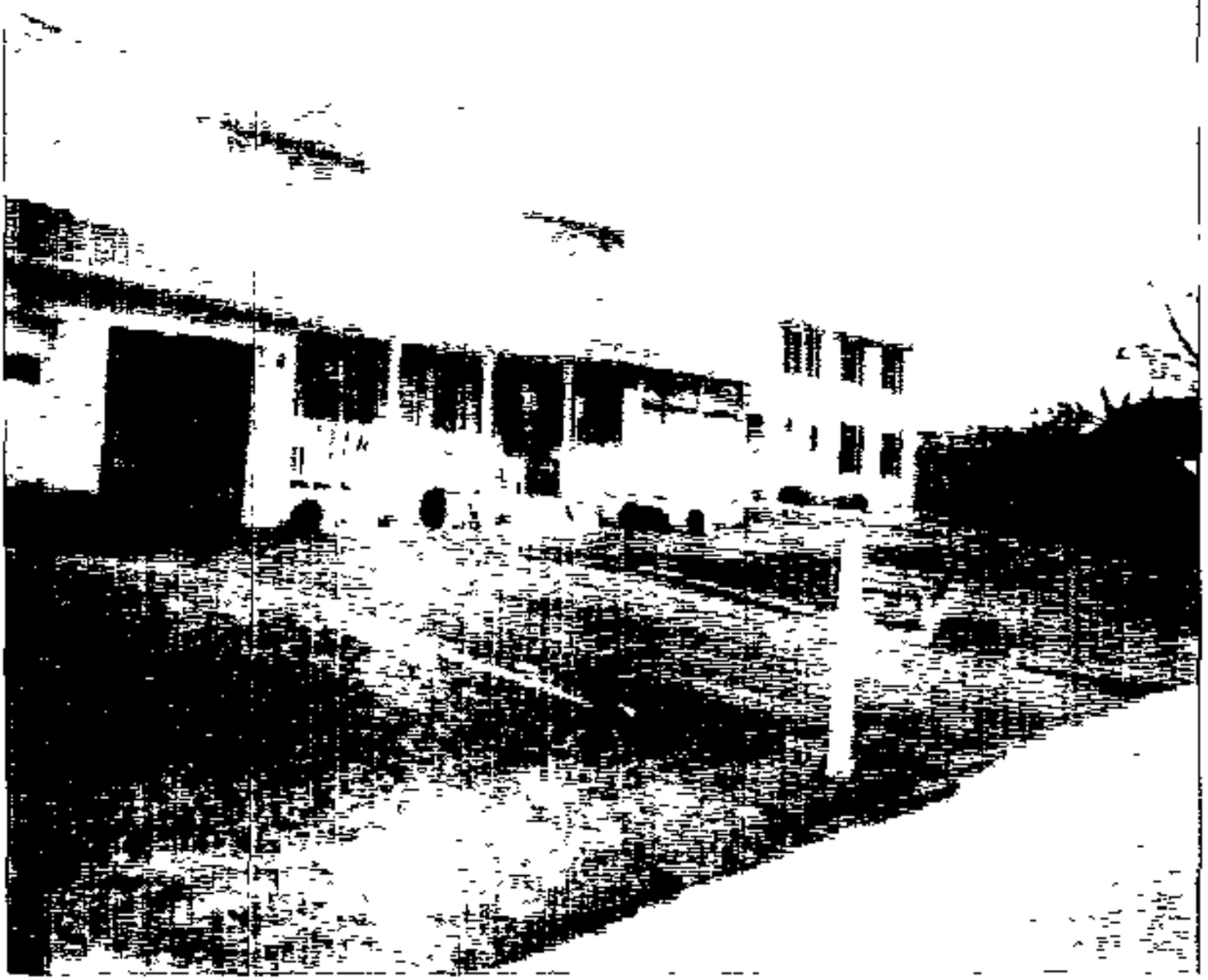
3825 Annadale Road
Baltimore, MD 21222

0950 2094

POLAROID 605



3827 Annadale Road
Baltimore, MD 21222



3830

3830 Annadale Road
Baltimore, MD 21222

0950720940

POLAROID



25

East on Annadale Road

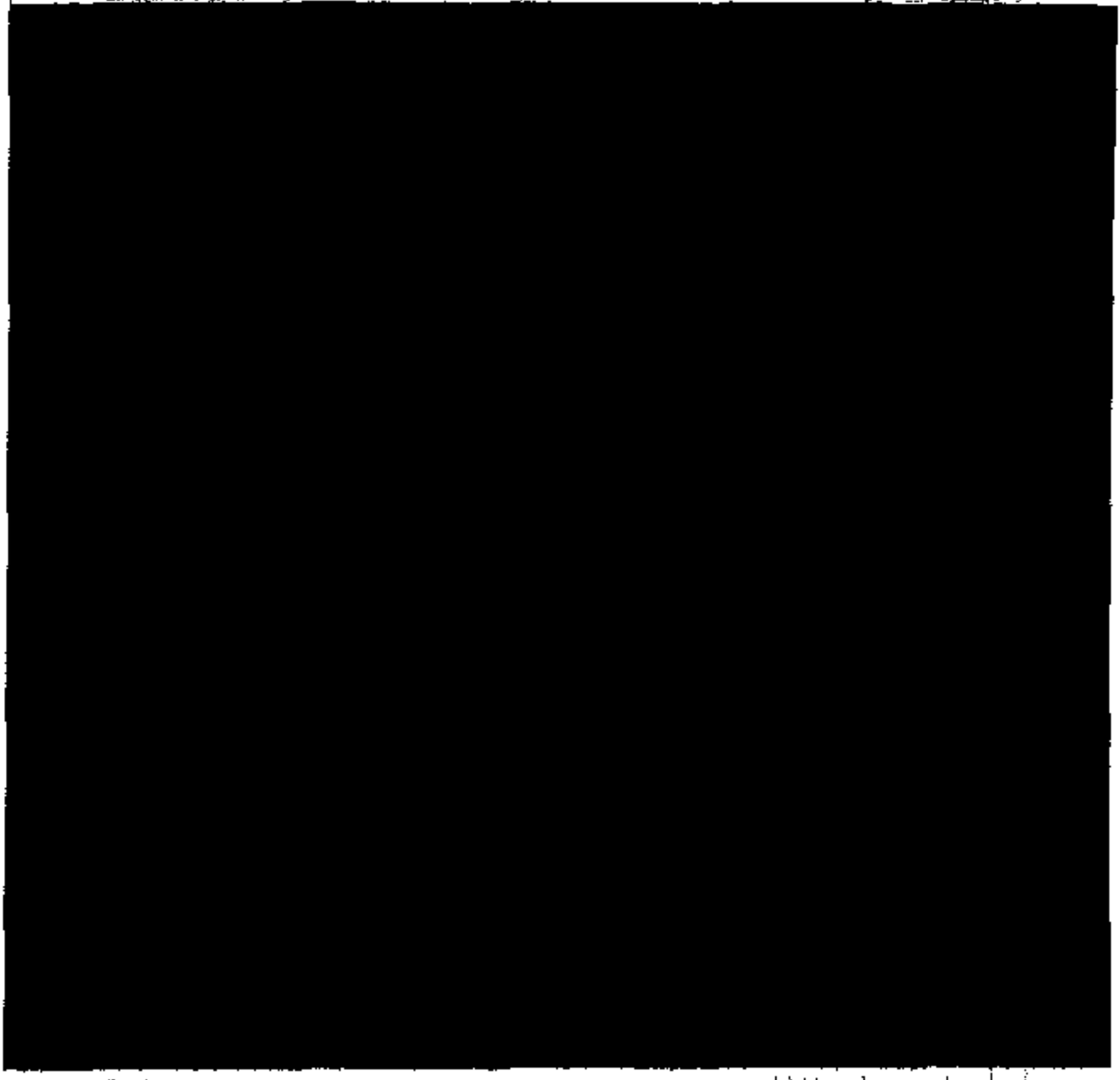


Weston Arsenal Rd

251



NO Trespassing Sign
Debris Available



No Trespassing
Sign removed 10/21





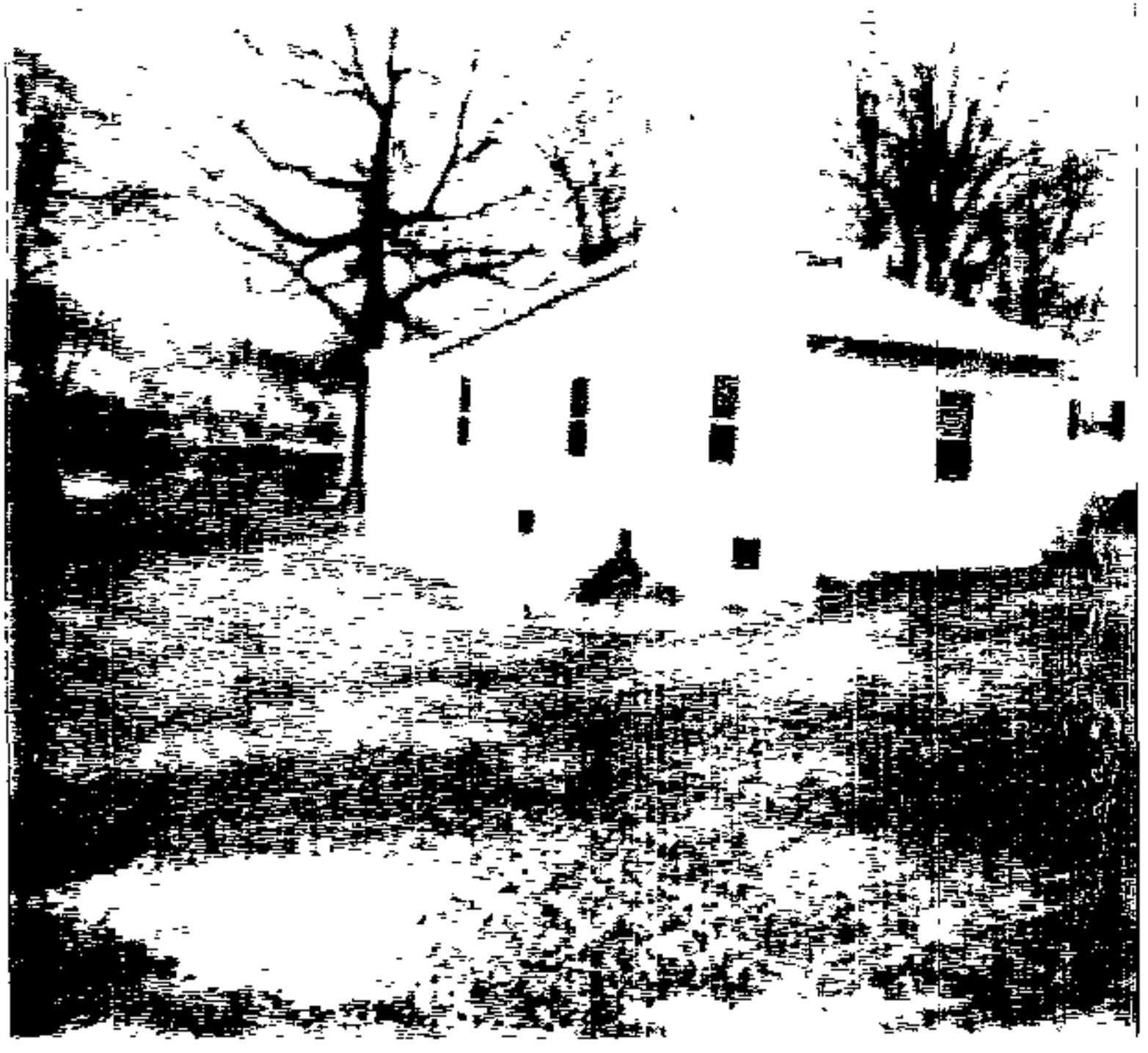
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3817 Annadale Road
Baltimore, MD 21222

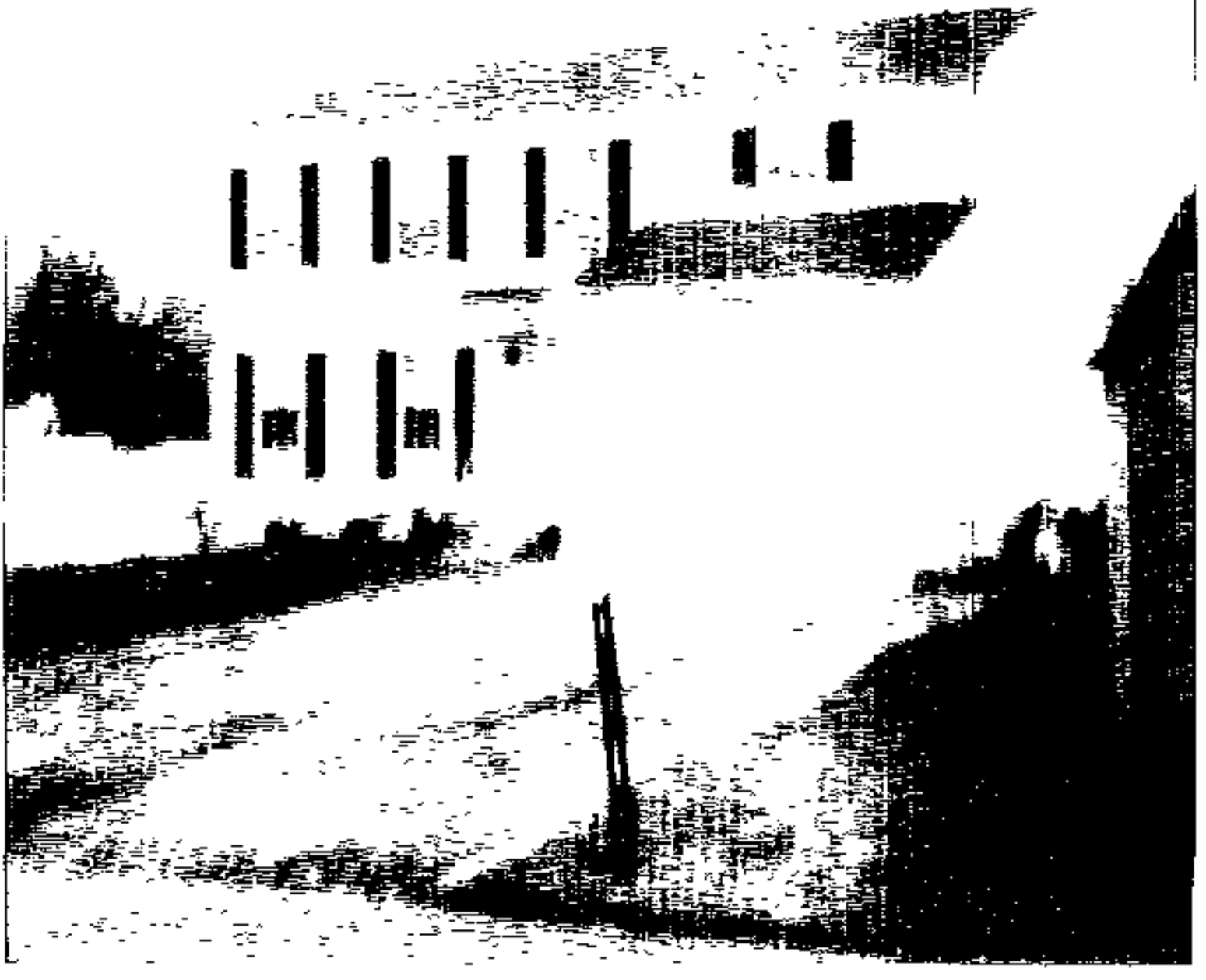
0950220

POLAROID

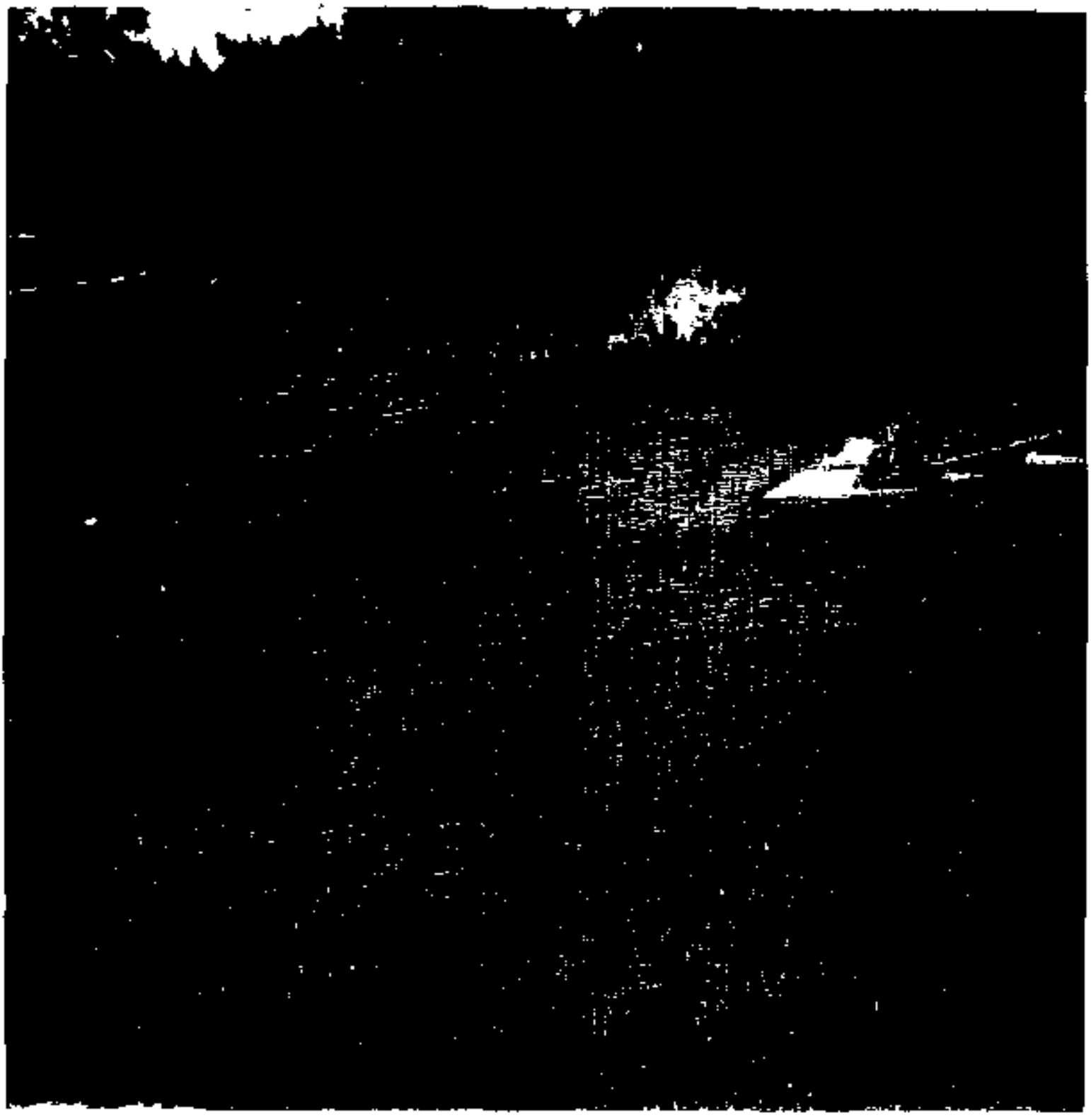




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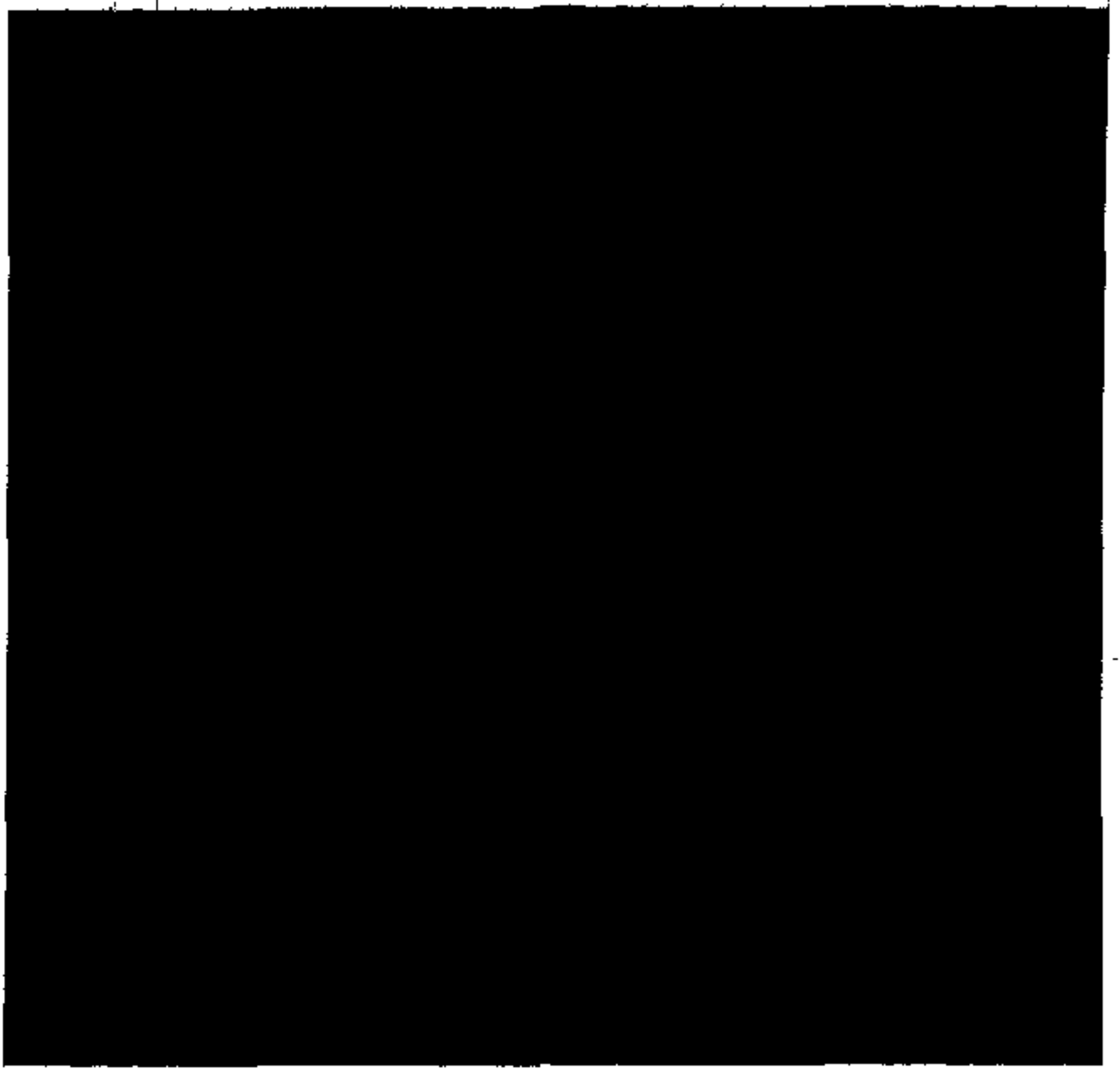


3835 Annadale Road
Baltimore, MD 21222



From annadale Rd

Tabloo Rd



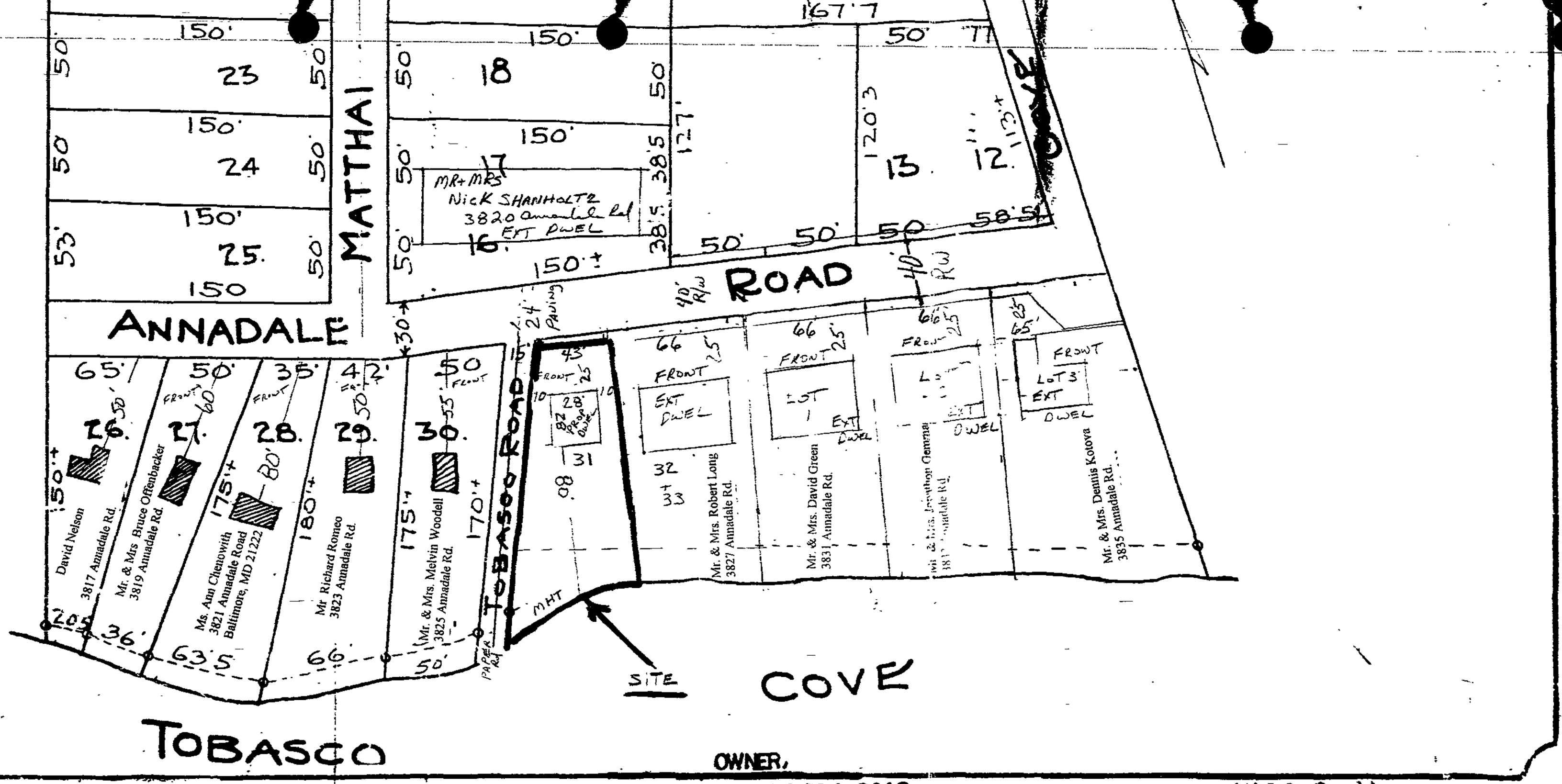
NO Trespassing
Signs removed 10/21

251

3819 Annadale Road
Baltimore, MD 21222

0950220940

POLAROID®5



LOCATION INFORMATION

Election District: 15th

Councilmanic District: 7

1"=200' scale map#: SE 3 G

Zoning: DR 5.5

Lot size: 186 acreage 8,130 square feet

	public	private
SEWER:	X	
WATER:	X	

	yes	no
Chesapeake Bay Critical Area:	X	

Prior Zoning Hearings: none

Zoning Office USE ONLY!

reviewed by:	ITEM #:	CASE#:
RT	251	

OWNER:
ROBERT LONG
3827 ANNADALE ROAD
BALTIMORE, MARYLAND 21222
388-1974

W.P.C.-B-34

95'

Lot No 1

Plat to accompany Petition for Zoning [x] Variance [x] Special Hearing

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

PROPERTY ADDRESS: 3825a Annadale Rd

Subdivision name: Annadale

plat book# 8 ,folio# 38 ,lot# 31 ,section

OWNER: Robert R. & Rose M. Long

A-126-89

Scale 1" = 60 ft.

45C3



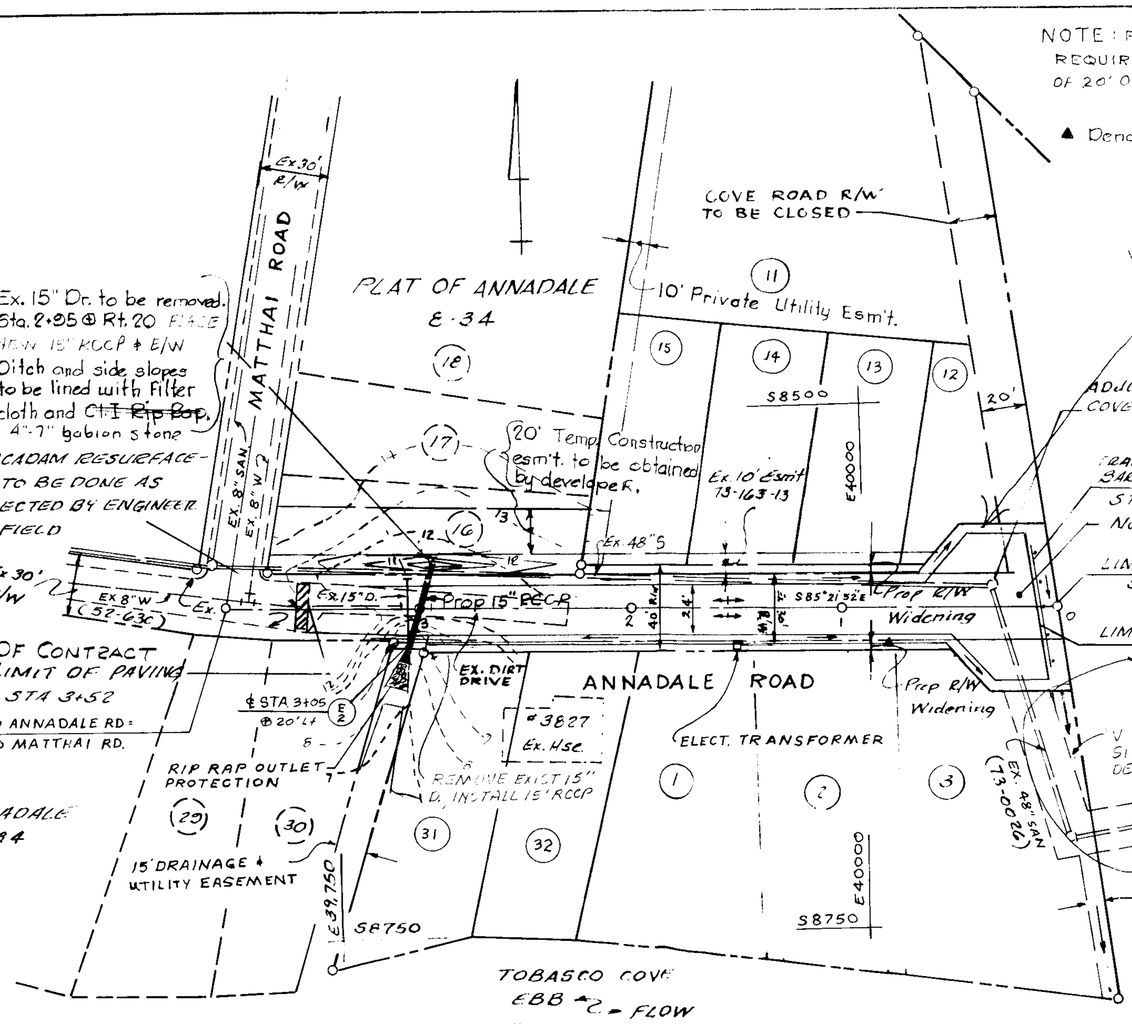
E-N'W
E-S'W

PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS		
	BY	DATE

Topography Compiled By Photogrammetric Methods
ADRAMS AERIAL SURVEY CORP. LANSING MICH.

SCALE	LOCATION	SHEET
1" = 200'	NORTH POINT	S. E. 3-G
DATE OF PHOTOGRAPHY DEC. 1954		


NOTE: FULL TRENCH COMPACTION IS REQUIRED FOR A MINIMUM DISTANCE OF 20' ON EACH SIDE OF ALL CROSSINGS.
▲ Denotes Street Light (175 WMV)
Note:
Ex. 15" Dr. to be removed. Sta. 8+95 @ Rt. 20
NEW 15" RCCP + E/W
Ditch and side slopes to be lined with filter cloth and Cl I Rip Rap, 4'-7" Gabion Stone
MACADAM RESURFACING TO BE DONE AS DIRECTED BY ENGINEER IN FIELD
COVE ROAD R/W TO BE CLOSED
PLAT OF ANNADALE E.34
10' Private Utility Esm't.
20' Temp. Construction esm't. to be obtained by developer.
Ex. 10' Esmt 15.163.13
ADJUST EX. MANHOLE COVER TO PROP GRADE
TRAFFIC BARRIER W/BEAM GAGE, CURB, SHA STD. #300.61
STA C+09
NO PARKING
LIMIT OF CONTRACT STA 0+00
LIMIT OF PAVING STA C+16
Prop R/W Widening
Prop 15" RCCP
Ex 15" D.
Ex 30" R/W
Ex 8" W
Ex 8" San
Ex 8" W C.I.
MATTHAI ROAD
LIMIT OF CONTRACT
LIMIT OF PAVING
STA 3+52
℄ STA 3+90 ANNADALE RD
℄ STA 0+00 MATTHAI RD.
ANNADALE E-34
EX. DIRT DRIVE
ANNADALE ROAD
ELECT. TRANSFORMER
Ex. 48" S.
Ex. 48" SAN. (13.00 DIA.)
RIP RAP OUTLET PROTECTION
15' DRAINAGE + UTILITY EASEMENT
10' DRAINAGE + UTILITY EASEMENT
V. DITCH WITH 2:1 SIDE SLOPES, MIN. 1' DEEP
REMOVE EXIST 15" & INSTALL 15" RCCP
Ex. Hse. #3827
℄ STA 3+05 @ 20'-LT
TOBASCO COVE
EBB "C" FLOW
S 85°21'52" E 400.00
S 8750
E 39,750
E 40000
S 8500
Ex 10' Esmt 15.163.13
Ex 30' R/W
Ex 8" W
Ex 8" San
Ex 15" D.
Prop 15" RCCP
Prop R/W Widening
Ex 48" S.
Ex 48" SAN (13.00 DIA.)
Ex 8" W C.I.
Ex 8" San
Ex 8" W
Ex 8" San

CERTIFICATION

I HEREBY CERTIFY, that on this 1 day of ~~February~~ March, 1999, a copy of the foregoing was mailed to Newton A. Williams, Esquire, Nolan, Plowhoff & Williams, 502 Washington Avenue, Towson, Maryland 21204 and a copy was mailed to Nancy West, Esquire, Office of Law, 400 Washington Avenue, Towson, Maryland 21204.

Wendy A. Zerwitz

WENDY A. ZERWITZ

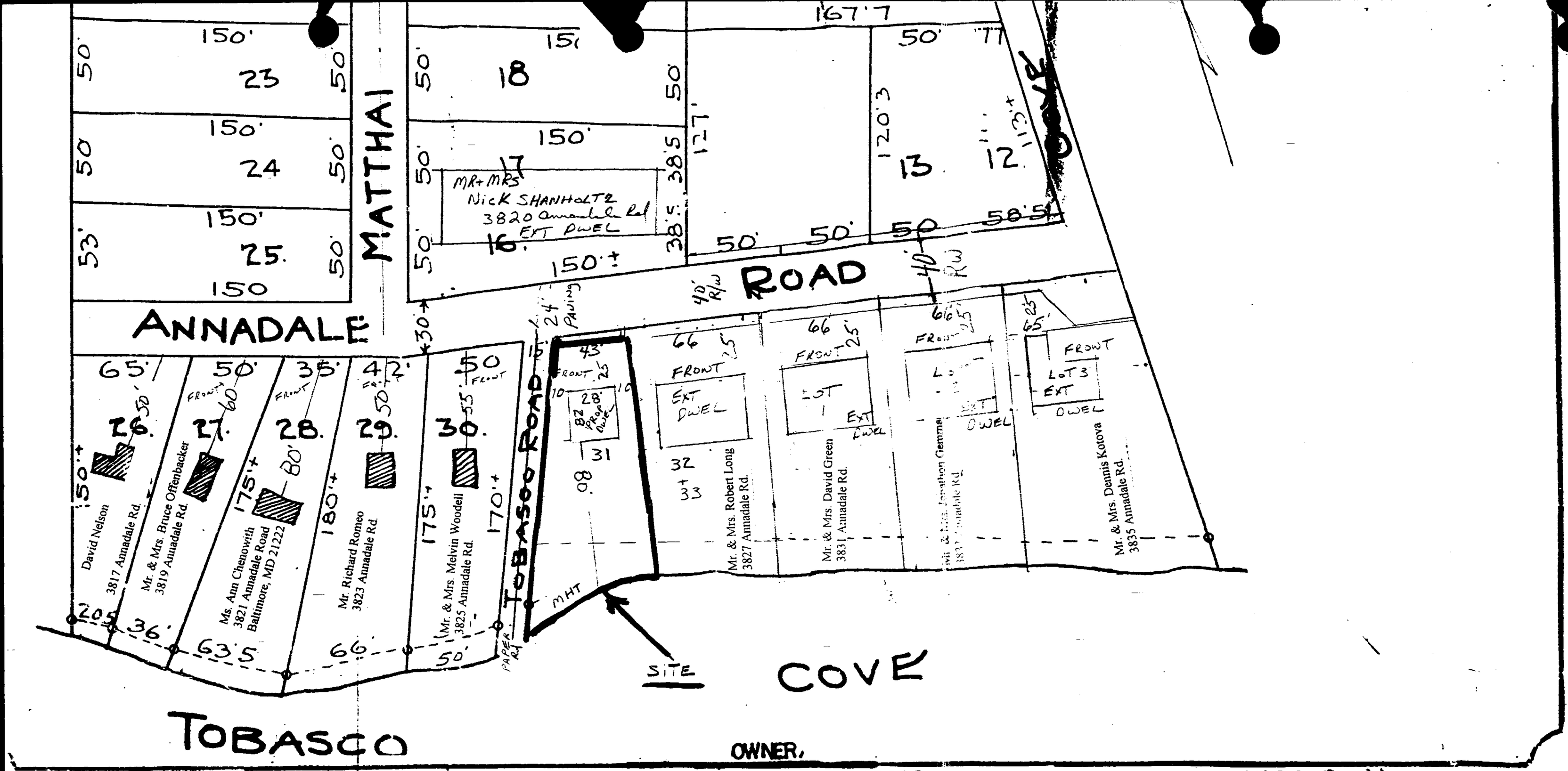
Best regards.

NEWTON At 410-823-7800

CONFIDENTIALITY NOTICE

"WARNING: Unauthorized interception of this telephonic communication could be a violation of Federal and Maryland law."

The documents accompanying this telecopy transmission contain confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original documents to us.


ANNADALE
ROAD
MATTHAI
ROAD
TOBASCO
ROAD
COVE
TOBASCO
SITE
MHT
PAPER RD
167.7
150'
150'
150'