

IN THE MATTER OF
THE APPLICATION OF
DARRYL McLEAN, ET UX
FOR A VARIANCE ON PROPERTY
LOCATED ON THE S/S PEACH TREE CT,
300' W OF THE C/L WOODLING WAY
(3 PEACH TREE COURT)

1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

* * * * *

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 00-227-A

ORDER OF DISMISSAL

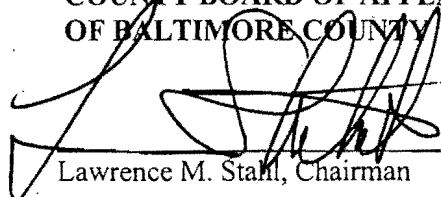
This matter comes to the Board of Appeals by way of an appeal filed by Matthew H. Azrael, Esquire, and AZRAEL, GANN & FRANZ, on behalf of Mr. and Mrs. Harold Ross, Appellants /Protestants, from a decision of the Zoning Commissioner dated February 1, 2000 and his subsequent denial of Appellants' Motion for Reconsideration dated February 23, 2000, in which the Petition for Variance was granted in part with restrictions and denied in part.

WHEREAS, the Board is in receipt of a letter of withdrawal of appeal filed October 24, 2000 by Jonathan A. Azrael, Esquire, AZRAEL, GANN & FRANZ, on behalf of Mr. and Mrs. Harold Ross, Appellants /Protestants (a copy of which is attached hereto and made a part hereof); and

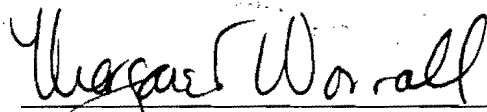
WHEREAS, said Counsel for Appellants requests that the appeal taken in this matter be withdrawn and dismissed as of October 24, 2000;

IT IS ORDERED this 31st day of October, 2000 by the County Board of Appeals of Baltimore County that the appeal taken in Case No. 00-227-A be and the same is hereby **DISMISSED**.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence M. Stahl, Chairman


Charles L. Marks


Margaret Worrall



AZRAEL GANN+FRANZ

ATTORNEYS AT LAW

October 13, 2000

Baltimore County Board of Appeals
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: Appeal from Granting of Zoning Variance on
3 Peach Tree Court
Case No. 00-277-A

Dear Gentleman:

On behalf of Mr. and Mrs. Harold Ross, please dismiss the above referenced appeal from the zoning variance that was granted to Mr. and Mrs. Darryl McLean. Mr. and Mrs. Ross do not wish to pursue the appeal any further.

Very truly yours,

AZRAEL, GANN & FRANZ

Jonathan A. Azrael

JAA:cm

cc: Mr. and Mrs. Harold Ross
Mr. and Mrs. Darryl McLean

EDWARD AZRAEL
JONATHAN A. AZRAEL
KEITH S. FRANZ
PAUL J. SCHWAB, III
JUDITH H. LITWINOFF
SUSAN H. TEBBES
MAUREN H. AZRAEL
JONATHAN S. BACH

H. DAVID GANN (202-550-1500)
OF COUNSEL
DANIEL J. DEKOSTER, JR., P.A.
MURRAY L. AZRAEL, P.A.

*Also admitted in DC

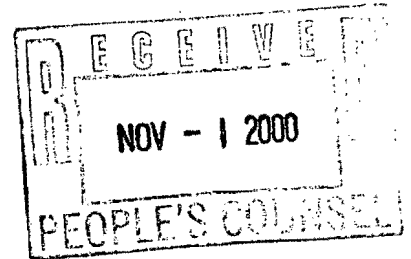


County Board of Appeals of Baltimore County

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

cd
PMZ

October 31, 2000



Jonathan A. Azrael, Esquire
AZRAEL, GANN & FRANZ
101 E. Chesapeake Avenue
Fifth Floor
Baltimore, MD 21286

RE: In the Matter of Darryl McLean, et ux
Case No. 00-227-A

Dear Mr. Azrael:

Enclosed please find a copy of the Order of Dismissal issued this date by the Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

Kathleen C. Bianco
Kathleen C. Bianco
Administrator

Enclosure

c: Darryl McLean, et ux
Dell Clements /Delev Construction Company
Mr. and Mrs. Harold Ross
✓ Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

2/23/00
PM2

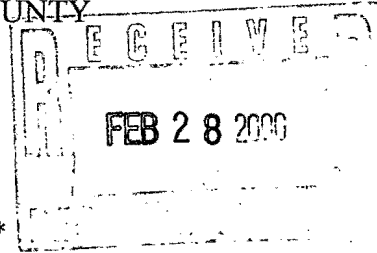
IN RE: PETITION FOR VARIANCE
S/S Peach Tree Court, 300' W of the c/l
Woodling Way
(3 Peach Tree Court)
3rd Election District
2nd Council District

Darryl McLean, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY

* Case No. 00-227-A

*



* * * * *

ORDER ON THE MOTION FOR RECONSIDERATION

WHEREAS, this matter came before this Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Darryl and Janeen McLean, at a public hearing held on January 11, 2000. The Petitioners sought relief from Section 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 4 feet in lieu of the required 15 feet for a proposed garage addition, in accordance with the site plan submitted into evidence and marked as Petitioner's Exhibit 1.

The Petitioners, Darryl and Janeen McLean, appeared at the hearing, as did Dell N. Clements, the contractor/builder engaged by the Petitioners to construct the proposed garage. Also appearing at the hearing was Jonathan Azrael, Esquire, who appeared on behalf of the adjacent property owners, Harold and Harriett Ross, who were opposed to the requested relief.

Testimony and evidence presented at the hearing disclosed that the Petitioners proposed replacing an existing carport with a two-car garage, 24 feet by 40 feet in dimension. A 4-foot wide breezeway between the existing dwelling and proposed garage were also proposed. A 12-foot side yard setback is presently maintained on that side of the property. The proposed improvements, however, would leave a 4-foot side yard setback. Testimony indicated that the relief requested was necessary in order to accommodate the intended move of Mr. McLean's mother to the subject property. The proposed improvements would provide storage space for the elder Mrs. McLean's personal possessions as well as her automobile, and provide safe access thereto, particularly during inclement weather.

On behalf of the Protestants, Mr. Azrael indicated that Mr. & Mrs. Ross were opposed to the variance in that it would result in the loss of landscaping and leave a short distance between the proposed building and the common property line they share with the Petitioners. Additional concerns over storm water runoff and impacts on property values were also expressed.

By my Order dated February 1, 2000, I granted a modification of the requested relief. Specifically, I granted a variance to allow a garage 24 feet by 30 feet in dimension and eliminated the 4-foot wide breezeway area, thereby providing an 8-foot side yard setback to the property line.

Subsequent to the issuance of said Order, the Petitioners requested I reconsider my decision to allow a garage 24 feet by 32.8 feet in dimension. Their letter, dated February 4, 2000, was accepted as a Motion for Reconsideration. Within their Motion, the Petitioners noted that the longest side wall of their dwelling is 32.8 feet. In consideration of the Petitioners' request, I forwarded a copy of their letter to the Protestants and their Counsel for their review and comment.

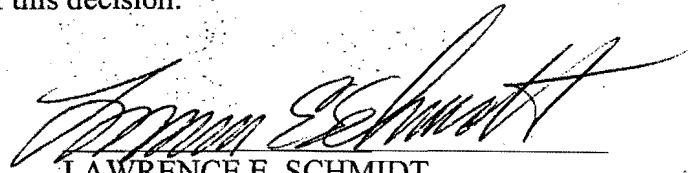
By letter dated February 16, 2000, Counsel for the Protestants noted that although the longest side wall of the subject dwelling is 32.8 feet, that wall is on the opposite side (east side) of the dwelling. The west side wall of the dwelling, on which side the garage is proposed (adjacent to the Ross property), is 28.9 feet deep.

After due consideration of the Petitioners' request, I am not inclined to amend my original decision. Although not precisely the depth of the west side wall of the dwelling, I believe that a depth of 30 feet is appropriate for a two-car garage and is consistent with the average depth of the dwelling overall. In addition, in as much as the west side wall of the dwelling is 28.9 feet deep and I am granting a depth of 30 feet, the proposed garage will be permitted to extend 16 inches beyond the front face of the west side wall of the dwelling.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 23rd day of February, 2000 that the Motion for Reconsideration filed in the above-captioned matter be and the same is hereby DENIED; and,

IT IS FURTHER ORDERED that the terms and conditions of the Order issued February 1, 2000 shall remain in full force and effect; and,

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



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Darryl McLean
3 Peach Tree Court, Baltimore, Md. 21208
Mr. Dell N. Clements, Delev Construction Co., Inc.
P.O. Box 7496, Baltimore, Md. 21227
Jonathan Azrael, Esquire
101 E. Chesapeake Avenue, fifth Floor, Towson, Md. 21286
Mr. & Mrs. Harold Ross
4 Peach Tree Court, Baltimore, Md. 21208
✓ People's Counsel; Case File

IN RE: PETITION FOR VARIANCE
S/S Peach Tree Court, 300' W of the c/l
Woodling Way
(3 Peach Tree Court)
3rd Election District
2nd Council District

Darryl McLean, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 00-227-A
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Darryl and Janeen McLean. The Petitioners seek relief from Section 1B02.3.B (205.3, 1955, R.20) to permit a side yard setback of 4 feet in lieu of the required 15 feet for a proposed garage addition. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing on behalf of the request were Darryl and Janeen McLean, property owners. Also present was Dell N. Clements, the contractor/builder engaged by the Petitioners to construct the proposed garage. Appearing in opposition to the request was Jonathan Azrael, Esquire, an attorney representing the adjacent property owners, Harold and Harriett Ross. Mr. Azrael appeared in a representative capacity, and indicated that his clients were out of town and unavailable at the time of the hearing.

An examination of the site plan shows that the subject property consists of a gross area of 0.522 acres, more or less, zoned D.R.2, and is improved with a single family dwelling which features an attached carport that is open on three sides. The carport is 12 feet wide by 35 feet deep in dimension and is wide enough to accommodate one automobile. Testimony offered by Mr. & Mrs. McLean is that they propose to remove the existing carport and replace same with a two-car garage. The proposed garage, however, will be significantly bigger than the carport. As shown on

the building plans submitted at the hearing, the Petitioners propose a garage 24 feet wide by 40 feet deep. Additionally, the Petitioners propose to leave a 4-foot wide breezeway area between the dwelling and the garage. As a result of the proposed improvements, a 4-foot side yard setback will be maintained on that side of the property in lieu of the required 15 feet. Thus, the garage will be 16 feet closer to the side property line than the existing carport, in view of the proposed breezeway (4 feet) and difference in width between the carport (12 feet) and garage (24 feet).

Mr. & Mrs. McLean indicated that the enclosed garage was necessary in order to accommodate Mr. McLean's mother's automobile. Apparently, she is elderly and it is planned that she will reside with the Petitioners on the subject property. The McLeans indicated that the size of the enclosed garage was necessary in order to provide an area for the elder Mrs. McLean to safely access her automobile, particularly in inclement weather, and to provide needed storage area for her belongings. It was also testified that the garage would be architecturally compatible with the existing dwelling and aesthetically pleasing.

On behalf of his clients, Mr. Azrael voiced a number of concerns. He believes that the granting of the requested variance would detrimentally impact his clients' property. He indicated that the proposed construction will result in the loss of landscaping and leave an inappropriately small distance between the building and the property line. Mr. Azrael also expressed concerns over storm water runoff from the garage onto his clients' property. He also raised concerns about the impact the garage would have on the value of his clients' property and the precedent the proposed variance would set for the neighborhood.

The granting of a variance from the requirements of the B.C.Z.R. is governed by Section 307 thereof. That Section requires that a property owner demonstrate that the property at issue is unique, and that its uniqueness drives the need for the variance. The Petitioners must also demonstrate that a practical difficulty would be suffered if relief were denied and that the variance would not result in any adverse impact upon adjacent properties. The requirements of Section 307 of the B.C.Z.R. have been construed by the appellate courts of this State. (See Cromwell v. Ward, 102 Md. App. 691 (1995)).

In addition to the required showing of uniqueness, practical difficulty and no adverse impacts, Cromwell, infra, also requires that the Petitioners demonstrate that only the minimum relief necessary is being requested. That is, any variance relief should be a minimal deviation from the standards set forth in the B.C.Z.R.

In my judgment, the Petitioners cannot construct a useable two-car garage on the side of their property if strict adherence to the 15-foot setback is required. Therefore, some relief is appropriate. Nonetheless, the variance being requested in this case is excessive. Thus, I will grant a modified relief.

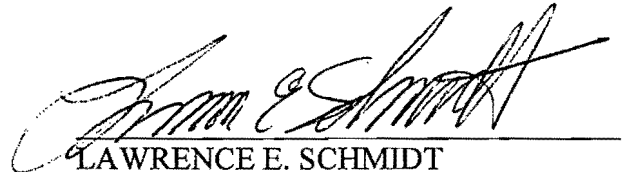
After due consideration of the testimony and evidence presented, I believe that a garage 24 feet by 30 feet in dimension is more appropriate. The 24-foot width is the minimum distance necessary for two vehicles to park side by side and the 30-foot depth will provide adequate room for extra storage space. Moreover, I shall require the elimination of the 4-foot wide breezeway. I am not persuaded by the Petitioners' arguments that a breezeway area is necessary or that the need for the breezeway justifies an additional 4-foot reduction in the side yard setback. In my view, placement of the garage immediately adjacent to the dwelling would be a better design and would provide an additional 4 feet of setback area from the side wall of the garage to the property line. Thus, the Petitioners shall amend their plan to reflect the modified relief granted herein. The Petitioners shall construct a garage not larger than 24 feet wide by 30 feet in depth and the front face of the garage shall not extend any further towards the road than the front face of the existing dwelling. A minimum setback of 8 feet need be maintained.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 1st day of February, 2000 that a variance from Section 1B02.3.B (205.3, 1955, R.20) to permit a side yard setback of 8 feet in lieu of the required 15 feet for a proposed garage addition, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) Prior to the issuance of any building permits, the Petitioners shall submit a revised site plan incorporating the modified relief granted herein. The proposed garage shall be no larger than 24 feet side by 30 feet deep in dimension. There shall be no breezeway area, so as to provide an 8-foot side yard setback, and the front wall of the proposed garage shall extend no further towards the road than the front face of the existing dwelling.
- 3) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 1B02.3.B (205.3, 1955, R.20) to permit a side yard setback of 4 feet in lieu of the required 15 feet for a proposed garage addition, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

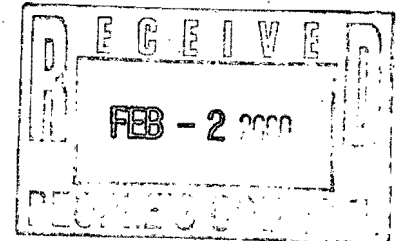


Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

February 1, 2000

Mr. & Mrs. Darryl McLean
3 Peach Tree Court
Baltimore, Maryland 21208



RE: PETITION FOR VARIANCE
S/S Peach Tree Court, 300' W of the c/l Woodling Way
(3 Peach Tree Court)
3rd Election District - 2nd Councilmanic District
Darryl McLean, et ux - Petitioners
Case No. 00-227-A

Dear Mr. & Mrs. McLean:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance has been denied in part, and granted 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. Dell N. Clements
Delev Construction Co., Inc., P.O. Box 7496, Baltimore, Md. 21227
Jonathan Azrael, Esquire
101 E. Chesapeake Avenue, Fifth Floor, Towson, Md. 21286
Mr. & Mrs. Harold Ross, 4 Peach Tree Court, Baltimore, Md. 21208
✓ People's Counsel; Case File

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





Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 3 Peach Tree Court

which is presently zoned RESIDENTIAL RZ

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

1302.3.B (205.3, 1955, R.20) to permit a 4-ft side yard setback
in lieu of 15 ft for an attached garage addition.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

- Variance is needed to accommodate conversion of an existing single car carport to a two car enclosed garage with storage.
- Enclosed garage and additional storage space is ultimately needed to accommodate mother's residency.
- Garage must be two cars wide to allow for expedient exit in the event of an emergency.
- The steep slope and unlevel grading of land behind the dwelling prohibits extending the garage more than 6 feet toward the rear building line.
- Brick flower mound and concrete patio at rear of dwelling also prohibit construction at the rear of the dwelling.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

Telephone No.

City

State

Zip Code

Legal Owner(s):

Darryl McLean

Name - Type or Print

Signature

Janeen McLean

Name - Type or Print

Signature

3 Peach Tree Ct. 410-653-9084

Address

Telephone No.

Baltimore, MD 21208

City

State

Zip Code

Representative to be Contacted:

Name

Address

Telephone No.

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1-2 hr.

UNAVAILABLE FOR HEARING

Reviewed By MJK Date 11/27/99

Case No. 00-227-A

RE: PETITION FOR VARIANCE
3 Peach Tree Court, S/S Peach Tree Ct,
300' W of c/I Wooding Way
3rd Election District, 2nd Councilmanic

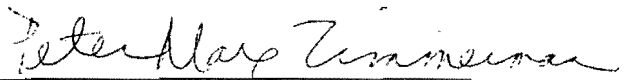
Legal Owner: Darryl & Janeen McLean
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 00-227-A

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of December, 1999 a copy of the foregoing Entry of Appearance was mailed to Darryl & Janeen McLean, 3 Peach Tree Court, Baltimore, MD 21208, Petitioners.

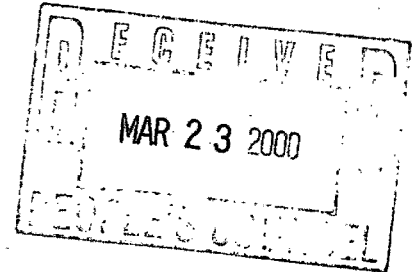

PETER MAX ZIMMERMAN



Baltimore County
Department of Permits and
Development Management

Director's Office *cd/pmr*
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

March 22, 2000



Mr. and Mrs. Darryl McLean
3 Peach Tree Court
Baltimore, MD 21208

Dear Mr. and Mrs. McLean:

RE: Petition for Variance, Case No.00-227-A, 3rd Election District

Please be advised that an appeal of the above-referenced case was filed in this office on March 14, 2000, by Matthew A. Azrael, Esquire. 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 at 410-887-3180.

Sincerely,


Arnold Jablon
Director

AJ:rsj

c: Mr. Dell Clements, Delev Construction Company, P.O. Box 7496,
Baltimore, MD 21227
Jonathan Azrael, Esquire, 101 East Chesapeake Avenue, Fifth Floor,
Towson, MD 21286
Mr. and Mrs. Harold Ross, 4 Peach Tree Court, Baltimore, MD 21208
Lawrence E. Schmidt, Zoning Commissioner
People's Counsel, M.S. 2010



APPEAL

Petition for Variance
3 Peach Tree Court
S/S Peach Tree Court, 300' W of the c/I Woodling Way
3rd Election District – 2nd Councilmanic District
Darryl McLean, et ux, Legal Owners
Case No. 00-227-A

Petition for Variance (filed 11/29/99)

Zoning Description of Property

Notice of Zoning Hearing (dated 12/15/99)

Certification of Publication (The Jeffersonian 12/23/99)

Certificate of Posting (posted 12/27/99 by Thomas P. Ogle, Sr.)

Entry of Appearance by People's Council (dated 12/28/99)

Petitioners' Sign-In Sheet

Protestants' Sign-In Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibits:

1. Plat to Accompany Variance Petition (dated 05/06/97)
2. Petition in Support of Variance

Miscellaneous (not marked as exhibits):

1. 11 Photographs
2. Contractor's Sketches

Zoning Commissioner's Order, dated 02/01/00 (Granted in Part with Restrictions; Denied in Part)

Letter with Enclosures to Lawrence E. Schmidt, from Janeen P. McLean, dated 02/04/00

Letter from Lawrence E. Schmidt to Mr. and Mrs. Darryl McLean, dated 02/08/00

Letter to Lawrence E. Schmidt from Jonathan A. Azrael, Esquire, on behalf of Harold and Harriet Ross, dated 02/16/00

Zoning Commissioner's Order on the Motion for Reconsideration dated 02/23/00 (Denied)

Notice of Appeal received 03/14/00 from Matthew H. Azrael, Esquire

c: Mr. and Mrs. Darryl McLean, 3 Peach Tree Court, Baltimore, MD 21208
Jonathan Azrael, Esquire, 101 East Chesapeake Avenue, Fifth Floor,
Towson, MD 21286
Lawrence E. Schmidt, Zoning Commissioner
People's Counsel, M.S. 2010
Arnold Jablon, PDM Director