COUNTY BOARD OF APPEALS
02 MAY 13 AM 9:40

IN THE MATTER OF ANTHONY J. and SUSAN S. MOKEN	*	BEFORE THE
	*	BOARD OF APPEALS
	*	OF BALTIMORE COUNTY
RE: PETITION OF SPH	*	Case No.: 01-147-SPH
RE: ZONING VARIANCE	*	Case No.: 99-401-A

* *

CLOSING MEMORANDA

The above-captioned matters were called for a hearing before the Board of Appeals on March 12, 2002. The appeals stem from two (2) separate petitions filed by Petitioners. In Case Number 99-401A, the Zoning Commissioner denied Petitioner's request for a zoning variance to permit an accessory structure (a detached garage) to be located in the side yard in lieu of the required rear yard, with a side yard setback of two (2) feet in lieu of the minimum 2.5 feet and a height of sixteen (16) feet in lieu of the maximum fifteen (15) feet. Following the denial, Petitioners' filed a Motion for Reconsideration which was also denied. In Case Number 01-147-SPH, the Deputy Zoning Commissioner denied Petitioners' request to approve the designation of an accessing structure (a detached garage) located in the side yard as a prior nonconforming use and permit its reconstruction. Facts will be presented as they pertain to each argument.

EVIDENCE PRESENTED

ANTHONY and SUSAN MOKEN are the owners of 2400 Baurenschmidt Drive, a single family dwelling. When Mr. and Mrs. Moken purchased the property in 1967 there existed, next to the house, a detached garage. Although it is unknown exactly when the

garage was build, a structure appears in an aerial photograph taken by Baltimore County in 1954. A photograph taken in 1970 shows the structure, presumed to be the garage, with wood walls in the front and back, block walls on the side and a flat wood roof covered with tar paper. Mr. Moken testified that the roof began leaking in the late 1970's - early 1980's and so he replaced the shallow roof. The leaking became worse in the early 1990's which led to rotting. He began to remove the roof when it broke and caved in. He testified that he did not remember when he removed the roof, it could have been as early as 1992 or as late as 1997. The entrance wall also rotted and so Mr. Moken testified he took that wall down in 1997 or 1998. Mr. Moken removed the back wall in 1998. In early 1999, Mr. Moken decided to rebuild the ends and the roof, adding a pitch to the roof when he rebuilt it. He further testified that he believed that to keep the structure he would have to build up so in March 1999 he took he remaining walls down and put plates in on the base. It was then that he received an order to stop building due to the fact that he did not have a permit for the work which was being done.

On March 19, 1999, Mr. and Mrs. Moken applied for a permit to raze the existing structure and build a new garage. The application was denied and so Mr. and Mrs. Moken applied for variances to allow them to build a garage on the side of their house with a two (2) foot side yard setback and a height of sixteen (16) feet. On July 2, 1999, Zoning Commissioner, Lawrence Schmidt, denied Mr. and Mrs. Moken's request for a variance. On July 19, 1999, Mr. and Mrs. Moken requested Commissioner Schmidt reconsider his decision and on August 6, 1999, Commissioner Schmidt issued an Order on the Motion for

Reconsideration, denying same. Mr. and Mrs. Moken were advised that they had thirty (30) days to file an appeal of that decision. On that same day, Mr. and Mrs. Moken filed an appeal to this Board.

As to the issue of height, Mr. Moken testified that he would agree to limit the garage to fifteen (15) feet in height. Regarding the side yard setback, Mr. Moken testified that he never had the property surveyed so he does not know where the property lines are located. Mr. Moken never testified as to why he could not build the garage in his rear yard or why the variance to build the garage in his side yard was necessary.

On April 25, 2000, Mr. Moken filed a second request for a permit. In the second request, he shortened the length of the garage by six (6) feet and the height of the garage by one (1) foot. The second request was also denied and Mr. and Mrs. Moken filed for a special hearing alleging a prior non-conforming use. That petition was denied by Deputy Zoning Commissioner Timothy Kotroco on February 7, 2001 and Mr. and Mrs. Moken filed an appeal to the Board.

Although Mr. Moken testified that he "pretty much" drilled into the old foundation, he acknowledged that he did not know the dimensions of the original garage. He did not measure the garage prior to razing it, but he believed he added six (6) feet to the length at one end, a "minuscule amount" to the length at the other end, as well as some to the width and height.

Petitioners called James Patten to testify on their behalf. Mr. Patten was qualified as an expert in zoning codes. He testified that he visited Mr. and Mrs. Moken's home the

Friday before the hearing for about one-half (½) hour to forty-five (45) minutes. He had never been to the house prior to that date so he never saw the original garage. He did not measure the property to determine boundaries so he could offer no evidence regarding the issue of the side yard setback. He testified that he was able to observe the foundation of the original garage based upon physical evidence. The physical evidence supported the fact that the original garage had been modified in the front and rear. New walls and a roof were built on the foundation, but, as Mr. Patten never saw the original structure, there was no way for him to determine the original height.

Mr. Patten also testified as to the property itself. He testified that he believed the property was unique in that the front of the house was on the street side as opposed to the water. Additionally, he reviewed three (3) or four (4) plots in a tax map and, in his opinion, the property was unique because it was irregularly shaped while most plots in the area were rectangular in shape.

Mr. Patten testified that, in his opinion, Mr. and Mrs. Moken could build a new garage in the rear of their house without the need for a variance, so long as they satisfied any limitations placed upon them as a result of the water. Mr. Patten also testified that he believed Mr. and Mrs. Moken could rebuild their garage pursuant to Sections 104 and 305 so long as they did not increase the height or length of the original structure. Restoration means to reestablish as once was. If the garage pre-existed the regulations now in place, it could be restored according to Mr. Patten. Contradicting that, he also testified that the pitch of the roof could be changed, however Mr. Patten offered no evidence as to how he reached

that conclusion.

Michael Fisher testified in opposition to Mr. and Mrs. Moken's petitions. He has lived next door to the Mokens since 1988. The house he lives in was built by his in-laws sometime in the 1950s'. Mr. Fisher testified that Mr. Moken began taking apart the garage in 1992 or 1993 when he took off the roof. Mr. Moken modified the garage in 1993 when he attached the ramp.

Mr. Fisher objects to the garage because it interferes with his use and enjoyment of his property. The garage, as it stands now, is substantially different from the original structure. Mr. Fisher introduced photographs to show how the garage has changed in size and shape. The new garage blocks his view of the water while the original garage only blocked his inside porch windows.

ARGUMENT - CASE 99-401-A

The first issue for the Board to address is whether the appeal is timely filed. Zoning Commissioner Lawrence Schmidt denied Mr. and Mrs. Moken's Petition for Variance on July 2, 1999. Mr. and Mrs. Moken had thirty (30) days from that date to file an appeal. They did not file an appeal. Instead, they asked for a reconsideration and in a letter from Commissioner Schmidt were advised that the appeal period would be extended only if he received a letter of support prior to the expiration of thirty (30) days from the request. No letter of support was ever obtained. Mr. Moken advised Commissioner Schmidt that he could not obtain a letter from the Protestants and, on August 6, 1999, Commissioner Schmidt denied the Motion for Reconsideration. His Order stated that Mr. and Mrs. Moken had thirty

(30) days to file an appeal of that decision. An appeal was filed the same day. As this appeal was filed more than thirty (30) days after Commissioner Schmidt rendered his original decision, the time for filing an appeal of that decision expired. Mr. and Mrs. Moken were advised in Commissioner Schmidt's letter dated July 26, 1999 that only a letter of support from Mr. and Mrs. Fisher and Mr. Glass would extend the time for filing an appeal. Therefore, the appeal in the instant case must be from Commissioner Schmidt's Order denying Mr. and Mrs. Moken's Motion for Reconsideration. No new evidence was presented to or considered by Commissioner Schmidt. He was not clearly erroneous, nor did he abuse his discretion in denying the motion for reconsideration. Although a hearing before the Board is de novo, this hearing should be solely limited to the Motion for Reconsideration. The original decision was not appealed. There was no evidence presented to the Board to suggest that the denial of the Motion for Reconsideration was in error. As such, Mr. and Mrs. Moken's appeal in Case Number 99-401A, should be denied.

Assuming Arguendo that this appeal is proper and that the Board can consider Mr. and Mrs. Moken's requests for variances, the requests should still be denied.

Cromwell v. Ward, 102 Md.App. 691, 651 A.2d 424(1995) remains the seminal case for determining whether the granting of a variance is proper. The Court of Special Appeals has held that for a variance to be appropriate, it must be shown that the property is unique or unusual from the surrounding properties and the need for a variance must be based upon practical difficulties or unreasonable hardships not created by the land owner. This is a two (2) prong test. Only if the Board finds that the property is unique can it consider whether

denial of the variance requests will result in practical difficulties or unreasonable hardship for the property owner.

In the instant case, the only evidence that Mr. and Mrs. Moken's property is unique or unusual came from Mr. Patten who testified that the Mokens' property was unusually shaped. That fact, even if coupled with the additional fact that Mr. and Mrs. Moken's house faces the street instead of the water, does not render Mr. and Mrs. Moken's property unsuitable in its proposed use. See North v. St. Mary's County, 99 Md.App. 502, 638 A.2d 1175(1994).

Mr. and Mrs. Moken have requested three (3) separate variances. In the first request, they have requested a height variance to build a sixteen (16) foot garage instead of a fifteen (15) foot garage. They have also requested a variance to allow the garage to be built in the side yard instead of the rear of the house. Even if the Board finds that the fact of the shape of the property renders it unique, by the testimony of Mr. Moken and his witness, they have failed to meet the second requirement, that the failure to grant the variance will result in practical difficulties for the Mokens in the use and enjoyment of their property or will result in an unreasonable hardship. Without these two variances, Mr. and Mrs. Moken could still build a garage. Mr. Patten testified that Mr. and Mrs. Moken could build a garage elsewhere on their property. Mr. Moken testified that he could shorten the garage in order to not exceed the maximum height and he could shorten the length of the garage by six (6) feet. There is no evidence of unreasonable hardship. If any hardship does exist, it is self-imposed. Mr. and Mrs. Moken tore down their existing garage and began building a new one prior to

obtaining the required permits or variations.

As to the third request for a variance, for the side yard setback, there has been no evidence presented by Mr. and Mrs. Moken as to the property line. It is unclear the distance between the garage and the property line. Mr. Moken testified that it was a distance of about two (2) feet. Mr. Fisher testified it was a distance of about eighteen (18) inches. As it is unclear how far away the garage is from the property line, and for the additional reasons stated hereinabove regarding the other two (2) requests for variances, this request must also be denied.

ARGUMENT - CASE NUMBER 01-147-SPH

In this case, the Board is asked to approve the designation of the garage as a prior nonconforming use and allow its reconstruction.

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 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 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 qual to but may not

exceed the number of units which existed before the casualty."

In determining whether the restoration contemplated by Mr. Moken is in conformity with these zoning regulations, the Board determine whether the work occurred within two (2) years of the damage and whether it was increased or enlarged in any respect to the height or area of the original structure.

The testimony is unclear as to when exactly damage occurred. It may have been as early as 1992 or as recent as 1998. As Mr. Moken could not conclusively say that he began the restoration within two (2) yeas of the damage occurring, he has failed to prove one of the requirements necessary under Section 104.2 and for that reason his request for a designation of a prior nonconforming use should be denied.

Once again, assuming arguendo that this Board finds that restoration of the garage was within the two year limitation of Section 104.2, Mr. and Mrs. Moken are still in violation of both that Section and Section 305. Both Sections clearly state that a structure with a nonconforming use may be restored only so long as the building is not enlarged in any respect. Clearly, Mr. and Mrs. Moken have increased the length, width and height of the original structure. Mr. Moken admitted to lengthening and widening the garage. The pictures introduced by Michael Fisher show the increase in the height of the garage. Therefore, the structure which Mr. and Mrs. Moken are trying to build is in violation of these Sections.

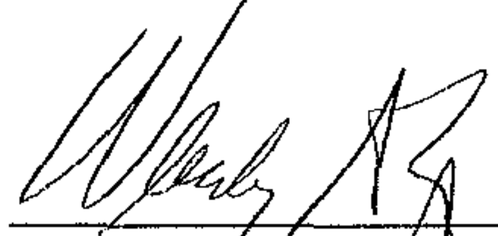
Mr. and Mrs. Moken did not measure the garage before it was razed and so there is no evidence before the Board as to the original size. Had they followed proper procedure,

there would have been a record of the measurements of the original structure and they could have properly and legally restored the structure. They did not follow the proper procedure and must now suffer the consequences of their actions. The Board can not allow them to restore, to make as once was, what no longer exists. There is no evidence before the Board as to what previously existed. Mr. and Mrs. Moken's request to be permitted to reconstruct a building designated as a prior nonconforming structure must be denied.

CONCLUSION

Petitioner's property is not unique. They can still use the property and enjoy the property for its intended use without the variances. They will suffer no unusual hardship or practical difficulty if they are not granted the variances requested. They are not denied a use of their property enjoyed by their neighbors. Any hardship exists of their own creation as they failed to obtain the appropriate permits prior to razing the garage. Even if the garage would have qualified as a prior nonconforming use, the Petitioners' plans to rebuild the garage substantially increase its length, width and height. They can not restore it to its original size as they do not know its original dimensions. Therefore, both cases must be denied.

Respectfully submitted



WENDY A. ZERWITZ
ZERWITZ & ZERWITZ
38 South Dundalk Avenue
Baltimore, Maryland 21222

(410) 288-9303
Attorneys for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of May, 2002, a copy of the foregoing MEMORANDA was mailed, first class mail, postage prepaid to ROBERT J. FELDMAN, ESQUIRE and MATTHEW F. JERNIGAN, ESQUIRE, FREILICH LAW GROUP, LLC, P.O. Box 5465, Towson, Maryland 21204.

WENDY A. ZERWITZ

In The Matter of Anthony J. and Susan S. Moken 2400 Bauernschmidt Avenue Petition For Special Hearing Case No. 01-147-SPH	* * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case Number: 01-147-SPH

* * * - * * *

Affidavit of Service

The undersigned hereby certifies that Henry Reichenberg executed service of process pursuant to the authority granted by the County Board of Appeals upon Sherry L. Moyle, an indivdual over the age of 18 who works for the Baltimore County Office of Planning at the Baltimore County Circuit Court, 401 Bosley Avenue, Room 405, Towson, Maryland 21204, by delivering and leaving with the receptionist on February 4th, 2002, a copy of the Subpoena which is being filed with this Court.. The undersigned further certifies that (s)he is over eighteen years of age and is not a party to this action.

I DO SOLEMNLY DECLARE AND AFFIRM under the penalties of perjury that the matters and facts set forth herein are true to the best of my knowledge, information, and belief.

Respectfully submitted,

Henry Reichenberg

Henry Reichenberg

E:\Clients\moken\Affidavit of Service ZC2.wpd

02 MAR -5 AM 10:16

RE: IN THE MATTER OF
ANTHONY J. AND SUSAN S. MOKEN

2400 Bauernschmidt Avenue

PETITION FOR SPECIAL HEARING

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 01-147-SPH

* * * * * * * * *

S U B P O E N A

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County)

Sherry L. Hankins a/k/a Sherry L. Moyle
Baltimore Conty Office of Planning
County Courts Building
401 Bosley AVenue, Suite 406
Towson, Maryland 21204

YOU ARE HEREBY COMMANDED TO: ( ) Personally appear; ( ) Produce documents and/or objects only; (XXX) Personally appear and produce documents or objects;

in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on March 12, 2002 at 10:00 a.m./~~p.m.~~

YOU ARE COMMANDED TO produce the following documents or objects (for general purpose as stated): Aerial photo dated 12/25/54; 02-166, 154-45 and all other photos of the property commonly known as 2400 Bauernschmidt Avenue, Baltimore County.

SUBPOENA REQUESTED BY:
Michael L. Freilich, Esquire, Atty.
for Anthony & Susan Moken
(Name of Party /Attorney)
Suite 117 , 305 W. Chesapeake Avenue
Towson, Md. 21204
(Address /Telephone #)
(410) 321-0040

The witness named above is hereby ORDERED to so appear before the County Board of Appeals. The Board requests (____) the Sheriff, (XXX) Private Process Server, to issue the summons set forth herein.

County Board of Appeals of
Baltimore County

02 FEB -4 PM 4:08

IN RE: PETITION FOR SPECIAL HEARING E/S Bauernschmidt Drive, 515' N centerline of Riverside Drive 15th Election District 5th Councilmanic District (2400 Bauernschmidt Drive) Anthony J. & Susan S. Moken Petitioners	* * * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 01-147-SPH

* * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing filed by the legal owners of the subject property, Anthony and Susan Moken. The Petitioners are requesting a special hearing for property they own at 2400 Bauernschmidt Drive, which property is zoned DR 3.5. The special hearing request is from Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve the designation of an accessory structure (garage) located in the side yard as a nonconforming use and permit reconstruction thereof pursuant to Section 104.2 of the B.C.Z.R.

Appearing at the hearing on behalf of the special hearing request were Anthony Moken, property owner, Matthew Jernigan and Robert Feldman, attorneys at law, representing the Petitioners. Appearing in opposition to the Petitioners' request were the adjacent property owners, Michael and Janet Fisher.

Testimony and evidence indicated that the property, which is the subject of this special hearing request, consists of 0.36 acres, more or less, zone DR 3.5. The subject property is located at the end of Bauernschmidt Drive in the Bauernschmidt Manor area of Baltimore County. The subject property is a waterfront lot improved with an existing single-family dwelling and a detached garage, the latter of which is the subject of this special hearing

2/7/01

request. Testimony offered by Mr. Moken demonstrated that the garage has been on the property since the time that he moved there in 1970. He further testified that he was advised that the garage was actually constructed in 1949. He is requesting permission to reconstruct the garage as it existed when it was originally built. In order to proceed with the reconstruction of the garage, Mr. Moken has filed the instant special hearing request. As stated previously, Mr. and Mrs. Fisher who reside adjacent to the Petitioners' property appeared in opposition to the Petitioners' request. Mr. and Mrs. Fisher indicated that the Petitioners are attempting to replace the old garage with a much larger structure. They fear that this larger structure will impede their view of the water, given that both properties are waterfront properties.

In order to fully understand the case, it is necessary to give a brief review of the history of the subject property. This is not the first time that the Petitioners have come before this Zoning Commissioner's Office. This information was not provided at the hearing; however, it was included within the Division of Code Inspection and Enforcement's file regarding the active violation pending on the subject property. In 1999, the Petitioners, Mr. and Mrs. Moken, came before the Zoning Commissioner, Lawrence E. Schmidt, and requested a variance to allow this garage to be located in the side yard of their property with a side yard setback of 2 ft. in lieu of the required 2 ½ ft. and to allow the garage to stand at a height of 16 ft. in lieu of the permitted 15 ft. Commissioner Schmidt in Case No. 99-401-A entertained testimony and evidence on the variance request. After considering the Petitioners' position, as well as the protestants in that case, the Commissioner denied all 3 variance requests by Order dated the 2nd day of July, 1999. Thereafter, the Petitioners requested a motion for reconsideration of Commissioner Schmidt's decision which again was denied.

ORDER RECEIVED FOR FILING
Date 2/7/01
By K. Jameson

The case proceeded on to the Board of Appeals where Commissioner Schmidt's decision was upheld.

Apparently, the Moken's tore down the old garage that has existed on the property and began to reconstruct the garage without the benefit of a building permit. Thereafter, they were cited with a code violation which caused them to file the variance request before Commissioner Schmidt in the first place. Now that the variance request has been denied by Commissioner Schmidt and the Board of Appeals, the Petitioners have refiled a new request by way of this special hearing to allow the garage to be reconstructed on the property utilizing the theory of nonconforming use. In reviewing the language contained in Section 104 of the Baltimore County Zoning Regulations, I find it is not appropriate to grant the special hearing relief requested in this case. The Petitioners have forfeited their right to request a nonconforming use as a result of their tearing down the old block structure in an attempt to reconstruct it without the benefit of a building permit. Therefore, I cannot find, based on the testimony and evidence offered at the hearing, as well as the prior zoning history of the property, that the Petitioners enjoy a true legal nonconforming use. The Petitioners had their choice of remedies when they originally filed their case before Commissioner Schmidt in Case No. 99-401-A. In that case they chose, in lieu of proceeding with a nonconforming use request, to request variance relief from Commissioner Schmidt. After considering all of the evidence before him, Commissioner Schmidt denied their variance and ordered that the subject garage be removed within 90 days from the date of his order. After receiving Commissioner Schmidt's denial, the Petitioners requested, by way of a motion for reconsideration, approval to reconstruct the garage no larger than what existed on the property for many years. Again, Commissioner Schmidt denied that request.

ORDER RECEIVED FOR FILING
Date 4/7/01
By R. Jamison

I agree with Commissioner Schmidt's approach to this case and hereby find that the Petitioners' request for special hearing to allow a garage on the property which was already determined to be inappropriate by Commissioner Schmidt and ordered to be removed be and is hereby denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 7th day of February, 2001, that the Petitioners' request for special hearing to approve an accessory structure located in the side yard as a nonconforming use, be and is hereby DENIED.

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

IT IS FURTHER ORDERED, that any appeal of this decision must be filed within thirty (30) days from the date of this Order.

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

PLACING THE ORDER
DATE 2/7/01
BY D. Jamison

CBCA
FLOODPLAIN

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2400 Bauernschmidt ~~Manor~~ Drive
which is presently zoned D.R. 3.5

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 Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve Designation of an accessory structure (garage) Located on the sideyard as a non-conforming use and permit reconstruction thereof, pursuant to §104.2 (BCZR)

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, 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:

Michael L. Freilich
Name - Type or Print

Signature

Freilich Law Group, LLC
Company

305 W. Chesapeake Ave Suite 117 (410) 321-0040
Address — Telephone No.

Towson MD 21204
City — State — Zip Code

2/7/01

Legal Owner(s):

Anthony J. Moken
Name - Type or Print

Anthony J. Moken
Signature

Susan S. Moken
Name - Type or Print

Susan S. Moken
Signature

2400 Bauernschmidt Dr. 410-686-104
Address — Telephone No.

Baltimore Md 21221
City — State — Zip Code

Representative to be Contacted:

Michael L. Freilich, Esq.
Name

305 W. Chesapeake Ave Suite 117 (410) 321-0040
Address — Telephone No.

Towson MD 21204
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By JNP Date 10/2/00

Case No. 01-147-SPH

REV 9/15/98

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~~ 15,687 square feet. Also known as 2400 Bauernschmidt Drive and located in the 15th Election District, 5th Councilmatic District.

401

01-147-SPH

01-147-SPH
~~99-401-A~~

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 06872

DATE 10/2/2000 ACCOUNT R-001-6150

AMOUNT $ 50.00

RECEIVED FROM: Anthony J. Maher

FOR: 2400 Bauernschmidt Drive

01-147-SPH

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PAYMENT ACTUAL TIME
10/02/2000 10/02/2000 10:09:24
REF W403 CASHIER 1 WIL 1.00 DRAWER 3
Dept 5 528 ZONING VERIFICATION
Receipt # 143967 OFLN
CR NO. 086872
Recpt Tot 50.00
50.00 CK .00 CA
Baltimore County, Maryland

01-147-SPH

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 091752

DATE 3-5-01 ACCOUNT 001-006-6150

AMOUNT $ 210.00

RECEIVED FROM: Michael L Freilich

FOR: Appeal Case # 01-147-SPH 2400 Bauernschmidt Dr Special Hearing

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PAYMENT ACTUAL TIME
3/05/2001 3/05/2001 10:20:06
REF W502 CASHIER 0001 DMD DRAWER 2
RECEIPT # 172266 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 091752
Recpt Tot 210.00
210.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

MICHAEL L. FREILICH & ASSOCIATES, P.A.
Baltimore County

ATTORNEY ESCROW ACCOUNT - GENERAL

3/2/2001

1272

210.00

escrow-gen Moken Filing Fees 210.00

MICHAEL L. FREILICH & ASSOCIATES, P.A.
Baltimore County

ATTORNEY ESCROW ACCOUNT - GENERAL

3/2/2001

1272

210.00

escrow-gen Moken Filing Fees 210.00

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: #01-147-SPH
2400 Bauernschmidt Drive
E/S Bauernschmidt Drive, 515-feet N of Riverside Drive
15th Election District
5th Councilmanic District
Legal Owner(s): Susan S. & Anthony J. Moken

Special Hearing: to approve designation of an accessory structure (garage) located in the side yard as a non-conforming use and permit reconstruction.

Hearing: Wednesday, November 15, 2000, at 9:00 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.

10/270 Oct. 26 C429238

CERTIFICATE OF PUBLICATION

TOWSON, MD, 10/26/, 2000

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 10/26/, 2000.

THE JEFFERSONIAN,

S. Wilkinson

LEGAL ADVERTISING

[redacted]

APPEAL SIGN POSTING REQUEST

01-147-SPH

ANTHONY J. & SUSAN S. MOKEN, PETITIONER

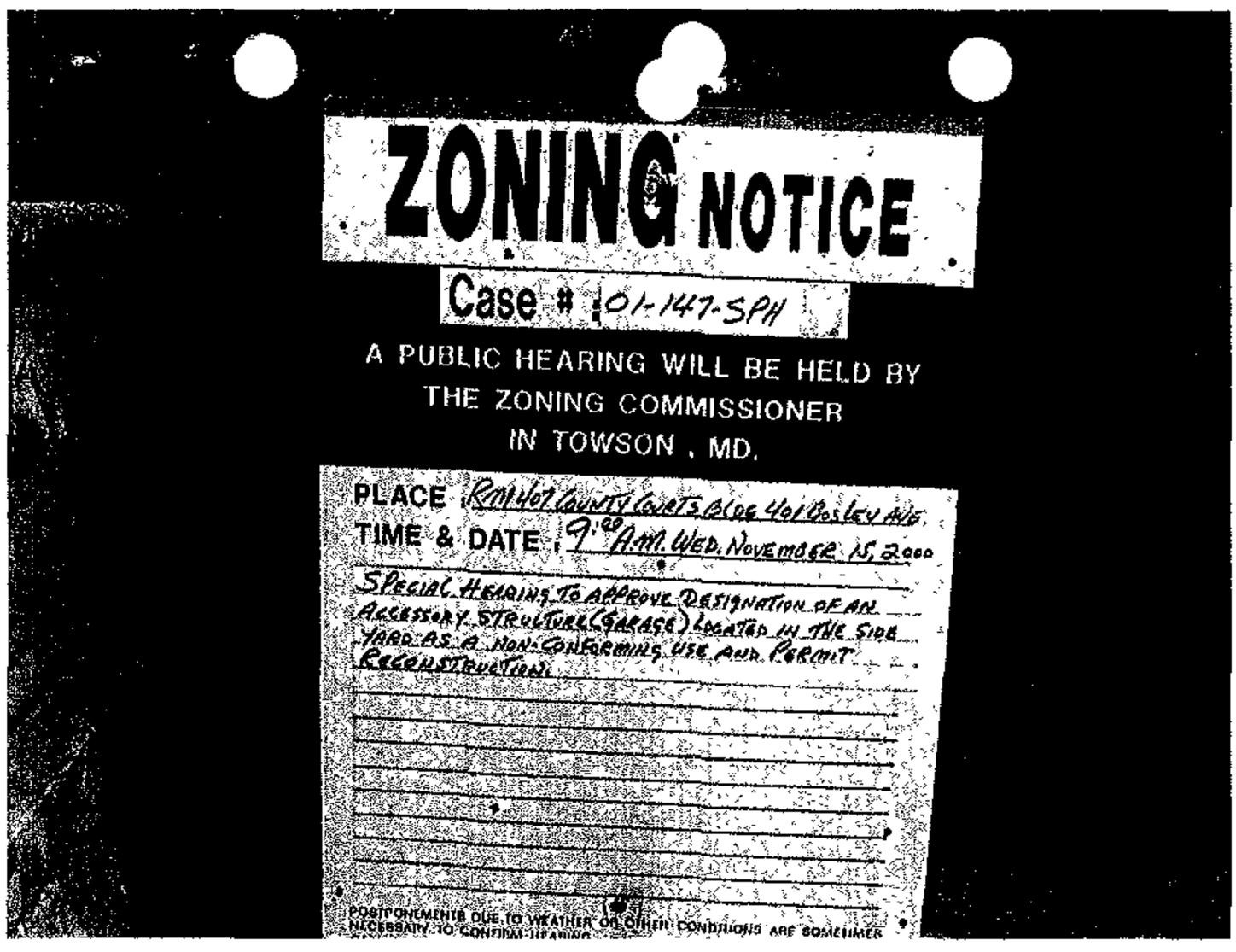
E/s Bauernschmidt Drive, 515' N c/l Riverside Drive

Election District 15th Appeal Date: 3/02/01

Attachment – (Plan to accompany Petition
Petitioner's Exh. # 1)

Please post the Appeal sign on this property and complete & return bottom portion

****



2400 Bauernschmidt Drive

CERTIFICATE OF POSTING

RE: CASE # 01-147-SPH
PETITIONER/DEVELOPER
(Anthony Moken)
DATE OF Hearing
(11-15-00)

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION : MS. GWENDOLYN STEPHENS

LADIES AND GENTLEMEN:

THIS LETTER IS TO CERTIFY UNDER THE PENALTIES OF PERJURY THAT THE NECESSARY SIGNS(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON THE PROPERTY LOCATED AT

2400 Bauernschmidt Drive Baltimore, Maryland 21221

THE SIGN(S) WERE POSTED ON 10-27-00
(MONTH, DAY,YEAR)

SINCERELY,

10/27/00
(SIGNATURE OF SIGN POSTER & DATE)

THOMAS P. OGLE SR.

325 NICHOLSON ROAD

BALTIMORE, MARYLAND 21221

410-687-8405
(TELEPHONE NUMBER)

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (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: 01-147-SPH

Petitioner: Anthony & Susan Moken

Address or Location: 2400 Bauernschmidt Drive

PLEASE FORWARD ADVERTISING BILL TO:

Name: Anthony J Moken

Address: 2400 Bauernschmidt Dr. Apt
Baltimore Md 21221

Telephone Number: 410 686-1041

Revised 2/20/98 - SCJ

01-147-SPH

Baltimore County
Department of Permits and
Development Management

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

October 6, 2000

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: 01-147-SPH
2400 Bauernschmidt Drive
E/S Bauernschmidt Drive, 515-feet N of Riverside Drive
15th Election District – 5th Councilmanic District
Legal Owners: Susan S. & Anthony J. Moken

Special Hearing to approve designation of an accessory structure (garage) located in the side yard as a non-conforming use and permit reconstruction.

HEARING: Wednesday, November 15, 2000, at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

GDZ

Arnold Jablon
Director

C: Michael L. Freilich, Esquire, Freilich Law Group, LLC, 305 W. Chesapeake Ave, Ste 117, Towson 21204
Susan & Anthony Moken, 2400 Bauernschmidt Dr., Baltimore 21221

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, OCTOBER 27, 2000.**
(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.

Printed with Soybean Ink
on Recycled Paper

TO: PATUXENT PUBLISHING COMPANY
Thursday, October 26, 2000 Issue – Jeffersonian

Please forward billing to:
Anthony J. Moker
2400 Bauernschmidt Drive
Baltimore, MD 21221

410 686-1041

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: 01-147-SPH
2400 Bauernschmidt Drive
E/S Bauernschmidt Drive, 515-feet N of Riverside Drive
15th Election District – 5th Councilmanic District
Legal Owners: Susan S. & Anthony J. Moken

Special Hearing to approve designation of an accessory structure (garage) located in the side yard as a non-conforming use and permit reconstruction.

HEARING: Wednesday, November 15, 2000, at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt
GDZ

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.

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 : Michael L. Freilich, Esquire
Petitioners /Legal Owners : 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

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on Recycled Paper

Baltimore County
Department of Permits and
Development Management

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

November 9, 2000

Michael L. Freilich, Esquire
Freilich Law Group, LLC
305 W. Chesapeake Avenue, Ste. 117
Towson, MD 21204

Dear Mr. Freilich:

RE: Case Number: 01-147-SPH, 2400 Bauernschmidt Drive

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on October 2, 2000.

The Zoning Advisory Committee (ZAC), which consists of representatives from several 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, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr. GDZ
Supervisor, Zoning Review

WCR:

Enclosures

C: Susan & Anthony Moken, 2400 Bauernschmidt Drive, Baltimore 21221
People's Counsel

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 10-11-00

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

RE: Baltimore County
Item No. 147 JNP

Dear. Ms. Jackson:

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,

L. J. Gredlein

for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Baltimore County
Fire Department

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

October 12, 2000

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Gwen Stephens

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF OCTOBER 10, 2000

Item No.: See Below

Dear Ms. Stephens:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

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

118, 137, 140, 141, 142, 144, 145, 146, 147,

REVIEWER: LIEUTENANT HERB TAYLOR, Fire Marshal's Office
PHONE 887-4881, MS-1102F

cc: File

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on Recycled Paper

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley AC/RBS

DATE: October 16, 2000

SUBJECT: Zoning Item #147
2400 Bauernschmidt Drive

Zoning Advisory Committee Meeting of October 10, 2000

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

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

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

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

____ Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).

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

Reviewer: Keith Kelley Date: October 12, 2000

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Mgmt.

DATE: November 13, 2000

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For October 16, 2000
Item No. 147

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

The minimum flood protection elevation for this site is 11 feet.

Where feasible, accessory structures and garages greater than 300 square feet should be located out of the flood plain or elevated to or above the flood protection elevation. When these measures are not feasible, the following apply:

1. *The floor of the structure must be at or above grade;*

2. *The structure must be located, oriented, and constructed so as to minimize flood damage; and*

3. *The structure must be firmly anchored to prevent flotation.*

RWB:HJO:jrb

cc: File

ZAC-10-16-2000-ITEM NO 147.doc

Jim 11/15

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: October 17, 2000

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

SUBJECT: 2400 Bauernschmidt Drive

17

INFORMATION:

Item Number: 01-147

Petitioner: *Anthony J. Moken*

Zoning: DR 3.5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not support the requested variance. An inspection of the site revealed that construction of the garage is underway. This office has determined that completion of the garage will result in over development of the subject property that could negatively impact the adjacent residential lots.

If there should be any question concerning the matters stated herein, please contact Karin Brown, Fifth District Community Planner, at 410-887-3480

Prepared by: Mark Cook

Section Chief: Jeffrey W. Long

AFK:MAC:

\\NCH_NW\VOL3\WORKGRPS\DEVREV\ZAC\01-147.doc

RE: PETITION FOR SPECIAL HEARING 2400 Bauernschmidt Drive, E/S Bauernschmidt Dr, 515' N of Riverside Dr 15th Election District, 5th Councilmanic	*	BEFORE THE
	*	ZONING COMMISSIONER
	*	FOR
Legal Owner: Anthony J. & Susan S. Moken Petitioner(s)	*	BALTIMORE COUNTY
	*	Case No. 01-147-SPH

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

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.

All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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 16th day of October, 2000 a copy of the foregoing Entry of Appearance was mailed to Michael L. Freilich, Esq., Freilich Law Group, 305 W. Chesapeake Avenue, Suite 117, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

APPEAL

Petition for Special Hearing
2400 Baurenschmidt Drive
E/S Bauernschmidt Drive, 515' N centerline of Riverside Drive
15th Election District – 5th Councilmanic District
Anthony J. & Susan S. Moken - Legal Owners
Case No.: 01-147-SPH

Petition for Special Hearing (filed 10/2/00)

Zoning Description of Property

Notice of Zoning Hearing (10/6/00)

Certification of Publication (The Jeffersonian issue 10/26/00)

Certificate of Posting (posted 10/27/00 by Thomas P. Ogle, Sr.)

Entry of Appearance by People's Counsel (10/16/00)

Petitioner(s) Sign-In Sheet

Protestant(s) Sign-In Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibits:

1. Plat to accompany Petition for Zoning – Special Hearing of 2400 Bauernschmidt Drive (dated 8/28/00)
2. Code Enforcement Report on 2400 Bauernschmidt Drive (dated 3/11/99)
3. Division of Code Inspections and Enforcement Active Violation Case Documents (14 pages)
4. Photogrammetric Map of Back River Neck/Cape May area
5. Photographs of 2400 Bauernschmidt Drive

Miscellaneous (Not Marked as Exhibits):

- Letter From Timothy M. Kotroco, Deputy Zoning Commissioner to Robert J. Feldman, Esquire and Matthew F. Jernigan, Esquire (dated 2/7/01)
- Affidavit of Service From Henry Reichenberg to Sherry L. Hankins, on behalf of Susan & Anthony Moken (dated 11/2/00)

Deputy Zoning Commissioner's/Zoning Commissioner's Order (2/7/01 - Denied)

Notice of Appeal received on 3/2/01 from Michael L. Freilich, Esquire

c: Michael L. Freilich, Esquire, Freilich Law Group, LLC, 305 W. Chesapeake Avenue, Suite 117, Towson, MD 21204
Anthonty J. and Susan S. Moken, 2400 Bauernschmidt Drive, Baltimore, MD 21221
James H. Thompson, Code Enforcement (Enforcement Case No. 99-0812)
People's Counsel of Baltimore County, MS #2010
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

3/9/01

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.

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 Lawrence M. Stahl Richard K. Irish	CLM LMS 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

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

c: Counsel for Petitioners /Legal Owners : Michael L. Freilich, Esquire
Petitioners /Legal Owners : 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.

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on Recycled Paper

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
POST-HEARING MEMOS

DATE: May 13, 2002

TO: C. Marks
L Stahl
R. Irish

FROM: Kathi

SUBJECT: Case No. 01-147-SPH /99-401-A / *In the Matter of: Anthony J. and Susan S. Moken, Petitioners*
Memos filed – Deliberation assigned for June 27, 2002

The subject case is scheduled for public deliberation on Thursday, June 27, 2002 at 9:30 a.m.

The following documents have been filed as requested and are attached for your review prior to deliberation:

1. Closing Memorandum filed by Wendy Zerwitz, Esquire, on behalf of Mr. and Mrs. Michael Fischer, Protestants;

2. Closing Memo filed by Michael J. Freilich, Esquire, on behalf of Anthony and Susan Moken; and

3. Letter from Office of People's Counsel, submitting on Memorandum filed by Ms. Zerwitz.

A copy of the Deliberation notice was sent to you at time of scheduling. Should you have any questions, please call me.

Kathi

Attachments (3)

FILE

LAW OFFICES
ZERWITZ & ZERWITZ
38 SOUTH DUNDALK AVENUE
DUNDALK, MARYLAND 21222

ARNOLD M. ZERWITZ
WENDY A. ZERWITZ

COUNSEL
LOUIS L. DEPAZZO

FAX (410) 288-9330
TELEPHONE (410) 288-9303

02 MAY 13 AM 9:40

May 13, 2002

HAND DELIVERED
County Board of Appeals of
Baltimore County
Old Courthouse - Room 40
400 Washington Avenue
Towson, Maryland 21204

Re: In the Matter of Anthony J. & Susan Moken
Petitioners/Case No.: 01-147-SPH/99-401-A

Dear Sir/Madam:

Enclosed herewith please find an original and three (3) copies of my Closing Memoranda on behalf of Mr. and Mrs. Michael Fischer.

Thank you for your kind attention to this matter.

Very truly yours,

WENDY A. ZERWITZ

WAZ:lt
Enclosure
cc: Michael Freilich, Esquire
Mr. and Mrs. Michael Fischer

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: November 14, 2002

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton trs
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILES**

The following case(s) have been finalized and the Board of Appeals is closing the copy of the appeal case file(s) and returning the file(s) and exhibits (if applicable) attached herewith.

BOARD OF APPEALS CASE NUMBER	*PDM FILE NUMBER*	NAME	LOCATION
01-147-SPH	***01-147-SPH***	Anthony and Susan Moken	2400 Baurenschmidt Dr.
99-401-A	***99-401-A***	"	"

Attachment: SUBJECT FILE(S) ATTACHED

County Board of Appeals of Baltimore County

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

WCR

*** **HEARING ROOM** – *Room 48* ***
Basement –Old Courthouse
400 Washington Avenue

APPEAL HEARINGS SCHEDULED FOR THE WEEK OF **MARCH 11, 2002**

TUESDAY **3/12** **10:00 am** **Case No.: 01-147-SPH** **/HEARING**

In the Matter of:
Anthony J. and Susan S. Moken
2400 Bauernschmidt Drive
E/s Bauernschmidt Drive, 515' N of c/l of Riverside Dr.
15th Election; 5th Councilmanic

SPH – From 500.7 BCZR – to approve dewsignation of accessory structure (garage) located in side yard as nonconfoirming use and to permit reconstruction thereof per 104.2 BCZR
Cross reference with 99-401-A – VAR – accessory structure (detached garage) in side yard; height and setbacks

---

WEDNESDAY **3/13** **10:00 am** **Case No.: CBA-01-115** **/HEARING**

In the Matter of:
Dianne Beryl Pasternack
2408 Sylvale Rd., Baltimore, MD 21209

Re: Decision of AHB #2315; Violation E05737; Nuisance animal/bite case; civil penalty amt. $25.00

THURSDAY **3/14** **10:00 am** **Case No.: CR-02-153** **/HEARING**
Cyycle II, 2001

In the Matter of:
The Kent-Mar Corporation – Legal Owner
Sidney Emmer Builders, Inc. – CP
W/s Pleasant Hill Road, S of Red Run Blvd.
4th Election; 3rd Councilmanic

Reclassification: From M.L.-I.M. to OT / Documented
To be opened and continued on record; hearing on merits 4/23/02.

10:30 am **Case No.: 01-215-A** **/HEARING**

In the Matter of:
Sandra and Michael Peregoy
NW/s Chestnut Road, 200' NE of c/l Seneca Road
3916 Chestnut Road
15th Election; 5th Councilmanic

VAR – To allow construction of pier within 0' of divisional lines ilo min req'd 10'; ALSO – to allow pier to extend 15' beyond divisional line on NE/s of property

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on Recycled Paper

c: Executive Office
Law Office
Director /PDM

People's Counsel
Planning Office
Court Info. Desk

County Council
Board Members
Court Reporter

Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

March 9, 2001

Michael J. and Janet F. Fisher
2348 Martin Drive
Baltimore, Maryland 21221

Dear Mr. and Mrs. Fisher:

RE: Case No. 01-147-SPH, 2400 Bauernschmidt Drive

Please be advised that an appeal of the above-referenced case was filed in this office on March 2, 2001 by Michael L. Freilich, Esquire. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

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:aem

c: Michael L. Freilich, Esquire, Freilich Law Group, LLC, 305 W. Chesapeake Avenue, Suite 117, Towson, MD 21204
Anthony J. and Susan S. Moken, 2400 Bauernschmidt Drive, Baltimore, MD 21221
People's Counsel, MS 2010
Robert Jay Feldman, Esquire, and Matthew F. Jennejahn, Esquire, Freilich Law Group, LLC, 305 W. Chesapeake Avenue, Suite 117, Towson, MD 21204

Printed with Soybean Ink
on Recycled Paper

RE: PETITION FOR SPECIAL HEARING 2400 Bauernschmidt Drive, E/S Bauernschmidt Dr, 515' N of Riverside Dr 15th Election District, 5th Councilmanic	*	BEFORE THE
	*	ZONING COMMISSIONER
	*	FOR
Legal Owner: Anthony J. & Susan S. Moken Petitioner(s)	*	BALTIMORE COUNTY
	*	Case No. 01-147-SPH

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

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.

All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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 16th day of October, 2000 a copy of the foregoing Entry of Appearance was mailed to Michael L. Freilich, Esq., Freilich Law Group, 305 W. Chesapeake Avenue, Suite 117, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Anthony J. Maken	2400 Bauerwschmidt Dr. Rt 1
	Baltimore Md 21221
Matthew F. Jennejahn	305 W. Chesapeake Ave Suite 117
	Towson, MD 21204
Robert Jay Feldman, Esq.	305 W. Chesapeake Ave Suite 117
	Towson, MD 21204

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BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley AC/RBS

DATE: October 16, 2000

SUBJECT: Zoning Item #147
2400 Bauernschmidt Drive

Zoning Advisory Committee Meeting of October 10, 2000

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

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

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

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

_____ Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).

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

Reviewer: Keith Kelley Date: October 12, 2000

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Mgmt.

DATE: November 13, 2000

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For October 16, 2000
Item No. 147

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

The minimum flood protection elevation for this site is 11 feet.

Where feasible, *accessory structures and garages greater than 300 square feet should be* located out of the flood plain or elevated to or above the flood protection elevation. When these measures are not feasible, the following apply:

1. *The floor of the structure must be at or above grade;*

2. *The structure must be located, oriented, and constructed so as to minimize flood damage; and*

3. *The structure must be firmly anchored to prevent flotation.*

RWB:HJO:jrb

cc: File

ZAC-10-16-2000-ITEM NO 147 doc

Item 11/15

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: October 17, 2000

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

SUBJECT: 2400 Bauernschmidt Drive

INFORMATION:

Item Number: 01-147

Petitioner: Anthony J. Moken

Zoning: DR 3.5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not support the requested variance. An inspection of the site revealed that construction of the garage is underway. This office has determined that completion of the garage will result in over development of the subject property that could negatively impact the adjacent residential lots.

If there should be any question concerning the matters stated herein, please contact Karin Brown, Fifth District Community Planner, at 410-887-3480

Prepared by: Mark Cole

Section Chief: Jeffrey W. Long

AFK:MAC:

\\NCH_NW\VOL3\WORKGRPS\DEVREV\ZAC\01-147.doc

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~~ 15,687 square feet. Also known as 2400 Bauernschmidt Drive and located in the 15th Election District, 5th Councilmatic District.

401

01-147-SPH

01-147-SPH

~~99-401-A~~

CODE ENFORCEMENT REPORT

RF

DATE: 3 / 11 / 99 INTAKE BY: K Hopkins CASE #: 99-0812 INSPEC: P Larrick

COMPLAINT LOCATION: 2400 Baumschlmidt Dr.

ZIP CODE: 21221 DIST: 15

COMPLAINANT NAME: Councilman Gardenia PHONE #: (H) (W) X 3384

ADDRESS: ZIP CODE:

PROBLEM: Building 2 story garage w/o permit

OWNER/TENANT INFORMATION:

TAX ACCOUNT #: ZONING:

INSPECTION: 3/12/99 14 x 36 Garage under construction - no permit on site - no permit in system. Stop Work Order written to secure permit Stop Work Order given to workmen on site Rechecks 3/26/99 Larrick

REINSPECTION: 3/19/99 Tony Molten came in with bldg permit application. Due to foundation location, he must apply for a zoning variance for side yard set back. His appt. is set for April 9 @ 9 AM in Room 111 P/ Propalis

REINSPECTION: 7/12 Variance denied - Recheck 8/16 for removal of structure or appeal to Board of Appeals Recheck 8/16

REINSPECTION: 8/11 Zoning Commissioner has given owners 90 days to remove structure - but owners requested a reconsideration by Lawerence Schmidt Recheck 8/27

8/27 No reply back from zoning commissioner Recheck 11/15

CO ENFORCEMENT R ORT

RE-INSPECTION SHEET CONTINUED

DATE:

12/15 Hearing set for sometime in March 2000 as of 12/15, firm date has ~~Re~~ not been set per Board of Appeals Recheck 3/8/2000

3/8/00 Board of Appeals has put on hold at this point, see attached

DATE: 3/13/00 Onsite - per request of J Reisinger to determine location of old foundation of garage that was removed. Appears that owner has added 6' ~~tow~~ towards water and 4' towards street side R Lamick E Eicher

DATE:

3/17/00 Conversation with owner - he is going to to apply for permit based on original size of garage R Lamick

→ 4/26/00 No application in system will call owner for update Recheck 5/10 R Lamick

DATE:

5/10/00 Owner was in on 4/26 to refile with Board of Appeals. Board of Appeals will hear sometime in July. This hearing is for a garage on original foot print Recheck 7/28/00

DATE: 7/28/00 Board of Appeals to hear on 8/24/00 Recheck 8/30/00

8/30/00 Board of Appeals is going to keep matter open to allow owner to obtain permit based on original size and height Recheck 9/27

9/27/00 Meeting with Board of Appeals on [illegible]

Update Message Form

Date: 9/27/00

2400 Baumschmitd Rd
15th

Time: _____ a.m. p.m.

Name: _____

Case #: 99-0812

Comments: Meeting on 10/2/00 at 10:00
with Board of Appeals Recheck 10/18/00
R Garrick

A 5 400 _____

DATE: 10/12/2000 STANDARD ASSESSMENT INQUIRY (1)
TIME: 07:31:27

PROPERTY NO.	DIST	GROUP	CLASS	OCC.	HISTORIC	DEL	LOAD DATE
15 16 752980	15	3-1	34-00	H	NO		04/25/00

MUKEN ANTHONY J
MUKEN SUSAN S
2400 BAUERNSCHMIDT DR

DESC-1.. IMPS
DESC-2.. BAUERNSCHMIDT MANOR
PREMISE. 02400 BAUERNSCHMIDT DR
00100-0000

BALTIMORE MD 21221-1714 FORMER OWNER: MUKEN ANTHONY J

FCV	PRIOR	PROPOSED		PHASED IN	CURR ASSESS	PRIOR ASSESS
LAND:	99,420	112,670		CURR FCV		
IMPV:	95,600	109,570	TOTAL..	204,093	81,630	78,000
TOTL:	195,020	222,240	PREF...	0	0	0
PREF:	0	0	CURT...	204,093	81,630	78,000
CURT:	195,020	222,240	EXEMPT.		0	0
DATE:	10/96	10/99				

TAXABLE BASIS		FM DATE
00/01 ASSESS:	81,630	11/21/99
99/00 ASSESS:	78,000	06/04/99
98/99 ASSESS:	76,400	06/05/98

ENTER-INQUIRY2 PA1-PRINT PF4-MENU PF5-QUIT PF7-CROSS REF

PG-001

DATE: 10/12/2000 STANDARD ASSESSMENT INQUIRY (1)
TIME: 07:31:35

PROPERTY NO.	DIST	GROUP	CLASS	OCC.	HISTORIC	DEL	LOAD DATE
15 16 752980	15	3-1	34-00	H	NO		04/25/00

LOT.... 1 BOOK.... 0012 MAP..... 0098 LOT WIDTH..... 0.00
BLOCK.. FOLIO... 0081 GRID.... 0008 LOT DEPTH..... .00
SECTION.. A PARCEL.. 0035 LAND AREA.. .068 .000 S
PLAT.. YEAR BUILT..... 0

TRANSFER DATA

NUMBER..... 089768
DATE..... 02/17/88
PURCHASE PRICE..... 0
GROUND RENT..... 0
DEED REF LIBER..... 07844
DEED REF FOLIO..... 0009
CONVEYED IND..... 9
TOT-PART TRAN IND..... 1
GRANTOR ACCT NO.. 15-16-752980

EXEMPT DATA

STATUS.....
CLASS CODE..... 000
STATE EXEMPT CODE..... 000
COUNTY EXEMPT CODE..... 000
CURR STATE EX ASMT..... 0
PRIOR STATE EX ASMT..... 0
CURR COUNTY EX ASMT..... 0
PRIOR COUNTY EX ASMT..... 0

CRITICAL AREAS CODE	NEW CONST YEAR	CARD NO	STRUCTURE CODE	SQ. FEET
		14477		1424

ENTER-INQUIRY3 PA1-PRINT PF2-INQUIRY PF4-MENU PF5-QUIT PF7-CROSS REF

PG-002

DATE: 10/12/2000 STANDARD ASSESSMENT INQUIRY (3)
TIME: 07:31:49

PROPERTY NO.	DIST	GROUP	CLASS	OCC.	HISTORIC	DEL	LOAD DATE
15 16 752980	15	3-1	34-00	H	NO		04/25/00

STATE

REC CREATE DATE.. 10/23/92
DELETE CODE.....
DATE DELETED.....
LAST FM DATE..... 11/21/99
LAST FM TYPE..... C
PREV FM DATE.....
PREV FM TYPE.....

LEU CODE	N/A	LAND-USE
82	NO	R

COUNTY

LAST LOAD DATE... 04/25/00
PRIOR LOAD DATE.. 04/05/00

STATE TAXABLE ASSESS

98/99 ASSESS: 78,400

ENTER-INQUIRY1 PA1-PRINT PF2-INQUIRY2 PF4-MENU PF5-QUIT PF7-CROSS REF

DATE: 10/12/2000 STANDARD ASSESSMENT INQUIRY (1) RA1001
TIME: 07:32:06

PROPERTY NO.	DIST	GROUP	CLASS	OCC.	HISTORIC	DEL	LOAD DATE
15 13 752981	15	3-1	34-00	N	NO		04/25/00

MOKEN ANTHONY J
MOKEN SUSAN S
2400 BAUERNSCHMIDT DR

DESC-1..
DESC-2.. BAUERNSCHMIDT MANOR
PREMISE. 00000 BAUERNSCHMIDT DR

BALTIMORE MD 21221-1714 FORMER OWNER MOKEN ANTHONY J 00000-0000

FCV	PRIOR	PROPOSED
LAND:	74,740	84,480
IMPV.	0	0
TOTL:	74,740	84,480
PREF:	0	0
CURR	0	0
DATE.	10/96	10/99

PHASED IN	CURR FCV	CURR ASSESS	PRIOR ASSESS
TOTAL..	78,980	41,190	29,890
PREF...	0	0	0
CURR...	0	0	0
EXEMPT.		0	0

TAXABLE BASIS		FM DATE
00/01 ASSESS:	41,190	11/21/99
99/00 ASSESS:	29,890	06.04/99
98/99 ASSESS:	29,260	06/05/98

ENTER-INQUIRY2 PA1-PRINT PF4-MENU PF5-QUIT PF7-CROSS REF

DATE: 10/12/2000 STANDARD ASSESSMENT INQUIRY (2) RA1001C
TIME: 07:32:13

PROPERTY NO.	DIST	GROUP	CLASS	OCC.	HISTORIC	DEL	LOAD DATE
15 13 752981	15	3-1	34-00	N	NO		04/25/00

LOT.... 2 BOOK.... 0012 MAP..... 0098 LOT WIDTH..... 17.90
BLOCK.. FOLIO... 0081 GRID.... 0008 LOT DEPTH..... .00
SECTION.. A PARCEL.. 0035 LAND AREA.. 12985.000 S
PLAT..
YEAR BUILT..... 00

----------TRANSFER DATA----------
NUMBER..... 092528
DATE..... 04/22/88
PURCHASE PRICE..... 0
GROUND RENT..... 0
DEED REF LIBER..... 0784
DEED REF FOLIO..... 0009
CONVEYED IND..... Y
LOT-PART TRAN IND..... T
GRANTOR ACCT NO.. 15-13-752981

----------EXEMPT DATA----------
STATUS.....
CLASS CODE..... 000
STATE EXEMPT CODE..... 000
COUNTY EXEMPT CODE..... 000
CURR STATE EX ASMT.... 0
PRIOR STATE EX ASMT... 0
CURR COUNTY EX ASMT... 0
PRIOR COUNTY EX ASMT.. 0

CRITICAL AREAS CODE	NEW CONST YEAR	CARD NO	STRUCTURE CODE	STRUCTURE SQ. FEET
		14478		

ENTER-INQUIRY3 PA1-PRINT PF2-INQUIRY1 PF4-MENU PF5-QUIT PF7-CROSS REF

DATE: 10/12/2000 STANDARD ASSESSMENT INQUIRY (3) RA1001D
TIME: 07:32:17

PROPERTY NO.	DIST	GROUP	CLASS	OCC.	HISTORIC	DEL	LOAD DATE
15 13 752981	15	3-1	34-00	N	NO		04/25/00

----------STATE----------
REC CREATE DATE.. 10/23/92
DELETE CODE.....
DATE DELETED.....
LAST FM DATE..... 11/21/99
LAST FM TYPE..... C
PREV FM DATE.....
PREV FM TYPE.....

WEU CODE	N/A	LAND-USE
82	NO	R

---------- COUNTY ----------
LAST LOAD DATE... 04/[illegible]/00
PRIOR LOAD DATE.. 04/[illegible]/00

99- 0812

Case No. 99-401-A

3/8/00

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)

Case No. 99-401-A VAR -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'.

Amended -- 15' in height; reduced size; advised by J. Reisinger that variance for setback (2' ilo 2.5') was still required.

8/24/00 -Board convened for hearing. In addition to counsel for the Fishers, Michael L. Freilich, Esquire, appeared on behalf of Mr. and Mrs. Moken, Petitioners. After conference with counsel in chambers, this matter was continued on the record to allow counsel opportunity to review this matter complete; determine what it is the Petitioner requires; whether the case is appropriately before the Board based on that determination; and whether or not issues can be resolved and permit issued for replacement of original garage with structure of same size, height, etc. Will reschedule for hearing only when all outstanding issues are resolved and it has been determined that a variance is what the Petitioner is seeking and what is needed to rebuild the garage in question. (Stahl, Barranger, Worrall)

SCHEDULE CONTINUED

THURSDAY **6/27** **9:30 am** **Case No.: 01-147-SPH** **/DELIBERATION**

In the Matter of:
Anthony J. and Susan S. Moken
2400 Bauernschmidt Drive
15th Election District; 5th Councilmanic District

10:00 am **Case No.: CBA-01-132** **/HEARING**

In the Matter of:
Shirley Whisonant
3114 Fairview Road, Baltimore, MD 21207

RE: ERS Decision / Approved Ordinary Disability allowance effective 2/2/01

---

c: Executive Office
Law Office
Director /PDM
People's Counsel
Planning Office
Court Info. Desk
County Council
Board Members
Court Reporter

10 a

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* *****
Basement –Old Courthouse
400 Washington Avenue

APPEAL HEARINGS SCHEDULED FOR THE WEEK OF **JUNE 25, 2002**

TUESDAY **6/25** **10:00 am** **Case No.: 02-283-A** **/HEARING**

In the Matter of:
Sheryl Denise Gardner – Legal Owner - Petitioner
5516 McCormick Avenue
14th Election District; 6th Councilmanic District

VAR – To permit a detached accessory structure (gazebo) to be located in the front yard ilo required rear yard.

WEDNESDAY **6/26** **10:00 am** **Case No.: CBA-01-127** **/HEARING**

In the Matter of:
Lowe's Home Centers, Inc. Store #720
19 Texas Station/ Timonium

RE: False Alarm Fees / Reg #C 988020-6

11:30 am **Case No.: CBA-01-116** **/HEARING**

In the Matter of:
The Parkanna Medical Center
4000 Annapolis Road, Baltimore, MD 21227

RE: False Alarm Fees / Reg #C 991088

2:00 pm **Case No.: CBA-02-112** **/HEARING**
CBA-02-113

In the Matter of:
Brink's Incorporated
3610 Commerce Drive, Baltimore, MD 21227

RE: Denial of hearing by ART (timeliness of request) Reg. # C965814-3 and False Alarm Fees / Reg. # C 986518-1

SCHEDULE CONTINUED ON NEXT PAGE FOR THURSDAY JUNE 27, 2002

RECEIVED
JUN 17 2002
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

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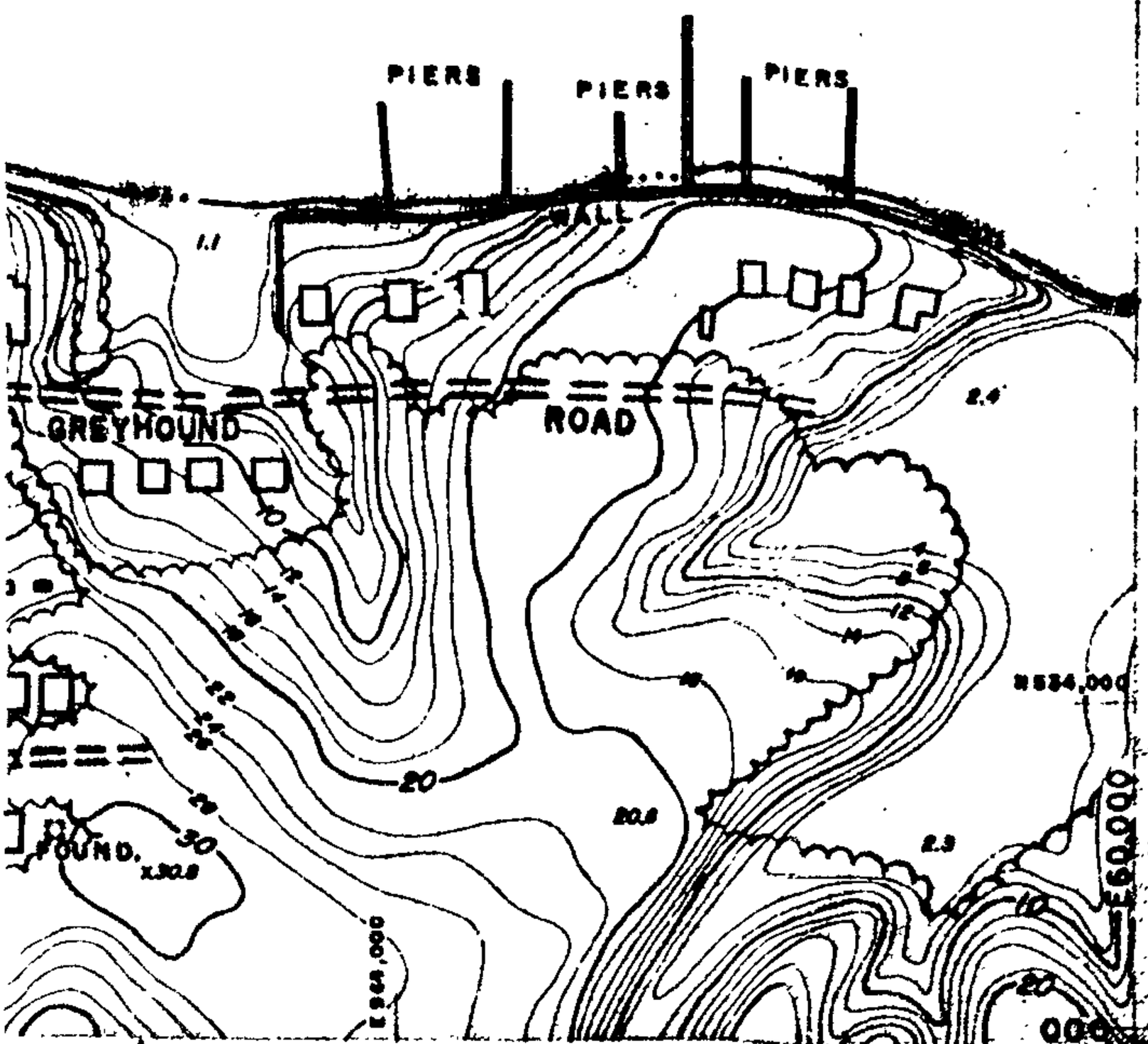

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LOCATION

BACK RIVER NECK
CAPE MAY

SHEET

N.E.
I-J

01-147-SPH

01-147-SPH

Sui 11/15

Petition for Designation of a	*	BEFORE THE
Non-Conforming Use	*	ZONING COMMSSIONER
Re:	*	FOR
SUSAN & ANTHONY MOKEN	*	BALTIMORE COUNTY
	*	Case Number: 99-401-A

01-147-SPH

* * * * * * *

Affidavit of Service

The undersigned hereby certifies that Henry Reichenberg executed service of process pursuant to the authority granted by the Zoning Commisoner upon Sherry L. Hawkins, Baltimore County Office of Planning, County Courts Building. (an individual over the age of 18 who works at 401 Bosley Avenue, Suite 406,Towson, Maryland 21204) on behalf of Susan & Anthony Moken , at 3:15PM on the 24th day of October, 2000, at 401 Bosley Avenue , Towson, Maryland, 21204, by delivering and leaving with Sherry L. Hankins a copy of the Subpoena which is being filed with this Court.. The undersigned further certifies that (s)he is over eighteen years of age and is not a party to this action.

I DO SOLEMNLY DECLARE AND AFFIRM under the penalties of perjury that the matters and facts set forth herein are true to the best of my knowledge, information, and belief.

Respectfully submitted,

Henry Reichenberg

Henry Reichenberg

F:\client\Moken\Affidavit of Service.wpd

IN RE: PETITION FOR
Designation of a
Non-Conforming Use

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

* * * * * * * * * * *

SUBPOENA

TO: Sherry L. Hankins
Baltimore County Office of Planning
County Courts Building
401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Baltimore County

You are hereby summoned and commanded to be and appear personally before the Zoning Commissioner/Deputy Zoning Commissioner of Baltimore County in Room 407, County Courts Building, 401 Bosley Avenue, Towson, MD 21204

and to bring Aerial Photo dated 12-25-54, OZ-166, 154-45

on the 15 day of November 2000 ~~199~~, regarding the above captioned case, for the purpose of testifying at the request of Susan & Anthony Moken.

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule IV(c).

Zoning Commissioner/Deputy
Zoning Commissioner
for Baltimore County

Issued: _____

11/15 Sim

IN RE: PETITION FOR
Designation of a
Non-Conforming Use

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

01-147-SPH

* * * * * * * * * * *

SUBPOENA

TO: Sherry L. Hankins
Baltimore County Office of Planning
County Courts Building
401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Baltimore County

You are hereby summoned and commanded to be and appear personally before the Zoning Commissioner/Deputy Zoning Commissioner of Baltimore County in Room 407, County Courts Building, 401 Bosley Avenue, Towson, MD 21204

and to bring Aerial Photo dated 12-25-54, OZ-166, 154-45

on the 15 day of November 2000 ~~199~~, regarding the above captioned case, for the purpose of testifying at the request of Susan & Anthony Moken.

Mr. Sheriff/Private Process Server:

Please process in accordance with Zoning Commissioner's Rule IV(c).

Zoning Commissioner/Deputy
Zoning Commissioner
for Baltimore County

Issued: _____

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 2400 Bauernschmidt Dr. Rd

which is presently zoned DR 3.5

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) 400.1 and 400.3 of BCZR 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 2½ feet. And to allow a height of 16 feet in lieu of the required 15 feet.

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

Rebuilding the garage on the original foundation shows a 24"setback from the existing 50 year old property line fence. The present height of the garage with the gable ends in place is 16'. Variance is requested for the property line setback. Variance is also requested for the additional height to prevent tearing out and resizing already completed work.

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):

Mr. Anthony J. Moken
Name - Type or Print

Anthony J. Moken
Signature

Mrs. Susan J. Moken
Name - Type or Print

Susan J. Moken
Signature

work 410-293-5234
Home 410-686-1041

2400 Bauernschmidt Dr.
Address — Telephone No.

Baltimore Md 21221
City — State — Zip Code

Representative to be Contacted:

Name

Address — Telephone No.

City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By JE/ROD Date 4/9/99

ORDER RECEIVED FOR FILING
Date 4/9/99
By REV 9/15/98

Case No. 99-401-A

PET #11 3/12/02 3 pgs.

Plat to accompany Petition for Zoning [ ] Variance [X] Special Hearing

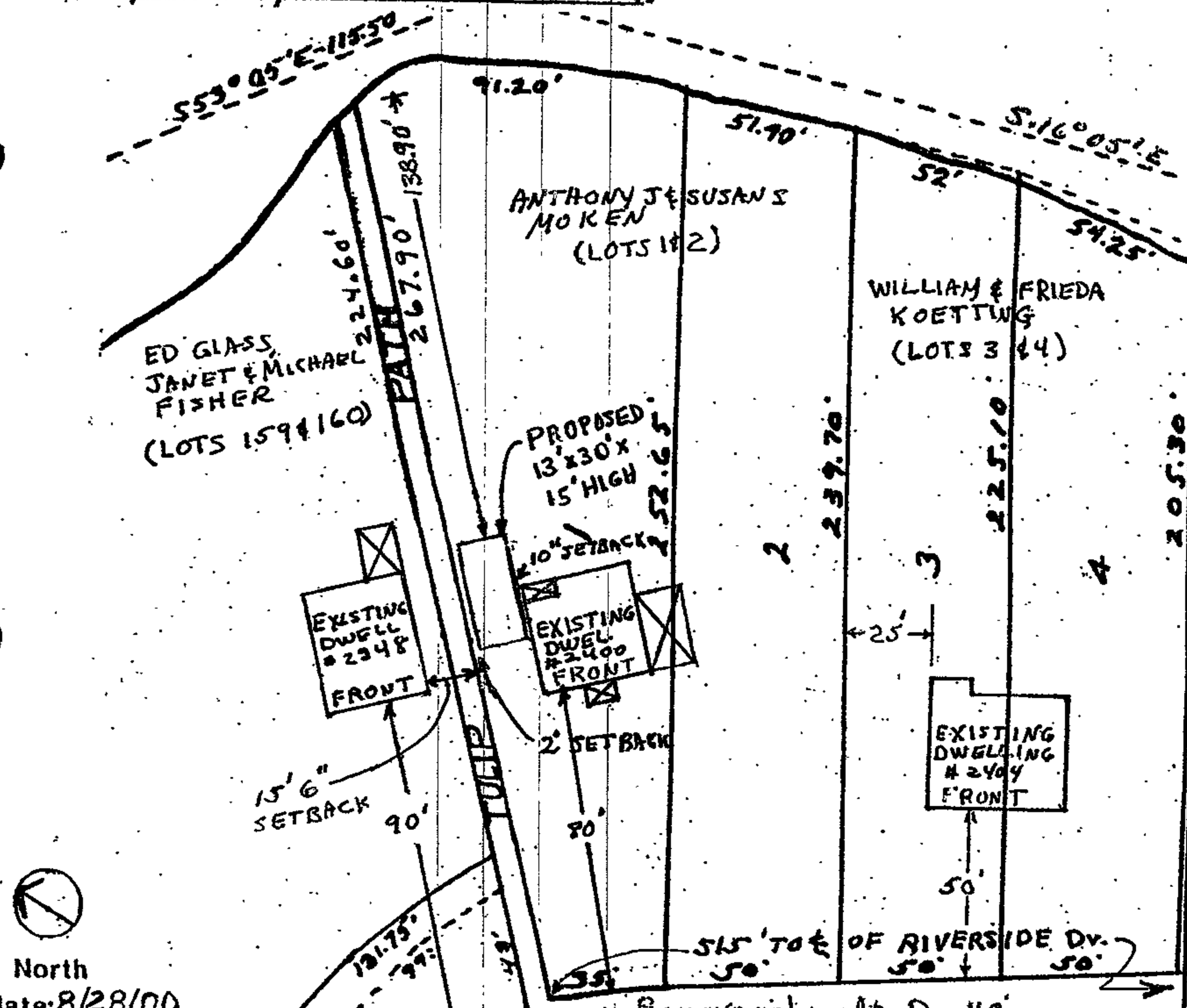
PROPERTY ADDRESS: 2400 Bauernschmidt Dr.

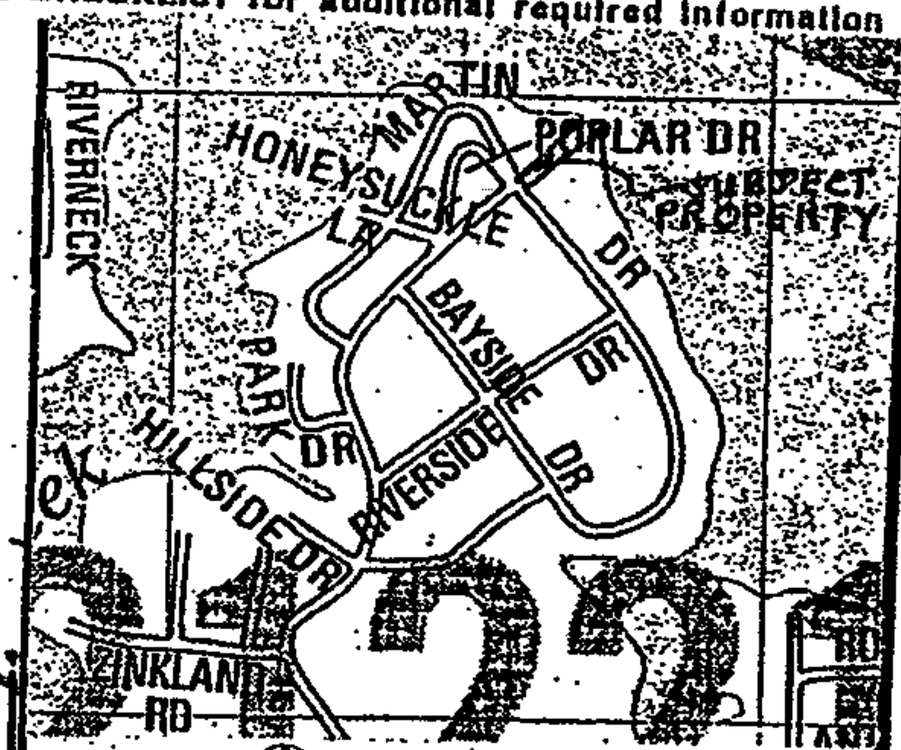
see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: Bauernschmidt Manor

plat book# 12 ,folio# 81 ,lot# 1 section# A

OWNER: Anthony J. & Susan S. Moken





Vicinity Map
scale: 1"=1000'

LOCATION INFORMATION

Election District: 15th

Councilmanic District: 5

1"=200' scale map#: N.E. 1-5

Zoning: D.R. 3.5

Lot size: 0.36 acreage 15,687 square feet

	public	private
SEWER:	[X]	[ ]
WATER:	[X]	[ ]

	yes	no
Chesapeake Bay Critical Area:	[ ]	[X]

Prior Zoning Hearings: 99-401-A

North

date: 8/28/00

prepared by: G.J.M.

Scale of Drawing: 1"= 50'

Zoning Office USE ONLY!

reviewed by:	ITEM #:	CASE#:
JNP	147	01-147-SPH

01-147-SPH Pet. Ex. #1

IN RE:	PETITION FOR SPECIAL HEARING	*	BEFORE THE DEPUTY
	E/S Bauernschmidt Drive,	*	ZONING COMMISSIONER
	515' N centerline of Riverside Drive	*	OF BALTIMORE COUNTY
	15th Election District		
	5th Councilmanic District	*	
	(2400 Bauernschmidt Drive)		
		*	Case No. 01-147-SPH
	Anthony J. & Susan S. Moken,		
		*	
	Petitioners.		
		*	

01 MAR 22 PM 3:08
RECEIVED
COUNTY BOARD OF APPEALS

* * * \

LAW OFFICES
ZERWITZ & ZERWITZ
38 SOUTH DUNDALK AVENUE
DUNDALK, MARYLAND 21222

ARNOLD M. ZERWITZ
WENDY A. ZERWITZ

COUNSEL
LOUIS L. DEPAZZO

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

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

March 21, 2001

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

RECEIVED
COUNTY BOARD OF APPEALS
01 MAR 22 PM 3:08

Re: In the Matter of Anthony J. and Susan S. Moken
2400 Bauernschmidt Drive
Petition for Special Hearing
Case No. 01-147-SPH

Dear Sir/Madam:

Enclosed herewith please find the Notice to Enter my Appearance on behalf of the Protestants, Mr. and Mrs. Michael Fisher in the above-captioned matter. Kindly file same and forward to my office notice of all hearing dates.

Thank you for your kind attention to this matter.

Very truly yours,

WENDY A. ZERWITZ

WAZ:lt
Enclosure
cc: Mr. and Mrs. Michael Fisher
Robert J. Feldman, Esquire
Matthew F. Jernigan, Esquire

Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

RECEIVED
COUNTY BOARD OF APPEALS
01 MAR -9 PM 2:53

March 9, 2001

Michael J. and Janet F. Fisher
2348 Martin Drive
Baltimore, Maryland 21221

Dear Mr. and Mrs. Fisher:

RE: Case No. 01-147-SPH, 2400 Bauernschmidt Drive

Please be advised that an appeal of the above-referenced case was filed in this office on March 2, 2001 by Michael L. Freilich, Esquire. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

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:aem

c: Michael L. Freilich, Esquire, Freilich Law Group, LLC, 305 W. Chesapeake Avenue, Suite 117, Towson, MD 21204
Anthony J. and Susan S. Moken, 2400 Bauernschmidt Drive, Baltimore, MD 21221
People's Counsel, MS 2010
Robert Jay Feldman, Esquire, and Matthew F. Jennejahn, Esquire, Freilich Law Group, LLC, 305 W. Chesapeake Avenue, Suite 117, Towson, MD 21204

Printed with Soybean Ink
on Recycled Paper

IN THE MATTER OF	*	IN THE
SUSAN and ANTHONY MOKEN	*	COUNTY BOARD
LEGAL OWNERS/PETITIONERS 24 Bauernschmidt Drive 15th Election District 5th Councilmanic District	*	OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
	*	Case No. 01-147-SPH Case No. 99-401-A

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

Closing Memo

Anthony and Susan Moken, by their undersigned counsel, hereby submits a copy of the transcript made at the hearing of this matter on March 12, 2002, before this Board as a Closing Memo.

Respectfully submitted,

Michael L. Freilich
305 West Chesapeake Avenue, Suite 117
Towson, MD 21204
(410) 321-0040

Attorney for Petitioner

Certificate of Service

I HEREBY CERTIFY that on this 13th day of May 2002, a copy of the foregoing was sent by first class mail, postage prepaid, to:

Ms. Wendy Zerwitz
Zerwitz & Zerwitz
38 South Dundalk Avenue
Baltimore, Maryland 21222

Michael L. Freilich

02 MAY 13 PM 2:28

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

May 13, 2002

Charles L. Marks, Panel Chairman
County Board of Appeals
of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204
Hand-delivered

02 MAY 13 PM 2:39

Re: Petition for Special Hearing
2400 Bauernschmidt Drive
15th Election District, 5th Councilmanic
Anthony J. & Susan S. Moken, Petitioners
Case No.: 01-147-SPH

Dear Mr. Marks:

Our office entered our appearance in this matter on October 16, 2000, a copy of which was mailed to Michael L. Freilich, attorney for Petitioner.

The Petition for Special Hearing was denied by Deputy Zoning Commissioner Kotroco and an appeal was filed by Petitioners. The Protestants, Mr. and Mrs. Fisher, were represented before the CBA by Wendy A. Zerwitz.

We understand that the Board has requested Memoranda in this matter, due on Monday, May 13, 2002. Our office remains opposed to the Petition for Special Hearing. We submit on the Memorandum filed by Ms. Zerwitz.

Very truly yours,

Peter Max Zimmerman

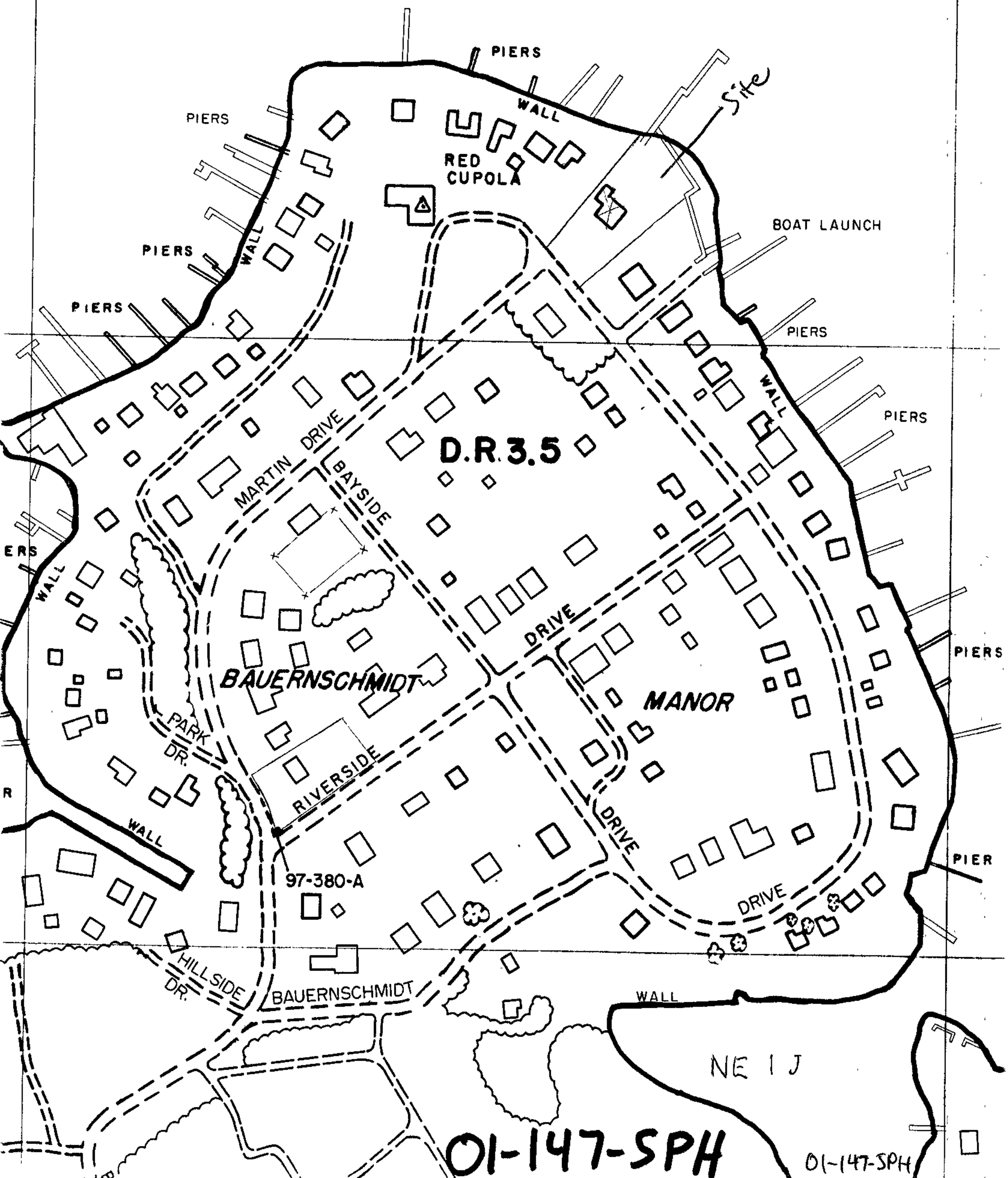
Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

cc: Michael L. Freilich, Esq., Attorney for Petitioners

Wendy A. Zerwitz, Esq., Attorney for Protestants


PIERS
WALL
Site
PIERS
RED CUPOLA
BOAT LAUNCH
PIERS
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MARTIN DRIVE
BAYSIDE
D.R.3.5
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DRIVE
BAUERNSCHMIDT
MANOR
PARK DR.
RIVERSIDE
DRIVE
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97-380-A
DRIVE
HILLSIDE DR.
BAUERNSCHMIDT
WALL
NE I J
01-147-SPH
01-147-SPH

Baltimore County
Zoning Commissioner

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

February 7, 2001

Robert J. Feldman, Esquire
Matthew F. Jernigan, Esquire
Freilich Law Group, LLC
305 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Special Hearing
Case No 01-147-SPH
Property: 2400 Bauernschmidt Drive

Dear Messrs. Feldman & Jernigan:

Enclosed please find the decision rendered in the above-captioned case. The Request for Special Hearing has been denied in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure

Census 2000 For You, For Baltimore County Census 2000

Printed with Soybean Ink on Recycled Paper

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

Copies to:

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

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

County Board of Appeals of Baltimore County

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

September 5, 2002

Michael L Freilich Esquire
Freilich Law Group LLC
Suite 117
305 W Chesapeake Avenue
Towson Md 21204

RE: *In the Matter of: Susan & Anthony Moken*
Case No. 99-401-A and Case No. 01-147-SPH

Dear Mr. Freilich:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that ALL PETITIONS FOR JUDICIAL REVIEW FILED FROM THIS DECISION SHOULD BE NOTED UNDER THE SAME CIVIL ACTION NUMBER.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco /trs
Kathleen C. Bianco
Administrator

Enclosure

c: Anthony J. and Susan S. Moken
Wendy A. Zerwitz, Esquire
Michael and Janet Fisher
Edward Glass
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

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on Recycled Paper

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
MATTHEW FREDRICK JENNEJAHN

*ADMITTED MD & FL

PLEASE ADDRESS CORRESPONDENCE TO:
P.O. BOX 5465
TOWSON, MARYLAND 21285-5465

FAX: (410) 337-8855
email: freilichlawgroup@juno.com

February 22, 2001

Mr. Arnold Jablon, Director
Baltimore County Development Management
111 West Chesapeake Avenue, Room 111
Towson, Maryland 21204

Re: Petition for Special Hearing
Case No. 01-147-SPH
Property: 2400 Bauernschmidt Drive

Dear Mr. Jablon:

Attached is our check in the sum of $210.00, made payable to Baltimore County.

We hereby request an appeal to the Baltimore County Board of Appeals from the Baltimore County Zoning Commissioner in connection with the decision in the above captioned case file. A copy of this decision is annexed.

This appeal is based on the belief some of the findings made by the Zoning Commissioner are blatantly wrong with respect to the facts and we believe his conclusions of law are also wrong as applied in this case.

We hereby request a hearing before the Board at the earliest convenience of the Board.

Should you have any questions or comments, do not hesitate to contact me.

Sincerely yours,

Michael L. Freilich

MLF:lh

G:\Clients\moken\Jablon 01.wpd

RECEIVED
COUNTY BOARD OF APPEALS

01 MAY -7 PM 12: 17

Edwin L. Morris
2310 Martin Drive
Baltimore, Maryland 21221
April 30, 2001

MAY - 4 2

Mr. Lawrence E. Schmidt
Baltimore County Zoning Commissioner
Suite 405 County Courts Building
401 Bosley Ave.
Towson, Maryland 21204

Re: 2412 Bauernschmidt Drive
Case No. 01-294-A

we do not have an appeal under this #

Motion 99-401-A
E -01-147-A
?

Dear Mr. Schmidt,

I am a property owner in Bauernschmidt Manner at the above address. It has recently come to my attention that the property owner at 2412 Bauernschmidt Drive has requested a zoning variance to enlarge the existing home and add an attached garage that would extend to within eight feet of the road front. It is also my understanding that approval for the home enlargement has been granted but the garage, which would encroach upon the 30- foot setback, has been denied. The property owner has requested an appeal of this denial.

The purpose of my letter is to request that this appeal be denied. The argument is made that there are several garages in the development that encroach upon the 30-foot setback and thereby lend precedence to such a variance. While I am not familiar with the circumstance that permitted the earlier encroachment I would argue that the most egregiously situated structure in Bauernschmidt Manner should not constitute a standard to which other structures are permitted to conform.

The owner contends that the garage is needed to store classic automobiles. Although this may very well be true one cannot deny that the next owner might use the same facility for automotive repair work or other activities detrimental to the character of the community.

I respectfully submit that granting this variance would not be in the best interest of one of the finest waterfront communities in Baltimore County and strongly encourage that this variance be denied.

Thank you for your kind consideration.

Sincerely,

Edwin L. Morris

APPEAL SIGN POSTING REQUEST

[redacted]

ANTHONY J. & SUSAN S. MOKEN - PETITIONER

E/s Bauernschmidt Drive, 515' N c/l Riverside Drive

15th Election District | Appealed 3/02/01

Attachment – (Plan/Plat to accompany Petition
Petitioner's Exhibit # 1)

**********COMPLETE AND RETURN BELOW INFORMATION**********

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Charlotte Radcliffe
Appeals Clerk

RE: Case No. 01-147 SPH
Petitioner/Developer:
Anthony J. & Susan Moken

This is to certify that the necessary appeal sign(s) was posted conspicuously on

property located at 2400 Bauernschmidt Dr.

The sign(s) was posted on 3/27, 2001.

By Gary C Freund
(Signature of Sign Poster)

GARY C. FREUND
(Printed Name)

CODE ENFORCEMENT REPORT

DATE: 3 / 11 / 99 INTAKE BY: K. Hopkins CASE #: 99-0812 INSPEC: R. Larrick

COMPLAINT LOCATION: 2400 Bauernschmidt Dr.

ZIP CODE: 21221 DIST: 15

COMPLAINANT NAME: Councilman Gardenia PHONE #: (H) (W) 3384

ADDRESS: ZIP CODE:

PROBLEM: Building 2 story garage w/o permit

3/13/99 Onsite per [illegible] J Reichner [illegible]

OWNER/TENANT INFORMATION: [illegible]

TAX ACCOUNT #: ZONING:

INSPECTION: 03/12/99 24x36 Garage under construction no permit on site - no permit in system. Stop Work Order written to secure permit. Stop Work Order given to work man on site Rechek 3/26/99 Larrick

[illegible] Rechek 5/10 R Larrick

REINSPECTION: 3/19/99 Tony Moken came in with bldg permit application. Due to foundation location, he must apply for a zoning variance for side yard set back. His appt. is set for April 9 @ 9 AM PM Room 111 D/ Prospalis

REINSPECTION: 7/12 Variance denied B Rechek 8/16 for removal of structure or appeal to Board of Appeals

Rechek 8/16

REINSPECTION: 8/11 Zoning Commissioner has given owners 90 days to remove structure - but owners requested a reconsideration by Lawerence Schmidt Rechek 8/27

8/27 No reply back from zoning commissioner Rechek 11/15

CODE ENFORCEMENT REPORT

RE-INSPECTION SHEET CONTINUED

DATE: 12/15 Hearing set for some time in March 2000 as of 12/15, firm date has ~~R~~ not been set per Board of Appeals Recheck 3/8/2000

3/8/00 Board of Appeals has put on hold at this point, see attached

DATE: 3/13/00 Onsite per request of J Reisinger to determine location of old foundation of garage that was removed. Appears that owner has added 6' ~~two~~ towards water and 4' towards street side R Lamick E Eckes

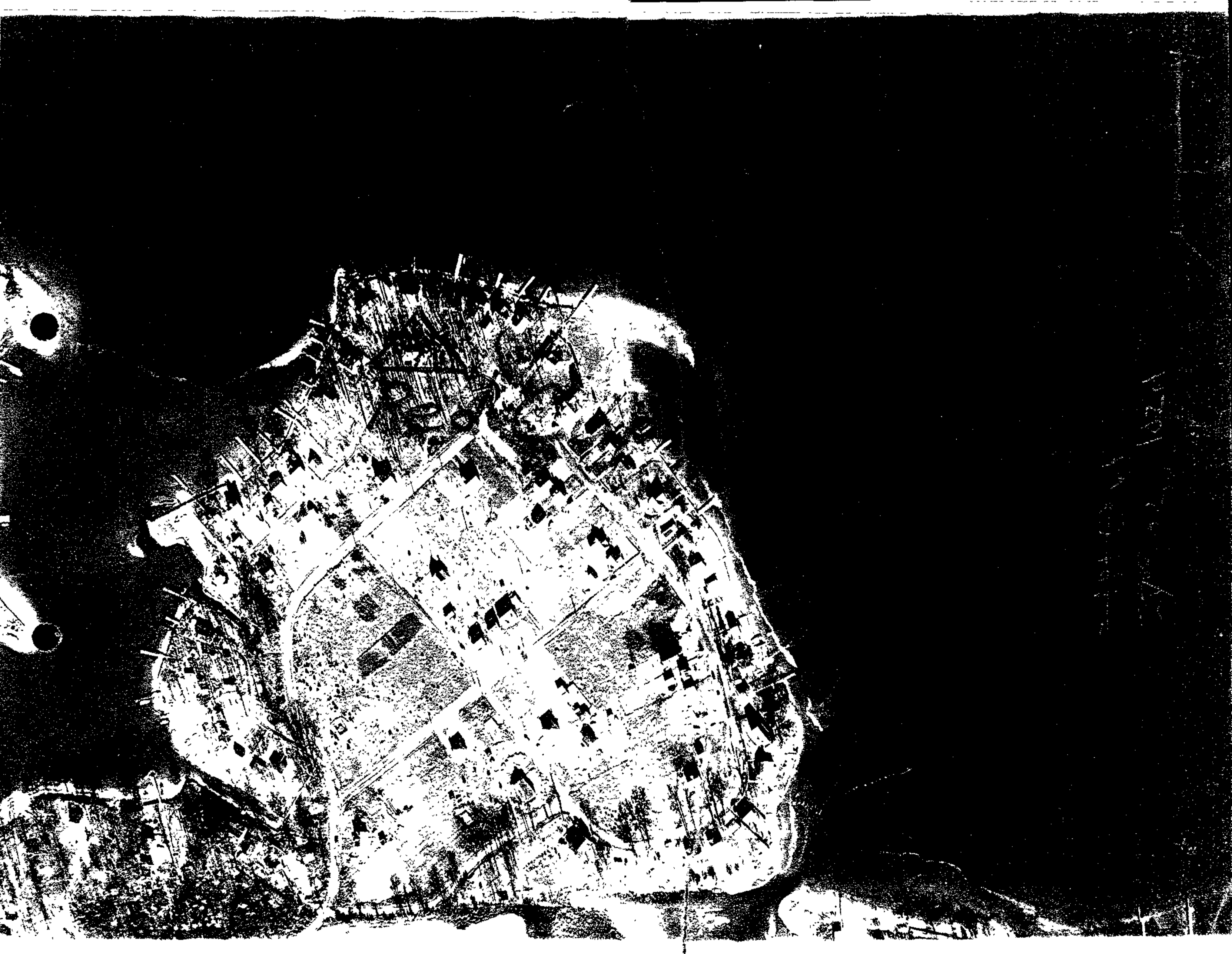
DATE: 3/17/00 Conversation with owner - he is going to to apply for permit based on original size of garage R Lamick

→ 4/26/00 No application in system will call owner for update Recheck 5/10 R Lamick

DATE:

5/10/00 Owner was in on 4/26 to refile with Board of Appeals. Board of Appeals will hear some time in July. This hearing is for a garage on original foot print Recheck 7/28/00

DATE:



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

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

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

March 24, 2001

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 Freilich

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

MLF:lh

G:\Clients\moken\032401lt.wpd

RECEIVED
FOR FILING
COUNTY BOARD OF APPEALS
01 MAR 26 PM 1:10

RE: IN THE MATTER OF
ANTHONY J. AND SUSAN S[illegible]OKEN

2400 Bauernschmidt Avenue

PETITION FOR SPECIAL HEARING

* BEFORE THE [illegible]
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 01-147-SPH

* * * * * * * * *

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County)

Sherry L. Hankins a/k/a Sherry L. Moyle
Baltimore Conty Office of Planning
County Courts Building
401 Bosley AVenue, Suite 406
Towson, Maryland 21204

YOU ARE HEREBY COMMANDED TO: ( ) Personally appear;
( ) Produce documents and/or objects only; (xxx) Personally appear and produce documents or objects;

in Room 48, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 21204 on March 12, 2002 at 10:00 a.m./~~p.m.~~

YOU ARE COMMANDED TO produce the following documents or objects (for general purpose as stated):
Aerial photo dated 12/25/54; 02-166, 154-45 and all other photos of the property commonly known as 2400 Bauernschmidt Avenue, Baltimore County.

SUBPOENA REQUESTED BY:
Michael L. Freilich, Esquire, Atty.
for Anthony & Susan Moken
(Name of Party /Attorney)
Suite 117 , 305 W. Chesapeake Avenue
Towson, Md. 21204
(Address /Telephone #)
(410) 321-0040

The witness named above is hereby ORDERED to so appear before the County Board of Appeals. The Board requests (____) the Sheriff, (xxx) Private Process Server, to issue the summons set forth herein.

Kathleen C. Bianco
County Board of Appeals of
Baltimore County

02FEB -4 PM 4:08

IN THE MATTER OF: * BEFORE THE

ANTHONY J. AND SUSAN S. MOKEN * COUNTY BOARD OF APPEALS

Legal Owners * OF

2400 Baurenachmidt Drive * BALTIMORE COUNTY

15th Election District * CASE NO: 01-147-SPH

5th Councilmanic District * CASE NO: 99-401-A

* March 12, 2002

* * * * *

The above-entitled matters came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 a.m., March 12, 2002.

* * * * *

Reported by:

C.E. Peatt

1 BOARD MEMBERS:
2
3 CHARLES MARKS, Panel Chairman
4 LAWRENCE STAHL
5 RICHARD IRISH
6
7 APPEARANCES:
8 MICHAEL L. FREILICH, Esquire
9 On behalf of Petitioners/Legal Owners
10 WENDY A. ZERWITZ, Esquire
On behalf of Protestants
11
12
13
14
15
16
17
18
19
20
21

1 PROCEEDINGS
2 * * * * *
3 THE CHAIRMAN: The Baltimore County Board of
4 Appeals for Baltimore County is in its regularly scheduled
5 session for today, Tuesday, March 12, at 10 a.m., relative
6 to Case No. 001-147-SPH, in the matter of Anthony J. and
7 Susan S. Moken concerning a Deputy Zoning Commissioner's
8 order in which a petition for special hearing was denied
9 under date of February 7, 2001; also Case No. 99-401-A, in
10 the matter of Susan and Anthony Moken, concerning a Zoning
11 Commissioner order dated July 2, 1999 in which the
12 petition was denied in part, dismissed in part as moot,
13 and also a Motion for Reconsideration was denied under
14 date of August 6, 1999.
15 Will counsel please state their appearances,
16 please, and their representation.
17 MR. FREILICH: Your Honor, Michael Freilich. I
18 represent Anthony and Susan Moken, Mr. Moken seated to my
19 right and Mrs. Moken is seated behind me, to my right,
20 too.
21 THE CHAIRMAN: Thank you.

1 MS. ZERWITZ: Good morning, your Honor, for the
2 record, Wendy Zerwitz, on behalf of the protestants Mr.
3 and Mrs. Fisher.
4 THE CHAIRMAN: Do we have any preliminary
5 matters?
6 MR. FREILICH: If I may?
7 THE CHAIRMAN: Surely.
8 MR. FREILICH: This has a tortored history and
9 you're hearing two matters at once. Normally, I would
10 give a brief inroduction about the site and the problem,
11 which I would like to do.
12 With your permission, I'd like to give a little
13 bit longer opening statement to give you the woof and warp
14 of how we got here, because I think you need that to sort
15 out procedurally where we are at.
16 But, again, you're the tribunal. I will follow
17 what you tell me.
18 THE CHAIRMAN: No. You have opening statement.
19 You're on the floor. It's your nickle.
20 MR. FREILICH: Okay. Let me just give a little
21 bit of woof and warp in terms of what the property is.

1 The site is approximately .36 acres. It's zoned D.R. 3.5.
2 It's located toward the terminus of Bauernschmidt --
3 B-a-u-e-r-n-s-c-h-m-i-d-t -- Drive. It.
4 Is located in the Bauernschmidt Manor Subdivision
5 which was recorded in the early fourties.
6 Okay. The property is a waterfront lot and it has
7 an existing single family two-story dwelling and a
8 detached garage.
9 The detached garage is the subject matter of two
10 other proceedings, the two proceedings which are before
11 you now. I will produce as one of the early exhibits, a
12 deed which calls to the plat -- which is somewhere, I
13 think, at my house, because when I was going over my notes
14 last night I forgot to bring it -- but it's a deed that
15 shows the subdivision was put on the record in 1940, and
16 predates the zoning code of 1955.
17 Now, at some point, and we have reason to believe
18 it was on March 11 of 1999, there was a complaint made and
19 someone went out and filed it, a complaint with Baltimore
20 County, and an inspection person went out and the
21 complaint was, open quote, building two-story garage

Page 6

1 without permit, close quote.
2 An inspector went out on the very next day, on
3 March 12 1999, and he issued a stop work order.
4 There's no doubt that Mr. Moken was razing this
5 particular facility. No one has denied that.
6 By way of background, we will introduce an aerial
7 photograph from 1954 maintained by Baltimore County
8 records that shows this garage predated the zoning code.
9 We have a magnifying glass and we have someone
10 from that department to testify to it, and they have other
11 ways of checking what happened.
12 In addition, Mr. Moken and his family have used
13 the garage continuously until a short time before it was
14 razed.
15 The roof started to go bad in the early nineties.
16 It started to rot, parts fell down, and parts were taken
17 down in late '97.
18 In early '98, Mr. Moken tore down the balance of
19 the roof. The ends of this garage were primarily wood
20 construction at the side facing the water. It was
21 wood-like stuff and wood, with a window. At the other

Page 7

1 end, it was wooden doors and wood and some cinder block, I
2 guess, to hold the stuff.
3 At that point, he decided to try to put on a new
4 roof and realized that the end facing the water and the
5 end facing the street were rotted.
6 He started to take them down. He used the garage
7 while these parts were falling to store his car, his
8 riding mower and other equipment. It was in constant use.
9 In the spring of 1999, he went out with one or
10 two of his friends I forgot, and they were going to re-put
11 up the roof and the front and the back, which was the wood
12 that already had been rotted, and they had removed most of
13 it by the spring of '99, and realized that the concrete
14 walls that were perhaps six to eight inches away from the
15 house were cinder block and the exterior cinder block were
16 structural really unsound, had started to crumble, lean
17 in, huge cracks, and was generally unsafe.
18 At that point, he and his friends stopped using
19 the garage, took down the walls, and he started to erect a
20 new garage.
21 It was very early on in the process when the

Page 8

1 housing inspector came by and issued a violation notice,
2 because he did not have a permit to raze the garage.
3 We'll introduce the application for the permit to
4 raze the garage, which is roughly March of '99. I'm
5 embarrassed, but I can't read the note of the day, but I
6 will tell you what it is. I wrote it this morning and I
7 just can't read it. At some date, some time, he made an
8 application for a construction permit to build the garage.
9 The permit to raze the garage was granted. The
10 permit to construct the garage was not, and it's sitting,
11 still sitting in limbo.
12 He spoke with the county officials and asked them
13 what he had to do, what he had to fill out, and we'll go
14 through the application of what he filled out and what
15 they filled out.
16 Okay. At that point, he told them he wanted to
17 build it on the same foundation as the old garage which
18 was from, presumably, the 1940s and early fifties, on the
19 same foundation, except he wanted to extend it six feet
20 towards the water and build it a foot higher than fifteen
21 feet, which would have been allowed.

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1 Okay. At that point, he was told by the county
2 he needed to file for a variance because there were three
3 violations.
4 Number one, there was a side yard violation
5 because the code calls for two and a half feet and he had
6 twenty-four inches instead of thirty. The way he
7 determined, on the first drawing he put in, he had
8 twenty-four inches, he took a yardstick and measured to
9 what might have been a fence, he thought might have been a
10 property line.
11 The engineer will testify that there's no way of
12 knowing whether that measurement was correct without a
13 full property survey.
14 Next, he wanted to build it sixteen feet instead
15 of fifteen feet, and wanted to extend it to six feet. He
16 was told he needed a variance.
17 On April 5th, he applied for a variance. What
18 were the three things he applied for? Surprise of
19 surprises. Two feet instead of two-feet six, sixteen feet
20 inside of fifteen, and to build a six-foot extension
21 closer to the water.

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1 It's interesting. This is a pie-shape lot. And
2 in reading the Baltimore County zoning code -- if I called
3 it wrong, I'm sorry -- it's not clear because of the
4 unusual shape of the lot what's the front and what's the
5 rear.
6 In Anne Arundel County, you face the water,
7 that's the front. But there will be testimony that
8 there's no direct back door in this lot to the house, that
9 the couple parks in the driveway, there's no entrance from
10 the driveway, or where the garage will be, into the house,
11 and they use the front door as their primary exit, and
12 what they consider to be the front door faces the street
13 which is Baurenschmidt.
14 Well, on July 2, the Zoning Commissioner made a
15 Findings of Fact and Conculsions of Law. If you want to
16 go into whether where some was accuracies or inaccuracies,
17 I assume that's for argument later?
18 THE CHAIRMAN: Yes.
19 MR. FREILICH: On July 23, Mr. and Mrs. Moken
20 requested a reconsideration, and it was basically denied.
21 That denial was on July 26 of 1999.

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1 Now,on August 6 of 1999, he received an official
2 order denying the reconsideration. I believe that he
3 appealed on that same day, which was August 6, 1999, to
4 this Board.
5 There was then a hearing, and my recollection --
6 I have two hearings mixed up. I can't read my notes, they
7 are my own handwriting. I have diabetic neuropathy, and
8 sometimes I can't quite make out what I write, no matter
9 how hard I try. I'm sorry. It's a fact of life.
10 There was a hearing -- and I can't recall if it
11 was in March or August 24 in the Case No. 99-401-A, and at
12 that point we appeared for the first time and we discussed
13 the issue of a prior nonconforming use.
14 And my recollection of that hearing, it was
15 either on the 8th or in August, one was cancelled, and I
16 don't remember which was, we were told by you that you
17 would hold Case No. 99-401A in abeyance until further
18 notice from us, or something to that effect from the
19 petitioner, and you recommended we go back and redo an
20 application.
21 Okay. So other than administrative stuff which

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1 may be in the files, or the record, nothing happens in
2 99-401-A of any substance until to date.
3 Okay. Now, we are not stupid. We have a Board
4 that if the Board tells you to do something, you do it.
5 Mr. Moken goes out and he files a new building
6 permit, which we have and will introduce into evidence,
7 and we'll go through it, and he does that on 4/25/2000.
8 As far as we know, that's still pending. He's
9 paid his $50. And if the decision of this Board comes in
10 time, I think it has ninety days or six months left, he
11 can still build it without the other fifty. I'm not sure
12 the fifty matters to him at this time.
13 Now, again, he went to the building permit people
14 and said, This is what I want to do. He said to them, I'm
15 going to build it fifteen feet high, I'm going to build it
16 on the same footprint as the old one, and I'm not going to
17 build the six-foot extension.
18 We'll go through what he filled out on the
19 document and what they filled out and what happened to
20 that application. We have an original counterpart of it
21 here.

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1 Well, that got denied. So he files a petition
2 for special hearing with this Board, which is then
3 docketed as case number -- oh. I'm sorry. He then files
4 an appeal, which is where we start Case No. 01-147-SPH,
5 and that gets heard by Deputy Commissioner Kotrocco.
6 He had his hearing, and issued a Findings of Fact
7 on February 7, '01. His Findings of Facts and Conclusions
8 of law have problems with them.
9 Number one, he sites law that doesn't apply and,
10 number two, he sites facts that do not exist and, number
11 three, I think it's improper application.
12 Within the appeal time, we appealed it, and
13 that's why we are here. Now, vis-a-vis the evidence, I
14 hope this procedural background is somewhat helpful.
15 THE CHAIRMAN: I think basically what we have is
16 two cases, both de novo --
17 MR. STAHL: What happened, what he wrote in his
18 opinion may or may not be valid, and it's absolutely
19 irrelevant since we start from scratch on both.
20 MR. FREILICH: I understand that, but I thought
21 it important to clarify what's going on because I believe

1 I was in front of you last week, and a coule weeks ago I
2 sat down and I made out all the papers in chronological
3 order and realized that until I started to diagram it and
4 get rid of what was, quote, really irrelevant, what may be
5 okay, and focused in, that the history made no sense, and
6 I had to do that.
7 Okay. We are here today seeking a partial
8 variance and a prior nonconforming use, either/or a
9 combination of. I will be putting on as my first witness
10 Sherry Henkens who's now known as Sherry Moyle -- my guess
11 is she's become married -- to produce records from
12 Baltimore County which show that as early as 1954, there
13 was a garage.
14 We have photographs from the sixties that shows
15 there's a garage, and we'll deal with that prior
16 nonconforming use in the deed, and then we'll go into the
17 construction and various things that happened, and put on
18 Mr. Moken for that testimony, and then with Mr. Patton as
19 the expert who's visited and seen certain things and has
20 certain opinions, and that will be the petitioners' case.
21 THE CHAIRMAN: Thank you.

1 MS. ZERWITZ: I will be very brief. Wendy
2 Zerwitz, on behalf of the protestants. As the Board has
3 stated, we have two separate cases here today,
4 consolidated for purposes of the appeal.
5 The first case that of 99-401-A deals with the
6 variance. As counsel has stated, the denial of the
7 variance by Commissioner Schmidt occurred on July 2, 1999.
8 Subsequently, the petitioners wrote a letter
9 requesting a modification, and there was a letter written
10 by Commissioner Schmidt indicating that he would entertain
11 that if there was a letter of support written by
12 protestants to extend the time for filing the appeal.
13 There was then an order on the motion for
14 reconsideration dated August 6, 1999, from which there was
15 an apeal.
16 So the first issue before the Board is what
17 exactly is the first appeal. Is it an appeal of the
18 denial of the variance or is it a denial of the motion for
19 reconsideration?
20 It's our position, and we'll submit evidence,
21 there was no letter of support written by protestants and,

1 therefore, the thirty-day time to file the appeal on the
2 original denial expired prior to filing of the appeal and,
3 therefore, the appeal should just be on the order of the
4 motion for reconsideration and not on the entire petition.
5 As to the petition for a special hearing for a
6 nonconforming use, I believe that Baltimore County, the
7 zoning regulations clearly state what is necessary to be
8 done for a nonconforming use to be upheld.
9 And in this case, it is our position that they
10 did not follow the regulations that are set forth in the
11 Baltimore County zoning regulations, specifically Section
12 104, nonconforming use, and Section 305, which deals with
13 replacement of destroyed or damaged buildings, and for
14 that reason we would suggest that the structure which is
15 rebuilt was not merely a rebuilding of a destroyed
16 building or replacement of a destroyed or damaged
17 dwelling, but was, in fact, a brand new structure and did
18 not fall within the definition of a nonconforming use, and
19 we would ask this Board to deny both petitions. Thank
20 you.
21 THE CHAIRMAN: Mr. Freilich, do you want to call

1 your first witness?
2 MR. FREILICH: Yes, sir. Will you please mark
3 this petitioner -- I move this be admitted into evidence.
4 It is a photographic record from the Baltimore County GIS
5 Services unit which was taken February of 2002, and I have
6 put the yellow post-it on it so you can see the site. I
7 find it is frequently helpful to visualize what happened.
8 THE CHAIRMAN: Ms. Zerwitz, any objection?
9 MS. ZERWITZ: No objection.
10 THE CHAIRMAN: Admitted.
11 MR. FREILICH: I'd like you to take notice and
12 admit Petitioner's 2, and I have prepared an extra one for
13 you to go through, which is a copy of what used to be
14 referred to in the title business as the plat deed, and
15 you will see it's dated from 1940, and that it calls to
16 the plat being recorded, and I would ask this be admitted.
17 THE CHAIRMAN: Ms. Zerwitz, any objection?
18 MS. ZERWITZ: If the Court would indulge me?
19 MR. FREILICH: I'm sorry, I didn't hear what she
20 said.
21 THE CHAIRMAN: She wants to review it.

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1 MS. ZERWITZ: No objection.
2 THE CHAIRMAN: Admitted.
3 MR. FREILICH: Your Honor, I would now like to
4 call Ms. Sherry Henkins Moyle to the stand.
5 S H E R R Y L. M O Y L E,
6 having been called as a witness, was duly sworn and
7 testified as follows.
8 DIRECT EXAMINATION
9 BY MR. FREILICH:
10 Q. Would you please state your name, and spell your
11 last name.
12 A. Sherry Louise Moyle. My last name is spelled
13 M-o-y-l-e.
14 Q. Congratulations from the last time you were here.
15 A. Thank you.
16 Q. What do you do?
17 A. I am a planning associate. I work for the
18 Baltimore County Office of Planning.
19 Q. What do you do in that office?
20 A. Among many trades, I track historic aerials in
21 Baltimore County.

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1 Q. I fogot to ask, what is your business office?
2 A. 401 Bosley Avenue, Suite 406, Towson 21204.
3 Q. Are you here in response to a subpoena?
4 A. Yes, sir, I am.
5 Q. Did that subpoena request you bring information
6 to this hearing?
7 A. Yes, sir, it did.
8 Q. What information did you bring as a result of
9 that subpoena?
10 A. I brought historic aerials of 2400 Baurenschmidt
11 Drive. The years that I was asked to bring that I had to
12 cover that site were 1938, 1954, 1961, and 1977.
13 Q. Now, we also requested, as I recall, you bring a
14 magnifying glass?
15 A. Yes, because you will need it.
16 Q. It's your job to know what's on these
17 photographs?
18 A. Yes, sir.
19 Q. You've had a chance to review these photographs?
20 A. Yes, sir.
21 Q. Will you be able to submit these as exhibits

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1 today?
2 A. No, I will not. We don't have negatives and we
3 couldn't reproduce them, but we are able to xerox a copy
4 and give a true test seal to it.
5 Q. But on the true test seal, is the copy hard to
6 read?
7 A. Is the copy hard to read? It depends on the
8 photo. If it's an actual photo, which three of them I
9 have are not hard to view, but the mylar photos turned out
10 very bad.
11 MR. FREILICH: So now, my question to the Board
12 is, would you like me to ask her to bring down certified
13 copies at a later date, or can we work with what we have
14 now and her testimony?
15 We have requested a xerox copy, and it looks --
16 horrible. You can't see what's happening.
17 THE CHAIRMAN: I think we can work with what we
18 have today. And, subsequently, if you want to bring down
19 certified copies, that will be acceptable.
20 The certified copies for the file will be fine.
21 We'll work with what she has today.

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1 Q. Will you certify the copies and see that they get
2 here? And I'll pay for it.
3 A. Yes.
4 MR. FREILICH: My next question to you is, how do
5 you want to work with this? Because you really need her
6 to show you. Can we approach the Bench with opposing
7 counsel?
8 THE CHAIRMAN: I would think so.
9 MR. FREILICH: And work in front of Mr. Marks.
10 THE CHAIRMAN: And the Board members will join
11 me, as long as the court reporter can hear.
12 If you can speak loudly so the court reporter can
13 hear.
14 Q. What I'd like you to do is place the first
15 photograph, which will be Plaintiff's Exhibit No. 3, in
16 front of Mr. Marks.
17 A. Okay.
18 THE CHAIRMAN: Why don't we go over there and
19 take a look at it?
20 Q. Which is the oldest?
21 A. This is our oldest, which is April 5, 1938, and

1 with using a magnifying glass, you can see there is
2 nothing there. It's just land.
3 MR. FREILICH: Can we put the 1938 photograph,
4 the copy later? I would move to be admitted as
5 Petitioner's No. 3.
6 MS. ZERWITZ: No objection.
7 THE CHAIRMAN: Admitted.
8 A. This is at 1000 scale, so it's very hard to see.
9 The second photo is January 8, 1954, at a 300 scale, so
10 it's a lot easier. And according to the ADC map, it is
11 claiming this this property here is Baurenschmidt Drive.
12 MR. FREILICH: Can I move the copy of this which
13 would be supplied later be admitted as Petitioner's No. 4?
14 MS. ZERWITZ: No objection.
15 Q. This is 1954. Here, what you're attempting to
16 show by the photo --
17 MR. STAHL: Hold it up and somebody stick a pin
18 here. You're attempting to show an existing garage where?
19 THE WITNESS: According to the ADC map, it shows
20 that it's calling this corner here as Baurenschmidt Drive,
21 which I'm assuming is this pie shape.

1 There's a house, and then the existing structure
2 behind there is also a house on this side, which looks
3 like a structure behind that one as well.
4 MR. STAHL: Are you saying it is, or it might be?
5 THE WITNESS: To my knowledge, I am saying there
6 is a structure there.
7 MR. STAHL: A structure?
8 THE WITNESS: Yes, but I can't tell the depth of
9 the structure.
10 MR. STAHL: Now, let's look and see if we can
11 see --
12 Q. (MR. FREILICH) If you look at it very carefully,
13 I think there's a shadow where she just pointed that
14 indicates there's a structure, presumably a garage there.
15 MS. ZERWITZ: The witness just testified to
16 something different than you testified to.
17 MR. STAHL: She said it's a structure.
18 A. It's definitely a structure there. I can't tell
19 if that is an actual garage or if that's a house off to
20 the side with a flat roof, but it is a structure.
21 Q. It has a flat roof?

1 A. Yes.
2 Q. Can you tell us if there's a house in close
3 proximity to it?
4 A. Yes. It's actually in front of it.
5 MR. STAHL: The house is in front of the
6 structure, or the structure is in front of the house?
7 THE WITNESS: The house is in front of the
8 structure.
9 Q. Where would the front be?
10 A. The front is facing Baurenschmidt Drive. The
11 structure is facing the water -- well, it's behind the
12 house.
13 Q. Now, did you bring any other aerial photographs?
14 A. Yes. I brought from April 3, 1961, an aerial
15 photo, and this one is that one to 1000 scale.
16 Q. Can you interpret for us what it shows?
17 A. There's a house there facing Bauernschmidt Drive.
18 It looks like there are some additional houses surrounding
19 it in close proximity.
20 I believe they have actually added more houses to
21 the area, and it does look like there's a structure still

1 there.
2 MR. STAHL: Where?
3 THE WITNESS: Behind the house facing the water.
4 Q. So you're talking about the one with the flat
5 roof?
6 A. Yes, sir.
7 MR. STAHL: What's got a slat roof?
8 THE WITNESS: The structure behind the house. It
9 actually looks like there is more pathways to it like
10 there's a laid macadam drive or concrete path to it, or
11 something.
12 Q. Do you have any other photographs?
13 A. Yes. This one is very hard to see.
14 MR. FREILICH: I'm sorry, what exhibit number are
15 we up to?
16 MR. PATNODE: We are at five.
17 MR. FREILICH: Would you please accept the
18 certified copy just coming in later as Petitioners' No. 5?
19 THE CHAIRMAN: Any objection, Ms. Zerwitz?
20 MS. ZERWITZ: No objection.
21 THE CHAIRMAN: Fine. Admitted.

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1 A. I have one additional photo of 4/1/1977, a one
2 inch to 2000 scale. It's harder to see because it's a
3 mylar photo. It's very hard to see.
4 Q. Can you see if the garage or structure with the
5 flat roof is still there?
6 A. Yes, sir, it's still there.
7 MR. FREILICH: I move it be admitted as
8 Petitioner's No. 6.
9 MS. ZERWITZ: No objection.
10 THE CHAIRMAN: Admitted.
11 MR. STAHL: The date?
12 THE WITNESS: 4/1/1977.
13 MR. STAHL: Interesting how the quality got worse
14 closer to the present.
15 THE WITNESS: You should see the ones today.
16 Q. Are you sure you want that in the record?
17 A. Yes, you can put it in the record.
18 Q. Ms. Moyle, from your experience in looking at
19 these aerial photographs, do you have an opinion to a
20 reasonable degree of certainty for someone who does what
21 you do that that structure with the flat roof was --

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1 MS. ZERWITZ: Objection. She's hasn't been
2 qualified as an expert to give any type opinion.
3 THE CHAIRMAN: I don't think a foundation has
4 been set to qualify the young lady as an expert.
5 Q. What type of training have you had in the reading
6 of these aerial photographs?
7 A. I have five years experience with my office. My
8 supervisor, my boss, has shown me, and the person that I
9 actually replaced in the job showed me. But as far as
10 legal training, I have had none.
11 Q. Have you provided opinions in other forums on
12 what the material in the photographs shows?
13 A. Yes, sir, I have.
14 MR. FREILICH: I move she be qualified as an
15 expert.
16 THE CHAIRMAN: If she can state what other
17 jurisdictions she's been qualified.
18 Q. Where have you qualified in any court to give
19 opinions on these?
20 A. For zoning hearings, I am often asked to produce
21 photos for Mr. Tim Kotrocco upstairs.

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1 Q. Are you also asked to interpret them?
2 A. Yes, I am.
3 MR. FREILICH: I would move she be admitted. One
4 of the tests is whether or not she can help the fact
5 finder.
6 THE CHAIRMAN: Voir dire?
7 VOIR DIRE
8 BY MS. ZERWITZ:
9 Q. Other than the training in your department, have
10 you gone to any class along those lines?
11 A. No.
12 Q. The only place you have been requested to give an
13 opinion are zoning hearings?
14 A. Yes.
15 Q. Have you ever testified before this Board or any
16 other court?
17 A. Before Zoning Commissioner Haines, yes. I was
18 called once for this case, and it was postponed.
19 Q. Have you ever testified before the Board of
20 Appeals or any other court besides the Zoning
21 Commissioner?

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1 A. No.
2 MS. ZERWITZ: I still object.
3 THE CHAIRMAN: I will accept her as an expert,
4 but the Board will look at the totality of her answer and
5 interpretation and give it the weight it deserves.
6 Q. Based on your understanding and on-the-job
7 training, do you have an opinion to what the flat roof
8 structure in those photographs is, or was?
9 A. In my opinion, from what I have seen over the
10 past years, just discussing photos with other people,
11 obviously, it looks like a garage, because it's right
12 behind the house.
13 I've never seen a structure that large to be
14 anything other than a garage.
15 MR. FREILICH: I have no other questions of this
16 witness.
17 THE CHAIRMAN: Cross examination.
18 CROSS EXAMINATION
19 BY MS. ZERWITZ:
20 Q. Ms. Moyle, those photographs, which we can all
21 agree were difficult for everyone else to see, can you

1 tell from those photographs the size of a structure?
2 A. According to the scale, it can be measured out to
3 size, yes.
4 Q. Have you done that?
5 A. No.
6 Q. Are you able to do that?
7 A. No.
8 Q. So when you said the size makes it look like a
9 garage, you were talking about the size?
10 A. In comparison to the house, yes.
11 Q. Is there any relevance to the time period these
12 photographs were taken, or do you take seriatically?
13 A. I'm not sure what you mean.
14 Q. Were the photographs entered as evidence taken in
15 in 1938, 1954, 1961, and 1977, how often does your
16 department take these aerial photographs?
17 A. It really depends. Baltimore County doesn't do a
18 fly-over of the entire county every year.
19 What ends up happening, according to the budget
20 for that year, they will do a fly-over of the hot spot
21 areas, like Owings Mills, or White Marsh, things of that

1 nature, if there's been a lot of development that has
2 taken place in the area within that year. There's only
3 certain years that have complete fly-overs.
4 Q. Who determined when the fly-overs are done?
5 A. I don't know.
6 MS. ZERWITZ: I have no further questions, your
7 Honor.
8 THE CHAIRMAN: Anything further, Mr. Freilich?
9 MR. FREILICH: just a clarification, maybe three
10 questions.
11 REDIRECT EXAMINATION
12 BY MR. FREILICH:
13 Q. Do you know why the photographs that were
14 historically taken from 1970 back were taken in the years
15 in which they were taken?
16 A. Other than to track the development.
17 Q. Do you know why they chose those years as opposed
18 to other years?
19 A. There are other years that were taken, but not
20 all the years cover the entire county, if that makes any
21 sense.

1 Q. Are there any of the photographs of which are in
2 your custody, possession or control that show the subject
3 site?
4 A. No.
5 MR. FREILICH: No other questions.
6 MS. ZERWITZ: No questions.
7 THE CHAIRMAN: The witness is excused. Thank
8 you, sir.
9 MR. FREILICH: I'd like to call Mr. Moken to the
10 stand.
11 ANTHONY MOKEN,
12 having been called as a witness, was duly sworn, and
13 testified as follows:
14 DIRECT EXAMINATION
15 BY MR. FREILICH:
16 Q. Will you please state your name.
17 A. Anthony Moken.
18 Q. Where do you reside?
19 A. 2400 Baurenschmidt Drive.
20 Q. With whom do you reside?
21 A. With my wife and son.

1 Q. When did you acquire this property?
2 A. In 1967.
3 Q. Have you lived there continually, other than
4 vacations?
5 A. Yes, I have.
6 Q. Are you employed?
7 A. I am now retired.
8 Q. Prior to your retirement, what did you do?
9 A. I worked for the Navy, the federal government,
10 and I consulted for them.
11 Q. You retired from that position?
12 A. I retired from that position.
13 Q. Do you, from time to time, still do consultation?
14 A. Excuse me?
15 Q. From time to time, do you still do consultation?
16 A. I have completely finished consulting now. The
17 last year, I finished.
18 Q. Did there come a time when you took an aerial
19 photograph of your home?
20 A, Yes, I did.
21 Q. When was that?

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1 A. It was in 1970.
2 MR. FREILICH: Now, would you please mark this as
3 Petitioners' -- I believe we're at 7.
4 Q. Did you yourself take the picture of your
5 residence?
6 A. Yes, I did.
7 Q. You were in the airplane?
8 A. Yes, I was.
9 Q. You snapped the picture?
10 A. Yes.
11 Q. Were you flying the airplane?
12 A. Not at the time, no.
13 Q. Does that picture we marked for purposes of
14 identification as Petitioners' Exhibit No. 7 accurately
15 and fairly depict what your home looked like on the day in
16 which you took the picture?
17 A. Yes, it does.
18 MR. FREILICH I move Petitioner's No. 7 be
19 admitted.
20 MS. ZERWITZ: No objection.
21 THE CHAIRMAN: Admitted.

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1 Q. Now, if you take a look at the photograph,
2 immediately to the right, there's a small structure in the
3 window?
4 A. Yes.
5 Q. Is that attached to your house?
6 A. That is not attached to the house, no.
7 Q. Is that what we are referring to as the garage?
8 A. Yes.
9 Q. Has a dark top?
10 A. Yes.
11 Q. Now, there's a window in the wall that's facing
12 the water?
13 A. That's correct.
14 Q. What was that wall made out of?
15 A. That wall was made of block and wood.
16 Q. Now, opposite that window were doors into the
17 garage?
18 A. Yes.
19 Q. Facing the street?
20 A. Correct.
21 Q. What were they made of?

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1 A. Wood.
2 Q. Now, the side which would be the side next to
3 your house and the side which is facing your neighbor's
4 house, what was that made of?
5 A. They were made out of not brick, they were made
6 out of block. There was some brickwork in it near the
7 top, but it was comprised of a block structure.
8 Q. Cinder block?
9 A. It was a plastic type block. I guess it's hard
10 to -- I don't think it's the common ordinary cinder block
11 you find laying anywhere, but this is a block that they
12 used.
13 Q. At that time, what did the roof consist of?
14 A. The roof was entirely wood.
15 Q. Was it covered with anything?
16 A. Tarpaper.
17 Q. Was it black? White? Orange? Green?
18 A. Black.
19 Q. Does it appear in that photograph to be black and
20 flat?
21 A. Yes, it does.

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1 Q. Now, tell us when you first started to notice a
2 problem with the roof?
3 A. The roofed periodically leaked since the time I
4 owned the property, but it become increasingly bad in the
5 early nineties.
6 By this time, the leaking had led to a sufficient
7 amounty of rotting.
8 Q. Did there come a time when you started to remove
9 the roof?
10 A. Yes.
11 Q. Tell us about that.
12 A. The roof had begun really deteriorating, and
13 parts of it had actually broken or were caving into the
14 interior of the garage.
15 And as these problems happened, I kept removing
16 the dangerous pieces of wood that were rotted.
17 Q. When did you start that process?
18 A. That process was started to the middle nineties,
19 and got greater and greater as we approached the end of
20 the nineties.
21 Q. Did there come a time you intended to remove the

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1 whole roof?
2 A. Yes.
3 Q. When was that?
4 A. As best I can recall, it was late in 1977, around
5 Christmastime when enough had caved in, and I had removed
6 enough that I had to take out every last bit of wood that
7 was the roof.
8 Q. I need to ask you a question, because I don't
9 know if I didn't hear you right, or wasn't paying
10 attention. Did you say '77 or '97?
11 A. I'm sorry. '97.
12 Q. I wasn't sure what I heard. Now, would you then
13 tell us what you did with the garage next?
14 A. Well, the garage, minus the roof, still afforded
15 protection from the north, the north wind, so I would keep
16 my car in it, or my lawn tracter, lawn implementations, as
17 well as I could, within the caving in of the roof and the
18 removal of the roof.
19 Q. Did there come a time you decided to remove
20 anymore than the roof?
21 A. Yes.

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1 Q. Tell us about that.
2 A. The roof was made out of wood, but so was the
3 entrance doors, and because of the way the garage was
4 built, it was almost no drainage available away from the
5 doors. So as the roof rotted, so did the doors.
6 It become necessary to remove the end, the door
7 end of the garage, because it was just rotted. It was
8 falling in also.
9 Q. And that door would be the end that faced the
10 street?
11 A. It faces Baurenschmidt Drive, yes.
12 Q. When did you remove that?
13 A. That was in the same time frame, a little bit
14 later, maybe.
15 Q. What year? What month? What season?
16 A. That would have been in '98.
17 Q. Do you recall the season?
18 A. No, I don't.
19 Q. And then, after you removed that front door to
20 the garage, were you still using it?
21 A. Yes.

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1 Q. For what?
2 A. Well, it was good wind protection from the storms
3 that we normally see in Baurenschmidt, and the wall
4 provided a certain degree of security for the cars and for
5 the tractors, especially if you just threw a tarp over
6 there. It worked pretty well.
7 Q. So you were still storing your riding mower?
8 A. Yes.
9 Q. And your car in there?
10 A. Yes.
11 Q. On a regular basis?
12 A. Yes.
13 Q. Now, did there come a time you removed the back
14 wall? That would be the wall facing the water.
15 A. Yes, I did.
16 Q. When was that?
17 A. That was in the 1998 time frame, late '98, or
18 actually, early '98 that was done, because that back wall,
19 although it looked like it's block on the outside, it had
20 a considerable amount of wood in it. And that, and the
21 condition of the window, that thing was just cracking.

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1 Because of lack of the wood support, the block in that
2 area was cracking and leaning, so I removed the back wall
3 of the garage at that time, leaving only the side walls.
4 Q. So sometime in 1998?
5 A. Yes.
6 Q. That summer? Fall? Winter?
7 A. I can't be certain.
8 Q. After you removed the back wall --
9 A. Yep.
10 Q. -- did you still use it to park your cars and/or
11 your riding mowers?
12 A. I kept the riding mower in there and kept a car
13 in there during that time frame, yes.
14 Q. Did there come a time you decided to rebuild the
15 front and the back and the roof?
16 A. Early in 1999, it was apparent that the existing
17 walls that were there, that I needed to do something with
18 them before I lost the entire structure.
19 And I decided then I would rebuild the end of the
20 walls, the two ends of the building, get a roof on it with
21 more of a pitch so it wouldn't rot from the weather, and

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1 improve the building so I could use it on a full-time
2 basis.
3 Q. Were you still using your garage to park your car
4 and/or riding mower in 1999?
5 A. In 1999, early on, it become evident I couldn't
6 use it anymore. The walls that were left were starting to
7 lean. There were cracks in the masonry.
8 It was -- I was afraid to really use it for
9 anything by that time, because I was afraid the walls
10 would fall down on me.
11 Q. What did you decide then to do?
12 A. I talked to a number of friends that were helping
13 me, that I had available to help me, and we talked about
14 it for a number of days, and decided that in order to keep
15 the existing side walls, we would have to build a lot of
16 wood structure around to try to hold them.
17 And it just became evident that the only logical
18 thing to do was take the last walls down and come up with
19 wood from the base.
20 Q. You prepared to do that in the late winter, early
21 spring of 1999?

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1 A. In the spring of '99, yes.
2 Q. How were you prepared to do that?
3 A. I had friends that had trade ability, and
4 together we decided we would build it.
5 Q. When did you take the walls down?
6 A. They came down in March of 1999.
7 Q. When did you start to rebuilt?
8 A. The very next day. We already had the plates in
9 for the side walls.
10 Q. What is a plate?
11 A. A plate is a heavy timber which is laid on the
12 original structure, provides the basis for the side wall.
13 Q. Is that where you put this thing?
14 A. Yes, on the original -- right down on the
15 basement. We cleared block out of the way, and where the
16 block was sitting on the structure, we replaced the block
17 with the wood.
18 Q. On the old foudation?
19 A. That is correct.
20 Q. Then do you recall being ordered to stop?
21 A. Yes.

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1 Q. Can you identify what I will ask be marked as
2 Petitioner's 8? Can you please tell us what Petitioner's
3 8 is?
4 A. This is -- this exhibit is the stop work order
5 that was issued by Rodney Larrick of the building
6 inspectors.
7 Q. You have the original in your hand?
8 A. This is the original.
9 MR. FREILICH: I move Petitioners' --
10 MR. STAHL: What's the date?
11 THE WITNESS: The date was issued was March 13,
12 1999, or March 12th -- I'm sorry -- March 12, 1999.
13 MR. FREILICH: I move Petitioners' 8 be admitted.
14 THE CHAIRMAN: Any objection?
15 MS. ZERWITZ: No objection.
16 THE CHAIRMAN: Admitted.
17 Q. Now, do you know how this particular code code
18 violation was generated, or how an inspector came?
19 MS. ZERWITZ: Objection.
20 THE CHAIRMAN: If he knows, he can answer.
21 A. Yeah. I had to be in work that day and a friend

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1 of mine that were there stated that --
2 MS. ZERWITZ: Objection. He wasn't even there.
3 THE CHAIRMAN: I'll sustain that hearsay.
4 Q. Now, as a result of this, as a result of what you
5 received on March 12, did you stop working?
6 A. Yes.
7 Q. What did you immediately do?
8 A. I took that notice and I went to Baltimore County
9 and asked what do I have to do.
10 Q. Where did you go in Baltimore County?
11 A. I went to the county building, to the permit
12 section.
13 Q. Tell us what happened.
14 A. I applied for a permit for this new structure.
15 Q. I'd like to show you what will be marked as
16 Petitioners' 9. I ask you if you can recognize what
17 Petitioners' 9 is?
18 A. This is the applicatiaon for the permit I needed
19 to raze the detached garage. I did this the same time as
20 I applied for the permit.
21 MR. FREIICH: Here's an extra copy.

1 THE CHAIRMAN: Thank you.
2 Q. Now --
3 MR. STAHL: No. 8 is the razing permit?
4 MR. FREIICH: No. 8 was the stop work order.
5 THE CHAIRMAN: No. 9 is the razing permit.
6 MR. STAHL: Thank you.
7 Q. I'm going to show you a copy of Petitioners' No.
8 9. Can you tell us what you filled that out when you were
9 at the county?
10 A. I filled out the application for this permit to
11 raze, and also an application for the garage that was
12 being built.
13 Q. Let me ask you a question. Can you identify on
14 here what handwriting is yours?
15 A. Only the little upper right-hand section we
16 filled in. The rest is all filled in by county people.
17 Q. When it says "ADDR," is that your handwriting?
18 A. Where's this?
19 Q. Right here.
20 A. Oh, yeah. The address, yes. Uh-huh.
21 Q. Now, it then says "CONTR," which I assume is

1 contractor?
2 A. Uh-huh.
3 Q. You said "owner"?
4 A. Owner.
5 Q. Is that your handwriting?
6 A Yes.
7 Q. Says "raze detached garage"?
8 A. That was provided by the county. They wrote that
9 in.
10 Q. Who wrote on there "work already done," with an
11 exclamation point? Is that your handwriting?
12 A. No, it's not my handwriting. It's the county
13 people.
14 Q. Did you see them write it?
15 A. Yes.
16 Q. Now, did you do anything else at the same time?
17 A. Well, I filled out the application for the
18 permit, for the structure.
19 MR. FREILICH: Will you mark this, please, as
20 Petitioners' 10, Mr. Marks? Thank you.
21 Q. I'm going to ask you to look at what's been

1 marked for purposes of identification as Petitioner's 10.
2 What is it?
3 A. This is an application for a permit for the
4 detached garage I wanted to build.
5 Q. Again, what part of this did you fill in?
6 A. Only the upper right-hand corner saying who I am,
7 and address.
8 Q. Did you see where it says "Describe Proposed
9 Work"? It's about four inches down in the center of the
10 page?
11 A. Yes.
12 Q. Is that your handwriting?
13 A. No.
14 Q. At the time, did you tell the people at the desk
15 that you were building it on the existing foundation?
16 A. Yes.
17 Q. Now, the information in the lower left-hand
18 corner about building size, lot size and setbacks, did you
19 fill that in?
20 A. No.
21 Q. Did you know to ask for the permit, or did they

1 tell you to fill this out?
2 A. When I went to the county, they told me to apply
3 for this permit.
4 Q. When did you do this?
5 A. This says March 19, 1999.
6 MR. FREILICH: If I haven't done it, I would move
7 Petitioners' 10 be admitted.
8 MS. ZERWITZ: No objection.
9 THE CHAIRMAN: Admitted.
10 Q. Now, did you ever get your building permit?
11 A. No.
12 Q. Did you get your permit to raze the garage? Tear
13 it down?
14 A. I just have the paperwork that I originally took
15 to the county, and when I took it, they said, That's it.
16 I applied for it, and I believed that's it.
17 Q. How did you learn for the first time you weren't
18 going to be allowed to build this garage?
19 A. Well, I filed the petition to build a garage and
20 asked for a hearing, and we went to the hearing. And at
21 that first hearing, it was denied.

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1 Q. Why did you have to go to a hearing?
2 A. Because I was told to submit a permit, and that's
3 what you do.
4 Q. Who told you to do that?
5 A. The county.
6 Q. Someone in Baltimore County government?
7 A. In Baltimore County, in the Baltimore building
8 office here.
9 Q. In the building department?
10 A. Yes.
11 Q. Licenses, or something like that?
12 A. Yes.
13 Q. That building is right close to here, isn't it?
14 A. Oh, yeah. It's across the street.
15 Q. You walked into the first floor?
16 A. Yes.
17 Q. You walked straight back?
18 A. Straight back.
19 Q. And you met with licensing in there to get help?
20 A. Yes.
21 Q. Did they tell you to file --

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1 MR. FREILICH: I know it's leading but --
2 THE CHAIRMAN: Off the record.
3 (Discussion held off the record.)
4 THE CHAIRMAN: We can go back on.
5 Q. Did you pay a fee to get the razing permit?
6 A. Excuse me?
7 Q. Did you have to pay when you filed that permit?
8 A. There was no charge on that.
9 Q. Was there a charge when you went for the permit
10 to build?
11 A. Yes, there was.
12 Q. Now, did you end up filing a petition for a
13 variance?
14 A. Yes.
15 Q. Who helped you fill that in?
16 A. People in Baltimore County when I went through
17 with the permits to get all their permission on other
18 permits.
19 Q. How did that process work?
20 A. I simply walked the permit application through
21 every department and every office as, you know, I was told

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1 to do.
2 MR. FREILICH: I'd like to have this marked as
3 Petitioners' Exhibit No. 11.
4 MS. ZERWITZ: Your Honor, I'm going to object. I
5 can't read what the description is. He can testify he
6 filed for a permit, but to put a document in when I have
7 no idea what it says, I object.
8 MR. FREILICH: They should have one with the
9 file, too.
10 MR. STAHL: Let's see if there's one in here.
11 You're talking about the top part?
12 MS. ZERWITZ: No. The part I was shown by
13 counsel.
14 MR. IRISH: I can read every word on here.
15 MS. ZERWITZ: May I approach?
16 MR. IRISH: I can read every word on it.
17 MS. ZERWITZ: That's better. Can I have a
18 second?
19 MR. FREILICH: Here's a copy.
20 MS. ZERWITZ: Can I see the original then? May I
21 approach? I'm sorry. Thank you. If I can have one

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1 second?
2 THE CHAIRMAN: Sure.
3 MR. IRISH: You're submitting these two with
4 that?
5 MR. FREILICH: Yes.
6 THE CHAIRMAN: Mr. Freilich, why don't you have
7 this submitted as an original exhibit so it will be
8 included in with your case along with those?
9 MR. FREILICH: Let's add that to the top page of
10 Petitioners' 11. Here are extra copies for the Board.
11 Q. Now, you were told to file Petitioners' Exhibit
12 11?
13 A. Yes. I was told to file this, and that's my
14 signature, and my wife's signature.
15 Q. Who prepared this with you?
16 A. The people in Baltimore County.
17 Q. With this, this is a building permit section?
18 A. Yes.
19 Q. They told you that you needed a variance?
20 A. Yes.
21 Q. I'd like you to take a look at the second page

1 which is a drawing. Who drew this?
2 A. I did.
3 Q. Where did you get it from?
4 A. From the -- this came from the plat of the
5 property which I have at home.
6 Q. I notice on there you said on the drawing, you
7 marked it two-foot setback?
8 A. Yes.
9 Q. Where did you come up with two feet?
10 A. I came up with two feet by measuring.
11 Q. From what?
12 A. From the foundation for the garage to the fence
13 posts.
14 Q. And those, do you know if those fence posts were
15 accurate boundary markers?
16 A. The fence posts were there when I got there. I
17 assumed they were accurate.
18 Q. You don't really know, do you?
19 A. Well, no.
20 Q. You didn't have a field survey, did you?
21 A. The field was not surveyed, no. There was no

1 survey made. There was just a fence there.
2 MR. FREILICH: Petitioners' 11, I move to have
3 admitted.
4 THE CHAIRMAN: Ms. Zerwitz, any objection?
5 MS. ZERWITZ: No.
6 THE CHAIRMAN: Admitted.
7 Q. Now, when you filed your petition for the
8 variance, okay, was there a hearing?
9 A. Yes.
10 Q. Do you recall when that hearing was held?
11 A. Sometime in the fall of 2000, I believe.
12 Q. Okay. Then was it granted or denied?
13 A. It was denied.
14 Q. Who was that in front of?
15 A. That was --
16 MS. ZERWITZ: Objection.
17 THE CHAIRMAN: I will sustain the objection.
18 Q. Then shortly after that hearing, did you do
19 anything?
20 A. No, I don't believe so.
21 Q. Let me call your attention to April of 2000. Did

1 you have reason to talk to anyone in the county?
2 A. April of 2000?
3 Q. Let me ask you, did you have occasion to talk to
4 Mr. Reisinger, or any of the staff?
5 A. Yes. In April 2000. It's been awhile. Forgive
6 me. Yeah. I talked and called Mr. Reisinger in the
7 county, and there was some concerns as to whether we could
8 properly locate the original foundation garage.
9 And I was told that they would send the building
10 inspector and his supervisor down to the property to look
11 at the foundation and verify where it was exactly.
12 And the inspector was Rodney Larrick and his
13 supervisor came to the property to see if they could
14 locate it, and they did.
15 Q. Okay. Now, did you make any notes of that
16 meeting?
17 A. When I met with people there to come and look at
18 it, I told them, you know, the problem that was there, and
19 I simply stated I would like to build on a foundation, I'd
20 cut the six foot off the end which appears to be the
21 problem, and do what was necessary to build a garage.

1 MR. FREILICH: Can we move -- I believe we are
2 up to Petitioners' 12?
3 THE CHAIRMAN: Yes.
4 MS. ZERWITZ: I'm going to object, your Honor. I
5 don't see the relevance of the handwritten note.
6 THE CHAIRMAN: Well, the best evidence is what he
7 wrote down himself, according to his notes, so we'll admit
8 it. Do you have a copy?
9 MS. ZERWITZ: Yes.
10 MR. FREILICH: I'd like to mark for
11 identification Petitioners' No. 12.
12 Q. What are these?
13 A. This is just a page of my notes that I took
14 during the spring of 2000 when I was in touch with the
15 county to see what I had to do.
16 Q. Did you do these notes at or about the time of
17 the incidents which you took notes of them occurred?
18 A. They're dated.
19 Q. Those are the dates on which that occurred?
20 A. Yes.
21 MR. FREILICH: I would move Petitioners' 12 be

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1 admitted.
2 MS. ZERWITZ: Same objection.
3 THE CHAIRMAN: Noted. Admitted.
4 Q. Now, if you'll take a moment and read
5 Petitioners' 12, is there anything additional that
6 happened between you and the county in early April of 2000
7 that you haven't mentioned before?
8 A. Yeah. At that same time, after the inspector,
9 building inspector Larrick and the supervisor came, they
10 said they would go back and report --
11 MS. ZERWITZ: Objection.
12 A. -- to Reisinger as to what their findings were.
13 THE CHAIRMAN: Why don't you rephrase the
14 question? Counsel has objected.
15 MR. FREILICH: It doesn't matter. It really
16 doesn't.
17 Q. Let's go on. Did there come a time you filed
18 another building permit?
19 A. Yes. Shortly after this time. After talking to
20 the county, I was told to submit another permit, and so I
21 did submit another permit.

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1 Q. Who told you to do that?
2 A. I talked to Rodney Larrick. He stated I need to
3 talk to Reisinger --
4 MS. ZERWITZ: Objection.
5 THE CHAIRMAN: Sustained.
6 Q. But you submitted a new application as a result
7 of your discussion with Larrick?
8 A. That is correct.
9 Q. I'd like to show you what's being marked for
10 identification at this point as No. 13 --
11 MR. STAHL: The only difference between this one
12 and the other one is what?
13 Q. When you went to submit this application, what
14 changed or differences are there between this one and the
15 other one?
16 A. The change that I made in this one from the
17 previous one is the size of the garage has been reduced.
18 This reflects the removal of the six feet, and it
19 also removed the height restriction that was in effect
20 from the county.
21 Q. It's now back to fifteen feet?

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1 A. That is correct.
2 Q. Did you tell them, the people at permits, you
3 were building it on the same foundation?
4 A. Yes, I did.
5 MR. FREILICH: I would move Petitioners' 13 be
6 admitted.
7 MS. ZERWITZ: No objection.
8 THE CHAIRMAN: Admitted.
9 Q. Now, again, where it says "Describe Proposed
10 Work," is that your handwriting?
11 A. No. That is Baltimore County's handwriting.
12 Q. Now, your only handwriting is this under
13 applicant information?
14 A. Yes. Upper right-hand corner. Just name and
15 address.
16 MR. FREILICH: May I have the original back?
17 Unfortunately, our copier cut it off the last line. Thank
18 you.
19 Q. Okay. Now, there's some handwriting at the
20 bottom in bluish ink. Is that your handwriting?
21 A. No.

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1 Q. Can you please read that for us?
2 A. It says, "requires variance for inside yard and
3 for twenty-four inches in lieu of thirty inches. And then
4 after that, it has "building code" with a question mark
5 after it.
6 Q. Did you write that?
7 A. No.
8 Q Do you know who wrote that?
9 A. Baltimore County.
10 Q. Did you tell them that you wanted a prior
11 nonconforming use?
12 A. No. At the time, I didn't know where it was an
13 issue.
14 MR. FREILICH: If I haven't done it. I move it
15 13 be admitted.
16 MS. ZERWITZ: No objection.
17 THE CHAIRMAN: Admitted.
18 Q. Now, after you applied for the permit to build
19 this garage, did you obtain a permit?
20 A. We had another hearing.
21 Q. Okay. Did you obtain a permit?

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1 A. No.
2 Q. What did you do as a result of not getting the
3 permit?
4 A. Had a hearing.
5 Q. Did you then file a petition for special hearing?
6 A. Yes, I did.
7 Q. And that's why we're here today?
8 A. Yes.
9 Q. In part. Do you recall when you filed that
10 special hearing?
11 A. Probably in April, as far as I recall. It was
12 later in 2000. The exact date, I can't recall. The whole
13 series of events just kept -- it's hard to keep track of,
14 a daily event.
15 Q. On the permit you're presently seeking --
16 A. Yes.
17 Q. -- which is in the second case, what is it you
18 want to do?
19 A. I was asking to construct a garage approximately
20 thirteen by thirty and by fifteen on the site of the
21 original foundation, the original garage.

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1 Q. You had already started to construct --
2 A. Yes.
3 Q. -- the new garage?
4 A. That's correct.
5 Q. And then you received the cease and desist?
6 A. Yes.
7 Q. Did you build anymore after you received that
8 order?
9 A. Not a stick, no.
10 Q. I'd like to show you what I'd like to have marked
11 for identification as plaintiff's fourteen --
12 THE CHAIRMAN: Why don't you show it to Ms.
13 Zerwitz?
14 MR. FREILICH: This one, I took.
15 Q. Can you please identify now Petitioners' 14?
16 A. This is a picture that you took from my pier
17 looking back from the water, looking back towards
18 Baurenschmidt Drive.
19 Q. There's a structure next to the house. Is that
20 the garage you stopped building?
21 A. That is correct.

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1 Q. And is that in the exact location where the prior
2 garage was?
3 A. That is correct.
4 Q. Foundation placed on the old foundation?
5 A. Yes.
6 Q. Sill plates on the old foundation?
7 A. Yes.
8 Q. What's a sill plate?
9 A. When you build a structure and have a concrete
10 foundation, you normally start off by laying a piece of
11 wood down, and that's where your vertical upright starts.
12 Q. You attached that to the old foundation?
13 A. Correct.
14 Q. Did you have to chip away any of the old
15 foundation to secure any posts on it?
16 A. Did I do what?
17 Q. Did you have to chip away any of the old
18 foundation, it was bad or anything?
19 A. No. It was pretty much drilled into it, drilled
20 studs that we could bolt that plate right on top of it.
21 Q. Does it fairly and accurately depict that portion

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1 of your house looking towards the water?
2 A. Yes, it does.
3 Q. On the right is your neighbor's house, Mr.
4 Fisher?
5 A. Yes.
6 Q. Where's the front door to your house?
7 A. The front door to my house faces Baurenschmidt
8 Drive.
9 MR. FREILICH: I move Petitioners' 14 be
10 admitted.
11 MS. ZERWITZ: No objection.
12 THE CHAIRMAN: Admitted.
13 Q. Now, when you go back on the old foundation, can
14 you pretty clearly see where the old foundation was and
15 the new foundation is?
16 A. Yes. You can walk alongside of it and touch it,
17 see it, if you want.
18 MR. FREILICH: If you all give me just a moment
19 to double-check my notes.
20 THE CHAIRMAN: Surely.
21 Q. Do you have any access to your actual home from

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1 the waterside?
2 A. The only access to the home is a set of basement
3 doors you have to drop down below ground to go down into.
4 There's no door facing the water.
5 MR. FREILICH: Please allow me review my notes
6 for a minute?
7 THE CHAIRMAN: That's fine.
8 MR. FREILICH: I think I have covered it, but the
9 older you get. I have no further quesions of this witness
10 at this time.
11 MR. STAHL: Before we start, if I may ask a
12 question, and you can come back if it generates anything
13 before you cross.
14 Sir, I'm looking at this picture. I notice that
15 there's a structure -- we are looking from the water as I
16 understand it -- we are looking at the back of the house.
17 There's a structure here. That's not -- I
18 understand that's not the structure we are talking about?
19 THE WITNESS: That is the area of the structure
20 we are talking about, yes.
21 MR. STAHL: This is the foundation?

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1 MR. FREILICH: No. The foundation is here were
2 your fingernail is. You're looking right through it.
3 MR. STAHL: So this is actually the structure
4 that's in question in relation to the house in relation to
5 the water?
6 THE WITNESS: Yes.
7 MR. STAHL: At this point, cars were still being
8 parked there that way?
9 THE WITNESS: Yes. There's a car parked in there
10 right now, as a matter of fact. Well, yesterday, there
11 was.
12 MR. STAHL: I don't know if that generated
13 anything? I wanted to make sure.
14 MR. FREILICH: I think there is some confusion.
15 Let me lead just a wee bit.
16 THE CHAIRMAN: I think --
17 Q. (MR. FREILICH) There, it shows a wooden garage
18 in the state of construction on Petitioners' 14, correct?
19 A. Yes.
20 Q. Is that as it appeared, other than weathering, as
21 of the date you were issued your stop work order, correct?

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1 A. That is correct.
2 Q. Now, Mr. Moken, there is a white thing. What is
3 that?
4 A. That white shed belongs to the neighbor. It's on
5 his property.
6 Q. Next to the white shed, there's an edge of the
7 building right about there?
8 A. Yes.
9 Q. Can you see that foundation mark?
10 A. Yes.
11 MR. FREILICH: May I show the tribunal?
12 THE CHAIRMAN: Yes.
13 MS. ZERWITZ: May I approach as well?
14 THE CHAIRMAN: Sure.
15 Q. Can you stand up so when I show them, I do it
16 right.
17 THE CHAIRMAN: Can you mark this?
18 Q. I'm going to draw a circle. Is that the area
19 which you can see the old foundation?
20 A. On the right side, yes.
21 Q. You can also see the old foundation from the left

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1 side?
2 A. Yes.
3 MR. STAHL: Talking about the square of light
4 colored --
5 MR. FREILICH: No. Underneath --
6 MS. ZERWITZ: Let the witness testify, counsel.
7 Q. Is that what you are seeing?
8 A. The very top edge you see there is the edge of
9 the original foundation. The little extra white block is
10 where I made an extension to the -- where I attempted to
11 be a six-foot extension to the original building.
12 But if you come from the side, you can see the
13 original foundation here. Right here, you can see where
14 the break is in the concrete. If you look on this side,
15 you can see the original condition.
16 You can see my boat down here. The other one is
17 in my back yard.
18 MR. IRISH: Is that a boat ramp?
19 THE WITNESS: That's a ramp to get my riding
20 tractor down into my front yard.
21 MR. IRISH: Your front yard is the other side?

1 THE WITNESS: Front yard, back yard,
2 MR. IRISH: Where does the concrete end?
3 THE WITNESS: At my pier.
4 MR. IRISH: Does it go down into the water or
5 another pier level?
6 THE WITNESS: The pier is level with the concrete
7 right at this point.
8 MR. IRISH: So the boat ramp does not go into the
9 water?
10 THE WITNESS: There's a boat ramp this side, yes,
11 and I use it for this little boat.
12 MR. IRISH: But it does continue, because the
13 concrete goes in that direction, it goes off that
14 direction? If you could come through here, conceivably,
15 come through this -- well, you can go through here and
16 come over to that boat ramp, correct?
17 THE WITNESS: Conceivably, yes, if you would
18 desire, if you could get through the garage.
19 MR. IRISH: You can right there.
20 MR. FREILICH: I'm going to try to find a picture
21 to show that better. Can we mark this as Petitioners' 15?

1 Q. Can you please tell us what Petitioners' 15 is?
2 THE CHAIRMAN: Why don't you have a seat?
3 A. Okay. This is a photo taken from the -- inside
4 the garage on the original foundation of the garage
5 looking down the ramp where I have access to the front
6 yard.
7 This dark line here is the break, the end of the
8 original foundation and the roadway.
9 MR. FREILICH: Can we please have this marked as
10 Petitioners' 15?
11 MS. ZERWITZ: No objection.
12 THE CHAIRMAN: Admitted.
13 Q. Could you draw an arrow to show where you can
14 pick up the differentiation between the old foundation and
15 the new?
16 A. Yeah.
17 MR. FREILICH: Will you please mark this as the
18 next exhibit? I believe it's sixteen.
19 THE CHAIRMAN: No. 16.
20 Q. Can you please describe for us what Petitioners'
21 16 is?

1 A. Yes. This picture is a picture taken on the ramp
2 way that goes down to the water away from the garage.
3 MR. FREILICH: I would move Petitioners' 16 be
4 admitted.
5 MS. ZERWITZ: No objection.
6 THE CHAIRMAN: Admitted.
7 Q. Does this fairly and accurately depict where your
8 pier is, your ramp, and the -- I don't know what you call
9 it -- the brown timbers in the water?
10 A. Yes, this is an accurate picture of what the
11 property looks like right now.
12 MR. FREILICH: In light of this, do you have any
13 questions in terms of how that back yard is with the pier
14 and driveway? I would hope that would clarify that.
15 THE CHAIRMAN: No. That's fine.
16 MR. FREILICH: No further questions of this
17 witness at this time.
18 THE CHAIRMAN: Before we continue, Mr. Long is
19 here just for some brief certification, if you want to
20 call him.
21 MR. FREILICH: Mr. Long, please take the stand.

1 THE CHAIRMAN: Of if you want to proffer? Unless
2 counsel has any objection, he can just proffer what his
3 comments are.
4 MR. STAHL: As to the certified copies.
5 THE CHAIRMAN: Mr. Long, make your proffer.
6 JEFFREY LONG: We don't have true test copies
7 sealed, but we went over to the Permits and Development
8 Management office and borrowed their seals, and those
9 copies accurately reflect the reproduction of the
10 originals.
11 They have been stamped and signed as true test
12 copies.
13 MR. FREILICH: I have no further questions if you
14 accept this.
15 MS. ZERWITZ: No objection.
16 THE CHAIRMAN: That's fine. Thank you, Mr. Long.
17 MR. FRIELICH: Off the record.
18 (A discussion was held off the record.)
19 THE CHAIRMAN: Why don't we take a break for
20 lunch and come back at 12:30.
21 (A luncheon recess was taken.)

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1 * * * * *
2 AFTERNOON SESSION
3 THE CHAIRMAN: We're back on the record. Ms.
4 Zerwitz.
5 MS. ZERWITZ: Thank you.
6 CROSS EXAMINATION
7 BY MS. ZERWITZ:
8 Q. Mr. Moken, you purchased the property in 1967?
9 A. That is correct.
10 Q. There was also an existing house?
11 A. Yes.
12 Q. Did you did anything to the actual house during
13 you course of time?
14 A. Put a second story on it in 1970.
15 Q. What about did you do anything to the entrance or
16 exit to the house?
17 A. No.
18 Q. You never did anything to the doorways? Anything
19 like that?
20 A. No, never changed doorways at all.
21 Q. The only construction you did was the second

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1 story in 1970?
2 A. That is correct.
3 Q. You testified the problem with the roof began
4 early on?
5 A. Yes.
6 Q. When did you start having problems?
7 A. Probably by the late seventies, eighties, I began
8 to have to keep replacing that shallow roof.
9 Q. It got worse in the nineties?
10 A. By that time, all the leaks had caused members to
11 actually start rotting.
12 Q. You testified you removed the roof around
13 Christmas '97. Is it possible you could have removed the
14 roof earlier than that?
15 A. Somewhere in that time frame. It was an ongoing
16 time thing. A piece would come in, you take it off.
17 There's still pieces on the --
18 Q. Is it fair to say you don't recall when you
19 actually removed the roof?
20 A. I can't give you an exact date.
21 Q. Do you remember a year, or you don't remember

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1 remember?
2 A. No.
3 Q. Is it fair to say you also don't clearly remember
4 when you removed the side or the back or the front?
5 A. I think I was pretty accurate, you know.
6 Q. Later on after -- at any time, is it fair to say
7 you don't remember when you removed it?
8 A. I can't give you an exact date.
9 Q. But do you remember in 1999 when you started to
10 rebuild?
11 A. Yes.
12 Q. At that point in time, other than the foundation,
13 was anything standing?
14 A. Yes. Up until the date we actually put up new
15 materials, we had the side walls still intact.
16 Q. But prior to building, you took down those side
17 walls, is that correct?
18 A. Yes. We took the walls down one day and the
19 timber went up the next day.
20 Q. Prior to beginning the rebuilding process, did
21 you measure the garage?

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1 A. No.
2 Q. And you never -- you measured based on what you
3 felt was the property line, is that correct?
4 A. Yes.
5 Q. You never, to this day, you never had the
6 property surveyed?
7 A. The property has never been surveyed, to my
8 knowledge.
9 Q. And when you said it was two feet to the property
10 line, that was just a best guess, is that a fair
11 statement?
12 A. There were a number of pipes in the ground, a
13 number of fence posts, some very substantial, and they
14 were there now back when even I got there in '67. They
15 were still in there in '99. I presumed that was the
16 property line.
17 Q. But you never actually went out to find out? You
18 just assumed that?
19 A. No. The only evidence of that was a property
20 line or not was in a conversation with the owner of the
21 property, Mr. Glass. He indicated --

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1 MR. FREIICH: Objection.
2 THE CHAIRMAN: Sustained.
3 Q. Now, when you went to apply for the permit, the
4 permit indicated work had already been done, so you had
5 already taken down the property before you got the permit
6 to take it down?
7 A. That is correct.
8 Q. And the picture that we have seen so far of the
9 garage was what had already been done prior to your
10 obtaining, or prior to your applying for the permit?
11 A. That's correct.
12 MS. ZERWITZ: Now, can I see Petitioners'
13 Exhibit -- I believe it's 16. The big photograph. Okay.
14 Make it 15 --
15 THE CHAIRMAN: Fourteen?
16 MS. ZERWITZ: I'm sorry. Petitioners' 14. I'm
17 I'm sorry.
18 MR. FREILICH: May I approach and watch?
19 THE CHAIRMAN: Surely.
20 Q. Sir, I'm going to show you what's been marked in
21 evidence as Petitioners' Exhibit 14.

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1 What you have circled on here is the foundation
2 of the new garage or the original, or what was on the
3 original --
4 A. The little blocks you see, those are the end of
5 the extension that we put on.
6 Q. You put on that?
7 A. Yes.
8 Q. Now, in your petition for variance, you, among
9 other things, asked for six -- to make it thirty-six feet
10 long, is that correct?
11 A. That was the very first one, yes.
12 Q. That six feet, you have not done, is that
13 correct?
14 A. It is there.
15 Q. It is here?
16 A. It is there.
17 Q. No. In other words, you have agreed to take six
18 feet -- you would agree to take six feet off this garage?
19 A. Yes, ma'am.
20 Q. So the garage right now is thirty-six feet, or
21 the length?

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1 A. The length right now is approximately thirty-six
2 feet, yes.
3 Q. And you would agree to shorten it to thirty feet?
4 A. Absolutely.
5 Q. Did you add anything to the other end of the
6 garage?
7 A. There was some repair work done on the other end,
8 drain repair.
9 Q. Did you lengthen it any further from the length
10 of the garage from that direction?
11 A. A miniscule amount, if any. Just had to replace
12 that drain area.
13 Q. What about the width of the garage, did you add
14 anything to the width of the original garage?
15 A. The width of the garage is on its original tract.
16 The one end along the portion of the house we straightened
17 out a little bit, but nothing outside the original
18 envelope.
19 Q. So you added more to the garage inside closer to
20 your house, but nothing the other direction?
21 A. Nothing the other direction.

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1 Q. Mr. Moken, you were here back in July of 1999
2 before the Zoning Commissioner, is that correct?
3 A. Yes.
4 Q. On your application for a variance?
5 A. Yes, I believe so.
6 Q. That variance application was denied, is that
7 correct?
8 A. Yes.
9 Q. You then filed a request with Commissioner
10 Schmidt for a reconsideration, is that correct?
11 A. Yes.
12 Q. I'm going to show you a copy of a letter dated
13 July 26, 1999. I'm going to ask if you can identify this
14 letter.
15 MS. ZERWITZ: I'd like to have this marked as
16 Complainants' Exhibit No. 1 for identification purposes,
17 or Protestants'.
18 Q. Can ypu identify this letter, sir?
19 A. I have a copy of this letter, yes.
20 Q. You received that letter?
21 A. From Commissioner Schmidt.

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1 Q. I'm going to ask if you can read the last full
2 sentence of the second paragraph.
3 MR. FREILICH: Objection.
4 THE CHAIRMAN: The letter speaks for itself.
5 We'll read it.
6 MR. FREILICH: I'm going to object to the
7 admissibility, based on relevance. When we were here on
8 appeal, one issue is what the first appeal is from,
9 whether it's an apeal from the variance or appeal from
10 modification or reconsideration.
11 It's our position that the appeal is not proper
12 from the denial of the variance, but it is proper from the
13 denial of the motion for modification.
14 THE CHAIRMAN: We'll take it in their entirety.
15 MS. ZERWITZ: I proffer this as Protestants' No.
16 1 and move it into evidence.
17 I would also like the court to take judicial
18 notice of the motion for reconsideration which is part of
19 the case file.
20 THE CHAIRMAN: We'll take notice, and take it
21 under advisement.

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1 Q. Mr. Moken, when did you file your appeal in the
2 variance case?
3 A. Immediately after I got the denial.
4 Q. Which was in August, is that correct?
5 A. Yes. They give you thirty days to appeal, and I
6 brought it as quickly as I could.
7 Q. Is the date of the denial the date you filed the
8 appeal?
9 A. It's not -- if it's not, its the next day, or
10 whatever over the weekend, the next trip to Baltimore
11 County.
12 Q. Do you know how -- you said you never measured
13 the original garage, but do you know how high the original
14 garage was?
15 A. I really don't know how high it was.
16 Q. Do you know whether you added any height to the
17 original garage?
18 MR. FREILICH: Objection. When?
19 Q. When you rebuilt the walls that you put up on the
20 garage, did you add anything to the height of the original
21 garage?

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1 A. Yes.
2 Q. Do you know approximately how much height you
3 added to the wall of the garage?
4 A. I only know the building inspector said it was
5 sixteen feet tall.
6 Q. But you don't know what the original height was?
7 A. No.
8 Q. What was the purpose of the garage for you?
9 A. The purpose of the garage was to provide
10 protection for my cars.
11 Q. Did you ever store a boat in there?
12 A. No.
13 Q. You have a boat, is that correct?
14 A. I have two.
15 Q. You never stored them in the garage?
16 A. Never.
17 Q. How big are are your boats?
18 A. One is twelve foot, and the other is
19 approximately twenty-three.
20 Q. The end of the garage which leads to the water --
21 A. Yes.

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1 Q. -- is that flat or a ramp?
2 A. That's a ramp. The garage is flat, but then the
3 ramp goes down.
4 Q. Was that always a ramp?
5 MR. FREILICH: Objection.
6 THE CHAIRMAN: Overruled.
7 MR. FREILICH: Always? That could have been
8 from Adam and Eve.
9 Q. From the time you moved into the house in the
10 seventies, was that driveway to the water always a ramp?
11 A. No.
12 Q. Did you make it into a ramp?
13 A. Yes.
14 Q. When did you do that?
15 A. I guess it was early nineties.
16 MS. ZERWITZ: Court's indulgance, please.
17 Q. You have already indicated you're agreeable to
18 also taking a foot off the height, is that correct?
19 A. Probably more than the final take-down, yes.
20 We'll not exceed the Baltimore Code.
21 MS. ZERWITZ: May I have the Court's indulgance

1 for one second?
2 THE CHAIRMAN: Yes.
3 Q. You testified the floor of the garage is flat.
4 Did the ramp begin in the garage or after the garage?
5 A. After.
6 MS. ZERWITZ: I have nothing further at this
7 time.
8 THE CHAIRMAN: Mr. Freilich?
9 MR. FREILICH: Thank you.
10 REDIRECT EXAMINATION
11 BY MR. FREILICH:
12 Q. I want to revisit just a couple things with you.
13 When did you start to remove the rotting wood from the
14 garage?
15 MS. ZERWITZ: I'm going to object. He's already
16 answered that.
17 MR. FREILICH: He did, but her question was a
18 little different, and I thought the time frames were
19 confusing.
20 If the Board has it fixed in its mind, I don't
24 need to spend time on it.

1 THE CHAIRMAN: I'm pretty well set on what the
2 time frame was.
3 MR. FREILICH: Then I have no further questions
4 of this witness at this time.
5 THE CHAIRMAN: Okay. Your excused, sir. Thank
6 you.
7 MR. FREILICH: I would like to call Mr. James S.
8 Patton to the stand.
9 JAMES S. PATTON,
10 having been called as a witness, was duly sworn and
11 testified as follows.
12 MR. FREILICH: I'd like to please mark the next
13 exhibit as 17.
14 DIRECT EXAMINATION
15 BY MR. FREILICH:
16 Q. Mr. Patton, state your name, and spell your last
17 name, please.
18 A. James S. Patton. P-a-t-t-o-n.
19 Q. Your office address?
20 A. 395 West Chesapeake Avenue, Towson.
21 Q. What do you do, sir?

1 A. I am a land development consultant, professional
2 engineer.
3 Q. How long have you been doing that?
4 A. Over thirty years.
5 Q. From whence do you have your degrees?
6 A. I have a Bachelor of Science in civil engineering
7 from Swarthmore Collge, a Master's of City Planning, which
8 is professional planning, from the University of
9 Pennsylvania, and I am also a registered licensed engineer
10 in Maryland and Pennsylvania.
11 Q. Now, do you have a resume that you typically use?
12 A. Yes, sir.
13 Q. I'd like to show you what's being marked first
14 for identification as Petitioner's Exhibit No. 17.
15 MR. FREILICH: I'm going to submit him as an
16 expert in land development, the zoning code in Baltimore
17 County, and planning.
18 THE CHAIRMAN: Because I know Mr. Patton has been
19 before this Board on prior occasions --
20 MR. STAHL: We usually like a precise, He's an
21 expert in.

1 MR. FREILICH: Give me a second. We're going to
2 use him as an expert on zoning and the Baltimore County
3 zoning code and the interpretation of the code as applied
4 to this particular facility, and as a partial fact
5 witness.
6 THE CHAIRMAN: Do you want time to look at the
7 resume?
8 MS. ZERWITZ: Please. With all due respect to
9 the witness, the CV is certainly more than impressive, but
10 I'm not sure what qualifies him to be an expert in the
11 zoning code.
12 Certainly, he has a number of degrees in planning
13 and various educational facilities having been built, but
14 I don't see anything with qualification to a zoning
15 expert.
16 THE CHAIRMAN: Do you want to continue?
17 MR. FREILICH: Sure.
18 Q. Mr. Patton, have you testified as an expert
19 before this Board in the past on zoning issues in
20 Baltimore County?
21 A. Yes, I have.

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1 Q. Do you regularly advise clients with respect to
2 the zoning code for real estate projects in Baltimore
3 County?
4 A. I do.
5 Q. And have you testified as an expert in any
6 courts?
7 A. Yes.
8 Q. In those courts in which you have qualified to
9 testify as an expert, did it deal with land use and
10 zoning?
11 A. Yes.
12 Q. Deal with the Baltimore County Code?
13 A. Yes.
14 Q. What were those courts?
15 A. The courts were Baltimore County Circuit Court.
16 Q. How many times do you think you have testified on
17 the Baltimore County Code and zoning in the last five or
18 ten years?
19 A. Particularly before the Board, before the Zoning
20 Commissioner, before this particular Board, it's probably
21 been, in the past five years, over twenty-four times.

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1 MR. FREILICH: I would move he be accepted as an
2 expert.
3 MS ZERWITZ: I would object, your Honor, on the
4 basis -- I'm not quite -- he testified to nothing to
5 indicate he's qualified to be an expert on the zoning
6 code.
7 THE CHAIRMAN: I think in the years I have served
8 as Chairman, Mr. Patton has qualified as an expert in land
9 development and zoning and in the Baltimore County
10 regulations, so we'll accept him as an expert.
11 MR. FREILICH: Thank you, sir.
12 Q. Now, you're being paid for your time, aren't you?
13 A. I am being paid for my time. I have been
14 retained by Mr. and Mrs. Moken.
15 Q. At my request, you went and visited the subject
16 site?
17 A. I did.
18 Q. And you have seen the other exhibits that have
19 been entered today, correct?
20 A. Yes.
21 Q. Is it possible to locate the foundation of the

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1 old garage?
2 A. It would be possible to locate the old foundation
3 based on my site observation. I could not locate it
4 precisely relative to the side line.
5 Q. Not the side line. When you look at the
6 ground -- I'm sorry. When you look at the floor of the
7 garage, could you tell where the old foundation for the
8 garage was?
9 A. I can see approximately where that old foundation
10 was, yes. There's physical evidence.
11 Q. You said approximately. Approximately an inch
12 out of whack? Ten feet out of whack?
13 MS. ZERWITZ: Objection.
14 Q. What does the word "approximately" refer to?
15 A. Plus or minus a couple inches.
16 Q. Is that relatively easy to determine when you
17 looked at the site?
18 A. It is easy to determine what the earlier block
19 foundations were, what the original slabs were.
20 Q. Now, is it possible to build on that original
21 slab in the same location as the old foundation?

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1 Let me jump back. What's a foundation as opposed
2 to a slap?
3 A. The foundation -- are you asking me that
4 question?
5 Q. Yes.
6 A. The foundation is basically the four walls, or
7 roughly the four walls that are contained on corners. The
8 slab is what is poured within that area to create a floor.
9 Q. So could you look at the physical evidence and
10 locate where the prior foundation was?
11 A. I could look at the physical evidence and see
12 what was the prior foundation.
13 Q. Would you build the new foundation?
14 A. No, you would not in this particular case. You
15 would not go building a new foundation.
16 Q. What would you be doing?
17 A. You would be putting up new walls and a new roof
18 on the old foundation.
19 Q. So you basically -- what would you call that,
20 building? Restoring?
21 A. Restoration reconstruction.

1 Q. Now, in your opinion, was the garage, or is this
2 structure we are talking about, calling a garage, totally
3 removed?
4 MS. ZERWITZ: Objection.
5 THE CHAIRMAN: He can answer.
6 A. From my evidence and my site visit, it was not
7 totally removed in that obviously the corners would have
8 still been there. I could sight physical evidence of
9 where the lower part of the foundation up to the floor
10 slab was still in existence.
11 It has been added to in certain instances and it
12 is evident where those additions had occurred in that the
13 original floor slab of the garage, i.e., the floor, was
14 still in existence, and it had been modified in the front
15 end prior to going into the garage, and there had been
16 modification as you left that floor slab, but you could
17 see the actual joints where that original floor slab still
18 existed.
19 MR. FREILICH: May I please have the photograph
20 that shows the --
21 Q. I'm going to show you and move in evidence

1 Petitioners' Exhibit No. 14.
2 Can you point out on here -- and try to hold it
3 so the judges can see --
4 MS. ZERWITZ: May I approach?
5 THE CHAIRMAN: Yes.
6 Q. Show us what you just spoke about in the abstract
7 in the concrete. Hold it so they can see, the Honors can
8 see it, too.
9 A. Perhaps if I get up and come over towards the
10 center.
11 Q. I was having a little trouble following that with
12 this.
13 A. Right here, you can see where this was razed, and
14 if you come back to the top of this ramp --
15 MR. FREILICH: Let the record show the witness is
16 pointing to the two arrows drawn by Mr. Moken to both
17 sides of the site, one into the garage.
18 THE WITNESS: Shall I use the top sheet, if I may
19 do that with a marker?
20 Looking at that photograph, we have a perspective
21 where the garage is sitting like -- whoops -- looking at

1 the garage from this end, there is the opening in that
2 end, and if you notice what Mr. Moken drew were two little
3 areas down in this portion, and then the ramp coming on
4 down from that.
5 Q. Would you please mark those with an A, the little
6 boxes?
7 A. (Indicating.) Now, in order to -- the very top
8 point of where the ramp brakes and then in a cross
9 section, I will relate to this what I saw in the field as
10 evidence, that we have the garage, and it's rather short,
11 but you have a ramp, slight ramp coming down.
12 Then you have the level area of the garage to
13 this point, and then you have the ramp coming on down to
14 the waterfront, this being the water area.
15 What has happened is that there was a block wall
16 here, which this being grade, this being grade, actually
17 the grade comes back in here, and what had happened is
18 that this was the old garage. This was as far as the old
19 garage corner and lower wall.
20 Q. Would you could you please mark that as B, and an
21 draw an additional line? How about bracket like a double

1 arrow so we know what we are looking at later on.
2 A. What you see is this garage was extended out
3 further and this area was built up so that what you're
4 seeing is this triangle portion, so that there was
5 actually a triangle portion, which this distance was
6 approximately the six feet that Mr. Moken had extended.
7 But there is physical evidence on the ground to
8 the fact that this slab in this area. Then this change,
9 this break, was extended out. So this was the area of
10 extension that occurred in the first phase, but this block
11 wall here and what this Moken had done is simply put a
12 plate, a base plate for wood down on top of the original
13 concrete block wall of the original garage, but he had
14 also made this little extension, which is what you saw, or
15 what you see in that photograph.
16 So, basically, there is this little triangular
17 extension, with this side being six feet, this height
18 being approximately a block and a half, roughly twelve or
19 fourteen inches.
20 But from this point on, I would submit to the
21 Board, that, indeed, that was the original garage.

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1 So that what you see is lengthening in this
2 area -- not at this point -- but all this portion was
3 restored, reconstructed, as far as the two side walls, on
4 the original foundation plate.
5 Q. Now, could you also tell whether both sides of
6 that structure were located on the old foundation lines?
7 A. The plates that I saw were on the old foundation
8 lines and the plywood sheathing that was placed on those
9 two sills basically lined up as you can see in the photo
10 relative to the side walls and the original side walls of
11 the original garage.
12 Q. I've taken the liberty of marking those with a C,
13 is that correct?
14 A. That is correct.
15 MR. FREILICH: I ask this be made an exhibit and
16 let's call it Exhibit No. 18.
17 MS. ZERWITZ: I would object.
18 THE CHAIRMAN: We'll take it in.
19 MR. FREILICH: I'm sorry. I didn't hear your
20 ruling.
21 THE CHAIRMAN: We'll take it in.

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1 MR. FREILICH: Can I tear it off later when I can
2 wrestle with it?
3 THE CHAIRMAN: Surely.
4 Q. While I'm at this, let's look at Petitioners' 18.
5 Let's look at the photograph which I think is 16. To the
6 left of the photograph, which is 14, on the left-hand side
7 is your home, correct?
8 A. No, it's not my home.
9 Q. Mr. Moken's home?
10 A. Mr. Moken's.
11 Q. The ramp goes up to the garage?
12 A Correct.
13 Q. Is it possible to look on the side which would
14 correspond to what I'm going to call or mark "D" on the
15 drawing which is Petitioners' 8 and look at the ground
16 level and see where the concrete is?
17 A. To see where the concrete is, yes.
18 Q. You can determine where the foundation is?
19 A. It's exposed, yes, it is.
20 Q. What's the front of this property?
21 A. I submit the front of the property is where you

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1 enter the home from, and that is what is designated as the
2 front in common practice as far as Baltimore County
3 zoning.
4 Q. Now --
5 A. Which is the street side.
6 Q. I'm going to show you a copy of Petitioners' 11
7 which is the petition for variance.
8 I'd like you to take a look at it and tell me if
9 you see -- this was done by Mr. Moken, he said, off the
10 plat, okay? -- which shows the existing dwelling and the
11 parcel in which he wants to restore this garage.
12 Would that be considered regular or irregularly
13 shaped land, for Baltimore County zoning?
14 A. It's considered irregulary shaped.
15 Q. Is that different than the other lots in the
16 subdivision?
17 MS. ZERWITZ: Objection. How would he know that?
18 Q. Do you have knowledge of the other lots in the
19 subdivision?
20 A. I have looked at the plat, and most of the lots
21 are rectangular in shape in that particular subdivision.

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1 They're irregular as far as the shoreline is concerned
2 relative to the waterfront constructs.
3 Q. Now, you have been here for Tony's testimony this
4 morning, and again this afternoon?
5 A. Yes.
6 Q. You heard about the tortured history from Mr.
7 Moken, and you have seen the papers that were introduced?
8 A. Yes.
9 Q. Where did he go wrong? What should he have done?
10 MS. ZERWITZ: Objection.
11 THE CHAIRMAN: I am inclined to agree. I don't
12 really see where you're headed on this. I mean, the facts
13 speak for themself, what he did.
14 Q. Had you been hired originally to get approval for
15 this project, what would you have done?
16 MS. ZERWITZ: Objection.
17 THE CHAIRMAN: No. He can answer that question.
18 A. First off, I would have advised Mr. Moken not to
19 start until all the permits and applications and any
20 petitions that might have been required would have been in
21 place.

1 Having said that, it would have been a
2 straightforward review of the zoning regulations that he
3 did have a legitimate permitted use and that the
4 nonconformity that existed was as relates to the structure
5 and the structure only.
6 And as far as Baltimore County zoning is
7 concerned, I would reiterate that under the D.R. zones,
8 that being accessory buildings, i.e., for parking of cars,
9 are a use by right, that there is no variance required or
10 special exception required to put a garage on or a covered
11 parking space on a single family lot. Point one.
12 Point two is that because the garage was located
13 where it was, prior to any major restoration to the degree
14 to which Mr. Moken has done, that the appropriate
15 procedure would be to confirm or perfect the nonconforming
16 use through a special hearing.
17 I would suggest that that special hearing would
18 have taken into account the provisions of the zoning
19 ordinance in that the zoning ordinance would have come in
20 play as to, number one, Section 400 relating to accessory
21 buildings and residence zones, and that in particular

1 400.1 would have been applicable as well as 400.3, and in
2 particular -- if I can refer to 400.1, that accessory
3 buildings in residence zones, other than farm buildings,
4 shall be located only in the rear yard and shall occupy
5 not more than forty percent thereof.
6 In no case shall they be located less than two
7 and a half feet from any side or rear lot lines, except
8 that two private garages may be built with a common party
9 wall straddling a side interior property line if all other
10 requirements are met.
11 400.3 refers to the height of accessory buildings
12 except as noted in Section 300 shall not exceed fifteen
13 feet. Section 400.2 does not apply.
14 Then we come into having looked at the accessory
15 buildings, and this is where this two and a half feet,
16 relative to the two feet comes in, that the building which
17 the testimony earlier has indicated was in use
18 continuously prior to the adoption of the ordinance was
19 actually, relative to the location of the structure, I
20 would suggest half a foot closer to the property line than
21 an accessory building could be and, second, that the

1 building was placed in a side yard, rather than a rear
2 yard.
3 Those are the only two items that really would
4 relate to the need for a variance from the perspective of
5 what Mr. Moken had proposed in that he was proposing a
6 lengthening and an increase in height, that those were
7 additional variances that might have been requested.
8 So from the point of view of the nonconforming
9 use, to restore or reconstruct, we are now then having to
10 look at Section 305 and Section 104 regarding
11 noncomformities.
12 And in Section 305 of the ordinance -- excuse me
13 just a moment -- 305, in particular, says, In case of
14 complete or partial casualty loss by fire, windstorm,
15 flood or otherwise of an existing dwelling that does not
16 comply with height or area requirements of the zone in
17 which it is located, such dwelling may be restored,
18 provided area or height deficiencies of the dwelling
19 before the casualty are not increased in any respect, and
20 such restoration is subject to the limitations imposed by
21 Section 104.2.

1 I would submit that the application of Section
2 305 is that had he not made the attempt to increase the
3 height, had he not made the attempt to increase the area,
4 that Section 305 relative to the replacement would not be
5 applicable.
6 In other words, by it's not being applicable, he
7 would be permitted to restore, reconstruct that building
8 relative to what he was proposing to do in that 104.22,
9 which pertains to nonconforming uses, and because of the
10 generic point, nonconforming use, nonconforming structures
11 are basically one and the same.
12 104.2 refers to a structure damaged to any extent
13 or destroyed by fire or other casualty may be restored
14 within two years after destruction or damage, but may not
15 be enlarged.
16 In the case of residential use, structures which
17 are nonconforming in density -- and this doesn't apply,
18 but I will read the rest of the clause -- the number of
19 dwelling units or density units rebuilt may be equal to
20 but may not exceed the number of units which existed
21 before the casualty.

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1 Then also, in 104.3 where it also relates to
2 buildings and nonconforming buildings or structures. No
3 nonconforming building or structure and no nonconforming
4 use of a building, structure or parcel of land shall
5 hereafter be extended more than twenty-five percent of the
6 ground floor area of the building so used.
7 This provision does not apply to structures or
8 uses restored pursuant to Section 104.2, what I had just
9 just read, except as authorized by the Zoning Commissioner
10 pursuant to Section 307, and as we all familiar with
11 zoning, it's the variance provision.
12 So from the original concept, when the county
13 staff saw this proposal for the first time with an
14 increase in height, with an increase in length, they right
15 away looked at it from the point of view of a variance.
16 That's where there was no perfecting of the
17 nonconforming use because, I would suggest, they were
18 following procedures, that there was enough evidence that
19 it was a restoration, it was maintenance of an existing
20 garage which was a permitted use in this area.
21 As to the location of it in the side yard, had

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1 they been really keen on it, they should have requested a
2 variance from 400.1 relative to placement of the building
3 in the side yard and relative to the two and a half feet
4 and suggested that, no, you could not heighten it, you
5 cannot lengthen it, but you could, through the variance
6 procedure, get the side yard variance.
7 And at that point in time, you would have had a
8 conforming location, a conforming structure in the side
9 yard, and the additional variances, if approved.
10 The later case that Mr. Kotrocco heard then was
11 based on essentially perfecting a nonconforming structure
12 without the need for any variances, so that we then came
13 to the issue of saying the nonconformity exists.
14 And I would submit that Mr. Kotrocco was wrong,
15 the county was wrong relative to denying the building
16 permit.
17 I have earlier testified that, indeed, 104.2 is
18 the applicable provision. Without any expansion, a
19 structure damaged to any extent may be restored within two
20 years after such destruction or damage, but may not be
21 enlarged.

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1 And that is basically indicated clearly as a
2 permitted reconstruction or restoration of a damaged
3 structure, and by the zoning ordinance he has a right to
4 do so.
5 Q. Now, how did you find out where the property line
6 was for this two and a half feet we are talking about?
7 A. By establishing the corner points of the
8 property. A professional land surveyor would have to go
9 out, locate the points, and then have a line established
10 right along where that property line is.
11 Q. So, as we sit here today, we don't know if that
12 old foundation is two feet or two and a half feet from the
13 property line, do we?
14 A. As purely hearsay when I visited the site, Mr.
15 Moken showed me where these fence posts are. I do not
16 know, and without having the testimony of a registered
17 property surveryor, or surveyor, to say, indeed, relative
18 to the property line to that foundation is a precise
19 distance.
20 Q. Were those pipes set or were they a fence?
21 A. They were a fence. I saw no evidence of actual

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1 surveyor property corners as placed by a surveyor.
2 Q. Now, is it true fence posts like that can move
3 with time in terms of surface movement?
4 MS. ZERWITZ: Objection.
5 THE CHAIRMAN: Overruled.
6 A. Yes.
7 Q. Now, I'm trying to absorb what you took us
8 before, the various tests.
9 If I understand what I think you said, if he
10 wanted to, he could build a pretty decent size garage
11 between his house and the waterline under the current
12 regulations?
13 A. Can you repeat the question?
14 Q. As I understand what you said, if he wanted to,
15 he could build a garage between his existing house and the
16 edge of the water?
17 A. That's correct, because that is the rear yard as
18 defined by not only the plat that was submitted -- and if
19 you want to draw attention to that, again, the front was
20 designated on the plat, and it appears that that was put
21 on later, because it doesn't look like it's the same

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1 writing, so that zoning, in review of this, did establish
2 the front yard as being as I defined it, the front towards
3 the road, not relative to the waterfront.
4 And in accordance with provisions of the
5 ordinance, you may place an accessory structure in the
6 rear yard.
7 Q. So if he wanted to --
8 A. Now, there is one exception, it I may. You're
9 still subject to critical areas and buffer regulations.
10 Q. Assuming we comply with those, he could build a
11 thirty, thirty-six foot garage in his back yard near the
12 water two and a half feet from the property line not
13 exceeding fifteen feet in height?
14 A. That is correct.
15 Q. In order to do that, he'd only have to apply for
16 a building permit?
17 A. Correct.
18 Q. How far from the water would he have to be to
19 build this, do you recall?
20 A. He would probably have to be a hundred feet
21 because of the critical area buffer.

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1 Q. But other than that, he could probably do it?
2 A. That is correct, as long as he was in the rear
3 yard, i.e., he wasn't any closer than the back projected
4 line of his house which defines the rear yard.
5 MR. FREILICH: No further questions.
6 THE CHAIRMAN: Ms. Zerwitz?
7 CROSS EXAMINATION
8 BY MS. ZERWITZ:
9 Q. When when did you visit the house?
10 A. Pardon?
11 Q. When did you visit the house, do you recall?
12 A. This Friday morning, approximately 8 o'clock.
13 This past Friday.
14 Q. You talked about physical evidence allowing you
15 to determine the foundation of the old garage.
16 What type things are you looking for when looking
17 for physical evidence?
18 A. I am looking at basically what the construction
19 material is and age of construction material.
20 Q. You indicated that first you said you couldn't
21 locate the whole foundation, then you approximated plus or

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1 minus a couple inches. Can you explain that?
2 A. There is some overlaps as far as there was
3 sheathing on part of the formwork where some of the walls
4 was poured.
5 So I'm not able to say exactly this is where the
6 construction joints occurred between the old foundation
7 and the new foundation.
8 Q. But, to the best of your observation, and you saw
9 the six feet which he added towards the water then and
10 something added to the other end, but you couldn't really
11 tell, is that what you testified to?
12 A. I could see on the other end where the drain has
13 been placed, that was new constrution, or relatively new
14 construction.
15 I could also see on that end where there was the
16 older slab, that would have been the original garage.
17 Q. How large was that section, that you can recall?
18 A. The front end of the garage where the drainage
19 is, probably two feet, three feet. That was purely from
20 the point of view of making a change in the drainage
21 pattern so the grade would not come right down and flood

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1 the garage, because it's downslope. It would stop before
2 and provide a lip for the front of the garage.
3 Q. Then, to the best of your guesstimation, we have
4 six feet in the back and two or three feet in the front
5 added to the original foundation?
6 A. No, that's not what I said.
7 Q. Okay.
8 A. As far as the front of the garage, there was
9 drainage improvement done, but there was no indication
10 that the walls or the footers in the block side walls had
11 been lengthened. They were at the original length of the
12 garage.
13 Q. I thought you had testified that there was two or
14 three feet of new foundation?
15 A. No, I did not say of new foundation. I said
16 there was new slab work, or there was reconstruction done
17 there. I did not say it was foundation.
18 Q. Can you tell when the new slab work was done?
19 A. I could tell, approximately, because of the age
20 of concrete and the type of tone, finish.
21 Q. But it was not same as the rest of the

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1 foundation, the rest of the slab work?
2 A. It was not at the same texture. It was not of
3 the same tone and finish. So I could see, clearly,
4 evidence of what the original garage slab was and relative
5 to the joint that was created to take care of the drainage
6 problem.
7 Q. Is it fair to say the original slab -- I don't
8 want to mix up slab and foundation -- the original slab
9 was approximately eight feet shorter than the slab now, is
10 that a fair statement?
11 A. No.
12 Q. Okay. Well, we have six feet added to the water
13 then?
14 A. Maybe by illustration --
15 THE CHAIRMAN: Surely.
16 MR. FREILICH: Why don't you start a new page?
17 A. As far as the front property lane, we have front
18 property line, and the grade comes basically like this.
19 Then you have the garage. And then you the grade
20 coming done like this, so this being waterfront.
21 Right here was our earlier exhibit. This was the

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1 short area, and this was the garage. This area was
2 original foundation, footer, here being grade, and what I
3 am suggesting, even an enlargement of this area right
4 here, that this was original. This was original. This is
5 the area that was extended on this end.
6 Q. That's the six feet you're referring to?
7 A. This is the six feet that the variance applied
8 to, what the variance request was about relative to
9 extending on this end, and this end only.
10 Q. Without interrupting you, where were the two or
11 three foot slab you're referring to?
12 A. What I was referring to is that plane view.
13 Q. What's a "plane hue"?
14 A. Looking down on the top, a bird's eye view. That
15 what we have -- excuse me -- come right here. This block
16 wall, block wall, this slab, with one minor exception into
17 there, this was the original garage slab which was still
18 in evidence.
19 What I was referring to, when the two to three
20 feet -- these walls stop here and these walls stop here.
21 And where the original -- what Mr. Moken had done is --

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1 and I did draw this like this for a reason -- the water
2 was sheet flowing done the driveway and coming across the
3 garage, so what he did in a large view here was, the
4 original slab, he created a lip here -- and they're a
5 distance of about like this -- he created a new area with
6 a drain in here that created a lip which was approximately
7 an inch.
8 Your typical garage downslope in here was a
9 trench drain, so he had to go back a distance and
10 reconstruct this area, and that was new concrete, as you
11 would do in any driveway, which is not a subject relative
12 to the nonconforming structure.
13 Q. Where was that? I guess I can't -- where's that
14 two feet?
15 A. Where is that two feet? That two feet, again, in
16 plane view, was an area in here with this grade right in
17 here which was pavement that was not part of the garage,
18 nor was it part of what was going to become part of the
19 garage. Never was.
20 Q. That does not have any side walls on it?
21 A. Correct.

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1 Q. Is it a fair statement to say that when you went
2 out to the site and were looking at the garage as it is
3 now, the only thing you could determine is the length?
4 You couldn't tell the height of the original garage or
5 anything along those lines?
6 A. I cannot tell what the original height of the
7 garage was, no, because it had been removed, and there was
8 no evidence of any of the previous walls.
9 Q. Could you tell the width?
10 A. I could tell the width of what the previous
11 garage was, yes.
12 Q. How did this garage compare to the width of the
13 original garage?
14 A. The same.
15 Q. So then, when you testified earlier that he
16 modified the front and the rear, you were talking about
17 that two or three feet outside of the garage?
18 A. I was talking about the rear being the extension
19 towards the water relative to approximately six feet. And
20 as far as the front was concerned, I was talking about
21 simply modification to the paving leading into the garage,

1 not to any change in the front of the garage.
2 Q. Other than going out to visit the property, what
3 else did you do to prepare for your examination today?
4 A I have reviewed all the testimony and I have
5 reviewed the applicable zoning ordinances and I have
6 talked to some of the zoning and building permit staff.
7 Q. Other than the plats you were shown today, did
8 you do any research as far as that was concerned?
9 A. As far as what?
10 Q. As far as the plat map of the area?
11 A. No, I did not review any of the subdivision plats
12 for the area.
13 Q. So when you testified this was an irregularly
14 shaped property, you were going based on what you were
15 shown today, is that correct?
16 A. That, and also the tax map as far as a rough
17 indication as to the shape of lots in that subdivision.
18 Q. How many lots did you look at on the tax map?
19 A. I looked at probably three, four. I have been
20 familar with the area from past experience.
21 Q. Three or four out of how many, do you know?

1 A. Of tax maps? Three or four tax maps of the whole
2 county.
3 Q. How does a tax map work? You said you looked at
4 tax maps.
5 MR. FREILICH: Objection.
6 THE CHAIRMAN: Rephrase.
7 Q. I'm not familiar with the term of tax maps. I'm
8 trying to figure out what --
9 A. You are assigned individual lot numbers and they
10 basically are the ready reference for the Department of
11 Assessments.
12 Q. You looked at three or four tax maps from that
13 development, is that correct?
14 A. No. That development only comprises one tax map.
15 That tax map covers areas clear over to like Turkey Point
16 Road and over to the firehouse and so on and so on.
17 Q. You testified that the front of this house is to
18 the street as opposed to most waterfront properties have
19 been to the water?
20 MR. FREILICH: Objection. That's not what he
21 testified to.

1 THE CHIAMRN: Would you restate the question,
2 please.
3 Q. Based on your review, where do you believe the
4 front of the house to be?
5 A. The front is as defined and designated. It is
6 where his front entrance is, and it is, in this particular
7 case, fronting the street.
8 What I testified to was that Baltimore County,
9 unlike other adjoining jurisdictions, does not make the
10 waterfront the front, by definition.
11 Q. Now, when counsel asked you about what you would
12 have done had you been advised about Mr. Moken from the
13 beginning, you indicated that the garage is a right of a
14 homeowner to have, but there are some limitations on that
15 right based ON Section 305, or based on 400.1 and 400.3?
16 MR. FREILICH: Objection. She mischaracterized
17 the testimony.
18 Q. There are limitations to a garage on a person's
19 property, is that correct?
20 A. There are limitations.
21 THE CHAIRMAN: She rephrased her question. It's

1 acceptable.
2 Q. There are limitations to a person's right to
3 build a garage on their property, is that a fair
4 statement?
5 A. As I indicated, Section 400 pertains to accessory
6 buildings in residential zones, and garages are an
7 accessory building by definition.
8 Q. But there are limitations to where you can put
9 this garage?
10 A. That is correct.
11 Q. Other than a critical area buffer, are there any
12 other limitations to Mr. Moken placing the garage in the
13 rear?
14 A. There would not be.
15 Q. The only reason he would be allowed to place it
16 on the site would be because of the nonconforming use, is
17 that your testimony?
18 A. No, that's not my testimony.
19 Q. The garage is on the side of the house in this
20 instant case?
21 A. Yes.

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1 Q. It is not in the rear?
2 A. That is correct.
3 Q. So if he were applying for a variance, the
4 variance would have to include the right to put the garage
5 on the side of the house, as opposed to the rear of the
6 house?
7 A. That would be a requirement of the variance
8 simply because you would be requesting a variance from
9 Section 400.1.
10 Q. Did you, when you went out, did you do any
11 measurements?
12 A. I did not.
13 Q. How long were you out there?
14 A. Approximately half an hour, maybe forty-five
15 minutes.
16 Q. Is it your testimony if Mr. Moken were building
17 or repairing an existing structure, that this case were a
18 nonconforming use and could be looked at under 104.2 which
19 deals with structures destroyed by fire or other
20 casualties?
21 A. Repeat the question.

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1 Q. If Mr. Moken were repairing the existing garage
2 because it was destroyed by elements, or fire, other
3 casualties, it would fall under 104.2?
4 A. That is correct.
5 Q. Does 104.3 apply?
6 A. As I indicated, 104.3 would apply if there was to
7 be an expansion.
8 Q. And would he have had to list that on his
9 petition for a variance? Or for a special hearing?
10 Excuse me.
11 MR. FREILICH: Objection. Calls for a conclusion
12 of law concerning procedure.
13 MS. ZERWITZ: This witness already testified to
14 what he indicated.
15 THE CHAIRMAN: I think he can answer the
16 question.
17 A. Repeat the question.
18 Q. If Mr. Moken were looking to enlarge, would he
19 have to file for a special hearing uner 104.3?
20 A. If he were looking to enlarge, he would have done
21 it two ways. Because of the application of 104.2, he had

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1 to go through the variance requirement as per the second
2 portion of 104.3.
3 There are two, indeed, two facts relative to
4 104.3, and he would have had to have followed 104.2
5 because of the damage. He had to have the authorization
6 of the Zoning Commissioner if it were to be enlarged.
7 MS. ZERWITZ: Court's indulgence. I have no
8 further questions of this witness.
9 MR. FREILICH: Just a very short few questions.
10 What is the next number, 18?
11 MR. IRISH: Nineteen.
12 MR. FREILICH: I'd like to mark this Petitioners'
13 19.
14 THE CHAIRMAN: Any objection?
15 MS. ZERWITZ: No objection.
16 THE CHAIRMAN: We'll take it in.
17 REDIRECT EXAMINATION
18 BY MR. FREILICH:
19 Q. Now, this is what you call a plane view?
20 A. Plane view yes.
21 MR. FREILICH: I'll mark that and write on it

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1 "plane view."
2 Q. What does plane view mean?
3 A. Let's call that plane sketch, rather than plane
4 view.
5 Q. "Plane" in this context is a word of art?
6 A. That is correct, because you're looking down on
7 something. You're looking at it in two dimensions from
8 above as though you might have been a bird.
9 Q. Over here where I pointing, you referred to as
10 the drain?
11 A. Correct.
12 Q. So I'm going to draw a bracket and mark a drain.
13 Does it refer to the correct area?
14 A. That is correct.
15 Q. Now, what is the first view with -- I don't know
16 what that is up there?
17 A. It's an elevation, side view.
18 Q. Can I mark on here "side view"?
19 A. Cross section.
20 Q. Now, does, in a rough sense, the sideview cross
21 cut line indicate the division between the slab and the

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1 ramp correspond to that other line on the plane sketch?
2 A. Yes, as close as it can.
3 MR. FREILICH: I move Petitioner's 19 be
4 admitted, reworked with some drawing and arrows.
5 MS. ZERWITZ: Objection.
6 THE CHAIRMAN: Noted.
7 MR. FREILICH: I have no further questions of
8 this witness.
9 MS. ZERWITZ: I have no redirect.
10 MR. IRISH: I have one.
11 THE WITNESS: Yes, Mr. Irish.
12 MR. IRISH: 104.2, restoration is allowed as long
13 as you don't enlarge. Would that include changing the
14 roof design?
15 THE WITNESS: I would suggest that it probably
16 does not. You can change the pitch in order to insure
17 continuous drainage, but from the point of view of roof
18 design, there's been interpretations of law and cases on
19 that, that someplaces have permitted it, but to be true to
20 it is basically restoration, which means reestablishment
21 as it once was.

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1 MR STAHL: As a follow-up, in general, all that
2 you talk about in 104, all of this presupposes this is, in
3 fact, a nonconforming use?
4 THE WITNESS: Or a nonconforming structure, that
5 is correct.
6 MR. STAHL: Thank you.
7 THE WITNESS: This is part of, I would submit,
8 that the testimony that was laid was the fact that it
9 preexisted the location of a structure in the side yard,
10 preexisted the adoption of the zoning.
11 MR. STAHL: Right.
12 THE WITNESS: So, therefore, that it preexisted
13 and it is permitted to be restored.
14 THE CHAIRMAN: Does that generate any other
15 questions?
16 MS. ZERWITZ: No.
17 MR. FREILICH: Petitioner rests, and the
18 petitioners' counsel would like a potty stop for a minute.
19 THE CHAIRMAN: We'll take ten minutes.
20 (A recess was taken.)
21 THE CHAIRMAN: Okay. Ms. Zerwitz.

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1 MS. ZERWITZ: We would first call Michael Fisher.
2 MICHAEL FISHER,
3 called as a witness, was duly sworn and testified as
4 follows.
5 DIRECT EXAMINATION
6 BY MS. ZERWITZ:
7 Q. Mr. Fisher, can you state your address for the
8 record, please.
9 A. 2348 Martin Drive, Baltimore, Maryland.
10 Q. Where is that in relation to Mr. Moken's
11 property?
12 A. Right next door.
13 Q. Different address?
14 A. Yes. We are the last street on Martin Drive. We
15 are the last house on Martin drive.
16 Q. How long have you been living in your house?
17 A. Since 1988. Fourteen years.
18 Q. That was actually your father-in-law's house?
19 A. Correct.
20 Q How long has he lived in the house?
21 A. He built it in '58. He's been there since.

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1 Q. Are you close to Baurenschmidt?
2 A. We are. Baurenschmidt Manor.
3 THE CHAIRMAN: You mean what used to be the old
4 Brenschmidt house?
5 THE WITNESS: Yes. Just catercorener from us.
6 Q. So when you moved back into the house in '88, Mr.
7 and Mrs. Moken were already living there?
8 A. Correct.
9 Q. You heard discussions regarding the garage on the
10 property?
11 A. Not right at that time. It wasn't until a little
12 bit after that when he started taking the roof out.
13 Q. There was something on the property when you
14 moved there?
15 A. Yes. The garage was there.
16 MS. ZERWITZ: In the Court's file, there were
17 photographs Mr. and Mrs. Fisher entered at the Zoning
18 Commissioner hearing. If I could have those back, please?
19 Thank you.
20 Q. I'm going to show you two photographs and direct
21 your attention to a structure in the photographs.

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1 Actually, I'll show you two first. Can you tell the Court
2 what is depicted in this photograph?
3 A. It's the original garage.
4 Q. Do you know when that photograph was taken?
5 A. It was taken in 1989.
6 Q. And you can tell that because?
7 A. That's when --
8 Q. Kodak stamped it on the back?
9 A. Yes.
10 Q. Does that fairly and accuractely reflect the
11 height of the garage at the time the picture was taken?
12 A. Yes.
13 Q. You heard some testimony regarding when the roof
14 was taken off the garage, is that correct?
15 A. That is correct.
16 Q. I'm going to show you another phogoragraph and
17 ask you if yu can describe what's there?
18 MR. FREILICH: Objection.
19 A. The garage, showing the roof is missing.
20 THE CHAIRMAN: Whoops. Basis?
21 MR. FREILICH: She's ahead of herself. She

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1 hasn't laid a proper foundation.
2 THE CHAIRMAN: Sustained.
3 Q. I show you a photograph. Do you know who took
4 that photograph?
5 A. Yes. Most likely, I did.
6 Q. Do you know when it was taken?
7 A. It was taken on Memorial Day in 1993.
8 Q. How do you know what year that was taken?
9 A. It's dated on the back.
10 Q. What is in the photograph?
11 MR. FREILICH: Objection. Speaks for itself
12 THE CHAIRMAN: Sustained.
13 MS. ZERWITZ: Your Honor, I'd like to have these
14 two photographs marked as Protestant's Exhibit 2A and B.
15 MR. FREILICH: Which is which?
16 THE CHAIRMAN: 2A would be the first --
17 MR. FREILICH: Objection. Failed to lay the
18 proper foundation with respect to "B."
19 THE CHAIRMAN: I think he said he did take both
20 of them, if I recall, so we'll take them in.
21 Q. Can you describe for the Court what changes were

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1 made to the garage following the taking of those two
2 photographs in 1989, 1993?
3 A. Yes. In '97, just two walls.
4 Q. I'm actually going to take you back before then.
5 Did you hear testimony as to a ramp? Is there anything
6 that would was done in here, that you can recall?
7 MR. FREILICH: Objection. It's irrelevant.
8 THE CHAIRMAN: There was some questioning about
9 the ramp. We'll let it in.
10 A. Which the front of the ramp, the part going down,
11 or the -- I'm not sure what you're asking me.
12 Q. I'm going to show you a photograph and ask do you
13 know who took this photograph?
14 A. Yes. I did.
15 Q. Do you know when this photograph was taken?
16 A. Yes. It would be Memorial Day of the same year,
17 '93.
18 Q. How do you know when this picture was taken?
19 A. It's on the back, dated on the back.
20 Q. What, in regard to the garage, is reflected in
21 that photograph?

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1 MR. FREILICH: Objection. Speaks for itself.
2 THE CHAIRMAN: Sustained.
3 MS. ZERWITZ: I'd like to have marked and moved
4 as evidence, Protestant's Exhibit No. 3.
5 Q. Does that photograph fairly and accurately
6 reflect the work done on the garage at the time you took
7 the picture?
8 A. Yes.
9 Q. From 1993 to 1997, was anything done to the
10 garage?
11 A. No.
12 Q. When was the next time something was done to the
13 garage?
14 A. It was in the summer of '99. Two end walls were
15 taken -- they took them down.
16 Q. Who's "they"?
17 A Whoever was working there.
18 Q. Was Mr. Moken involved in that?
19 A. I did not see him over there.
20 Q. Did there come a time you filed a protest to the
21 rebuilding of the garage?

1 A. Yes.
2 Q. What was the basis for your objection to the
3 garage?
4 A. It was waterfront property and it blocked our
5 view as far as seeing the river, towards the bay and all,
6 and it blocked our windows and a portion of our deck.
7 Q. Did the original garage block your windows?
8 A. No, not out on the deck, it didn't. It
9 partically blocked it, yes, yes, it did. The original
10 garage partially blocked it.
11 Q. Partially blocked your deck?
12 A. No, not the deck. Just the inside porch windows.
13 Q. What does the new garage do?
14 A. It blocks all of the inside window and a portion
15 of the deck, if you're sitting on the deck. Plus we have
16 a second -- an attic finished upstairs. The new roof
17 would totally block that, too.
18 Q. I'm going to show two additional photographs and
19 ask if you can identify them. Do you know who took these
20 photographs?
21 A. I did.

1 Q. When did you take them?
2 A. I took them in 2001.
3 Q. Do they fairly and accurately depict the view of
4 the garage at that point in time?
5 A. Yes.
6 Q. What portion of the garage as it stands now was
7 not in existence prior to these photographs, prior to the
8 new garage being built?
9 A. Well, on this one here.
10 MS. ZERWITZ: Let's move these into evidence as
11 Protestant's 4A and B.
12 Q. I'm showing you what marked as Protestant's 4A.
13 Can you tell the Court what in this photograph would not
14 have been there on the original garage?
15 A Yes. From about here, it would have been six
16 foot, approximately six foot.
17 Q. So that entire garage corner, you can say, was
18 not there originally?
19 THE CHAIRMAN: He has to identify that on the
20 photo.
21 Q. Why don't you come on forward and approach the

1 Board?
2 THE CHAIRMAN: You can mark them with a pen, if
3 you'd like.
4 Q. Mark on this photograph what was not originally
5 there?
6 A. Just about this much right here (indicting).
7 Q. Mark it all the way up.
8 A. (Indicating).
9 Q. As far as the height portion of it, what was not
10 there originally?
11 A. It would be approximately this much.
12 (Indicating).
13 THE CHAIRMAN: It forms a "T" section.
14 MS. ZERWITZ: We move those in evidence as
15 Protestant's 4, I believe.
16 MR. FREILICH: No objection.
17 THE CHAIRMAN: Admitted.
18 Q. As far as other than the height and the length of
19 the garage, were there any other changes that were made to
20 the garage?
21 A. Yes. The -- well, they added the six foot on the

1 waterfront. Of course, the height was changed. And then
2 they added approximately four foot to the street side.
3 Q. When did they do that?
4 A. When they put up the studding in it.
5 Q. Was that all done around 1999, or earlier?
6 A. Well, the wood part of the actual frame was done
7 in '99.
8 Q. And that was also the four feet added to the
9 front?
10 A. Yes.
11 Q. What about the width?
12 A. It's definitely wider compared to the older
13 garage. As far as the -- I guess it would have been '98,
14 around spring or fall, summer, fall of '98, they were
15 putting -- I seen them put cement in over there.
16 I don't know what they were doing at the time,
17 so -- but it looked like they might have been putting
18 footers in, but they didn't do the cement work and the
19 building all at the same time. That was done at different
20 times.
21 Q. When was the cement work done?

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1 A. The portion I was just talking about was probably
2 '98, around summertime.
3 Q. Did you see them doing this work?
4 A. Yes, I did.
5 Q. Prior to Mr. Moken making the changes to the
6 garage, what, if anything, was the garage used for, could
7 you tell?
8 A. Just storage.
9 Q. Did you ever see him keep his automobile there?
10 A. No, I never seen him keep his auto there.
11 Q. What does he do with the garage now?
12 A. The ones that's there now, he parks his cars
13 there occasionally.
14 Q. One of the issues that we have been talking about
15 today deals with a side yard setback. Do you know where
16 your property line is?
17 A. Only by looking at the fence. I just assumed the
18 fence was right.
19 Q. Do you know, or did you have occasion to measure
20 how far the garage is from the fence?
21 A. Yes. The measurement we got was about eighteen

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1 inches.
2 Q. But you have no knowledge where the property line
3 is, either?
4 A. No, I don't.
5 Q. Other than the fact it is now blocking your
6 window and your view from your deck, how does this
7 interfere with the enjoyment you have of your property?
8 A. It's so close, the homes are so close, it just
9 totally blocks everything. It's a giant wall there.
10 Q. Have you thought about what effect it would have
11 on your property if you were to try to sell it some point
12 in time?
13 MR. FREILICH: Objection.
14 THE CHAIRMAN: Sustained.
15 Q. Let me show you one last photograph.
16 MS. ZERWITZ: May I see Protestants' Exhibit No.
17 13?
18 Q. I'm showing you one additional photograph. Who
19 took this picture?
20 MR. FREILICH: Would you ask the witness and the
21 lawyer to speak louder?

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1 Q. I show you one additional photograph and ask you
2 to tell the Court who took it.
3 A. I took it.
4 Q. When did you take this picture?
5 A. October 2001.
6 Q. In regard to the width of this garage, is this
7 the same width, can you tell, from the original garage?
8 MR. FREILICH: Objection. Number one, the
9 picture hasn't been admitted. Two, it speaks for itself,
10 and number three, I can't deal what the question refers to
11 because there's nothing out there for reference.
12 THE CHAIRMAN: Do you want to restate the
13 question?
14 MS. ZERWITZ: Sure.
15 Q. Does this photograph fairly and accurately depict
16 the garage at the time you took the picture?
17 A. Yes.
18 MS. ZERWITZ: I move the photograph into
19 evidence as Protestants' Exhibit No. 5.
20 MR. FREILICH: No objection.
21 THE CHAIRMAN: Admitted.

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1 Q. In the photograph, can you tell, if you know,
2 whether the width of this garage is the same as the width
3 of the original garage?
4 A. No. It's wider.
5 MR. FREILICH: Objection. It will speak for
6 itself, and the orignal garage would not be in the
7 photograph.
8 THE CHAIRMAN: He can ask answer.
9 Q. How can you tell from this photograph that this
10 garage is wider than the original garage?
11 A. The owners previous there, the Browns, they
12 parked their car in there, and had enough room to get your
13 car in there, but could barely get the door open to get
14 out of the car. That's what I'm going by. That looks
15 much wider.
16 Q. The original owners, the Browns, how do you know
17 how they used garage?
18 A. Just by being around there.
19 Q. Sir, you testified that you bought the house in
20 1988, but you were around the property earlier than that
21 point in time?

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1 A. My wife lived there, yes.
2 MS. ZERWITZ: Move into evidence Protestants'
3 Exhibit 5.
4 Q. You had occasion to observe the prior owner's use
5 of the garage?
6 A. Yeah, I think I did.
7 MS. ZERWITZ: Court's indulgance, please.
8 I have no further questions.
9 THE CHAIRMAN: Cross.
10 CROSS EXAMINATION
11 BY MR. FREILICH:
12 Q. I believe in your testimony you said you filed a
13 protest. What caused you to file that protest?
14 A. About the building that was being built?
15 Q. Yes.
16 A. The guy that was building it, I asked him, when I
17 seen how large it was, if he had a permit.
18 He said no, they didn't get a permit. So I told
19 him, Better tell Mr. Moken to call me because -- well, I
20 didn't tell him I was going to report him, but, you know,
21 Just, You better have Mr. Moken call me.

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1 Q. Did you report him, didn't you?
2 A. Yes. My wife made the call.
3 Q. As a matter of fact, she called Councilman
4 Gardinia, didn't she?
5 MS. ZERWITZ: Objection.
6 THE CHAIRMAN: Sustained.
7 Q. Do you know who she called?
8 MS. ZERWITZ: Objection.
9 THE CHAIRMAN: Sustained.
10 Q. Do you know when she made the call?
11 MS. ZERWITZ: Objection.
12 THE CHAIRMAN: Sustained.
13 Q. Was it shortly after she made the call that the
14 order came about to cease and desist the construction on
15 the garage?
16 MS. ZERWITZ: Objection.
17 THE CHAIRMAN: You can answer. If he knows.
18 A. Approximately about a week.
19 Q. Since that occurred in 1999, in March, then the
20 construction you're complaining about would have been in
21 March of 1999, correct?

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1 A. That's correct.
2 Q. Now, I'd like to call your attention to what's
3 been admitted as petition for variance, and there's a plat
4 attached to it.
5 This is a copy of the plat, at least a portion of
6 it, for the Baurenschmidt Manor development, correct?
7 A. Correct.
8 Q. And the original plat contains the notation that
9 the existing dwelling front is on that?
10 A. I see it says "front" here. I don't know who
11 wrote that on there.
12 Q. Where's the front door to your house?
13 A. Out here on the water.
14 Q. It's not facing Baurenschmidt Manor?
15 A. No, it isn't.
16 Q. What about your neighbor's, the Kettings?
17 They have a door on the house facing Baurenschmidt, right?
18 A. Yes, they do.
19 Q. That's the door they use the most?
20 A. I don't know that.
21 Q. Do you have a door on your street side to

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1 Baurenschmidt?
2 A. Yes, we do.
3 MR. FREILICH: I need the exhibits that were
4 introduced a few minutes ago, the photographs.
5 Q. Let's take a look at Protestants' Exhibit 4A.
6 MR. FREILICH: Can I have that plat back again,
7 if I may? Thank you.
8 Q. Now, as I understand it, you were standing on
9 your deck when you took Exhibit 4A, correct?
10 A. That is correct.
11 Q. So you would be looking basically, if the
12 waterfront is ninety degrees -- zero degrees to the top of
13 the paper -- you would be looking ninety degrees to the
14 right when you took that photograph, wouldn't you?
15 A. That is correct.
16 Q. So on your deck, even with the trees, you
17 couldn't see the water, could you?
18 A. Yes, we could.
19 Q. Could you see through those trees at that angle?
20 A. You mean if the building wasn't there?
21 Q. Yes.

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1 A. Yes.
2 Q. Are there other buildings? Wouldn't your line of
3 sight directly at ninety degrees be across all those
4 building lines?
5 A. There are no buildings there.
6 Q. But aren't there trees?
7 A. Just Mokens, now.
8 Q. What is the grade between your house and the
9 Mokens'?
10 A. The grade?
11 Q. Uh-huh.
12 A. Ours is a little bit higher than theirs is,
13 certain portions of it. Other portions, it's level.
14 Q. How about in this picture? Isn't that a little
15 higher than the Mokens' yard in Exhibit 2B?
16 A. Yes. From there, that would be higher than their
17 front yard.
18 Q. So there would be four shortening, and it would
19 make it look smaller than otherwise when you took --
20 MS. ZERWITZ: Objection.
21 THE CHAIRMAN: Sustained.

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1 Q. Does that shed belong to you?
2 A. Yes, it does.
3 Q. How close is that to the side yard?
4 A. It's right there by the fence.
5 Q. So it's closer than two and a half feet?
6 A. No, I won't say that.
7 Q. I didn't think you would, would you?
8 MS. ZERWITZ: Objection.
9 THE CHAIRMAN: Strike that.
10 Q. You took Protestants' Exhibit No. 5, correct?
11 A. Yes.
12 Q. I'm going to show you a similar view with a
13 larger picture.
14 MR. FREILICH: I forgot what number we're up to?
15 THE CHAIRMAN: No. 20.
16 Q. This sort of basically looks like the back of
17 your house which is on on the left, and your neighbors,
18 the Mokens, is on the right, correct?
19 A. Yes.
20 Q. Now, show me on here where you saw them putting
21 in cement?

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1 A. It would have been up in in area here.
2 MR. FREILICH: Let the record show that he's
3 pointing to an area closer to the water than the external
4 heating fuel tank.
5 THE CHAIRMAN: Why don't we mark it?
6 MR. STAHL: Why don't you mark it and we'll
7 decide where it is.
8 Q. Would you put a circle and your initials on it.
9 A. (Indicating).
10 Q. Did you go up and actually look to see where this
11 is compared to the old foundation?
12 A. Yes.
13 Q. Are they on the same foundation?
14 A. Yes, on the left side.
15 Q. That would be the side closer to your house?
16 A. Yes.
17 Q. On the right side, did you measure it?
18 A. No.
19 Q. Can you tell?
20 A. At the time they did the cement work, I didn't
21 pay that much attention.

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1 Q. Your shed, which is sitting in the side yard, was
2 it in violation --
3 MS. ZERWITZ: Objection.
4 THE CHAIRMAN: Objection sustained.
5 Q. Initial that.
6 THE CHAIRMAN: Mark what?
7 MR. FREILICH: The shed.
8 MS. ZERWITZ: Objection. You sustained the
9 objection where his shed is located.
10 THE CHAIRMAN: It wasn't where it was located.
11 It was a question whether he was in violation of the
12 setback regulations.
13 MR. FREILICH: He already testified it was.
14 MR. STAHL: But it's not relevant. It's not
15 germain, and it's not necessary.
16 MS. ZERWITZ: Thank you.
17 MR. FREILICH: Move No. 20 be admitted.
18 MS. ZERWITZ: No objection.
19 THE CHAIRMAN: Admitted.
20 Q. How would you feel about Mr. and Mrs. Moken
21 rebuilding that same garage that was there?

1 MS. ZERWITZ: Objection.
2 THE CHAIRMAN: Sustained.
3 Q. Do you have a feeling if they were to have a
4 garage exactly where this one was?
5 MS. ZERWITZ: Objection.
6 THE CHAIRMAN: Sustained.
7 Q. Do you recall that you testified at the hearing
8 before Deputy Kotrocco with respect to wanting a garage
9 there at all?
10 MS. ZERWITZ: Objection.
11 THE CHAIRMAN: He can answer.
12 A. No, I don't remember.
13 Q. What about in front of Commissioner Schmidt, do
14 you recall you testified about a garage?
15 MS. ZERWITZ: Objection.
16 THE CHAIRMAN: Sustained.
17 MR. FREILICH: No further questions.
18 THE CHAIRMAN: I just have one question. Your
19 house is actually located on Martin Drive?
20 THE WITNESS: That is correct.
21 THE CHAIRMAN: So you're the last house on Martin

1 Drive opposite the bed and breakfast facility?
2 THE WITNESS: That's correct.
3 THE CHAIRMAN: Then the petitioners' house is the
4 first house on Baurenschmidt as it makes that curve around
5 and joins in with Martin Drive?
6 A. That's correct. Baurenschmidt makes the curve,
7 stays Baurenschmidt.
8 THE CHAIRMAN: Then you're the last house on
9 Martin?
10 THE WITNESS: Yes.
11 THE CHAIRMAN: Does that create any questions?
12 MS. ZERWITZ: I have one redirect.
13 REDIRECT EXAMINATION
14 BY MS. ZERWITZ:
15 Q. Mr. Fisher, counsel asked you a question about
16 your view of the water. I'm going to show you a
17 photograph and ask you if you know who took this
18 photograph?
19 A. I did.
20 Q. When was this taken?
21 A. Memorial Day of '93.

1 Q. How do you remember the date?
2 A. It was Memorial Day, and -- oh, its on the back
3 there.
4 Q. Does this fairly and accurately depict the view
5 of the water from your porch prior to the new garage being
6 built?
7 A. Yes, it does.
8 MS. ZERWITZ: May I have it marked and entered in
9 evidence as Protestant's Exhibit No.6.
10 THE CHAIRMAN: Admitted.
11 MS. ZERWITZ: I have no further questions at this
12 time.
13 THE CHAIRMAN: Mr. Freilich?
14 MR. FREILICH: I have nothing further.
15 THE CHAIRMAN: Okay. During the break, I asked
16 the other Board members if they would prefer to have
17 briefs written in the case, and I think the Board would
18 like to have briefs submitted to us in lieu of closing
19 argument, unless you want any closing remarks?
20 You're certainly welcome to do so, but we would
21 prefer briefs.

1 (Discussion held off the record.)
2 THE CHAIRMAN: We've set a date of May 13, and
3 if you need an extension, get together and let Ms. Bianco
4 know what you come across with.
5 Okay. If there's nothing further, I appreciate
6 the presentation on the part of both counsel, and we'll
7 stand adjourned.
8 (Hearing concluded.)
9 * * * * *
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STATE OF MARYLAND)
) ss
COUNTY OF BALTIMORE)

I, Carolyn E. Peatt, a Notary Public of the State of Maryland, County of Baltimore, do hereby certify that the above-indicated proceedings were recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 25th day of March 2002.

_____
Carolyn E. Peatt
Notary Public

My Commission expires June 4, 2003.

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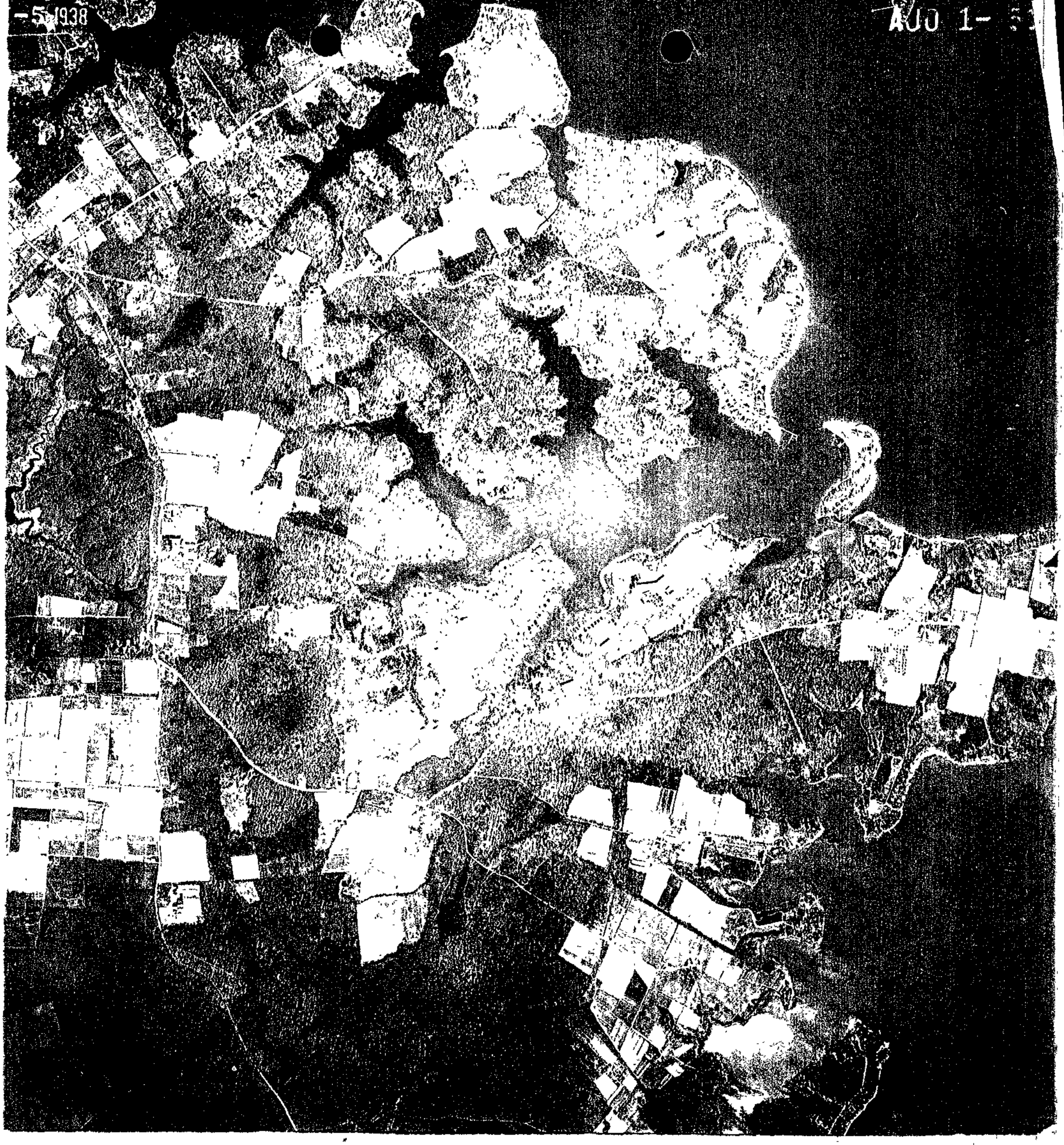


April 5, 1938 1" = 1000 SCALE AJO 1-51

↑N 2400 Bauernschmidt drive

TRUE TEST COPY
Dept. of Permits and Development Management

PET#3 3/12/02

January 8, 1954 1" = 300 SCALE 431-13-1929

↑N 2400 Bauernschmidt drive

TRUE TEST COPY
[redacted]
Dept. of Planning and
Development Management

PET #4 [redacted] 3/12/02

april 3, 1961

1" = 1000 SCALE

556-5-8

↑N

2400 Bauernschmidt drive

TRUE TEST COPY
3/12/02
Dept. of Permits and
Development Management

PET #5 3/12/02

April 1, 1977

1" = 2000 SCALE

BA 28-5

↑N

2400 Bauernschmidt drive

TRUE TEST COPY
3/12/02
Dept. of Permits and
Development Management

PET #6 3/12/02

Baltimore ıty
Department of Permits and
Development Management

Code Inspectic 'nd Enforcement
County Office L ıing
111 West Chesapeake Avenue
Towson, Maryland 21204

Code Enforcement: 410- 887-3351 Extension_____
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE VIOLATION NOTICE

VIOLATION(S) OF TITLE 3, 7, 18, 24, OR 26 OF THE BALTIMORE COUNTY CODE, ZONING, OR OTHER CODES, REGULATIONS, AND POLICIES AS INDICATED BELOW:

Violation Notice No. 112311

Case No.:

Election District 15 Permit No. —

Name (s) Tony Moken

Address 2400 Bauernschmidt Dr

Location of Violation (if different than address) _____

Vehicle License No.: _____ Vehicle ID: _____

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

County Code:
§§ _____
§§ _____

Zoning Regulations:
§§ _____
§§ _____

Building Code (BOCA):
§§ 107.1
§§ Permits Required

Livability Code (18-66):
§§ _____
§§ _____

Investment Property Act (7-66):
§§ _____

Electrical Code (NEC):
§§ _____

Plumbing Code (NSPC):
§§ _____

Dwelling (CABO):
§§ _____

Other: §§ _____

COMMENTS OR OTHER VIOLATIONS:

Secure permit for garage appox 14 x 36 x 16' Structure at this time is over ~~15~~ 15' in height

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE _____ FAILURE TO COMPLY WILL RESULT IN THE PENALTIES DESCRIBED ON THE REVERSE SIDE OF THIS VIOLATION NOTICE.

DATE ISSUED: _____ **INSPECTOR:** _____

STOP WORK NOTICE

PURSUANT TO INSPECTION AND IDENTIFICATION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT.

THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN: 3/26/99

DATE ISSUED: 3/12/99 **INSPECTOR:** Rodney Larrick

IMPORTANT INFORMATION ON FINES AND PENALTIES PRINTED ON REVERSE SIDE. PLEASE READ CAREFULLY.

PET#8 3/12/02 VIOLATION SITE

APPLICATION FOR PERMIT
BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 4-25-02
OEA: TLM

PERMIT #: B
RECEIPT #: 7
CONTROL #: MR
XREF #:

FEE: 60+5
PAID:
PAID BY:
INSPECTOR:

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

BUILDING 1 or 2 FAM. ✓
CODE CODE
BOCA CODE

TYPE OF IMPROVEMENT
1. ✓ NEW BLDG CONST
2. ___ ADDITION
3. ___ ALTERATION
4. ___ REPAIR
5. ___ WRECKING
6. ___ MOVING
7. ___ OTHER

PROPERTY ADDRESS 2400 Bauernschmidt Dr. ☐ YES ☑ NO
SUITE/SPACE/FLOOR
SUBDIV: BAUERSCHMIDT MANOR ☐ DO NOT KNOW
TAX ACCOUNT #: 1513752980 DISTRICT/PRECINCT 15
OWNER'S INFORMATION (LAST, FIRST)
NAME: Moken, Susan & Anthony J
ADDR: 2400 Bauernschmidt Dr Rt 1

DOES THIS BLDG. HAVE SPRINKLERS YES ___ NO ___

APPLICANT INFORMATION
NAME: Moken, Anthony
COMPANY:
STREET 2400 Bauernschmidt Dr., Rt 1
CITY,ST,ZIP Baltimore, Md. 21221
PHONE #: 686-1041 MHIC LICENSE #:
APPLICANT SIGNATURE: Anthony J Moken DRC#
PLANS: CONST ___ PLOT ___ PLAT ___ DATA ___ EL 2 PL 2
TENANT
CONTR: owner
ENGNR:
SELLR:

DESCRIBE PROPOSED WORK: Construct a detached garage - side/rear of property 13'X30'X15' = 450 SF

CBCA

FLOOD ZONE B/C
FEMA Panel #445
el. - 14-16'

NE 1-J

TYPE OF USE

RESIDENTIAL
01. ___ ONE FAMILY
02. ___ TWO FAMILY
03. ___ THREE AND FOUR FAMILY
04. ___ FIVE OR MORE FAMILY (ENTER NO UNITS)
05. ___ SWIMMING POOL
06. ✓ GARAGE
07. ___ OTHER

NON-RESIDENTIAL
08. ___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ___ CHURCH, OTHER RELIGIOUS BUILDING
10. ___ FENCE (LENGTH ___ HEIGHT ___)
11. ___ INDUSTRIAL, STORAGE BUILDING
12. ___ PARKING GARAGE
13. ___ SERVICE STATION, REPAIR GARAGE
14. ___ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ___ OFFICE, BANK, PROFESSIONAL
16. ___ PUBLIC UTILITY
17. ___ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ___ SIGN
19. ___ STORE ___ MERCANTILE ___ RESTAURANT SPECIFY TYPE
20. ___ SWIMMING POOL SPECIFY TYPE
21. ___ TANK, TOWER
22. ___ TRANSIENT HOTEL, MOTEL (NO. UNITS ___)
23. ___ OTHER

TYPE FOUNDATION
1. ___ SLAB
2. ___ BLOCK
3. ___ CONCRETE

BASEMENT
1. ___ FULL
2. ___ PARTIAL
3. ___ NONE

TYPE OF CONSTRUCTION
1. ___ MASONRY
2. ✓ WOOD FRAME
3. ___ STRUCTURE STEEL
4. ___ REINF. CONCRETE

TYPE OF HEATING FUEL
1. ___ GAS 3. ___ ELECTRICITY
2. ___ OIL 4. ___ COAL

TYPE OF WATER SUPPLY
1. ✓ PUBLIC SYSTEM ___ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM ___ EXISTS ___ PROPOSED

TYPE OF SEWAGE DISPOSAL
1. ✓ PUBLIC SEWER ___ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM
___ SEPTIC ___ EXISTS ___ PROPOSED
___ PRIVY ___ EXISTS ___ PROPOSED

CENTRAL AIR: 1. ___ 2. ___
ESTIMATED COST: $ 8,000 OF MATERIALS AND LABOR
PROPOSED USE: SFD + detached garage
EXISTING USE: SFD

OWNERSHIP
1. ✓ PRIVATELY OWNED 2. ___ PUBLICLY OWNED 3. ___ SALE 4. ___ RENTAL

RESIDENTIAL CATEGORY: 1. ✓ DETACHED 2. ___ SEMI-DET. 3. ___ GROUP 4. ___ TOWNHSE 5. ___ MIDRISE 6. ___ HIRISE
#EFF: ___ #1BED: ___ #2BED: ___ #3BED: ___ TOT BED: ___ TOT APTS/CONDOS: ___
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1. Y 2. N BATHROOMS ___ CLASS 04
POWDER ROOMS ___ KITCHENS ___ LIBER 612 FOLIO 081

BUILDING SIZE
FLOOR
WIDTH
DEPTH
HEIGHT
STORIES
LOT #'S 1
CORNER LOT
1. ___ YES 2. ___ N

LOT SIZE AND SETBACKS
SIZE 15,687
FRONT STREET
SIDE STREET
FRONT SETBK
SIDE SETBK NC/2'
SIDE STR SETBK
REAR SETBK 132'
ZONING

APPROVAL SIGNATURES		DATE
BLD INSP		
BLD PLAN		
FIRE		
SEDI CTL		
ZONING	CM 111	
PUB SERV		
ENVRMNT	CM 116	
	N.C.	
PERMITS	PET #13	3/12/02

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

reqs. Variance for in side yd. & for 24" in lieu of 30" Bldg. code ?

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 3-19-99

OEA: JB

HISTORIC DISTRICT/BLDG. ___ YES ✓ NO ___ DO NOT KNOW

PERMIT #: B-
RECEIPT #: A-
CONTROL #: RA
XREF #:

FEE:
PAID:
PAID BY:
INSPECTOR:

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

BUILDING 1 or 2 FAM. ✓
CODE CODE ✓
BOCA CODE

TYPE OF IMPROVEMENT
1.___ NEW BLDG CONST
2.___ ADDITION
3.___ ALTERATION
4.___ REPAIR
5. ✓ WRECKING
6.___ MOVING
7.___ OTHER

TYPE OF USE

RESIDENTIAL
01.___ ONE FAMILY
02.___ TWO FAMILY
03.___ THREE AND FOUR FAMILY
04.___ FIVE OR MORE FAMILY (ENTER NO UNITS)
05.___ SWIMMING POOL
06. ✓ GARAGE
07.___ OTHER

TYPE FOUNDATION
1.__ SLAB
2.__ BLOCK
3.__ CONCRETE

BASEMENT
1.__ FULL
2.__ PARTIAL
3.__ NONE

PROPERTY ADDRESS 2400 Bauernschmidt Dr
SUITE/SPACE/FLOOR
SUBDIV: BAUERNSCHMIDT MANOR
TAX ACCOUNT #: 1513752980
DISTRICT/PRECINCT 15

OWNER'S INFORMATION (LAST,FIRST)
NAME: ~~Anthony J. Moken~~
ADDR: Moken, Anthony & SUSAN
2400 BAUERNSCHMIDT DR

DOES THIS BLDG. HAVE SPRINKLERS YES ___ NO ✓

APPLICANT INFORMATION
NAME: Moken Anthony
COMPANY:
STREET 2400 Bauernschmidt Dr. Rd
CITY,ST,ZIP Baltimore, Md 21224
PHONE #: 686-1041 MHIC LICENSE #:
APPLICANT SIGNATURE: Anthony J Moken DRC#

PLANS: CONST___ PLOT___ PLAT___ DATA___ EL 2 PL 2
TENANT
CONTR: OWNER
ENGNR:
SELLR:

DESCRIBE PROPOSED WORK:
RAZE DETACHED GARAGE. TO BE TORN DOWN & DEBRIS TO BE HAULED TO AN APPROVED SANITARY LANDFILL IN ACCORDANCE WITH APPLICABLE COUNTY SITE REGULATIONS. NO UTILITIES. PERMIT EXPIRES 90 DAYS FROM DATE OF ISSUE.
GARAGE BUILT 1940's.
13' x 30' = 390 SF. WORK ALREADY DONE!

NON-RESIDENTIAL
08.___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09.___ CHURCH, OTHER RELIGIOUS BUILDING
10.___ FENCE (LENGTH ___ HEIGHT ___)
11.___ INDUSTRIAL, STORAGE BUILDING
12.___ PARKING GARAGE
13.___ SERVICE STATION, REPAIR GARAGE
14.___ HOSPITAL, INSTITUTIONAL, NURSING HOME
15.___ OFFICE, BANK, PROFESSIONAL
16.___ PUBLIC UTILITY
17.___ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18.___ SIGN
19.___ STORE ___ MERCANTILE ___ RESTAURANT
SPECIFY TYPE
20.___ SWIMMING POOL
SPECIFY TYPE
21.___ TANK, TOWER
22.___ TRANSIENT HOTEL, MOTEL (NO. UNITS ___)
23.___ OTHER

TYPE OF CONSTRUCTION
1.___ MASONRY
2.___ WOOD FRAME
3.___ STRUCTURE STEEL
4.___ REINF. CONCRETE

TYPE OF HEATING FUEL
1.___ GAS 3.___ ELECTRICITY
2.___ OIL 4.___ COAL

TYPE OF WATER SUPPLY
1. ✓ PUBLIC SYSTEM ✓ EXISTS ___ PROPOSED
2.___ PRIVATE SYSTEM ___ EXISTS ___ PROPOSED

TYPE OF SEWAGE DISPOSAL
1. ✓ PUBLIC SEWER ✓ EXISTS ___ PROPOSED
2.___ PRIVATE SYSTEM
___ SEPTIC ___ EXISTS ___ PROPOSED
___ PRIVY ___ EXISTS ___ PROPOSED

CENTRAL AIR: 1.___ 2.___
ESTIMATED COST: $100.00 OF MATERIALS AND LABOR

PROPOSED USE: SFD
EXISTING USE: SFD & DETACHED GARAGE

OWNERSHIP
1. ✓ PRIVATELY OWNED 2.___ PUBLICLY OWNED 3.___ SALE 4.___ RENTAL

RESIDENTIAL CATEGORY: 1.___ DETACHED 2.___ SEMI-DET. 3.___ GROUP 4.___ TOWNHSE 5.___ MIDRISE 6.___ HIRISE
#EFF:___ #1BED:___ #2BED:___ #3BED:___ TOT BED:___ TOT APTS/CONDOS:___
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1.__Y 2.__N BATHROOMS___ CLASS 34
POWDER ROOMS___ KITCHENS___ LIBER 12 FOLIO 81

BUILDING SIZE
FLOOR 390
WIDTH 13
DEPTH 30
HEIGHT
STORIES
LOT #'S 1
CORNER LOT
1.__ YES 2.__ N

LOT SIZE AND SETBACKS
SIZE 15687 SF
FRONT STREET 1
SIDE STREET 1
FRONT SETBK NC
SIDE SETBK
SIDE STR SETBK
REAR SETBK
ZONING

APPROVAL SIGNATURES		DATE
BLD INSP		
BLD PLAN		
FIRE		
SEDI CTL		
ZONING		
PUB SERV		
ENVRMNT	Neighborhood - Email	3-19-99
PERMITS		

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

PET #9 3/12/02

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 3-19-99

OEA: JB

HISTORIC DISTRICT/BLDG. [ ] YES [X] NO [ ] DO NOT KNOW

PERMIT #: B-
RECEIPT #: A-
CONTROL #: MR
XREF #:

FEE: 60+5
PAID: 65
PAID BY:
INSPECTOR:

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

BUILDING 1 or 2 FAM.
CODE CODE ✓
BOCA CODE

PROPERTY ADDRESS 2400 Bauernschmidt Dr
SUITE/SPACE/FLOOR
SUBDIV: BAUERNSCHMIDT MANOR
TAX ACCOUNT #: 1513752980
DISTRICT/PRECINCT 15

OWNER'S INFORMATION (LAST,FIRST)
NAME: Moken, Anthony & SUSAN
ADDR: 2400 Bauernschmidt

DOES THIS BLDG. HAVE SPRINKLERS YES ___ NO ✓

APPLICANT INFORMATION
NAME: Moken Anthony
COMPANY:
STREET 2400 Bauernschmidt Dr, Apt
CITY,ST,ZIP Baltimore, Md 21221
PHONE #: 686-1041 MHIC LICENSE #:
APPLICANT SIGNATURE: Anthony J Moken DRC#
PLANS: CONST — PLOT ___ PLAT — DATA — EL 2 PL 2
TENANT NA
CONTR: OWNER
ENGNR:
SELLR:

TYPE OF IMPROVEMENT
1. ✓ NEW BLDG CONST
2. ___ ADDITION
3. ___ ALTERATION
4. ___ REPAIR
5. ___ WRECKING
6. ___ MOVING
7. ___ OTHER

DESCRIBE PROPOSED WORK:

CONST 1 CAR DETACHED GARAGE ON SIDE OF PROPERTY.
13'x36' = 468SF. ~~HEIGHT NOT TO EXCEED 15' MAX.~~ to be variance
WALL ON 2' SIDE SETBACK WILL BE A ONE HOUR FIRE RATED WALL WITH NO OPENINGS.

VIOLATION NOTICE # 112311 - NO FEE.

TYPE OF USE

RESIDENTIAL
01. ___ ONE FAMILY
02. ___ TWO FAMILY
03. ___ THREE AND FOUR FAMILY
04. ___ FIVE OR MORE FAMILY (ENTER NO UNITS) ___
05. ___ SWIMMING POOL
06. ✓ GARAGE
07. ___ OTHER

NON-RESIDENTIAL
08. ___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ___ CHURCH, OTHER RELIGIOUS BUILDING
10. ___ FENCE (LENGTH ___ HEIGHT ___)
11. ___ INDUSTRIAL, STORAGE BUILDING
12. ___ PARKING GARAGE
13. ___ SERVICE STATION, REPAIR GARAGE
14. ___ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ___ OFFICE, BANK, PROFESSIONAL
16. ___ PUBLIC UTILITY
17. ___ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ___ SIGN
19. ___ STORE ___ MERCANTILE ___ RESTAURANT
SPECIFY TYPE
20. ___ SWIMMING POOL
SPECIFY TYPE
21. ___ TANK, TOWER
22. ___ TRANSIENT HOTEL, MOTEL (NO. UNITS ___)
23. ___ OTHER

CBCA

Floodzone B/C
Fence panel #445
el. 14-16' ±
NE 1-J

TYPE FOUNDATION
1. ✓ SLAB
2. ___ BLOCK
3. ___ CONCRETE

BASEMENT
1. ___ FULL
2. ___ PARTIAL
3. ✓ NONE

TYPE OF CONSTRUCTION
1. ___ MASONRY
2. ✓ WOOD FRAME
3. ___ STRUCTURE STEEL
4. ___ REINF. CONCRETE

TYPE OF HEATING FUEL
1. ___ GAS 3. ___ ELECTRICITY
2. ___ OIL 4. ___ COAL

TYPE OF WATER SUPPLY
1. ✓ PUBLIC SYSTEM ✓ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM ___ EXISTS ___ PROPOSED

TYPE OF SEWAGE DISPOSAL
1. ✓ PUBLIC SEWER ✓ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM
___ SEPTIC ___ EXISTS ___ PROPOSED
___ PRIVY ___ EXISTS ___ PROPOSED

CENTRAL AIR: 1. ___ 2. ___
ESTIMATED COST: $9,000
OF MATERIALS AND LABOR

PROPOSED USE: SFD & DETACHED GARAGE
EXISTING USE: SFD

OWNERSHIP
1. ✓ PRIVATELY OWNED 2. ___ PUBLICLY OWNED 3. ___ SALE 4. ___ RENTAL

RESIDENTIAL CATEGORY: 1. ✓ DETACHED 2. ___ SEMI-DET. 3. ___ GROUP 4. ___ TOWNHSE 5. ___ MIDRISE
#EFF: ___ #1BED: ___ #2BED: ___ #3BED: ___ TOT BED: ___ TOT APTS/CONDOS: ___ 6. ___ HIRISE
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1. Y 2. N BATHROOMS ___ CLASS 34
POWDER ROOMS ___ KITCHENS ___ LIBER 12 FOLIO 81

BUILDING SIZE
FLOOR 468
WIDTH 13
DEPTH 36
HEIGHT ~~16'~~
STORIES
LOT #'S 1
CORNER LOT
1. ___ Y'S 2. ___ N

LOT SIZE AND SETBACKS
SIZE 15687 SF
FRONT STREET
SIDE STREET
FRONT SETBK NC
SIDE SETBK 2'/NC
SIDE STR SETBK
REAR SETBK 135
ZONING

APPROVAL SIGNATURES		DATE
BLD INSP		
BLD PLAN		
FIRE		
SEDI CTL		
ZONING	111	
PUB SERV		
ENVRMNT	~~NTF~~ Dixon - OK To File	3-19-99
PERMITS		

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

PET #10 3/12/02

reqs. variance side setback & in side yard & ht. as well.

107799) THIS DEED Made this 8th day of August 1960 by and between
Otto F Unger & wf) Otto F Unger and Gertrude I Unger his wife of Baltimore County in
Deed to) the State of Maryland of the first part and William M Travers of
William M. Travers) the second part
----------) WITNESSETH that in consideration of the sum of Five Dollars and other good and valuable considerations the receipt of which is hereby acknowledged the said parties of the first part do grant and convey unto the said party of the second part his heirs and assigns in fee simple subject to the restrictions and conditions hereinafter set out all that tract of land situate in Baltimore County State of Maryland and described as follows that is to say

BEGINNING FOR THE SAME at a cherry tree now marked with six notches and standing at a point south forty three and one half degrees east ten and one half feet from the latch gate post of the gate entering the ground now being described and running thence north fifty two degrees west twenty-four perches to a stake set south seventy seven and one half degrees east nine feet from a large chestnut tree thence north one degree east five perches to the water of Hog Pen Creek thence running with and bounding on the water of said creek the eighteen following courses vizually north thirty seven degrees east four and eight tenths perches north thirty three degrees west four and two tenths perches north twenty three degrees west three and two tenths perches north six degrees east three and three tenths perches north forty two and one half degrees west three and eight tenths perches north three degrees east three and four tenths perches north twenty five degrees east five perches north thirty and three quarters degrees east four perches north forty nine degrees east four perches north thirty nine degrees east four perches north twenty one degrees west nine perches south eighty and one half degrees west six and eight tenths perches north seven degrees east two perches north seventy eight degrees east six perches north seventy and one half degrees east twelve perches north forty two and three quarters degrees east ten and six tenths perches north twenty eight and one quarter degrees east fourteen perches north thirteen and one half degrees east nine perches to the water Middle River thence running with and bounding on the water of said River the six following courses vizually south eighty six degrees east fourteen perches south seventy three and one quarter degrees east eighteen perches south fifty seven and one half degrees east seven perches south twenty and one half degrees east thirty four perches south nineteen and one quarter degrees east twenty four and four tenths perches south ten degrees east nine perches to the water of Greyhound Creek thence running with and bounding on the waters of said Creek the six following courses vizually south twelve degrees west seven perches south twenty three and one half degrees west twelve perches south fifty six and one half degrees west nine perches north fifty five and one half degrees west eight perches south eighty eight degrees west eight and eight tenths perches south fifty eight and one quarter degrees west six and three tenths perches to a stake planted by a fence thence running with and bounding on said fence the three following courses vizually north eighty three and one quarter degrees west ten perches north eighty eight and three quarter degrees west eight perches north eighty eight degrees west twenty perches to the beginning Containing forty acres more or less

BEING the first lot of ground described in a deed dated June 5 1940 and recorded among the Land Records of Baltimore County in Liber OWB Jr No 1107 folio 90 whereby said lot was granted and conveyed by Agnes A Bauernschmidt Widow unto the said Otto F Unger and

PET #2 3/12/02

Gertrude L Unger his wife

AND BEING known as "Bauernschmidt Manor" Plat of which has heretofore been filed among the Land Records of Baltimore County

TOGETHER with the buildings and improvements thereupon erected made or being and all and every the rights alleys ways waters privileges appurtenances and advantages to the same belonging or anywise appertaining and especially all aquatic and riparian rights

TO HAVE AND TO HOLD the said parcel of ground and premises above described and mentioned and hereby intended to be conveyed together with the rights privileges appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said parties of the second part as tenants by the entireties their assigns the survivor of them and the heirs and assigns of such survivor in fee simple subject to the following conditions and restrictions

1 Neither the said land nor any part thereof nor any building nor structure that may be erected thereon shall be sold conveyed leased rented or otherwise disposed of to any other than white gentile persons as the owners or tenants thereof

2 Nor shall the said lot or any part thereof or any building erected thereon at any time hereafter be used or occupied as a bone boiling establishment tannery slaughter house glue soap candle starch or gunpowder manufactory or for offensive or dangerous purposes nor for the keeping of pigs horses goats or cows nor for the use of burial or cemetery purposes

3 That no house except outbuildings shall be erected to cost less than Twenty Five Hundred ($2500.00) Dollars

4 That no club houses stores booths bath houses or other business places or place of amusement or places for public use shall be established unless with the assent of the vendors in writing

5 That no more than one dwelling shall be erected on any lot as shown on the plat and no house or porch shall be built nearer than twenty five feet to the street or road line as to those lots fronting along the water or nearer than ten feet to any other line or nearer than fifty feet from the river line As to those lots not fronting on the water no house or porch shall be built nearer than fifty feet to the street or road line nor nearer than ten feet to any other line

6 No wooden or other solid fence shall be erected except by the written consent of the vendors

7 Toilets and bath houses must be in either the dwelling or the garage and no garage outbuilding or tent shall be later used for dwelling purposes nor erected prior to the building of the dwelling except by the written consent of the vendors

8 That the layout of the lots as shown on the plan of BAUERNSCHMIDT MANOR shall be adhered to and no scheme of facing lots or houses in any other direction shall be permitted

9 That the vendors do not dedicate to public use but reserves unto themselves the fee in any and all streets roads lanes and alleys and that said streets drives lanes and paths shown on said plat are for the purpose of description only and not for the purpose of dedication and to use the same for gas water and sewer pipes electric light telephone and telegraph poles and wires and for such other reasonable uses as the said vendors may see fit or to close same absolutely except for the uses of the abutting owners thereon

10 That no privy or sewer for drainage or other purposes shall be installed on the property except it be either

a of a chemical type approved by the State Board of Health or

b where a household is quipped with a water system the drainage from such shall be made to pass through a properly built septic tank of a type approved by the State Board of Health

11 House plans to be submitted to vendors for approval before starting construction

AND the said parties of the first part hereby covenant that they have not done or suffered to be done any act matter or thing whatsoever to encumber the property hereby conveyed that they will warrant specially the property granted and that they will execute such further assurances of the same as may be requisite

WITNESS the hands and seals of the said grantors

TEST

Otto F Unger (SEAL)

Walter F Reese Jr

Gertrude L Unger (SEAL)

STATE OF MARYLAND CITY OF BALTIMORE to wit

I HEREBY CERTIFY That on this 28th day of August 1940 before me the subscriber a Notary Public of the State of Maryland in and for the City of Baltimore aforesaid personally appeared Otto F Unger and Gertrude L Unger his wife the above named grantors and they acknowledged the foregoing Deed to be their act

AS WITNESS my hand and Notarial Seal

Walter F Reese Jr

(Notarial Seal)

Notary Public

Recorded August 28 1940 at 1.30 PM and Exd per C Willing Browne Jr Clerk

---

157800) THIS DEED Made this 28th day of August in the year one thousand
William M Travers & wf) nine hundred and forty by and between William M Travers and
Deed to) Mary C Travers his wife of the City of Baltimore in the State
Otto F Unger & wf) of Maryland of the first part and Otto F Unger and Gertrude L
----------) Unger his wife of the second part

DEL PER TICKET FEB 13 1963

Witnesseth that in consideration of the sum of Five Dollars and other good and valuable considerations the receipt of which is hereby acknowledged the said parties of the first part do grant and convey unto the said parties of the second part as tenants by the entireties their heirs and assigns in fee simple all the right title and interest in and to all that tract of ground lying in Baltimore County and containing about forty (40) acres more or less and known as HAUERNSCHMIDT MANOR

BEING more particularly described in a deed of even date herewith and recorded or intended to be recorded among the Land Records of Baltimore County immediately prior hereto which was granted and conveyed by the said Otto F Unger and Gertrude L Unger to the said William M Travers and subject to the conditions and restrictions therein contained

TOGETHER with the buildings and improvements thereupon erected made or being and all and every the rights alleys ways waters privileges appurtenances and advantages to the same belonging or anywise appertaining

TO HAVE AND TO HOLD the said lot of ground and premises above described and mentioned and hereby intended to be conveyed together with the rights privileges appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of

the said parties of the second part as tenants by the entireties their heirs and assigns in fee simple subject to the conditions and restrictions contained in a deed from Otto F Unger and Gertrude L Unger his wife to William M Travers

And the said parties of the first part hereby covenant that they have not done or suffered to be done any act matter or thing whatsoever to encumber the property hereby conveyed that they will warrant specially the property granted and that they will execute such further assurances of the same as may be requisite

Witness the hands and seals of said grantors

William M Travers (SEAL)

TEST

Mary C Travers (SEAL)

Walter P Reese Jr

STATE OF MARYLAND CITY OF BALTIMORE to wit

I HEREBY CERTIFY That on this 28th day of August in the year one thousand nine hundred and forty before me the subscriber a Notary Public of the State of Maryland in and for the City of Baltimore aforesaid personally appeared William M Travers and Mary C Travers his wife the above named grantors and they acknowledged the foregoing Deed to be their act

As Witness my hand and Notarial Seal

Walter P Reese Jr

(Notarial Seal)

Notary Public

Recorded August 28 1940 at 1.30 P. M. and Exd Per C Willing Browne Jr Clerk

---

157801) THIS DEED Made this Twenty-eightieth day of August in the year
Carl H Shelton & wf) one thousand nine hundred and Forty by Carl Shelton and Blanche E
Deed to) Shelton his wife of Baltimore County State of Maryland parties of
Socrates Saraf) the first part and Socrates Saraf of Baltimore City State of
----------) Maryland party of the second part

DEL PER TRANSFER OCT 28 1940

Witnesseth that in consideration of the sum of Five ($5.00) Dollars and other good and valuable considerations the receipt hereof is hereby acknowledged the said Carl H Shelton and Blanche E Shelton his wife do grant and convey unto Socrates Saraf his heirs and assigns in fee simple all the lots of ground situate lying and being in Baltimore County and described as follows that is to say

Beginning for the same on the Northeastern most side of Windsor Road at the distance of 677 and 9/100 feet Northwesterly from the corner formed by the intersection of the Northeast side of Windsor Road with the Northwest side of the old Harford Road and running thence Northeasterly along the boundary line between lots #40 and #41 as shown on the Plat of Block 2 Section A of Harford Park which said Plat is recorded among the Plat Records of Baltimore County and Plat Book liber WPC #5 Folio 62 120 feet and thence Northwesterly 47 feet to a point and thence southwesterly parallel with the first line of this description 120 feet to the Northeast side of said Windsor Road and thence Southeasterly binding on the Northeast side of Windsor Road 47 feet to the place of beginning Being and comprising lots #41 #42 and the Southeastern 7 feet of lot #43 Block 2 as shown on the Plat of Harford Park which Plat is duly recorded among the Plat Records of Baltimore County in Plat Book WPC #5 Folio 62

Being a part of same lot of ground which by deed dated May 25, 1940 and recorded among the Land Records of Baltimore County in OWB Jr #1105 Folio 253 were granted and

Baltimore County Zoning Commissioner
Office of Planning
Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204

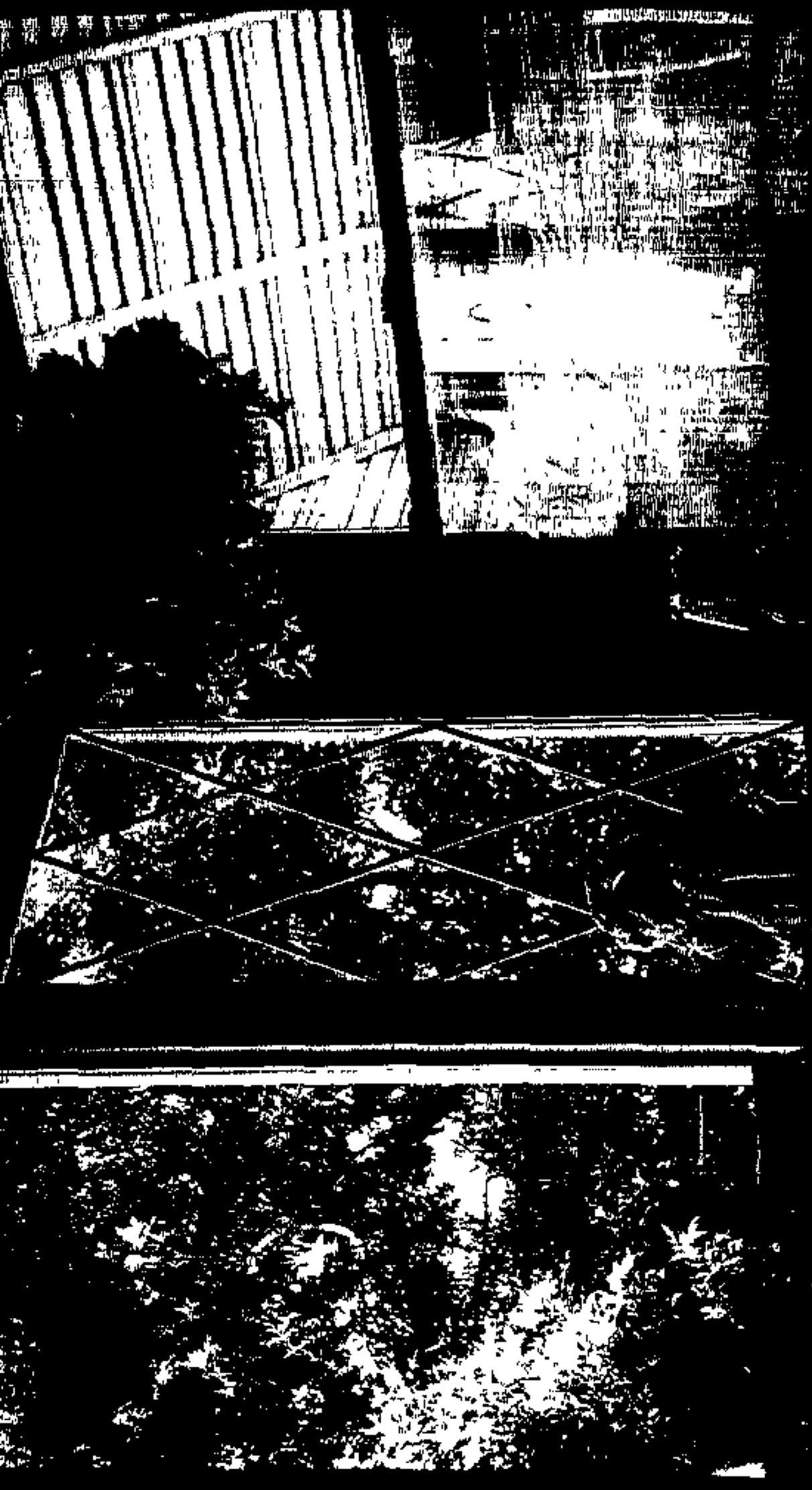
Photographs
#01-147-SPH

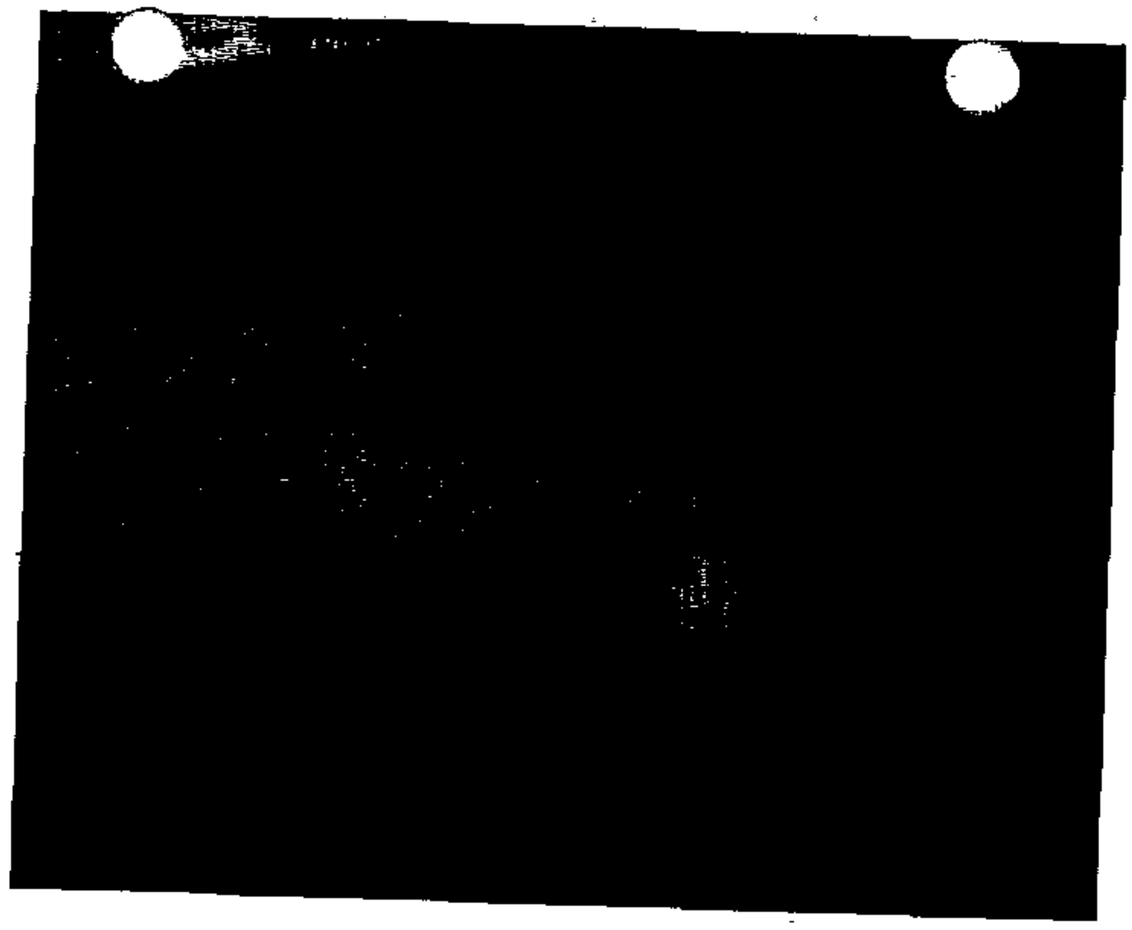
PROTESTANTS
1A-1E. Pet. Ex.

CBA

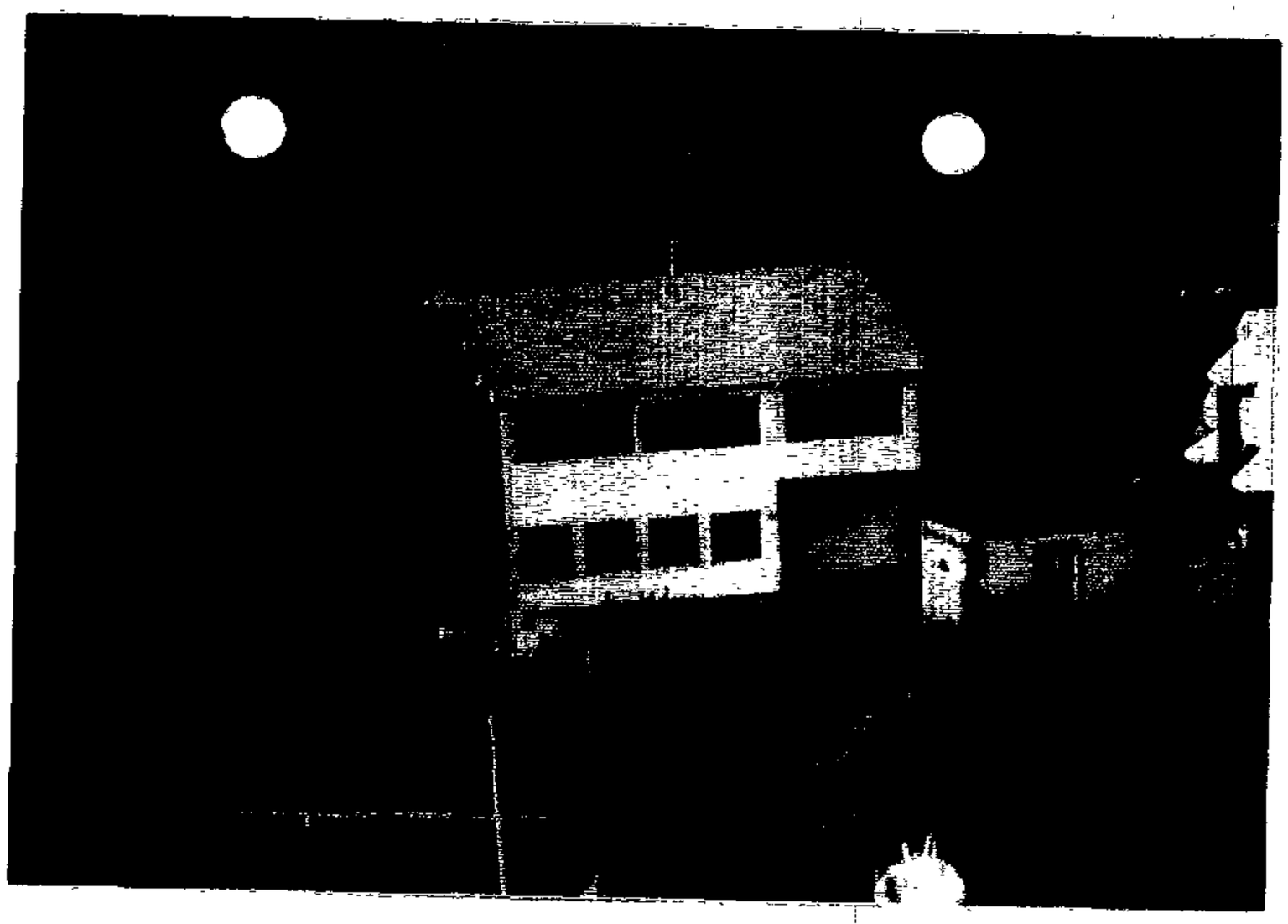
Protestants 2A-2B
3
4A-4B
5
6
} 7 Photos

Printed with Soybean Ink





PET #15 3/12/02

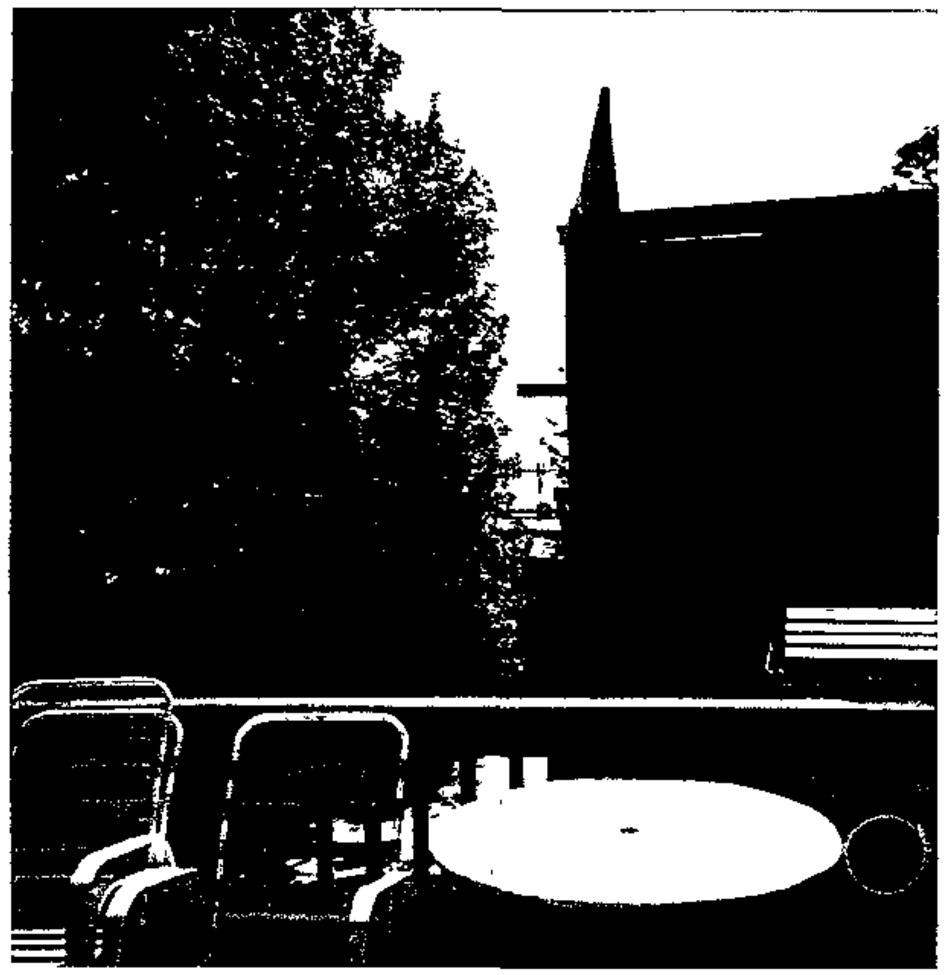


PET #7
3/12/02

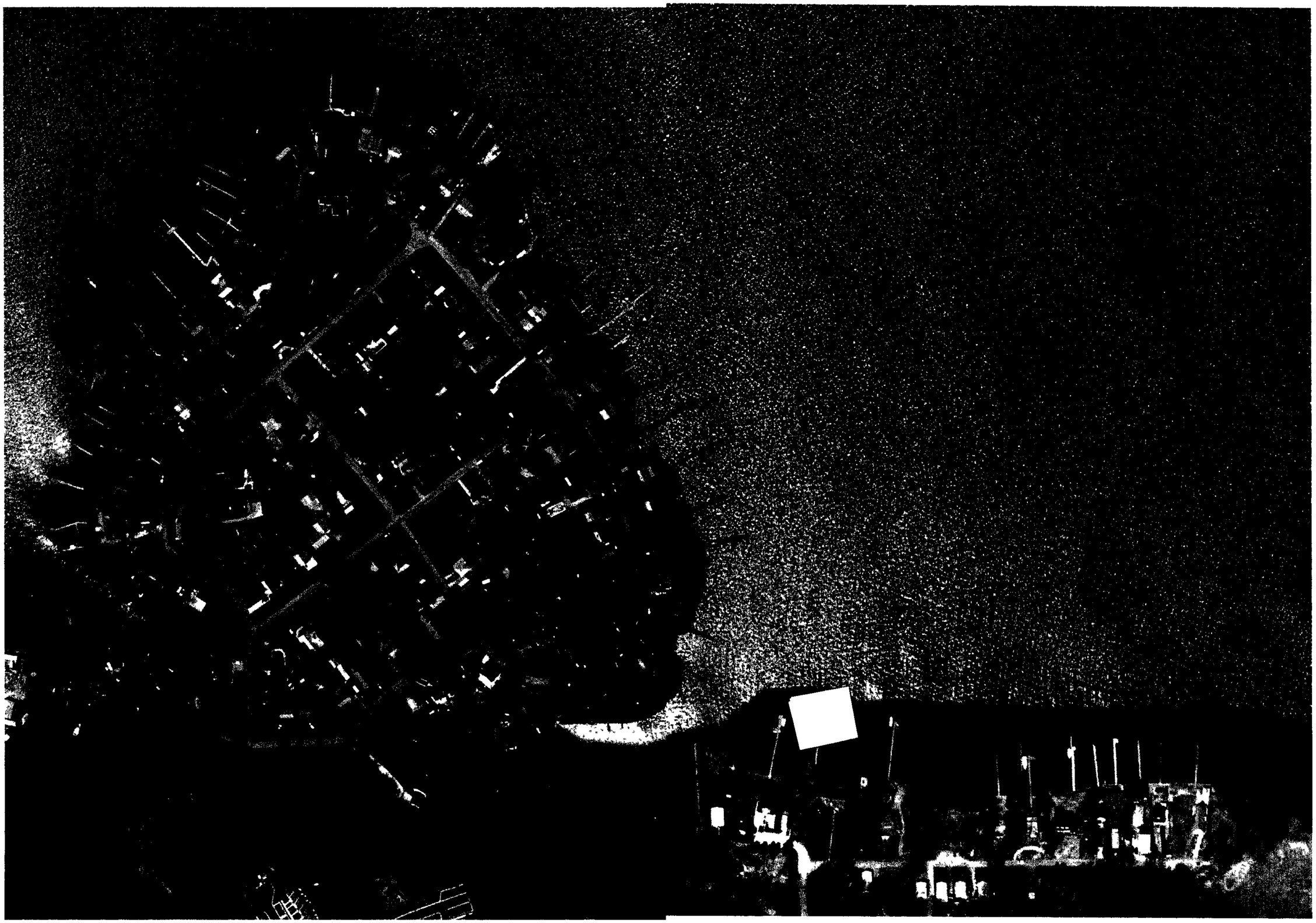
PET #20 3/12/02

PET #14 3/2/02

PET#16 3/12/02



PR 1A



Produced by Baltimore County GIS Services Unit
February, 2002
Date of data capture March, 2000
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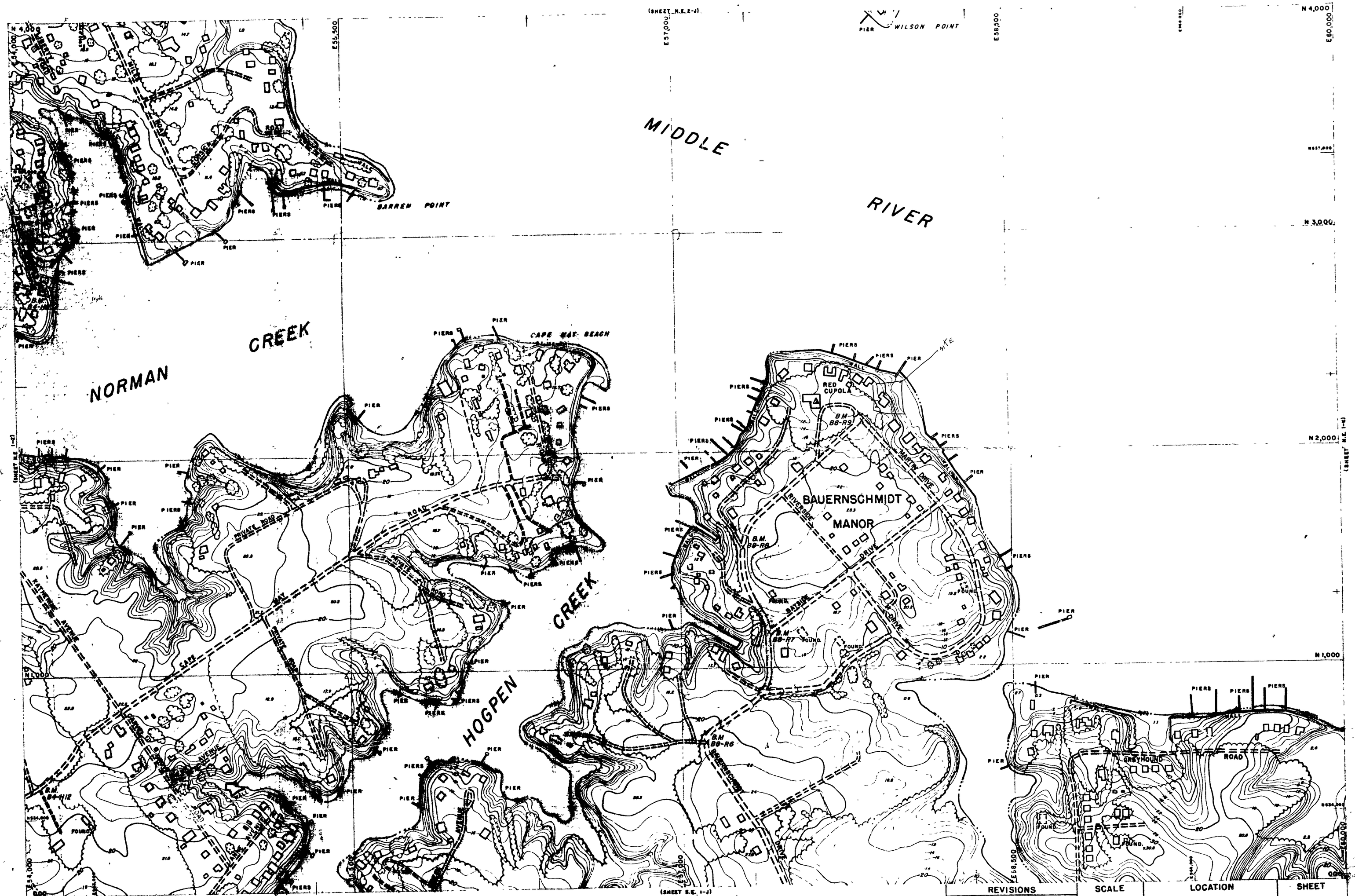
Herndon, Virginia
CD 106 Tile a478595a

200 0 200 400 600 800 Feet

Scale 1" = 200'

N

PET #1 3/12/02



1 - SE Z - SW
E - NE ZZ - NW

PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS			SCALE	LOCATION	SHEET
	BY	DATE	1" = 200'	BACK RIVER NECK CAPE MAY	N.E. 1-4
		9/17/81	DATE OF PHOTOGRAPHY DEC 1954		

Topography Compiled By Photogrammetric Methods

01-147-SPH

01-147-SPH

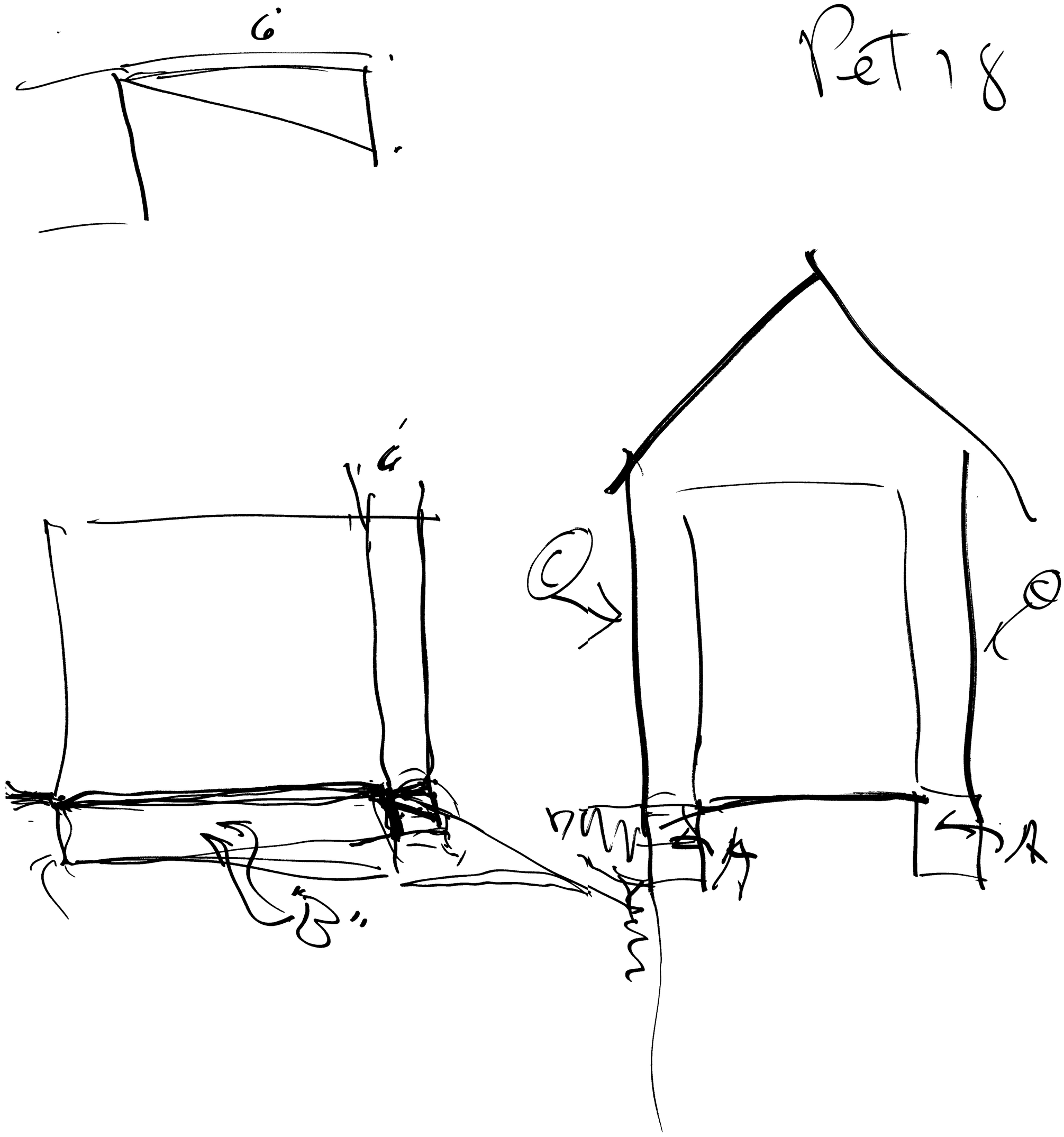
Pet 19

Side view
Cross Section

DRAW

Plan view
Sketch

Pet 18



PET #18 3/12/02