IN THE MATTER OF
THE APPLICATION OF
ANTHONY J. AND SUSAN S. MOKEN
- LEGAL OWNER FOR A SPECIAL
HEARING /VARIANCE ON PROPERTY
LOCATED ON THE E/S BAUERNSCHMIDT
DRIVE, 515' N C/L OF RIVERSIDE DRIVE
(2400 BAUERNSCHMIDT DRIVE)

15th ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT * BEFORE THE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

Case No. 01-147-SPH and Case No. 99-401-A

<u>OPINION</u>

This case comes to the Baltimore County Board of Appeals based on an appeal from a decision of both the Baltimore County Zoning Commissioner and the Deputy Zoning Commissioner. The case before the Zoning Commissioner involved variances to permit the Petitioners to construct a garage on the side of their home with a two- (2) foot side yard setback; and a height of sixteen (16) feet. The Zoning Commissioner denied the variance request on July 2, 1999. The Petitioners requested reconsideration of his denial on July 19, 1999. On August 6, 1999, Commissioner Schmidt issued an Order on the Motion for Reconsideration denying same.

Later on the same day, an appeal was filed to this Board. That was Case No. 99-401-A.

Subsequently, on April 20, 2000, the Petitioners filed a second request for a permit. At that time, the Petitioners shortened the length of the garage by six (6) feet and the height of the garage by one (1) foot. This request was also denied.

The Petitioners then filed for a special hearing alleging a nonconforming use. That Petition, Case No. 01-147-SPH, was denied by the Deputy Zoning Commissioner on February 7, 2001. An appeal was taken to this body.

The case was heard in public session on March 12, 2002. Michael L. Freilich, Esquire, represented the Petitioners. Wendy A. Zerwitz, Esquire, represented the Protestants. At the

conclusion of the hearing, counsel was requested to file briefs on a simultaneous basis. Mrs.

Zerwitz submitted an 11-page brief; Mr. Freilich submitted a copy of the transcript as his closing memorandum. People's Counsel for Baltimore County submitted on the Memorandum filed by Ms. Zerwitz. A public deliberation was held on June 27, 2002.

Both counsel made brief opening statements at the public hearing. Both counsel understood that the case was being heard on a *de novo* basis. Ms. Zerwitz raised the question as to what was on appeal. Was it an appeal of the denial of the variance, or was it the denial of the Motion for Reconsideration? It was her position that the 30-day time to file the original appeal denial had expired prior to the filing of the appeal, and therefore the appeal should be limited to the Order of Motion for Reconsideration and not the entire Petition. Secondly was the issue of the nonconforming use regulations (§ 104, § 305, *Baltimore County Zoning Regulations*).

Section 305 pertains to the replacement of destroyed or damaged buildings.

Mr. Freilich introduced his first exhibit, a photographic record from the Baltimore

County GIS Service Unit. Ms. Sherry L. Moyle was called as Petitioner's first witness. She is a

planning associate with the Baltimore County Office of Planning. In her job, she tracks

historical aerials in Baltimore County. Under subpoena, she produced aerial photographs from
the department covering the years 1938, 1954, 1961 and 1977. She had brought with her a

magnifying glass as many of the photographs required magnification. She could not leave the
photographs on the hearing date, but promised to reproduce them and place a "true seal" on the
reproductions, which was acceptable to the parties.

The Board members convened at a desk in the room to observe the photographs as Ms.

Moyle testified. The oldest photograph was dated April 5, 1938 reflecting just land (Petitioners' Exhibit #3). The second photograph was dated January 8, 1954 at 1" - 300 scale. Ms. Moyle

opined that, in her opinion, there was an existing structure on the photograph and a structure behind that. She was not able to "tell if that is an actual garage or if that is a house off to the side with a flat roof, but it is a structure" [p 23], "The house was in front of the structure." [p 24] "The structure is facing the water-wall, it's behind the house." [p 24] Petitioners' Exhibit #5 dated April 3, 1961 (an aerial photograph on a 1"-1000 scale). It reflected all additional houses surrounding Bauernschmidt Drive. Petitioners' Exhibit #6 was a photograph, 1"-2000 scale. Ms. Moyle could still see "the garage or structure with the flat roof' [p 26]. A question was posed concerning Ms. Moyle's qualifications as an expert. She cited 5 years experience with the Planning Office and had provided such opinions in other forums, zoning, for example. Ms. Zerwitz conducted a voir dire. The only forum she had previously testified in was zoning issues. The Board accepted the witness as an expert "as to the totality of her answer and interpretation and give it the weight it deserves" [p 29]. In her opinion, the flat roof structure "looked like a garage because it's right behind the house" [p 29].

On cross-examination, the witness acknowledged that it was the size of the structure in comparison to the house that suggested it as a garage. On re-direct, the witness acknowledged that the County did not take aerial photographs on a regular basis, and those presented were the only ones that reflected the subject site, according to the County records.

Mr. Anthony Moken also testified. He acquired the property in 1967 and has since resided there on a continual basis. He is now retired from the Navy and occasionally does consulting work for the Federal Government. He opined that the had an aerial photograph of his house dated in 1997, 1"-2000 scale, a Mylar photograph (Petitioners' Exhibit #7). He took the photograph from an airplane. He described the smaller structure on the window as the garage, as a wall made of block and wood. Opposite the window were wooden doors into the garage facing

the street. The portion facing his neighbor's house was made of block, a plastic type block. The roof was entirely wood, covered with black tar paper. He stated that the roof leaked periodically and became "increasingly bad in the early 1990s." [p 37] This factor led to rotting. He began to remove parts of the roof that were rotten in the middle 1990s and the rest of it as it got "greater and greater as we approached the end of the nineties." [p 37] In late 1997, he decided it was time to remove all the wood around Christmas because much of the wood had caved in. In early 1999, he could not use the garage anymore because "the walls that were left were starting to lean. There were cracks in the masonry. I was afraid that the walls would fall down on me." [p 42] In discussions with friends, it was decided that "the logical thing was to take the last walls down and come up with wood from the base." [p 42] That was done in the spring of 1999. In March 1999, he rebuilt using the plate in for the side walls. The witness described the plate as "a heavy timber which is laid in the original structure, provides the basis for the side wall." [p 43] The old block was replaced with wood on the old foundation.

A Stop Order was issued by Baltimore County (Petitioners' Exhibit #8) on March 12, 1999. Mr. Moken stated that he had stopped immediately, went to Baltimore County and applied for a permit for the new structure (Petitioners' Exhibit #9). At the same time, he stated he applied for an application for the garage that was being built (Petitioners' Exhibit #10). The witness opined that he did inform the people at Baltimore County that he was building on the existing foundation. He filed a Petition to build a garage; requested a hearing; at the first hearing it was denied. Petitioners' Exhibit #11 was submitted.

Mr. Moken acknowledged that no field survey was made and he had made it from the plat of the property he had at home. Petitioners' Exhibit #12 was submitted representing notes the witness had taken of a meeting with Inspector Rodney Larrick. After his meeting with Mr.

Larrick, Mr. Moken filed a new application (Petitioners' Exhibit 13). This permit reflected the size of the garage being reduced – the removal of 6 feet and the height restriction that restricted it back to 15 feet. After he applied for the permit to build the garage, he had another hearing. At that time he was requesting to "construction a garage approximately 13' by 30' by 15' on the site of the original foundation, the original garage...that he had already begun to construct." [pp 62-63] Mr. Moken stopped building after the Cease and Desist Order. Petitioners' Exhibit 14 was admitted showing a picture taken from his pier, looking back from the water, looking towards Bauernschmidt Drive. The structure next to the house was the garage he stopped building. Mr. Moken opined that the garage was to be located on the old foundation.

On cross-examination the witness acknowledged that he had never had the property surveyed, and his measurements in the garage were based on pipes in the ground. He also acknowledged that he had "taken down the property before (you) Mr. Moken got the permit to take it down." [p 78] Mr. Moken acknowledged that he had agreed to take 6 feet off the garage. The current length was 36 feet. He would agree to shorten it to 30 feet. The original wood is on the original track. Petitioners' Exhibit #1 was admitted representing the Zoning Commissioner's Motion for Consideration and questions were posed concerning this Motion. Mr. Moken acknowledged that when he rebuilt the walls the building inspector noted that it was 16 feet tall. He did not know the original height of the garage. He stored only his car in the structure. The ramp goes down to the water. The driveway to the water was not always a ramp. It was constructed in the early 1990s.

Mr. Freilich called Mr. James Patton as a witness. After a *voire dire*, the Board accepted Mr. Patton as an expert in land development and zoning issues in Baltimore County based on his previous qualification many times in the past by the Baltimore County Board of Appeals. Mr.

Patton stated he had visited the site and had reviewed the exhibits entered into evidence. He opined that "it would be possible to locate the old foundation based on my site observation. I could not locate it precisely relative to the sideline... I could see approximately where the old foundation was, yes. There is physical evidence." [p 92] It was easy to determine what the earlier block foundations were, where the original steps were, in Mr. Patton's opinion. Mr. Patton also opined that you would not build a new foundation. You would "be putting up new walls and a new roof on the old foundation." [p 93] Mr. Patton described the process as "restoration reconstruction." [p 93] It was Mr. Patton's testimony that, based on the evidence and his site visit, the garage had not been totally removed in that the corners could have still been there. He could "cite physical evidence of where the lower part of the foundation up to the floor slab was still in existence." [p 94] Petitioners' Exhibit #14 was examined and used to illustrate Mr. Patton's contentions. Mr. Patton opined that there was a block wall being graded, and that there was evidence that there had been a previous garage. Mr. Patton acknowledged that the garage was extended and that the 6 feet had been added on to it as testified to by Mr. Moken. Mr. Patton described the garage condition reflecting that there was an original garage on site. Mr. Patton continued to explain his findings pointed out by features on Petitioners' Exhibits 16, 14 and 8. It was Mr. Patton's contention that the Moken lot was "irregularly shaped" [p 100] -

14 and 8. It was Mr. Patton's contention that the Moken lot was "irregularly shaped" [p 100] — with most of the lots on the subdivision plat being rectangular in shape. Mr. Patton indicated that in D.R. zones such rebuildings, i.e., parking of cars, are a use by right with no variance required or special exception required. It was his belief that the appropriate procedure for Mr. Moken was to file for a special hearing relative to a nonconforming use. He cited § 400.1, noting that such rebuldings in residential zones, other than farm buildings, shall be located on the rear yard and not more than 40 percent thereof. In no case can they be located more than 2½

Cases No. 01-147-SPH and 99-401-A

feet from any side or rear lot lines. Section 400.3 references the height of accessory buildings and shall not exceed 15 feet. If the building was in continuous use before adoption of the ordinance, he would suggest that ½ foot closer to the property line then an accessory building could be, and second that the building should be placed in the side yard rather than the rear yard. [pp 105-107] From the nonconforming use standpoint, he referenced § 104.3. The application had not mentioned the situation to increase the height or increase the area. Section 305 relative to the replacement would not be applicable. Section 104.2 references a structure damaged to an extent destroyed by fire or other casualty within 2 years after the disturbance or damage but may not be enlarged. [p 105] Mr. Patton opined that "where the County staff saw their proposal for the first time with an increase in size, and also with an increase in length, they right away looked at it from the point of view of a variance." Mr. Patton believed that "§ 104.2 was the applicable provision. Without any expansion, a structure damaged to any extent may be restored within 2 years after such destruction or damage, but may not be enlarged." [p 107] Mr. Patton stated that, under the current law, "you may place an accessory structure in the rear yard. In this case, the front is located toward the road and not the waterfront." Subject to the critical areas and buffering requirements, "assuming we comply with these, he could build a 30, 36-foot garage in his backyard near the water, 2½ feet from the property line, not exceeding 15 feet in height, provided he was 100 feet away from the water." [p 110]

On cross-examination, Mr. Patton restated his physical inspection of the subject property and garage; and he continued to opine that the "original garage slab...was still in evidence." [p 115] He was, however, "unable to tell what the original height of the garage was...because it had been removed, and there was no evidence of the previous walls." [p 117] He was able to determine the width of the previous garage and indicated that it was the same width. He had not reviewed any of the subdivision plats in reaching a conclusion that the property was unique or unusual compared to others in the area. [p 118] His premise was based on evidence submitted to the Board and the tax map "as far as a rough indication as to the shape of lots in that subdivision." [p 118] Mr. Patton again stated that § 104.3 applied if there was to be an expansion. He opined that § 104.2 applied to the instant case. The Petitioners rested their case.

Mr. Michael Fisher was the first witness for the Protestants. He resides at 2348 Martin Drive, next door to the Petitioner. His house is the last house on Martin Drive. He has resided in the house since 1988. It was formerly his father-in-law's house, who had resided therein since 1958 when he built it. He acknowledged the garage's presence when he moved there in 1988, 14 years ago.

Mr. Fisher's objections to the garage are that it blocked their "view as far as seeing the river, towards the bay and all; and it blocked our windows and a portion of our deck." [p 134]

The original garage had not blocked his windows out on the deck. "It only partially blocked it.

Just the inside porch windows." The new garage "blocks all the inside windows and a portion of the deck, if you are sitting on the deck, plus a second finished attic upstairs...The new roof would totally block that too." [p 134]

Protestant's Exhibits 4A and 4B, which the witness had taken in 2001, were accepted into evidence. He described the photographs and work performed on the garage by the Petitioner. He stated that the garage had been used by Mr. Moken for storage – he had "never seen him keep his auto there." [p 138] He was not aware of precisely where the property line was. Protestant's Exhibit #5 was admitted, taken by the witness in 2001. The photograph, in his opinion, reflected a garage wider than the original garage based on the previous owners' usage of the garage (the Browns). He opined that he started to complain about the garage in March 1999.

Protestant's Exhibit 6 was admitted reflecting a photograph taken on Memorial Day 1993 by the Protestant. It reflected the view of the water from his porch prior to the new garage being built. Protestants rested their case.

The Protestants initially asserted that the appeal to the Board was not a timely one. The Zoning Commissioner denied the Petitioners' "Petition for Variance" on July 2, 1999. Under the law, they had thirty (30) days from that date to file an appeal. Instead of filing an appeal directly to the Board, they requested that the Zoning Commissioner reconsider his decision. The Petitioners filed a request for reconsideration on July 19, 1999 to Arnold Jablon, Director of Permits and Development Management. That letter in turn was forwarded to the Zoning Commissioner who responded to the Petitioners by letter dated July 26, 1999. The Commissioner agreed to a reconsideration only on the condition that he receive a letter of support before the expiration of thirty (30) days from the request. No such letter was received from the Petitioners, and the Commissioner was so advised. On August 6, 1999, the Commissioner denied the Motion for Reconsideration. In that denial Order, the Commissioner stated that the Petitioners had 30 days to file an appeal of that decision. The Petitioners filed an appeal the same day, August 6, 1999. This appeal to the Board was beyond 30 days from the date of his original Order.

The Rules of Practice and Procedure before the Zoning Commissioner /Hearing Officer of Baltimore County (Baltimore County Code, Appendix G) specify how "Motions for Reconsideration" are to be handled. The Zoning Commissioner must rule on such Motions in 30 days from the date the Motion is accepted for filing. The filing of the Motion for Reconsideration shall stay all further proceedings. The Board takes the position that Motions for Reconsideration must be based upon either new evidence being presented to the Zoning

Commissioner or substantive matters that were not presented during the course of the original hearing. In the instant case, the Zoning Commissioner indicated that he would reconsider his decision only if a letter of support was gathered from the Petitioners' neighbors, Mr. and Mrs. Michael J. Fisher and Mr. Edward J. Glass. It is the Board's position that letters of support have no bearing upon the legitimacy of the approval of variances requested or the issue of the nonconforming use. Therefore, it is the Board's position that the Petitioners were required to file their appeal within 30 days of the original issuance of the Zoning Commissioner's "Order and Opinion," and that the appeal to this Board was beyond the 30 days from the date of the Zoning Commissioner's original Order.

The Board concurs with the conclusion reached by Counsel for the Protestants that the hearing must be confined to the denial of the reconsideration by the Zoning Commissioner; and, since the Board heard no testimony or evidence presented to suggest that the decision of the Zoning Commissioner was arbitrary, capricious, or an abuse of discretion, the appeal in Case No. 99-401-A shall be denied.

While the Board is not required to address the variance questions, had it done so, the variances would have been denied.

This Board is required to employ the guidance provided by the Court of Special Appeals in Cromwell v. Ward, 102 Md.App. 691 (1995), wherein the Court writes:

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...." Id. at 698.

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

In the zoning context 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 has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.... <u>Id.</u> at 710.

A review of the transcript does not reflect any substantive evidence from Mrs. Moyle or Mr. Moken as to any uniqueness or unusual features on the site. Mr. Patton's testimony as an expert in land development and zoning in Baltimore County [p 91] was limited as to "the irregularly shaped" lot after looking "at the plat, and most of the lots are rectangular in shape in that particular subdivision...irregular as far as the shoreline is concerned relative to the waterfront constraints." [p 101] The Board, after examining the evidence submitted, does not concur that this factor alone is sufficiently convincing to consider the property unique in the context of *Cromwell*, and the Maryland Courts have consistently held that even the testimony of an expert must present more than "a scintilla" of evidence in order to be persuasive. The Board is also not convinced that the Petitioners could not build a garage elsewhere on the property. The transcript does not reflect any "unreasonable hardship." The Board will accordingly deny the variances requested.

As to Case No. 01-147-SPH relative to consideration of the garage as a prior nonconforming use and to permit its reconstruction, the Board likewise will deny the request. The Petitioners, by the weight of the testimony and evidence, failed to demonstrate that "the restoration occurred within 2 years after such destruction." Section 104.2 and Section 305 of the *Baltimore County Zoning Regulations* address the relevant issues in the instant case and must be considered together. Section 305 states:

In case of complete or partial casualty loss by fire, windstorm, flood or otherwise of an existing dwelling that does not comply with height or area requirements of the zone in which it is located, such dwelling may be restored, provided are or

height deficiencies of the dwelling before the casualty are not increased in any respect, and such restoration is subject to the limitations imposed by Section 104.2 of the Baltimore County Zoning Regulations.

Section 104.2 requires that:

A structure damaged to any extent or destroyed by fire or other casualty may be restored within two years after such destruction or damage but may not be enlarged. In the case of residentially used structures which are nonconforming in density, the number of dwelling units or density units rebuilt may be equal to but may not exceed the number of units that existed before the casualty.

The Board concurs that there was a garage structure on site prior to 1955. However, Mr. Moken testified that the roof leaked since he purchased the property in 1967 [p 33] and became increasingly bad in the "early 90s; and had led to a sufficient amount of rotting." [p 37] He began removing the dangerous pieces of wood in the mid-1990s and got greater and greater "as we approached the end of the 90s." [p 37] In 1997, the roof was removed. Only his lawn tractor and lawn implements were kept inside to afford protection from the north wind. Thereafter, the doors were removed in 1998. [p 39] The back wall facing the water was removed in 1998. In 1999, "it was apparent that the existing walls were there, that I needed to do something with them before I lost the entire structure." [p 41] The walls came down in March 1999.

The Board agrees with the comments made in Protestants' Brief that the totality of the testimony is unclear as to when the exact damage occurred. The law does not favor the continuation of nonconforming uses. To that end, there is a heavy burden placed upon the Petitioners to satisfy the obligations imposed by the *Baltimore County Zoning Regulations*. The Board, based on the testimony and evidence, cannot conclude that restoration began within the 2-year limitation and the nonconforming use must also be denied.

<u>ORDER</u>

THEREFORE, IT IS THIS 5th day of September, 2002 by the

County Board of Appeals of Baltimore County

ORDERED that the Petitioners' appeal filed in Case No. 99-401-A which, for the reasons as stated in the above Opinion, was confined to the Zoning Commissioner's denial of Petitioners' Motion for Reconsideration, be and is hereby DENIED; and it is further

ORDERED that, based upon the evidence and testimony received in Case No. 99-401-A, and assuming in arguendo that Petitioners' appeal in that matter was not limited to the Motion for Reconsideration, Petitioners' variance request to permit construction of a garage on the side Hof their home with a two- (2) foot side yard setback and a height of sixteen (16) feet be and is **DENIED**; and it is further

ORDERED that, based on the testimony and evidence received as to Case No. 01-147-SPH, Petitioners' request for consideration of the garage as a prior nonconforming use and to permit its reconstruction must also be **DENIED**.

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.

> COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Charles L. Marks, Chairman

Lawrence M. Stahl

IN RE: PETITION FOR VARIANCE E/S Bauernschmidt Drive, 515' N of the c/l of Riverside Drive (2400 Bauernschmidt Drive) 15th Election District

5th Councilmanic District

Anthony M. Moken, et ux **Petitioners**

- BEFORE THE
- ZONING COMMISSIONER
- OF BALTIMORE COUNTY
- Case No. 99-401-A

ORDER ON THE MOTION FOR RECONSIDERATION

WHEREAS, this matter came before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Anthony J. and Susan S. Moken. The Petitioners sought relief from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (detached garage) to be located in the side yard in lieu of the required rear yard, with a side yard setback of 2 feet in lieu of the minimum required 2.5 feet, and a height of 16 feet in lieu of the maximum allowed 15 feet, in accordance with the site plan submitted into evidence and marked as Petitioner's Exhibit 1.

At the public hearing held in this matter, Anthony J. Moken, property owner, appeared and testified. The adjoining property owners, Michael J. and Janet Fisher, and her father, Edward Glass, appeared in opposition to the request.

Testimony and evidence was offered, both in support of, and in opposition to, the relief requested. At issue in this case is a detached garage, 13' x 36' x 16' in dimension, which was recently constructed on the subject waterfront property, in the side yard adjacent to the Fisher property. Testimony indicated that the property formerly featured a garage which was subsequently razed and replaced with the new structure, without benefit of a building permit. Although the new garage is located in the same side yard, it is taller than the older building and closer to both the water and side property line. The Protestants were generally opposed to the size and location of the new garage and their testimony and photographs presented were persuasive to my finding that the requested relief should not be granted. By my Order dated July 2, 1999, I denied the relief requested and required removal of the new garage within ninety (90) days of the date of said Order. Within my opinion, I

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indicated that the most practical solution would be for the Petitioner to relocate the garage closer to the road. Variance relief to allow the garage in the side yard would be appropriate, for so long as the garage is located an appropriate distance further from the water so as not to impact the Fisher/Glass property.

Subsequent to the issuance of said opinion, the Petitioner filed a written request for reconsideration, by letter dated July 19, 1999, and requested approval to reduce the size of the garage to that allowed by the zoning regulations in lieu of removing the structure altogether. By my response dated July 26, 1999, I advised the Petitioner that I would reconsider my earlier decision in the matter, provided his neighbors had no objections. The Petitioner was further advised to obtain a letter of support from the Fishers and Mr. Glass and submit same to me prior to the expiration of the thirty (30) day reconsideration period from the date of his request (July 19, 1999), or, August 18, 1999.

On August 5, 1999, the Petitioner telephoned this Office and reported that he was unable to obtain a letter of support from his neighbors in that they have decided they would not support any structure in the side yard. There being no other course of action available to the Petitioner at this level, I am compelled to deny the request for reconsideration.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this day of August, 1999 that the Motion for Reconsideration filed in the above-captioned matter, be and the same is hereby DENIED; and,

IT IS FURTHER ORDERED that terms and conditions of the Order issued July 2, 1999 shall remain in full force and effect; and,

IT IS FURTHER ORDERED that the Petitioner shall have thirty (30) days from the date of this Order to file an appeal of this decision.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Anthony J. Moken, 2400 Bauernschmidt Drive, Baltimore, Md. 21221 Mr. & Mrs. Michael Fisher and Mr. Edward Glass, 2348 Martin Drive, Baltimore, Md. 21221 Code Enforcement Division, DPDM; DEPRM; People's Counsel; Case File

IN RE: PETITION FOR VARIANCE

E/S Bauernschmidt Drive, 515' N of the

c/I of Riverside Drive

(2400 Bauernschmidt Drive)

15th Election District

5th Councilmanic District

Anthony M. Moken, et ux Petitioners

- * BEFORE THE
- * ZONING COMMISSIONER
- * OF BALTIMORE COUNTY
- * Case No. 99-401-A

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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, Anthony J. and Susan S. Moken. The Petitioners seek relief from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (detached garage) to be located in the side yard in lieu of the required rear yard, with a side yard setback of 2 feet in lieu of the minimum required 2.5 feet, and a height of 16 feet in lieu of the maximum allowed 15 feet. 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 public hearing held in this matter were Anthony J. Moken, property owner. Appearing as Protestants in the matter were Michael J. and Janet Fisher, and her father, Edward Glass. Mr. & Mrs. Fisher and Mr. Glass reside on the adjacent property.

Testimony and evidence offered revealed that the subject property is a waterfront parcel on Middle River, and is comprised of Lots 1 and 2 of the Bauernschmidt Manor subdivision, which was recorded many years ago. The property is an irregular shaped parcel consisting of a gross area of 0.36 acres, more or less, zoned D.R.3.5 and is improved with a single family dwelling. Mr. & Mrs. Moken have apparently owned the property and resided thereon for over 30 years. At issue in this case is a detached garage, 13' x 36' x 16' in dimension, which was recently constructed in the side yard of the property, adjacent to the

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Fisher property. Testimony indicated that the property formerly featured a garage which was subsequently razed and replaced with the new structure, without benefit of a building permit. Although the new garage is located in the same side yard, it is taller than the older building and closer to both the water and side property line.

Mr. Moken testified that the garage is needed to accommodate his vehicles and provide much needed storage space. He indicated that automobiles will be stored in the garage, and that they also will occasionally store their boat therein. Mr. Moken cited a recent episode of vandalism to one of his vehicles as the need for the garage. He also indicated that there is a large tree on the Fisher property which overhangs his driveway. He testified that limbs have fallen off of that tree during storms and caused damage to his vehicles. In addition, this tree is the home for many birds which soil his vehicles when parked outside the garage.

For their part, Mr. & Mrs. Fisher and Mr. Grass objected to the size and location of the new garage. They produced photographs of the new structure, which is substantially completed, as well as photographs of the former structure. Those photographs are persuasive that the garage is considerably larger than the older building, and located significantly closer to the water. The neighbors argue that this garage impairs their view of the water, and depreciates the value of their property.

Under the B.C.Z.R., the Zoning Commissioner has the authority to grant variances, pursuant to Section 307 thereof. That regulation has been considered and clarified by the Courts of this state. The leading case in considering Section 307 is Cromwell v. Ward, 102 Md. App. 691 (1995). In Cromwell, the Court held that the property owner must establish that his/her property is unique in order for variance relief to be considered. The Court also held that the Petitioner must establish that a practical difficulty or unreasonable hardship would be suffered if variance relief were denied and that the grant of the variance should not cause adverse impact to adjacent properties. The Court also noted that the basis of the hardship complained of by the property owner cannot be self-imposed.

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In open hearing, Mr. Moken testified that the garage could be altered so as to reduce its height to 15 feet in compliance with the B.C.Z.R. Such an admission by the property owner by necessity results in a finding that a variance from the height regulation must be denied. That is, in that the Petitioner candidly admitted that the building could be reduced in height, there was no practical difficulty shown and that variance must be denied.

The second variance under consideration relates to the request to allow the structure to be located 2 feet from the side property line in lieu of the required 2.5 feet. Mr. Moken was unclear about the precise dimensions of the garage and its distance from the property line. Mr. Fisher testified that his measurement showed that the structure was located 19 inches from the side property line. An examination of the site plan shows that the width of the subject building (13 feet) is appropriate and that the narrow width of the lot and location of the existing dwelling are significant factors which would justify variance relief. It is also to be noted that an additional strip of land which provides a buffer between these two properties, identified on the plan as the "tulip path". This reduces the impact of the variance. Despite these factors, I cannot grant the variance for the reduced side yard setback for reasons that follow in discussing the third variance.

The third request for variance is the most significant. The B.C.Z.R. requires that the garage be located in the rear yard, as opposed to the side or front yard. Photographs submitted and the site plan show that the subject structure is located to the side of the dwelling and closer to the water than is the house.

Waterfront property is indeed unique. Its value is derived primarily from its proximity to the river or creek on which it fronts. The front yard of a lot not located on the water is easy to determine. In those cases, the dwelling is normally oriented towards the road, thus, that portion of the yard between the house and road is considered the front yard. Generally it has been held that waterfront properties are just the opposite. Many homes built on the water are oriented to take advantage of the view and accessibility to the water. So is the case here for the Moken and Fisher properties. That is, I find that the front yards of those

properties is that area between the dwellings and the water. Thus, this structure is in the front and side yards. Even assuming arguendo that the front yard was determined to be between the road and the house (as stated on the site plan), it is to be noted that variance relief is nonetheless necessary in that a portion of the garage is undisputedly located in the side yard.

An examination of the photographs submitted by the Protestants is persuasive to a finding that variance relief to permit the garage where presently located should be denied. The "before" and "after" pictures produced by the Protestants show that the new garage is considerably closer to the water (i.e., in the front yard) than the old structure. This significantly impacts the Fisher/Glass property. Photographs taken from the Fishers' enclosed porch and open deck show that their view of the water has been dramatically decreased as a result of the applicant's construction. Surely, this adverse impact is a sufficient factor upon which variance relief should be denied.

For these reasons, the Petition for Variance shall be denied. Clearly, the variance to permit an increased height cannot be granted, based upon the Petitioner's own testimony. In addition, the request to allow the garage to be located in the side/front yard should be denied as same adversely impacts the neighbors' property. That portion of the variance as it relates to the location of the garage within 2 feet of the side property line is moot. Although not before me, it appears that the most practical solution would be for the Petitioner to relocate the garage closer to the road. Variance relief to allow the garage in the side yard would be appropriate, for so long as the garage is located an appropriate distance further from the water so as to not impact the Fisher/Glass property. The Petitioner may wish to consider this proposal, although same is not before me at this time.

Pursuant to the advertisement, posting of the property, and public hearing held thereon, and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this day of July, 1999 that the Petition for Variance seeking relief from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a

height of 16 feet in lieu of the maximum allowed 15 feet, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 400.1 and 400.3 of the B.C.Z.R. to permit an accessory structure (detached garage) to be located in the side yard in lieu of the required rear yard, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 400.1 and 400.3 of the B.C.Z.R. to permit an accessory structure with a side yard setback of 2 feet in lieu of the minimum required 2.5 feet, in accordance with Petitioner's Exhibit 1, be and is hereby DISMISSED AS MOOT; and,

IT IS FURTHER ORDERED that the subject garage shall be removed within ninety (90) days of the date of this Order.

The Petitioner shall have thirty (30) days from the date of this Order to file an appeal of this decision.

LAWRENCE E. SCHMIDT
Zoning Commissioner

for Baltimore County

LES:bjs

ORIDER RECEIVED FOR FILING By



TOWN THE ENGINEER OF THE PARTY OF THE PARTY

Case No.

REU 9115198

Petition for Variance

to the Zoning Commissioner of Baltimore County

UNAVAILABLE FOR HEARING Reviewed By

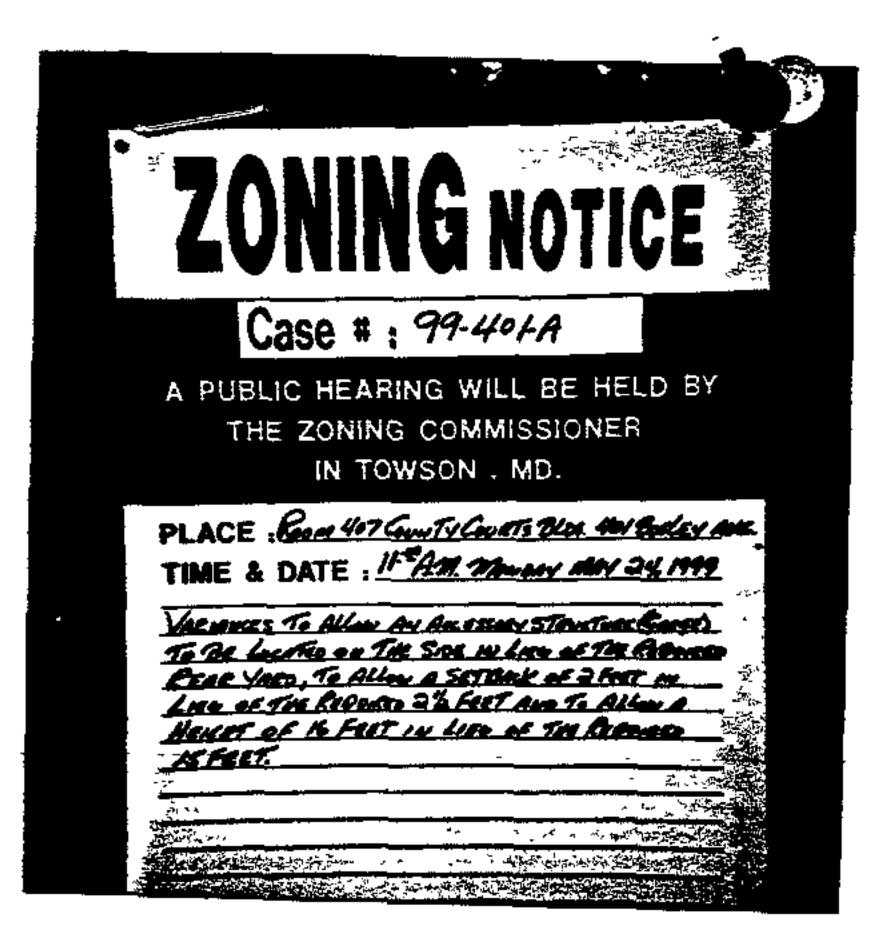
Date ____

to the zoning	1 1 D. Oti
for the proper	ty located at 240: Benemschmidt Dr. Pt/
	which is presently zoned DR 3.5
This Petition shall be filed with the Department of Permitowner(s) of the property situate in Baltimore County and which made a part hereof, hereby petition for a Variance from Section	on(s) =
•	
of the Zoning Regulations of Baltimore County, to the zoning hardship or practical difficulty)	
Rebuilding the garage on the original foundation	n shows a 24" setback from the existing 50
year old property line fence. The present heigh	t of the garage with the gable ends in
place is 16' Variance is requested for the prop	erty line setback. Variance is also
requested for the additional height to prevent te	earing out and resizing already completed
work. Property is to be posted and advertised as prescribed by the I, or we, agree to pay expenses of above Variance, advertising, por regulations and restrictions of Baltimore County adopted pursuant regulations.	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:	<u>Legal Owner(s):</u>
COMMACLI LICHASCIALGOLDO	11 Author T. Moken
	Mr. Anthony J. Moken Name - Type or Print
Name - Type or Print	Conthony of Makin
Signature	Signature 1
	MISCOULAN D.
Address Telephone No.	Name Type or Print Mohan Missan Mis
City State Zip Code	Signature
City	and Bandruschmidt Dr.
Attorney For Petitioner:	Address
	13-1t, more M. State 2122/ City State Zip Co.
Name - Type or Print	
	Representative to be Contacted:
Signature	
	Name
Company	
Telephone No.	Address Telephone N
Address	State Zip Co
City State Zip Code	City
	OFFICE USE ONLY
	ESTIMATED LENGTH OF HEARING
	COSTIMALED PERSONS

ZONING DESCRIPTION FOR 2400 BAUERNSCHMIDT DRIVE

Beginning at a point on the east side of Bauernschmidt Drive, which is 40 feet wide, at a distance of 515 feet north of the centerline of the nearest improved intersecting street, Riverside Drive, which is 40 feet wide. Being Lot #1, Section A in the subdivision of Bauernschmidt Manor as recorded in Baltimore County Plat Book #12, Folio #81, containing 13,312 square feet. Also known as 2400 Bauernschmidt Drive and located in the 15th Election District, 5th Councilmatic District.

401



RE: CASE # 99-401-A PETITIONER/DEVELOPER: (Anthony J. Molsen) **DATE OF Hearing** (May 24, 1999)

of nagement 111

TEPHENS

ADIES AND GENTLEMEN:	
This letter is to certify under the	e penalties of perjury that the necessary
sign(s) required by law were pos	sted conspicuously on the property located at
2400 Bauernschmidt Drive Balt	imore, Maryland 21221
The sign(s) were posted on	5-7-99
	(Month, Day, Year)
	Sincerely,
-	() 10 of 5/1/99
	(Signature of Sign Poster & Date)
	Thomas P. Ogle, Sr
	325 Nicholson Road
	Baltimore, Maryland 21221
	(410)-687-8405 (Telephone Number)

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in <u>Towson</u>, <u>Maryland</u> on the property identified herein as follows:

Case: #99-401-A 2400 Bauernschmidt Drive E/S Bauernschmidt Drive, opposite Martin Drive 15th Election District 5th Councilmanic District Legal Owner(s): Susan & Anthony Moken Variance: to allow an accessory structure (garage) to be located on the side in lieu of the required rear yard, to allow a setback of 2 feet in lieu of the required 2-1/2 feet, and to allow a height of 16 feet in lieu of the required 15 feet. Hearing: Monday, May 24, 1999 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E SCHMIDT Zoning Commissioner for Baltimore County

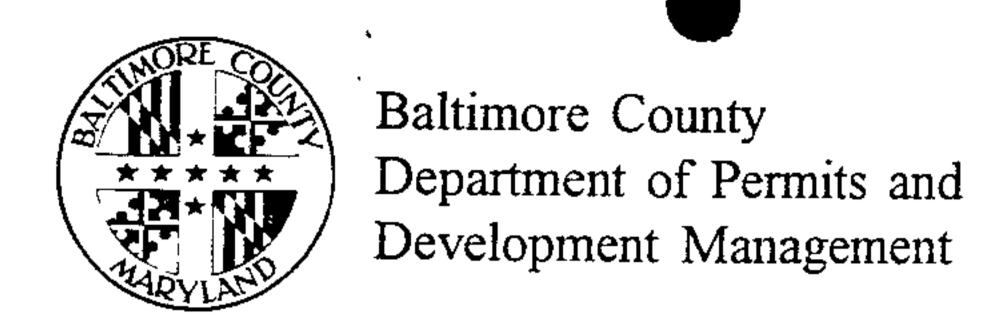
NOTES. (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

5/006 May 6 - C309630

CERTIFICATE OF PUBLICATION

TOWSON, MD., $5/6/$, 1999
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 successive
weeks, the first publication appearing on
THE JEFFERSONIAN,
S. Willings
LEGAL ADVERTISING



Development Processing County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 pdmlandacq@co.ba.md.us

April 22, 1999

NOTICE OF ZONING 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: 99-401-A
2400 Bauernschmidt Drive
E/S Bauernschmidt Drive, opposite Martin Drive
15th Election District – 5th Councilmanic District
Legal Owner: Susan & Anthony Moken

<u>Variance</u> to allow an accessory structure (garage) to be located on the side in lieu of the required rear yard, to allow a setback of 2 feet in lieu of the required 2-1/2 feet, and to allow a height of 16 feet in lieu of the required 15 feet.

HEARING: Monday, May 24, 1999 at 11:00 a.m. in Room 407, County Courts

Building, 401 Bosley Avenue

Arnold Jablon

Director

c: Susan & Anthony Moken

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MAY 9, 1999.

(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.

(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE:

April 20, 1999

TO:

Larry E. Schmidt

Zoning Commissioner

FROM.

James H. Thompson - RL

Code Enforcement Supervisor

SUBJECT: ITEM NO:

401

PETITIONER:

Anthony J. Moken and Susan S. Moken

VIOLATION CASE NO:

99-0812

LOCATION OF VIOLATION:

E/S of Bauernschmidt Drive, 515' of the centerline

of Riverside Drive (2400 Bauernschmidt Drive)

15th Election District

DEFENDANT(S):

Anthony J. Moken and Susan S. Moken

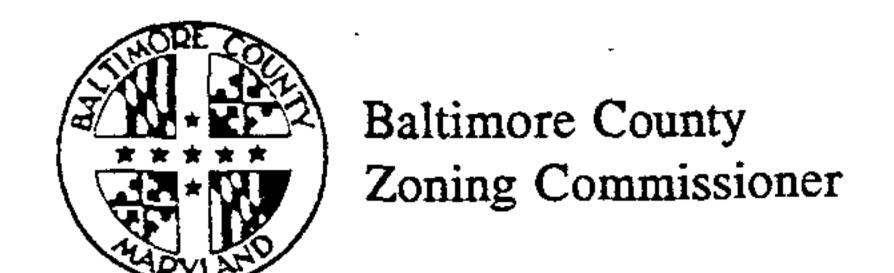
Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following person(s):

<u>NAME</u>

<u>ADDRESS</u>

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Code Enforcement Supervisor, so that the appropriate action may be taken relative to the violation case.

JHT/rl/lmh



July 26, 1999

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

Fax: 410-887-3468

Mr. & Mrs. Anthony J. Moken 2400 Bauernschmidt Drive Baltimore, Maryland 21221

RE: PETITION FOR VARIANCE (2400 Bauernschmidt Drive)
Case No. 99-401-A

Dear Mr. & Mrs. Moken:

Your letter dated July 19, 1999 to Mr. Arnold Jablon, Director of the Department of Permits and Development Management (DPDM), has been forwarded to me for a reply. Please be advised that as the Hearing Officer in the above-captioned matter, it is up to me to decide whether or not to entertain a request for reconsideration of my decision in that case. Hence, the reason Mr. Jablon forwarded your letter to me for a response.

In answer to your request for reconsideration, I have reviewed the contents of your letter and your proposal to reduce the size of the existing garage in lieu of removing the entire structure as required by my Order. Please be advised that I will reconsider my decision in this matter, if you get a letter of support from your neighbors, Mr. & Mrs. Michael J. Fisher and Mr. Edward Glass. However, this letter of support must be received by me prior to the expiration of the thirty (30) day reconsideration period from the date of your request (July 19, 1999), or, by the close of business on Wednesday, August 18, 1999. Upon receipt of said letter of support from the adjacent property owners (Fisher/Glass), the appeal period will be extended to run from the date of any subsequent Order issued on the Motion for Reconsideration, or Amended Order.

In the meantime, should you have any questions on the subject, please don't hesitate to call this office.

Very truly yours,

LAWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

LES:bjs

cc: Mr. & Mrs. Michael J. Fisher and Mr. Edward Glass

2348 Martin Drive, Baltimore, Md. 21221

Code Enforcement Division, DPDM; DEPRM; People's Counsel; Case File

2400 Bauernschmidt Drive Baltimore, MD 21221

July 19, 1999

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Mr. Arnold Jablon Director of P.D.M. 111 W. Chesapeake Avenue Towson, MD 21204

SUBJECT: REQUEST FOR RECONSIDERATION

RE: PETITION FOR VARIANCE CASE No. 99-401-A

Dear Sir:

I have received notice of the decision denying my petition of variances and am requesting a reconsideration of the action.

JUL 23

The original garage (built in 1950) was a block/frame structure of approximately 13'W X 30'D X 12'H. The roof and ends were made of wood and were in constant need of repair. A steep slope (25% grade) before the flat area of the garage allowed water and drainage to freely run through the garage, constantly rotting all but the side walls. The grade beyond the flat area toward the water is also 25%. This flat area of 13'W X 30'D is the only practical location for the garage, both 50 years ago and also today with the new garage.

Without complete knowledge of Section 400.3 of the B.C.Z.R. of 1955 and acting on poor advice from friends, I constructed a new garage on the site of my old garage of 49 years which was 6 feet longer (protruding closer to the water) and approximately 3 feet higher that the original structure.

My neighbor objected to this structure. His objections were based on his view from the enclosed porch of his house and required looking nearly perpendicular to the property line through both my property and the next property to view the water. His view from the water-side of his house, on his water-side yard, or from his pier is unobstructed.

By removing the 6 feet of building located closer to the water and dropping the height to conform to Section 400.3, the new garage will not impact the Fisher/Glass property any more than it has in the past 49 years.

The old garage was getting impractical to keep repairing and was the reason for my razing it and building a new structure. I understood that a building can be repaired

99.1925

indefinitely without permit, but I did not know that I needed a permit to replace it on its original foundation of 49 years.

The newly proposed garage, now 6 feet shorter and approximately 3 feet lower will essentially allow me to protect my cars for the three reasons given in the Petition for Variance.

I believe that replacing the old garage with the newly proposed one should be allowed, as it is only a new structure replacing the old.

Sincerely yours,

Gulhony J Moken
Anthony J. Moken

2400 Bauernschmidt Drive Baltimore, MD 21221 August 6, 1999

Mr. Arnold Jablon Director of D.P.D.M. 111 W. Chesapeake Avenue Towson, MD 21204

SUBJECT: REQUEST FOR APPEAL Case No. 99-401-A

Dear Sir:

I have received notice of the decision in my request for reconsideration from Lawrence Schmidt. My proposal to reduce the size of the garage to the size of the original garage was received by Mr. Schmidt and would be reconsidered if my neighbors, Mr. & Mrs. Michael J. Fisher and Mr. Ed Glass, would tender a letter of support.

I spoke with my neighbor, Michael Fisher, with no success. He stated that the reduction in size was not acceptable and that he did not want the garage rebuilt at all. My proposal would provide no change to his view from what has been there for 49 years and, as such, I cannot understand his opposition.

Because of his view, I am requesting an appeal in my case to rebuild my garage. Copies of my request for reconsideration and the letter from Lawrence Schmidt are enclosed for reference.

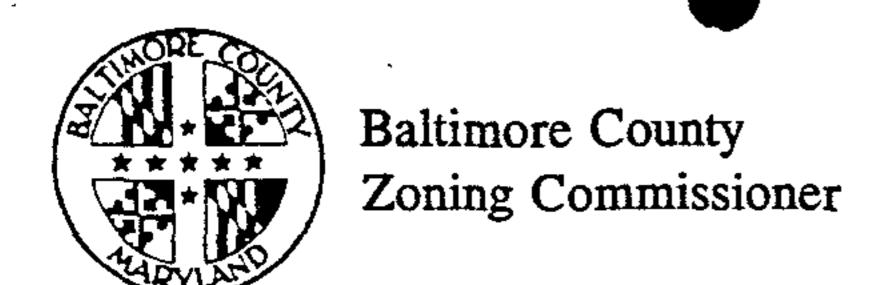
Sincerely yours,

Anthony J. Moken

Gothany of Mobien

AUG - 6 1999

DEPT OF PERMITS AND DEVELOPMENT MANAGEMENT



July 26, 1999

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

Fax: 410-887-3468

Mr. & Mrs. Anthony J. Moken 2400 Bauernschmidt Drive Baltimore, Maryland 21221

RE: PETITION FOR VARIANCE

(2400 Bauernschmidt Drive)

Case No. 99-401-A

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In the meantime, should you have any questions on the subject, please don't hesitate to call this office.

Very truly yours,

LAWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

LES:bis

cc: Mr. & Mrs. Michael J. Fisher and Mr. Edward Glass 2348 Martin Drive, Baltimore, Md. 21221

Code Enforcement Division, DPDM; DEPRM; People's Counsel; Case File

2400 Bauernschmidt Drive Baltimore, MD 21221 July 19, 1999

Mr. Arnold Jablon Director of P.D.M. 111 W. Chesapeake Avenue Towson, MD 21204

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RE: PETITION FOR VARIANCE CASE No. 99-401-A

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indefinitely without permit, but I did not know that I needed a permit to replace it on its original foundation of 49 years.

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I believe that replacing the old garage with the newly proposed one should be allowed, as it is only a new structure replacing the old.

Sincerely yours,

Anthony J. Moken

TO: PATUXENT PUBLISHING COMPANY

May 6, 1999 Issue - Jeffersonian

Please forward billing to:

Anthony J. Moken

410-686-1041

2400 Bauernschmidt Drive

Route 1

Baltimore, MD 21221

NOTICE OF ZONING 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: 99-401-A 2400 Bauernschmidt Drive

E/S Bauernschmidt Drive, opposite Martin Drive 15th Election District – 5th Councilmanic District

Legal Owner: Susan & Anthony Moken

<u>Variance</u> to allow an accessory structure (garage) to be located on the side in lieu of the required rear yard, to allow a setback of 2 feet in lieu of the required 2-1/2 feet, and to allow a height of 16 feet in lieu of the required 15 feet.

HEARING: Monday, May 24, 1999 at 11:00 a.m. in Room 407, County Courts

Building, 401 Bosley Avenue

LAWRENCE E. SCHMIDT

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

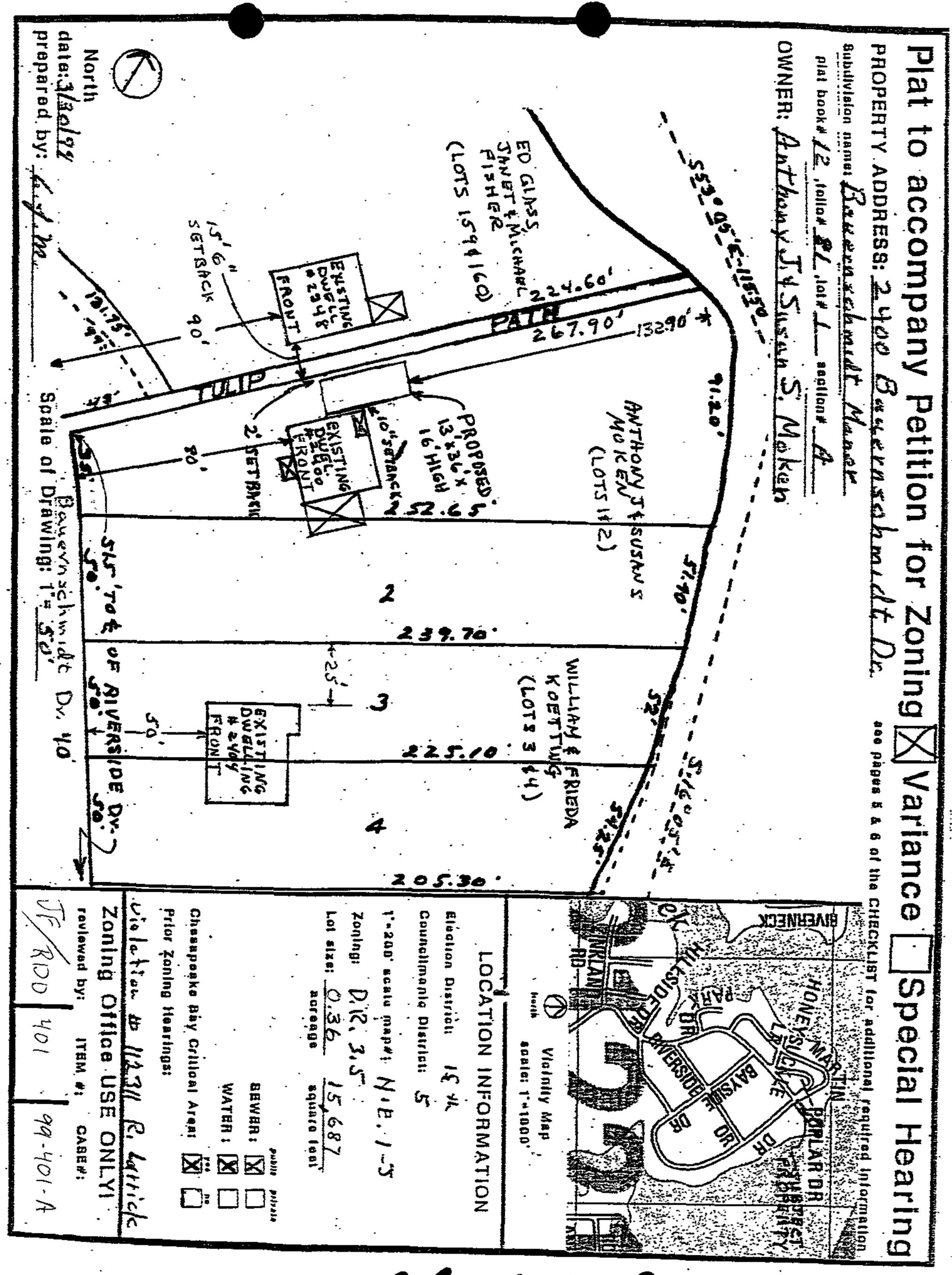
The <u>Baltimore County Zoning Regulations</u> (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:
Item Number or Case Number: 99-401-A
Petitioner: Anthony J. Moken
Address or Location: 2400 Banernschmidt Dr. Rtl Balto. Ml 2122
PLEASE FORWARD ADVERTISING BILL TO:
Name: Anthony J. Maken
Address: 2400 Banernschmidt Drie, Routel
Baltimore, Md. 21221
Telephone Number: 410 - 686 - 104/

Request for Zoning: \	Variance, Special Exception, or Special Hearing	
Date to be Posted: An	nytime before but no later than	
Format for Sign Print	ting, Black Letters on White Background:	
	ZONING NOTICE	
	Case No.: 99-401-A	
	A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER	
	IN TOWSON, MD	
PLACE:	- · · · · · · · · · · · · · · · · · · ·	_
DATE AND TIME:	<u> </u>	<u></u>
REQUEST: Vari		_
to allow an	accessory structure (garage) to be located	
	in lieu of the required rear yard. To allow a setback of	
	t the required 21/2 feet. And to allow a height of 16 feet 11	N
lieu of the re	equired 15 feet	
POSTPONEMENTS DU	UE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM HEARING CALL 887-3391.	
	10 com mari fillantita camp oca 2274.	
DO NOT REMOV	VE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW	
	HANDICAPPED ACCESSIBLE	
•		
		ļ



99-401-A

Case No. 01-147-SPH

SPH – To approve the designation of an accessory structure (garage)

located in the side yard as nonconforming use; permit reconstruction

thereof per 104.2 of BCZR

2/07/01 – DZC's Order – Petition DENIED.

Case No. 99-401-A

VAR – To permit accessory structure (detached garage) in side yd ilo req'd rear yard, with side yard setback of 2' ilo minimum req'd 2.5', height of 16' ilo maximum 15'.

3/26/2001 – Letter from Michael Lewis Freilich, Esquire – request to combine this matter with Case No. 99-401-A
/Petition for Variance (file presently on hold; see file note of 8/24/00.)

1/07/2002 - Notice of Assignment sent to following; assigned for hearing on Tuesday, March 12, 2002 at 10 a.m.:

Michael L. Freilich, Esquire
Anthony J. and Susan S. Moken
Wendy A. Zerwitz, Esquire
Michael and Janet Fisher
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
James H. Thompson, CIE /PDM (Ref CC# 99-0812)
Arnold Jablon, Director /PDM

- 3/12/02 Board convened for hearing (Marks, Stahl, Irish); concluded evidence /testimony; memos due from 'counsel Monday, May 13, 2002; deliberation to take place on 6/27/02; notice to be sent.
- 3/13/02 Notice of Deliberation sent to parties; assigned for Thursday, June 27, 2002 at 9:30 a.m. FYI copy to C.L.R.
- 5/13/02 Closing Memorandum filed by Wendy Zerwitz, Esquire, on behalf of Mr. and Mrs. Michael Fischer, Protestants; Closing Memo filed by Michael J. Freilich, Esquire, on behalf of Anthony and Susan Moken; letter from Office of People's Counsel remain opposed to Petition for Special Hearing; submit on Memorandum filed by Ms. Zerwitz.
 - -- Copies to C.L.R. by memo this date.

6/27/02 - Board convened for deliberation (C.LR.); unanimous decision - special hearing /accessory garage as nonconforming use /denied; variance request /denied; burden not met by Petitioner.

2400 Bauernschmidt Drive Baltimore, MD 21221 August 6, 1999

Mr. Arnold Jablon Director of D.P.D.M. 111 W. Chesapeake Avenue Towson, MD 21204

SUBJECT: REQUEST FOR APPEAL Case No. 99-401-A

Dear Sir:

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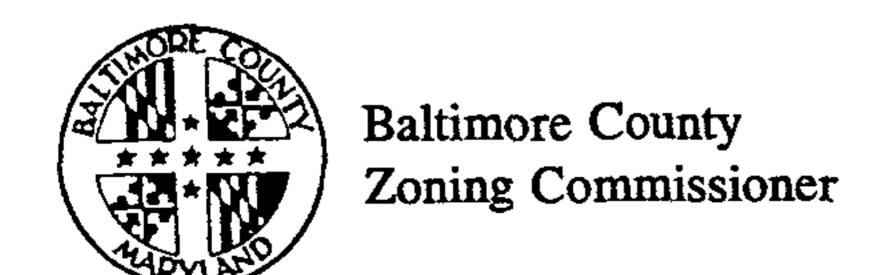
Sincerely yours,

Inthony of Moken

Anthony J. Moken

AUG - 6 1999

DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT



July 26, 1999

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

Fax: 410-887-3468

Mr. & Mrs. Anthony J. Moken 2400 Bauernschmidt Drive Baltimore, Maryland 21221

RE: PETITION FOR VARIANCE

(2400 Bauernschmidt Drive)

Case No. 99-401-A

Dear Mr. & Mrs. Moken:

Your letter dated July 19, 1999 to Mr. Arnold Jablon, Director of the Department of Permits and Development Management (DPDM), has been forwarded to me for a reply. Please be advised that as the Hearing Officer in the above-captioned matter, it is up to me to decide whether or not to entertain a request for reconsideration of my decision in that case. Hence, the reason Mr. Jablon forwarded your letter to me for a response.

In answer to your request for reconsideration, I have reviewed the contents of your letter and your proposal to reduce the size of the existing garage in lieu of removing the entire structure as required by my Order. Please be advised that I will reconsider my decision in this matter, if you get a letter of support from your neighbors, Mr. & Mrs. Michael J. Fisher and Mr. Edward Glass. However, this letter of support must be received by me prior to the expiration of the thirty (30) day reconsideration period from the date of your request (July 19, 1999), or, by the close of business on Wednesday, August 18, 1999. Upon receipt of said letter of support from the adjacent property owners (Fisher/Glass), the appeal period will be extended to run from the date of any subsequent Order issued on the Motion for Reconsideration, or Amended Order.

In the meantime, should you have any questions on the subject, please don't hesitate to call this office.

Very truly yours,

LAWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

LES:bjs

cc: Mr. & Mrs. Michael J. Fisher and Mr. Edward Glass 2348 Martin Drive, Baltimore, Md. 21221

Code Enforcement Division, DPDM; DEPRM; People's Counsel; Case File

2400 Bauernschmidt Drive Baltimore, MD 21221 July 19, 1999

Mr. Arnold Jablon Director of P.D.M. 111 W. Chesapeake Avenue Towson, MD 21204

SUBJECT: REQUEST FOR RECONSIDERATION

RE: PETITION FOR VARIANCE CASE No. 99-401-A

Dear Sir:

I have received notice of the decision denying my petition of variances and am requesting a reconsideration of the action.

The original garage (built in 1950) was a block/frame structure of approximately 13'W X 30'D X 12'H. The roof and ends were made of wood and were in constant need of repair. A steep slope (25% grade) before the flat area of the garage allowed water and drainage to freely run through the garage, constantly rotting all but the side walls. The grade beyond the flat area toward the water is also 25%. This flat area of 13'W X 30'D is the only practical location for the garage, both 50 years ago and also today with the new garage.

Without complete knowledge of Section 400.3 of the B.C.Z.R. of 1955 and acting on poor advice from friends, I constructed a new garage on the site of my old garage of 49 years which was 6 feet longer (protruding closer to the water) and approximately 3 feet higher that the original structure.

My neighbor objected to this structure. His objections were based on his view from the enclosed porch of his house and required looking nearly perpendicular to the property line through both my property and the next property to view the water. His view from the water-side of his house, on his water-side yard, or from his pier is unobstructed.

By removing the 6 feet of building located closer to the water and dropping the height to conform to Section 400.3, the new garage will not impact the Fisher/Glass property any more than it has in the past 49 years.

The old garage was getting impractical to keep improving and was the reason for my razing it and building a new structure. I understood that a building can be repaired

indefinitely without permit, but I did not know that I needed a permit to replace it on its original foundation of 49 years.

The newly proposed garage, now 6 feet shorter and approximately 3 feet lower will essentially allow me to protect my cars for the three reasons given in the Petition for Variance.

I believe that replacing the old garage with the newly proposed one should be allowed, as it is only a new structure replacing the old.

Sincerely yours,

Anthony J. Moken

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:

Anthony J. & Susan S. Moken

01-147-SPH / 99-401-A

DATE:

June 27, 2002

BOARD/PANEL:

Charles L. Marks

CLM

Lawrence M. Stahl

LMS

Richard K. Irish

RKI

RECORDED BY:

Theresa R. Shelton / Legal Secretary

PURPOSE: To deliberate the Petition for Special Hearing filed by Michael L. Freilich, Esquire, on behalf of Anthony J. and Susan S. Moken; to approve designation of an accessory structure (garage) located on the side yard as a non-conforming use and permit reconstruction thereof.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- Motion for Reconsideration violated own rules / moot point.
- Not enough evidence/substance provided to sufficiently prove uniqueness.
- No practical difficulty found.
- 2 year time period not met
- Years of dismantling / lost continuity / can not prove 2 year factor

FINAL DECISION: Unanimous decision by the Board of Appeals that the Motion for Reconsideration is moot; that the Variance is DENIED and the two (2) years standard was not satisfied for the non-conforming use issue.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted,

Theresa R. Shelton

County Board of Appeals



County Board of Appeals of Baltimore County

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

FAX: 410-887-3182

March 13, 2002

NOTICE OF DELIBERATION

IN THE MATTER OF:

ANTHONY J. & SUSAN S. MOKEN Petitioners /Case No. 01-147-SPH /99-401-A

Having heard this matter on 3/12/02, public deliberation has been scheduled for the following date /time:

DATE AND TIME

THURSDAY, JUNE 27, 2002 at 9:30 am.

LOCATION

Hearing Room 48, Basement, Old Courthouse

NOTE: Closing memos are due from counsel on Monday, May 13, 2002 (Original and three [3] copies)

Kathleen C. Bianco Administrator

¢:

Counsel for Petitioners /Legal Owners
Petitioners /Legal Owners

: Michael L. Freilich, Esquire : Anthony J. and Susan S. Moken

Wendy A. Zerwitz, Esquire Michael and Janet Fisher

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
James H. Thompson, CIE /PDM (Ref CC# 99-0812)
Arnold Jablon, Director /PDM

fyi: C.L.R.





Case No. 99-401-A

VAR -To permit accessory structure (detached garage) to be located in side yd ilo req'd rear yard, with side yd setback of 2' ilo of minimun req'd 2.5'; and a height of 16' ilo of maximum allowed of 15'.

7/02/99 -Z.C.'s decision in which Petition for Variance was DENIED in part and Dismissed as Moot in part.

8/06/99 -Motion for Reconsideration DENIED by Zoning Commissioner.

1/20/2000 -Notice of Assignment for hearing scheduled for Wednesday, March 8, 2000 at 10:00 a.m. sent to the following:

Anthony J. Moken
Edward Glass
Mr. & Mrs. Michael J. Fisher
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

- 2/11/00 -Amended Notice of Assignment (Amended only to reflect correct case number [99-401-A]) sent this date to above.
- 3/08/00 -Board convened for hearing as scheduled; Petitioner /Appellant and Protestants appeared pro se; as stated on the record, Petitioner indicated proposed revision to relief requested; case postponed on the record; Petitioner to consult with Permits re: permit to replace structure as it had existed for approx 49 years; upon exhaustion of all remedies prior to this Board, the instant appeal will either be dismissed or scheduled for hearing, said hearing to include any subsequent appeals filed with regard to this matter; hearing date to be assigned slot on docket based upon this appeal (to receive hearing date based on this postponed appeal) rather than any subsequent new appeals that may be filed. (Stahl, Worrall, Barranger)
- 4/25/00 Mr. Moken stopped in to request that a hearing be scheduled on his variance request. He has re-applied for the building permit for his garage; no longer requesting the height variance; the only relief requested is for a 2' setback ilo required 2.5' as indicated on his permit application, putting the new garage on the foundation of the previous garage constructed approx 50 years ago. Was advised by Mr. Reisinger that his permit can be issued once the variance as requested and on appeal before this Board is granted. Hearing date to be assigned at first opening on docket.
- 5/11/00 -Notice of Assignment sent to parties; scheduled for Thursday, August 24, 2000 at 10:00 a.m.

^{7/10/00 -}Entry of Appearance filed by Wendy A. Zerwitz, Esquire, as counsel for Protestants, Mr. and Mrs. Michael Fisher.



County Board of Appeals of Baltimore County

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

Hearing Room – Room 48 Old Courthouse, 400 Washington Avenue

January 7, 2002

NOTICE OF ASSIGNMENT

CASE #: 01-147-SPH IN THE MATTER OF: Anthony J. and Susan S. Moken –Legal Owners

2400 Baurenschmidt Drive 15th Election District; 5th Councilmanic

and

2/07/01 – DZC's Order – Petition for SPH - Denied

CASE #: 99-401-A IN THE MATTER OF: Susan & Anthony Moken – Legal Owners

2400 Bauernschmidt Drive 15th Election District; 5th Councilmanic

7/02/1999 – ZC's Order – Petition DENIED in part; dismissed in part as moot

8/06/99 - Motion for Reconsideration DENIED.

ASSIGNED FOR: TUESDAY, MARCH 12, 2002 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).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco Administrator

c: Counsel for Petitioners /Legal Owners

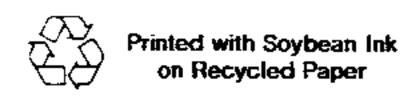
Petitioners /Legal Owners

: Michael L. Freilich, Esquire

: Anthony J. and Susan S. Moken

Wendy A. Zerwitz, Esquire Michael and Janet Fisher

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
James H. Thompson, CIE /PDM (Ref CC# 99-0812)
Arnold Jablon, Director /PDM



FREILICH LAW GROUP, L.L.C.

ATTORNEYS AT LAW

SUITE 117
305 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

(410) 321-0040

MICHAEL LEWIS FREILICH*

ROBERT JAY FELDMAN

*ADMITTED MD & FL

March 24, 2001

PLEASE ADDRESS CORRESPONDENCE To: P.O. Box 5465 Towson, Maryland 21285-5465

FAX: (410) 337-8855 email: freilich@freewweb.com

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

Re: In the matter of Anthony J. and Susan S. Moken

2400 Bauernschmidt Drive - Petition for Special Hearing

Case #01-147-SPH

Dear Members of the Board:

Please combine this case with the prior matter which is captioned in the matter of Susan & Anthony Moken Case #99-401-A for all purposes.

Sincerely Yours

Michael Lewis Frellich

cc: Wendy A. Zerwitz Mr. & Mrs. Moken

MLF:lh

G \Chents\moken\032401it.wpd

01 MAR 26 PM 1: 10

Case No. 99-401-A

ANTHONY M. MOKEN, ET UX - Petitioner

E/s Bauernschmidt Drive, 515' of c/l Riverside Drive (2400 Bauernschmidt Drive)

15th Election District

Appealed: 8/6/99

(See attached Pet. Ex. #1 - Plat to acc. Petition)



County Board of Appeals of Baltimore County

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

FAX: 410-887-3182

Hearing Room - Room 48

Old Courthouse, 400 Washington Avenue

May 11, 2000

NOTICE OF ASSIGNMENT

CASE #: 99-401-A

IN THE MATTER OF: SUSAN & ANTHONY MOKEN -Legal Owners /Petitioners 2400 Bauernschmidt Drive 15th Election District; 5th Councilmanic

(7/02/99 -Decision of the Z.C. in which Petition for Variance was DENIED in part and Dismissed as Moot in part; 8/06/99 -Motion for Reconsideration DENIED.)

ASSIGNED FOR:

THURSDAY, AUGUST 24, 2000 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 /Petitioner

: Anthony J. Moken

Edward Glass

Mr. & Mrs. Michael J. Fisher

Wendy A. Zerwitz, Esquire

: Counsel for Mr. & Mrs. Michael Fisher

People's Counsel for Baltimore County (7/10/00 - entered appearance)

Pat Keller, Director /Planning

Lawrence E. Schmidt /Z.C.

Arnold Jablon, Director / PDM

Virginia W. Barnhart, County Attorney

Editing App-99 table with form F: Record 33 or 105

App-99

33

FILE#:

99-401-A

NAME:

Moken, Anthony M., et ux

STREET:

Bauernschmidt Dr, E/S, 515' N of c/l Riverside Dr.

TYPE:

VAR /acc. structure (det. garage) in side yard

DISTRICT:

15;5

DATE APPEALED:

8/06/99

HRG. DATE:

3/08/2000

ORDER DATE: DECISION:

CLOSED:

UP:

Status:

4/3/00 - T/C from Buildings Engineer - John Reisinger - Mr. Moken is in his office as directed by the Board. Mr. Reisinger wanted to know the 2 directives the Board placed on Mr. Moken.

I read the top sheet notation to Mr. Reisinger - which indicated that Mr. Moken should get a permit with the proof that the building existed for nearly 50 years (prove nonconforming).

Mr. Reisinger sent Mr. Moken out to obtain photos of the building and any other info. to show proof that this building had been built before the BCZR came into effect.



County Board of Appeals of Baltimore County

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

FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

February 11, 2000

AMENDED NOTICE OF ASSIGNMENT /AMENDED ONLY TO REFLECT CORRECT CASE NUMBER

CASE #: 99-401-A

IN THE MATTER OF: SUSAN & ANTHONY MOKEN -Legal Owners /Petitioners 2400 Bauernschmidt Drive 15th Election District; 5th Councilmanic

(7/02/99 -Decision of the Z.C. in which Petition for Variance was DENIED in part and Dismissed as Moot in part; 8/06/99 -Motion for Reconsideration DENIED.)

ASSIGNED FOR:

WEDNESDAY, MARCH 8, 2000 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

TOWSON

cc: Appellant /Petitioner

: Anthony J. Moken

Edward Glass Mr. & Mrs. Michael J. Fisher

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



Printed with Soybean Ink on Recycled Paper





OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204

410-887-3180 FAX: 410-887-3182

Hearing Room - Room 48

Old Courthouse, 400 Washington Avenue

January 20, 2000

NOTICE OF ASSIGNMENT

CASE #: 99-104-A

IN THE MATTER OF: SUSAN & ANTHONY MOKEN -Legal Owners /Petitioners 2400 Bauernschmidt Drive 15th Election District; 5th Councilmanic

(7/02/99 -Decision of the Z.C. in which Petition for Variance was DENIED in part and Dismissed as Moot in part; 8/06/99 -Motion for Reconsideration DENIED.)

ASSIGNED FOR:

WEDNESDAY, MARCH 8, 2000 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).

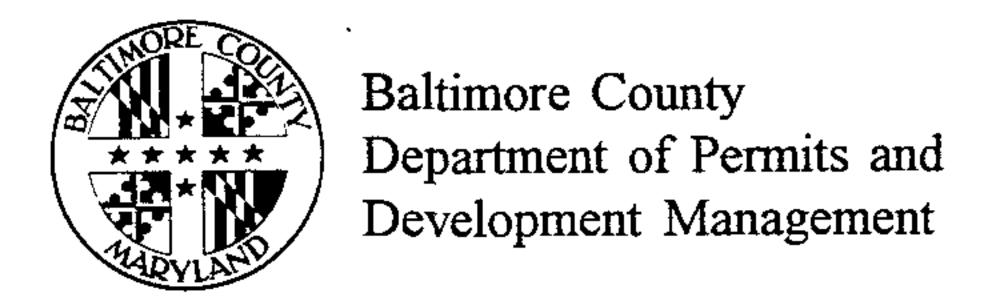
Kathleen C. Bianco Administrator

cc: Appellant /Petitioner

: Anthony J. Moken

Edward Glass Mr. & Mrs. Michael J. Fisher

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



Director's Office County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 410-887-3353

Fax: 410-887-5708

August 18, 1999

Mr. & Mrs. Michael Fisher 2348 Martin Drive Baltimore, MD 21221

Dear Mr. & Mrs. Fisher:

RE: Case No. 99-401-A, 2400 Bauernschmidt Drive, 15th Election District

Please be advised that an appeal of the above referenced case was filed in this office on August 6, 1999 by Anthony J. Moken. 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.

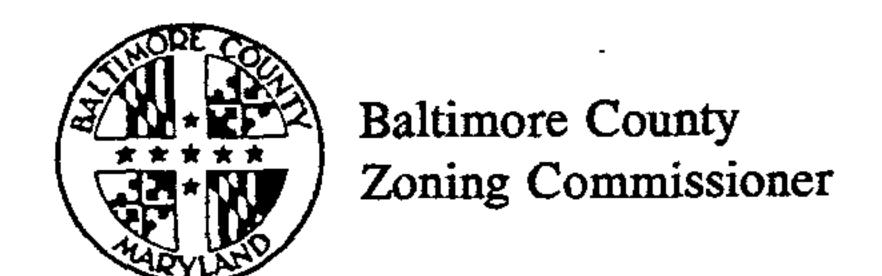
Sincerely,

Arnold Jablon Director

AJ:scj

c: Anthony & Susan Moken, 2400 Bauernschmidt Drive, Baltimore 21221 Edward Glass, 2348 Martin Drive, Baltimore 21221 People's Counsel

COUNTY BOARD OF APPEAL



July 26, 1999

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

Fax: 410-887-3468

Mr. & Mrs. Anthony J. Moken 2400 Bauernschmidt Drive Baltimore, Maryland 21221

RE: PETITION FOR VARIANCE (2400 Bauernschmidt Drive)
Case No. 99-401-A

Dear Mr. & Mrs. Moken:

Your letter dated July 19, 1999 to Mr. Arnold Jablon, Director of the Department of Permits and Development Management (DPDM), has been forwarded to me for a reply. Please be advised that as the Hearing Officer in the above-captioned matter, it is up to me to decide whether or not to entertain a request for reconsideration of my decision in that case. Hence, the reason Mr. Jablon forwarded your letter to me for a response.

In answer to your request for reconsideration, I have reviewed the contents of your letter and your proposal to reduce the size of the existing garage in lieu of removing the entire structure as required by my Order. Please be advised that I will reconsider my decision in this matter, if you get a letter of support from your neighbors, Mr. & Mrs. Michael J. Fisher and Mr. Edward Glass. However, this letter of support must be received by me prior to the expiration of the thirty (30) day reconsideration period from the date of your request (July 19, 1999), or, by the close of business on Wednesday, August 18, 1999. Upon receipt of said letter of support from the adjacent property owners (Fisher/Glass), the appeal period will be extended to run from the date of any subsequent Order issued on the Motion for Reconsideration, or Amended Order.

In the meantime, should you have any questions on the subject, please don't hesitate to call this office.

Very truly yours,

LAWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

LES:bjs

cc: Mr. & Mrs. Michael J. Fisher and Mr. Edward Glass 2348 Martin Drive, Baltimore, Md. 21221

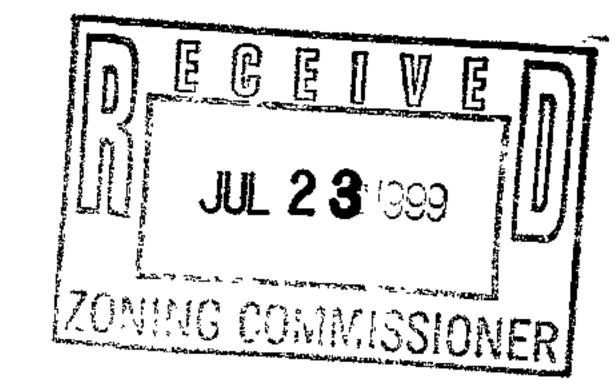
Code Enforcement Division, DPDM; DEPRM; People's Counsel; Case File

2400 Bauernschmidt Drive Baltimore, MD 21221

July 19, 1999

7/20/99

Mr. Arnold Jablon Director of P.D.M. 111 W. Chesapeake Avenue Towson, MD 21204



SUBJECT: REQUEST FOR RECONSIDERATION

RE: PETITION FOR VARIANCE CASE No. 99-401-A

Dear Sir:

I have received notice of the decision denying my petition of variances and am requesting a reconsideration of the action.

The original garage (built in 1950) was a block/frame structure of approximately 13'W X 30'D X 12'H. The roof and ends were made of wood and were in constant need of repair. A steep slope (25% grade) before the flat area of the garage allowed water and drainage to freely run through the garage, constantly rotting all but the side walls. The grade beyond the flat area toward the water is also 25%. This flat area of 13'W X 30'D is the only practical location for the garage, both 50 years ago and also today with the new garage.

Without complete knowledge of Section 400.3 of the B.C.Z.R. of 1955 and acting on poor advice from friends, I constructed a new garage on the site of my old garage of 49 years which was 6 feet longer (protruding closer to the water) and approximately 3 feet higher that the original structure.

My neighbor objected to this structure. His objections were based on his view from the enclosed porch of his house and required looking nearly perpendicular to the property line through both my property and the next property to view the water. His view from the water-side of his house, on his water-side yard, or from his pier is unobstructed.

By removing the 6 feet of building located closer to the water and dropping the height to conform to Section 400.3, the new garage will not impact the Fisher/Glass property any more than it has in the past 49 years.

The old garage was getting impractical to keep repairing and was the reason for my razing it and building a new structure. I understood that a building can be repaired

99-1926

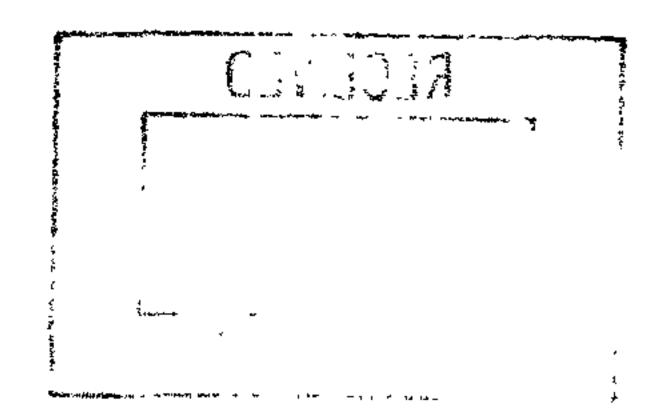
indefinitely without permit, but I did not know that I needed a permit to replace it on its original foundation of 49 years.

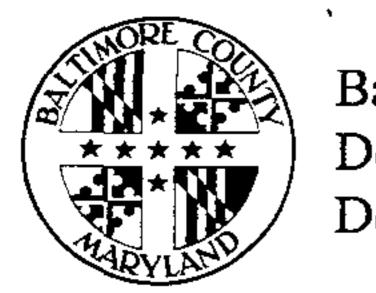
The newly proposed garage, now 6 feet shorter and approximately 3 feet lower will essentially allow me to protect my cars for the three reasons given in the Petition for Variance.

I believe that replacing the old garage with the newly proposed one should be allowed, as it is only a new structure replacing the old.

Sincerely yours,

Cuthony of Moken
Anthony J. Moken





Baltimore County
Department of Permits and
Development Management

Development Processing County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 pdmlandacq@co.ba.md.us

April 22, 1999

NOTICE OF ZONING 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: 99-401-A 2400 Bauernschmidt Drive

E/S Bauernschmidt Drive, opposite Martin Drive 15th Election District – 5th Councilmanic District

Legal Owner: Susan & Anthony Moken

<u>Variance</u> to allow an accessory structure (garage) to be located on the side in lieu of the required rear yard, to allow a setback of 2 feet in lieu of the required 2-1/2 feet, and to allow a height of 16 feet in lieu of the required 15 feet.

HEARING: Monday, May 24, 1999 at 11:00 a.m. in Room 407, County Courts

Building, 401 Bosley Avenue

Arnold Jablon

Director

c: Susan & Anthony Moken

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MAY 9, 1999.

(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.

(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE: April 20, 1999

TO: Larry E. Schmidt

Zoning Commissioner

FROM: James H. Thompson - RL

Code Enforcement Supervisor

SUBJECT: ITEM NO.: 401

PETITIONER: Anthony J. Moken and Susan S. Moken

VIOLATION CASE NO.: 99-0812

LOCATION OF VIOLATION: E/S of Bauernschmidt Drive, 515' of the centerline

of Riverside Drive (2400 Bauernschmidt Drive)

15th Election District

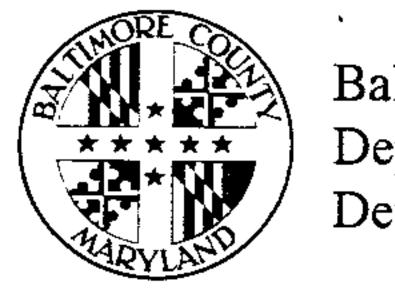
DEFENDANT(S): Anthony J. Moken and Susan S. Moken

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following person(s):

NAME ADDRESS

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Code Enforcement Supervisor, so that the appropriate action may be taken relative to the violation case.

JHT/rl/lmh



Baltimore County Department of Permits and Development Management

Development Processing County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 pdmlandacq@co.ba.md.us

May 20, 1999

Mr. & Mrs. Anthony J. Moken 2400 Bauernschmidt Drive Baltimore, MD 21221

> RE: Case No.: 99-401-A Petitioner: Moken

> > Location: 2400 Bauernschmidt Dr.

Dear Mr. & Mrs. Moken:

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM), on April 9, 1999.

Zoning Advisory Committee (ZAC), which consists of The representatives from several Baltimore County approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure 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. All comments 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.

Very truly yours,

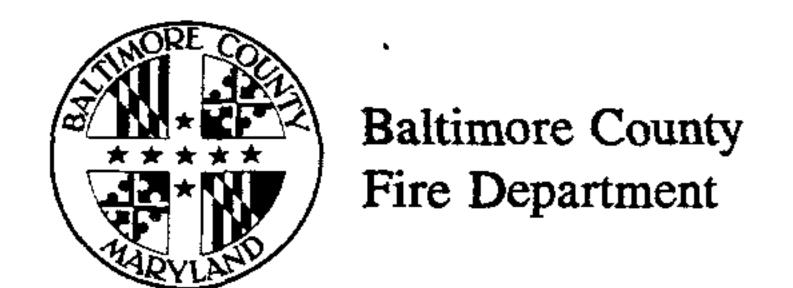
W. Carl Richards, Jr.

Zoning Supervisor

Zoning Review

WCR:ggs

Enclosures



700 East Joppa Road Towson, Maryland 21286-5500 410-887-4500

May 13, 1999

Arnold Jablon, Director
Zoning Administration and Development Management
Epltimore County Office Building
Thuson, MD 71204
MAIL STOP-1165

BE: Broberth Omnor: SEE BELOM

Location: DISTRIBUTION MEETING OF April 19, 1999

Item Mo.: Fee Below . Zoning Agenda:

Contlemen:

Purcuant to your request the references 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.

The Fire Macchalic Office has no commente at this time, IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

394, 395, 395, 397, 398, 400, 401) and 402

PEVIEWER: IT. ROBERT P. SAUERWALD

Else Makapal Office DrovE solatics Welliob

ro: File



Maryland Department of Transportation State Highway Administration

Parris N. Glendening Governor John D. Porcari Secretary Parker F. Williams Administrator

Date: 4.2c. 99

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

RE: Baltimore County

Item No. 401

JRF/RDD

Dear. Ms Stephens:

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.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

Michael M. Lenhart, Acting Chief Engineering Access Permits Division

My telephone number is ______

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

Date: April 20, 1999

FROM: Arnold F. 'Pat' Keller, III, Director

Office of Planning

SUBJECT: Zoning Advisory Petitions

The Office of Planning has no comment on the following petition (s): Item No (s): 383, 386, 391, 395, 397, 400, 401 and 402

If there should be any questions or this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 410-887-3480.

Section Chief:

AFK/JL

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Arnold Jablon, Director

Date: April 26, 1999

Department of Permits & Development

Management

FROM:

Robert W. Bowling, Supervisor

Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting

for April 26, 1999

Item No. 401

The Bureau of Development Plans Review has reviewed the subject zoning item. This site is located in a tidal floodplain area. The minimum flood protection elevation along Middle River is 11 feet.

State and Federal permits must be obtained before a County permit is issued for any development in a tidal floodplain.

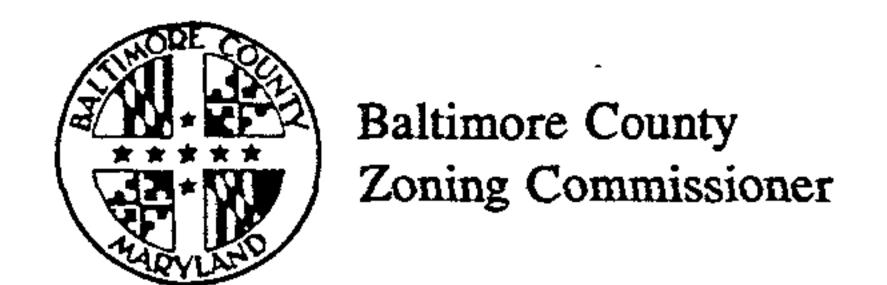
Any garage greater than 300 square feet must be located out of the tidal floodplain or built to or above the flood protection elevation.

RWB:HJO:jrb

cc: File

BALTIMORE COUNTY, MARYL DO No. OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT 066471	PROCESS ACTION TIME
DATE 4-0-000 ACCOUNT 2-001-6150	MISCELLANCES CASH RECEIPT
AMOUNT \$ 50.00	Receipt # 081476 091476 091476
RECEIVED FROM:	Recot Tot 50.00 50.00 III
TOR: DI VARIANCE Taken by: DD/	Bultimare licenty. Haryland
DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER	CASHIER'S VALIDATION

والمناس المستخدم المس



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

Fax: 410-887-3468

July 2, 1999

Mr. & Mrs. Anthony J. Moken 2400 Bauernschmidt Drive Baltimore, Maryland 21221

RE: PETITION FOR VARIANCE

E/S Bauernschmidt Drive, 515' N of the c/l of Riverside Drive

(2400 Bauernschmidt Drive)

15th Election District – 5th Councilmanic District

Anthony M. Moken, et ux - Petitioners

Case No. 99-401-A

Dear Mr. & Mrs. Moken:

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

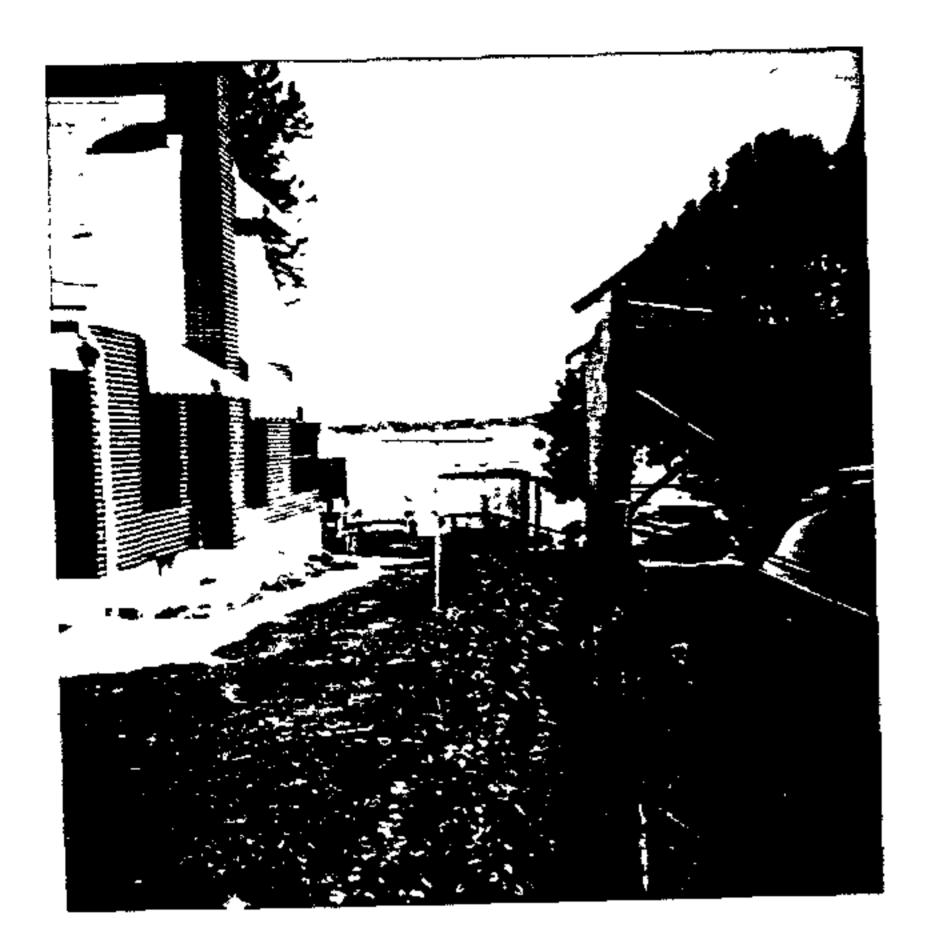
LAWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

LES:bjs

cc: Mr. & Mrs. Michael J. Fisher and Mr. Edward Glass 2348 Martin Drive, Baltimore, Md. 21221

Code Enforcement Division, DPDM; People's Counsel; Case File



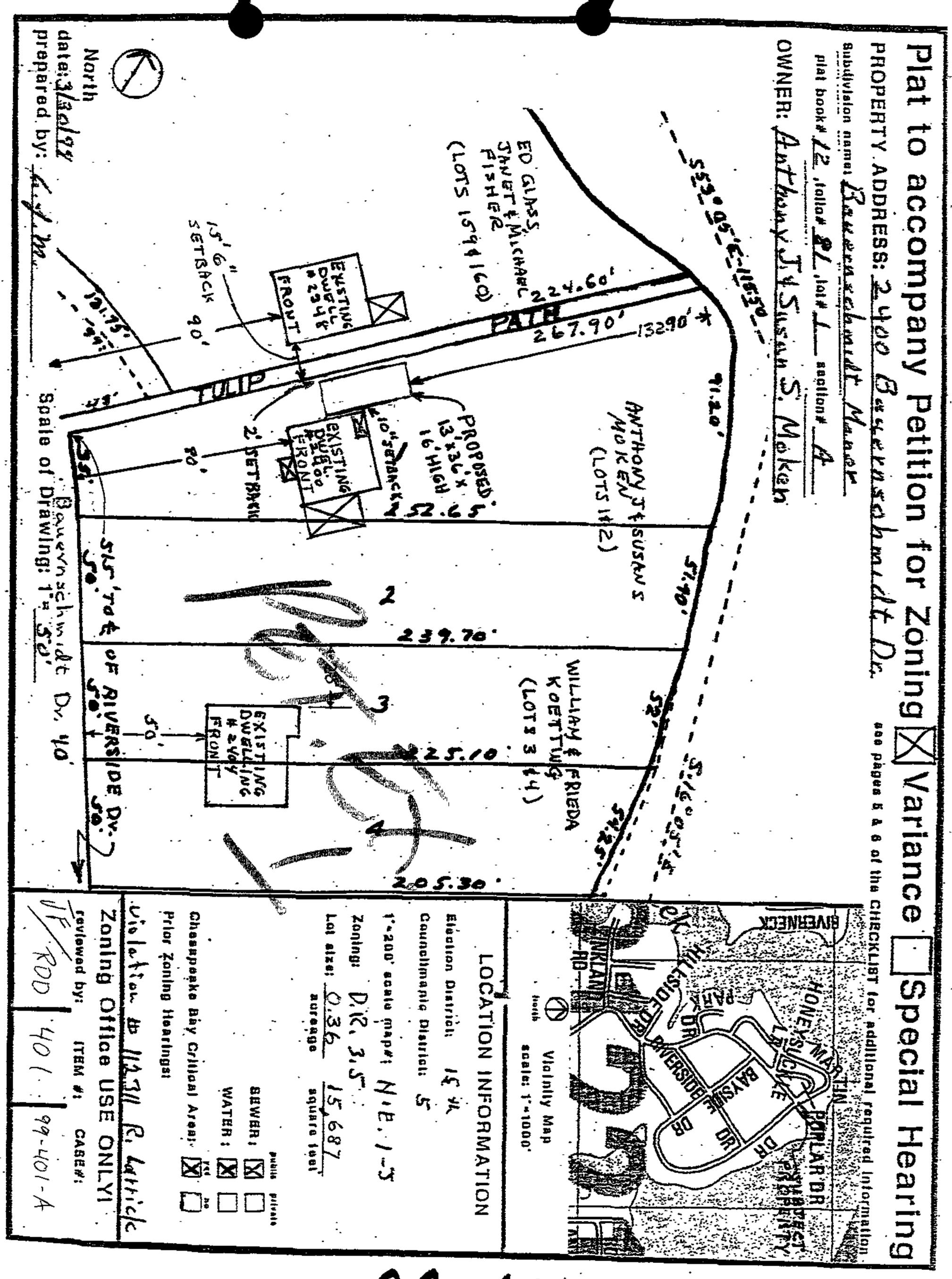






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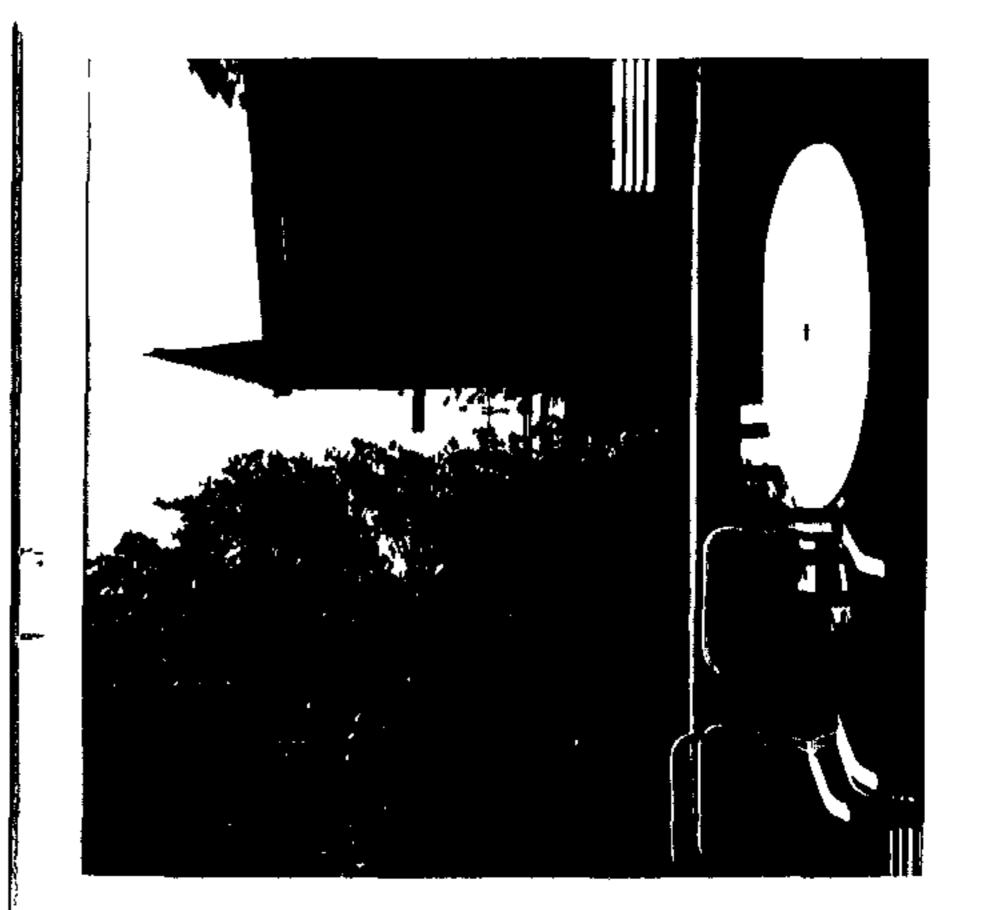
BOAN SEC 1.04 2 SEC 305

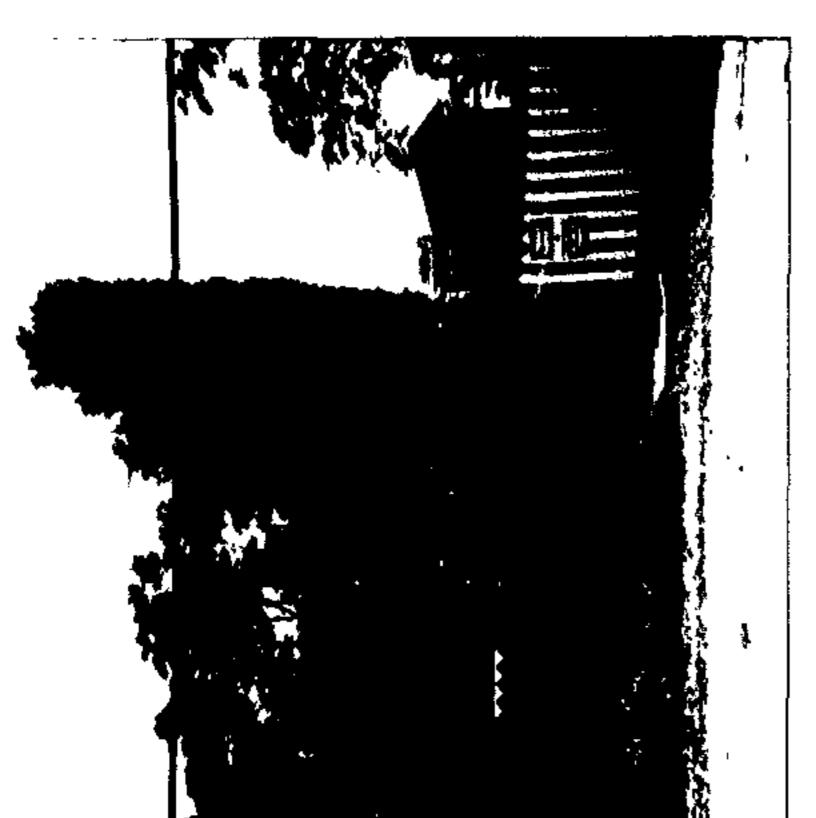


AX

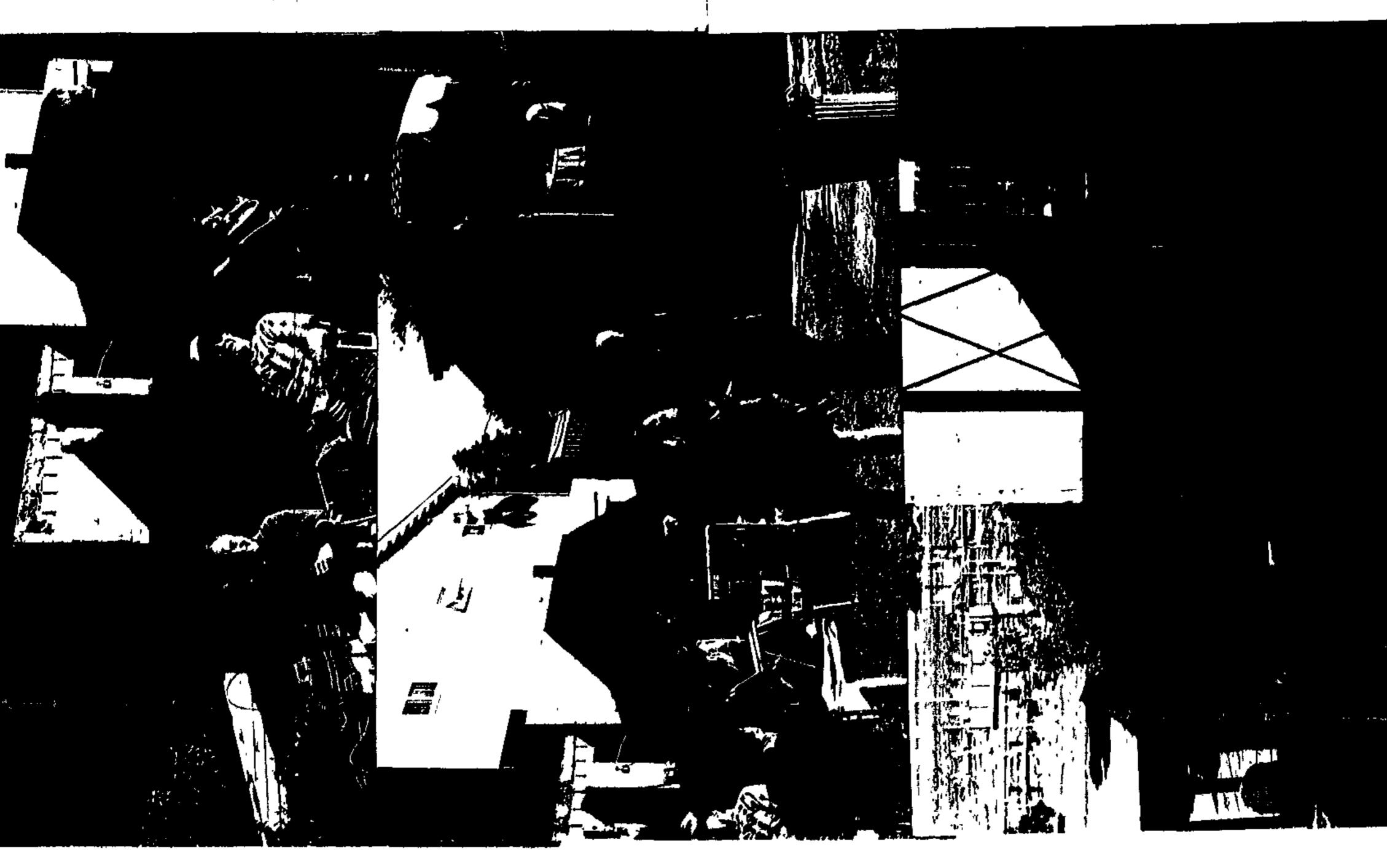
79-401-A











In applying the law, the Board observes that an area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973) Another method is to prove undue hardship, but the testimony does not present persuasive evidence to meet that requirement. To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

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

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

LAW OFFICES ZERWITZ & ZERWITZ

38 SOUTH DUNDALK AVENUE

DUNDALK, MARYLAND 21222

COUNSEL

LOUIS L DEPAZZO

WENDY A. ZERWITZ

ARNOLD M ZERWITZ

FAX (410) 288-9305 TELEPHONE (410) 288-9303

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

July 6, 2000

Clerk

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

Re:

In the Matter of: Susan and Anthony Moken

2400 Bauernschmidt Drive

15th Election District; 5th Councilmanic

Case No. 99-401-A

Dear Sir/Madam:L

Enclosed herewith please find Notice to Enter Appearance in connection with the above-captioned matter. Kindly file same.

Thank you for your kind attention to this matter.

Very truly yours,

WAZ:lt

Enclosure

cc: Mr. and Mrs. Michael J. Fisher - AS COUNSEL FOR THE FASHER'S

Mr. and Mrs. Anthony Moken

Pat Keller, Director/Planning

Arnold Jablon, Director/PDM

Virginia W. Barnhart, County Attorney

IN THE MATTER OF	*	IN THE
SUSAN and ANTHONY MOKEN	*	COUNTY BOARD
LEGAL OWNERS/PETITIONERS 2400 Bauernschmidt Drive	*	OF APPEALS
15th Election District 5th Councilmanic	*	OF
	*	BALTIMORE COUNTY
	*	Case No. 99-401-A

NOTICE TO ENTER APPEARANCE

Dear Sir/Madam:

Please enter the appearance of WENDY A. ZERWITZ and ZERWITZ & ZERWITZ, Attorneys, on behalf of the Protestants, MR. and MRS. MICHAEL J. FISHER in the above-captioned matter.

WENDY A. ZERWITZ ZERWITZ & ZERWITZ 38 South Dundalk Avenue Baltimore, Maryland 21222 (410) 288-9303

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this
a copy of the foregoing Notice to Enter Appearance was mailed first class mail, postage
orepaid to the Mr. and Mrs. Anthony Moken, 2400 Bauernschmidt Drive, Baltimore,
Maryland 21221, People's Counsel for Baltimore County, Pat Keller, Director/Planning,
County Courts Building, 401 Bosley Avenue, Towson, Maryland 21204, Arnold Jablon,
Director/PDM, 111 West Chesapeake Avenue, Towson, Maryland 21204 and Virginia W.
Barnhart, County Attorney, 400 Washington Avenue, Suite 219, Old Courthouse, Towson,
Maryland 21204. //

RE: IN THE MATTER OF:	* BEFORE
SUSAN & ANTHONY	* COUNTY BOARD OF APPEALS
MOKEN	* OF
	* BALTIMORE COUNTY
	* CASE NO. 99-401-A
* * * * <u>* * SUBP</u>	* * * * OENA
STATE OF MARYLAND, BALTIMORE COUNTY TO	WIT:
TO: (Name, Address, County)	Sherry L. Hankins
	Baltimore County Office of Planning
	County Courts Building
	401 Bosley Ave., Suite 406
	Towson, Maryland 21204 Baltimore County
YOU ARE HEREBY COMMANDED TO: (X) () Produce documents and/or objects; and produce documents or objects;	ects only; (xx) Personally appear
in Room 48, Basement, Old Courthouse, 40	O Washington Avenue, Towson, MD 21204
on <u>August 24, 2000</u>	at 10:00 am a.m./p.m.
YOU ARE COMMANDED TO produce the	e following documents or objects
(for general purpose as stated): Aerial Photo dated 12-25-54, QZ-	166, 154-45 SE No. 2
Aeriai Photo dated 12-25-54, QZ-	166, 154-45 G 🖫
	3 27 27 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
	SUBPORNA REQUESTED BY:
	Michael L. Freiligh, Esq
	(Name of Party /Attorney)
	305 West Chesapeake Ave., Suite 117 (Address /Telephone #)
	Towson, Maryland 21204
	(410) 321-0040
The witness named above is hereby Board of Appeals. The Board requests (ORDERED to so appear before the County) the Sheriff, () Private Process lerein.
,	
	County Board of Appeals of Baltimore County

- The provisions in Sections 26-447 through 26-451 and Section 26-454 of the Baltimore County Code, pertaining to wetlands, buffers, habitat protection areas and water-dependent facilities.
- Other applicable county laws or regulations in effect at the time a right is exercised.

Section 104 Nonconforming Uses [BCZR 1955]

- A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate. [Bill Nos. 18-1976; 124-1991]
- A structure damaged to any extent or destroyed by fire or other casualty may be restored within two years after such destruction or damage but may not be enlarged. In the case of residentially used structures which are nonconforming in density, the number of dwelling units or density units rebuilt may be equal to but may not exceed the number of units which existed before the casualty. [Bill No. 124-1991]
- No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25% of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the Zoning Commissioner pursuant to Section 307. [Bill No. 124-1991]
- Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes darnaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. [Bill Nos. 167-1980; 124-1991]
- Any use which becomes or continues to be nonconforming which exists within the Chesapeake Bay Critical Area on or after the effective date of this section is subject to the provisions of Sections 104.1, 104.2 and 104.3 and to the variance provisions and procedures of Section 26-207, 26-445 or 26-453 of the Baltimore County Code, 1988 Edition, as revised, whichever is or are applicable. [Bill Nos. 32-1988; 124-1991; 9-1996]
- A striptease business lawfully operating prior to the effective date of this legislation³⁴ that is in violation of the requirements contained herein shall be deemed a nonconforming use. A striptease business which is a nonconforming use:

³⁴ Editor's Note: Apparently refers to Bill No. 137-1990.

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- C. If the Department of Permits and Development Management has not notified the applicant of a determination pursuant to the provisions of this section, or has not notified the applicant pursuant to Section 304.4 above of the intention to require a public hearing, the dwelling shall be considered appropriate for purposes of this section.
- 304.6 The decision of the Zoning Commissioner or the Director of the Department of Permits and Development Management may be appealed, in which case the hearing shall be scheduled by the Board of Appeals within 45 days from receipt of the request.
- 304.7 The Director of the Department of Permits and Development Management shall establish appropriate fee schedules.

Section 305 Replacement of Destroyed or Damaged Dwellings [BCZR 1955; repealed by Bill No. 124-1991; re-enacted by Bill No. 214-1991]

In case of complete or partial casualty loss by fire, windstorm, flood or otherwise of an existing dwelling that does not comply with height or area requirements of the zone in which it is located, such dwelling may be restored, provided area or height deficiencies of the dwelling before the casualty are not increased in any respect, and such restoration is subject to the limitations imposed by Section 104.2 of the Baltimore County Zoning Regulations.

Section 306 Minor Public Utility Structures [BCZR 1955; Resolution, November 21, 1956]

Minimum lot area regulations in any zone shall not apply to repeater, booster or transformer stations, or small community dial offices.

Section 307 Variances [BCZR 1955; Bill Nos. 107-1963; 32-1988; 2-1992; 9-1996]

307.1 The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations 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 and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning

