3/22/01

IN RE: PETITION FOR VARIANCE W/S Treadwell Court, 536' N of the c/l Wyndam Court (24 Treadwell Court) 8th Election District 3rd Council District Mark F. Davison Petitioner	* * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 01-220-A

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Administrative Variance filed by the owner of the subject property, Mark F. Davison. The Petitioner seeks relief from Section 1A04.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a building setback of 5 feet in lieu of the required 50 feet for a proposed addition, and to amend the First Amended Partial Development Plan, The Hill Farm, Plat VI thereof, accordingly. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1A.

This case was originally filed as an administrative variance, pursuant to Section 26-127 of the Baltimore County Code. That Section allows an individual to seek variance relief for an owner-occupied residential property without a formal hearing, provided certain conditions are met. First, the property is duly posted and advertised giving public notice of the requested relief. Under the Code, any property owner residing within 1,000 feet of the property in question can request a public hearing within 15 days of the sign posting, if that person objects to the relief requested. If no hearing is requested, the matter can be considered and an Order issued by the Zoning Commissioner/Deputy Zoning Commissioner, based on the documentation contained in the file.

In the instant case, the property was duly posted and within the requisite time period, the adjacent property owners, Patrick and Lois Welsh, filed a request for public hearing. The matter was therefore scheduled for a public hearing, which was held on March 7, 2001.

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Appearing at the hearing in support of the request were Mark Davison, property owner, and his wife, Sarah Davison. Also appearing on behalf of the Petitioners were Michael J. Dowling, Architect who prepared the building elevation drawings of the proposed addition, Richard E. Matz, Professional Engineer who prepared the site plan for this property, and Howard L. Alderman, Jr., Esquire, attorney for the Petitioners. Appearing as Protestants in the matter were Mr. & Mrs. Patrick G. Welsh, adjacent property owners, Bruce E. Doak, a Registered Land Surveyor retained by Mr. & Mrs. Welsh, and J. Carroll Holzer, Jr, Esquire, their attorney.

Preliminarily, the Petitioner amended his Petition for Administrative Variance to seek a lesser relief than originally requested. As noted above, the original request was for a 5-foot side yard setback in lieu of the required 50 feet for a proposed addition. However, the addition has been reoriented and relief is now sought to permit a side setback of 20 feet in lieu of the required 50 feet. In that the amendment is for a lesser variance than originally requested, the modified relief was accepted in open hearing and the matter proceeded on the amended request.

Mr. Matz testified and presented the plan. Testimony and evidence offered revealed that the subject property is a roughly square-shaped parcel, located on the west side of Treadwell Court, just south of that road's intersection with Chestnut Ridge Drive in Lutherville. The property is also known as Lot 59 of the subdivision known as The Hill Farm, and contains a gross area of 1.442 acres, more or less, zoned R.C.5. Presently, the site is improved with a two-story contemporary dwelling, which features a flat roof and an attached garage. Photographs of the property were submitted and described by Mr. Matz. Mr. Matz further testified that a 50' x 22' addition was proposed to be located on the north side of the existing dwelling, adjacent to the Welsh property. He described the site constraints associated with this property, including the existence of slopes, and the location of the well and septic areas. In sum, Mr. Matz opined that the proposed location for the addition was the most appropriate, and that relief should be granted to allow a reduced setback and development plan amendment as requested.

Mr. Dowling also testified. He is a registered Architect and has designed the proposed addition. He described the originally proposed addition which would have resulted in construction

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to within 5 feet of the side property line adjoining the Welsh property. However, the addition was modified after notice of the Protestants' objections was received. The addition now proposed will be three stories in height. The top story will be approximately 22' x 40' in dimension. The first floor level and basement, which is partially exposed, will be 22' x 50' each. Mr. Dowling indicated that it would be "very difficult" to attach the proposed addition to the existing wall, thus, the addition has been designed as what might be described as a wing on the north side of the dwelling. Mr. Dowling also indicated that it would be difficult, from a functional and aesthetic standpoint, to construct an addition to other portions of the house. He indicated that the addition would feature a new master bedroom, and additional living space. He also testified about the photographs submitted at the hearing and produced elevation drawings of the proposed addition.

Mr. Davison also testified. He has owned the property and resided thereon for 14 years. He recently married and anticipates raising a family on the property. He indicated that he consulted with a number of architects and eventually settled upon Mr. Dowling. Mr. Davison also described the proposed addition and opined that additional living area was needed within the house. In his opinion, the only practical location for the addition is as proposed. He indicated that he had scaled back his plans in an effort to satisfy the Welsh's objections.

Bruce Doak was called as an expert in land surveying by the Protestants. He described the area and argued that the subject property is not unique, when compared with other lots in the neighborhood, and opined that the proposed addition could be added to other portions of the house. In Mr. Doak's opinion, the construction of the addition where proposed would be detrimental to the adjacent lot (Lot 58) owned by Mr. & Mrs. Welsh.

Testimony was also received from Mrs. Welsh. She and her husband have lived in the area since 1981. Interestingly, Mr. & Mrs. Welsh own several lots in the area, which is the convergence of three different subdivisions, namely Fallswood, The Hill Farm, and Old Lyme. Originally, they purchased Lots 5 and 6 in the Fallswood subdivision and constructed their home on Lot 5, which contains 4.153 acres in area. Lot 6, which remains undeveloped, immediately abuts Lot 5 and contains 4.153 acres in area as well. Mrs. Welsh emphasized that she and her

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husband desired privacy and thus purchased the two building lots, even though only one has been developed. Later Mr. & Mrs. Welsh bought Lot 4 in the Old Lyme subdivision. Again, this property has not been developed but serves as a buffer and to provide additional means of privacy for Mr. and Mrs. Welsh. Lot 4 abuts Lot 5 to the north and Lot 59 of The Hill Farm subdivision to the east, which is the Petitioner's property. In fact, as shown in photographs that were taken during the winter, the Welsh's house is visible from the Davison lot. Finally, Mr. & Mrs. Welsh purchased Lot 58 of The Hill Farm subdivision. This lot immediately abuts the Davison lot on the north side. As shown on the site plan, all of these lots are contiguous to one another, even though they are not in the same subdivision. Testimony indicated that Mr. & Mrs. Welsh purchased these lots, recognizing that they could ultimately be developed with single family homes. However, at this time, they prefer to retain them in an undeveloped state to create a larger buffer between their home and other residences in the area. Nonetheless, the lots are all duly recorded and may be sold separately and ultimately developed.

This is a difficult case. From a practical standpoint, I am appreciative of the Davisons' desire to expand their house. It was indicated that their house is one of the smaller houses in the area and that additional space is needed. On the other hand, Mr. & Mrs. Welsh have expended sufficient sums to safeguard their privacy and insure a significant buffer around their home. Although some of their lots are not developed, they are buildable and construction of a single family dwelling on each lot is ultimately contemplated.

In considering the variance request, I am mindful of the requirements of Section 307 of the B.C.Z.R., as construed by Cromwell v. Ward, 102 Md. App. 691 (1995), which is the leading appellate case in considering the variance statute in Baltimore County. Cromwell v. Ward essentially requires a three-part examination of the variance request. First, the Petitioner must demonstrate that the property at issue is unique. Second, it must be shown that the uniqueness of the property results in a practical difficulty upon the Petitioner, if strict compliance with the regulations is required. Third, the Petitioner must demonstrate that the variance, if granted, would not be detrimental to adjacent properties.

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Upon due consideration of the testimony and evidence presented in the instant case, I am not persuaded that the Petitioner has met his burden. Mr. Doak's testimony was particularly compelling that the subject property is not unique. Indeed, Cromwell requires that there must be a unique characteristic of the property at issue (i.e., topography, shape, configuration, etc.), in order for relief to be granted. The characteristics of the subject site are not unique when compared to other lots in the neighborhood. Moreover, I am not persuaded by the testimony presented by the Petitioner that the location for the proposed addition is the only functionally appropriate site. Without delving into matters of architectural taste or style, the Davisons' contemporary-style home is quite clearly different from other residences in the community. It seems, however, that this unusual architectural style of the dwelling would permit an addition to be added to another side of the structure when compared to some of the more traditionally styled homes in the area. Although I understand and appreciate the testimony offered by the Petitioner about the location of living space versus the garage area, I am not persuaded by the arguments. I do not find the land unique, as required by Cromwell and, moreover, find no justification relating to the design of the house which would satisfy this prong.

I also find that the Petitioners do not meet the final test to be considered; to wit, whether the grant of relief would cause detriment to surrounding or adjacent properties. In this regard, I am appreciative of the fact that several of the Welsh lots are undeveloped. However, Mr. Doak's testimony was persuasive that potential construction on Lot 58 would require the construction of any dwelling thereon near the common property line shared between the Davison and Welsh lots. That is, although a variance to allow a dwelling to be constructed closer to the property line cannot be assumed or justified, it is clear that any dwelling on Lot 58 would be in that location of the permitted building envelope closest to the Davison property line. Thus, any construction on that lot may be approximately 50 feet from the property line. To permit the Petitioner to build on his lot within 20 feet of that line would unduly restrict potential development on the Welsh property and could result in houses being within close proximity of one another,

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particularly when considering this neighborhood. Thus, I am not persuaded that a grant of the variance would not be detrimental to adjacent properties.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 22nd day of March, 2001 that the Petition for Variance seeking relief from Section 1A04.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a building setback of 20 feet in lieu of the required 50 feet for a proposed addition, as amended, and to amend the First Amended Partial Development Plan for The Hill Farm, Plat VI thereof, in accordance with Petitioner's Exhibit 1A, be and is hereby DENIED.

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

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

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1/3/02

IN THE MATTER OF THE APPLICATION OF MARK E. DAVISON -PETITIONER FOR A VARIANCE ON PROPERTY LOCATED ON THE W/S TREADWELL COURT, 536' N OF WYNDHAM COURT (LOT 59, PLAT VI, THE HILL FARM) 24 TREADWELL COURT 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	* * * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 01-220-A

* * * * * * * * *

OPINION

This case comes to the Baltimore County Board of Appeals based on an appeal from a decision of the Zoning Commissioner rendered under date of March 22, 2001 in which a Petition for Variance was denied. This case was heard by the Board over two days in public session. At the conclusion of the hearing, counsel mutually agreed to submit simultaneous briefs. The Board, having reviewed their individual notes, the evidence submitted, and the briefs, held a public deliberation on May 14, 2002.

Facts of the Case

The Petitioner is seeking an "administrative variance." Relief is sought from § 1A04.3.B.2 of the *Baltimore County Zoning Regulations*. The Petitioner desires a building setback of 20 feet in lieu of the required 50 feet. The purpose of the variance, if granted, would permit a building setback of 20 feet instead of the 50 feet required for a proposed addition, and would amend the first amended partial development plan known as "The Hill Farm, Plat VI." The Board takes note that the case was first filed as an administrative variance under § 26-127 of the *Baltimore County Code*. In accordance with the Code provisions, Mr. and Mrs. Patrick Welsh, adjacent property owners on the north and west sides of the property, filed a formal request for a public hearing. The Zoning Commissioner heard the case on March 7, 2001. Subsequently, on March 22, 2001, the Zoning Commissioner denied the variance petition as well as the amendment of the first amended partial development plan for reasons specified in his "Opinion and Order." A timely appeal was taken to

this Board who heard the case on a "de novo" basis.

On day one of the public hearing, February 26, 2002, the Appellants /Petitioners offered a number of witnesses in support of their request. Mrs. Sarah Davison opined that she and her husband, Mr. Mark Davison, were married in June 2000. Her husband had purchased the subject property when he was single and had resided on the property for approximately 15 years prior to their marriage. He was the third owner of the property. Mrs. Davison stated that she and her husband had consulted six architects to change the building style of the present home to accommodate the needs of a contemplated future family. Mrs. Davison described in considerable detail the present structure of the house and the desire to reconfigure portions of the home that would be more functional as a "family dwelling." She stated that she and her husband wanted to stay at the subject location and in Baltimore County. They loved the house style, the abundance of glass that permitted sunlight to come in, the general neighborhood, and friendly neighbors. She indicated support for the modified 20-foot variance and introduced a number of letters from neighbors who supported the variance request (Appellant's [Petitioner] Exhibit #1). An additional letter from another neighbor was also noted (Appellant's [Petitioner] Exhibit #2). The letters were accepted for identification purposes by the Board. The witness stated that Mr. and Mrs. Welsh had indicated to her and her husband that they would oppose the variance request.

On cross-examination, Mrs. Davison opined that the original variance request had been modified from 5 feet to 20 feet. She acknowledged that the proposed building, reconstructed, could be located elsewhere on the property, but that from a functional situation, it would not accommodate the plans that she and her husband had in planning for a future family that necessitated the proposed reconstructed home. A number of exhibits representing data from the

Maryland Department of Assessments and Taxation – Baltimore County – Real Property Data Search was introduced as Appellant's [Petitioner] Exhibit #3B.

Mr. L. J. Link, Jr., also testified on behalf of the Petitioner. He is the President of L.J. Link, Inc., Architect, Brooklandville, Maryland. Appellant's [Petitioner] Exhibit #4 was admitted consisting of 18 pages in which the architect outlined his reasons and opinion that the subject home was unique because of its "deconstructivism" design. Essentially, it was Mr. Link's testimony that the proposed addition to the house, as designed by Mr. Davison's architect, responded to the style criteria and function of the house. The location of the addition on the north side of the house was unique because of three factors: (1) the style of the house; (2) the lot configuration; and (3) the functional program of the house as it is designed. Mr. Link's testimony dealt at length with the proposed design criteria of the addition in which the bedrooms were placed on the north side of the house, essentially and functionally, separating the public areas from the private areas of the house, and placing the stairway as a connecting link to a circulation core and a functioning core of the house, giving it form and keeping with the house style. It was his testimony that the proposed design would maintain the naturalistic setting /views as part of the house and maintain the open plan for the public areas of the house. It was his opinion that the house was correctly sited on the building lot by the original architect and that the proposed addition would not work on the south, east or west sides due to topography, views and disruption of the design elements of the house. Mr. Link's testimony also dealt with the differing styles of architecture, and charts reflecting various architectural designs with supporting photographs of various architectural styles. Appellant's [Petitioner] Exhibit #8, consisted of a "concept elevation" from the property line accompanied by a schematic drawing of the basement plan and the first-floor plan, along with the second floor plan,

was also introduced into evidence and discussed by Mr. Link. Through photographic evidence, the Board was also afforded the opportunity, by way of Appellant's [Petitioner] Exhibits 10A through 10H to view various visual aspects of the existing dwelling of the Davisons.

On cross-examination, Mr. Link acknowledged that he had not testified at the original Zoning Commissioner's hearing and was retained subsequent to that hearing. He opined that Mr. Michael Dowling had testified, and that Mr. Dowling had acknowledged that physically the proposed addition could be relocated elsewhere. Appellant's [Petitioner] Exhibit #6 reflected a gross house area of 3,000 square feet. Mr. Dowling had stated that 2,300 square feet was the net usable space. The proposed addition would almost double the gross square footage of the house. The home originally had a white appearance. Mr. Davison had painted it gray. The redesign of the home allowed greater flexibility for the Davisons, according to Mr. Link. If allowed, it would be three stories above ground level. Mr. Link acknowledged that the Baltimore County Zoning Regulations required a 50-foot setback; however, if he had been the original architect, he would have placed the home in the same current position. He opined that the modifications could be made to the existing breezeway and pulled back, which could be reduced to eliminate the projected passageway.

Mr. Herbert Davis, Brooklandville, Maryland, also testified on behalf of the Petitioner. Mr. Davis has had extensive involvement in real estate matters and real estate appraisals. He has testified on such matters before this Board and the Circuit Court for Baltimore County, in addition to having served as a member of the Baltimore County Board of Appeals. He opined that he was quite familiar with the house and the subject site. He described other homes in the immediate area and felt this home was unique because of its style, contemporary format, and abundant use of glass

to permit the light to shine in. He described the basic interior of the property. In his opinion, the north side of the house was the most appropriate place to position the proposed addition. It was his opinion that no other design would be fundamentally acceptable. He opined that the present home was one of the smaller homes in the area by at least 700 square feet. Most of the existing homes have 3,000 square feet. The proposed addition, in his opinion, would bring the home more in line with existing properties in the area, and, hence, would make it more saleable, should Mr. and Mrs. Davison decide to sell it in future years. It was his testimony that, while the 30-foot difference between required side yard setbacks and those being proposed by the Davisons could be viewed in two dimensions on a drawing, they would, based on his years of experience, be imperceptible in the field. He also testified that he believed that the requested relief would not have any effect on the value of Lot 58 to the north, one of several lots currently vacant and owned by the Protestants.

On cross-examination, Mr. Davis did acknowledge that the Welshes have one of the larger lots in the community, and he was questioned extensively concerning the effect of the variance, if granted, upon Lot 58. He did indicate that he had not walked the lot but had only driven by it, and described it as a rolling lot, with an intermittent stream.

Mr. David Thaler, President of D.S. Thaler & Associates, also testified. Mr. Thaler was accepted as an expert in planning, zoning, and site design. He was familiar with Appellant's [Petitioner] Exhibit #9, the "Petition for Administrative Variance," under seal by the Matz firm. Mr. Thaler was familiar with the site and the property, and the relief being requested. He had made a personal inspection of the Petitioner's property, neighborhood, other lots, and was familiar with the documentation. He described the neighborhood as consisting of homes zoned R.C. 5, expensive, large lots of varying styles. The proposed addition was being added to the rear of the

property. He opined that, despite the fact that the Davisons' home was one of the smallest in the area, it was unique, in his opinion, although not on any historic list of County properties. The property was trapezoid in shape, consisting of 1.422 acres. He described the nature of the site and constraints imposed upon the building envelope. A number of photographs were admitted into evidence and reviewed in detail by him (Appellant's [Petitioner] Exhibits 10A through 10H). It was his opinion that the proposed building could not be possible without a variance being granted. The size, shape and location of the existing building was of considerable importance when comparing it to others in the community, and he deemed it to be unique. He described the nature of the topography.

Appellant's [Petitioner] Exhibit #11, the Treadwell Court site plan done by D.S. Thaler & Associates, was reviewed and discussed at length. The floor plan was described. Mr.Thaler stated that approval of the variance would not increase the density. As currently configured, the home simply did not function well as a practical family home. Mr. Thaler's testimony concluded Petitioner's case-in-chief.

On day two of the public hearing, Mrs. Lois Welsh testified in opposition to the granting of the variance. Her property adjoins the Petitioners' property. Protestant's Exhibit #1 was submitted, reflecting a plat under date of January 26, 2001 showing the Welsh and Davison properties. Her property adjoins the Petitioner's property. She also owns lot 6, in addition to lot 5. She and her husband purchased their first lot in January 1976 and moved into her present home in December 1978. Thereafter, the Welshes acquired the subsequent lots. Her lot, indicated in blue on the exhibit, borders the Davisons' property. It also borders her lots 5 and 6. She opined that her lot was one of the premium ones. She and her husband purchased the original lot as a real estate

investment. As time progressed, they purchased the additional lots for more privacy and as an investment. She described the physical features of lots 5 and 6 in the Fallswood community. They are heavily wooded, steep in topography, excellent building sites, set off the road by 200 feet. They were very private by nature. Lot 58 was similar, heavily wooded, steep with a stream running north about one-third of the way up. She described the area where, in her opinion, it would be favorable to build. Any home constructed would be at least 50 feet from the Davisons' property. The proposed addition would be visible from their home. She described the neighborhood as heavily wooded, replete with wildlife, and that most homes were not close in proximity. The Davison home was constructed subsequent to their home. The Davison home was actually constructed in either 1983 or 1984. She opined that she could see the Davison home from the rear of her home during the winter and fall months. When the foliage is out in the spring and summer, the view is somewhat diminished. She expressed her concern when the original sign was posted. She had expressed her concerns to Mr. and Mrs. Davison and also at the Zoning Commissioner's hearing. She stated that the proposed three-story home would be substantially larger than her existing home. It would detract from her privacy. The original subdivision provided her with considerable privacy, and if the variance were granted, it would diminish the value of her property. She believed that the proposed addition could easily be placed in front of the Davisons' property. She stated that while most of the neighbors had no objections to the granting of the variance they would not be as impacted as she and her husband. She opined that she would oppose any variance and that the purpose of the 50-foot setback was to provide landowners with protection from neighbors' intrusion. She stated that she had many offers to build on her vacant lots but she and her husband were considering having their children build on same.

Mr. Bruce Doak also testified on behalf of the Protestants. Mr. Doak is well known to this Board as a registered property line surveyor, licensed by the State of Maryland, who was accepted as an expert in land surveying. He stated that he was retained after the initial variance was requested and engaged by the Welshes to survey their property, and how, if the variance were granted, it would impact the Welshes' holdings. He visited the site, walked it, and drew the property lines. He described the neighborhood as medium to high-priced homes, well planned, and, for the most part, having 100-foot setbacks. He described the Welshes' lots, the streams, up to one-third of the property heavily wooded. Lot 4 similarly consisted of 2.1 acres, sloping in both directions, wooded and slightly higher than lot 58.

At the conclusion of the Protestants' case, Mr. David Thaler was offered in rebuttal to correct what Petitioner believed to be a flawed analysis. Appellant's [Petitioner] Exhibit #12 was submitted reflecting the opinion of a former County Attorney that current forest /stream buffer regulations were not applicable to certain lots. Mr. Thaler described how, in his opinion, the forest buffer line would be calculated based upon Appellant's [Petitioner] Exhibit #14A. It was Mr. Thaler's consensus that Mr. Doak's analysis of a potential building envelope on lot 58 was not correct, the professional analysis that had been previously submitted into evidence under Mr. Thaler's direction and control indicating a much less constrained building area on lot 58.

The Applicable Law

The Board is well aware of the law that must be applied to the facts of the case to arrive at a conclusion. The Maryland courts have long held that "as a general rule, variances are to be granted sparingly and under exceptional circumstances. To do otherwise, would decimate zonal restrictions and eventually destroy all zoning regulations." *Carney v. the City of Baltimore*, 201 Md. 130, 137

(1952). In *Cromwell v. Ward*, 102 Md.App. 691 (1995), the Court of Appeals, through Judge Cathell, articulated the standards that administrative bodies were required to consider in the granting of variances. The first step enunciated required that the subject property be unique. "The need for a variance must be due to the unique circumstances of the property and not to the general condition in the neighborhood." Judge Cathell wrote, "The treatise writers are also in accord with the rule that variance should only be granted when the uniqueness or peculiarity of the subject property is not shared by neighboring property and where the uniqueness of the property results in extraordinary impact on it by the operation of the statute, thus creating undue difficulty or unnecessary hardship in respect to use and variances. It is fundamental that the difficulties and hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions on a particular property and not general in character...It is not uniqueness of the plight of the owner. But uniqueness of the land in causing the plight which is the criteria. If the hardship is common to the whole neighborhood, it may be grounds for an exception for a special use permit (if the statute so provides)...The hardship (in order to justify a variance) however...must relate to the particular property of the Appellant." As was further stated in *North v. St. Mary's County*, 99 Md. App. 512, the Court of Appeals held that the ordinance requires a finding that "special conditions or circumstances exist upon the property or neighboring property." "Uniqueness" of property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area; i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions or other restrictions). In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing of

party walls. In the instant case, the Petitioner submitted letters from neighbors in support of the variance (Appellant's [Petitioner] Exhibits 1 and 2). However, from a practical standpoint, none of these neighbors would be as greatly impacted from the granting of the variance as would be the Welshes. In reviewing the exhibits, none of these neighbors could view the north or west sides of the Davison property as would the Welshes. Appellant's [Petitioner] Exhibit 3A (Department of Taxation and Assessment) does not reflect anything unusual or unique relative to the Davisons' lot. There are varying lot sizes running from the Davisons' lot size of 2,320 square feet to Lot 53 consisting of 2,925 square feet, to Lot 61 consisting of 7,950 square feet. Appellant's [Petitioner] Exhibit 3B reflects tax accounts, all as "standard" one, one and one-half or two-story units, all with basements ranging in total assessed value of $499,180 (Davisons) to $965,600. Based upon this review, the Board is unable to determine any uniqueness as to the Davison property that would qualify it as "unique" in accordance with standards imposed by higher Maryland Courts. Additionally, referencing Appellant's [Petitioner] Exhibit #1 (D.S. Thaler "Treadwell Court"), there is nothing unusual or unique on any of the lots which encompass this exhibit that was viewed by the Board members.

Mrs. Davison offered no testimony concerning the unique aspect of their home. Her concerns centered over its present functionality as a "family home" and their desire to reconfigure it if the variance were granted, and their desire to stay in the neighborhood.

The testimony of Mr. Herbert Davis was not totally compelling as to the uniqueness factor. He opined that the only reasonable place to place the addition was on the north side of the house, although he acknowledged that there was more than sufficient room to place the addition elsewhere. It was his opinion that the Davisons' house would be enhanced for resale by doubling

the size of the home. The description he gave of the character and nature of the community was not sufficiently instructive to lead the Board to conclude that the Davison home was particularly unique as compared to other existing homes. The property had been sold on three prior occasions, the last to Mr. Davison; and there was no reason for the Board to believe that its small size would be a hindrance to any future resale. Mr. Davis testified concerning his belief as to the uniqueness by reasons of the Davison home's "deconstructivist design." He related that the Davison house and its criteria as a deconstructivist house are discussed at length within the contents of Appellant's [Petitioner] Exhibit #4.

The Board has reviewed in depth the Link analysis as it relates to style, lot configuration, functional program of the house as it is designed and the proposed addition. While the Board members did not profess to be experts in architectural design, nevertheless, the Board finds that, while the Davison home as presently constituted is different in style, it is not unique as compared to many other structures that exist in Baltimore County. Essentially, Link references the uniqueness to "open space for public space…living, dining, entertainment." "Strong separation of private or public spaces, natural light as a dominant theme…flat roof…." The Board, based on practical individual experience, recognizes that many homes in Baltimore County have such features. The Board considered Mr. Thaler's observation that the existing lots and homes reflected a uniqueness in the Davison homestead. He and Mr. Doak were in disagreement concerning the uniqueness aspect. His concerns were directed at areas that placed the proposed addition anywhere else. The proposed site, in his opinion, would result in the removal of additional mature trees and vegetation and difficulty in getting from the addition to the main portion of the home. The Board does not find, however, based on the plats and evidence, that the shape and topography of the property, taken

with the existing improvements, are not like any other property in the area and were "unique" to the Davison property.

Having determined that the Petitioner has not satisfied the first prong required by *Cromwell v. Ward*, in that the property has been found by the Board not to be "unique" based on the evidence and testimony reviewed by its members, it is not necessary for the Board to discuss the second prong – or "practical difficulty" (as distinguished from unusual hardship in respect to use variances). However, in order to complete the record, the Board will express its opinion concerning this element.

The standard required to be met by a Petitioner in an area zoning variance case has been defined by the Maryland Court of Appeals in the well-known case of *McLean v. Soley*, 270 Md. 208 (1973), as follows:

> 1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome;
>
> 2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; and
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

1. It is undisputed that Mr. Davison purchased the subject property approximately 15 years ago when he was single. Presumably the property was purchased because of its architectural style, and the position of the house afforded a magnificent view even though the house was positioned within 50 feet of the property line (the north and west) to site the house. During his occupancy, the

house had suited his lifestyle as a bachelor. In June 2000 he married, and both he and his wife now desire to have a family. Functionally, they do not believe that the house is conducive to family life. It presently is the smallest home in the Hill Farms subdivision. The proposed addition would almost double the existing home.

There is no question but that the Petitioner has requested the variance for a permitted purpose. However, does the request "render conformity with such restrictions unnecessarily burdensome"? While understanding the sincere motives of the Petitioner in seeking the variance, the Board does not believe that the present restrictions place an unreasonable burden upon the Petitioner. The home, as presently constituted, contains a single master bedroom, second bedroom (used as Mr. Davison's office /study), along with a guest bedroom above the garage. The latter is disconnected from the Davisons' private living area. The main house is separate and joined by a common hallway /passage. The Davisons contemplate having children, and want more living space in the main section of the home. The drive for the addition is motivated by having more area space, for the contemplated children. Such a scenario is not unusual for a recently married couple. In most cases, couples adapt to their present circumstances, move to more suitable quarters, or seek an addition to their present home. The difficulty here is that the Petitioner "wants his cake and eat it too."

Testimony clearly reflects that the proposed addition could easily be placed elsewhere. It might cause removal of some large mature trees and vegetation. It may also be a violation of the *Baltimore County Building Code* or *Fire Code*. That latter fact is not known. The Board was not presented with any evidence of the latter. The Board is faced with conjecture as to the number of children the couple may have, and whether or not the addition could legally be constructed in

another area. The restrictions that apply to the Davisons apply to all the properties in the subdivision. Some have setbacks as much as 100 feet.

The Board concludes that the 50-foot setback restriction does not render conformity unnecessarily burdensome.

2. Clearly, the Welshes purchased their present home in the Fallscroft community 23 years ago. Their home straddles two lots in Fallscroft. The southernmost line of the improved lots 5 and 6 is located roughly 340 feet from the northern lot line of the Petitioner's property. In 1981, the Welshes purchased Lot #58 in the Hill Farm area. According to Mrs. Welsh, this was done to insure their privacy and possible future investment. At a later date, they purchased another lot in the Old Lyme subdivision for reasons identical to the purchase of Lot #58. Their present home is roughly 450 feet from the northern lot line of the Petitioner. In the fall and winter months, the Davison home is visible to the Welshes. In the spring and summer, the view is somewhat diminished by reason of vegetation and trees. Lot 4 shares approximately 110 feet of a common boundary with that of the Petitioner on the west side of the Davison home. The Davisons plan no addition on this side of their present home.

It is apparent to the Board from the testimony and evidence that the Welshes were aware of setback requirements when they purchased their landholdings. The testimony of both Petitioner's witnesses and that of the Protestant clearly indicate that the proposed addition will be quite visible from Lot #58 owned by the Welshes, regardless of where any future home would be positioned. The last picture in the series offered by Mr. Link clearly shows a slope from the rear of the Davisons' home. Clearly, if a potential home is located on Lot #58, and located in proximity to the property line of the Petitioner, the proposed story addition would be visible from their home. Mrs.

Welsh opined that the addition on the north side of the Davisons' property would affect Lot 4 in the Old Lyme subdivision, being clearly visible from Lot 4. Lot 4 is a pie-shaped lot which would require the proposed building site to be set back substantially off of the cul de sac in the Old Lyme subdivision, which would place the proposed home on Lot 4 closer to the Davisons' proposed addition.

The Board does not concur with the opinion of Mr. Davis that the 30-foot difference in setback would be imperceptible in the field, nor do we concur that the required relief would have no effect on the value of Lot 58. While Mr. Davis opined that the home would be difficult to sell, especially to a family with children, the fact remains that it has had three owners since the original purchaser.

The Board has also reviewed the testimony of both Mr. Thaler and Mr. Doak relative to the positioning of any future homes on the currently vacant properties owned by the Welshes. Both had varying expert opinions as to the probable location of a future home if built on Lot 58. Both had surveyed the property, Mr. Doak as a registered property line surveyor, and Mr. Thaler as an expert registered professional engineer. While clearly understanding the varying positions of both of these experts, the Board recognizes that sometime in the future, a home may or may not be located on Lot 58. At that time, the Welshes, or their children, or other purchasers, will determine the location of the home subject to Baltimore County regulations.

Speculation and conjecture raised by both Mr. Doak and Mr. Thaler was not that critical to the decision of the Board. The fact exists that the County Council enacted setbacks for a reason. The Board believes that the variance request does have a significant effect on the property of the Welshes. It would be on the southern edge of Lot 58 and within 50 feet of the property line. A

homeowner is not entitled to a variance to relieve his land from a restriction which applies equally to all lots of a similar size. In summary, the evidence is conclusive to the Board that the property is not subject to any undue hardship.

3. The Board believes that to grant the variance would not be within the spirit and intent of the ordinance in an area where some of the homes have even greater setbacks of 100 feet.

ORDER

THEREFORE, IT IS THIS 3rd day of July, 2002 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioner's request for variance from § 1A04.3.B.2 of the *Baltimore County Zoning Regulations* (BCZR) to permit a building setback of 5 feet in lieu of the required 50 feet for a proposed addition, and to amend the First Amended Partial Development Plan, The Hill Farm, Plat VI, be and is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Charles L. Marks, Chairman

Lawrence S. Wescott

Richard K. Irish

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
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July 3, 2002

Howard L. Alderman, Jr., Esquire
LEVIN & GANN, P.A.
Nottingham Centre, 8th Floor
502 Washington Avenue
Towson, MD 21204-4525

RE: *In the Matter of: Mark E. Davison – Legal Owner*
Case No. 01-220-A

Dear Mr. Alderman:

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. Also enclosed is a copy of Mr. Marks' Concurring /Dissenting Opinion.

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: Mark E. Davison
J. Carroll Holzer, Esquire
Patrick and Lois Welsh
Thomas Frankovic
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

Printed with Soybean Ink
on Recycled Paper

IN THE MATTER OF MARK E. DAVISON	*	BEFORE THE
	*	COUNTY BOARD OF
PETITION FOR VARIANCE WEST SIDE TREADWELL COURT, 536 FEET NORTH OF THE C/L WYNDAM COURT (24 TREADWELL COURT)	*	APPEALS OF
	*	BALTIMORE COUNTY
	*	
8TH ELECTION DISTRICT; 3RD COUNCILMANIC DISTRICT	*	Case No. 01-220-A

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MEMORANDUM IN LIEU OF FINAL ORAL ARGUMENT

Lois and Patrick Welsh, 901 Falls Croft Way, Lutherville, Maryland 21093, Protestants by their attorney J. Carroll Holzer, Holzer & Lee, hereby submits this Memorandum in Lieu of Final Argument as requested by the Board of Appeals.

STATEMENT OF THE CASE

This matter comes before the Board for consideration of a Petition for Administrative Variance filed by the owner of the subject property, Mark E. Davison. The Petitioner seeks relief from §1A04.3.B.2 of the Baltimore County Zoning Regulations to permit a building setback of 20 feet in lieu of the required 50 feet for a proposed addition and to amend the First Amended Partial Development plan, the Hill Farm, Plat VI accordingly.

This case was originally filed as an administrative variance pursuant to §26-127 of the Baltimore County Code. After public notice, Patrick and Lois Welsh, adjacent property owners on two sides (north and west) filed a request for public hearing. The matter was scheduled before the Zoning Commissioner for public hearing on March 7, 2001. The Zoning Commissioner in his findings of fact and conclusions of law on March 22, 2001 denied the Petition for Variance as well as the amendment of the First Amended Partial Development plan

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for Hill Farm. An appeal was taken by the Petitioner Davison to the Board of Appeals. The case was heard on February 26, 2002 and March 27, 2002. Deliberations are set for May 14, 2002.

STATEMENT OF FACTS

Petitioner's Case

This matter was originally presented before the Zoning Commissioner utilizing the testimony of Richard E. Matz, the professional engineer who prepared the site plan for this property, and Michael Dowling, the architect who prepared the building elevation drawings for the proposed addition. The testimony of both experts is summarized in the opinion of the Zoning Commissioner. Bruce Doak was likewise called as an expert in land surveying by the Protestants. Before the Zoning Commissioner Doak opined that the subject property was not unique and that the addition could be added to other locations on the property. He further opined that the construction of the addition where proposed would be detrimental to the adjacent lot (Lot #58 owned by the Welshs). The Zoning Commissioner in applying Cromwell v. Ward, 102 Md. App. 691 (1995) found that the subject property was not unique and that the characteristics of the subject site were not unique when compared to other lots in the neighborhood. Moreover, he was not persuaded that the location for the proposed addition is the only functional appropriate site (see Zoning Commissioner's Decision p.5). He also found that the Petitioners did not meet the final test. That is, the grant of variance relief in this case would be detrimental to surrounding properties. He found that the limited potential buildable area on lot 58 would require construction of any dwelling near the common property line and that to permit the Petitioner to build on his lot within 20 feet of that line would unduly restrict potential development on the Welsh property and could result in the houses being to close together.

Before this Board, the Petitioner changed his approach and called Sarah Davison, as opposed to her husband Mark, to testify as to their desire to construct an addition. Sarah Davison, in her testimony, acknowledged that Paul Marks was the original architect for the house and that they had discussed the proposed expansion with him. She acknowledged that Marks placed the house within 50 feet of both property lines (the north and west) to site the house. She acknowledged that they had previously utilized Mr. Downing to testify before the Zoning Commissioner. Finally, she acknowledged retaining a third architect, Mr. Link, who was neither the original architect for the house nor the architect who prepared the plans for the proposed expansion. She acknowledged that the letters of support submitted on her behalf were from neighbors who did not view the north and west sides of the property like the Welshs.

The Petitioners then called Herb Davis, a real estate appraiser, who had to acknowledge on cross-examination that additions could be physically placed elsewhere. He continued to opine that the only reasonable place was on the north side of the house. He acknowledged that the Petitioner's house was the smallest in the neighborhood and that the addition would almost double the size of the house. He acknowledged that his client, Davison, had purchased the house with knowledge of the size. He further acknowledged that other houses in the neighborhood were spaciously separated. He gratuitously suggested that if the Davison home was expanded, the owner of lot 58 (Mr. Welsh) could dedicate an easement and donate the development rights to lot 58. Davis testified that the potential for resale, because of the house's style and size, to a potential buyer would be small. However, he again acknowledged that Mr. Davison did buy the house for its style and for its size.

The Petitioner next presented Lawrence Link, an architect, to testify on his behalf. Clearly, Paul Marks, the original architect who designed and placed the house, was talked to by

Mrs. Davison but never called as a witness to testify in regard to the architectural style. Instead, before the Zoning Commissioner, Petitioner called Mr. Dowling to testify, and before the Board they called Link. After much discussion about the architectural style of the house and its "deconstructionist" style, Link had to testify that basically this style of house had a centralized public core with private space on the periphery. The Board certainly can be aware that many homes have a centralized public core with private areas surrounding it. While he attempted to relate this particular house to a Richard Meir home, he acknowledged that it was an adaptation by Mr. Paul Marks, the original architect. Again, Marks was not called to testify in regard to the alleged unique nature of this house and one suspects that he would have to acknowledge that he placed the house next to the 50 foot setback line intentionally to obtain the best views and that he did not expect the home to be expanded in either the northerly or westerly direction once he placed it next to the setback lines. Link also had to acknowledge that physically there are other areas on the property where the expansion could take place, including the garage. Aesthetically, it was his opinion that he would prefer not to use the garage or any other suitable open area on the property, but that his client wanted the addition on the north side and that's where the best place for the expansion would be in Link's opinion. Link's testimony at best was simply designed to support his client's wishes. He further testified that a "deconstructionist" house is a "house designed for flexibility". If that is truly the case, then clearly other suitable areas for expansion could be utilized due to the "flexibility" of the design.

Link presented Petitioner's Exhibits showing elevation and height, which clearly reflect to the Board, upon review, that this will be a large addition and because of the topography will tower over the Welshs lot #58 and any home that's placed thereon.

Link, after acknowledging that there was room on the Davison lot to construct an addition, acknowledged also that the garage could be converted, but again, he urged location on the north side of the Davison house.

The thrust of the Link testimony supported the proposition that the house had been originally located by Paul Marks on the site, 50 feet from the north and west property lines, knowing that first, that location provided the best view from the Davison lot to the surrounding countryside and second, that any expansion could not move in either the north or west direction but must be directed elsewhere on the lot. It is also clear from the testimony of Link that there is significant area on the south and east sides of the existing home that could be utilized for expansion. Also, by its very nature, Link's testimony that the deconstructionist style of the home was "flexible" contributes to the proposition that other arrangements could be made that would not impact the Welshs.

Link also testified that screening could be planted along the property line with the Welshs. This statement appears to suggest that in fact, the proposed Davison expansion would significantly impact any adjacent property owner on Welsh lot 58.

Finally, David Thaler was substituted as a witness for Richard Matz, who had previously testified. Thaler did not provide any new testimony other than a regurgitation of the testimony of previous witnesses. His testimony that the placement of the house is unique, that its style is unique, that its cathedral windows are unique, and that the topography slopes are unique is belied by the site plan and the evidence of other witnesses before the Board.

Protestant's Case

Lois Welsh testified on behalf of her husband and herself having lived in Falls Wood at 901 Falls Croft Way for over 23 years. They bought two lots in the Falls Wood Community in

order to locate their house in a private setting. They then bought lot 58 in the Hill Farm subdivision in 1981. The purchase was a real estate investment on their part, and it secured their privacy. They also bought lot 4 in the Old Line subdivision for the same reasons. As it turned out, lot 58 is immediately north of the Davison property and lot 4 is immediately west of the Davison property. As previously explained, the Davison home is built to within 50 feet of the property line in both the north and west directions. Lois Welsh testified that she opposed the Davison request before the Zoning Commissioner who denied it, and continues to oppose it before the Board of Appeals. The Welshs are not interested in selling the properties at this time, however, she testified that her children may be interested in building on lot 58 at some time in the future.

Mrs. Welsh described the characteristics of lot 58 as being very steep and heavily wooded with a stream running through it that prevents a large portion of the site from being developed. It appears from her testimony, and from the testimony of Bruce Doak, engineer, that there is a very limited buildable area on lot 58 at the southern side of the lot and up to the 50 foot setback from the Davison/Welsh property line. It is clear then, that no matter what analysis is performed, lot 58's potential home site must be located directly against the property line of Davison and would be severely impacted by at least a 3 story additional structure within 20 feet of the property line. The Board can review the plats of the neighborhood to determine that these are large lots, and the home constructed thereon, generally favor separation of at least 100 feet or more between homes on the lots in the Hill Farm subdivision.

Mrs. Welsh also testified that the location of this addition on the north side of the Davison property would impact lot 4 in the Old Line Subdivision because it would be clearly visible and seen from lot 4. Lot 4 is a pie-shaped lot which would require the proposed building

site to be set back substantially off of the cul-de-sac in the Old Line Subdivision which would, therefore, place the proposed home on lot 4 closer to the Davisons' proposed addition.

Mrs. Welsh testified that the Davison property is relatively flat, has other usable portions of the property for a proposed addition, and that it is not unusual or unique from the other lots in Hill Farm Subdivision.

Mrs. Welsh testified that the Davison proposal will significantly impact lot 58 and its value by the encroachment within the 50 foot setback.

Bruce Doak testified that he prepared Protestant's Exhibit #1 which showed a proposed buildable area on lot 58 as being a very limited area on the southern portion of the lot. He testified that there is nothing unusual or unique about the Davison lot in the Hill Farm Subdivision or the surrounding neighborhood. Doak testified that because of the topography between Welsh lot 58 and the Davison lot there would be a 10 foot elevation difference. Therefore, a 3 story building on the Davison lot would produce basically a 4 story difference in height between the top of the Davison addition and the Welsh building site location on lot 58. Doak also testified, being familiar with location of home sites on lots, that there was physically room to place the Davison addition elsewhere. Further, Doak testified that in his job as property line surveyor over the years and having located many homes on proposed lots, he has seen numerous homes with a central public core and private areas off to the side and that it's nothing unusual. The Petitioners attempted to suggest through Doak's testimony that the DEPRM policy would permit or exempt Welsh lot 58 from DEPRM forest buffer regulations. Whether or not the lot would be exempted is not relevant to the issue of the impact of the Davison addition on Welsh lot 58. Certainly, no one can deny that the Welshs, on lot 58, will have to deal with and go through the County bureaucracy, including DEPRM, related to construction of a proposed

home on lot 58. The primary objection of the Welshs is still the dramatic impact that the proposed addition will have on the lot 58 home site which, under either Doak's theory or Thaler's theory, will have to be located on the southern edge of lot 58 and to within 50 feet of the property line. Whether Doak or Thaler is correct is irrelevant since both agree that the home site for lot 58 will be placed along the 50 foot setback line. The real question and real objection is the impact of the grant of the variance upon the health, safety, and welfare, and the value of the Welsh lot. In this case, the Zoning Commissioner, in addition to finding the lack of uniqueness under Cromwell for the Davison lot, also found that the grant of relief would be detrimental to surrounding adjacent properties. (Zoning Commissioner Opinion p. 5). Welsh agrees with that conclusion.

LEGAL ARGUMENT

A. Generally

There is a long history of appellate court opinions discussing the general application of variance requirements. See, McLean v. Soley, 270 Md. 208 (1973): the need sufficient to justify a variance must be substantial and urgent and not merely for the convenience of the Applicant; Wilson v. Mayor and Commissioners of the Town of Elkton, 35 Md. App. 417(1977): any Petitioner who seeks a zoning variance must exercise proper diligence in ascertaining zoning ordinance requirements to avoid a result of hardship before he acquires the property; Carney v. City of Baltimore, 201 Md. 130 (1952); and finally, Easter v. Mayor and City Council of Baltimore, 195 Md. 395 (1950): the mere fact that the variance would make the property more profitable is not a sufficient ground to justify the relaxation of setback requirements.

In zoning and development law, a variance, if granted, permits a use which is prohibited and presumed to be in conflict with the ordinance. An Applicant for a variance, therefore, bears

the burden of overcoming the presumption that the proposed use is unsuitable. That is done, if at all, by completely satisfying the dictates of the statute authorizing the variance. North v. St. Mary's County, 99 Md. App. 502 (1994).

In North, the Court said:

> "Once an ordinance such as that in the case sub judice becomes effective, an Applicant's burden cannot generally be met by reference to Thoreau's hut on Walden Pond. Once these types of variance provisions are enacted, the result is generally that any project that does not cause damage to the environment will also be of such an inconsequential nature that it will not constitute an unwarranted hardship for it to be denied. North v. St.Mary's County, supra."

The Court of Appeals has required extremely strict adherence to the statute in regard to the granting of variances by administrative agencies:

> "As a general rule, variances are granted sparingly and under exceptional circumstances. To do otherwise would decimate zonal restrictions and eventually destroy all zoning regulations." Carney v. City of Baltimore, 201 Md. 130, 137 (1952).

The Court of Appeals in Park Shopping Center, Inc., v. Lexington Park Theater Company, 216 Md. 271, 276-277 (1958), speaking in reference to the St. Mary's County ordinance, opined:

> "The zoning ordinance for St. Mary's County...states that the Board shall have power to authorize... such variance... where, owing to special conditions, the enforcement... will result in unwarranted hardship and injustice.... It is in language typical of a variance as distinguished from an exception..."
>
> "The criteria for determining unnecessary hardship is whether the ... restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership."

In North, the Court then recited a partial list of cases in which variances have been rejected. Ad+Soil, Inc., v. County Commissioners, 307 Md. 307 (1986) (ignorance of setback requirements for sewer sludge facility was not a hardship); Burns v. Mayor and City Council,

251 Md. 554 (1968) (financial crisis generally not hardship, especially when same crisis applies to other property in same neighborhood); Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547 (1965) (self-inflicted hardship), and others.

Finally, in North, the Court discussed the additional requirement that in the land use context, the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property or upon neighboring property. In clarifying this element of proof necessary, the North Court stated:

> "Uniqueness of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e. its shape, topography, subsurface condition, environmental factors, historical significance, access and non-access to navigable waters, practical restriction imposed by abutting properties (such as obstructions) or other similar restrictions." (Emphasis supplied.)

In North, the Court found, of course, that there was nothing unique about the subject property.

A more recent case examining the requirements for a grant of variance arose in Baltimore County and was reported as David Cromwell, et al., v. Arthur Thomas Ward III, 102 Md. App. 691 (1995). In that case, Judge Cathell for the Court again discussed the uniqueness standard and the comparative analysis required, and he comprehensively reviewed the case law in Maryland applicable to that issue, as well as extensively discussing cases from other jurisdictions and treatises. There, the Court outlined the uniqueness and comparative analysis aspect as follows:

> [Variance]
> "The first step--uniqueness or peculiarity of the subject property...
>
> The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. See, e.g., A. Rathkopf, 3 The Law of Zoning and Planning, Section 38 (1979)...
>
> The requirement of the uniqueness of the subject property, as we have indicated, is specifically set out for non-Charter counties in this state's enabling legislation, Maryland Code Article 66B, and it is also set out in the Baltimore County ordinance

applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws-- and, before that, it was part of Maryland case law."

The Court then stated:

> "In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:
>
> > It was incumbent upon the Marino's to have shown... (ii) that the difficulties of hardships were peculiar to the property in question in contrast with those of other property owners in the same district and (iii) that the hardship was not the result of the Applicants' own actions." (Emphasis supplied)."
>
> Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218 (1957).

The Court then continued:

> "Frankel v. Mayor and City Council of Baltimore County, 223 Md. 97, 104 (1960):
>
> > It was incumbent...to show that hardship...affected his particular premises and was not...common to other property in the neighborhood..." (Emphasis supplied); Park Shopping Center, Inc. v. Lexington Park Theater CO., Inc., 216 Md. 271, 277-278 (1958)."
>
> > Sections 14(b), 14(d), and 16... have been held not to authorize a granting for the mere convenience to the owner, but to require a showing of urgent necessity, hardship peculiar to the particular property...."

The Court then analyzed in Cromwell its previous discussion in North:

> "In North v. St. Mary's County 99 Md. App. At 512, we held that the ordinance there required a finding that 'special conditions or circumstances upon the property, or upon neighboring property. "Uniqueness" of property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing of party walls." [Emphasis supplied.]

Judge Cathell continued his analysis in Cromwell:

> "...The seventy-five foot width and aggregation requirements do not put a burden on [appellants'] property which does not apply to other properties in the vicinity...*Id.* at

169. In the case *sub judice*, the Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood." [Emphasis supplied.]

And again:

"See also Chambers v. Smithfield City, 714 P.2d 1133, 1135 (Utah 1986), where the Court stated, 'There is no evidence of special conditions attached to the property itself which do not also attach to the property in the vicinity.'" (Emphasis supplied).

And:

"In Sibley v. Inhabitants of the Town of Wells, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

The need for a variance must be due to the unique circumstances of the property and not to the general conditions in the neighborhood... (Emphasis supplied.)

...The hardship must not be the result of action taken by the appellant or a prior owner.

...However, the mere fact that the lot is substandard is not a unique circumstance, all the undeveloped lots in that neighborhood are of substandard size... (Emphasis supplied).

...However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance of undue hardship."

Also:

"A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area... Indialantic's zoning restrictions are common difficulties shared by all other ocean-front lot owners in the area, and are therefore not the unique hardship required to support a variance. Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla. App. 5th Dist. 1981)."

Judge Cathell in analyzing various zoning treatises found:

"The treatise writers are also in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of the property results in an extraordinary

impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances). (emphasis supplied)

'It is *fundamental* that the difficulties and hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *particular property* and not in general in character...It is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides]... The hardship [in order to justify a variance, however,] ...must relate to the particular property of the Applicant.'

McQuillin, supra Section 25.167 [emphasis added, footnotes omitted].

It is held that a variance may be granted only for hardship which relates specifically to the Applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size. (Emphasis supplied).

Finally:

"Yokley quotes from Taxpayers Association v. Board of Zoning Appeals, 93 N.E.2d. 645, 647 (N.Y. 1950):

'The record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.'" (Emphasis supplied.)

Judge Cathell discussed variances again in Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County, 103 Md. App. 324 (1995). The Court in reviewing the record in that case found "not one minute speck of evidence was produced indicating that this property is inherently unique as compared to other properties in the area or that zoning ordinances impact on other properties in the neighborhood, area, or district was in any way different than its impact on the subject property." (Emphasis supplied). In discussing the difficulty which occasionally arises in the area where environmental regulations (critical area regulations) overlay zoning regulations, the Court in Chester Haven stated:

"We do not perceive that it was the legislative intention in passing the State or local critical area legislation that zoning variance procedures would be prostituted in order to alleviate the harshness of environmental regulation. If that is the intention of the legislative entities, they have the power to express clearly that intention. It may well be that the legislature should direct its attention to amending the variance provisions of Article 66B to include the effect of subjection to environmental regulations as a unique quality of property so as to enable local jurisdictions to provide by ordinance for such consideration."

It is implicit from the discussion in North and Cromwell that in order for the CBA to determine the "uniqueness" of the subject property, some analysis and comparison of the neighboring parties must be made and distinction drawn between the subject site and the surrounding neighborhood.

Most recently, the Court of Special Appeals in Umerley v. People's Counsel for Baltimore County, 108 Md. App. 497 (1996) further explained the two-step inquiry necessary for a variance:

> First, the Zoning Authority must determine whether the subject property is unique and different from the characteristics of surrounding properties to the extent that the uniqueness or particularity of the property (and not improvements on the property) impose a disproportionate impact on the subject parcel. If such a finding can not be made, no further inquiries are needed, and the petition fails. If however, such a finding can be made, the Zoning Authority must determine whether an unreasonable burden or hardship results from the disproportionate impact of the ordinance.

B. The Facts in This Case

With the above legal analysis in mind, Protestants submit that the Petitioners in this case failed to meet the necessary burden imposed upon them. First, the Petitioner acquired this property nine years prior with the house sited in its present location. When he purchased the property he should have known that the home was constructed on both the north and west setback lines. He failed to exercise proper diligence in ascertaining the zoning ordinance requirements to avoid a result of hardship before he acquired the property. (Wilson, supra)

Second, it is very clear that the original architect, Paul Marks, who was consulted by Mrs. Davison, chose to site the home adjacent to two setback lines (both the north and the west) for purposes of advantage for site views to the original property owner. Marks obviously knew what type of home he was constructing and did not intend any further expansion in either the north or west sides of the subject house.

Third, the Zoning Commissioner found that the Petitioner failed to establish that this property was unique. He has also failed to do so before this Board. A review of the cases cited above, including Umberly, clearly requires that the subject property be unique and different from the characteristics of surrounding properties to the extent that that uniqueness or particularity of the property imposes a disproportionate impact on the subject parcel. Here, the evidence is entirely devoid of any such proof. The site plan submitted by Petitioner and Protestant's Exhibit #1 clearly establishes that the Davison lot is almost rectangular. Thaler called it trapezoidal. It can be seen from the site plans that Welsh lot 58 is also trapezoidal. Additionally, other properties in the subdivision, according to the testimony of Doak and even the testimony of Petitioner's expert Davis, establish that this is just a normal lot in the Hill Side Subdivision. Clearly then, the lot fails to meet the standard established by Umberly, Cromwell, and North in regard to this prong. The Zoning Commissioner clearly saw that failure.

Petitioner may argue that the home is unique. The response to that argument is first that that fact does not qualify as uniqueness under the case law. Second, it is not on any historic State or County Landmark list. Third, while architect Link calls it a house of "deconstructionist" style, the functional description of the home is nothing more that what may be found in many American homes; a centralized public core with surrounding private areas. That description fits many ranch homes and traditional style homes in Baltimore County with a centralized public

living room, family room, and dining room area and private sections for bedrooms and bath facilities on the fringe of the public core. So even by Link's own definition there is nothing unique about this house's style. In any event, Protestants do not believe that constitutes satisfactory reason for granting a variance to a setback line.

Fourth, it is clear, regardless of whether Thaler or Doak is believed, that lot 58, owned by the Welshs, will be dramatically impacted by the placing of a 3 story addition to within 20 feet of the property line. The Board can clearly determine from the testimony of all of the witnesses that this area consists of homes on large lots separated significantly between home sites both in the Old Lyme/Hill Side and Falls Wood communities. The Welshs will be faced with lot 58 having a towering 3 story addition, plus 10 feet of grade difference for a 40 foot height difference, 70 feet from the proposed house on lot 58. That certainly is a detrimental and negative impact, as found by the Zoning Commissioner, on the Welshs lot. The Welshs urge this Board to likewise find detrimental impacts to the neighborhood by the granting of this variance request.

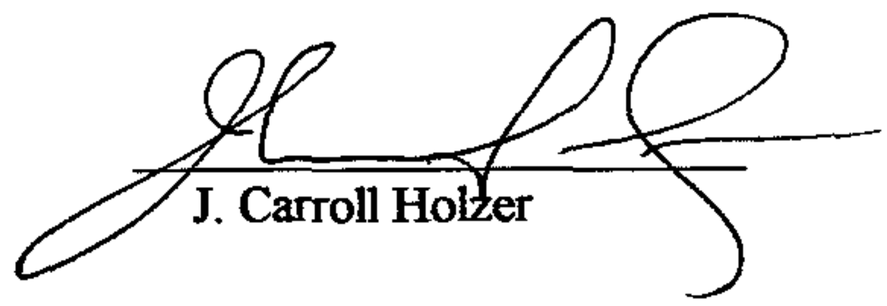
Wherefore Protestants respectfully request that this Honorable Board deny the Petitioner for Variance and deny the amendment to the subdivision as proposed by the Petitioner herein.

Respectfully submitted,

J. Carroll Holzer
508 Fairmount Ave.
Towson, MD 21286
410-825-6961

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 22ND day of April, 2002, a copy of the foregoing Memorandum in Lieu of Final Oral Argument was mailed first class, postage pre-paid to Howard Alderman at Levin & Gann, 502 Washington Ave., 8th Floor, Towson, MD 21204.



J. Carroll Holzer

C:Memos\Howe\Reply Memo-3-28-02

4/22/02

BEFORE THE

COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

Case No. 01-220-A

Mark and Sarah Davison

Petitioners

24 Treadwell Court
8th Election District
3rd Councilmanic District

PETITIONERS' POST-HEARING MEMORANDUM

Mark and Sarah Davison ("Owners", "Davison" or "Petitioners"), by and through their undersigned legal counsel, hereby submit this Post-Hearing Memorandum in accordance with the direction of the County Board of Appeals for Baltimore County ("Board") at the hearing held on the above-referenced appeal, in lieu of closing and legal argument.

STATEMENT OF THE CASE

This case is about the ability of the Davison's to use their property located at 24 Treadwell Court (the "Property") as a family home, such that they will not be required to attempt to relocate out of the Lutherville-Timonium area or Baltimore County.

Petitioners requested, by way of the Administrative Variance process, a side yard variance to permit an addition to their existing home to come within five (5) feet of their northern property line. Prior to any ruling by the Zoning Commissioner for Baltimore County, the owners of the vacant lot adjoining the Property on the north, Lois and Patrick Welsh ("Welsh" or "Protestants"), requested a full public hearing before the Commissioner on the variance relief requested. Prior to the scheduled public hearing, the Davisons communicated with the Protestants in an attempt to understand the request for hearing. As a result of the communication between the parties, the Petitioners modified the variance relief requested in the form of a side yard setback of twenty (20) feet rather than the five (5) feet requested originally.

A hearing was held by Zoning Commissioner Lawrence E. Schmidt during which testimony and evidence was accepted. On March 22, 2001, the Commissioner issued his findings of fact and conclusions of law denying the modified variance relief. A *de novo* appeal to this Board by the Petitioners followed.

THE RELEVANT FACTS

There is no dispute that the Property is zoned RC-5 and that the existing improvements are located in the northwest corner of the applicable building envelope. Likewise, there is no dispute that neither Mark Davison nor his immediate predecessor in title had anything to do with the location of the existing improvements on the Property. The record is clear that the original owner, in conjunction with his architect,

located the existing home on the Property.

Quality of Life

Mark Davison lived, as a bachelor, in the home on the Property for approximately fifteen (15) years. The Davison home was constructed shortly after the Protestants moved into their home in a separate, neighboring subdivision.[1] At present, the Davison home is probably the smallest home in the entire Hill Farms subdivision. The existing size, together with the changing needs of the Davison family necessitate that an addition be constructed.

Just as its position within the development envelope is not in question, the uniqueness of the architectural style and elements of the Davison home are clear. A report prepared by L.J. Link, Jr., Architect, recounted that the Davison home is "an example of the architectural style of deconstructivism."[2] The testimony of Ms. Sarah Davison and Mr. Link demonstrated that the <u>only</u> change Mr. Davison has made to the home since acquiring it was to stain it gray, after removal of the original white paint.[3]

Mr. Link described the deconstructivist style as a floor plan that functions as a

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[1] The Davisons take no present position regarding the issues of construction over lot lines, location of accessory structures and the like on the Protestants' home property.

[2] Report of L. J. Link, Jr., Inc. at unnumbered page 2; this report exists in the Record as Appellant's Exhibit No. 4 (referred to hereafter as the "Link Report").

[3] While white was the original design color, Mr. Link has opined that "gray is a subtle adaptation." Link Report at unnumbered page 2.

machine for living. In that regard, he described the open, public areas such as the living, dining and entertaining areas being separated distinctly and "strongly" from the private living areas such as the bedrooms, baths, etc. Ms. Davison reiterated the layout of the Davison home, describing the single master bedroom and other, small bedroom (currently utilized as Mr. Davison's office/study) as being functionally and physically separated from both:

- the guest bedroom, located above the garage and disconnected from the Davison's private living area; and
- the areas of the Property where an addition could possibly be "physically" constructed without the necessity of obtaining a variance

Ms. Davison testified that she and Mark intend to raise a family in the community in which they live and that they love. The Davison home is located near excellent amenities including, without limitation, quality public and/or private schools, places of worship, shopping and is otherwise centrally located in the Falls Road corridor.

Due Diligence

As evidenced by the testimony of both Mr. and Mrs. Davison, they did not rush into their decision to apply for a variance from the side yard setbacks. The uncontradicted evidence offered revealed that before filing for the variance:

- Sarah and Mark consulted six (6) separate architects, including Paul

Marks, AIA[4], the original architect of the Davison home; and

- Sarah and Mark retained the services of the engineering firm of Colbert, Matz and Rosenfelt to analyze the existing site configuration and constraints

As Ms. Davison acknowledged, she and Mark would have much rather invested the money spent on the cost of two separate and complete zoning hearings (including the cost of experts and counsel) in the addition to their home. However, based on the advice of all six architects, the only feasible location for the proposed addition to the Davison home is on the north side. The Protestants in this case have suggested that the variance relief requested should be denied for reasons including, but not limited to, the fact that Mark Davison bought his home in its present location (tucked into the northwest corner of the development envelope) and that the Davisons can move elsewhere to a larger home. In contrast, Ms. Davison testified of the pride and adoration that she and her husband have for the architectural style for their home and that they have been unable to find any home to replace it or a suitable lot to replicate it.

Function or Form?

The evidence of the Protestants suggested that the virtual function of the Davison home and the integrity of maintaining its rare architectural style are subservient to the

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[4] Beside Mr. Marks, Ms. Davison testified that Messrs. Mobley, Sutton, Warfield and Dowling (each a licensed architect) had been consulted. Ms. Davison could not recall the name of the 6th architect consulted.

fact that, physically, a proposed addition to the Davison home could be added in other areas without the necessity of the requested relief on the north side of the home. Testifying in opposition, Ms. Welsh acknowledged that she had not been in the Davison home over the last 15 years.

The evidence offered on behalf of the Owners showed clearly that to construct an addition to the Davison home anywhere but on the north side would result in a hodge podge living area, unworkable in function and a destruction of the architectural style. The existing layout and design of the Davison home and the way that it functions are two key factors that resulted in the filing of the variance petition.

The existing home comprises two, two-story components, connected via a common, utilitarian hallway/passageway. Looking at the home from Treadwell Court, the two-story component on the left is made up of a two-car garage, with a single, guest bedroom (utilized by Mark's in-laws when they are in town) constructed above and on the left side of the garage. Photographs introduced by the Owners show clearly that the <u>only</u> access to the existing guest bedroom is by walking (outside) <u>across the top</u> of the connecting hallway, then <u>across the roof</u> of the right-hand bay of the garage, until you reach the door to the guest bedroom. Clearly, the first floor garage and second floor in-law bedroom are physically and functionally separated from the main living areas of the home.

Irrespective of whether a proposed addition is added to the left of the garage/in-

law bedroom or if the existing garage were converted to needed bedroom space, both alternatives would have bedrooms needed for the children that the Davisons are planning separated entirely from the parents' bedroom, an awkward and undesirable situation. Counsel for the Protestants suggested that the existing garage could be converted to bedroom space and a new garage could be located further to the south, without a variance. As testified to by Sarah Davison, Mr. Link and the Petitioners' expert engineering witness, David Thaler, this alternative would require the removal of a number of large, mature trees and would result in access to the garage through one of the children's bedrooms, which may in itself violate the Building and/or Fire Codes of Baltimore County.

The location of the proposed addition achieves symmetry and balance as well as the more important functional factors. As noted by Mr. Link, the style of the existing home can only be maintained by construction of the addition in the proposed location. However, Mr. Link also noted that the existing private spaces in the Davison home, the master and auxiliary bedroom (Mark's study/office), are linked by a single hallway which ends on the southern end at the door of the master bedroom and on the northern end at the stairway connecting the first and second levels. The only access to these "private" areas of the Davison home is by the stairway on the northern side of the home. The proposed addition is designed to use this (same) stairway. The interlink of the proposed addition and the existing stairway on the northern face has been reduced to the

minimum size necessary to meet the requirements of the County Building Code. The children's bedrooms in the proposed addition would be immediately accessible from the parent's master bedroom, on the same level or directly downstairs, without the necessity of going through the common (public) living areas, the connecting hallway and the garage to bedrooms that could "physically" be constructed on the south side of the Davison home. Incorporating the existing stairway into the proposed addition permits the existing and the proposed private areas to be connected.

Community Compatibility

The evidence presented by the Davisons depicted clearly the compatibility of the proposed addition with the existing community and the lack of adverse effect even on the properties which directly adjoin the Davison's lot.[5] Numerous letters from immediate residents of the Hill Farm community, where the Davisons live, were introduced into evidence revealing support of the relief requested in this case. Mr. Herbert Davis, a recognized expert realtor and appraiser[6], testified that while the 30 foot difference between required sideyard setbacks and those proposed could be viewed in two-dimensions on a drawing, they would, in his countless years of experience, be "imperceptible" in the field. Moreover, Mr. Davis testified that the result of the

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[5] The Douglas, Rosenbaum and Mann properties, as well as the Welsh's lot. *See* the letters of support of the relief requested which exist in the record of this case.

[6] Mr. Davis noted candidly that he had also served in prior years as a member of the County Board of Appeals.

requested relief would have "no effect" on the value of Lot 58 to the north, one of the several vacant lots owned by the Protestants.

Sarah Davison testified as to the "natural" feeling from their home, as if one is located in the woods. Ms. Davison also testified that the proposed addition was located in an area that would result in the fewest number of existing trees being removed. Additionally, Ms. Davison identified the intention to plant additional landscaping between the proposed addition and the northern property line. When asked on cross-examination why additional landscaping would be added between the proposed addition and the common property line with the presently vacant Lot 58 owned by Mr. and Mrs. Welsh, Ms. Davison expressed her concern that there was no guarantee that the trees would remain on Lot No. 58. The "light, airy feeling" that one experiences from inside the Davison home is very important according to Sarah's testimony, a condition that will be maintained by the design and location of the proposed addition.

Property Values

Noted briefly above, Mr. Herbert Davis gave his professional opinion as an appraiser that the proposed addition to the Davison home would have no impact on the property values in the area. As to the existing value of the Davison home, Mr. Davis opined that due to its architectural style and functional bifurcation of private living areas, it would be difficult to sell, especially to a family with children. In Mr. Davis' opinion, if the Protestants were ever to improve Lot 58 by constructing a home against the

southern (50 foot) setback line, neither its value nor the value of the Davison home would be affected negatively if the requested relief is granted. Likewise, Mr. Davis testified that the variance relief requested would have no impact on the value of Lot 58 if its building rights are ever donated as part of a conservation easement. While Mr. Davis acknowledged candidly on cross-examination that there are instances where side yard setback variances can have an effect on adjoining properties, in the instant case there would be no effect since the addition being proposed would be virtually invisible and would not affect visibility or otherwise be perceptible, relative to the common property line.

Mr. Davis also offered his opinion as an experienced real estate broker as to the lack of function that would result if the proposed addition were to be constructed on the south side of the Davison home. He testified further that because the stairway connecting the existing bedrooms to the common areas was located on the north side of the home, it made sense that the addition be constructed on the north side. Mr. Davis further opined that the addition on the north side would be more pleasing, while at the same time enhancing interior functionality, both of which would increase the market value of the Davison home. Sarah Davison testified that it was not her or Mark's intent to merely increase the value of their home; rather, they want to make the existing home livable as a family home.

Uniqueness

David S. Thaler, PE, president of the firm which bears his name, D.S. Thaler and Associates, Inc., offered direct testimony without contradiction or cross-examination as to the physical features of the Davison property. Mr. Thaler indicated that he had examined the Davison's lot and had viewed the adjoining properties and other lots in the immediate area. As to the location of the proposed addition, Mr. Thaler testified that the northern location would require removal of the least number of existing, mature trees and emerging vegetation. Moreover, because of the existing grade, the lower level of the proposed addition would be used as the living space necessary to meet the Davison's requirements, thereby reducing the overall footprint of the addition. Mr. Thaler opined that placing the proposed addition on the front of the existing home would not function with the layout of the rest of the home, it would require the removal of mature vegetation and ornamental garden areas and the grade differential would make it difficult to get from the addition up to the main portion of the home.

While in two dimensions on a drawing the Davison lot appears to be not unlike other lots in Hill Farm, Mr. Thaler opined that the shape and topography of the property, taken together with the existing improvements were unlike any other property in the area and were "unique" to the Davison property. Through Mr. Thaler, photos of the Davison home and environs were introduced depicting the exterior and interior elements of the unique style of the Davison home. Driven by the uniqueness of the property, the

uniqueness of the architectural style and the desire to maintain as much of the natural surroundings as possible, Mr. Thaler opined that the relief requested was the minimum relief necessary and that, in achieving the additional living space needed, it would result in the smallest footprint.

As to the statutory standards, Mr. Thaler testified that, in his professional and expert opinion and for the reasons stated in open hearing before the Board:

- the conditions that exist on the property today justify the variance relief requested as they are peculiar and unique to the land and buildings on the subject site;
- that there will be no increase in residential density, beyond that otherwise allowable by the *Baltimore County Zoning Regulations* ("BCZR") if the requested relief is granted;
- that strict compliance with the BCZR would unreasonably prevent use of the subject property for a permitted purpose and that required conformity with the BCZR would be unnecessarily burdensome;
- that the relief requested would do substantial justice to the petitioners as well as other property owners in the district;
- that the relief requested is the minimum relief necessary and that lesser variances would not give substantial relief to the petitioners or be more consistent with justice to other property owners;
- that the requested relief can be granted so that the spirit and intent of the BCZR will be observed, and public health, safety and welfare secured; and
- that, in his expert opinion, considering the unique conditions of the subject property and the existing improvements located thereon, the literal enforcement of the Zoning Regulations would result in practical difficulty to the Petitioners.

At the conclusion of Mr. Thaler's direct testimony (and given that there was no cross-examination of that testimony), counsel for the Petitioners closed his case in chief and the Board adjourned the proceedings until a future date when the Protestants were to present their case, followed by any rebuttal desired by the Petitioners.

The Protestants' Case

Ms. Lois Welsh was the only resident of the general area to testify in opposition to the requested variance relief and there were no letters of opposition introduced from any neighbors other than the Welshs.. Mr. and Mrs. Welsh purchased their home in the subdivision of Fallscroft nearly 23 years ago. As depicted on Protestants' Exhibit No. 1, the Welsh home straddles two lots in Fallscroft[7], with the southernmost line of those improved lots being located approximately 340 feet from the northern lot line of the Davison property. In approximately 1981, the Welsh's purchased Lot No. 58 in Hill Farm to ensure their privacy in Fallscroft and as a potential real estate investment.[8] Subsequently, Mr. and Mrs. Welsh acquired Lot No. 4 in the Old Lyme subdivision for the same reasons as Lot 58. Lot No. 4 shares approximately 110 feet[9] of a common

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[7] The Welsh's improvements exist on Lot Nos. 5 and 6 of Fallscroft.

[8] Ms. Welsh testified that she and her husband had received numerous offers to purchase Lot No. 58, including offers from Sarah and Mark Davison (after which the Davisons would subject Lot 58 to a permanent conservation easement), but that the lot was not for sale.

[9] Calculated from Protestants' Exhibit No. 1.

boundary with the Davison property on the west of the Davison home, where no addition or construction by the Davisons is planned.

Ms. Welsh indicated that Lot 58 of Hill Farm is steep and heavily wooded and that it was purchased as "not a very desirable building lot." Ms. Welsh testified that neither she nor her husband had taken any action or obtained any permit or approval that protected it from the application of any subsequent governmental law or regulation that may impact the construction of an improvement on that lot. Finally, Ms. Welsh stated that her position and that of her husband had not changed; they are opposed to any variance relief whatsoever on the Davison Property.[10]

The final testimony on behalf of the Protestants was offered by Bruce Doak, a Maryland Registered Property Line Surveyor.[11] Mr. Doak indicated that he had visited Lot 58 owned by the Protestants on two occasions and at his clients' request had analyzed it relative to its building potential. Mr. Doak described the steps that he took in applying the current Baltimore County regulations for stream buffers to Lot 58, after

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[10] A letter from Mr. and Mrs. Welsh to Mr. and Mrs. Mark Davison, dated December 4, 2000, exists in the record of this case, the fifth, unnumbered paragraph of which provides "[t]herefore, we will oppose a variance **of any kind** that you might request." (Emphasis added.)

[11] Maryland makes a stark distinction between the more advanced Professional Land Surveyor and the less restrictive registration of Property Line Surveyor. *See* Business Occupations and Professions Article, §§ 15-101 (i) & (j), *et seq.*, *Annotated Code of Maryland.* Since July 1, 1990, the State Board for Professional Land Surveyors has been prohibited from issuing new licenses for the practice of property line surveying.

which he delineated on Protestants' Exhibit No. 1 his opinion of the location of the only building area on Lot 58. Subsequently, Mr. Doak did acknowledge that the various lots comprising the Welsh holdings could, potentially, be reconfigured to provide a building area on the north side of the stream which runs roughly east to west across Lot 58.

When asked during direct examination whether the requested variance relief would negatively impact the development of Lot 58, Mr. Doak discussed his concern associated with stormwater runoff, just before he acknowledged that stormwater can be redirected. On cross-examination, Mr. Doak testified that as a Property Line Surveyor, he was neither registered nor licensed to design facilities for erosion or stormwater issues. Mr. Doak offered testimony on the effective height of the proposed addition on the Davison property. However, on cross-examination he was unable, using the method for calculating height of buildings specified in the BCZR, to determine how much higher, if at all, the proposed addition would be than the existing Davison home.

Finally, Mr. Doak testified about his experiences in working with lot owners and their selection of a site to construct a home on their property. Mr. Doak described the participation of an owners' architect in locational setting and the need in some cases to obtain a setback or other variance to meet the design guidelines of the home to be constructed. With respect to future expansion, Mr. Doak indicated that he would discuss with the initial owners any possible expansion that may be desired "throughout their ownership" of the property.

Expert Rebuttal to Correct Flawed Analysis

In rebuttal, David Thaler, PE offered expert testimony with respect to the flaws that he determined to exist in the analysis performed by Mr. Doak. Mr. Thaler indicated that he was familiar with the current forest [stream] buffer regulations[12] and the written opinion of the former County Attorney that such regulations were not applicable to certain lots.[13] Mr. Thaler described how lots that are located in subdivisions for which a subdivision plat has been recorded and permits issued were specifically grandfathered[14] from the effect of the regulations used by Mr. Doak to delineate the forest buffer line on Lot 58.

Applying the applicable provisions of the Code of County Regulations adopted by the County Department of Environmental Protection and Resource Management, using a copy of Protestants' Exhibit No. 1, Mr. Thaler described how the forest buffer line would be calculated.[15] Then, through the use of a bumwad overlay, Mr. Thaler described how a home with a footprint (first floor only) of 4500 square feet could be

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[12] The applicable sections of the County Code were introduced as Appellants' Exhibit No. 12.

[13] Appellants' Exhibit No. 13

[14] Lot No. 58 of Hill Farm meets all of the criteria to be grandfathered.

[15] Appellants' Exhibit No. 14A

constructed in accord with applicable County laws and regulations.[16] In Mr. Thaler's opinion, Mr. Doak's analysis of a potential building envelope on Lot 58 was incorrect. The professional analysis performed under Mr. Thaler's direction and control depicts a much less constrained building area on Lot 58.

Mr. Davison's Summary

In rebuttal to the testimony of Ms. Welsh, Mr. Davison summarized his feelings about the Davison home and the need for expansion. Further, Mr. Davison testified that he realized that Lot 58 may, someday, have a house constructed on it and his hope was that the residents of that future house would be good neighbors and that they would have children that could play with his and Sarah's children.

LEGAL ARGUMENT

The Requested Area Variance Will Have No Impact on the Protestants Nor Change the Character of the Community

The appellate courts of this state have long recognized the difference between a use variance and an area variance. The *Anderson* Court articulated the difference as follows:

> . . . the variances requested in this case involve an 'area variance' (a variance from area, height, density, **setback**, or sideline restrictions, such as a variance from the distance required between buildings) and not a 'use variance' (a variance which permits a use other than that permitted in the

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[16] Appellants' Exhibit 14B.

> particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses).

Anderson at 37-38. (Emphasis added.)

In support of its reasoning, the *Anderson* Court relied on a prior holding of the Court of Appeals of Maryland, in the case of *Loyola Loan Ass'n v. Buschman*, 227 Md. 243 (1961), where that Court described the distinctions:

> "between a **use** variance, which **changes the character of the zoned district**, and an area variance, which does not. Use variances are customarily concerned with 'hardship' cases, where the land cannot yield a reasonable return if used only in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance, while area variances are customarily concerned with 'practical difficulty.'"

Anderson at 38. (Emphases added.)

Most often, the appellate courts in this and other states have focused on the different standards of proof required to justify an "area" versus a "use" variance. In the case of a variance from a distance or setback requirement or a height requirement, the lesser "practical difficulty" standard applies. To prove practical difficulty, an applicant or petitioner:

> need show only that:
>
> '1) Whether compliance with the strict letter of the restrictions governing area, **setbacks**, frontage, height, bulk or density would unreasonably **prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.**'2) Whether a grant of the variance applied for would **do substantial justice to the applicant as well as to other property owners**

> **in the district**, or **whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.**'3) Whether relief can be granted in such fashion that the **spirit of the ordinance will be observed and public safety and welfare secured.**' McLean v. Soley, 270 Md. 208, 214-215, 310 A.2d 783, 787 (1973), quoting 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972). The lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance.

Anderson at 39. (Emphasis added.)

Contrast this to the more stringent **undue hardship** standard applied in obtaining a "use" variance to prohibit a taking of property rights in the constitutional sense.

> Where the standard of undue hardship applies, the applicant, in order to justify the grant of the variance, must meet three criteria: 1) If he complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property. Pem Co. v. Baltimore City, 233 Md. 372, 378, 196 A.2d 879, 882 (1964); Marino v. City of Baltimore, 215 Md. 206, 218, 137 A.2d 198, 202 (1957); see Salisbury Bd. v. Bounds, 240 Md. 547, 555, 214 A.2d 810, 815 (1965). Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance. Daihl v. County Board of Appeals, 258 Md. 157, 167, 265 A.2d 227, 232 (1970); Salisbury Bd. v. Bounds, supra, 240 Md. at 555, 214 A.2d at 814; Marino v. City of Baltimore, supra; Easter v. City of Baltimore, 195 Md. 395, 400, 73 A.2d 491, 492 (1950). 2) The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district. Burns v. Baltimore City, 251 Md. 554, 559, 248 A.2d 103, 106 (1968); Marino v. City of Baltimore, supra; Easter v. City of Baltimore, supra. 3) The hardship was not the result of the applicant's own actions. Salisbury Bd. v. Bounds, supra; Marino v. City of Baltimore, supra; Gleason v. Keswick Impvt. Ass'n, 197 Md. 46, 50-51, 78 A.2d 164, 165-166 (1951).

Anderson at 38-39.

Clearly, in this case Sarah and Mark Davison are seeking relief by way of an area variance. The requested variance is for an addition to a use permitted as of right in the Resource Conservation zone in which it is located. The Davisons have shown through extensive, expert testimony that the characteristics of the Davison property and its improvements are unique, that the variance is justified in accordance with the statutory standards and that the requested relief (as modified) can be granted without impact or detriment to the adjoining properties or the neighborhood in general.

The County Council has authorized the Zoning Commissioner and this Board, pursuant to BCZR § 307.1 to grant area variances where strict application of the regulations would result in practical difficulty or unreasonable hardship. The standards are stated in the disjunctive; the case law as noted above is clear that practical difficulty is the standard to be applied to area variances and unreasonable hardship is that standard applicable to use variances. The authority to grant such variances applies in cases where there are special circumstances or conditions that exist relative to the subject property. Before an area variance can be approved, the Petitioner(s) must also show that there will be no increase in residential density and that the relief requested is in accord with the spirit and intent of the BCZR and that the public health, safety and welfare will be secured.

The Petitioners' Prior Knowledge as Self-Created Hardship?

The Protestants have attempted to impute some import to the fact that Mark

Davison knew of the location of the home on the Davison property before he purchased it. If prior knowledge of the need to obtain a variance to employ a particular use was a bar to the granting of variance relief, few (if any) variances would be granted. The uncontradicted testimony was that Mark Davison purchased his home and lived there for approximately 15 years as a bachelor. After their marriage Sarah and Mark now want to be able to raise a family in their own home, in an area that they love. Even if Mark had purchased his home knowing that 15 years hence he would need a variance to expand, such knowledge would not be a bar to the granting of variance relief.

Slightly more than one month ago, the Maryland Court of Appeals considered the case of Richard Roeser, a professional builder, who purchased a lot knowing full well that he would need to obtain variances from applicable zoning regulations to build the size house that he desired on the property. The Anne Arundel County Board of Appeals found that one must exercise due diligence in determining the applicable setback restrictions before purchasing the property and that the failure to do so constituted self-inflicted hardship. The Court of Appeals held that purchasing with prior knowledge of conditions requiring one or more variances did not constitute self-created hardship. *Richard Roeser Professional Builder, Inc. v. Anne Arundel County, Maryland*, No. 79, September Term, 2001, *2002 Md. LEXIS 92* The State's highest court, citing *Land Use Planning and Control Law*, ruled that:

> The reasons used to deny a variance to one who violates the law and then seeks

> relief are not applicable to one who purchases with knowledge. In the former, the owner created the hardship; in the latter, the zoning created the hardship, which pre-existed the purchaser's acquisition of title .... But it is not an affront to the law to grant relief to one who purchases land where unique circumstances have already zoned the land into a state of uselessness.

Id. at 20. (Emphasis added.)

There is no self-created hardship in this case. Mark Davison acquired the Davison home in its current configuration and has made no modifications except to stain the exterior gray.

The Applicable Case Law

The initial standards to be met by a petitioner in a zoning variance case were articulated clearly by the Maryland Court of Appeals in the case of *McLean v. Soley*, 270 Md. 208 (1973). Quoting Professor Rathkopf's treatise *The Law of Planning and Zoning*, the Court reiterated the three (3) standards to be met when seeking an area variance:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome;

2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; and

3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

McLean v. Soley at 214-215.

These standards are the same held by the Maryland Court of Special Appeals in the *Anderson* case and recognized in subsequent opinions of both Maryland appellate courts. As noted by the Maryland Court of Special Appeals in *Cromwell v. Ward*, 102 Md. App. 691 (1995), where a landowner has actual or constructive knowledge of the zoning regulations, such knowledge is a bar to the grant of a variance on the basis of "undue hardship". *Cromwell* at 717; (quoting *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27 (1983)). As noted, repeatedly, above the applicable standard to the request pending in this case is "practical difficulty" and not "undue hardship".

As to the relevant [practical difficulty] standards, the Petitioners have shown that: <u>Strict compliance with BCZR §421.2 will prevent, unreasonably, the Petitioners from using the Davison property for a permitted purpose</u>

- all parties testifying acknowledge that the use of the property for a single family home is a permitted purpose; the Davisons wish to increase the size of their existing home, more in keeping with the other homes in the area, to enable them to have a functional home in which to raise their children in safe and secure conditions.

- as testified to by Mr. Davis and Mr. Thaler, strict compliance with the 50 foot setback in this residential community is unreasonable and unwarranted. Mr. Davis opined without contradiction that a 70 foot separation would be "invisible" to purchasers of either home. Mr. Thaler testified that even if Lot 58 to the north is subjected to forest buffer requirements, there is more than adequate area on that lot to construct a very large home, well separated and in no way impacted by the proposed addition to the Davison home.

- Ms. Davison testified that failure to grant the variance would place an unreasonable burden on her and her husband. Conversely, there is no impact on the Welsh home or their vacant lots.

<u>The grant of the variance requested is the minimum necessary and can be granted so as to do substantial justice to the Petitioners and others in the RC5 zone</u>

- The uncontradicted, expert testimony from David Thaler, PE was that the requested 20 foot setback from a property line was the **minimum relief necessary** for the proposed addition to the permitted use

- the existing stairway at the north end of the Davison home is a principal, existing element that is to be retained and incorporated into the proposed addition. It is the adaptive reuse of this existing stairway that enabled the Davisons to reduce the variance relief requested. At present, the linkage between the existing home and northern face stairway and the proposed addition has been reduced to the minimum necessary to meet the life, health, safety and building codes of the County.

- Mr. Herbert Davis testified without contradiction that the variance relief would not have any impact on the **value** of Lot 58 **either** as a lot sold for purposes of building **or** as a lot subjected to an environmental conservation easement.

<u>The requested relief can be granted within the spirit and intent of the BCZR and without effect on the public health, safety and welfare</u>

- Mr. Thaler testified that there would be no adverse impact or effect on the public, health or welfare of the neighborhood as a result of the grant of the requested variance.

- Being familiar with the spirit and intent of the BCZR and, by his own understanding of the purpose and intent behind the 50 foot setback from a property line, Mr. Thaler opined that **the requested relief can be granted such that the spirit and intent of the zoning ordinance will be**

observed

The uniqueness of the Davison property and the improvements located thereon are discussed, perhaps *ad nauseam*, above. Neither Ms. Welsh nor her professional land surveyor could identify any property configured in a manner similar to the Davison property, including the existing topography and improvements, neither of which either Sarah nor Mark Davison caused. The architectural style and the necessity of maintaining a functional, residential structure that is not rendered obsolete due to construction of an addition in the wrong place are both unique factors in this case, neither of which are applicable to other properties in the area.

The Petitioners have met their burden necessary to prevail on the variance relief requested. Ms. Welsh, a lay witness, has recited purported fear of the unknown and dislike of the project, including any variance relief that may be necessary, irrespective of the nature of the relief requested. A review of the proceedings before this Board will reveal that the Protestants were afforded wide latitude in their attempts to refute the expert and professional testimony and exhibits presented by the Davisons. Any decision of this Board must meet the requisite legal standards, including without limitation, substantial evidence to support its conclusions. The appellate courts of this State have ruled on the force and effect and quality of evidence presented to Boards of Appeal in zoning cases:

> While zoning agency bodies then are not bound by strict

> rules of evidence, their decisions must be supported by substantial evidence on the record. Rockville Fuel, supra. 'Zoning is not a plebiscite' and therefore testimony in opposition restricted solely to lay witnesses, petitions of objection to the proposal by residents, and testimony amounting to unsupported dislike and fear of (a) project, '. . . **amounted to no evidence at all**.

Entzian v. Prince George's County, 32 Md. App. 256, 262 (1976) (Emphases added.)

The Protestants had ample opportunity to present quality and credible testimony that could be properly reviewed and considered by the Board, perhaps even being relied upon by the Board in its decision. The rebuttal case of the Davisons showed clearly that the property line surveyor relied upon by the Protestants applied present day forest buffer requirements rather than the provisions applicable to grandfathered lots.

SUMMARY and CONCLUSION

This case is a *de novo* appeal of a prior zoning decision, but it is also a real life appeal. It is an appeal by Sarah and Mark Davison for relief from conditions that they did not create that will permit them to raise their family in a quality home and a first-rate area of the County. The relief they are seeking will not impair or even affect the value of adjoining properties nor the ability to build on those properties.

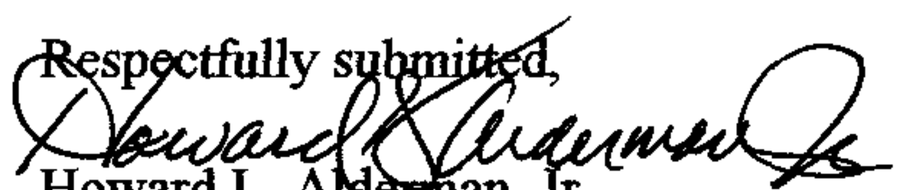
Without the requested relief, the Davisons will be forced from their home and neighborhood. At the other end of the spectrum they could "physically" construct an addition to their home that would result in a nonfunctional, dwelling. While having children's bedrooms physically separated by stairways, connecting hallways and,

perhaps, even existing garages may be attractive to some parents of certain teenagers, those are not the conditions in which the Davisons wish to raise a loving family. A realtor with particular expertise in selling homes in the Falls Road corridor testified that placing the addition anywhere but on the north side of the Davison home would result in such unwanted and unwarranted conditions. Moreover, the architectural integrity of this uniquely crafted home (and one which may be added to a preservation list in the future according to Mr. Thaler) would be destroyed.

The Petitioners have met their burden through substantial and uncontroverted evidence. The testimony offered in opposition to the variance relief requested is inapposite to the legal standards which apply in a zoning case. The uniqueness of the Davison property and the practical difficulty that will be suffered by the Petitioners if the requested relief is not granted has not been seriously challenged.

For all of the foregoing reasons, this Board should grant, without condition or restriction, the variance relief requested.

Respectfully submitted,



Howard L. Alderman, Jr.
Levin & Gann, P.A.
8th Floor, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
410.321.0600 [voice]/410.296.2801 [fax]
halderman@LevinGann.com [e-mail]

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April, 2002, a copy of the foregoing Petitioners' Post-Hearing Memorandum, was mailed, postage prepaid, First Class United States Mail to the following:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286

Howard L. Alderman, Jr.

Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 24 Treadwell Court

which is presently zoned RC -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)

1A04.3.B.2, BCZR, ~~for~~ to permit a building setback of 5 feet in lieu of the required 50 feet, and to amend the First Amended Partial Development Plan, Plat VI, The Hill Farm.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form.

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):

Mark E. Davison
Name - Type or Print

Signature

Name - Type or Print

Signature

24 Treadwell Court — 410-252-2094
Address — Telephone No.

Lutherville, — MD — 21093
City — State — Zip Code

Representative to be Contacted:

Richard E. Matz, P.E.
Colbert Matz Rosenfelt, Inc.
Name

2835 G Smith Ave. — 410-653-3838
Address — Telephone No.

Baltimore, — MD — 21209
City — State — Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ____ day of _____, _____ that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning *regulations of Baltimore County and that the property be reposted.*

Zoning Commissioner of Baltimore County

CASE NO. 01-220-A

Reviewed By JNP **Date** 11/22/00

Estimated Posting Date 12/3/00

REV 9/15/98

Affidavit in Support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows: That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 24 Treadwell Court
Address
Lutherville MD 21093
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty):

Location and configuration of existing house
dictates necessary location of proposed addition.

That the Affiant(s) acknowledge(s) that if a formal demand is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

Signature

Signature

Mark E. Davison
Name - Type or Print

Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this _____ day of _____, _____, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared

_____

the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s), and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her/their knowledge and belief.

AS WITNESS my hand and Notarial Seal

11/21/2000
Date

Notary Public

My Commission Expires 9/2003

DIANE D. SEIDEL NOTARY PUBLIC BALTIMORE CO., MD.

REV 09/15/98

Affidavit in Support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows: That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 24 Treadwell Court
Address

Lutherville MD 21093
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty):

Location and configuration of existing house
dictates necessary location of proposed addition.

That the Affiant(s) acknowledge(s) that if a formal demand is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

Signature

Signature

Mark E. Davison
Name - Type or Print

Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this _____ day of _____, _____, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared

_____

the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s), and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her/their knowledge and belief.

AS WITNESS my hand and Notarial Seal

11/21/2000
Date

Notary Public

My Commission Expires 9/ /2003

DIANE D. SEIDEL NOTARY PUBLIC BALTIMORE CO. MD.

REV 09/15/98

Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners

ZONING DESCRIPTION
24 TREADWELL COURT

Beginning at a point on the west side of Treadwell Court, which is 50 feet wide, at the distance of 536 feet from the centerline of Wyndam Court, which is 40 feet wide.

Being Lot 59 in the subdivision of Plat VI, The Hill Farm, as recorded in Baltimore County Plat Book #48, Folio #70, and containing 62,814 square feet (1.442 Ac.).

Also known as 24 Treadwell Court and located in the 8th Election District, 3rd Councilmanic District.

STATE OF MARYLAND
RICHARD EARL MATZ
No. 13203
REGISTERED
PROFESSIONAL ENGINEER

11/22/00

2835 Smith Avenue, Suite G Baltimore, Maryland 21209
Telephone: (410) 653-3838 / Facsimile: (410) 653-7953

[redacted]

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: #01-220-A
24 Treadwell Court
W/S Treadwell Court, 536' N of Wyndham Court (Lot 59, Plat VI, The Hill Farm)
8th Election District
3rd Councilmanic District
Legal Owner(s): Mark E. Davison
Administrative Variance: to permit a building setback of 5 feet in lieu of the required 50 feet and to amend the First Amended Partial Development Plan, Plat VI, The Hill Farm.
Hearing: Tuesday, January 23, 2001 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.
1/009 Jan. 4 C442480

CERTIFICATE OF PUBLICATION

TOWSON, MD, 1/4, 2001

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 1/4, 2001.

THE JEFFERSONIAN,

S. Wilkinson

LEGAL ADVERTISING

[redacted]

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: #01-220-A
24 Treadwell Court
W/S Treadwell Court, 536' N of Wyndham Court
(Lot 59, Plat VI, The Hill Farm)
8th Election District – 3rd Councilmanic District
Legal Owner(s): Mark E. Davison

Administrative Variance: to permit a building setback of 5 feet in lieu of the required 50 feet and to amend the First Amended Partial Development Plan, Plat VI, The Hill Farm.

Hearing: Wednesday, March 7, 2001 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.

JT 2/691 Feb. 20 C451681

CERTIFICATE OF PUBLICATION

TOWSON, MD, 2/22/, 2001

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 2/20/, 2001.

THE JEFFERSONIAN,

S. Wilkinson

LEGAL ADVERTISING

[redacted]

FORMAL DEMAND FOR HEARING

CASE NUMBER: 01-~~230~~ 220 A

Address: 24 Treadwell Court, Lutherville

Petitioner(s): Mr. + Mrs. Mark Davison

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I/We Patrick + Lois Welsh
Name - Type or Print

( ) Legal Owner OR (X) Resident of

901 Falls Croft Way
Address

Lutherville MD 21093
City State Zip Code

410-252-7007
Telephone Number

which is located approximately property lines are contiguous *feet from the property, which is the subject of the above petition,* ***do hereby formally demand that a public hearing be set in this matter.***

ATTACHED IS THE REQUIRED PROCESSING FEE FOR THIS DEMAND.

Signature Date Dec. 8, 2000

Signature Date

Revised 9/18/98 - wcr/sci

APPEAL SIGN POSTING REQUEST

CASE NO. 01-220-A

Mark F. Davison

W/s Treadwell Court, 536' N of the c/l Wyndam Court
(24 Treadwell Court)

8th Election District

Appealed 4/19/01

Attachment – (Plan to accompany Petition
- Petitioner's Exhibit No. 1A)

CERTIFICATE OF POSTING

RE: Case No.: 01-220-A

Petitioner/Developer: Mark E. Davidson

Date of Hearing/Closing: 3-7-01

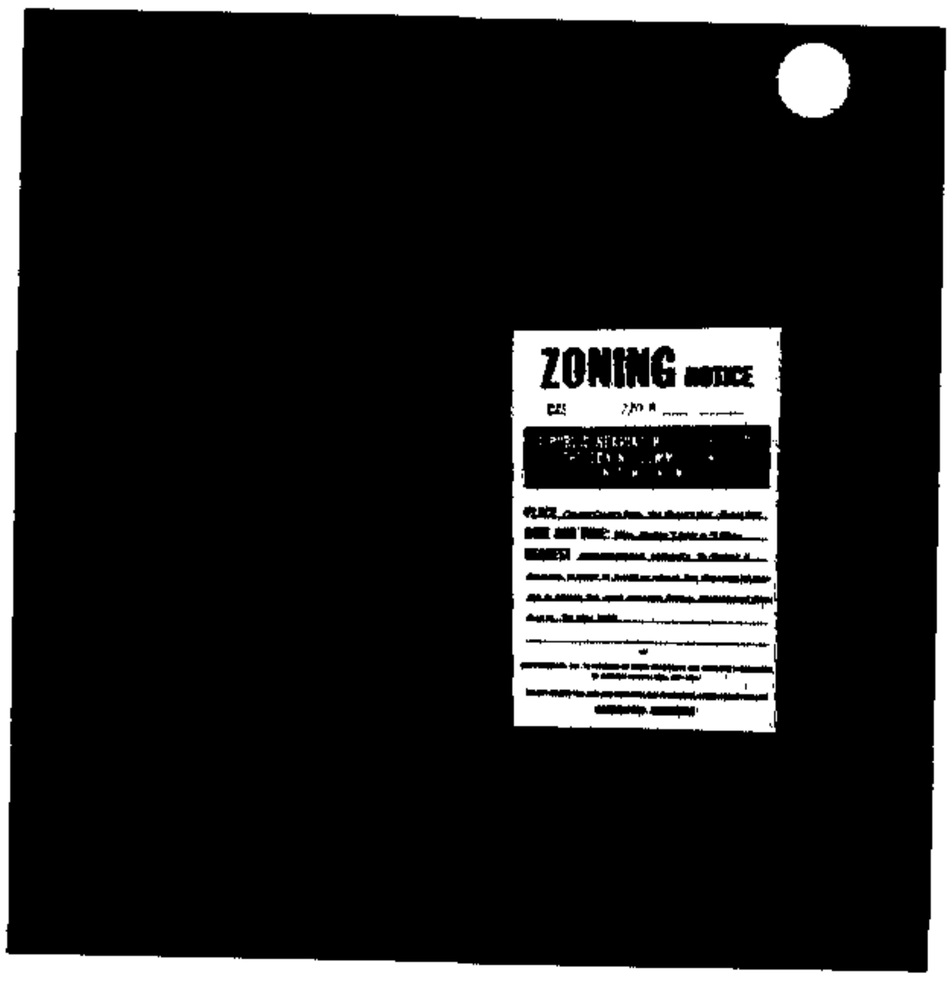
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 24 Treadwell Ct. Lutherville, Maryland 21093

The sign(s) were posted on February 6, 2001
(Month, Day, Year)



Sincerely,

Stacy Gardner 2/6/01
(Signature of Sign Poster and Date)

Stacy Gardner
(Printed Name)

SHANNON-BAUM SIGN CO.
105 COMPETITIVE COURT
(Address)

EMMITSBURG, MD. 21784
(City, State, Zip Code)

410-781-400
(Telephone Number)

CERTIFICATE OF POSTING

RE: Case No.: 01-220-A

Petitioner/Developer: Mark E. Davidson

Date of Hearing/Closing: 3-7-01

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

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 24 Treadwell Court Lutherville, MD 21093

The sign(s) were posted on February 19, 2001
(Month, Day, Year)

RE-INSTALLATION
customer removed sign that was originally posted because he did not want it posted earlier than it needed to be

Sincerely,

Stacy Gardner 2/19/01
(Signature of Sign Poster and Date)

Stacy Gardner
(Printed Name)

SHANNON-BAUM SIGNS INC.
105 COMPETITIVE GOALS DR.
(Address)
ELDERSBURG, MD. 21784
(City, State, Zip Code)

410-781-4000
(Telephone Number)

9/96
cert.doc

CERTIFICATE OF POSTING

ADMIN

RE: Case No.: 01-220-A (01-220-A)

Petitioner/Developer: O'KEEFE, ETAL

Date of Hearing/Closing: ~~12/18/00~~ (2) 1/23/01

~~January (2.) Closing~~

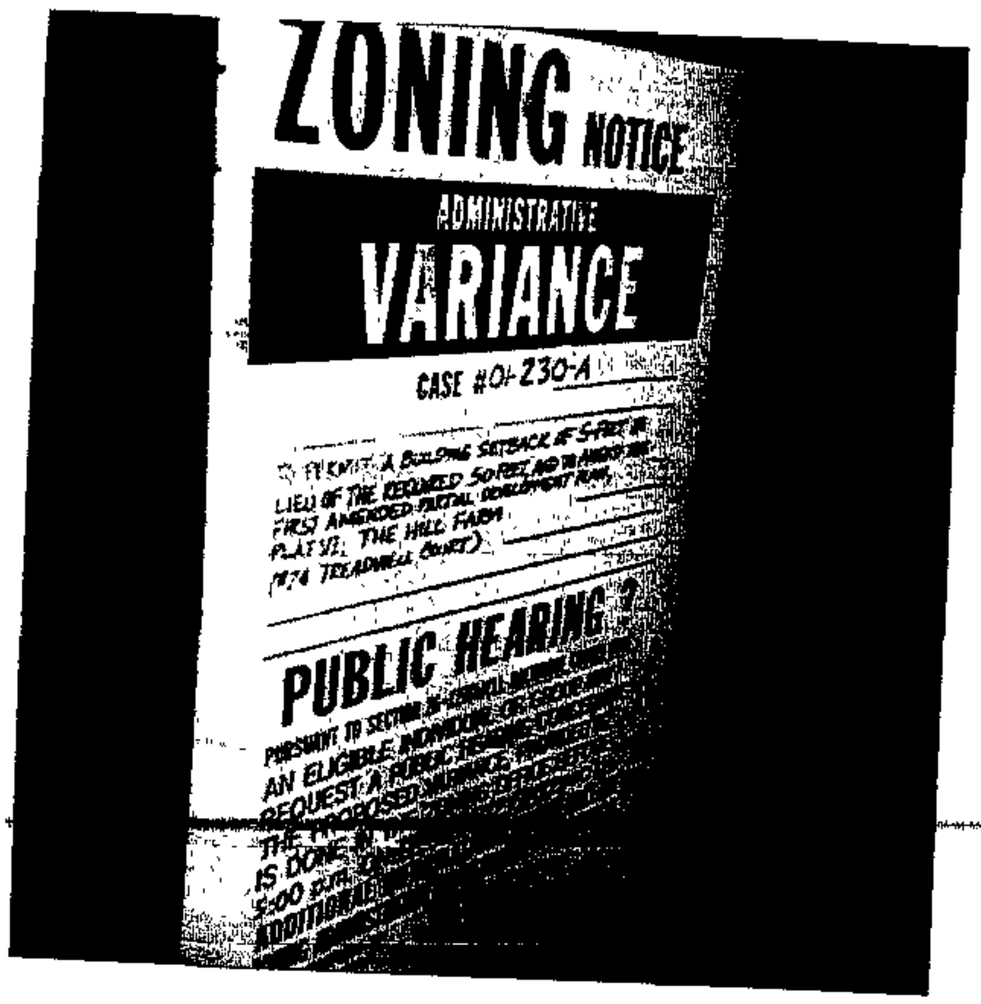
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at #24 TREADWELL CT.

The sign(s) were posted on 12/1/00
(Month, Day, Year)



Sincerely,

12/4/00
(Signature of Sign Poster and Date)

PATRICK M. O'KEEFE
(Printed Name)

523 PENNY LANE
(Address)

HUNT VALLEY, MD. 21030
(City, State, Zip Code)

410-666-5366 ; CELL-410-905-8571
(Telephone Number)

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

January 24, 2001

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: 01-220-A
24 Treadwell Court
W/S Treadwell Court, 536' N of Wyndham Court (Lot 59, Plat VI, The Hill Farm)
8th Election District – 3rd Councilmanic District
Legal Owner: Mark E. Davison

Administrative Variance to permit a building setback of 5 feet in lieu of the required 50 feet and to amend the First Amended Partial Development Plan, Plat VI, The Hill Farm.

HEARING: Wednesday, March 7, 2001 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

C: Mark E Davison, 24 Treadwell Court, Lutherville 21093
Richard E Matz PE, Colbert Matz Rosenfelt Inc, 2835 Smith Avenue, Suite G, Baltimore 21209
J. Carroll Holzer, Holzer & Lee, 508 Fairmount Avenue, Towson 21286
Lois & Patrick Welsh, 901 Fallscroft Way, Lutherville 21093

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, FEBRUARY 20, 2001.**
(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

BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number 01-220 -A Address 24 Treadwell Court

Contact Person: Jeffrey Perlow Phone Number: 410-887-3391
Planner, Please Print Your Name

Filing Date: 11/22/00 **Posting Date:** 12/3/00 **Closing Date:** 12/18/00

Any contact made with this office regarding the status of the administrative variance should be through the contact person (planner) using the case number.

1. **POSTING/COST:** The petitioner must use one of the sign posters on the approved list (on the reverse side of this form) and the petitioner is responsible for all printing/posting costs. Any reposting must be done only by one of the sign posters on the approved list and the petitioner is again responsible for all associated costs. The zoning notice sign must be visible on the property on or before the posting date noted above. It should remain there through the closing date.

2. **DEADLINE:** The closing date is the deadline for an occupant or owner within 1,000 feet to file a formal request for a public hearing. Please understand that even if there is no formal request for a public hearing, the process is not complete on the closing date.

3. **ORDER:** After the closing date, the file will be reviewed by the zoning or deputy zoning commissioner. He may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. You will receive written notification (typically within 7 to 10 days of the closing date) as to whether the petition has been granted, denied, or will go to public hearing. The order will be mailed to you by First Class mail.

4. **POSSIBLE PUBLIC HEARING AND REPOSTING:** In cases that must go to a public hearing (whether due to a neighbor's formal request or by order of the zoning or deputy zoning commissioner), notification will be forwarded to you. The sign on the property must be changed giving notice of the hearing date, time and location. As when the sign was originally posted, certification of this change and a photograph of the altered sign must be forwarded to this office.

(Detach Along Dotted Line)

Petitioner: This Part of the Form is for the Sign Poster Only

USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT

Case Number 01-220 -A Address 24 Treadwell Court

Petitioner's Name Mark E. Davison Telephone 410-252-2094

Posting Date: 12/3/00 **Closing Date:** 12/18/00

Wording for Sign: *To Permit* a building setback of 5 feet in lieu of the required 50 feet, and to amend the First Amended Partial Development Plan, Plat VI, The Hill Farm.

ZONING REVIEW

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number 01-220 -A Address 24 Treadwell Court

Contact Person: Jeffrey Perlow Phone Number: 410-887-3391
Planner, Please Print Your Name

Filing Date: 11/22/00 **Posting Date:** 12/3/00 **Closing Date:** 12/18/00

Any contact made with this office regarding the status of the administrative variance should be through the contact person (planner) using the case number.

1. **POSTING/COST:** The petitioner must use one of the sign posters on the approved list (on the reverse side of this form) and the petitioner is responsible for all printing/posting costs. Any reposting must be done only by one of the sign posters on the approved list and the petitioner is again responsible for all associated costs. The zoning notice sign must be visible on the property on or before the posting date noted above. It should remain there through the closing date.

2. **DEADLINE:** The closing date is the deadline for an occupant or owner within 1,000 feet to file a formal request for a public hearing. Please understand that even if there is no formal request for a public hearing, the process is not complete on the closing date.

3. **ORDER:** After the closing date, the file will be reviewed by the zoning or deputy zoning commissioner. He may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. You will receive written notification (typically within 7 to 10 days of the closing date) as to whether the petition has been granted, denied, or will go to public hearing. The order will be mailed to you by First Class mail.

4. **POSSIBLE PUBLIC HEARING AND REPOSTING:** In cases that must go to a public hearing (whether due to a neighbor's formal request or by order of the zoning or deputy zoning commissioner), notification will be forwarded to you. The sign on the property must be changed giving notice of the hearing date, time and location. As when the sign was originally posted, certification of this change and a photograph of the altered sign must be forwarded to this office.

(Detach Along Dotted Line)

Petitioner: This Part of the Form is for the Sign Poster Only

USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT

Case Number 01-220 -A Address 24 Treadwell Court

Petitioner's Name Mark E. Davison Telephone 410-252-2094

Posting Date: 12/3/00 **Closing Date:** 12/18/00

Wording for Sign: To Permit a building setback of 5 feet in lieu of the required 50 feet, and to amend the First Amended Partial Development Plan, Plat VI, The Hill Farm.

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 4, 2002

NOTICE OF ASSIGNMENT

CASE #: 01-220-A **IN THE MATTER OF: MARK E. DAVISON –Legal Owner / Petitioner** 24 Treadwell Court
8th Election District; 3rd Councilmanic District

3/22/2001 – Petition for Variance DENIED by Zoning Commissioner.

ASSIGNED FOR: **TUESDAY, FEBRUARY 26, 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 Appellant /Petitioner : Howard L. Alderman, Jr., Esquire
Appellant /Petitioner : Mark E. Davison

Counsel for Protestants (Welsh) : J. Carroll Holzer, Esquire
Protestants : Patrick and Lois Welsh

Thomas Frankovic

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

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

3/11/02
WCR

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

March 6, 2002

NOTICE OF ASSIGNMENT /Day #2

CASE #: 01-220-A

IN THE MATTER OF: MARK E. DAVISON –Legal Owner / Petitioner 24 Treadwell Court
8th Election District; 3rd Councilmanic District

3/22/2001 – Petition for Variance DENIED by Zoning Commissioner.

Day #2 from 2/26/02

ASSIGNED FOR: **WEDNESDAY, MARCH 27, 2002 at 10:00 a.m. /Day #2**

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 Appellant /Petitioner : Howard L. Alderman, Jr., Esquire
Appellant /Petitioner : Mark E. Davison

Counsel for Protestants (Welsh) : J. Carroll Holzer, Esquire
Protestants : Patrick and Lois Welsh

Thomas Frankovic

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

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on Recycled Paper

County Board of Appeals of Baltimore County

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

March 28, 2002

NOTICE OF DELIBERATION

IN THE MATTER OF:
MARK E DAVISON – Legal Owner /Petitioner
Petitioners / Case No-01-220-A

Having heard this matter in two days of hearing (2/26/02 and 3/27/02), public deliberation has been scheduled for the following date /time:

DATE AND TIME : TUESDAY, MAY 14, 2002 at 9:30 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Memos are due from counsel on Monday, April 22, 2002 by close of business.
(Original and three [3] copies).

Kathleen C. Bianco
Administrator

c: Counsel for Appellant /Petitioner : Howard L. Alderman, Jr., Esquire
Appellant /Petitioner : Mark E. Davison

Counsel for Protestants (Welsh) : J. Carroll Holzer, Esquire
Protestants : Patrick and Lois Welsh

Thomas Frankovic

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

fyi copy: C.S.R.

Printed with Soybean Ink
on Recycled Paper

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

January 11, 2001

Howard L. Alderman, Jr.
Levin & Gann
520 Washington Avenue, 8th Floor
Towson MD 21204

Dear Mr. Alderman, Jr.:

RE: 01-220-A, 24 Treadwell Court

The above matter, previously scheduled for Tuesday, January 23, 2001 at 9:00 a.m. in Room 407, has been postponed at your request. Once the hearing has been rescheduled you will be notified by mail.

Please be advised that, as the individual requesting and receiving the postponement, the responsibility and costs associated with the appropriate posting of the property now lies with you. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so. If the property has been posted with notice of the original hearing date, as quickly as possible a notice of the new hearing date should be affixed to the sign(s).

Very truly yours,

GDZ

Arnold Jablon
Director

AJ: gdz

C: Mark E. Davison, 24 Treadwell Court, Lutherville 21093
Richard E. Matz, PE, Colbert, Matz, Rosenfelt, Inc., 2836 Smith Avenue Suite G, Baltimore 21209
J. Carroll Holzer, Holzer & Lee, 508 Fairmount Avenue, Towson 21286
Lois & Patrick Welsh, 901 Fallscroft Way, Lutherville 21093

Baltimore County
Department of Permits and
Development Management

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

March 2, 2001

Mark E Davison
24 Treadwell Court
Lutherville MD 21093

Dear Mr. Davison:

RE: Case Number: 01-220-A, 24 Treadwell Court

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on December 3, 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: gdz

Enclosures

c: Richard E Matz PE, Colbert Matz Rosenfelt Inc, 2835 Smith Avenue Suite G, Baltimore 21209
J Carroll Holzer, Holzer & Lee, 508 Fairmount Avenue, Towson 21286
Lois & Patrick Welsh, 901 Fallscroft Way, Lutherville 210933
People's Counsel

AV
12/18
1/23/01

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 7, 2000

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

- 7

SUBJECT: Zoning Advisory Petition(s): **Case(s) 01-218 & 220**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For any further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared by: Mark A Cunningham

Section Chief: Jeffrey W. Long

AFK/JL:MAC

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 7, 2000

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

SUBJECT: Zoning Advisory Petition(s): **Case(s) 01-218 & 220**

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For any further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared by: Mark A Cunningham

Section Chief: Jeffrey W. Long

AFK/JL:MAC

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley AC/RBS

DATE: December 15, 2000

SUBJECT: Zoning Petitions
Zoning Advisory Committee Meeting of December 4, 2000

DEPRM has no comments for the following zoning petitions:

Item #	Address
211	7514 Rossville Boulevard
216	1946 Catanna Avenue
217	1431 Fuselage Avenue
219	7307 Seven Mile Lane
220	24 Treadwell Court

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 12 · 1 · 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. 220 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,

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, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: December 12, 2000

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

SUBJECT: Zoning Advisory Committee Meeting
For December 11, 2000
Item Nos. 211, 212, 215, 216, 218, 219,
220, and 221

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

ZAC-12-11-2000-NO COMMENT ITEMS-12122000.doc

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

April 23, 2001

Bruce E Doak
Gerhold Cross & Etzel Ltd
320 E Towsontown Blvd
Towson MD 21286

RECEIVED
COUNTY BOARD OF APPEALS
01 APR 24 PM 4:10

Dear Mr. Doak:

RE: Case No. 01-220-A, Address 24 Treadwell Court

Please be advised that an appeal of the above-referenced case was filed in this office on 4/19/01 by Howard L Alderman Jr, on behalf of Mark E Davison. 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: gdz

c: Mark E Davison, 24 Treadwell Court, Lutherville 21093
Howard L Alderman, Jr, Levin & Gann, 8th Floor, 502 Washington Avenue, Towson MD 21204
Mr. & Mrs. Patrick G Welsh, 901 Fallscroft Way, Lutherville 21093
People's Counsel

APPEAL

Petition For Administrative Variance
24 Treadwell Court
W/S Treadwell Court, 536' N of Wyndham Court (Lot 59, Plat VI, The Hill Farm)
8th Election District – 3rd Councilmanic District
Mark E. Davison - Legal Owner
Case No. 01-220-A:

Petition for Administrative Variance (Dated 11/22/00)

Zoning Description of Property

Notice of Zoning Hearing (12/12/00)
Notice of Zoning Hearing (1/24/01)

Certification of Publication (The Jeffersonian issue 1/4/01)
Certification of Publication (The Jeffersonian issued 2/20/01)

Certificate of Posting (Patrick M O'Keefe posted 12/1/00)
Certificate of Posting (Patrick M O'Keefe posted 1/9/01)
Certificate of Posting (Stacy Gardner posted 2/6/01)
Certificate of Posting (Stacy Gardner posted 2/19/01)

Entry of Appearance by People's Counsel (none)

Petitioner(s) Sign-In Sheet (1 page)

Protestant(s) Sign-In Sheet (1 page)

Citizen(s) Sign-In Sheet (none)

Zoning Advisory Committee Comments

Petitioners' Exhibits:
1. Plan to Accompany Petition for Administrative Variance (dated Rev 3/6/01)
2. Photographs (8 pages)
3. Resume Michael J Dowling
4. Proposed/Existing/Beyond (2 pages)
5. State Assessment Map
6. Letter to Mr & Mrs Mark Davison from Pat & Lois Welsh (dated 12/4/00)

Protestants' Exhibits:
1. Plat Showing the Welsh & Davison Properties (dated 1/24/01)

Miscellaneous (Not Marked as Exhibits):
- Letter to Arnold Jablon Director from J. Carroll Holzer (dated 12/8/00)
- Letter to Lawrence E Schmidt, Esquire from Howard L Alderman Jr. (dated 1/9/01)
- Letter to Howard L Alderman Jr from Arnold Jablon, Director (dated 11/1/01)
- Letter to Mr Lawrence E Schmidt from Rona C Rosenbaum, Arthur E Rosenbaum, MD (dated /18/01)
- Letter to Lawrence E Schmidt, Zoning Commissioner from Charles & Susan B Mann (dated 2/8/01)
- Letter to Lawrence E Schmidt, Zoning Commissioner from Dr & Mrs Charles Paidas (dated 2/12/01)
- Letter to Mr Lawrence E Schmidt, Zoning Commissioner from Gary & Raili Naktin (dated 2/18/01)
- Letter to Lawrence E Schmidt, Zoning Commissioner from Doug and Lynn McCorkle (dated 2/20/01)
- Letter to Mr Lawrence E Schmidt, Baltimore County Zoning Commissioner, from Bruce R & Charlotte D Douglas (dated 2/24/01)
- Letter to Mr Schmidt from K N Rao (dated 2/28/01)
- Letter to Lawrence E Schmidt Zoning Commissioner from AbulKalam M Shamsuddin (dated 3/2/01
- Letter to Lawrence E Schmidt, Zoning Commissioner from Dave Zerhusen and Kathy Schoff (dated 3/5/01)
- Photographs (5 pages)

Zoning Commissioner's Order (dated 3/22/01 - Denied)

Notice of Appeal received on 4/19/01 from Levin & Gann on behalf of Mark E Davison, Owner/Appellant

c: Howard L Alderman Jr, Levin & Gann, 8th Floor, 502 Washington Avenue, Towson 21204
Mark E Davison, 24 Treadwell Court, Lutherville 21093
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Mark E. Davison
Case No.: 01-220-A

DATE: May 14, 2002

BOARD/PANEL:

Charles L. Marks	CLM
Richard K. Irish	RKI
Lawrence S. Wescott	LSW

RECORDED BY: Theresa R. Shelton / Legal Secretary

PURPOSE: To deliberate the Petition for Variance filed by Mark E. Davison, Owner, to permit building setback of 5' in lieu of required 50' for proposed addition

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- ✓ Property is not unique
- ✓ Property is not on Landmark status
- ✓ Property is not on Historical listing
- ✓ Style of housing does not qualify for uniqueness; it is the property that must satisfy uniqueness
- ✓ Even though the lot size is the smallest – it is still not considered unique
- ✓ The setback may interfere with the rights of the other property owners
- ✓ Does not meet the provisions of area variance

DECISIONS BY BOARD MEMBERS:

CLM - Property does not meet uniqueness characteristic – Variance denied
RKI - Property does not meet uniqueness characteristic – Variance denied
LSW - Property does not meet uniqueness characteristic – Variance denied

FINAL DECISION: Board unanimous AFFIRMS the Findings of Fact and Conclusions of Law issued by the Zoning Commissioner (Schmidt) in which that requested variance relief was DENIED.

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

Case No. 01-220-A

In the Matter of Mark E. Davison –Petitioner /Legal Owner

VAR –To permit building setback of 5 feet ilo req'd 50' for proposed addition; amend First Amended Partial Dev Plan (Hill Farm Plat VI) accordingly.

3/22/2001 –Z.C.'s Order in which Petition for Variance was DENIED.

1/04/2002 -Notice of Assignment sent to following; assigned for hearing on Tuesday, February 26, 2002 at10 a.m.:

Howard L. Alderman, Jr., Esquire
Mark E. Davison
J. Carroll Holzer, Esquire
Patrick and Lois Welsh
Thomas Frankovic
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

2/21/02 – Letter from Carroll Holzer, Esquire; Witness Doak has advised Mr. Holzer that he will be unavailable on 2/26/02 – all day class /professional competency obligation; suggests additional half-day to permit testimony of Mr. Doak. To be addressed on 2/26/02 by the Board.

2/26/02 – Board convened for hearing (Marks, Irish, Wescott); to be assigned for second hearing day upon confirmation by counsel of viable date (either 3/06, 3/13 or 3/27/02).81

2/27/02 – T/C from Sterling Leese – 3/27/02 okay with Mr. Doak and Mr. Holzer; awaiting confirmation that this date is also a good date for Mr. Alderman. If so, Notice of Assignment for Day #2 will be sent out on Tuesday, 3/05/02.

3/05/02 – T/C from H. Alderman – 3/27/02 is not good for his clients. Looking at July dates at this point in time. Awaiting t/c from Mr. Alderman re 7/16/02 date.

3/06/02 – T/C from H. Alderman – his clients will make themselves available for 3/27/02 date, if still available on Board's docket. Conference call by H. Alderman to C. Holzer; left message re 3/27/02.
- T/C from S. Leese – 3/27/02 is okay both with Mr. Holzer and with Mr. Doak. Notice of Assignment /Day #2 sent this date to all parties; assigned for Wednesday, March 27, 2002 at 10:00 a.m.

3/08/02 – Thomas Frankovic telephoned – requested that his name be removed from file; no future notices to be sent to him. File so noted (see TRS note in file).

3/27/02 – Hearing concluded (C.S.R.); memos due from counsel on 4/22/02; deliberation assigned for 5/14/02; notice to be sent.

3/28/02 – Notice of Deliberation sent to parties; assigned for Tuesday, May 14, 2002 at 9:30 a.m.; fyi copy to C.S.R.

4/22/02 – Memorandum in Lieu of Final Oral Argument filed by J. Carroll Holzer, Esquire, on behalf of Lois and Patrick Welsh – Protestants.
-- Petitioners' Post-Hearing Memorandum filed by Howard L. Alderman, Jr., Esquire on behalf of Petitioners, Mark and Sara Davison. Also copy of *Richard Roeser Prof'l Builder, Inc. v. Anne Arundel County* – 4/07/02 decision from the Court of Special Appeals re variances /self-created hardship.
-- Copies to C.S.R. (delib scheduled for 5/14/02)

5/14/02 – Board convened for deliberation (Marks, Wescott, Irish); unanimous decision that property does not meet uniqueness requirement; variance is denied; Order to be issued; appellate period to run from date of written Order.

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

DATE: September 26, 2002

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

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILES**

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

BOARD OF APPEALS CASE NUMBER	*PDM FILE NUMBER*	NAME	LOCATION
01-313-A	***PDM No.: 01-313-A***	Daniel H. Dupont	11304 Beach Road
01-220-A	***01-220-A***	Mark E. Davidson	24 Treadwell Court

Attachment: SUBJECT FILE(S) ATTACHED

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Written Briefs in Lieu of Final Oral Argument

DATE: April 22, 2002

TO: C. Marks
L. Wescott
R. Irish

FROM: Kathi

SUBJECT: Case No. 01-220-A / *In the Matter of: Mark Davison, et al*
Closing Memos – Deliberation assigned for 5/14/02

The subject case is scheduled for public deliberation on Tuesday, May 14, 2002 at 9:30 a.m. A copy of the deliberation notice was previously forwarded to you.

The following memos were filed in lieu of closing argument:

1. Memorandum in Lieu of Final Oral Argument filed by J. Carroll Holzer, Esquire, on behalf of Lois and Patrick Welsh, Protestants; and

2. Petitioners' Post-Hearing Memorandum filed by Howard L. Alderman, Jr., Esquire, on behalf of Mark Davison, et al, with attachment, a copy of the recent CSA decision in *Richard Roeser Prof'l Builder, Inc. v. Anne Arundel County, Maryland*, 2002 Md. LEXIS 92.

Kathi

Attachments (2)

March 11, 2002

Kathi:

On Friday, March 8, 2002, Thomas Frankovic telephoned and requested that his name be removed from the file. He does not want any future notices sent to him on this case.

Thank-you

Theresa TRS

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
FACSIMILE 410-296-2801

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

DIRECT DIAL
410-321-4640

ELLIS LEVIN (1893-1960)

March 4, 2002

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME	TELEFAX NO.
Kathleen Bianco, Administrator	410-887-3182
c: M/M Mark Davison	410-252-2218
J. Carroll Holzer, Esquire	410-825-4923

FROM: HOWARD L. ALDERMAN, JR., ESQUIRE

NUMBER OF PAGES [INCLUDING THIS COVER PAGE]: 1

CLIENT/MATTER: Day 2 - Davison Variance Hearing Case No. **01-220-A**

COMMENTS: **Ms. Bianco: Of the dates available to the Board during March for the concluding day of the above-referenced matter, the only day that Mr. Holzer and his witnesses were available was March 27th. Unfortunately, that date does not work for the Petitioners/Appellants. Dates in April which do not work for me and my clients are as follows: 4/1, 4/2, 4/5, 4/9 through and including 4/17; 4/22 through and including 4/26. I would appreciate it if Mr. Holzer would advise the Board of the availability of his clients on the remaining days in April. M/M Davison would like to get this matter scheduled as quickly as possible, within the stated constraints. My advance thanks to you, the Board and Mr. Holzer.**

[x] ORIGINAL WILL NOT BE MAILED

If you do not receive all of the pages indicated above, please call 321-0600 as soon as possible.
My return FAX Number is (410) 296-2801.

WARNING: UNAUTHORIZED INTERCEPTION OF THIS TELEFAX COMMUNICATION COULD BE A VIOLATION OF FEDERAL AND MARYLAND LAW.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for expenses. Thank You.

2/26

IN THE MATTER OF:	*	BEFORE THE
MARK E. DAVISON, Legal Owner	*	COUNTY BOARD OF APPEALS
24 TREADWELL COURT	*	BALTIMORE COUNTY
3RD COUNCILMANIC DISTRICT	*	CASE NO. 01-220-A

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

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday February 26, 2002 at 10:00 a.m. at Room 48, located at Basement, Old Courthouse, 400 Washington Ave., Towson and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Bruce Doak
Address: Gerhold, Cross & Etzel, Ltd.
320 East Towsontowne Blvd.
Towson, MD 21286

Name: J. Carroll Holzer, P.A.
Firm: Holzer and Lee
Address: 508 Fairmount Ave.
Towson, MD 21286
410-825-6961

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

02 FEB 19 PM 3:55

County Board of Appeals of
Baltimore County

Cost: $
Summoned: _____, 2002

Not Served: _____, 2002

Sheriff of Baltimore County

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 4, 2002

NOTICE OF ASSIGNMENT

CASE #: 01-220-A

IN THE MATTER OF: MARK E. DAVISON –Legal Owner / Petitioner 24 Treadwell Court
8th Election District; 3rd Councilmanic District

3/22/2001 – Petition for Variance DENIED by Zoning Commissioner.

ASSIGNED FOR: **TUESDAY, FEBRUARY 26, 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 Appellant /Petitioner : Howard L. Alderman, Jr., Esquire
Appellant /Petitioner : Mark E. Davison

Counsel for Protestants (Welsh) : J. Carroll Holzer, Esquire
Protestants : Patrick and Lois Welsh

Thomas Frankovic

People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

Printed with Soybean Ink
on Recycled Paper

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

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410-321-4640

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION

NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
TELEFAX 410-296-2801

ELLIS LEVIN (1893-1960)

April 22, 2002

02 APR 22 PM 2:05

Ms. Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
400 Washington Avenue, Suite 49
Towson, Maryland 21204

RE: *In Re: Mark Davison, et al*
24 Treadwell Court
Case No.: 01-220-A
Petitioners' Post-Hearing Memorandum

Dear Ms. Bianco:

In accordance with the direction received from the Board at the conclusion of the hearing on the above-referenced matter, I am pleased to provide to the Board an original and three (3) copies of the *Petitioners' Post-Hearing Memorandum*. Should you or any member of the Board desire additional information or additional copies, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosures (4)
c (w/one encl.): J. Carroll Holzer, Esquire

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halderman@LevinGann.com

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TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

1/11/01
To George 1/12/00
WC

January 9, 2001

SENT BY TELECOPIER and MAIL
Lawrence E. Schmidt, Esquire
Zoning Commissioner for Baltimore County
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: Petition for Administrative Variance
Hearing requested and scheduled: January 23, 2001
Case No.: 01-220-A
Request for Postponement

Dear Commissioner Schmidt:

I represent Mr. and Mrs. Mark E. Davison, owners of the property at 24 Treadwell Court on which a Petition for Administrative Variance was filed and a hearing requested. That hearing was scheduled to be heard on Tuesday, January 23, 2001. I learned from the engineer today that despite a request being made to have the property properly posted, the person selected from the approved County list did not have the property posted within fifteen (15) days of the scheduled hearing as required by the Code.

The purpose of this letter is to request a postponement and a prompt rescheduling of the hearing on the variance relief requested. This postponement is based on a failure other than that of the owner, but rather an individual selected from the approved County list.

This morning I have called the law offices of J. Carroll Holzer, Esquire to advise him of the request so that he might delete the scheduled hearing from his calendar. The rescheduling of this hearing should be coordinated with Mr. Holzer and myself.

Upon your receipt and review of this letter, should you have any questions or should it be necessary for me to appear on the date and time of the original hearing, please let me know.

Thank you for every consideration in this regard.

Very truly yours,

Howard L. Alderman, Jr.

HLA/pal
cc: Mr. and Mrs. Mark Davison
Arnold Jablon, Director (Sent by Telecopier - 410-887-5708 and Mail)
J. Carroll Holzer, Esquire (Sent by Telecopier - 410-825-4923 and Mail)
U:\hla\schmidt-l2 ltr-13613-1.wpd

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HOWARD L. ALDERMAN, JR.
halderman@ LevinGann.com

DIRECT DIAL
410-321-4640

ELLIS LEVIN (1893-1960)

reset 2/14/01 3/7/01 Jesse

JAN 12

January 9, 2001

SENT BY TELECOPIER and MAIL

Lawrence E. Schmidt, Esquire
Zoning Commissioner for Baltimore County
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: Petition for Administrative Variance
Hearing requested and scheduled: January 23, 2001
Case No.: 01-220-A
Request for Postponement

OK to PP. Call Holzer & Carroll & Reset. JES 1/16/01

Dear Commissioner Schmidt:

I represent Mr. and Mrs. Mark E. Davison, owners of the property at 24 Treadwell Court on which a Petition for Administrative Variance was filed and a hearing requested. That hearing was scheduled to be heard on Tuesday, January 23, 2001. I learned from the engineer today that despite a request being made to have the property properly posted, the person selected from the approved County list did not have the property posted within fifteen (15) days of the scheduled hearing as required by the Code.

The purpose of this letter is to request a postponement and a prompt rescheduling of the hearing on the variance relief requested. This postponement is based on a failure other than that of the owner, but rather an individual selected from the approved County list.

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Upon your receipt and review of this letter, should you have any questions or should it be necessary for me to appear on the date and time of the original hearing, please let me know.

IMPORTANT MESSAGE

FOR

DATE TIME A.M. P.M.

M. Pat O'Keefe

OF

PHONE 410-512-4621
AREA CODE NUMBER EXTENSION

☐ FAX

☐ MOBILE
AREA CODE NUMBER TIME TO CALL

TELEPHONED		PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE 01-220-A
posted at wrong location

SIGNED

TOPS FORM 3002P MADE IN U.S.A.

(JCH)
Sterling called about rescheduling case # 01-220 ASAP!
I referred him to George Rohner
1/10/01

2/16/01

2/6/01

hearing was 1/23/01
Dawson

Thank you for every consideration in this regard.

Very truly yours,

Howard L. Alderman, Jr.

HLA/pal
cc: Mr. and Mrs. Mark Davison
Arnold Jablon, Director (Sent by Telecopier - 410-887-5708 and Mail)
J. Carroll Holzer, Esquire (Sent by Telecopier - 410-825-4923 and Mail)
U:\hla\schmidt-l2 ltr-13613-1.wpd

HOLZER & LEE

LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING
508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX. (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

To: George
process + send letters out
12/11/00
LCA

December 8, 2000
 # 7246

12/11/00
WLR
cf

HAND DELIVERED
Arnold Jablon, Director
Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Administrative Variance # 01-~~230~~ 280 A
Subject property located at 24 Treadwell Court

Dear Mr. Jablon:

Please be advised that I have just been retained by Patrick and Lois Welsh who reside at 901 Fallscroft Way in Lutherville. I hereby enter my appearance on their behalf in the above referenced Administrative Variance. Attached hereto is our Formal Demand for a Hearing before the Zoning Commissioner and a check to cover the processing fee.

If you have any questions, please call me at 410-825-6961.

Very truly yours,

J. Carroll Holzer

JCH:clh

cc: Lois and Patrick Welsh
Lawrence Schmidt, ZC

H:\Letters\Arnold Jablon - Perry Hall Improvement Assoc..doc

HOLZER
&
LEE

LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

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TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

February 21, 2002
#7246

HAND DELIVERED
Charles L. Marks, Chairman
Board of Appeals
Basement, Old Courthouse
Towson, MD 21204

Re: Case No. 01-220-A
In the Matter of Mark E. Davison

Dear Mr. Chairman:

Please be advised that the above captioned case is currently scheduled for hearing on Tuesday, February 26, 2002 at 10:00 a.m. This matter has previously been tried before the Zoning Commissioner with a decision rendered favorably to my clients, Lois and Patrick Welsh, by the Zoning Commissioner denying the Request for Variance. As part of the case, we presented the testimony of Bruce E. Doak of Gerhold, Cross & Etzel, Ltd. as an integral part of our presentation. I have subpoenaed Mr. Doak and have received the enclosed letter from him indicating that he will be in an all day class on February 26th fulfilling a professional competency obligation. I, therefore, suggest that we will need an additional half day to permit the testimony of Mr. Doak before the Board. This letter is to alert the Board and Mr. Alderman to the scheduling dilemma which I fact and an additional day to present Mr. Doak's testimony. Thank you for your consideration in this matter.

Very truly yours,

J. Carroll Holzer

J. Carroll Holzer

cc: Lois and Patrick Welsh
Howard Alderman, Esq.

02 FEB 21 PM 3:37

C:\My Documents\Letters\Bd of Appeals - Lois and Patrick Walsh.doc

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906
Suite 100 • 320 East Towsontown Boulevard • Towson, MD 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

FACSIMILE TRANSMITTAL SHEET

TO
Carroll Holzer

FROM:
Bruce E. Doak

COMPANY:

DATE:
2/21/02

RE:
Board of Appeals Hearing
Case 01-220-A

TOTAL NO OF PAGES INCLUDING COVER

FAX NUMBER:
410-825-4923

PHONE NUMBER:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☒ F Y.I

NOTES/COMMENTS:

I have received the subpoena dated February 19, 2002 for the above stated case. I will not be able to attend the hearing on February 26, 2002. I have a mandatory course I am taking all that day to partially fulfill my professional competency credits needed to renew my license. Please accept my apology.

Thank you,

Bruce E. Doak
Principal

This is a confidential message, intended solely for the person to whom it is addressed. If you receive this message in error, please forward it to the correct person, or mail it back to us. Thank you.

LAW OFFICES
HOLZER AND LEE
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND 21286
(410) 825-6961
FAX (410) 825-4923

Facsimile Cover Sheet

To: Kathy B.

From: J. Carroll Holzer

Date: Feb. 22, 2002 Time. 9:00 a.m./p.m.

Total Number of Pages Including this Cover: 3

Original Will _____ / Will Not _____ Follow.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

For Sending Office Purposes

Fax Number _____ Main Number

Client & Matter _____ File Number

CONFIDENTIALITY NOTICE

The information in this transmittal is intended only for the individual or entity named above. The attached letter or documents may be legally privileged and confidential. If you have received this information in error, please notify the sender immediately and return the original transmission to us by mail. Return postage is guaranteed. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, dissemination, distribution or copying of this communication or its contents is strictly prohibited and a breach of confidentiality.

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HOLZER
&
LEE

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E-MAIL: JCHOLZER@BCPL.NET

February 21, 2002
#7246

HAND DELIVERED
Charles L. Marks, Chairman
Board of Appeals
Basement, Old Courthouse
Towson, MD 21204

FILE COPY

Re: Case No. 01-220-A
In the Matter of Mark E. Davison

Dear Mr. Chairman:

Please be advised that the above captioned case is currently scheduled for hearing on Tuesday, February 26, 2002 at 10:00 a.m. This matter has previously been tried before the Zoning Commissioner with a decision rendered favorably to my clients, Lois and Patrick Welsh, by the Zoning Commissioner denying the Request for Variance. As part of the case, we presented the testimony of Bruce E. Doak of Gerhold, Cross & Etzel, Ltd. as an integral part of our presentation. I have subpoenaed Mr. Doak and have received the enclosed letter from him indicating that he will be in an all day class on February 26th fulfilling a professional competency obligation. I, therefore, suggest that we will need an additional half day to permit the testimony of Mr. Doak before the Board. This letter is to alert the Board and Mr. Alderman to the scheduling dilemma which I fact and an additional day to present Mr. Doak's testimony. Thank you for your consideration in this matter.

Very truly yours,

J. Carroll Holzer

J. Carroll Holzer

cc: Lois and Patrick Welsh
Howard Alderman, Esq.

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HOLZER

& LEE

LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

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E-MAIL: JCHOLZER@BCPL.NET

May 4, 2001
#7246

Kathleen Bianco, Administrator
Baltimore County Board of Appeals
Old Courthouse, Room 49
400 Washington Ave.
Towson, MD 21204

Re: Case No. 01-220-A, 24 Treadwell Court
In the Matter of Petition for Variance by Mark E. Davison
Appeal to CBA

Dear Ms. Bianco:

The above referenced matter has been appealed to the County Board of Appeals on April 19, 2001 by the Petitioner/property owner, Mark E. Davison. However, this office was not notified of the appeal until my clients, Patrick and Lois Welsh, submitted a copy of the appeal to me today via fax.

Consequently, please enter my appearance on behalf of Appellees Patrick and Lois Welsh who reside at 901 Fallscroft Way, Lutherville, MD 21093.

As always, I appreciate your assistance and cooperation.

Very truly yours,

J. Carroll Holzer

JCH:clh

cc: Lois Welsh

C:\My Documents\Letters\Bianco - Lois Welsh CBA Appeal.doc

HOWARD L. ALDERMAN, JR.
halderman@LevinGann.com

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410-321-4640

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502 WASHINGTON AVENUE
8th Floor
TOWSON, MARYLAND 21204
410-321-0600
FACSIMILE 410-296-2801

ELLIS LEVIN (1893-1960)

April 19, 2001

VIA HAND DELIVERY
Arnold Jablon, Director
Baltimore County Department of Permits
and Development Management
111 West Chesapeake Avenue, Suite 109
Towson, MD 21204

RE: *Appeal of Zoning Commissioner's Order*
Case No. 01-220-A
Mark E. Davison, Owner/Appellant

Dear Mr. Jablon:

An appeal of the March 22, 2001 decision of Lawrence E. Schmidt, Zoning Commissioner for Baltimore County is hereby noted. I have enclosed the check of our client, Mr. Mark E. Davison, in the amount of $210.00, payable to Baltimore County, Maryland to cover: i) the appeal fee of $175.00; and ii) the sign posting fee of $35.00.

Should you need any additional information in this regard or to enable the prompt transmittal of the zoning file in this case to the County Board of Appeals for Baltimore County, please contact me directly.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
c: Mr. Mark Davison

RECEIVED
APR 19 2001
By GDZ

*2002 Md. LEXIS 92, **

RICHARD **ROESER** PROFESSIONAL BUILDER, INC. v. ANNE ARUNDEL COUNTY, MARYLAND

Richard Roeser Prof'l Builder, Inc. v. Anne Arundel County

No. 79, September Term, 2001

COURT OF APPEALS OF MARYLAND

2002 Md. LEXIS 92

March 7, 2002, Filed

DISPOSITION: Reversed and remanded with directions.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner landowner sought **variances,** which were denied by the board of appeals (board) of respondent county, because the landowner knew of the zoning restrictions when he purchased the land. The first reviewing court reversed. The Court of Special Appeals (Maryland) then reversed the first reviewing court, and entered judgment ordering that the decision of the board be reinstated. The landowner's petition for writ of certiorari was granted.

OVERVIEW: The landowner purchased the property aware of property restrictions for the area. The board ruled that the purchase, with knowledge, precluded the granting of a **variance,** because it was considered a self-created hardship. In disagreeing, the highest appellate court found that while a purchaser of property acquired no greater right to a **variance** than his predecessor, he also did not acquire less. The right to a **variance** was not affected by a sale of the land, as to hold otherwise would be inconsistent with the general property-law goal of preserving alienability. The type of hardship that would normally be considered to be self-created did not arise from the purchase of the property, but rather from the actions of a landowner himself that created the hardship. In the instant case, the property was in a "buffer" zone adjacent to wetlands. The landowner, when purchasing the property, knew that **variances** from the county's zoning provisions would be required in order to build the house it desired. It was error for the court below to find that the purchase was a self-created hardship, since the landowner did nothing to create the situation, other than purchase the property.

OUTCOME: The judgment of the court of appeals was reversed. The matter was remanded, with instructions to the board of appeals.

CORE TERMS: variance, hardship, self-created, zoning, regulation, purchaser, ordinance, predecessor, zoning ordinance, area variance...

HEADNOTES: [...*1] The Anne Arundel County Board of Appeals denied petitioner's application for **variances** from a Critical Area buffer zone and zoning provisions of Anne Arundel County. The Board found that the conditions surrounding petitioner's application had

been self-created because the zoning regulations were in existence when petitioner purchased the property. ...

OPINION: ... **[*1]** County. The Circuit Court had found that the Anne Arundel County Board of Appeals (hereinafter Board) had made an error of law and had also used an *erroneous standard in respect to the Board's denial of a request for certain* **variances** made by Richard **Roeser** Professional Builder, Inc., petitioner. The Court of Special Appeals reversed the judgment of the Circuit Court and directed the Circuit Court to reinstate the decision of the Board. Upon petitioner's request, we granted its Petition for Writ of Certiorari. ***Roeser*** *v. Anne Arundel County*, 366 Md. 246, 783 A.2d 221 (2001). **[*2]**

Petitioner presents three questions for our review:

"1. Did the Circuit Court correctly determine that the Anne Arundel County Board of Appeals' decision to deny critical area **variances** was based on the application of an erroneous legal standard which had been specifically overruled by the Court of Appeals, and was reversible error as a matter of law?

"2. Did the Circuit Court correctly determine that the Anne Arundel County Board of Appeals' ...

... **[*2]** self-created hardship' was reversible error as a matter of law?

"3. Is the Court of Special Appeals' decision reversing the Circuit Court and ruling that acquisition of title to land knowing that a critical area's buffer **variance** will be applied for constitutes a 'self-created hardship' reversible error as a matter of law?"

We answer affirmatively to questions two and three. Accordingly, we shall reverse. We shall address question one ...

... **[*3]** Anne Arundel County. Only one lot is part of this appeal and part of the lot is located in the Critical Area "buffer" zone adjacent to wetlands. n2 At the time it contracted to purchase the property, petitioner knew that **variances** from the "Critical Area" and zoning **[*4]** provisions of Anne Arundel County would be required in order for it to be able to build a house of the size it desired. It applied for those **variances** and, as we have indicated, the Board denied its request.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n2 For explanations of "Critical Area," "buffer zones," etc., *see Belvoir Farms, White*, and *Mastandrea, supra.*

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

In relevant part, the Board found:

"The conditions surrounding the Petitioners' request for a **variance** have been self-created. The co-petitioner . . . purchased the subject property . . . on February 23, 1999. The wetlands existed on the property at that time. Indeed, it appears from the purchase price of the two lots ($ 62,000 total) that both seller and buyer were well aware of potential development issues with the land. The buyer apparently elected to purchase the property and now seeks to maximize the investment. Any applicant for a **variance,** however, must *exercise proper diligence in ascertaining the setback requirements prior to the acquisition of* property. If such **[*5]** diligence is not exercised, any resulting hardship to the property

owner is regarded as self-created. *See, Wilson v. Elkton, ...*

... **[*5]** 443 (1977)." n3 [Some citations omitted.]

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n3 It is a relatively common practice throughout the State, and has been so for decades, that buyers contract to buy properties with contingencies that make consummation of the contract conditioned on the granting of **variances.** So far as we have discovered, in cases involving "area" **variances,** this Court has never disapproved the practice. Additionally, in such instances in respect to "area" **variances,** we have never held that such a practice, by itself, constitutes a "self-created" hardship. In *Wilson, infra,* a predecessor in title to the current landowner modified a structure, which put the structure ...

... **[*5]** Likewise, in *Ad. + Soil, Inc. v. Queen Anne's County*, 307 Md. 307, 513 A.2d 893 (1986), the applicant had built into a setback, and, after the fact, sought a **variance** of the setback requirements. The issue of the effect of a purchase was not addressed in a **variance** context in either opinion, and both involved requests for "area" **variances,** not "use" **variances.**

We also note that in this country it is not considered inappropriate to "maximize" investments.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - - **[*6]**

Judge Manck, of the Circuit Court for Anne Arundel County, in correctly rejecting the position of the Board, stated:

"[Little] ...

... **[*6]** 736 A.2d 1072 (1999); *Washington National Arena Ltd. Partnership v. Controller,* 308 Md. 370, 519 A.2d 1277 (1987). . . .

. . .

"Lastly, the Board found the need for the **variances** had been self-created; hence, pursuant to *Wilson v. Elkton*, 35 Md. App. 417, 371 A.2d 443 (1977) and *Ad + Soil, Inc. v. Queen Anne's County*, 307 Md. 307, 513 A.2d 893 (1986), the **variances** must fail.

"Taking the latter argument first, the Court is unconvinced that the hardship was self-created. Hardships of this type are normally those which are created by the owners of the property and not by the property itself. *Cromwell v. Ward, ...*

... **[*8]** Appeals, citing CHARLES A. RATHKOPF, THE LAW OF ZONING AND PLANNING, § 23, at 262 (2d ed. 1949), stated:

Where a person purchases property with the intention to apply to the board of appeals for a **variance** from the restrictions imposed by the ordinance he cannot contend that such restrictions cause him such a peculiar hardship that entitles him to the special privileges which he seeks." n4

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n4 The position taken by Anne Arundel County does not ...

... **[*8]** L. Ed. 2d 592 (2001).

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

[*9]

Discussion

Gleason v. Keswick Improvement Association, 197 Md. 46, 78 A.2d 164 (1951), was not an application for an "area" **variance.** The request was designed to permit commercial use (a grocery store) in a residentially zoned area; accordingly, it concerned "uses," not "area." Indeed, it was not really an application for a "use" **variance** either. It was sought under a peculiar Baltimore statutory provision providing that a person desiring to use his property contrary to the uses permitted as of right in a particular district could apply for the particular ...

... **[*10]** 78 A.2d at 166 (emphasis added). In other words, we were asserting that the hardship that existed when the property was purchased was not a reason to reclassify (rezone) the specific property. The issue was not treated as a **variance** application, in spite of our reference to Rathkopf's *The Law of Zoning and Planning* (a reference that Rathkopf has since largely disowned, *see infra* at pages **[*11]** 8 through 10).

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - - -

n5 Ordinarily, a **"variance"** is couched in terms of **"variances"** from the provisions of the ordinance, and generally do not involve reclassifications or alternate classifications of property use.

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

Shortly afterwards, in a case in which we upheld the Board's denial of an "exception," we explained what we thought we had done ...

... **[*11]** Md. 294, 308, 79 A.2d 367, 373 (1951). The language in *Hoffman,* describing what we had done in *Gleason*, was classic change/mistake **[*12]** language usually associated with Euclidian reclassifications, not **variances.**

In *City of Baltimore v. Weinberg*, 204 Md. 257, 103 A.2d 567 (1954), a case involving a denial of a non-conforming use status, we continued to treat *Gleason* as a re-classification case rather than a **variance** (we had never treated it as a **variance)** and emphasized that the owners in *Gleason* had permitted dwelling structures on their property to deteriorate and thus were, in that fashion, creating a situation where residential use was a hardship. We said in *Weinberg*: "The appellants also rely on *Gleason v. Keswick ...*

... **[*12]** Frederick County bought the farm for the purpose of building **[*13]** and operating a landfill. It was known to the County at the time it purchased the property that in order to operate a landfill, the County would need to obtain substantial setback **variances** (area **variances)**. The opinion we adopted distinguished the *Gleason* case, making its ruling, at the least, inapplicable to area **variance** cases. We referred to the trial judge's opinion, and said: "We shall adopt his opinion as follows . . . ." *Id.* at 3, 276 A.2d at 648. The opinion we adopted as our own distinguished the *Gleason* case, making its ruling inapplicable to area **variance** cases. Through the trial judge's opinion, we held:

"Appellants make the further contention that where one purchases realty intending to apply for a **variance** from zoning restrictions, he cannot contend that such restrictions cause him the undue hardships that would entitle him to such **variance,** citing *Gleason v. Keswick Improvement Association*, 197 Md. 46, 78 A.2d 164. This same rule has been relaxed where

there has been an application for area **variance** such as here, as distinguished from a use **variance** as in *Keswick*, the Court of Appeals pointing out that a use **variance** is **[*14]** customarily concerned with unusual hardship where the land cannot yield a reasonable return without a **variance** whereas an area **variance** is primarily concerned with practical difficulties. *Loyola Federal Savings & Loan Assoc. v. Buschman*, 227 Md. 243, 176 A.2d 355 (1961).

"Section 40-145 permits a **variance** where practical difficulty or unnecessary hardship is present. Since this is an application for an area **variance** and since there was testimony of practical difficulty in the absence of the grant of a **variance,** the rule announced in *Keswick* does not apply.

"Moreover, in *Stacy v. Montgomery County*, 239 Md. 189, 210 A.2d 540, an area **variance** was approved by the Court of Appeals where a party had purchased a property intending to apply for a special exception. The need for an area **variance** was not determined until after the special exception had been granted. That is substantially what happened in the present case and *Stacy* is further authority for holding that the rule in *Keswick* does not here apply."

Id. 262 Md. at ...

... **[*15]** property is tantamount to self-created hardship is an error of law. While it was the general rule at one time 'that one who purchases property with actual or constructive knowledge of the restrictions of a zoning ordinance was barred from securing a **variance,**' the rule has since been 'altogether abandoned or modified into nonexistence' in most jurisdictions. 3 Rathkopf, *The Law of Zoning and Planning* § 38.06(2) (1988). . . . The modern rule provides that a purchase with knowledge does not preclude the granting of a **variance** and, at most, is considered a nondeterminative factor in consideration **[*16]** of a **variance.** Rathkopf at § 38.06." [Some citations omitted.]

Rathkopf, now provides:

"While this rule may still be applicable in a few jurisdictions, it has been altogether abandoned, or modified into nonexistence, in others. Two basic ...

... **[*16]** in the old rule have been recognized, and these faults are the reasons behind its demise. First, since hardship can neither be measured by the cost of the property to the owner nor by the difference between the value the land has as restricted and the value it would have if the **variance** were granted, there is no danger that a knowledgeable purchaser could create evidence of hardship by paying an excessive price for property that is restricted. Second, the old rule failed to acknowledge that if the prior owner would have been entitled to a **variance** at the time of the zoning ordinance restriction was enacted, the right is not lost to a purchaser simply because he bought with knowledge of the regulation. *In other words, because a purchaser of property acquires no greater right to a **variance** than his predecessor, he should not be held to acquire less.*

"The 'current trend' in the rule, that purchase with knowledge of restrictions either **[*17]** does not prohibit the granting of a **variance,** or is at most a nondeterminative factor to consider in the granting of **variance,** has had proponents at least as early 1957 when the *Supreme Court of Rhode Island rejected the notion that purchase with knowledge of* restrictions, in itself, constituted self-created hardship. The 'traditional rule,' has been relaxed to leave the decision of whether a purchaser with knowledge of restrictions should receive a **variance** up to the discretion of the board of appeals.

"It should not be within the discretion of a board of appeals to deny a **variance** solely because a purchaser bought with knowledge of zoning restrictions. . . .

"The evolution and development of the rule took two slightly different paths. Originally, purchase with knowledge of restriction had its greatest application where a use **variance** was sought. When the rule was being modified so as to be less harsh, nonuse **variances** were first to be granted even when there was knowledge."

Arden H. Rathkopf & Daren A. Rathkopf, *The Law of Zoning and Planning* § 58.22, 141-48 (Edward H. Ziegler, Jr. revision, vol. 3, West ...

... **[*18]** discusses the application of the rule in New Jersey, saying:

"Although a number of earlier cases . . . repeated a more restrictive rule, the more recent decisions seem clearly to say that the right to a **variance** is not affected by a sale of land. One decision . . . said the following: 'The hardship criteria of (c) are expressly stated in terms of the objective physical characteristics of the property itself. The hardship thus entailed is not ordinarily mitigated by mere transfer of title to property . . . . *Where an original owner would be entitled to a **variance** under a specific set of facts, any successor in title is ordinarily also entitled to such a **variance,** providing that no owner in the chain of title since the adoption of the zoning restriction has done anything to create the condition for which relief by **variance** is sought.*

"The Supreme Court of New Jersey has applied the same rule to the granting of **variances** for 'special reasons.' It said: We wish to make it clear that if a prior owner would be entitled to such relief, that right is not lost to a purchaser simply because **[*19]** he bought with knowledge of the zoning regulation involved. . . ." [Emphasis added.] [Footnotes ...

... **[*19]** *property itself as a permanent entity and the current ownership merely as a passing phase*. We hesitate to lay down a rule that Darling's property, by his purchase of it, became positively ineligible for a **variance.** . . ."

". . . Courts which permit relief, but also permit the board of adjustment to consider the fact of self-created hardship, fix their attention on the fact that hardship must relate to the property itself, and they see little relevance in a ...

... **[*19]** footnotes omitted). Julian Conrad Juergensmeyer and Thomas E. Roberts, *Land Use Planning and Control Law* § 5.17, 211 (West 1998), state:

"When one purchases property and then applies for a **variance** on the grounds of unnecessary hardship, a difference of opinion exists as to whether the **variance** should be denied on the ground of self-induced hardship. **[*20]** Most courts consider the transfer of title irrelevant, but some cases contain contrary suggestions. . . . *However, since ownership is normally irrelevant to zoning, the transfer of title ought not affect the issue. If the land suffers the requisite hardship, in that the owner can make no reasonable return from its use as zoned, then the board ought to grant a **variance.** If not, the land becomes permanently zoned in a useless state.*

*"The reasons used to deny a **variance** to one who violates the law and then seeks relief are not applicable to one who purchases with knowledge. In the former, the owner created the hardship; in the latter, the zoning created the hardship, which pre-existed the purchaser's acquisition of title. . . . ...*

... **[*20]** unique circumstances have already zoned the land into a state of uselessness.

". . . A windfall may result, but it is not an unjustifiable one vis-a-vis the public, since the situation assumes that land deserves the **variance.** It is simply a question of which owner gets the **variance,** the prior owner or the new owner." [Emphasis added.] [Footnotes omitted.]

Daniel **[*21]** R. Mandelker, *Land Use Law* § 6.50, 259-60 (4th ed., LEXIS 1997), as to this issue, states:

"A ...

... **[*21]** created in this situation stems from early New York cases and is followed in some states. . . .

"The present status of the New York rule is in doubt. The New York courts adopted the rule in use **variance** cases in which there were other reasons for denying the **variance.** In the area **variance** cases they hold that self-created hardship based on purchase with knowledge of existing zoning is only one factor to consider.

"The cases that reject the rule that purchase with knowledge of existing zoning in self-created hardship are ...

... **[*21]** Purchase should not relieve a subsequent owner of this infirmity. To hold that mere purchase with knowledge of existing zoning is self-created hardship improperly makes the purchase of land a basis for denying a **variance.**" [Footnotes omitted.]

Several jurisdictions **[*22]** have held similarly to both our cases distinguishing *Gleason* in respect to area **variances,** and the Maine court's overruling of the prior position taken by Rathkopf, and Rathkopf's disavowal of his previous position. They include Minnesota, where the Court of Appeals of Minnesota in *Myron v. City of Plymouth*, 562 N.W.2d 21 (Minn. App. 1997), first noted that the property owner had been denied his request for a **variance** because the city found that the "appellant was aware at the time he purchased the property that a **variance** would be necessary to make the property buildable." *Id.* at 22. The intermediate appellate court then held:

"In short, these cases have interpreted the phrase 'created by the landowner,' . . . to include circumstances in which a landowner purchased property with knowledge (actual or constructive) that the property was subject to a zoning ordinance restricting development.

"The problem with such a reading of the statute is that - by backspin - it places an unreasonable limitation on the power of cities to grant **variances,** for although the statute provides authority to grant **variances** when certain prerequisites are met, it also **[*23]** creates a mirror image limitation on the authority to grant a **variance** whenever the stated prerequisites are not met. One of those prerequisites is that the need for the **variance** not be 'created by the landowner.' If that includes mere purchase with knowledge, a [city] would, in effect, be prohibited from granting a **variance** to every subsequent owner who purchased with knowledge that a **variance** would be required for development.

. . .

"*More significantly, such a reading is also inconsistent with the general property-law goal to preserve alienability. An owner who did not self-create a hardship is eligible for a* ***variance.*** *But that owner would, in effect, be barred from selling to someone else without, as a consequence of the sale, destroying the eligibility to receive a* ***variance.*** *We see no reason why an owner who sells should not be able to convey to a buyer the eligibility for a* ***variance*** *along with the land itself.*

"We therefore hold that actual or constructive knowledge of a zoning ordinance before a purchase of land is not a bar to granting a **variance.** We overrule *Hedlund* and its progeny to the extent that they conflict with our holding."

Id. at 23 **[*24]** (emphasis added).

The Court of Appeals of Indiana first noted the issue in *Reinking v. Metropolitan Board of Zoning Appeals of Marion County, ...*

... **[*24]** 465. Uncontested testimony in the record supports the fact that the Reinkings purchased lot 244 after 1989. After purchasing the property from a tax sale buyer, the Reinkings petitioned the MBZA for a **variance** of developmental standards. . . .

. . .

"We next determine whether knowledge of a restrictive zoning ordinance prior to the acquisition of property is sufficient grounds to bar [a] **variance** petition. . . . The MBZA argues that the purchase of property which does not meet zoning specifications is a self-imposed burden. . . . However, where an unnecessary hardship is shown to exist based upon the terms of an ordinance, as they apply to the land, the ability to claim ...

... **[*25]** undue hardship, in part, was based on the constructive knowledge of the plaintiff's family that the lot was nonconforming at the time of purchase back in 1963 . . . ." The court held:

"The law is clear that if an owner who is entitled to a lot size **variance** on hardship grounds sells to a buyer who has knowledge of the non-conformity, the right to a **variance** is not lost as a result of the buyer's knowledge. However, if a prior owner created the hardship, the purchaser . . . would not be entitled to a **variance** on the basis that **[*26]** the hardship was self-imposed. An examination of the chain of title and the record shows that the lot was zoned into a substandard condition and that the hardship alleged, notwithstanding the constructive knowledge of the substandard condition, is not self imposed by any ...

... **[*26]** 514 N.W.2d 54 (1993) ("Here, Steiner was not engaged in any reckless conduct or unauthorized activity. He merely purchased an existing nonconforming building. We have recognized that a purchaser should not be precluded from securing a **variance** in such a situation. '"A purchaser of property acquires no greater right to a **variance** than his predecessor and he should not be held to acquire less."' *Id.* (quoting 3 RATHKOPF, THE LAW OF ZONING AND PLANNING § 39.022, at 39-16 (1987))."); *see also* *In re Gregor*, 156 Pa. Commw. 418, ...

... **[*26]** develop a nonconforming lot is not personal to the owner of property at the time of enactment of the zoning ordinance but **[*27]** runs with the land, and a purchaser's knowledge of zoning restrictions alone is insufficient to preclude the grant of a **variance** unless the purchase itself gives rise to the hardship.")

Even in those jurisdictions that still, to a degree, adhere to the older Rathkopf standard, more often than not the standard has been greatly relaxed where area, as opposed to use, **variances** are at issue. The Court of Special Appeals in a case in which it reversed the granting of a **variance,** described the differences between "area" **variances** and "use" **variances,** as:

"'Area **variance'** (a **variance** from area, height, density, setback, or sideline restrictions, such as a **variance** from the distance required between buildings) and not a 'use **variance'** (a **variance** which permits a use other than that permitted in the particular district by the ordinance, such as a **variance** for an office or commercial use in a zone restricted to residential uses)."

Anderson v. Board of Appeals, 22 Md. App. 28, 37-38, 322 A.2d 220, 225- ...

... **[*27]** 1974). n6

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n6 E. C. Yokley, *Zoning Law and Practice* § 21-6, 321 (vol. 3, 4th ed., Michie 1979), describes the difference between "use" and "area" **variances** as:

"A use **variance** is one that permits a use other than that prescribed by the zoning ordinance in a particular district. An area **variance** has no relationship to a change of use. It is primarily a grant to erect, alter, or use a structure for a permitted use in a manner other than that prescribed by the restrictions of a zoning ordinance."

Anderson's *American Law of Zoning, supra*, at § 20.48, 578, distinguishes the two, as:

"A use **variance** authorizes a use of land which otherwise is proscribed by the zoning regulations. An area **variance** authorizes deviation from restrictions upon the construction and placement of buildings and structures which are employed to house or otherwise serve permitted uses. . . . More specifically, area **variances** include those relating to setback, yard, lot-area, lot-coverage, floor-area, frontage, height, and similar restrictions. [Footnote omitted.]

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - - **[*28]**

Subsequent to *Zengerle v. Board of County Commissioners for ...*

... **[*28]** 276 A.2d 646 (1971), we reiterated its holding in *McLean v. Soley*, 270 Md. 208, 215, 310 A.2d 783, 787 (1973), where we also distinguished between area and use **variances,** saying:

"It is also contended by McLean that Soley is precluded from asserting 'practical difficulty' because he was charged with knowledge of the sideyard requirements when he purchased this property. We see no merit in this argument. We noted in *Zengerle v. Bd. of Co. Comm'rs*, 262 Md.1, 21, 276 A.2d 646 (1971), citing *Loyola, supra,* that this 'rule' is more strictly applied in 'use **variance'** cases than in cases of 'area **variances,'** such as the one at bar."

There has also been a federal "takings" case, *Palazzolo v. Rhode Island*, 533 U.S. 606, 121 S. Ct. 2448, 150 L. Ed. 2d 592 (2001), that in a ...

... **[*28]** assumed "takings" cases, where the issue **[*29]** of compensation was involved, would be subject to the harsher rule, that a purchaser who takes property with environmental restrictions could not then challenge the restrictions. Juergensmeyer, when putting forward the less harsh rule for **variances,** notes:

"A different question is presented when one who purchases with knowledge of an existing restriction seeks to recover just compensation on the basis that the zoning restriction effects a taking under the Fifth Amendment. In such a case, courts may treat the personal right to compensation as waived. Thus, a board may grant a **variance** under state law to permit land to be used according to traditional zoning principles, but if the board denies the **variance** the courts might not allow an action for compensation. Under **variance** law, the land is the focus; under constitutional law, the person is."

Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law* § 5.17, 212 (West 1998) (footnotes omitted). ...

... **[*35]** permit (although he thought a valid permit existed). The building was in violation

of the zoning code. After it was discovered, the property owner, much as *Ad + Soil* would do twenty-one years later, sought a **variance** to legalize what he had already done. The Board declined to grant the **variance** on the grounds that it was Bounds' responsibility to obtain a valid permit, and thus the resulting hardship resulted from his failures. The trial court reversed the Board's denial of the **variance,** n8 and we held that in doing so the trial court erred. We cited to Rathkopf's *The Law of Zoning and Planning* in reversing the trial court:

"' § 1. Hardship Caused by Affirmative Acts of Commission.

'Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions of the zoning ordinance, hardship arises which is capable of being relieved through the grant of a **variance.** . . . If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been **[*36]** themselves caused or created by the property owner *or his predecessor in title*, n9 the essential basis of a **variance,** i.e., that the hardship be caused *solely* through the manner of operation of the ordinance upon the particular property, is lacking. In such case, a **variance** will not be granted . . . .

. . .

'There is a uniform application of the rule in those cases in which there has been an act on the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created ...

... **[*37]** no reasonable or beneficial use in its then classification. The owner then sought to have the parcel reclassified, asserting that it was a hardship for the parcel to remain in its present classification. Although it was a reclassification case, and not a **variance** case, we applied the same act of commission principle. We noted that the trial court had found:

"*For engineering reasons, economic reasons, or for some other reason the applicant, in laying out the subdivision, left as an outlot the ...*

... **[*38]** Appeals agreed with the "Board" that "the needs of SCI's customers have nothing to do with the peculiarity of the property in question. Thus, any hardship claimed by SCI - the second prong of the test - is self-inflicted, and thus not a ground for a **variance.**" The hardship complained of in the Court of Special Appeals' case of *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995), was also self-created. The **[*39]** current property owner erected ...

... **[*39]** albeit a predecessor owner, had illegally transformed a two-unit non-conforming apartment building into a three-unit non-conforming apartment building, and her successor owner was attempting to obtain a **variance** from set-back requirements to permit an exterior fire escape, necessitated by the change in the number of units, to be built in a required side yard. That court noted: "The finding of the Board of Appeals that the circumstances requiring the **variance** are not the result of actions on the applicant's part must be read to mean the applicant, or his predecessor. When so read, the finding is directly contrary to the evidence, and must be rejected." *Id.* at 428, 371 A.2d at 449.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n10 The Court of Special Appeals opined further: "Were we to hold that self-inflicted hardships in and of themselves justified **variances,** we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances." *Cromwell*, 102 Md. App. at 722, 651 A.2d at 439-40.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - - **[*40]**

This typical type of ...

... **[*40]** enclosure around a walkway was deemed self-inflicted); *Midgett v. Schermerhorn*, 24 A.D.2d 572, 262 N.Y.S.2d 269 (1965) (disregard of conditions imposed on prior grant of a **variance** held to be self-imposed); *Pittsburgh v. Zoning Board of Adjustment*, 522 Pa. 44, 559 A.2d 896 (1989) (reliance on city permits that had been obtained on false information in permit applications ...

... **[*40]** 486 (1989) (failure to procure permits self-created); *In re Fecteau*, 149 Vt. 319, 543 A.2d 693 (1988) **[*41]** (reliance on his surveyor's measurements held to be self-created).

Conclusion

The **variance** at issue in the case *sub judice* is an "area" **variance,** not a "use" **variance.** *Gleason*, cited by the Court of Special Appeals, never applied to "area" **variances,** and, as we have indicated in the several cases we have cited, we made that distinction long ago. Moreover, there is a serious question of whether it is, or ever was, viable in any **variance,** as opposed to a "classification," situation.

As we failed to discern, or at least to discuss, in *Gleason*, zoning constitutes restrictions on land, not on title. Both the Maryland Declaration of Rights and the Fifth Amendment of the United States Constitution ...

... **[*43]** transferred, it takes with it all the encumbrances and burdens that attach to title; but it also takes with it all the benefits and rights inherent in ownership. If a predecessor in title was subject to a claim that he had created his own hardship, that burden, for **variance** purposes, passes with the title. But, at the same time, if the prior owner has not self-created a hardship, a self-created hardship is not immaculately conceived merely because the new owner obtains title.

To the extent that any vestige of *Gleason*, *supra*, has survived the cases in which we have distinguished it, it is, as to any application in cases of "area" **variances,** overruled. We do not resolve its application, if any, in "use" **variance** cases only because that issue is not squarely before us. n11

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n11 It may not actually have been before us even in *Gleason.* As we have indicated, *Gleason* appears to have been a reclassification case.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - **[*44]**

We reverse the ...

Source: All Sources > Maryland > Cases and Court Rules > By Court > **MD Court of Appeals, Court of Special Appeals, and Tax Court Cases**
Terms: **roeser & variance** (Edit Search)
View: KWIC ± 25
Date/Time: Monday, April 22, 2002 - 9:41 AM EDT

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Verified
2/26/02

EXHIBITS

CASE #: 01-220-A

Verified 5/21/02

2/26/02

Appellants / Petitioner

1. 9 letters from adjacent lot owners to Larry Schmidt, ZC.
2. letter from Mr + Mrs James Casey (neighbor) to Zoning Appeal Board. 2/22/02
3A. Md. Dept. of Assessments + Taxation MAP. (2 pages)
3B. " " " " " " Owner Info. (8 pages)
4. L.J. Link Jr., Inc. Architectural report of Davison's house.
5. site plan w/blue shaded existing home, orange is addition w/2 photos — Large exh. IN closet
6. plan, 1st floor plan, with 2 photos attached — Large exh. IN closet
7. easel of 6 photos, 3 on right are Davison home, 3 on left are Douglas + Smith — Large exh. IN closet
8. 4 sheets - 1 - North elevation - 2 - basement - 3 - 1st floor - 4 - 2nd floor
9. Plan to accompany variance request. 3/6/01
10A-10H. Photos
11. Treadwell Court site plan done by D.B. Taylor + Associates.

Protestants

1. Plat showing Welsh + Davison Properties. Date 1/26/01

3/27/02 ~~Protestants~~ Appellants / Petitioner

12. Environmental Protection + Resource Management pgs. 917-920
13. Balto. Co. Interoffice Correspondence fm C.A. Parks to J.J. Dieter, Dir, DEPRM.
14A. Forrest Buffer Study
14B. Lot 58 Bldg. footprint, with septic area shown.

Michael Justin Dowling, **ARCHITECT**

Ref No 3

PO Box 226
Annapolis, MD 21404

150 South Street
Suite 204
Annapolis, MD 21401

410-269-0621

Résumé

Personal

Michael Justin Dowling	6 Steele Avenue Annapolis, Maryland 21404 (301) 269 5513 b. 24 August 1950 Married to Barbara Fine Dowling, with three children.

ARCHITECTURE
URBAN DESIGN

Education

Harvard University	M.Arch in Urban Design	February 1977
University of Maryland	B.Arch	May 1973

Professional

Registered Architect	State of Maryland, 3625-A	February 1977
	State of Delaware, 005434	July 1989
	NCARB Certificate, 22561	August 1979

Professional Experience

Principal/Owner	Michael Justin Dowling, Architect Annapolis, Maryland	September 1980 - Present
Asst Director of Design	Vision, Inc. Cambridge, Massachusetts	February 1979 - August 1980
Architect	RTKL Associates Baltimore, Maryland	July 1978 - February 1979
Urban Designer	Maryland National Capital Park and Planning Commission Silver Spring, Maryland	August 1977 - July 1978
Architect	Cambridge Seven Associates Cambridge, Massachusetts	April 1977 - August 1977
Designer	Andrew V. Donnally & Associates Bethesda, Maryland	September 1974 - 1975
Designer	Peter D. Paul, Architect Baltimore, Maryland	May 1973 - September 1974

Michael Justin Dowling
AIA

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Memberships

American Institute of Architects – Corporate Member
Chesapeake Bay Chapter of the American Institute of Architects – Past President
Annapolis Preservation Trust – Past President and Board Member
National Trust for Historic Preservation
Vernacular Architecture Forum
Society for Commercial Archeology

Awards

Citation of Merit	December 1989	Chesapeake Bay Chapter, AIA Design Awards Program

Published Projects

A Collector's Place	**Mid Atlantic Monthly**	January 1996
Cabin Fever	**Colonial Homes**	August 1995
New Life for Old Treasures	**Baltimore Magazine**	August 1993
A Lovely Log House	**Baltimore Sun Magazine**	April 29, 1990
Light House	**Annapolitan**	January 1989
Sited to Fit	**Southern Living**	September 1988

Principal Residential Projects

Garcia / DeGarcia Residence, *Annapolis, Maryland* 2000
Major renovations and second floor addition to a small water-view house.

Purnell Residence, *Annapolis, Maryland* 2000
Major addition and interior and exterior renovation of a early twentieth century house in the Murray Hill neighborhood of Annapolis.

Leffers Residence, *Grasonville, Maryland* 2000
Additions and major renovations to an Eastern Shore home.

Ridout / Brown Residence, *Annapolis, Maryland* 1999
New custom home on a waterfront site adjacent to a significant archeological site.

1916 East Pratt Street, *Baltimore, Maryland* 1998
Interior and exterior renovation of a late nineteenth century corner row house and the adjoining carriage house.

110 Duke of Gloucester Street, *Annapolis, Maryland* 1998
Renovation and Addition to an existing historic 18th century house in Annapolis Historic District.

Gimelstob Residence, *Arnold, Maryland* 1998
Renovation and Addition to an existing riverfront house

Patz Studio, *Baltimore, Maryland* 1997
An artist's studio addition to an existing house.

Mason Residence, *Annapolis, Maryland* 1997
New small custom home an an infill lot in Murray Hill.

Faitoute / Schneider Residence, *Annapolis, Maryland* 1996
New custom home an a small wooded lot in Epping Forest.

Strott Residence, *Stevensville, Maryland* 1996
New custom home an a waterfront lot in Queen Anne's County.

Ochs Residence, *Annapolis, Maryland* 1995
Major second floor addition and extensive renovations to an existing Bay view house.

McArthur Residence, *Phoenix, Maryland* 1994
Major second floor addition to an existing house.

Bowser Residence, *Annapolis, Maryland* 1994
New home on a wooded lot.

Tuerk Studio, *Annapolis, Maryland* 1993
Studio garage additions to an existing house.

Samorajczyk Residence, *Annapolis, Maryland* 1993
Additions and renovations to an existing waterfront house.

Litt Residence, *Baltimore, Maryland* 1993
Major addition and renovation to an existing home.

Stahr Renovation, *Arnold, Maryland* 1992
Major additions and renovations to an existing house.

Feldmann Residence, *Hillsmere, Annapolis, Maryland* 1991
New single family residence.

Mills Addition, *Davidsonville, Maryland* 1991
Major additions and renovations to an existing waterfront house.

Meier Renovation, *Baltimore, Maryland* 1991
Major kitchen and powder room renovations to an existing house.

Weber Addition, *Annapolis, Maryland* 1990
Addition and renovations to an existing bungalow in Murray Hill.

Ahern Residence, *Eastport, Annapolis, Maryland* 1989
New single family waterfront residence.

Restifo House, *Stevensville, Maryland* 1989
Renovations and major additions to a waterfront home.

Shampaine Residence, *Annapolis, Maryland* 1988
Renovations and major additions to an existing home.

Coggeshall Addition, *Annapolis, Maryland* 1988
Renovations and additions to a house in the Historic District.

Butler House, *Crownsville, Maryland* 1987
New single family residence on a waterfront site.

Feldmann House, *Annapolis, Maryland* 1987
New single family residence.

Myers House, *Baltimore County, Maryland* 1987
Major addition to an existing house.

Lankford Renovation, *Ocean City, Maryland* 1987
Major additions and renovations to an existing bayfront house.

Dowling House, *Annapolis, Maryland* 1986
New single family residence.

Shenk Residence, *Annapolis, Maryland* 1985
New single family residence.

Delavan Residence, *Annapolis, Maryland* 1985
New single family residence.

Hammond Addition, *Annapolis, Maryland* 1984
Renovations and additions to an existing Murray Hill home.

Lankford Renovation, *Baltimore, Maryland* 1984
Major renovations to an existing house.

Owens / Reife Renovation, *Annapolis, Maryland* 1984
Major additions and renovations to an existing house.

Arrowhead Farm, *Kent Island, Maryland* 1984
Additions and renovations to an existing farm house complex.

Briscoe Addition, *Calvert County, Maryland* 1983
Additions and renovations to an existing riverfront house.

Martha's Kitchen, *Annapolis, Maryland* 1982
Renovation of an existing Historic District townhouse.

Astle Residence, *Annapolis, Maryland* 1982
Renovation of a basement as an apartment in the Historic District.

Mr. & Mrs. Patrick Welsh
901 Fallscroft Way
Lutherville, Maryland 21093

Mr. & Mrs. Mark Davison
24 Treadwell Court
Lutherville, Maryland 21093

December 4, 2000

Dear Mark and Sarah,

After our telephone conversation the other night, November 30, 2000, Pat and I discussed your ideas and plans for your expansion at 24 Treadwell Court and how it would affect the property we own. We are responding in writing because the word "compromise" was used quite often. We do not want you to misunderstand or be misled by us in any way whatsoever.

We both feel very strongly that any expansion at 24 Treadwell Court beyond the 50-foot set-back lines would have a negative impact on our property value in Hill Farm and on our own private residence, as we understand your plans. We enjoy the openness and privacy our woods provide for us. It is very nice to know that our neighbors also enjoy our undeveloped lots and have asked to be called first if we ever decide to sell them. Even though we do not intend to sell or build on these lots at the present time or in the foreseeable future, we believe very strongly that any proposed variance would greatly reduce the value of our property in Hill Farm and Old Lyme.

It is unfortunate for you the original owners chose to situate their house directly on the 50-foot set-back lines. Although Old Lyme was not developed yet, they freely chose to be boxed-in by property lines which require by law a 50-foot set-back.. When Old Lyme was developed we chose again to protect our investment and privacy by purchasing another lot contingent with the rest of our property.

Over the last 17 years our intentions have not changed. We will maintain and preserve our properties in their natural state knowing also that they are developable lots with increasing values. We paid the going price for these lots and have paid the same property taxes as everyone else. We must and will protect our investment.

Therefore, we will oppose a variance of any kind that you might request.

We appreciate your thoughtfulness in approaching us first about your plans, but judging from the background work you did in our behalf you must have considered your plans to be a long shot from the beginning. Perhaps the bottom line is that the site of your house does not utilize your property to its best advantage and your own dreams.

This letter comes to you in good spirits with wishes for the very best in life as you and Sarah begin your life's journey together.

Sincerely,

Pat Welsh

Lois Welsh

Pat and Lois Welsh

Pet No 6

#20 TREADWELL Ct.

February 20, 2001

Lawrence E. Schmidt, Zoning Commissioner
401 Bosley Avenue, Suite 405
Towson, MD 21204

RE: Mark Davidson's Zoning Variance
24 Treadwell Court
Case No. 01-220-A

Dear Mr. Schmidt,

We are aware of the addition proposed by our neighbor, Mark Davison, to his property in Hill Farm. We are writing to advise that although we will be unable to attend the hearing that you are going to hold, we support Mr. Davison's request for a zoning variance.

Please drop us a line should you need any additional information.

Sincerely,

Doug and Lynn McCorkle

Appelants #1
2/26/02

WEISS, McCORKLE, MASHBURN, M.D., P.A.

OTOLARYNGOLOGY
HEAD AND NECK SURGERY
FACIAL COSMETIC SURGERY
AUDIOLOGY/SPEECH PATHOLOGY

Michael D Weiss, M.D
Douglas C McCorkle, M D , F A C S
Mark A Mashburn, M D

Alfred M Lieberman, M D *(1915-1988)*

AUDIOLOGY
Natalie M Pantalone, M S , CCC-A
Wendy A. Teie, M S., CCC-A
Linda K Fuller, M.A., CCC-A

MAIN OFFICE
23 Crossroads Drive, Suite 400
Owings Mills, Maryland 21117
(410) 356-2626
Fax· (410) 356-8945
www.baltimoreent com

215 Washington Heights
Westminster, Maryland 21157
(410) 876-9300

Mr. & Mrs. Gary Naktin
35 Treadwell Court
Lutherville, Maryland 21093

February 18, 2001

Mr. Lawrence E. Schmidt,
Zoning Commissioner
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: Mark Davison's Zoning Variance
24 Treadwell Court
Case No. 01-220-A

Dear Mr. Schmidt:

We are aware of the addition that our neighbor, Mark Davison, is proposing for his property at 24 Treadwell Court. We will be unable to attend the hearing on the variance, but are writing to voice our support for his request.

Please contact us if you need any further information.

Sincerely yours,

Gary & Raili Naktin

Sent 3/7

ARTHUR E. ROSENBAUM, M.D.
22 TREADWELL COURT
LUTHERVILLE, MARYLAND 21093

(410) 308-0705
FAX (410) 308-1382

JAN 18

Mr. Lawrence E. Schmidt
Zoning Commissioner
401 Bosley Avenue
Towson, MD 21204

RE: Zoning Variance
Mark Davison
24 Treadwell Court
Lutherville, MD 21093

Case #01-220-A

Dear Mr. Schmidt:

We understand that Mr. Davison is requesting a zoning variance so that he can make improvements to his property. We are his next door neighbors and write in support of this request. We are unable to attend the zoning hearing but want to go on record in support of this zoning variance.

Yours truly,

Rona C Rosenbaum

Arthur E Rosenbaum, MD

Rona C. Rosenbaum
Arthur E. Rosenbaum, M.D.

SUSAN AND CHARLES MANN
15 OLD LYME ROAD
LUTHERVILLE, MARYLAND 21093

February 8, 2001

Lawrence E. Schmidt, Zoning Commissioner
401 Bosley Avenue
Suite 405
Towson, Maryland 21204

RE: Case Number 01-220-A
Mark Davison's Zoning Variance
24 Treadwell Court
Lutherville, Maryland 21093

Dear Mr. Schmidt,

We reside at the address noted in the letterhead. The backyard of our house meets the backyard of Mark Davison's house at 24 Treadwell Court. As we are unable to be present at the hearing where Mr. Davison is requesting a zoning variance on his property, this letter is being sent to lend support to his request.

We are aware of the improvements/additions proposed by Mr. Davison to his home in Hill Farm. We support his request for a zoning variance.

Sincerely,

Charles Mann Susan B. Mann

Lawrence E Schmidt, Zoning Commissioner
401 Bosley Avenue, Suite 405
Towson, MD 21204

2-12-01

Re: Mark Davison's Zoning Variance
24 Treadwell Court
Case No. 01-220-A

Dear Mr. Schmidt,

We have been informed of the addition that our neighbor, Mark Davison, would like to undertake. Please understand that we have no objection to his request for a zoning variance.

Sincerely,

Dr & Mrs. Charles Paidas

Dr. and Mrs. Charles Paidas
25 Treadwell Ct.
410-252-6507

5 March 2001

Lawrence E. Schmidt, Zoning Commissioner
401 Bosley Avenue, Suite 405
Towson MD 21204

Re: Mark Davison's Zoning Variance
24 Treadwell Court
Case No. 01-220-A

Dear Mr. Schmidt:

We have been advised by our neighbors, Mark and Sarah Davison, that they propose to add an addition and to make related improvements to their home in Hill Farm. We write to advise you that we have no objection to the Davison's request for a zoning variance.

Very truly yours,

Dave Zerhusen / Kathy Schoff

Dave Zerhusen and Kathy Schoff
12 Old Lyme Road
Lutherville MD 21093

THE
CANCER
FIGHTER
WWW.IP-6.NET

ABUL KALAM M. SHAMSUDDIN, MD, PHD
15 CHARLES PLAZA, SUITE 2508
BALTIMORE, MD 21201-3931, USA

March 02, 2001

Lawrence E. Schmidt
Zoning Commissioner, Baltimore County
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Ref: Zoning Variance Case # 01-220-A [24 Treadwell Court]

Dear Mr. Schmidt,

I am the owner of the property at 31 Treadwell Court, Lutherville, and thus a neighbor of Mr. Mark Davison at 24 Treadwell Court. I have been made aware of the improvements proposed by Mr. Davison. While I cannot personally be in attendance at the hearing, I would however like to state that I support Mr. Davison's request for a zoning variance.

If I may be of any further assistance in this matter, please do not hesitate to call me at 410-706-4874.

Sincerely,

AbulKalam M. Shamsuddin
31 Treadwell Court
Lutherville, MD 21093-3765

cc: Mark Davison

Drs. Krishnamurti and Neena Rao
29 Treadwell Court
Lutherville, MD 21093

RE: Mark Davison's Zoning Variance
24 Treadwell Court
Case No. 01-220-A

Dear Mr. Schmidt:

We are supportive of our neighbor, Mr. Davison's effort to obtain a zoning variance. We hope that he will be successful in this endeavor.

Thanking you,

Sincerely yours,

K.N. Rao 2/28/01

27 Treadwell Court
Lutherville, MD 21093
February 24, 2001

Mr. Lawrence E. Schmidt
Baltimore County Zoning Commisioner
401 Bosley Avenue, Suite 405
Towson, MD 21204

Subject: Request for Zoning Variance
Mark Davison, 24 Treadwell Court
Case No. 01-220-A

Dear Mr. Schmidt:

We have been made aware of Mr. Davison's plans to expand his home. It is our understanding that his plans require a zoning variance. We have no objection to the planned expansion and location on his property.

Please feel free to contact us for further information or clarification.

Sincerely,

Bruce R. Douglas
Charlotte D. Douglas

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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Account Identifier: **District** - 08 **Account Number** - 1900003658

Owner Information

Owner Name:	KUNISCH ALICIA S KUNISCH ROBERT D,TRUSTEES	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	C/0 ALICIA K DEL GUERCIO 13015 JEROME JAY DR COCKEYSVILLE MD 21030-1523	**Deed Reference:**	1) /12798/ 98 2) /12798/ 94

Location & Structure Information

Premises Address	Zoning	Legal Description
23 TREADWELL CT		1.347 AC 23 TREADWELL CT THE HILL FARM

Map	Grid	Parcel	Subdivision	Section	Block	Lot	Group	Plat No:	
60	1	27				52	81	Plat Ref:	6 48/ 70

Special Tax Areas	Town Ad Valorem Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1983	5,360 SF	1.34 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	FRAME

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2001	As Of 07/01/2002
Land:	180,950	180,950		
Improvements:	425,100	529,750		
Total:	606,050	710,700	606,050	640,933
Preferential Land:	0	0	0	0

Transfer Information

Seller:	KUNISCH ROBERT D	**Date:**	04/17/1998	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/ 6450/ 120	**Deed2:**	
Seller:	HILL FARM JOINT VENTURE	**Date:**	10/21/1982	**Price:**	$70,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Code	07/01/2001	07/01/2002
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Appellants #3B
2/26/02

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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Account Identifier: **District** - 08 **Account Number** - 1900003659

Owner Information

Owner Name:	PAIDAS CHARLES N PAIDAS MARIANNE	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	25 TREADWELL CT LUTH-TIMONIUM MD 21093-3723	**Deed Reference:**	1) /14548/ 69 2)

Location & Structure Information

Premises Address	Zoning	Legal Description
25 TREADWELL CT		1.954 AC 25 TREADWELL CT THE HILL FARM

Map	Grid	Parcel	Subdivision	Section	Block	Lot	Group	Plat No:	
60	1	27				53	81	Plat Ref:	6 48/ 70

Special Tax Areas	Town Ad Valorem Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1983	2,925 SF	1.95 AC	04

Stories	Basement	Type	Exterior
1 1/2	YES	STANDARD UNIT	FRAME

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2001	As Of 07/01/2002
Land:	191,620	191,620		
Improvements:	302,640	397,220		
Total:	494,260	588,840	494,260	525,786
Preferential Land:	0	0	0	0

Transfer Information

Seller:	PAPPAS MICHELE M	**Date:**	06/26/2000	**Price:**	$610,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/12045/ 96	**Deed2:**	
Seller:	PAPPAS HARRY G,JR	**Date:**	02/21/1997	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/ 6401/ 674	**Deed2:**	
Seller:	HILL FARM JOINT VENTURE	**Date:**	06/08/1982	**Price:**	$70,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Code	07/01/2001	07/01/2002
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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BALTIMORE COUNTY
Real Property Data Search

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Account Identifier: **District** - 08 **Account Number** - 1900003660

Owner Information

Owner Name:	DOUGLAS BRUCE R DOUGLAS CHARLOTTE D	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	27 TREADWELL CT LUTH-TIMONIUM MD 21093-3723	**Deed Reference:**	1) / 6472/ 207 2)

Location & Structure Information

Premises Address
27 TREADWELL CT

Zoning

Legal Description
5.148 AC
THE HILL FARM

Map	Grid	Parcel	Subdivision	Section	Block	Lot	Group	Plat No:	
60	1	27				54	81	Plat Ref:	6 48/ 70

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1983	3,040 SF	5.14 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	BRICK

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2001	As Of 07/01/2002
Land:	246,220	246,220		
Improvements:	233,530	250,640		
Total:	479,750	496,860	479,750	485,453
Preferential Land:	0	0	0	0

Transfer Information

Seller:	HILL FARM JOINT VENTURE	**Date:**	12/30/1982	**Price:**	$62,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Code	07/01/2001	07/01/2002
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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BALTIMORE COUNTY
Real Property Data Search

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Account Identifier: **District** - 08 **Account Number** - 1900003661

Owner Information

Owner Name:	RAO KRISHNAMURTI N RAO NEENA	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	29 TREADWELL CT LUTHERVILLE TIMONIUM MD 21093-3765	**Deed Reference:**	1) / 7073/ 80 2)

Location & Structure Information

Premises Address
29 TREADWELL CT

Zoning

Legal Description
2.525 AC
THE HILL FARM

Map	Grid	Parcel	Subdivision	Section	Block	Lot	Group	Plat No:	
60	1	27				55	81	Plat Ref:	6 48/ 70

Special Tax Areas **Town**
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1986	4,862 SF	2.52 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	BRICK

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2001	As Of 07/01/2002
Land:	201,600	201,600		
Improvements:	498,660	568,560		
Total:	700,260	770,160	632,450	723,560
Preferential Land:	0	0	0	0

Transfer Information

Seller:	RAO KRISHNAMURTI N	**Date:**	12/30/1985	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Code	07/01/2001	07/01/2002
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
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Account Identifier: **District** - 08 **Account Number** - 1900003662

Owner Information

Owner Name:	SHAMSUDDIN ABULKALAM M	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	31 TREADWELL CT LUTHERVILLE TIMONIUM MD 21093-3765	**Deed Reference:**	1) /14167/ 112 2)

Location & Structure Information

Premises Address
31 TREADWELL CT

Zoning

Legal Description
2.322 AC
31 TREADWELL CT
THE HILL FARM

Map	Grid	Parcel	Subdivision	Section	Block	Lot	Group	Plat No:	
60	1	27				56	81	Plat Ref:	6 48/ 70

Special Tax Areas **Town**
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1985	3,852 SF	2.32 AC	04

Stories	Basement	Type	Exterior
1	YES	STANDARD UNIT	STONE

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2001	As Of 07/01/2002
Land:	198,100	198,100		
Improvements:	522,970	603,840		
Total:	721,070	801,940	721,070	748,026
Preferential Land:	0	0	0	0

Transfer Information

Seller:	BENJAMIN CHARLES S	**Date:**	11/23/1999	**Price:**	$630,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 8735/ 724	**Deed2:**	
Seller:	BENJAMIN CHARLES S	**Date:**	03/19/1991	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Code	07/01/2001	07/01/2002
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
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Account Identifier: **District** - 08 **Account Number** - 1900003666

Owner Information

Owner Name:	DAVISON MARK E	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	24 TREADWELL CT LUTHERVILLE TIMONIUM MD 21093-3757	**Deed Reference:**	1) / 7618/ 107 2)

Location & Structure Information

Premises Address
24 TREADWELL CT

Zoning

Legal Description
1.442 AC
THE HILL FARM

Map	Grid	Parcel	Subdivision	Section	Block	Lot	Group	Plat No:	
60	1	27				59	81	Plat Ref:	6 48/ 70

Special Tax Areas **Town**
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1984	2,320 SF	1.44 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	FRAME

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2001	As Of 07/01/2002
Land:	182,700	182,700		
Improvements:	256,850	316,480		
Total:	439,550	499,180	439,550	459,426
Preferential Land:	0	0	0	0

Transfer Information

Seller:	WIDOWS DAVID E	**Date:**	07/23/1987	**Price:**	$417,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Code	07/01/2001	07/01/2002
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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Account Identifier: **District** - 08 **Account Number** - 1900003667

Owner Information

Owner Name:	ROSENBAUM ARTHUR E ROSENBAUM RONA C	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	22 TREADWELL CT LUTHERVILLE TIMONIUM MD 21093-3764	**Deed Reference:**	1) /13329/ 456 2)

Location & Structure Information

Premises Address
22 TREADWELL CT

Zoning

Legal Description
1.285 AC
22 TREADWELL COURT
THE HILL FARM

Map	Grid	Parcel	Subdivision	Section	Block	Lot	Group	Plat No:	6
60	1	27				60	81	Plat Ref:	48/ 70

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1983	4,051 SF	1.28 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	FRAME

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2001	As Of 07/01/2002
Land:	179,900	179,900		
Improvements:	353,740	419,610		
Total:	533,640	599,510	533,640	555,596
Preferential Land:	0	0	0	0

Transfer Information

Seller:	SMITH ELEANORE G	**Date:**	11/30/1998	**Price:**	$540,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/10848/ 406	**Deed2:**	
Seller:	SMITH JULIAN P	**Date:**	11/29/1994	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/ 7994/ 638	**Deed2:**	
Seller:	FIORELLI ANTHONY J,JR	**Date:**	10/10/1988	**Price:**	$625,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Code	07/01/2001	07/01/2002
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Click here for a plain text ADA compliant screen.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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New Search

Account Identifier: **District** - 08 **Account Number** - 1900003668

Owner Information

Owner Name:	MCCORKLE DOUGLAS C HARRIS-MCCORKLE LYNN	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	20 TREADWELL CT LUTHERVILLE TIMONIUM MD 21093-3764	**Deed Reference:**	1) / 8289/ 828 2)

Location & Structure Information

Premises Address
20 TREADWELL CT

Zoning

Legal Description
1.332 AC
THE HILL FARM

Map	Grid	Parcel	Subdivision	Section	Block	Lot	Group	Plat No:	
60	1	27				61	81	Plat Ref:	6 48/ 70

Special Tax Areas **Town**
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1992	7,950 SF	1.33 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	BRICK

Value Information

	Base Value	Value As Of 01/01/2002	Phase-in Assessments As Of 07/01/2001	As Of 07/01/2002
Land:	180,770	180,770		
Improvements:	738,200	784,830		
Total:	918,970	965,600	918,970	934,513
Preferential Land:	0	0	0	0

Transfer Information

Seller:	MARK A EPSTEIN D EVELOPMENT COMPAN	**Date:**	10/04/1989	**Price:**	$260,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Code	07/01/2001	07/01/2002
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

EXHIBIT
12 3/27/02

b. The development of a corrective action plan, based on the result of the assessment study, suitable to the department and in conjunction with the state department of the environment.

c. The provision for potable water supply to any and all properties determined by visual evidence, groundwater assessment, or laboratory analysis to be affected by the product release by the treatment of existing water supply or the provision for new supply.

(Bill No. 156, 1989, § 4(13-144))

Cross reference—Permits and licenses and business regulation, tit. 24.

Sec. 14-301. Release of petroleum products and hazardous substances; cleanup; costs to be lien on property.

No person shall release, cast, throw, discharge, or cause to flow from a storage system or other containers onto the ground surface or into surface waters or groundwaters of the county any petroleum products or hazardous substance which could become a nuisance or a menace to public health or contribute to the degradation of the air and water resources of the county. The application of petroleum products to roadways and other surfaces for dust control or any other purpose shall be prohibited except as authorized by the department and state authority. In the event that the person responsible for the release is not available to provide for cleanup, state funds, as identified in the Maryland Oil Disaster Containment, Cleanup and Contingency Fund, will be utilized when available. When such state funds are not available, the department may enlist the services of a private cleanup contractor and such charges shall be a lien upon the property owned by such person or seek reimbursement by action of law or administrative procedure from such person for any and all expenses incurred in the control, containment, and removal for proper disposal or processing of the petroleum product or hazardous substance and contaminated materials and the restoration of affected land and water resources.

(Bill No. 156, 1989, § 4(13-143))

Secs. 14-302—14-330. Reserved.

ARTICLE IX. PROTECTION OF WATER QUALITY, STREAMS, WETLANDS AND FLOODPLAINS

Sec. 14-331. Legislative findings of fact.

(a) Section 101(a) of the Federal Water Pollution Control Act amendments of 1972 (P.L. 92-500), as amended by the Clean Water Act of 1977 (P.L. 95-217), declares that the objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act:

(1) It is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) It is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) It is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) It is the national policy that federal financial assistance be provided to construct publicly owned waste treatment works;

(5) It is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each state;

(6) It is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and

(7) It is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of

this Act to be met through the control of both point and nonpoint sources of pollution.

(b) COMAR 26.08.02, Water Pollution - Water Quality, prohibits pollution of the waters of this state and prohibits degradation of the quality of certain waters of this state.

(c) The state is committed to the 1987 Chesapeake Bay Agreement, the goal of which is to reduce nutrient loads entering the Chesapeake Bay by forty (40) percent by the year 2000 and is initiating implementation of Maryland's Chesapeake Bay Nutrient Reduction Plan 1985–2000, which calls for the establishment of forested buffer strips along stream channels adjoining cropland.

(d) The county department of environmental protection and resource management has received delegation from the state for the administration of environmental programs.

(e) The county master plan 1979–1995 calls for the protection of the natural functions of stream valleys and the county master plan 1989–2000 states that wetland and riparian vegetation play an essential role in the natural functioning of stream systems.

(f) Section 35-1 of this Code, entitled Reservoir Watershed; Subdivision Applications; Studies and Reports, provides for hydrogeological studies and environmental effects reports and authorizes the disapproval of any subdivision within the watershed of a public water supply reservoir if such studies and/or reports show that such is required in the interest of the protection of the watershed and the public health, safety, and welfare.

(g) Section 26-276 of this Code, entitled Floodplain and Wetland Protection, restricts construction in or alteration of any floodplain; prohibits dredging, filling, or construction in any wetland; and requires that any wetland must be adequately protected from contamination.

(h) Section 26-278 of this Code, entitled Preservation of Natural or Historical Features, requires that natural features, including watercourses and significant vegetation, must be preserved.

(i) Section 22-1 of this Code provides for abatement of nuisances affecting health or the environment.

(j) The county is a signatory to the 1984 Reservoir Watershed Management Agreement and the 1990 Reaffirmation Agreement which calls for the county to adopt policies to maintain vegetated buffers along streams in new subdivisions.

(k) The county water quality steering committee has determined that forest buffers are necessary to protect water quality, streams, wetlands, and floodplains and has recommended that regulations concerning the same be enacted.
(Bill No. 224, 1990, § 1(38-28))

Sec. 14-332. Legislative intent.

The purpose of the county council in adopting these regulations is to protect the county's streams, wetlands, and floodplains; to protect the water quality of the county's watercourses, reservoirs, lakes, and the Chesapeake Bay; to protect the county's riparian and aquatic ecosystems; and to provide environmentally sound use of the county's land resources. Multiple environmental protection and resource management values are provided by forest buffers. Forest buffers enhance and protect the natural ecology of stream systems; water quality; wildlife habitat; the aesthetic and scenic qualities of natural features; environmentally sensitive areas, such as aquifer recharge areas; and flora and fauna preservation sites. Forest buffers adjacent to stream systems do the following:

(1) Restore and maintain the chemical, physical, and biological integrity of the water resources;

(2) Filter nutrients and toxics;

(3) Reduce erosion and control sedimentation;

(4) Stabilize stream banks;

(5) Provide infiltration of stormwater runoff;

(6) Maintain base flow of streams;

(7) Provide the organic matter that is the source of food and energy for the aquatic ecosystem;

(8) Provide tree canopy to shade streams and encourage trout and other desirable aquatic species;

(9) Provide riparian wildlife habitat;

(10) Provide scenic value and recreational opportunity; and

(11) Minimize public investment in waterway restoration, stormwater management, and other water resource expenditures.

(Bill No. 224, 1990, § 1(38-29))

Sec. 14-333. Scope.

(a) These regulations shall apply to all proposed development except that section 14-341 of these regulations, Design Standards for Forest Buffers and Building Setbacks, shall not apply to those developments which, prior to January 1, 1991:

(1) Have been issued building permits;

(2) Have been issued grading permits and an executed public works agreement whenever required; or

(3) Have had substantial construction commenced during the period prior to January 1, 1991 and thereafter said construction is pursued to completion with reasonable diligence.

(b) These regulations shall apply to all forest harvesting operations, except that section 14-341 of these regulations, Design Standards for Forest Buffers and Building Setbacks, shall not apply to those forest harvesting operations which are implementing a forest management plan approved by the department, the state department of natural resources, the county forest conservancy district board, or the county soil conservation district.

(c) These regulations shall apply to all surface mining operations, except that section 14-341 of these regulations, Design Standards for Forest Buffers and Building Setbacks, shall not apply to active surface mining operations which are operating in compliance with a state surface mining permit. Reclamation of the affected land shall include: the reestablishment of the original stream system to the degree possible, including the reestablishment of the stream channel, one-hundred-year floodplain and wetlands; and the establishment of forest buffers in accordance with sections 14-341 and 14-342 of these regulations.

(d) The basic purposes of the forest buffer standards and requirements outlined herein shall apply to all agricultural operations and shall be administered by the county soil conservation district through the implementation of an approved soil conservation and water quality plan which includes the application of best management practices, such as the establishment of vegetative buffers and other water quality and stream protection measures.

(e) Except as provided in subsection (d) of this section and section 14-337(d) herein, these regulations shall apply to all parcels of land, structures and activities which are causing or contributing to:

(1) Pollution, including nonpoint pollution, of the waters of this state within the county;

(2) Erosion and sedimentation of stream channels; or

(3) Degradation of aquatic and riparian habitat.

(Bill No. 224, 1990, § 1(38-30))

Sec. 14-334. Variances.

(a) The director of the department may grant a variance:

(1) For those projects or activities where strict compliance with the requirements of the regulations herein would result in practical difficulty or unreasonable hardship;

(2) For those public improvement projects or activities where no feasible alternative is available;

(3) For the repair and maintenance of public improvements where avoidance and minimization of adverse impacts to nontidal wetlands and associated aquatic ecosystems have been addressed; or

(4) For those developments which have had stream buffers/forest buffers applied in con-

formance with the requirements outlined in the county water quality management policy (February 1, 1986) or the county executive order for the protection of water quality, streams, wetlands and floodplains (June 4, 1989) and for which the potential for water quality and aquatic resource degradation is minimal.

(b) The applicant shall submit a written request for a variance to the director of the department. The application shall include specific reasons justifying the variance and any other information necessary to evaluate the proposed variance request. The department may require an alternatives analysis that clearly demonstrates that no other feasible alternative exists and that minimal impacts will occur as a result of the proposed project, activity, or development.

(c) In granting a request for a variance, the director of the department may require site design, landscape planting, fencing, the placement of signs, and the establishment of water quality "best management practices" in order to reduce adverse impacts on water quality, streams, wetlands, and floodplains.
(Bill No. 224, 1990, § 1(38-31))

Sec. 14-335. Authority.

The county department of environmental protection and resource management is responsible for enforcing the provisions of the regulations herein, and the director is authorized to promulgate rules, policies, and regulations as necessary to implement the provisions of this article, pursuant to Bill No. 88-90.
(Bill No. 224, 1990, § 1(38-32))

Sec. 14-336. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section:

Agriculture means all methods of production, processing, storage, and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry, and handling their byproducts.

Agricultural operation means properties used for the production of agricultural products in accordance with a soil conservation and water quality plan approved by the county soil conservation district.

Applicant means any person who is an owner, contract purchaser, or the legally authorized representative of either requesting approval of development pursuant to this title or article V of title 26.

Best management practices or practices(BMPs) means conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal wastes, toxics, sediment, and runoff.

Department means the county department of environmental protection and resource management is termed the "department."

Development means:

(1) The improvement of property for any purpose involving building;

(2) Subdivision;

(3) The combination of any two (2) or more lots, tracts, or parcels of property for any purpose;

(4) Subjecting property to the provisions of the state Condominium Act; and

(5) The preparation of land for any of the purposes listed in (1) through (4).

Floodplain, one-hundred-year riverine, means that land which is inundated by the stormwater runoff created by a one-hundred-year frequency rainfall event (which is an event which has a one (1) percent chance of occurrence in any year) and which is based on maximum development of the watershed using the current zoning and based on the current standards approved by the department of public works.

Howard Lederman

BALTIMORE COUNTY, MARYLAND

Interoffice Correspondence

TO: J. James Dieter, Director
Department of Environmental Protection
and Resource Management

DATE: June 11, 1992

FROM: H. Emslie Parks HEP/53
County Attorney

EXHIBIT
13 3/27/02

SUBJECT: Interpretation of Section 14-333 of
Baltimore County Code (Bill No. 224-90)

Section 14-333 provides that regulations with respect to streams, wetlands, and floodplains apply to all proposed development except that forest buffer standards prescribed by Section 14-341 are not to apply to developments which, prior to January 1, 1991, have been issued (1) building permits, or (2) grading permits and have an executed public works agreement, or (3) for which substantial construction began prior to that date.

The extent or measure of the exemption from Section 14-341 is commensurate with the exceptions from the sunset or lapsing provisions of Section 26-216 which would otherwise be applied to underdeveloped or outmoded plats.

The scope of exceptions in Section 14-333 expands, however, to include those developments which have a grading permit and a public works agreement. Likewise, when there are three or fewer lots in the same ownership, there is an additional exception from the sunset or lapsing provisions of Section 26-216. Otherwise, the provisions of Sections 14-333 and 26-216 are cognate and complementary and as they relate to the same general subject matter, i.e., "development," and as they are not inconsistent with each other, are in pari materia even though passed at different time and contain no references to each other.

In any case whenever the legislative branch enacts a provision, it has in mind previous legislation relating to the same general subject matter. Similarly, the new provision is presumed to accord with the legislative policy embodied in prior statutory law. Indeed, they should be considered parts of the same system and are to be construed together. In addition, as legislative terms which are plural in form include the singular, where a development inclusive of a subdivision or any one of its sections or parcels has been issued building permits or even one permit, then the exception contained in Sections 14-333 and 26-216 applies to the whole subdivision. *

Case law also makes evident that a vested status is achieved where a developer proceeds under a valid permit to exercise his rights by committing his land to permanent use by substantial construction before either a change in land use regulations or the expiration of a statutory deadline. The statutory exception in Sections 14-333 and 26-216 is no more than a codification and reflection of the common law rule insulating from further regulatory changes, "reasonable investment backed expectations" that have achieved some degree of actual development.

Therefore, the application of design standards for forest buffers and building set-backs does not apply to developments which, prior to January 1, 1991, have been issued (1) building permits, or (2) have grading permits and an executed public works agreement, or (3) have begun substantial construction as defined by case law.

HEP:MMcM:sm

February 22, 2002

Zoning Appeal Board
Towson, Maryland

RE: Mark Davison's Zoning Appeal – Case Number 01-220-A
24 Treadwell Court
Lutherville, MD

Dear Madam/Sir:

We have been made aware of the zoning appeal that deals with the proposed improvements to the residence of Mr. Mark Davison located in Hill Farm, Lutherville, Maryland. This letter is to advise you that we will not be able to attend the hearing that deals with this issue; however, we support Mr. Davison's request.

Please feel free to call upon us if you have any questions regarding this issue.

Very truly yours,

Mr. & Mrs. James J. Casey
12 Old Lyme Road
Lutherville, Md
410-843-9304 (work)

Appelants #2
2/26/02

Circuit Court for Anne Arundel County
Case # C-1999-58456

IN THE COURT OF APPEALS OF MARYLAND

No. 79

September Term, 2001

RICHARD ROESER PROFESSIONAL BUILDER, INC.

v.

ANNE ARUNDEL COUNTY, MARYLAND

Bell, C. J.
Eldridge
Raker
Wilner
Cathell
Harrell
Battaglia,

JJ.

Opinion by Cathell, J.

Filed: March 7, 2002

Anne Arundel County, Maryland, respondent, appealed to the Court of Special Appeals from a judgment of the Circuit Court for Anne Arundel County. The Circuit Court had found that the Anne Arundel County Board of Appeals (hereinafter Board) had made an error of law and had also used an erroneous standard in respect to the Board's denial of a request for certain variances made by Richard Roeser Professional Builder, Inc., petitioner. The Court of Special Appeals reversed the judgment of the Circuit Court and directed the Circuit Court to reinstate the decision of the Board. Upon petitioner's request, we granted its Petition for Writ of Certiorari. *Roeser v. Anne Arundel County*, 366 Md. 246, 783 A.2d 221 (2001).

Petitioner presents three questions for our review:

> "1. Did the Circuit Court correctly determine that the Anne Arundel County Board of Appeals' decision to deny critical area variances was based on the application of an erroneous legal standard which had been specifically overruled by the Court of Appeals, and was reversible error as a matter of law?
>
> "2. Did the Circuit Court correctly determine that the Anne Arundel County Board of Appeals' finding of 'self-created hardship' was reversible error as a matter of law?
>
> "3. Is the Court of Special Appeals' decision reversing the Circuit Court and ruling that acquisition of title to land knowing that a critical area's buffer variance will be applied for constitutes a 'self-created hardship' reversible error as a matter of law?"

We answer affirmatively to questions two and three. Accordingly, we shall reverse. We shall address question one only to affirm that the standards set out in *Belvoir Farms Homeowners Association v. North*, 355 Md. 259, 734 A.2d 227 (1999), and in *White v. North*, 356 Md. 31, 736 A.2d 1072 (1999), and reiterated and explained in *Mastandrea v. North*, 361 Md. 107,

760 A.2d 677 (2000), are the correct standards to apply upon remand to the Board.[1]

Facts

Petitioner was the contract purchaser of two lots near Annapolis in Anne Arundel County. Only one lot is part of this appeal and part of the lot is located in the Critical Area "buffer" zone adjacent to wetlands.[2] At the time it contracted to purchase the property, petitioner knew that variances from the "Critical Area" and zoning provisions of Anne Arundel County would be required in order for it to be able to build a house of the size it desired. It applied for those variances and, as we have indicated, the Board denied its request.

In relevant part, the Board found:

> "The conditions surrounding the Petitioners' request for a variance have been self-created. The co-petitioner . . . purchased the subject property . . . on February 23, 1999. The wetlands existed on the property at that time. Indeed, it appears from the purchase price of the two lots ($62,000 total) that both seller and buyer were well aware of potential development issues with the land. The buyer apparently elected to purchase the property and now seeks to maximize the investment. Any applicant for a variance, however, must exercise proper diligence in ascertaining the setback requirements prior to the acquisition of property. If such diligence is not exercised, any resulting hardship to the property owner is regarded as self-created. *See, Wilson v. Elkton*, 35 Md. App.

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[1] The present case was heard by the Board and voted on prior to the filing of the first two of the above cited cases, but the written decision was rendered subsequently. It is not altogether clear what standard was actually used by the Board. We were informed at oral argument that the Board has since been applying the *Belvoir Farms/White* standard. We presume it will apply the appropriate standard upon remand. We do not have to determine which standard it actually used in this case as the case must be reheard in any event because of the Board's erroneous interpretation of "self-created hardship."

[2] For explanations of "Critical Area," "buffer zones," etc., *see Belvoir Farms, White*, and *Mastandrea, supra.*

417, 371 A.2d 443 (1977)."[3] [Some citations omitted.]

Judge Manck, of the Circuit Court for Anne Arundel County, in correctly rejecting the position of the Board, stated:

> "[Little] deference, however, is appropriate when the agency's decision is predicated soley on an error of law. *White v. North*, 356 Md. 31 (1999); *Washington National Arena Ltd. Partnership v. Controller*, 308 Md. 370 (1987). . . .
>
> . . .
>
> "Lastly, the Board found the need for the variances had been self-created; hence, pursuant to *Wilson v. Elkton*, 35 Md. App. 417 (1977) and *Ad+Soil, Inc. v. Queen Anne's County*, 307 Md. 307 (1986), the variances must fail.
>
> "Taking the latter argument first, the Court is unconvinced that the hardship was self-created. Hardships of this type are normally those which are created by the owners of the property and not by the property itself. *Cromwell v. Ward*, 102 Md. App. 691 (1995); *Randolph Hills, Inc. v. Montgomery County Council*, 264 Md. 78 (1972); *Salisbury Board of Zoning Appeals v. Bounds*, 240 Md. 547 (1965); *Wilson v. Elkton*, 35 Md. App. 417 (1977). The topography and placement of the property is not a self-inflicted or self-created

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[3] It is a relatively common practice throughout the State, and has been so for decades, that buyers contract to buy properties with contingencies that make consummation of the contract conditioned on the granting of variances. So far as we have discovered, in cases involving "area" variances, this Court has never disapproved the practice. Additionally, in such instances in respect to "area" variances, we have never held that such a practice, by itself, constitutes a "self-created" hardship. In *Wilson, infra,* a predecessor in title to the current landowner modified a structure, which put the structure in violation of the existing zoning code. Therefore, the hardship was "self-created" by the applicant's predecessor in title. It was not created by the regulation. Likewise, in *Ad. + Soil, Inc. v. Queen Anne's County*, 307 Md. 307, 513 A.2d 893 (1986), the applicant had built into a setback, and, after the fact, sought a variance of the setback requirements. The issue of the effect of a purchase was not addressed in a variance context in either opinion, and both involved requests for "area" variances, not "use" variances.

We also note that in this country it is not considered inappropriate to "maximize" investments.

hardship and there is no evidence of testimony which would lend support to the Board's finding that in some fashion the Petitioner created this hardship.

"The Court is aware the scope of review 'is limited to whether a reasoning mind could have reached the factual conclusion the agency reached.' *Bulluck v. Pellham Woods Apartments*, 283 Md. 505 (1974), and further, an agency's decision may not be upheld unless it is sustainable on the agency's actual findings and for reasons advanced by the agency in support of its decision. *United Steel Workers of America Local #2610 v. Bethlehem Steel*, 298 Md. 665 (1984). In this case, the Board's decision as to the self-created hardship is not fairly debatable based on the evidence the Board had before it. The Court finds, therefore, the Board's action as to this finding was arbitrary and capricious and, more importantly, was an error of law."

The Court of Special Appeals, in reversing the Circuit Court, stated, as relevant here:

"In *Gleason v. Keswick Improvement Ass'n, Inc.*, 197 Md. 46, 78 A.2d 164 (1951), the Court of Appeals, citing CHARLES A. RATHKOPF, THE LAW OF ZONING AND PLANNING, § 23, at 262 (2d ed. 1949), stated:

> Where a person purchases property with the intention to apply to the board of appeals for a variance from the restrictions imposed by the ordinance he cannot contend that such restrictions cause him such a peculiar hardship that entitles him to the special privileges which he seeks."[4]

Discussion

Gleason v. Keswick Improvement Association, 197 Md. 46, 78 A.2d 164 (1951), was

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[4] The position taken by Anne Arundel County does not indicate what would happen if a property was conveyed by testamentary devise, or by operation of law. This points out another problem with the concept. Such a new owner would, apparently, not be subject to the self-created hardship rule if he or she obtained property by devise after the regulation was enacted. Under the County's theory, the Board would have to determine and distinguish between matters of title, *i.e.*, how an owner acquired title. Such matters are not within a board's areas of expertise. Zoning regulations regulate the land, impact the land – not ownership, and not title. For further comment on this issue, see the discussion, *infra*, from *Palazzolo v. Rhode Island*, 533 U.S. 606, 121 S. Ct. 2448, 150 L. Ed. 2d 592 (2001).

not an application for an "area" variance. The request was designed to permit commercial use (a grocery store) in a residentially zoned area; accordingly, it concerned "uses," not "area." Indeed, it was not really an application for a "use" variance either. It was sought under a peculiar Baltimore statutory provision providing that a person desiring to use his property contrary to the uses permitted as of right in a particular district could apply for the particular other use if "within one hundred feet of a boundary line between two use districts, any use permitted in that one of such use districts which has the lower classification, provided such one hundred foot measurement shall not extend across a street." *Id.* at 50, 78 A.2d at 165.[5] In other words, it was an alternate classification possibility, built into the statute itself, for property within certain distances of certain district boundaries. In essence, we treated it as a reclassification and in later cases made that distinction. In *Gleason,* we noted that the applicants had, in the five or six years since their purchase, been using the structure as a dwelling unit. We further opined that since they had purchased the property, the applicants had

> "allowed the residence to deteriorate, and the only repairs made to the house were made by the tenants themselves. . . . They claim that in view of the properties surrounding this lot, and that it is not fit for residential purposes, it would be a hardship not to grant them an exception to the general rule. . . . We think it a fair inference that the appellants *bought this property with the intention to change its classification* so as to permit its use as a store, and they cannot claim now that they suffer a peculiar hardship that entitles them to the special privilege which they seek."

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[5] Ordinarily, a "variance" is couched in terms of "variances" from the provisions of the ordinance, and generally do not involve reclassifications or alternate classifications of property use.

Id. at 50-51, 78 A.2d at 166 (emphasis added). In other words, we were asserting that the hardship that existed when the property was purchased was not a reason to reclassify (rezone) the specific property. The issue was not treated as a variance application, in spite of our reference to Rathkopf's *The Law of Zoning and Planning* (a reference that Rathkopf has since largely disowned, *see infra* at pages 8 through 10).

Shortly afterwards, in a case in which we upheld the Board's denial of an "exception," we explained what we thought we had done in *Gleason*:

> "On the facts the instant case is the converse of *Gleason v. Keswick Imp. Ass'n,* 197 Md. 46, 78 A.2d 164. In that case the property in question had originally been zoned, reasonably we held, as residential, in accordance with actual use. It is still so used, and we set aside an order of the Board in effect re-zoning it as commercial. In that case time had confirmed the reasonableness of the original zoning, instead of demonstrating the contrary or a contrary change."

Hoffman v. City of Baltimore, 197 Md. 294, 308, 79 A.2d 367, 373 (1951). The language in *Hoffman,* describing what we had done in *Gleason*, was classic change/mistake language usually associated with Euclidian reclassifications, not variances.

In *City of Baltimore v. Weinberg*, 204 Md. 257, 103 A.2d 567 (1954), a case involving a denial of a non-conforming use status, we continued to treat *Gleason* as a re-classification case rather than a variance (we had never treated it as a variance) and emphasized that the owners in *Gleason* had permitted dwelling structures on their property to deteriorate and thus were, in that fashion, creating a situation where residential use was a hardship. We said in *Weinberg*: "The appellants also rely on *Gleason v. Keswick Improvement Association,* 197

Md. 46, 50, 51, where this Court held that because the residence in question had been allowed to deteriorate, it was evident that the residence was bought with a view to changing its [zoning] classification." *Id.* at 263-64, 103 A.2d at 569.

In any event, ultimately, we have distinguished, if not overruled, *Gleason*. In *Zengerle v. Board of County Commissioners for Frederick County*, 262 Md. 1, 276 A.2d 646 (1971), we noted that Frederick County bought the farm for the purpose of building and operating a landfill. It was known to the County at the time it purchased the property that in order to operate a landfill, the County would need to obtain substantial setback variances (area variances). The opinion we adopted distinguished the *Gleason* case, making its ruling, at the least, inapplicable to area variance cases. We referred to the trial judge's opinion, and said: "[W]e shall adopt his opinion as follows . . . ." *Id.* at 3, 276 A.2d at 648. The opinion we adopted as our own distinguished the *Gleason* case, making its ruling inapplicable to area variance cases. Through the trial judge's opinion, we held:

> "Appellants make the further contention that where one purchases realty intending to apply for a variance from zoning restrictions, he cannot contend that such restrictions cause him the undue hardships that would entitle him to such variance, citing *Gleason v. Keswick Improvement Association*, 197 Md. 46. This same rule has been relaxed where there has been an application for area variance such as here, as distinguished from a use variance as in *Keswick*, the Court of Appeals pointing out that a use variance is customarily concerned with unusual hardship where the land cannot yield a reasonable return without a variance whereas an area variance is primarily concerned with practical difficulties. *Loyola Federal Savings & Loan Assoc. v. Buschman,* 227 Md. 243.
>
> "Section 40-145 permits a variance where practical difficulty or unnecessary hardship is present. Since this is an application for an area

variance and since there was testimony of practical difficulty in the absence of the grant of a variance, the rule announced in *Keswick* does not apply.

"Moreover, in *Stacy v. Montgomery County*, 239 Md. 189, an area variance was approved by the Court of Appeals where a party had purchased a property intending to apply for a special exception. The need for an area variance was not determined until after the special exception had been granted. That is substantially what happened in the present case and *Stacy* is further authority for holding that the rule in *Keswick* does not here apply."

Id. at 21-22, 276 A.2d at 656.

As important, is the fact that Rathkopf, *The Law of Zoning and Planning,* upon which we spoke in *Gleason*, and in turn the Court of Special Appeals relied on in the case at bar, has abandoned the position upon which the Court of Special Appeals relied. The Supreme Judicial Court of Maine noted the change in its relatively recent case of *Twigg v. Town of Kennebunk*, 662 A.2d 914, 916 (Me. 1995), saying:

"The Board ruled there was self-created hardship because 'the applicant knew, prior to his purchase, of the complications and prohibitions attached to this property and its use . . . .' The Board's concluson that knowledge of zoning restrictions prior to the purchase of property is tantamount to self-created hardship is an error of law. While it was the general rule at one time 'that one who purchases property with actual or constructive knowledge of the restrictions of a zoning ordinance was barred from securing a variance,' the rule has since been 'altogether abandoned or modified into nonexistence' in most jurisdictions. n3 3 Rathkopf, *The Law of Zoning and Planning* § 38.06(2) (1988). . . . The modern rule provides that a purchase with knowledge does not preclude the granting of a variance and, at most, is considered a nondeterminative factor in consideration of a variance. Rathkopf at § 38.06." [Some citations omitted.]

Rathkopf, now provides:

"While this rule may still be applicable in a few jurisdictions, it has been altogether abandoned, or modified into nonexistence, in others. Two

basic faults in the old rule have been recognized, and these faults are the reasons behind its demise. First, since hardship can neither be measured by the cost of the property to the owner nor by the difference between the value the land has as restricted and the value it would have if the variance were granted, there is no danger that a knowledgeable purchaser could create evidence of hardship by paying an excessive price for property that is restricted. Second, the old rule failed to acknowledge that if the prior owner would have been entitled to a variance at the time of the zoning ordinance restriction was enacted, the right is not lost to a purchaser simply because he bought with knowledge of the regulation. *In other words, because a purchaser of property acquires no greater right to a variance than his predecessor, he should not be held to acquire less.*

"The 'current trend' in the rule, that purchase with knowledge of restrictions either does not prohibit the granting of a variance, or is at most a nondeterminative factor to consider in the granting of variance, has had proponents at least as early 1957 when the Supreme Court of Rhode Island rejected the notion that purchase with knowledge of restrictions, in itself, constituted self-created hardship. The 'traditional rule,' has been relaxed to leave the decision of whether a purchaser with knowledge of restrictions should receive a variance up to the discretion of the board of appeals.

"It should not be within the discretion of a board of appeals to deny a variance solely because a purchaser bought with knowledge of zoning restrictions. . . .

"The evolution and development of the rule took two slightly different paths. Originally, purchase with knowledge of restriction had its greatest application where a use variance was sought. When the rule was being modified so as to be less harsh, nonuse variances were first to be granted even when there was knowledge."

Arden H. Rathkopf & Daren A. Rathkopf, *The Law of Zoning and Planning* § 58.22, 141-48 (Edward H. Ziegler, Jr. revision, vol. 3, West 1991) (emphasis added) (footnotes omitted).

Robert M. Anderson, in his *American Law of Zoning* § 20.44, 566 (Kenneth H. Young revisions, 4th ed., CBC 1996) discusses the application of the rule in New Jersey, saying:

"Although a number of earlier cases . . . repeated a more restrictive rule, the more recent decisions seem clearly to say that the right to a variance is not affected by a sale of land. One decision . . . said the following: 'The hardship criteria of (c) are expressly stated in terms of the objective physical characteristics of the property itself. The hardship thus entailed is not ordinarily mitigated by mere transfer of title to property . . . . *Where an original owner would be entitled to a variance under a specific set of facts, any successor in title is ordinarily also entitled to such a variance, providing that no owner in the chain of title since the adoption of the zoning restriction has done anything to create the condition for which relief by variance is sought.*

"The Supreme Court of New Jersey has applied the same rule to the granting of variances for 'special reasons.' It said: 'We wish to make it clear that if a prior owner would be entitled to such relief, that right is not lost to a purchaser simply because he bought with knowledge of the zoning regulation involved. . . .'" [Emphasis added.] [Footnotes omitted.]

Anderson then describes, favorably, the position of Delaware courts:

"A Delaware court described the diverse views and elected the more permissive one, explaining: 'We are inclined to regard the property itself as a permanent entity *and the current ownership merely as a passing phase*. We hesitate to lay down a rule that Darling's property, by his purchase of it, became positively ineligible for a variance. . . .'

". . . Courts which permit relief, but also permit the board of adjustment to consider the fact of self-created hardship, fix their attention on the fact that hardship must relate to the property itself, and they see little relevance in a change of ownership."

Id. at 568-69 (emphasis added) (footnotes omitted). Julian Conrad Juergensmeyer and Thomas E. Roberts, *Land Use Planning and Control Law* § 5.17, 211 (West 1998), state:

"When one purchases property and then applies for a variance on the grounds of unnecessary hardship, a difference of opinion exists as to whether the variance should be denied on the ground of self-induced hardship. Most courts consider the transfer of title irrelevant, but some cases contain contrary suggestions. . . . *However, since ownership is normally irrelevant to zoning,*

the transfer of title ought not affect the issue. If the land suffers the requisite hardship, in that the owner can make no reasonable return from its use as zoned, then the board ought to grant a variance. If not, the land becomes permanently zoned in a useless state.

"The reasons used to deny a variance to one who violates the law and then seeks relief are not applicable to one who purchases with knowledge. In the former, the owner created the hardship; in the latter, the zoning created the hardship, which pre-existed the purchaser's acquisition of title. . . . [B]ut it is not an affront to the law to grant relief to one who purchases land where unique circumstances have already zoned the land into a state of uselessness.

"... A windfall may result, but it is not an unjustifiable one vis-s-vis the public, since the situation assumes that land deserves the variance. It is simply a question of which owner gets the variance, the prior owner or the new owner." [Emphasis added.] [Footnotes omitted.]

Daniel R. Mandelker, *Land Use Law* § 6.50, 259-60 (4th ed., Lexis 1997), as to this issue, states:

"A more complicated problem is presented when self-created hardship is claimed because the land owner purchased a lot with knowledge of the zoning restrictions. The rule that hardship is self-created in this situation stems from early New York cases and is followed in some states. . . .

"The present status of the New York rule is in doubt. The New York courts adopted the rule in use variance cases in which there were other reasons for denying the variance. In the area variance cases they hold that self-created hardship based on purchase with knowledge of existing zoning is only one factor to consider.

"The cases that reject the rule that purchase with knowledge of existing zoning in self-created hardship are correct. The rule is fair in cases where a prior owner created a hardship through some action relating to the land. Purchase should not relieve a subsequent owner of this infirmity. To hold that mere purchase with knowledge of existing zoning is self-created hardship improperly makes the purchase of land a basis for denying a variance." [Footnotes omitted.]

Several jurisdictions have held similarly to both our cases distinguishing *Gleason* in respect to area variances, and the Maine court's overruling of the prior position taken by Rathkopf, and Rathkopf's disavowal of his previous position. They include Minnesota, where the Court of Appeals of Minnesota in *Myron v. City of Plymouth*, 562 N.W.2d 21 (Minn. App. 1997), first noted that the property owner had been denied his request for a variance because the city found that the "appellant was aware at the time he purchased the property that a variance would be necessary to make the property buildable." *Id.* at 22. The intermediate appellate court then held:

> "In short, these cases have interpreted the phrase 'created by the landowner,' . . . to include circumstances in which a landowner purchased property with knowledge (actual or constructive) that the property was subject to a zoning ordinance restricting development.
>
> "The problem with such a reading of the statute is that – by backspin – it places an unreasonable limitation on the power of cities to grant variances, for although the statute provides authority to grant variances when certain prerequisites are met, it also creates a mirror image limitation on the authority to grant a variance whenever the stated prerequisites are not met. One of those prerequisites is that the need for the variance not be 'created by the landowner.' If that includes mere purchase with knowledge, a [city] would, in effect, be prohibited from granting a variance to every subsequent owner who purchased with knowledge that a variance would be required for development.
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> . . .
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> "*More significantly, such a reading is also inconsistent with the general property-law goal to preserve alienability. An owner who did not self-create a hardship is eligible for a variance. But that owner would, in effect, be barred from selling to someone else without, as a consequence of the sale, destroying the eligibility to receive a variance. We see no reason why an owner who sells should not be able to convey to a buyer the eligibility for a*

variance along with the land itself.

> "We therefore hold that actual or constructive knowledge of a zoning ordinance before a purchase of land is not a bar to granting a variance. We overrule *Hedlund* and its progeny to the extent that they conflict with our holding."

Id. at 23 (emphasis added).

The Court of Appeals of Indiana first noted the issue in *Reinking v. Metropolitan Board of Zoning Appeals of Marion County*, 671 N.E.2d 137, 139 (Ind. App. 1996), as: "Whether knowledge of a restrictive zoning ordinance prior to the acquisition of property waives the right to argue undue hardship . . . ." The court opined:

> "The dwelling district ordinance in question was adopted in 1989, after the construction of I-465. Uncontested testimony in the record supports the fact that the Reinkings purchased lot 244 after 1989. After purchasing the property from a tax sale buyer, the Reinkings petitioned the MBZA for a variance of developmental standards. . . .
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> . . .
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> "We next determine whether knowledge of a restrictive zoning ordinance prior to the acquisition of property is sufficient grounds to bar [a] variance petition. . . . The MBZA argues that the purchase of property which does not meet zoning specifications is a self-imposed burden. . . . However, where an unnecessary hardship is shown to exist based upon the terms of an ordinance, as they apply to the land, the ability to claim hardship is available to subsequent purchasers as well as to the original owner.
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> ". . . [S]ubsequent decisions have made it clear that the purchase of property with knowledge of use restrictions does not prohibit a purchaser from claiming a special or unnecessary hardship, regardless of who owned the property at the time it was burdened. . . . Whether they met their burden of proving an undue hardship is yet another issue."

Id. at 139-42 (footnotes omitted) (some citations omitted).

In the New Jersey case of *Somol v. Board of Adjustment of the Borough of Morris Plains*, 277 N. J. Super. 220, 231, 649 A.2d 422, 428 (1994), the court noted: "The Board's finding that plaintiff showed no undue hardship, in part, was based on the constructive knowledge of the plaintiff's family that the lot was nonconforming at the time of purchase back in 1963 . . . ." The court held:

> "The law is clear that if an owner who is entitled to a lot size variance on hardship grounds sells to a buyer who has knowledge of the non-conformity, the right to a variance is not lost as a result of the buyer's knowledge. However, if a prior owner created the hardship, the purchaser . . . would not be entitled to a variance on the basis that the hardship was self-imposed. An examination of the chain of title and the record shows that the lot was zoned into a substandard condition and that the hardship alleged, notwithstanding the constructive knowledge of the substandard condition, is not self imposed by any action of the plaintiff or predecessor in title."

Id. at 232, 649 A.2d at 428 (citations omitted); *see Huebner v. Waukesha County Zoning Board of Adjustment*, 180 Wis.2d 469, 514 N.W.2d 54 (1993) ("Here, Steiner was not engaged in any reckless conduct or unauthorized activity. He merely purchased an existing nonconforming building. We have recognized that a purchaser should not be precluded from securing a variance in such a situation. '"A purchaser of property acquires no greater right to a variance than his predecessor and he should not be held to acquire less."' *Id.* (quoting 3 RATHKOPF, THE LAW OF ZONING AND PLANNING § 39.022, at 39-16 (1987)).");

see also In re Gregor, 156 Pa. Commw. 418, 426, 627 A.2d. 308, 312 (1993) ("The right to develop a nonconforming lot is not personal to the owner of property at the time of enactment of the zoning ordinance but runs with the land, and a purchaser's knowledge of

zoning restrictions alone is insufficient to preclude the grant of a variance unless the purchase itself gives rise to the hardship.")

Even in those jurisdictions that still, to a degree, adhere to the older Rathkopf standard, more often than not the standard has been greatly relaxed where area, as opposed to use, variances are at issue. The Court of Special Appeals in a case in which it reversed the granting of a variance, described the differences between "area" variances and "use" variances, as:

> "'[A]rea variance' (a variance from area, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings) and not a 'use variance' (a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses)."

Anderson v. Board of Appeals, 22 Md. App. 28, 37-38, 322 A.2d 220, 225-26 (1974).[6]

Subsequent to *Zengerle v. Board of County Commissioners for Frederick County*, 262

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[6] E. C. Yokley, *Zoning Law and Practice* § 21-6, 321 (vol. 3, 4th ed., Michie 1979), describes the difference between "use" and "area" variances as:

> "A use variance is one that permits a use other than that prescribed by the zoning ordinance in a particular district. An area variance has no relationship to a change of use. It is primarily a grant to erect, alter, or use a structure for a permitted use in a manner other than that prescribed by the restrictions of a zoning ordinance."

Anderson's *American Law of Zoning*, *supra*, at § 20.48, 578, distinguishes the two, as:

> "A use variance authorizes a use of land which otherwise is proscribed by the zoning regulations. An area variance authorizes deviation from restrictions upon the construction and placement of buildings and structures which are employed to house or otherwise serve permitted uses. . . . More specifically, area variances include those relating to setback, yard, lot-area, lot-coverage, floor-area, frontage, height, and similar restrictions. [Footnote omitted.]

Md. 1, 276 A.2d 646 (1971), we reiterated its holding in *McLean v. Soley*, 270 Md. 208, 215, 310 A.2d 783, 787 (1973), where we also distinguished between area and use variances, saying:

> "It is also contended by McLean that Soley is precluded from asserting 'practical difficulty' because he was charged with knowledge of the sideyard requirements when he purchased this property. We see no merit in this argument. We noted in *Zengerle v. Bd. of Co. Comm'rs*, 262 Md.1, 21, 276 A.2d 646 (1971), citing *Loyola, supra*, that this 'rule' is more strictly applied in 'use variance' cases than in cases of 'area variances,' such as the one at bar."

There has also been a federal "takings" case, *Palazzolo v. Rhode Island*, 533 U.S. 606, 121 S. Ct. 2448, 150 L. Ed. 2d 592 (2001), that in a taking context addresses the effect of purchase of property with knowledge of restrictions, doing so with language that may well be relevant to the issue now before this Court. The land use treatise writers had assumed "takings" cases, where the issue of compensation was involved, would be subject to the harsher rule, that a purchaser who takes property with environmental restrictions could not then challenge the restrictions. Juergensmeyer, when putting forward the less harsh rule for variances, notes:

> "A different question is presented when one who purchases with knowledge of an existing restriction seeks to recover just compensation on the basis that the zoning restriction effects a taking under the Fifth Amendment. In such a case, courts may treat the personal right to compensation as waived. Thus, a board may grant a variance under state law to permit land to be used according to traditional zoning principles, but if the board denies the variance the courts might not allow an action for compensation. Under variance law, the land is the focus; under constitutional law, the person is."

Julian Conrad Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Control Law*

§ 5.17, 212 (West 1998) (footnotes omitted). Juergensmeyer's speculation, with the decision in *Palazzolo* has, apparently, been rejected.

Before addressing *Palazzolo*, and in order to "set the stage" in which the *Palazzolo* opinion becomes most relevant to the instant case, we note that with the advent of the use of the term "investment-backed expectations," there was some concern expressed in the land use community as to whether when a purchaser obtained title to property already subject to environmental restrictions, he could not have "expected" to be able to use the property free of the restrictions. Accordingly, it was thought that some courts might hold that such a purchaser could not assert "taking" claims, even if the restrictions denied him all viable economic use.[7]

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[7] Dale R. Cathell, *Some Thoughts on Investment-Backed Expectations - Sword or Petard?* (MICPEL 1994 modified 1998). Addressing Justice Brennan's dissent in *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987), the writer remarked:

> "What he states is this: If one expects governmental authorities, via the permitting process, to extort from [him] one of the incidents of real property ownership, he does not expect to retain that which is extorted, thus he has no expectation of having it in the first instance. Thus, under Justice Brennan's theory of investment-backed expectations there is no taking. . . .
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> . . .
>
> "Thus, according to the dissent, if one is aware of a regulation which incorporates an unconstitutional taking scheme, he could not possibly have expected to be permitted to do that [which] the 'taking' takes and thus there is no interference with an investment-backed expectation upon which to base an unconstitutional taking."

The writer warned that some authorities would accept the reasoning of Justice Brennan's dissent.

(continued...)

The Supreme Court has now answered the questions raised. Palazzolo became the owner of property by conveyances that occurred after the environmental law at issue was passed. It was argued that because he took title subsequent to the statutory enactment, he could not assert "takings" claims in respect to the statute's effect upon his property. The Supreme Court of Rhode Island agreed with the State in *Palazzolo v. State*, 746 A.2d 707, 716 (R.I. 2000), applying one of its cases that had adopted the "investment-backed expectations" theory, saying:

> "Under his [Palazzolo's] reasoning, if a regulation deprives an owner of all beneficial use, it is immaterial whether the regulation predates the claimant's ownership of the land. However, Palazzolo was unable to cite a single case in which a court has ordered compensation for a regulatory taking when the claimant became the owner of the property after the regulation became effective. . . . Here, when Palazzolo became the owner of this land in 1978,

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[7](...continued)

Thereafter, in the "taking" context, in *Anello v. Zoning Board of Appeals*, 89 N.Y.2d 535, 678 N.E.2d 870, 656 N.Y.S.2d 184 (1997), the New York court held that a property owner who acquired property after the passage of a "steep-slope" ordinance was not deprived of an interest in the property because:

> "[I]f property owners were permitted to assert compensatory takings claims based on enforcement of preexisting regulations, the traditional takings analysis . . . and its inquiry into 'the extent to which the regulation has interfered with distinct investment-backed expectations,' would be rendered hopelessly circular."

Id. at 540-41, 678 N.E.2d at 871, 656 N.Y.S.2d at 185.

Additionally, in *Basile v. Town of Southampton*, 89 N.Y.2d 974, 976, 678 N.E.2d 489, 491, 655 N.Y.S.2d 877, 879 (1997), that court stated: "Since claimant took title to her property subject to . . . regulations . . . she cannot claim the value of the property without such restrictions." But, the New Jersey courts went the other way in *East Cape May Association v. State of New Jersey*, A-4852-95T5 (N.J. Super. Ct. App. Div. April 29, 1997), where that court held that successive owners have all the rights of their predecessors in title. The dispute, at least in taking issues, has been resolved by the Supreme Court in *Palazzolo, supra.*

state laws and regulations already substantially limited his right to fill wetlands. Hence, the right to fill wetlands was not part of the title he acquired."

The United States Supreme Court rejected the position, and the reasoning of the Rhode Island court.

"The theory underlying the argument that post-enactment purchasers cannot challenge a regulation under the Takings Clause seems to run on these lines: Property rights are created by the State. So, the argument goes, by prospective legislation the State can shape and define property rights and reasonable investment-backed expectations, and subsequent owners cannot claim any injury from lost value. After all, they purchased or took title with notice of the limitation.

"The State may not put so potent a Hobbesian stick into the Lockean bundle. The right to improve property, of course, is subject to the reasonable exercise of state authority, including the enforcement of valid zoning and land-use restrictions. . . . .Were we to accept the State's rule, the post enactment transfer of title would absolve the State of its obligation to defend any action restricting land use, no matter how extreme or unreasonable. . . .

"Nor does the justification of notice take into account the effect on owners at the time of the enactment, who are prejudiced as well. Should an owner attempt to challenge a new regulation, but not survive the process of ripening his or her claim (which, as this case demonstrates, will often take years), under the proposed rule the right to compensation may not b[e] asserted by an heir or successor, and so may not be asserted at all. The State's rule would work a critical alteration to the nature of property, as the newly regulated landowner is stripped of the ability to transfer the interest which was possessed prior to the regulation. The State may not by this means secure a windfall for itself. . . . The proposed rule is, furthermore, capricious in effect. The young owner contrasted with the older owner, the owner with the resources to hold contrasted with the owner with the need to sell, would be in different positions. . . .

. . .

"There is controlling precedent for our conclusion. *Nollan v. California*

> *Coastal Comm'n*, 483 U.S. 825, 97 L. Ed. 2d 677, 107 S. Ct. 3141 (1987) . . . . The principal dissenting opinion observed . . . the Nollans . . . were 'on notice that new developments would be approved only if provisions were made for lateral beach access.' A majority of the Court rejected the proposition. 'So long as the Commission could not have deprived the prior owners of the easement without compensating them,' the Court reasoned, 'the prior owners must be understood to have transferred their full property rights in conveying the lot.'"

Palazzolo, 533 U.S. at ___, 121 S. Ct. at 2462-64, 150 L. Ed. 2d at 613-14 (some citations omitted).

The types of hardships that are normally considered to be self-created in cases of this type do not arise from purchase, but from those actions of the landowner, himself or herself, that create the hardship, rather than the hardship impact, if any, of the zoning ordinance on the property. Our courts have spoken to these types of actions on several occasions. Relatively recently in *Ad + Soil, Inc. v. County Commissioners of Queen Anne's County*, 307 Md. 307, 316, 513 A.2d 893, 897-98 (1986), the Board found that "'The only extraordinary circumstances which would seem to exist in this case are self inflicted and a result of [Ad + Soil's] construction of the facilities on the site without conforming to the Ordinance's required setbacks.'" (Alteration in original.) We concurred that such a "hardship" was self-imposed.

In *Salisbury Board of Zoning Appeals v. Bounds*, 240 Md. 547, 214 A.2d 810 (1965), an earlier, but seminal case, a property owner had constructed a building without a valid building permit (although he thought a valid permit existed). The building was in violation of the zoning code. After it was discovered, the property owner, much as *Ad + Soil* would

do twenty-one years later, sought a variance to legalize what he had already done. The Board declined to grant the variance on the grounds that it was Bounds' responsibility to obtain a valid permit, and thus the resulting hardship resulted from his failures. The trial court reversed the Board's denial of the variance,[8] and we held that in doing so the trial court erred. We cited to Rathkopf's *The Law of Zoning and Planning* in reversing the trial court:

> "'§ 1. Hardship Caused by Affirmative Acts of Commission.
>
> 'Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions of the zoning ordinance, hardship arises which is capable of being relieved through the grant of a variance. . . . If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner *or his predecessor in title*,[9] the essential basis of a variance, i.e., that the hardship be caused *solely* through the manner of operation of the ordinance upon the particular property, is lacking. In such case, a variance will not be granted . . . .
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> . . .
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> 'There is a uniform application of the rule in those cases in which there has been an act on the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the ordinance.'"

Id. at 554-55, 214 A.2d at 814 (some emphasis added). We then held that the *Bounds* case

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[8] There was an issue of appealability also raised in *Bounds*. As it is not relevant to the case *sub judice*, we do not address that issue.

[9] If mere purchase was sufficient by itself to create a hardship, our citation to Rathkopf, with its distinction that hardships can be self-created by a predecessor in title, would be of little importance.

"fits squarely within the above general rule." *Id.* at 555, 214 A.2d at 814. As can be seen, the self-created hardship in *Bounds* was the actual structural modification of a building by the current owner that put the building into violation of the ordinance. In other words, it was the owner's act of commission that created the claimed hardship.

In *Randolph Hills, Inc. v. Montgomery County Council,* 264 Md. 78, 285 A.2d 620 (1972), the property owner subdivided a much larger tract of land into lots. In the process, the owner left one parcel in a character where, according to the owner, it had no reasonable or beneficial use in its then classification. The owner then sought to have the parcel reclassified, asserting that it was a hardship for the parcel to remain in its present classification. Although it was a reclassification case, and not a variance case, we applied the same act of commission principle. We noted that the trial court had found:

> *"For engineering reasons, economic reasons, or for some other reason the applicant, in laying out the subdivision, left as an outlot the particular ground which is the subject of this rezoning application.*
>
> . . .
>
> *"Its use for R-60 residences is precluded at this time because the applicant chose to lay out its subdivision in the particular manner that it did.*
>
> *". . . What is important is that the use of the particular ground in question is restricted because the applicant chose to develop as it did."*
>
> . . .
>
> "The applicant has said, in effect, that although it was entitled to use this ground in question under the zoning code for R-60 development *it chose not to do so, it now wants the County to permit the use of this land for some other purpose."*

Id. at 81-82, 285 A.2d at 621-22. We then agreed with the trial court, noting favorably its reliance on the *Bounds* case, *supra*.

In *Evans v. Shore Communications*, 112 Md. App. 284, 309, 685 A.2d 454, 466 (1996), the Court of Special Appeals agreed with the "Board" that "[t]he needs of SCI's customers have nothing to do with the peculiarity of the property in question. Thus, any hardship claimed by SCI – the second prong of the test – is self-inflicted, and thus not a ground for a variance." The hardship complained of in the Court of Special Appeals' case of *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995), was also self-created. The current property owner erected a structure that exceeded the height limitation on structures in Baltimore County. The court held that the activity of the owner had been self-imposed.[10] Similarly, in *Wilson v. Mayor and Commissioners of the Town of Elkton*, 35 Md. App. 417, 371 A.2d 443 (1977), the Court of Special Appeals found a self-created hardship where an owner, albeit a predecessor owner, had illegally transformed a two-unit non-conforming apartment building into a three-unit non-conforming apartment building, and her successor owner was attempting to obtain a variance from set-back requirements to permit an exterior fire escape, necessitated by the change in the number of units, to be built in a required side yard. That court noted: "The finding of the Board of Appeals that the circumstances

[10] The Court of Special Appeals opined further: "Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances." *Cromwell*, 102 Md. App. at 722, 651 A.2d at 439-40.

requiring the variance are not the result of actions on the applicant's part must be read to mean the applicant, or his predecessor. When so read, the finding is directly contrary to the evidence, and must be rejected." *Id.* at 428, 371 A.2d at 449.

This typical type of self-created hardship (an act of commission by the owner) is also the law in other jurisdictions. *Martin v. Board of Adjustment*, 464 So.2d 123 (Ala. Civ. App. 1985) (illegally building a carport in a setback, pursuant to a permit application that stated the carport would not be in the setback deemed self-imposed); *Board of Zoning Appeals v. Kempf*, 656 N.E.2d 1201 (Ind. App. 1995) (the paving over of a required green space deemed to be self-created); *CDK Restaurant, Inc. v. Krucklin*, 118 A.D.2d 851, 500 N.Y.S.2d 339 (1986) (the illegal enclosure around a walkway was deemed self-inflicted); *Midgett v. Schermerhorn*, 24 A.D.2d 572, 262 N.Y.S.2d 269 (1965) (disregard of conditions imposed on prior grant of a variance held to be self-imposed); *Pittsburgh v. Zoning Board of Adjustment*, 522 Pa. 44, 559 A.2d 896 (1989) (reliance on city permits that had been obtained on false information in permit applications held to be self-created hardship); *In re Cumberland Farms*, 151 Vt. 59, 557 A.2d 486 (1989) (failure to procure permits self-created); *In re Fecteau*, 149 Vt. 319, 543 A.2d 693 (1988) (reliance on his surveyor's measurements held to be self-created).

Conclusion

The variance at issue in the case *sub judice* is an "area" variance, not a "use" variance. *Gleason*, cited by the Court of Special Appeals, never applied to "area" variances, and, as

we have indicated in the several cases we have cited, we made that distinction long ago. Moreover, there is a serious question of whether it is, or ever was, viable in any variance, as opposed to a "classification," situation.

As we failed to discern, or at least to discuss, in *Gleason*, zoning constitutes restrictions on land, not on title. Both the Maryland Declaration of Rights and the Fifth Amendment of the United States Constitution guarantee rights to property owners. Property owners start out with the unrestricted right to use their land as they see fit. Under the common-law, those rights are limited only by a restriction as to uses that create traditional nuisances. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992). Our cases, however, and the cases of the Supreme Court of the United States, *see Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926), and its progeny, have held that reasonable regulation is constitutional. That said, it must, nonetheless, be recognized that regulation of land, including zoning regulations, are limitations on the full exercise of a property owner's constitutional rights as well as his or her rights under the common-law.

In *Aspen Hill Venture v. Montgomery County Council*, 265 Md. 303, 313-14, 289 A.2d 303, 308 (1972), we quoted from our earlier case of *Landay v. Board of Zoning Appeals*, 173 Md. 460, 466, 196 A. 293, 296 (1938):

> "In such a situation we must not forget the underlying principle that, 'Such ordinances [zoning ordinances] are in derogation of the common law right to so use private property as to realize its highest utility, and while they should be liberally construed to accomplish their plain purpose and intent, they should

> not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language.'" [Alteration in original.]

In that respect, reasonable zoning limitations are always directed to the property, itself, and its uses and structures, not to the completely separate matter of title to property, which is another whole field of law. In zoning, it is the property that is regulated, not the title.

In Maryland, when title is transferred, it takes with it all the encumbrances and burdens that attach to title; but it also takes with it all the benefits and rights inherent in ownership. If a predecessor in title was subject to a claim that he had created his own hardship, that burden, for variance purposes, passes with the title. But, at the same time, if the prior owner has not self-created a hardship, a self-created hardship is not immaculately conceived merely because the new owner obtains title.

To the extent that any vestige of *Gleason, supra*, has survived the cases in which we have distinguished it, it is, as to any application in cases of "area" variances, overruled. We do not resolve its application, if any, in "use" variance cases only because that issue is not squarely before us.[11]

We reverse the judgment of the Court of Special Appeals. Upon remand, the Anne Arundel County Board of Appeals will, in addition to complying with this opinion and the opinion of the Circuit Court for Anne Arundel County, apply the standards of *Belvoir Farms*, our *White*, and *Mastandrea*.

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[11] It may not actually have been before us even in *Gleason*. As we have indicated, *Gleason* appears to have been a reclassification case.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED AND CASE REMANDED TO THE COURT OF SPECIAL APPEALS WITH DIRECTIONS TO AFFIRM THE DECISION OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REMANDING THE CASE TO THE ANNE ARUNDEL COUNTY BOARD OF APPEALS FOR FURTHER PROCEEDINGS CONSISTENT WITH THE OPINION OF THE CIRCUIT COURT AND CONSISTENT WITH THE OPINION OF THIS COURT; COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY ANNE ARUNDEL COUNTY.

PLEASE PRINT CLEARLY

CASE NAME MARK DAVISON
CASE NUMBER 01-220-A
DATE 07 MARCH 2001

PETITIONER'S SIGN-IN SHEET

24 TREADWELL COURT

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Howard L. Alderman, Jr.	LEVIN & GANN, PA, Nottingham Centre 8th Floor, 502 Washington Avenue	TOWSON, MD 21204	halderman@LevinGann.com
MARK DAVISON	24 TREADWELL Ct.	LUTHERVILLE MD 21093	CUBICMAIL@AOL.COM
SARAH DAVISON	24 TREADWELL Ct	LUTHERVILLE MD 21093	
MICHAEL J. DONLIN	150 SOUTH STREET, S. 204	ANNAPOLIS, MD 21401	MJDAIA@aol.com
RICHARD E. MATZ	2835 SMITH AVE. SUITE G	BALTIMORE, MD 21209	

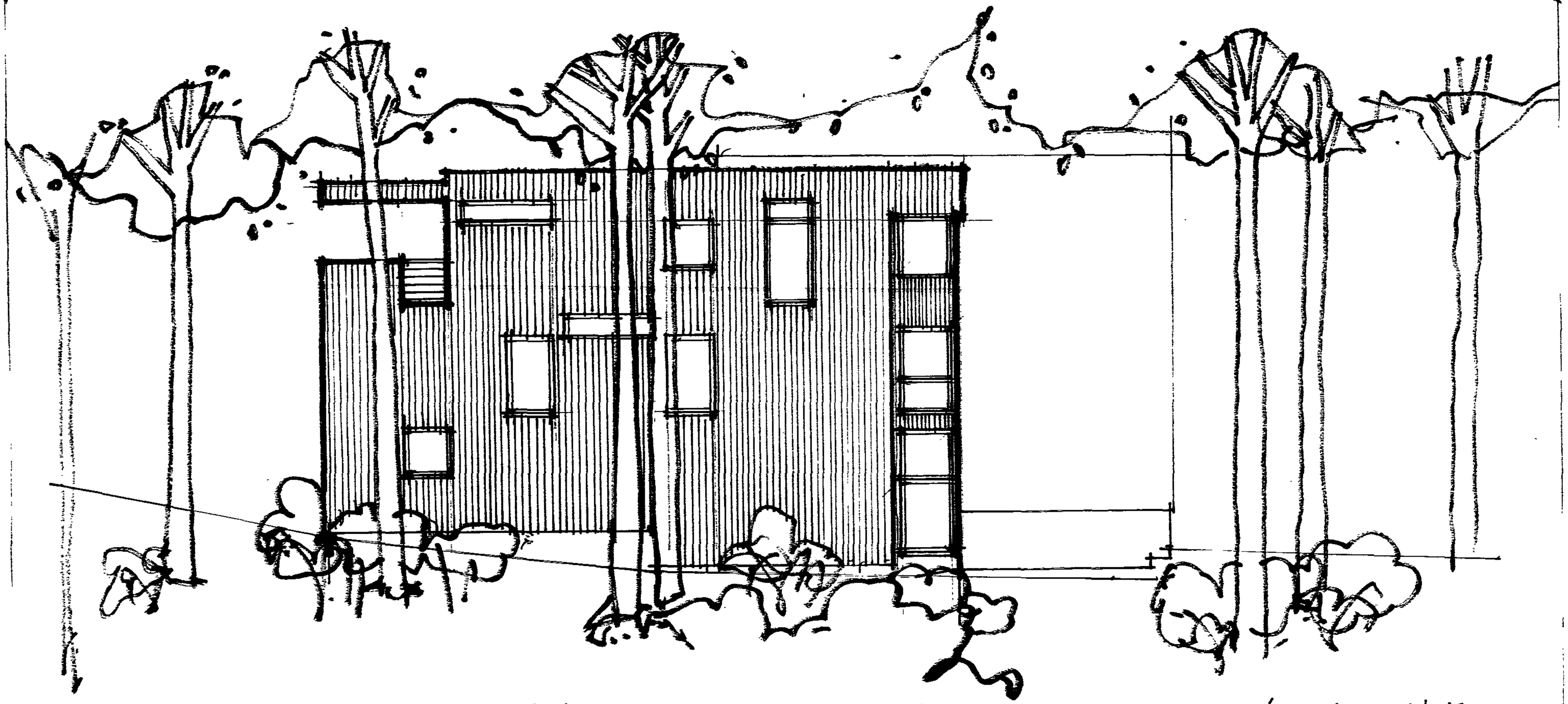
PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
MR. & MRS. PATRICK G. WELSH	901 FALLSCROFT WAY
	LUTHERVILLE, MD. 21093
BRUCE E DOAK	320 E. TOWSONTOWN BLVD
GERWOLD, CROSS & ETZEL, LTD	TOWSON, MD 21286

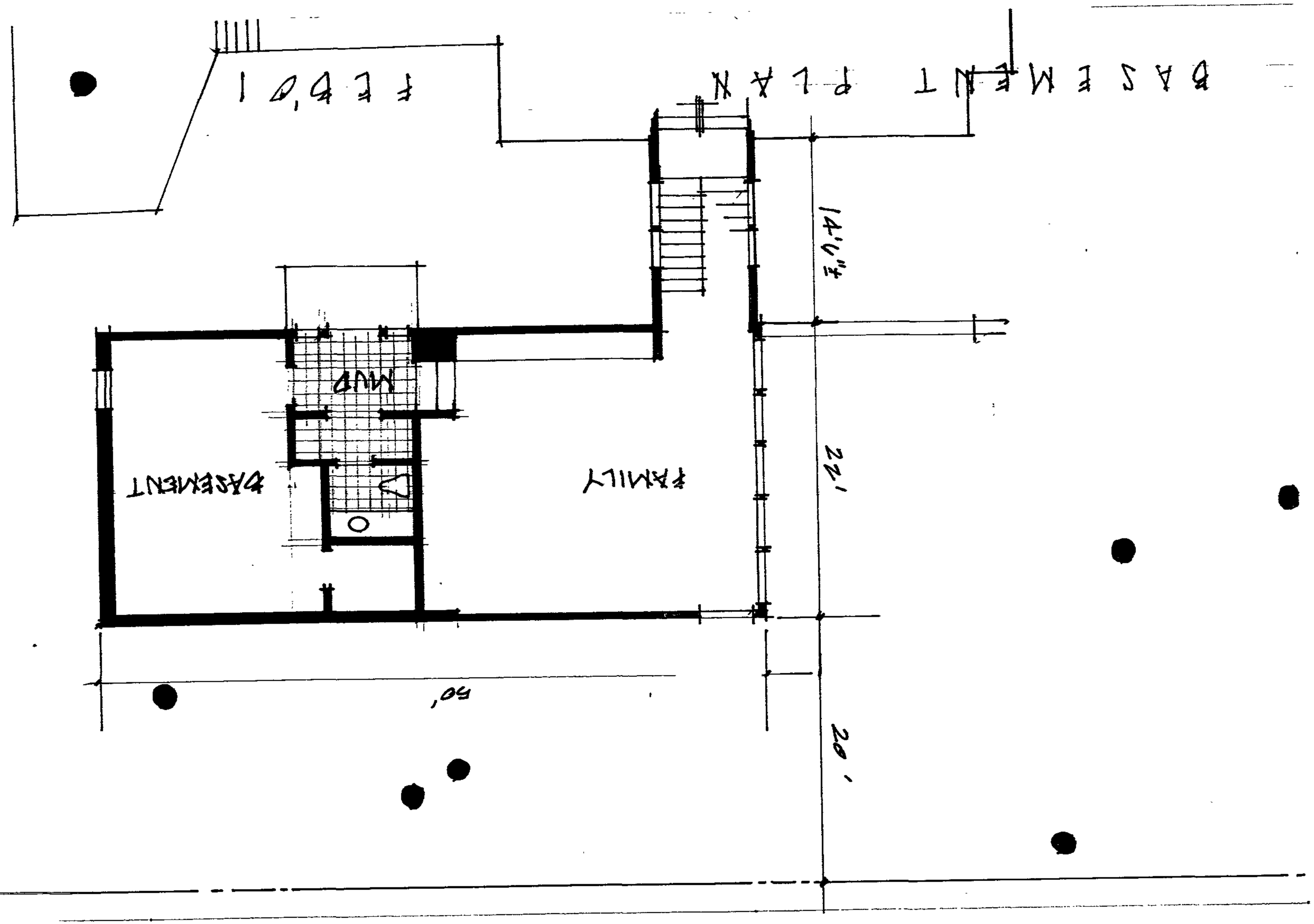
PRIVATE ROAD
NO
TRESPASSING

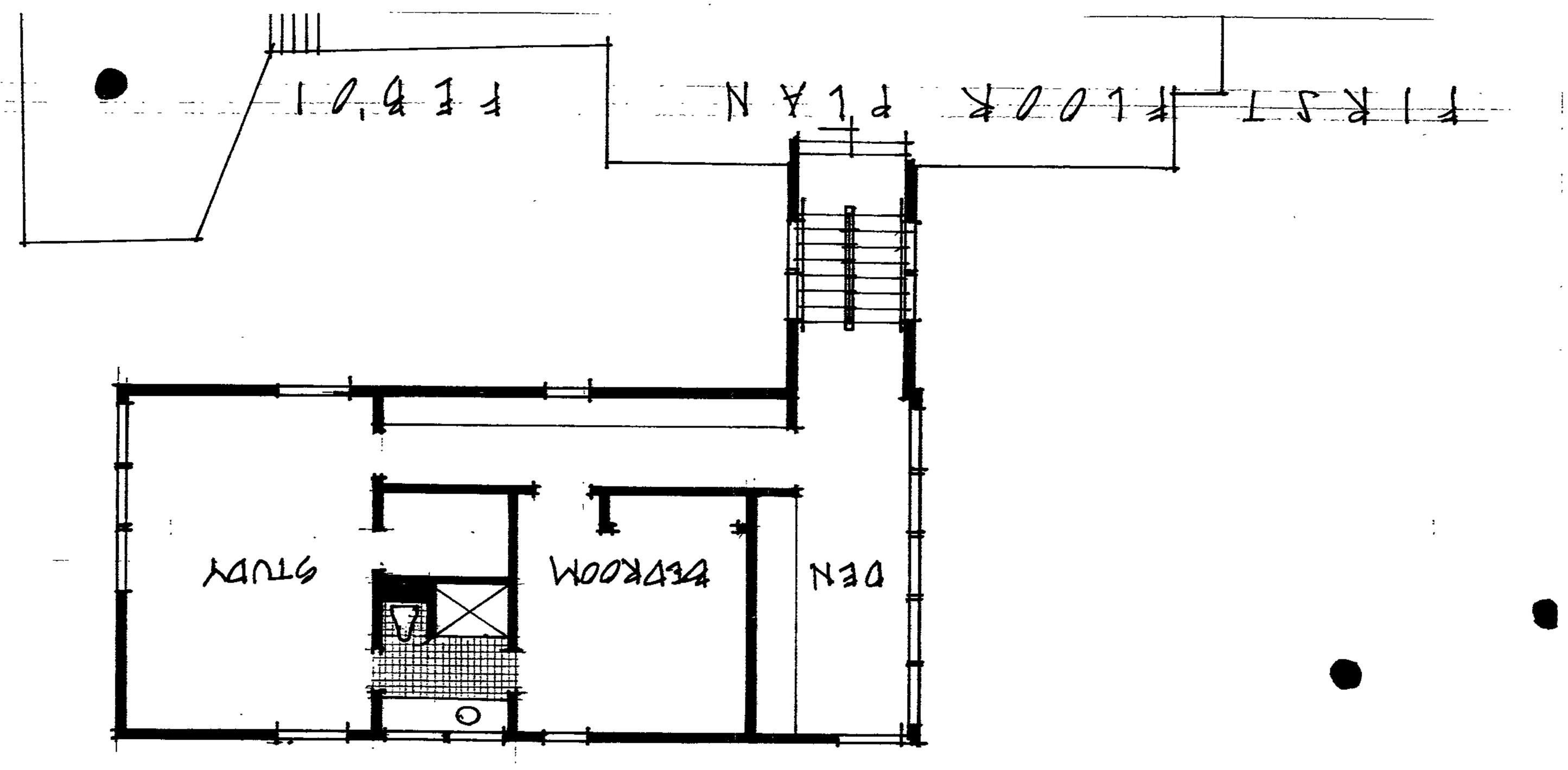
PRIVATE ROAD
NO
TRESPASSING

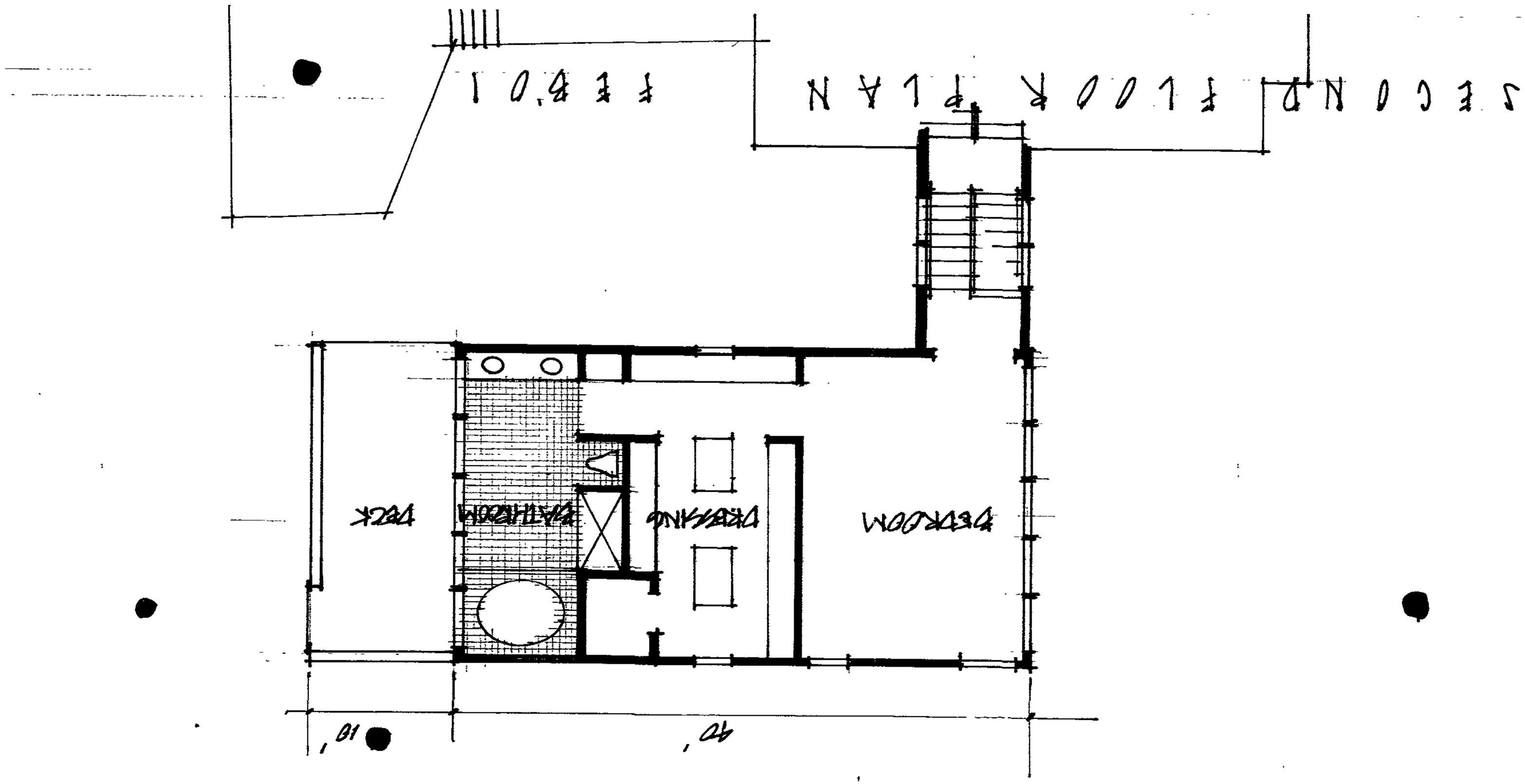


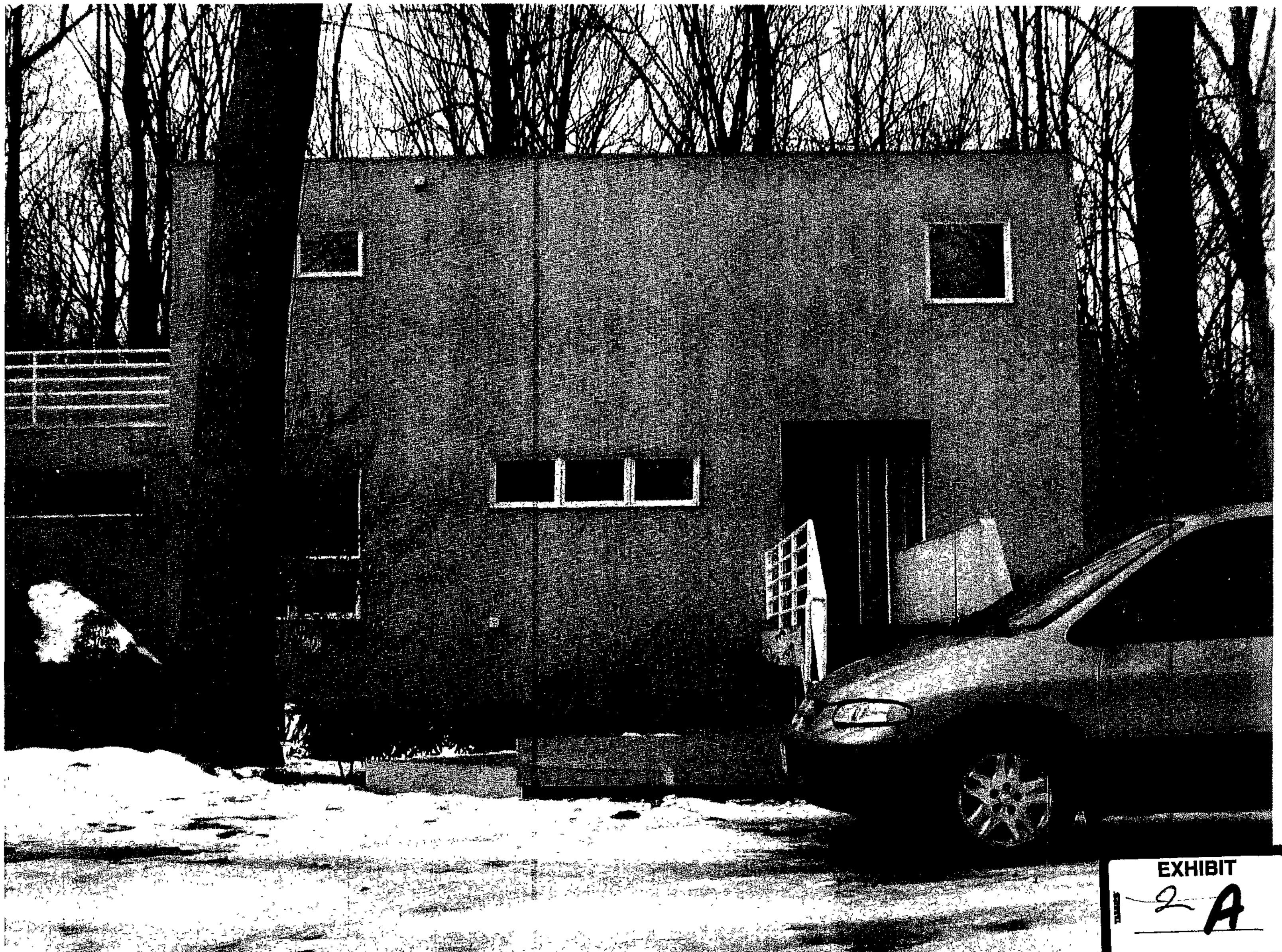
CONCEPT ELEVATION FROM PROPERTY LINE
FEB'01

APP 8
2/20/02


BASEMENT PLAN
FEB'01
14'-0"
22'
20'
50'
FAMILY
BASEMENT
MUP


FIRST FLOOR PLAN
FEB'01
STUDY
BEDROOM
DEN


SECOND FLOOR PLAN
FEB.01
BEDROOM
DRESSING
BATHROOM
DECK
40'
10'



FRONT OF HOUSE R/H SIDE

EXHIBIT 2 A

Appellants 10A

FRONT OF HOUSE L/H SIDE

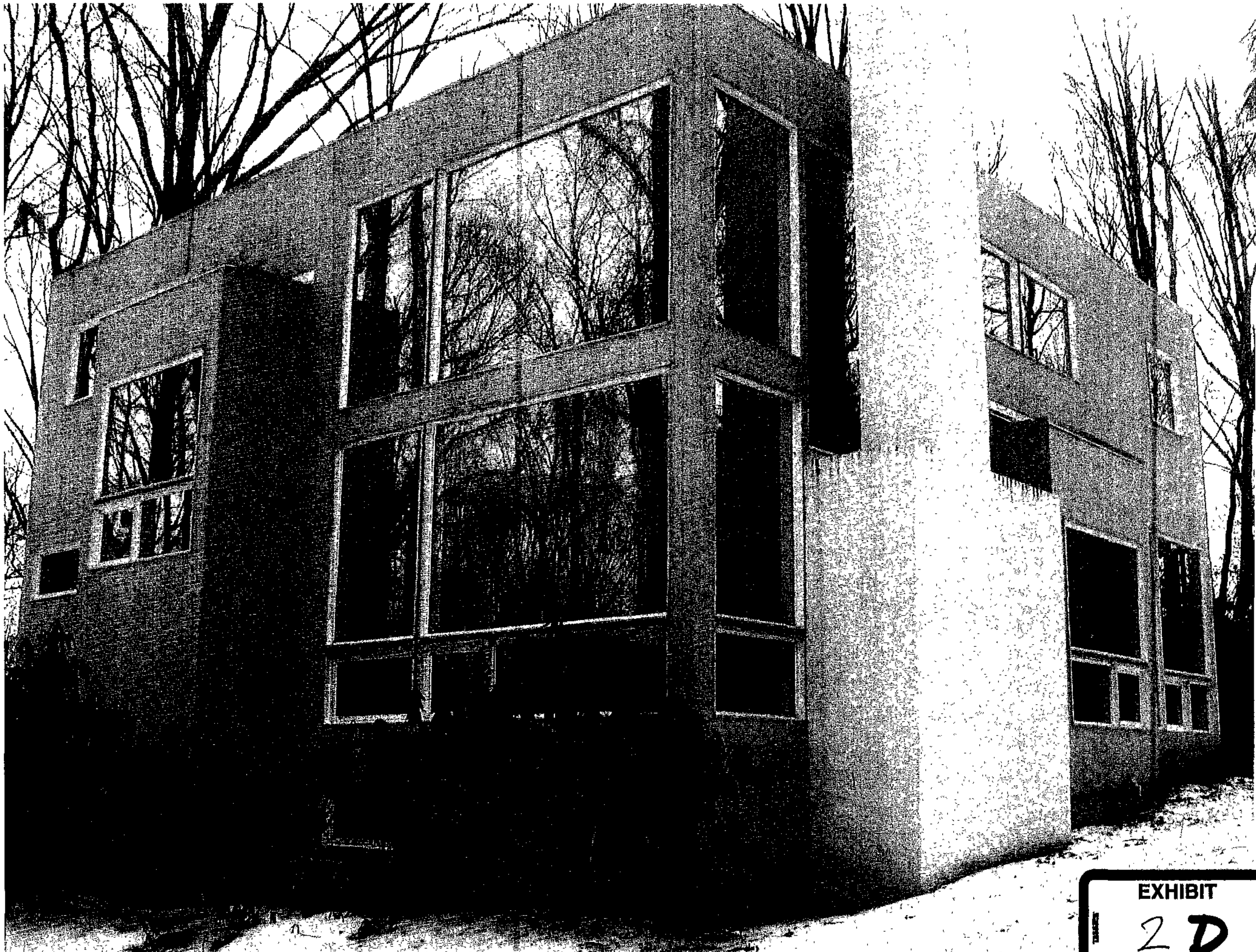
EXHIBIT
2 B

Appellants 10B

REAR OF HOUSE

EXHIBIT
2 C

Appellants 10C



CORNER OF SIDE / REAR OF HOUSE

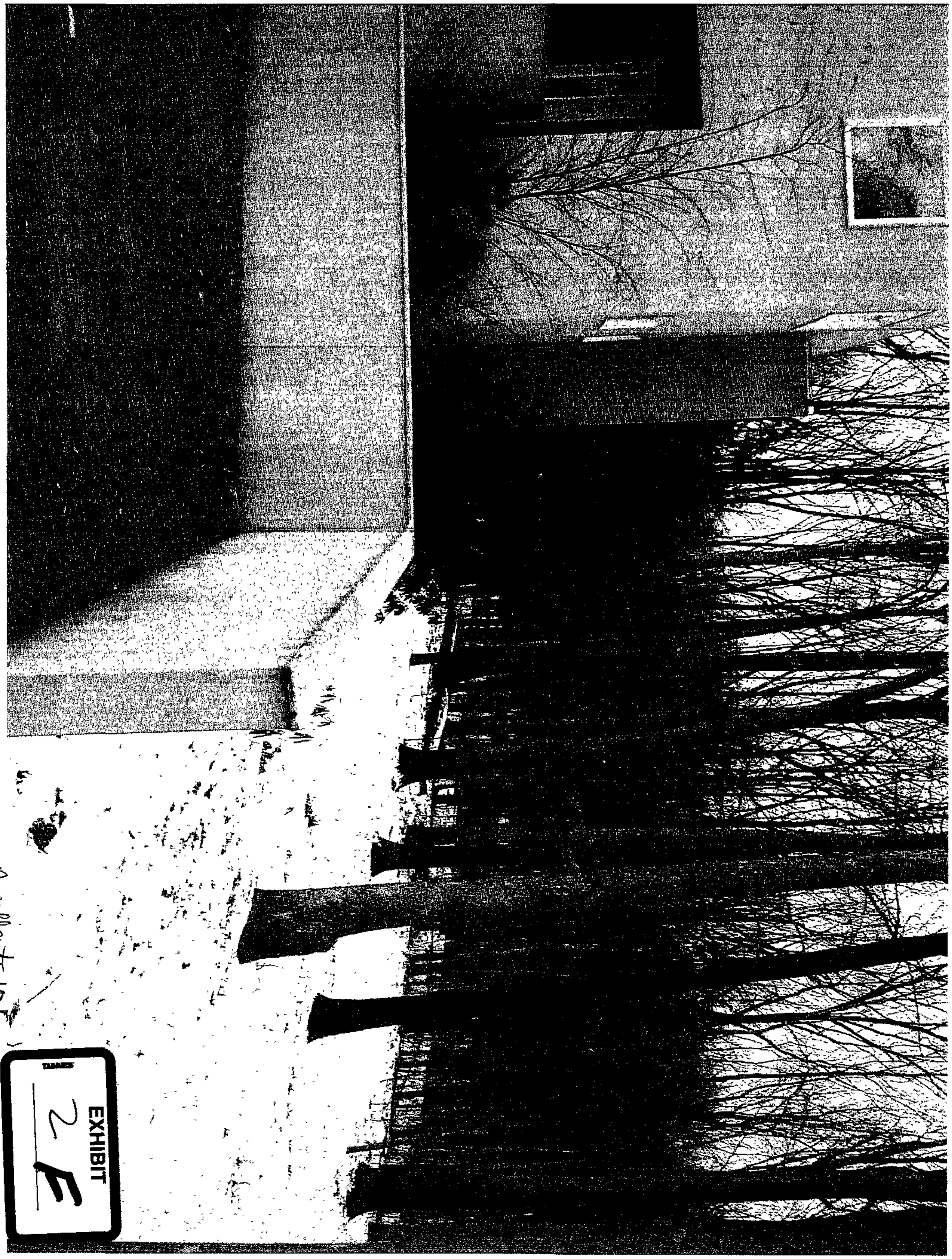
EXHIBIT
2D

Appellants 10D

SIDE OF HOUSE WHERE ADDITION IS PROPOSED

EXHIBIT
2 E

Appellants 10E



Appellants 10F

EXHIBIT
2
E

LOOKING FRONT TO REAR ALONG SIDE WHERE ADDITION IS PROPOSED

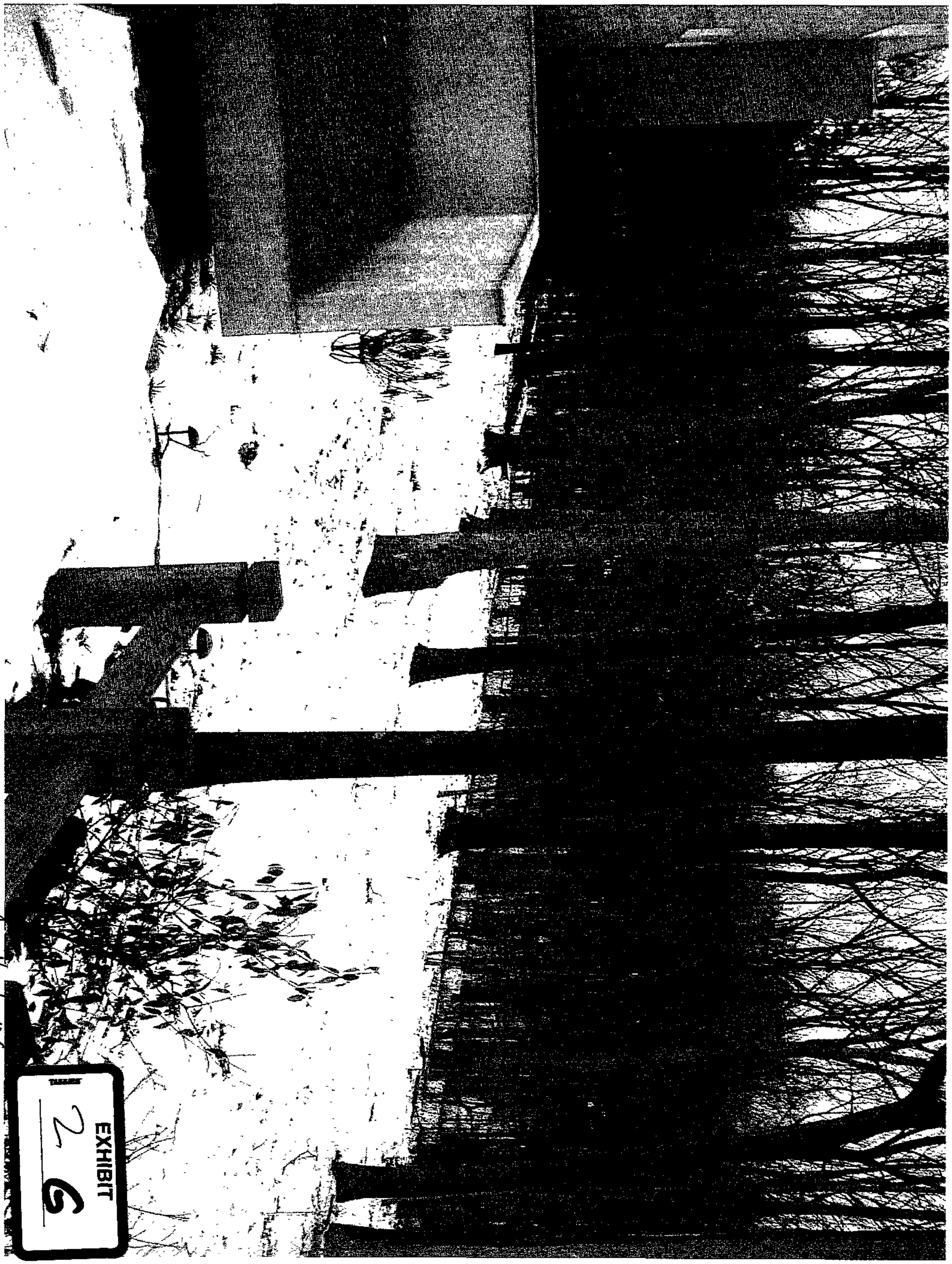


EXHIBIT 29

Appellants 10G

LOOKING FROM FRONT AT AREA OF PROPOSED ADDITION

LOOKING OUT OF SIDE TOWARDS LOT 58 HILL FARM

EXHIBIT
2H

Appellants 10H

The proposed addition to the house, as designed by Mr. Davison' Architect, responds to the style criteria and function of the house. The location of the addition on the north side of the house is unique because of:

1. the style of the house,
2. the lot configuration and
3. the functional program of the house as it is designed.

In keeping with the design criteria of the style, the proposed addition:

1. places the bedrooms on the north side of the house, functionally separating the public areas from the private areas of the house,

2. it places the stairway as a connecting link, that is as a circulation core in the function core of the house, giving it form in keeping with the house style,

3. maintains the naturalistic setting/views as part of the house,

4. maintains the open plan for the public areas of the house, and

5. the house was correctly sited on the building lot by the original Architect, and the proposed addition would not work on the south, east or west sides due to topography, views, and disruption of the design elements of the house.

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Appelants #4
2/26/02

The residence of Mr. & Mrs. Davison located on 24 Treadwell Court, Lutherville, Maryland, is an example of the architectural style of deconstructivism.

Huh ? What's that ?

Numerous examples of this style are in California and the Northeast region of the United States, but it never was very popular in the Baltimore area. Built in the fashionable suburbs and on lake fronts, this style and its cousins (International and Post Modernism) all share the clean, crisp lines of the machine aesthetic; the house as a machine for living. Form follows function. The style is not for everyone, but then again, neither is Georgian Revival.

Deconstructivism is as much a style as any of the other traditional styles; only it is new. There are design rules to follow and proportions to adhere to, and standards of good and bad design. The house that stands on Treadwell Court is copy of a Richard Meier original, the Smith Residence. The local Architect, Mr. Marks, faithfully copied Mr. Meiers design in proportion and styling, adapting the house to the site and his client. Mr. Davison is not the original owner and Mr. Davison has made only one revision to the house since he acquired it; he painted the house the gray it is and removed the original white. The white was more in keeping with the original design, but the gray is a subtle adaption.

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The Davison Residence displays all of the important criteria of a deconstructivist design; these are

1. the plan functions as a machine for living
2. open space plan for public spaces...living/dining/entertaining
3. circulation systems are articulated...stairways, halls, passages
4. strong separation of private versus public spaces
5. the glazing is designed to reflect the interior functions
6. views of the natural surroundings are tightly controlled
7. natural light as a dominant theme
8. exterior devoid of traditional detailing
9. exterior sheathing as smooth skin
10. flat roof
11. interior devoid of traditional detailing
12. geometry of floor plan and elevations shows
    a. asymmetrical composition
    b. grid plan development
    c. form follows functional layout

Unlike the traditional architectural styles which could be identified with an analysis of detail (Tudor, Romanesque, Georgian, Chippendale, Federal, Federal Revival, Dutch Colonial, Dutch Colonial Revival, etc., etc., etc.), the styles of the past 50 years are a little more difficult to classify. I class the Davidson Residence as Deconstructivist; another may say International, or even Post Modern. Even the architectural historians differ as to detail identification of styles, citing variations as refinements within an era of architecture. However, all of the historians (Marcus Wiffen, V. & L. McAlester, John J.-G. Blumenson, Tony Wrenn & E. D. Mulloy, and Allen G. Noble) all agree that the proportions, rhythms, geometry, composition, spacing and functional flow do as much to determine a style as the sum of all of its details and elements.

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Deconstructist was conceived of by the French philosopher Jacques Derrida. In his essay, Of Grammatology, he outlines the use of his philosophy of thinking to interpret the world (as he would have us see it.) In his thinking, in order to understand something properly, you have to understand its opposite, and the difference (i.e., "space" between them); this is critical in his thinking. For example, to understand white, one must understand black. To understand black, we must disassemble the concepts of white and black as colours, understanding the difference between them as logical constructs. White = all colours; black = no colours. Reducing the abstractions into logical forms gives the philosopher the ability to deconstruct a thought by comparison and to reassemble it into a new understanding by reassembling it from another viewpoint. Context and syntax over content. Simple, unless you're deconstructing the difference/ space between the letters "A" and "B", rather "B" and "C".

As it applies to architecture, Phillip Johnson is believed to have first applied the term to architecture by combining the terms deconstructist and constructivism into deconstructivism. The Museum of Modern Art (MOMA), New York, New York had the first retrospective show of deconstrutivist architecture in 1988, with the prominent members of the movement being: Richard Meier, Charles Gwathmey, Peter Eisenman, Michael Graves, John Hejduk, Isozaki, Richard Koolhaus, and Frank Gehry. (This list includes Meier of Getty Museum and Gehry of Bilboa Museum fame.) The show outlined the tenants of the architectural movement and declared it a STYLE. The chart following is a comparison of the style with other styles that were ongoing in the 20th century.

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	1890	1900	1910	1920	1930	1940	1950	1960	1970	1980	1990	2001
post modern									●	●	●	●
deconstructivism									●	●	●	●
minimalism/pop								●	●			
structuralists							●	●	●	●	●	●
brutalism							●	●	●			
international				●	●	●	●	●	●	●	●	●
bauhaus				●	●	●						
des stile			●	●								
art deco			●	●	●	●						
prairie		●	●	●								
craftsman		●	●	●	●							
beaux arts	●	●	●	●	●							
neoclassical revival	●	●	●	●	●	●	●					
tudor revival	●	●	●	●	●							
shingle	●	●										
colonial revival	●	●	●	●	●	●	●	●				

Chart A

The next chart compares and contracts the various major contemporary styles of architecture in the 20th century: Bauhaus, International, Post Modern & Deconstructivism. These styles are similar, with subtle differences. The differences are who designed them and how strictly they adhered to a philosophical theory of design.

Please note:
The great Architects of the last century stated a few of the basic tenants of all modern design, setting the tone for all "modern" design theory to follow:

Le Corbusier ..... "...A house is a machine for living...."
Beyond A Modern Architecture, 1925

Mies van der Rohe... "...Form follows function... "

Richard Meier..... "..White is a non colour, so abstract & pure ..."

Louis Kahn..... "...Architecture is form in light..."
"Salk Institute Lectures", 1970

These Architects set the tone for all of modern design by decreeing: modernism = the function, analytical, man made environment, devoid of decoration of the past, with the function of the house being foremost in the design. Light, form and function are assembled into geometrical forms that stand in nature.

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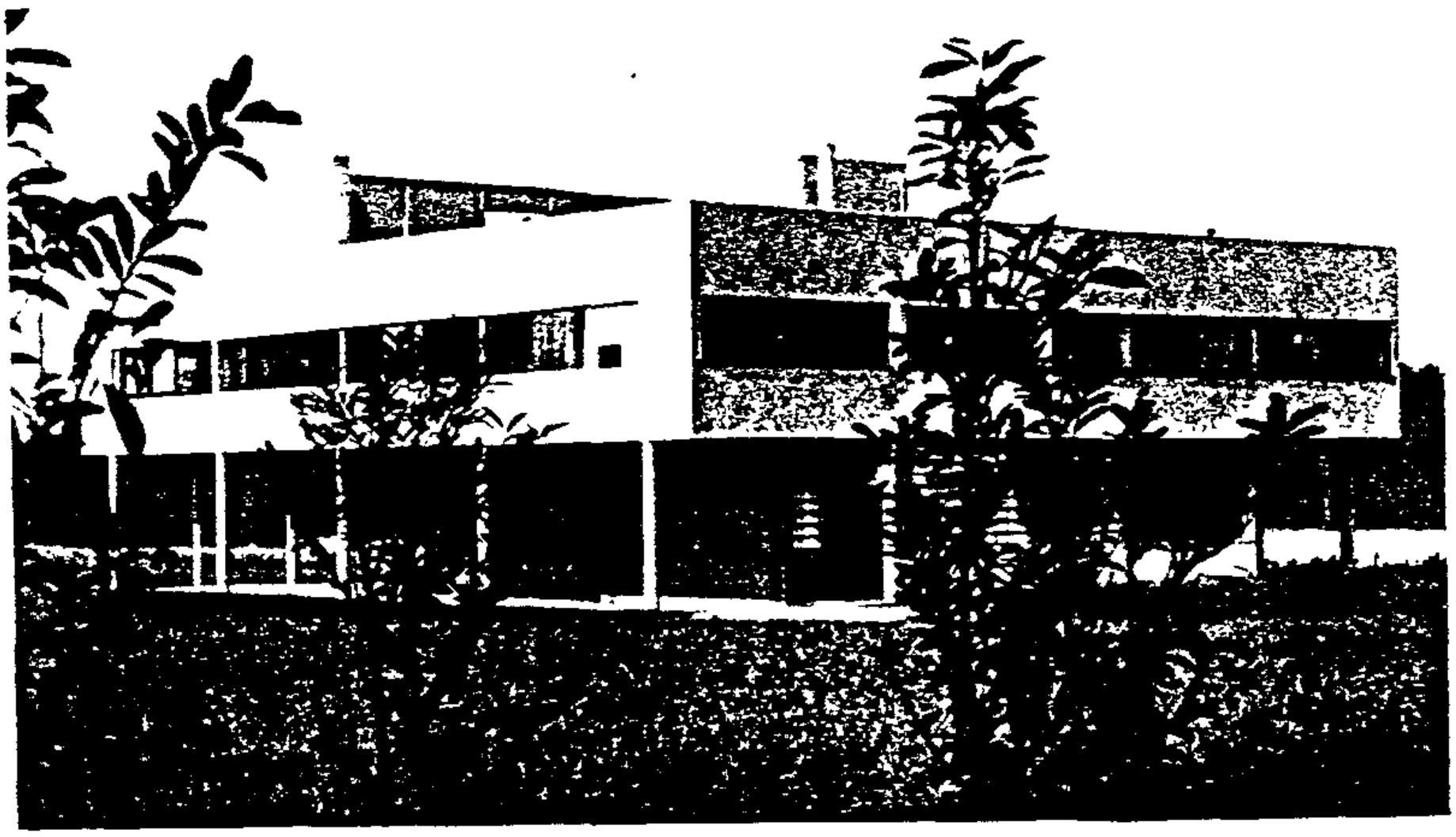
	bauhaus 1920-1939	international 1925-	postmodern 1971-
cubist geometry	■		
golden section geometry		■	
geometric design		■	■
grid plan		■	■
asymmetrical compostion	■	■	■
functional /open plan	■	■	■
form folows function	■	■	■
movement/circulation system	■	■	■
private/public spaces separation	■	■	
views/site response		■	■
exposed structural grid	■	■	
natural light	■	■	■
exterior as smooth skin	■	■	
white exterior		■	
flat roof	■	■	
bridge connections		■	
no decorative detailing	■	■	
ribbon glass walls		■	■
floor to ceiling glass	■	■	
large sections of blank walls		■	■
casement windows		■	■
Walter Gropius	■	■	
Richard Neutra	■	■	
Philip Johnson	■	■	■
Le Corbusier		■	
Mies van der Rohe	■	■	
Richard Meier		■	■
Charles Gwathmey			■
Peter Eisenman			
Michael Graves			■
John Hejduk			
Isozaki			■
Richard Koolhaus			
Frank Gehry			■

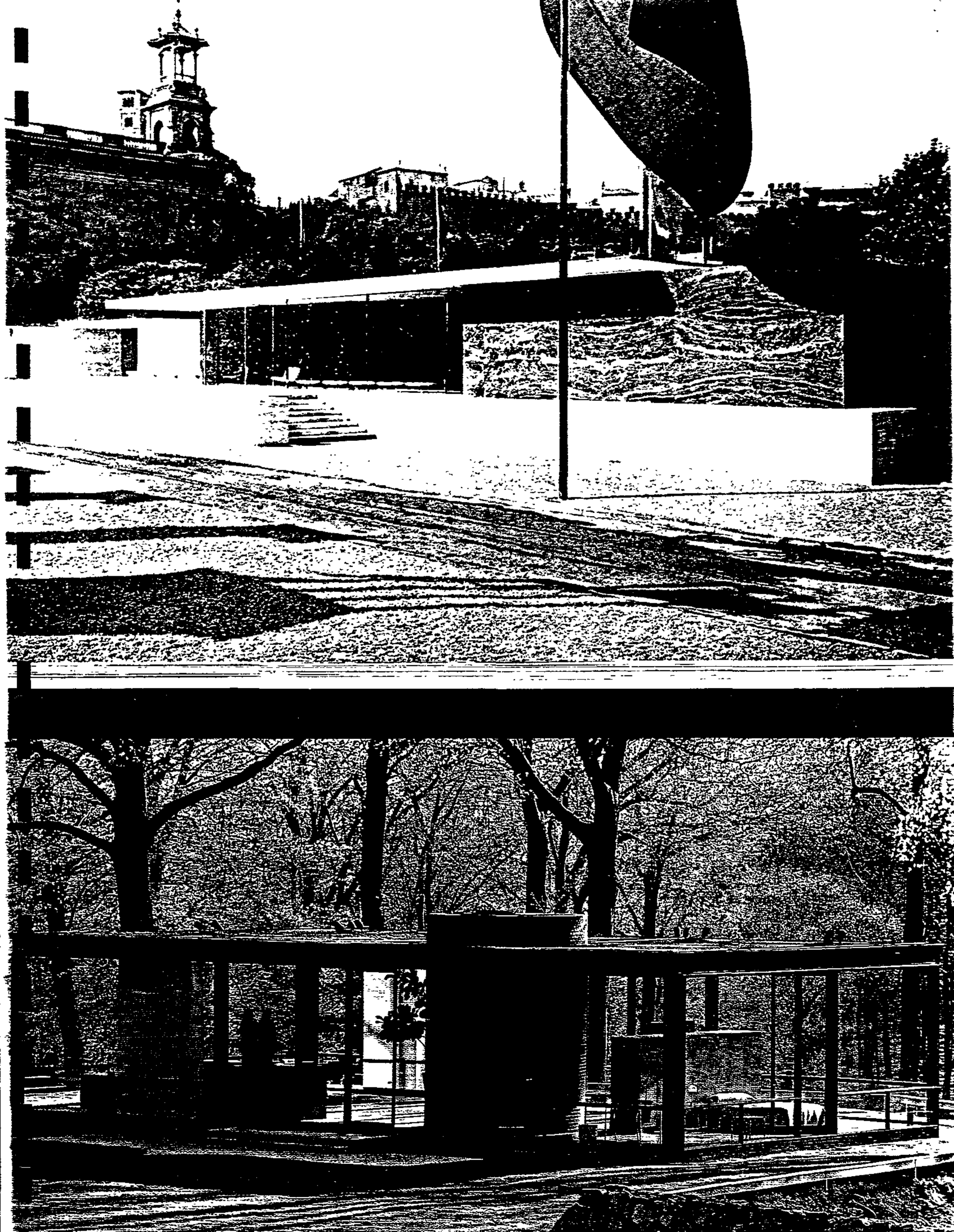
bold faces= New York Five began the revival of interest in international style...

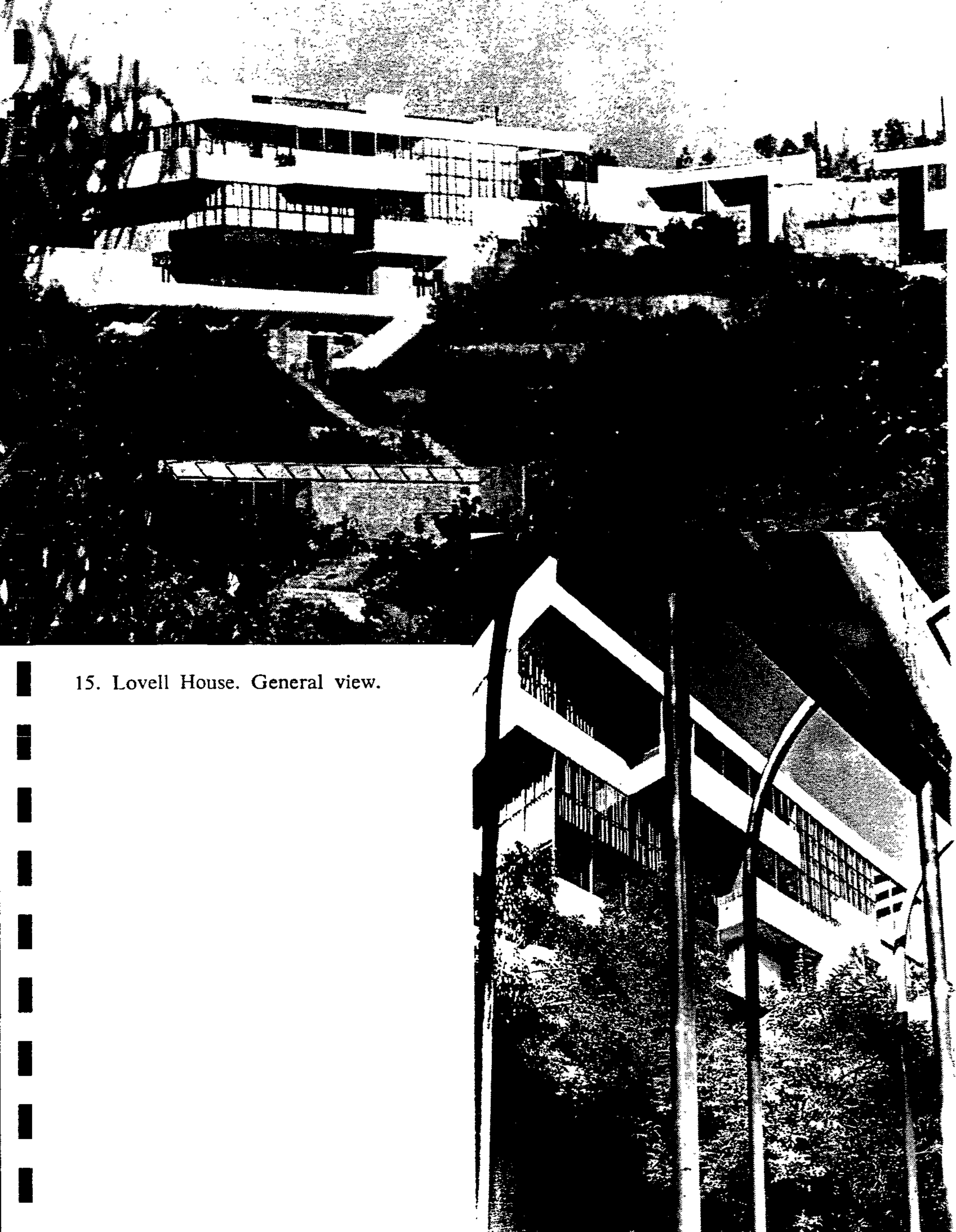
Chart B

below: 821. LE CORBUSIER. Savoye House.
Poissy-sur-Seine, France. 1929–30

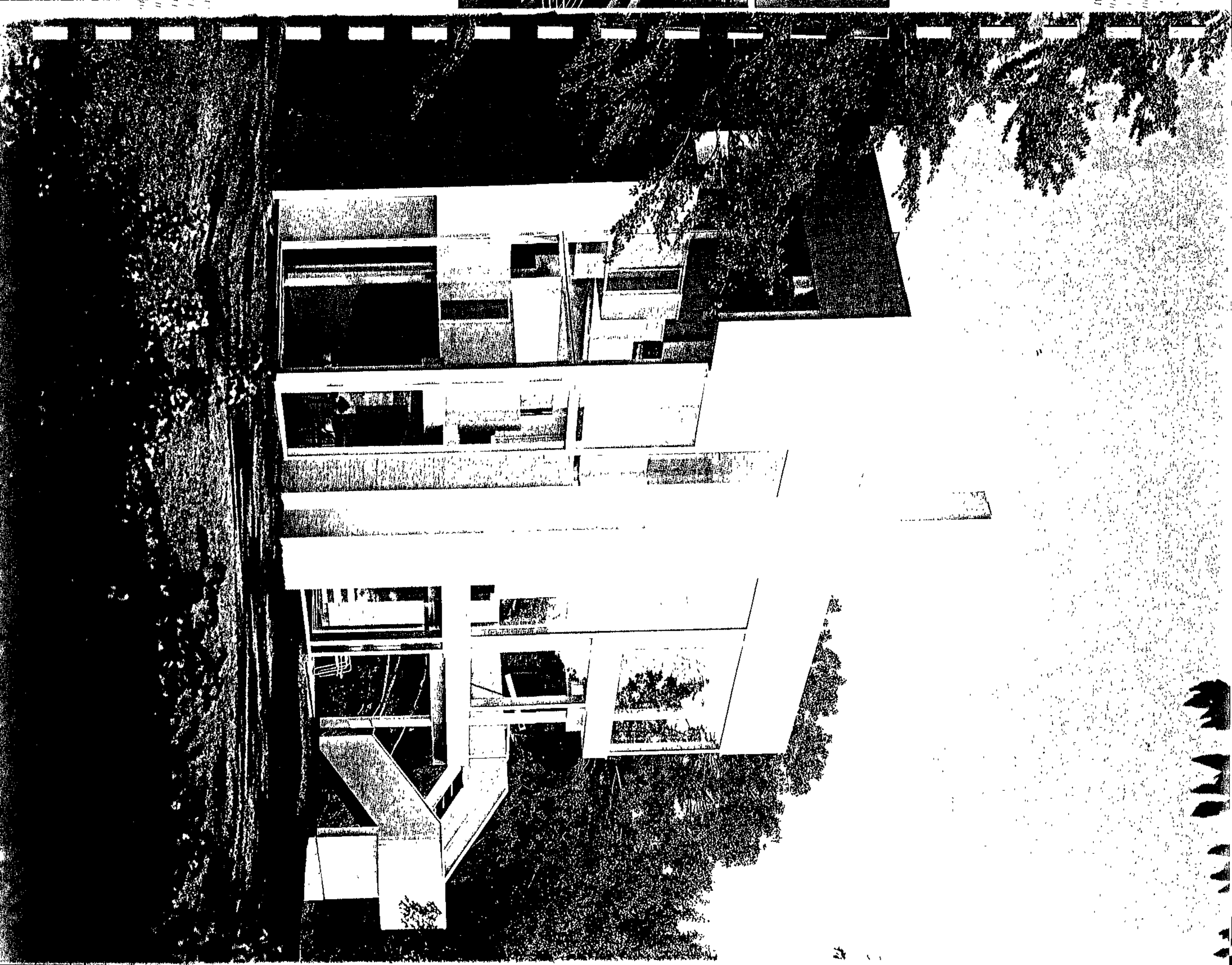


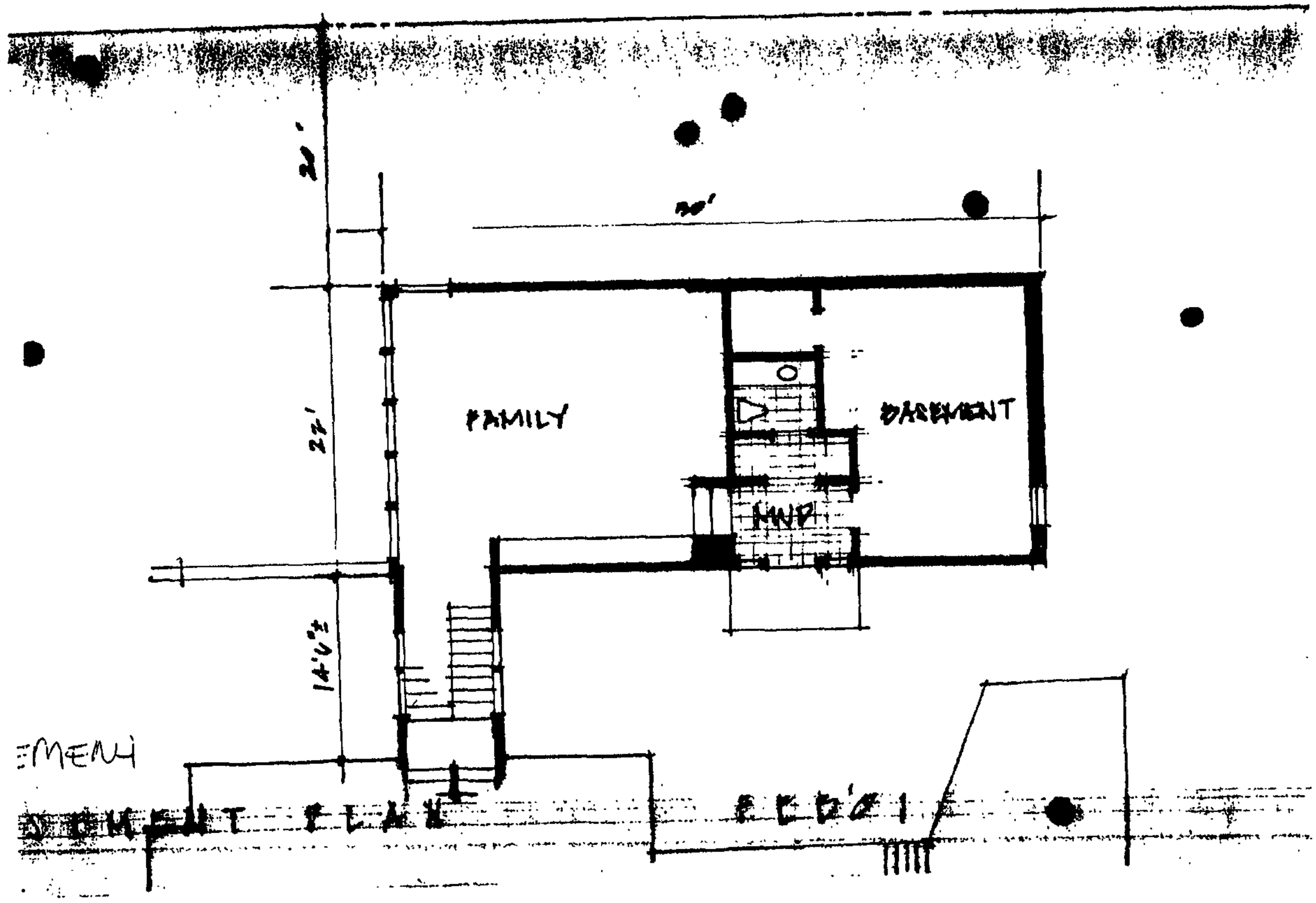
43. Kahn House, San Francisco, 1940.

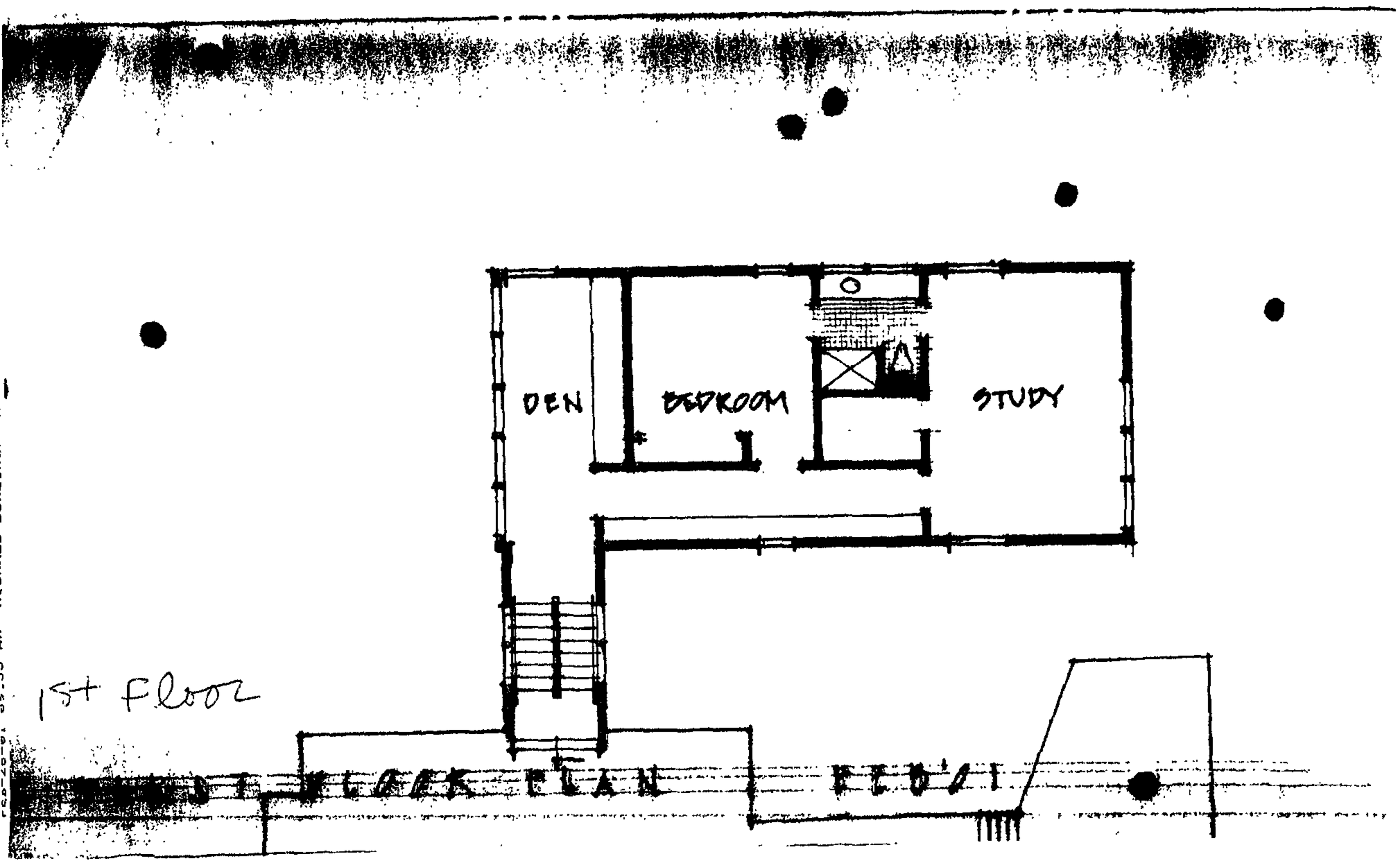


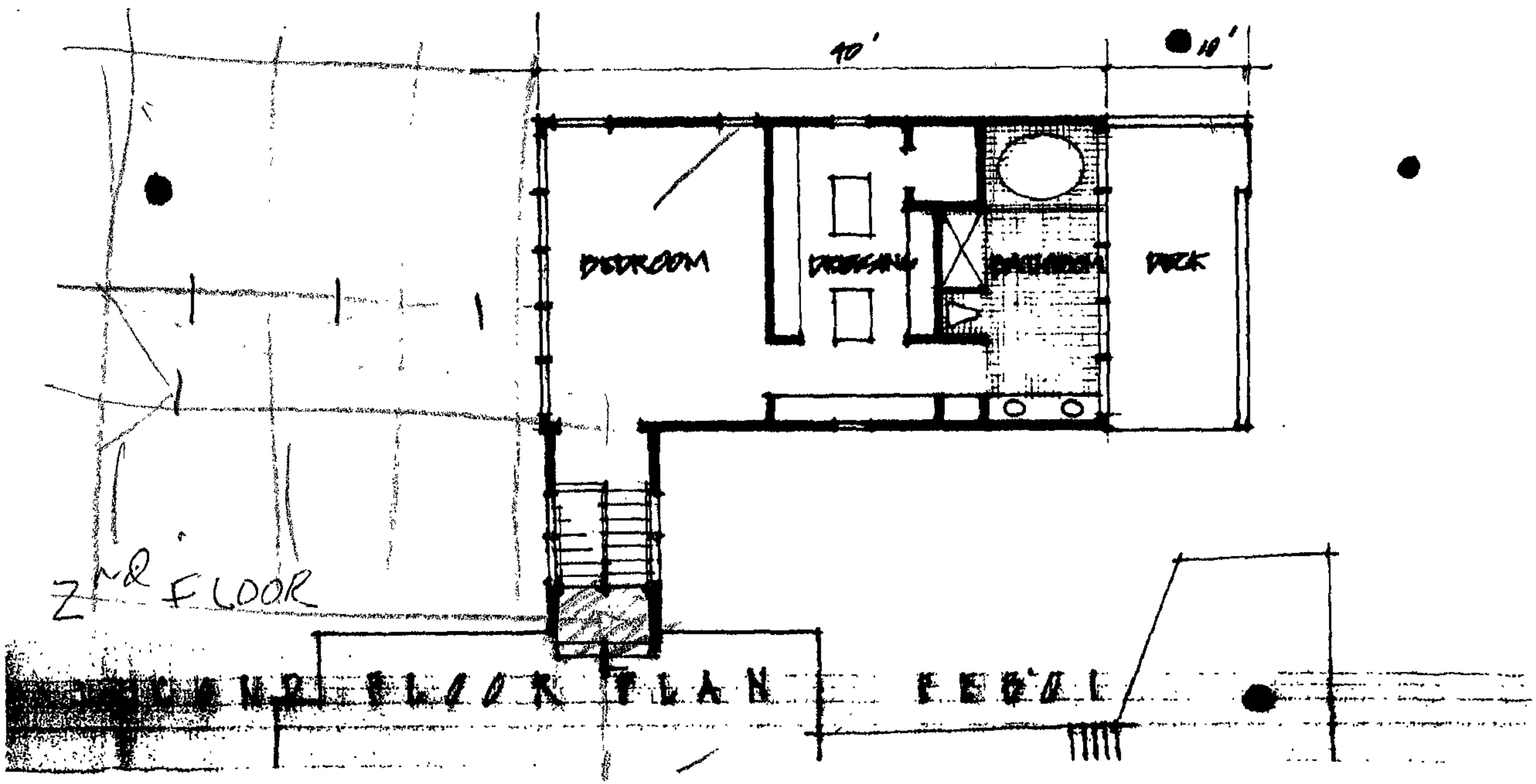


15. Lovell House. General view.

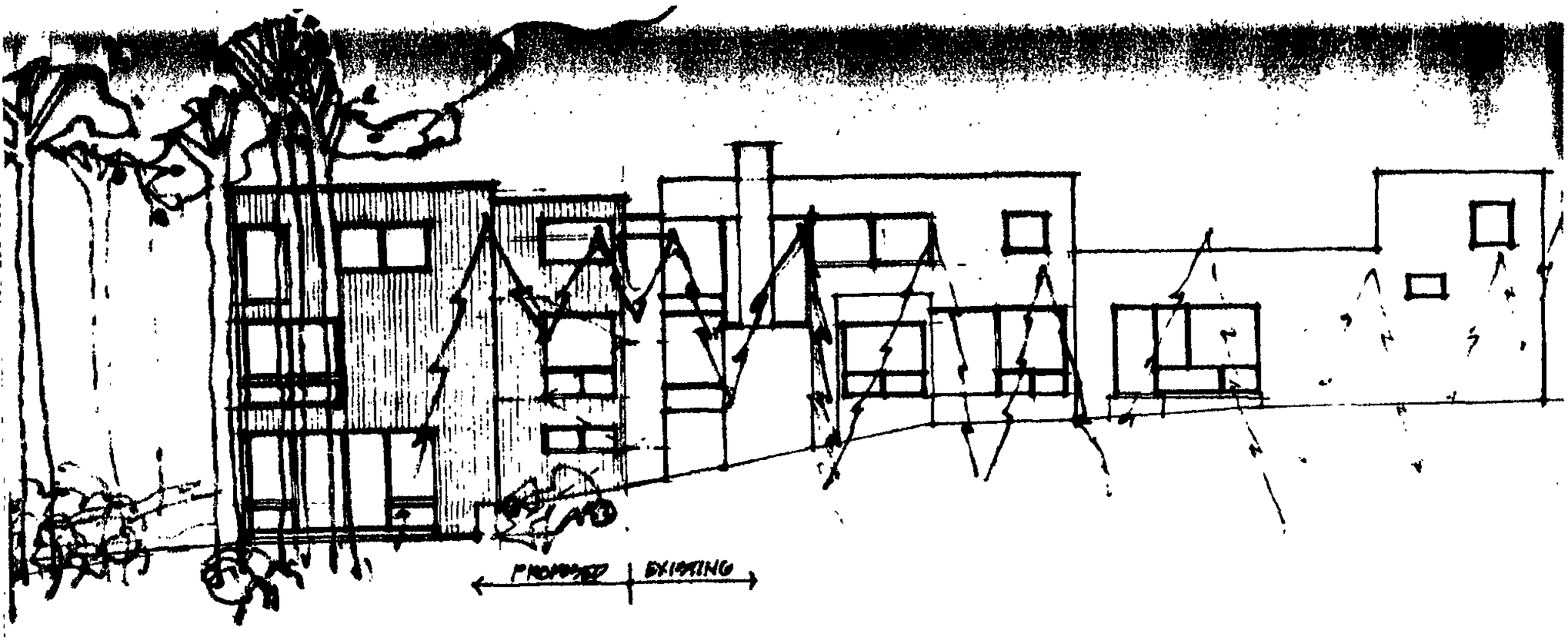



FAMILY
BASEMENT
HWP
22'
14'6"±
EMENT

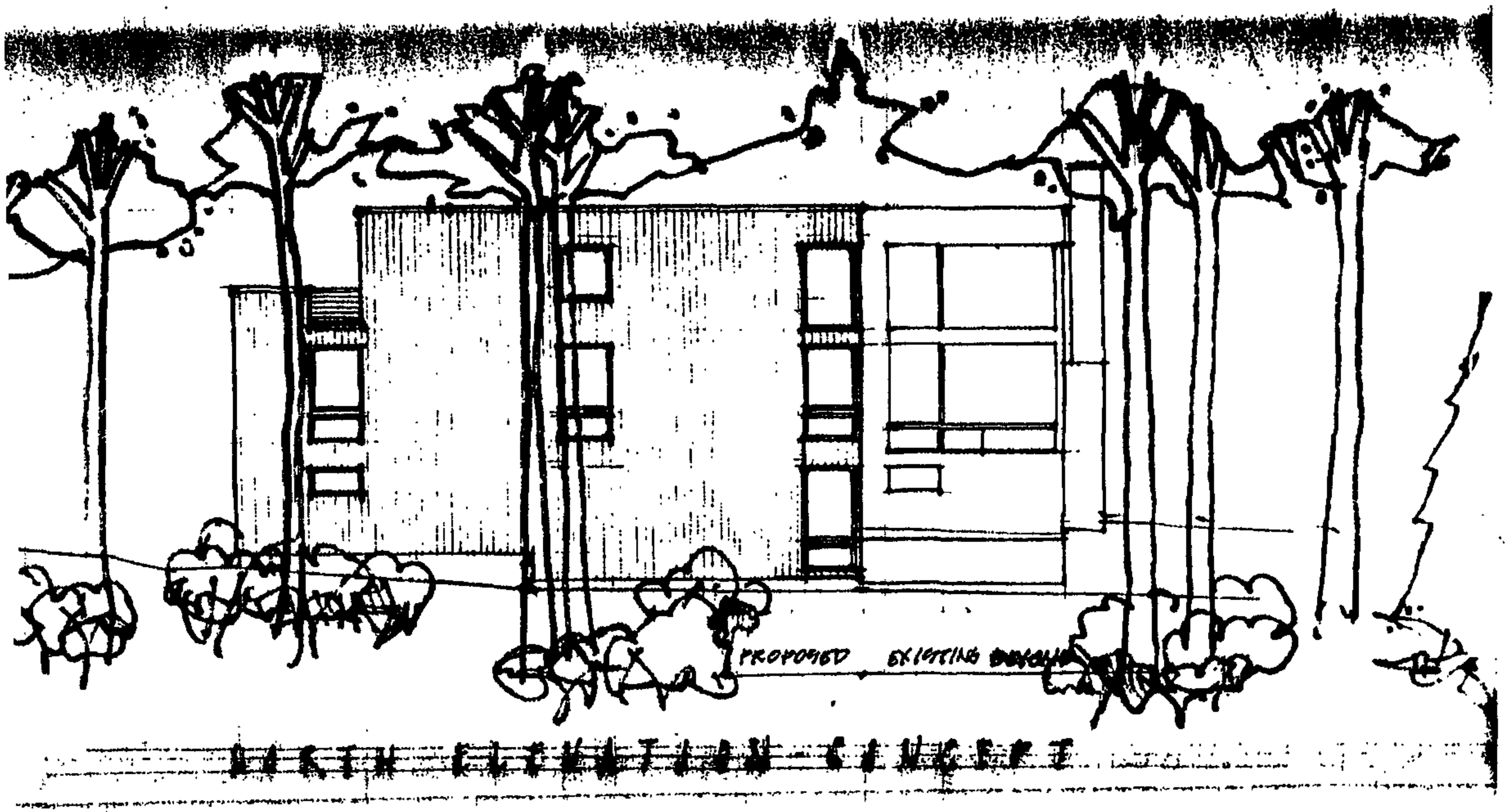

DEN
BEDROOM
STUDY
1st Floor



UPPER FLOOR PLAN FEET



WEST ELEVATION CONCEPT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EXISTING

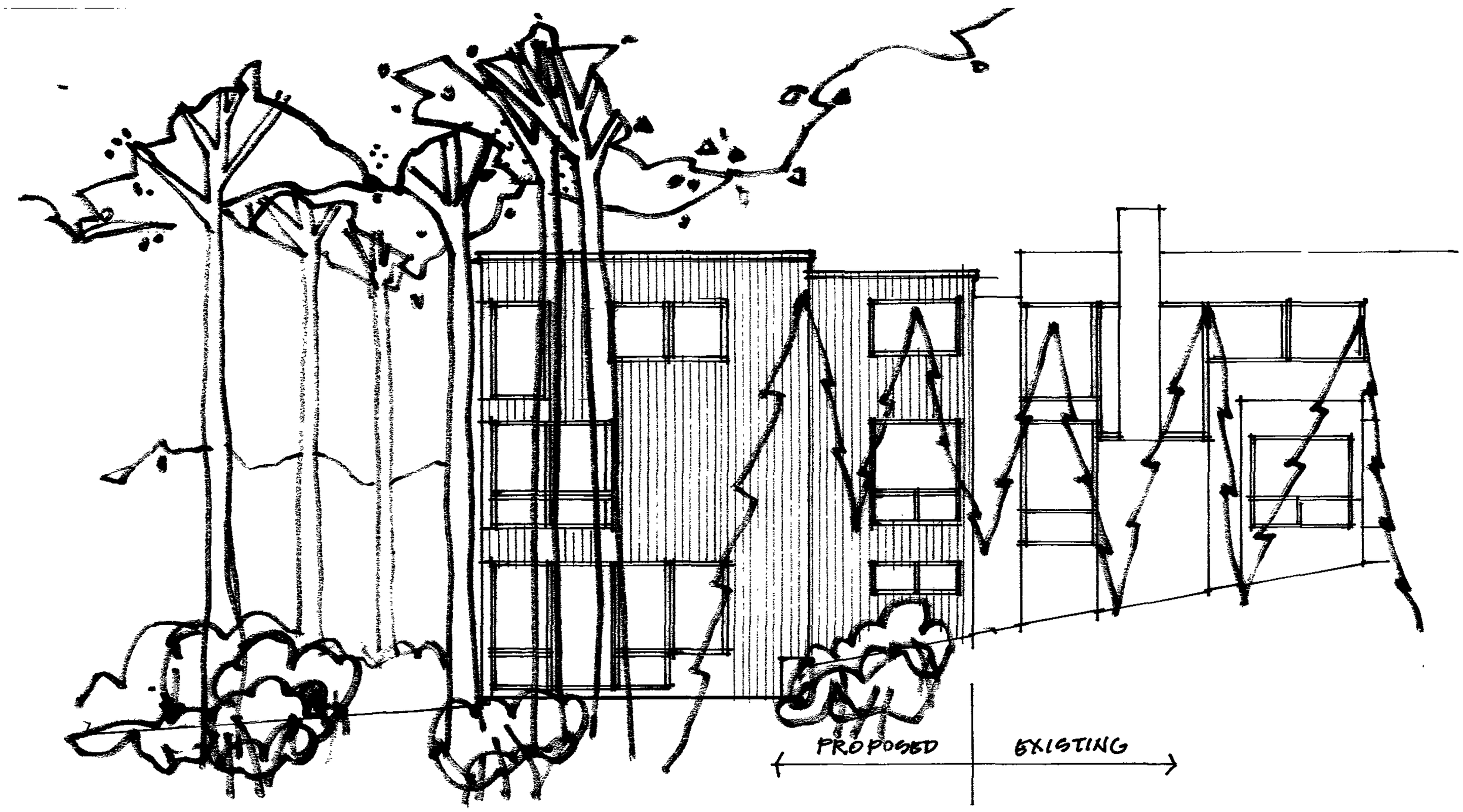
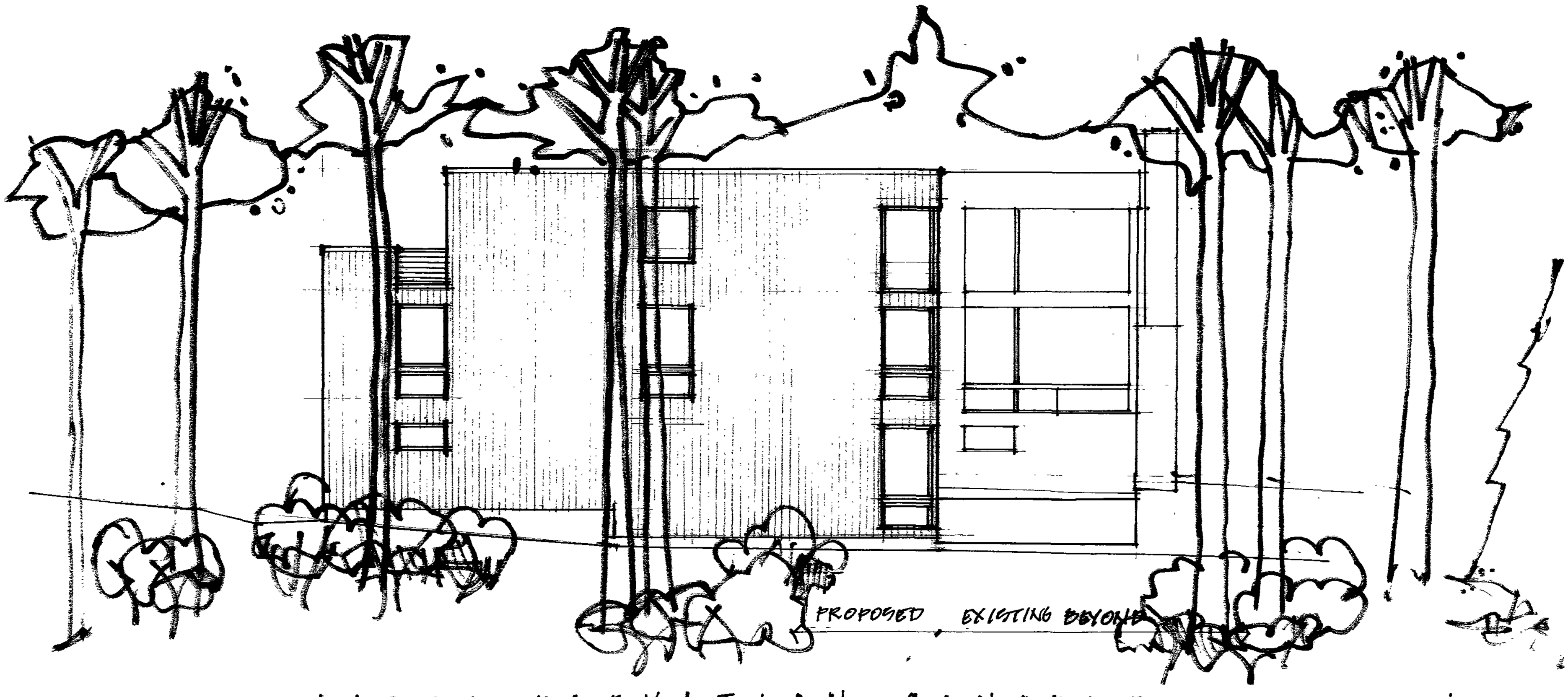


EXHIBIT
4A

WEST ELEVATION CONCEPT

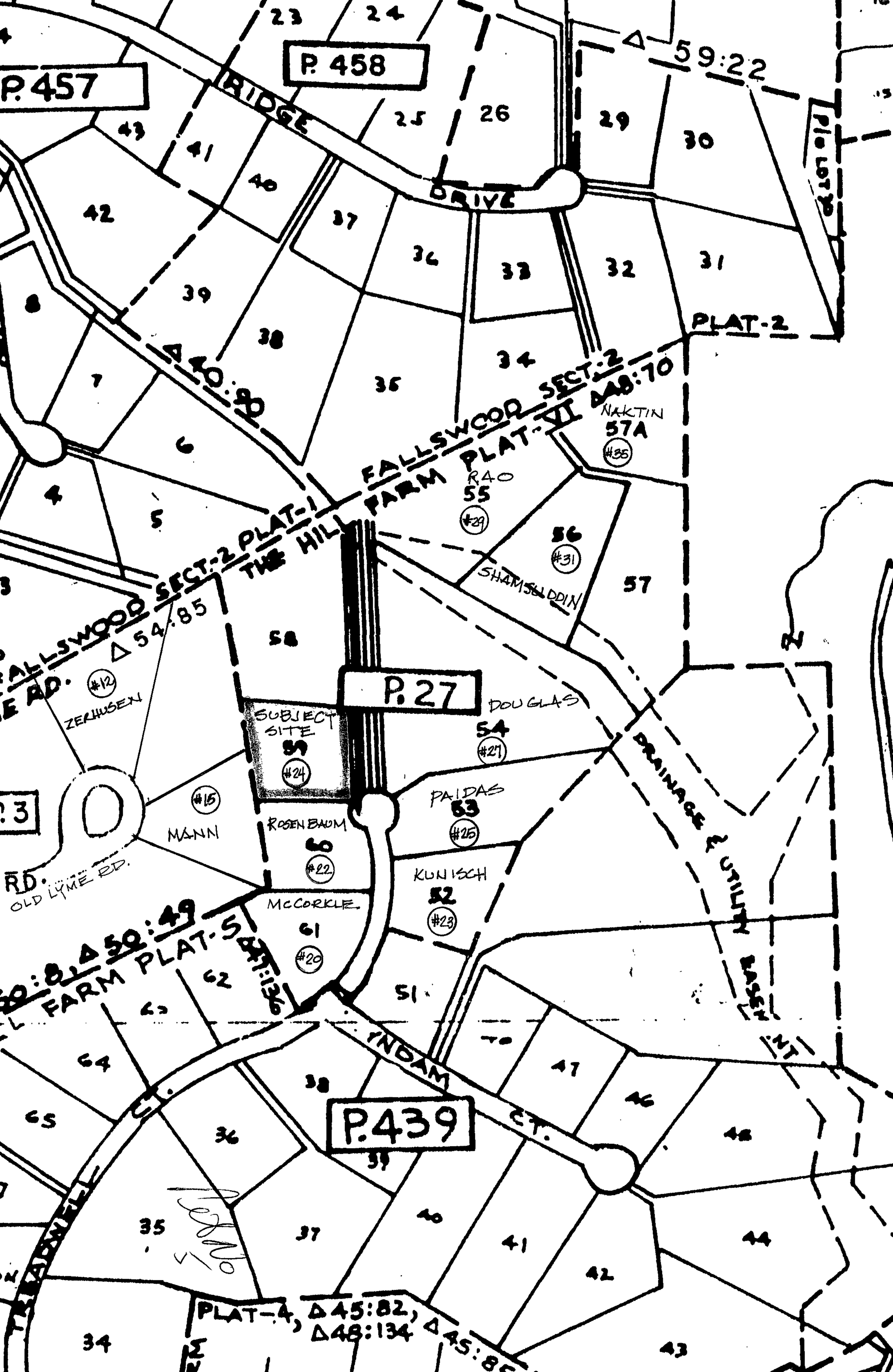
FEB '01

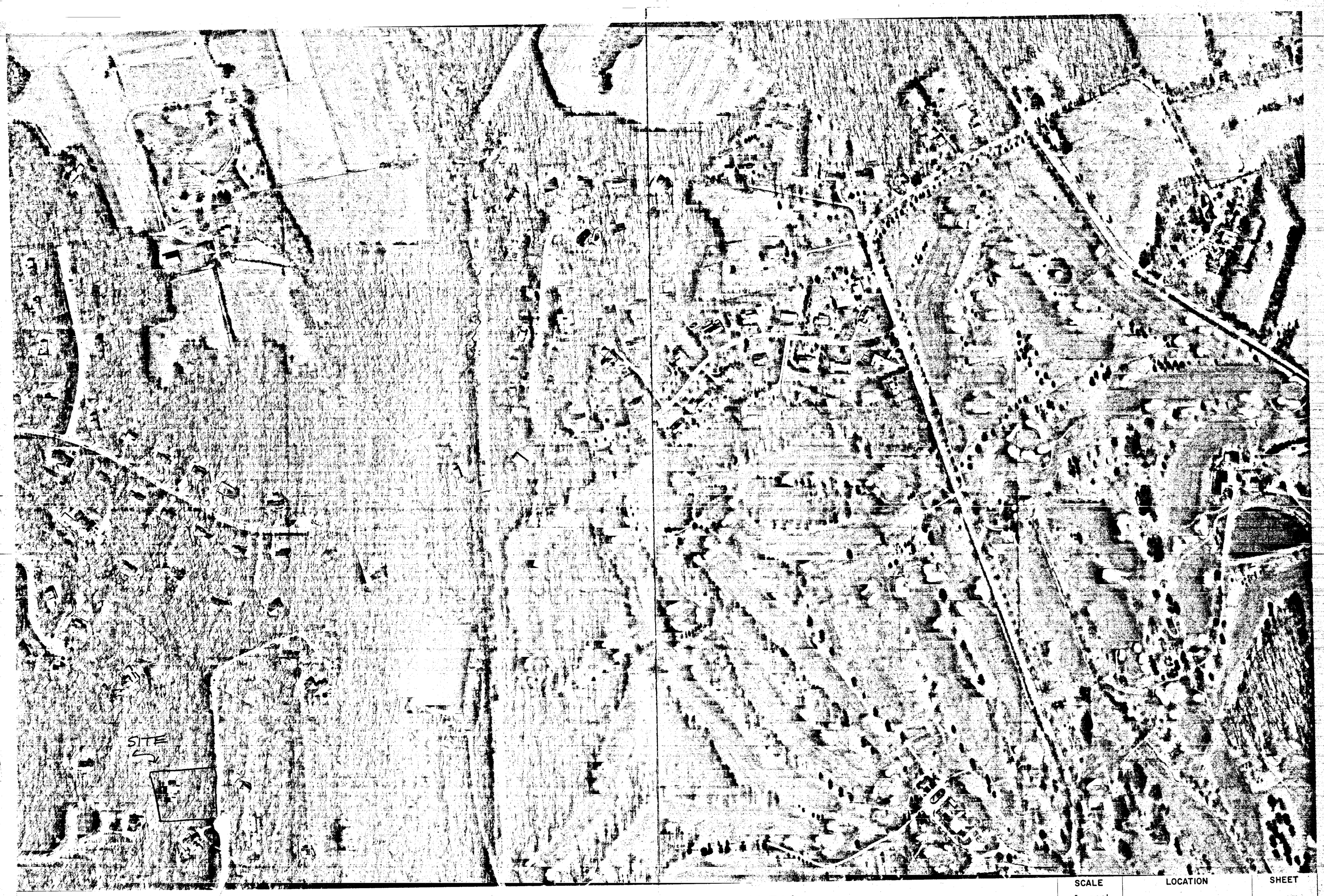
EXHIBIT
413



NORTH ELEVATION - CONCEPT

FEB '01


P.457
P.458
RIDGE
DRIVE
Δ 59:22
PLAT-2
Δ 50:80
FALLSWOOD SECT-2
Δ 48:70
NAKTIN
57A
#35
FALLSWOOD SECT-2 PLAT-1
THE HILL FARM PLAT-VI
RAO
55
#29
56
#31
SHAMSUDDIN
57
Δ 54:85
#12
ZERHUSEN
P.27
DOUGLAS
54
#27
SUBJECT SITE
59
#24
#15
MANN
ROSENBAUM
#22
PAIDAS
53
#25
KUNISCH
52
#23
OLD LYME RD.
McCORKLE
61
#20
Δ 50:49
FARM PLAT-5
Δ 48:134
62
51
DRAINAGE & UTILITY EASM'T
INDIAN
CT.
P.439
TRADEWELL
PLAT-4, Δ 45:82, Δ 48:134
Δ 45:85



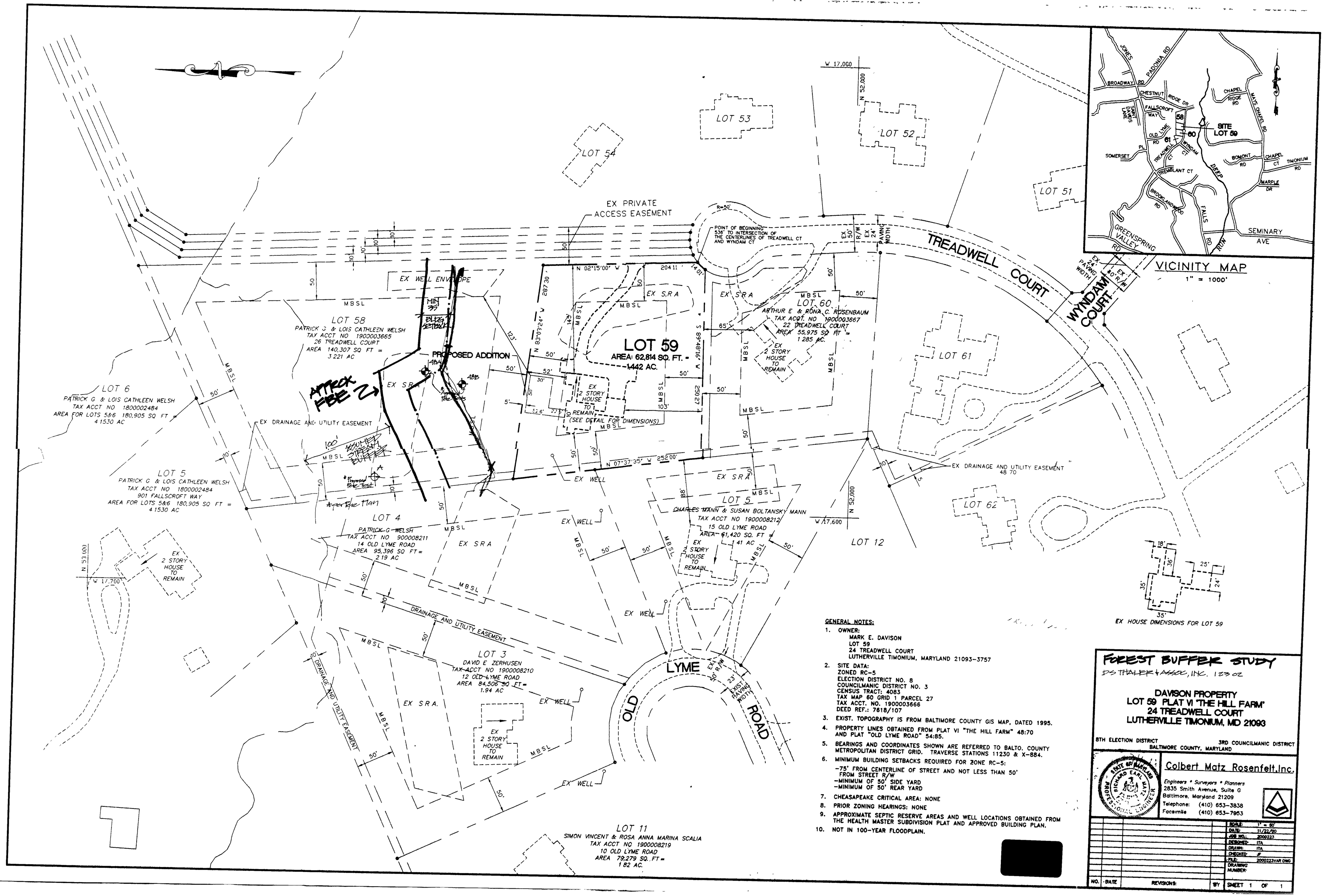
24 TREADWELL CT.

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

SCALE	LOCATION	SHEET
1" = 200'±	BALTIMORE COUNTRY CLUB	N.W. 14-C
DATE OF PHOTOGRAPHY JANUARY 1986		

PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

MICROFILMED
01-220-A



GENERAL NOTES:

1. OWNER:
   MARK E. DAVISON
   LOT 59
   24 TREADWELL COURT
   LUTHERVILLE TIMONIUM, MARYLAND 21093-3757
2. SITE DATA:
   ZONED RC-5
   ELECTION DISTRICT NO. 8
   COUNCILMANIC DISTRICT NO. 3
   CENSUS TRACT: 4083
   TAX MAP 60 GRID 1 PARCEL 27
   TAX ACCT. NO. 1900003666
   DEED REF.: 7618/107
3. EXIST. TOPOGRAPHY IS FROM BALTIMORE COUNTY GIS MAP, DATED 1995.
4. PROPERTY LINES OBTAINED FROM PLAT VI "THE HILL FARM" 48:70 AND PLAT "OLD LYME ROAD" 54:85.
5. BEARINGS AND COORDINATES SHOWN ARE REFERRED TO BALTO. COUNTY METROPOLITAN DISTRICT GRID. TRAVERSE STATIONS 11230 & X-884.
6. MINIMUM BUILDING SETBACKS REQUIRED FOR ZONE RC-5:
   -75' FROM CENTERLINE OF STREET AND NOT LESS THAN 50' FROM STREET R/W
   -MINIMUM OF 50' SIDE YARD
   -MINIMUM OF 50' REAR YARD
7. CHEASAPEAKE CRITICAL AREA: NONE
8. PRIOR ZONING HEARINGS: NONE
9. APPROXIMATE SEPTIC RESERVE AREAS AND WELL LOCATIONS OBTAINED FROM THE HEALTH MASTER SUBDIVISION PLAT AND APPROVED BUILDING PLAN.
10. NOT IN 100-YEAR FLOODPLAIN.

FOREST BUFFER STUDY
DS THALER & ASSOC, INC. 123 02

DAVISON PROPERTY
LOT 59 PLAT VI "THE HILL FARM"
24 TREADWELL COURT
LUTHERVILLE TIMONIUM, MD 21093

8TH ELECTION DISTRICT — 3RD COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

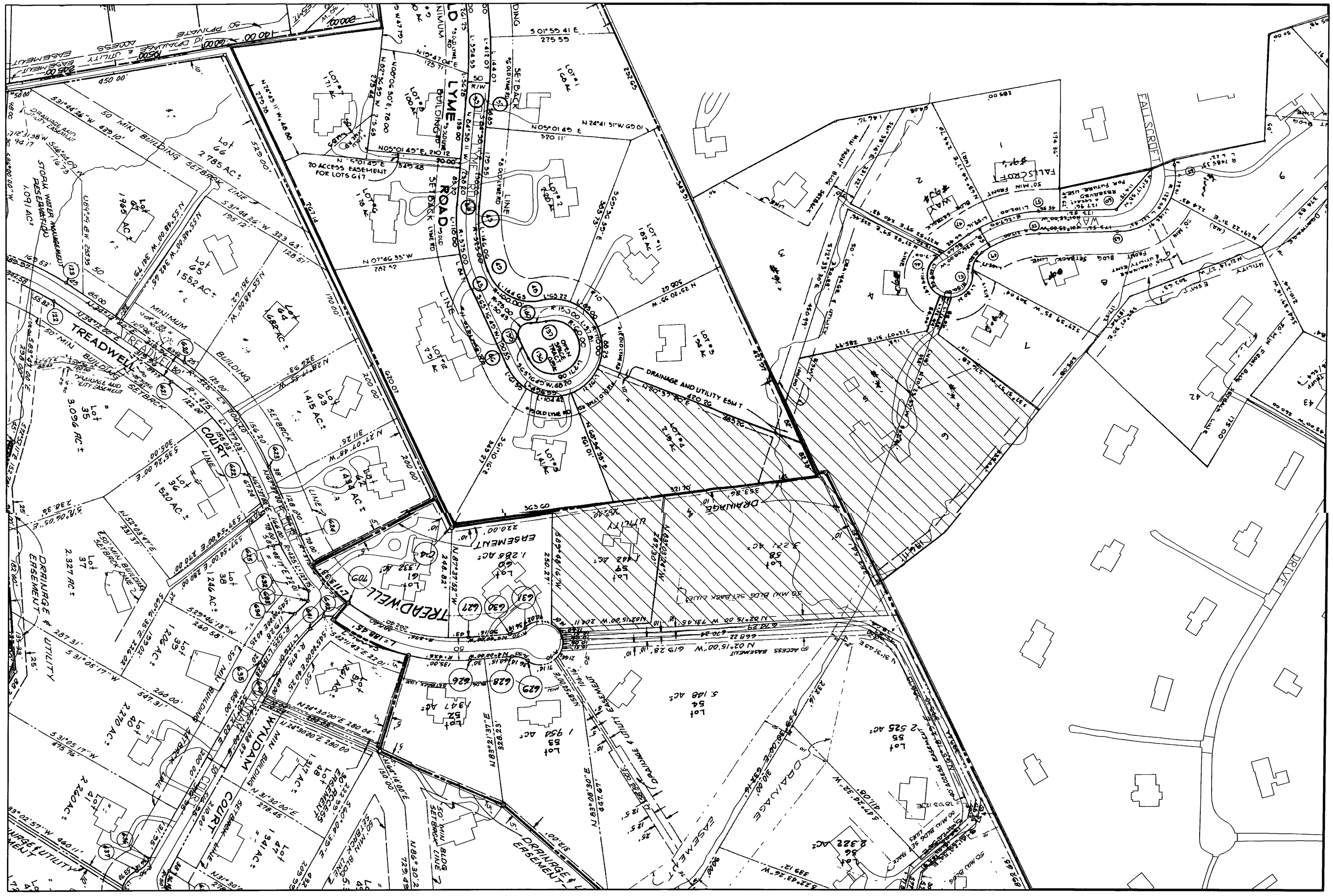
STATE OF MARYLAND — RICHARD EARL MATZ — PROFESSIONAL ENGINEER

Colbert Matz Rosenfelt, Inc.
Engineers * Surveyors * Planners
2835 Smith Avenue, Suite G
Baltimore, Maryland 21209
Telephone: (410) 653-3838
Facsimile (410) 653-7953

SCALE:	1" = 60'
DATE:	11/22/00
JOB NO.:	2000223
DESIGNED:	ITA
DRAWN:	ITA
CHECKED:	JF
FILE:	2000223VAR.DWG
DRAWING NUMBER:	

NO.	DATE	REVISIONS:	BY

SHEET 1 OF 1


TREADWELL COURT
TREADWELL
LYME ROAD
FALLSCROFT
DRAINAGE AND UTILITY EASEMENT
DRAINAGE & UTILITY EASEMENT
50 MIN BUILDING SETBACK LINE
20 ACCESS EASEMENT FOR LOTS 617
STORM WATER MANAGEMENT RESERVED
Lot 66 2.785 AC±
Lot 65 1.552 AC±
Lot 63 1.415 AC±
Lot 35 3.096 AC±
Lot 36 1.520 AC±
Lot 37 2.327 AC±
Lot 38 1.246 AC±
Lot 39 1.206 AC±
Lot 40 2.270 AC±
Lot 47 1.941 AC±
Lot 48 1.317 AC±
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Lot 59 1.923 AC±
Lot 54 5.168 AC±
Lot 55 2.525 AC±
Lot 56 2.322 AC±
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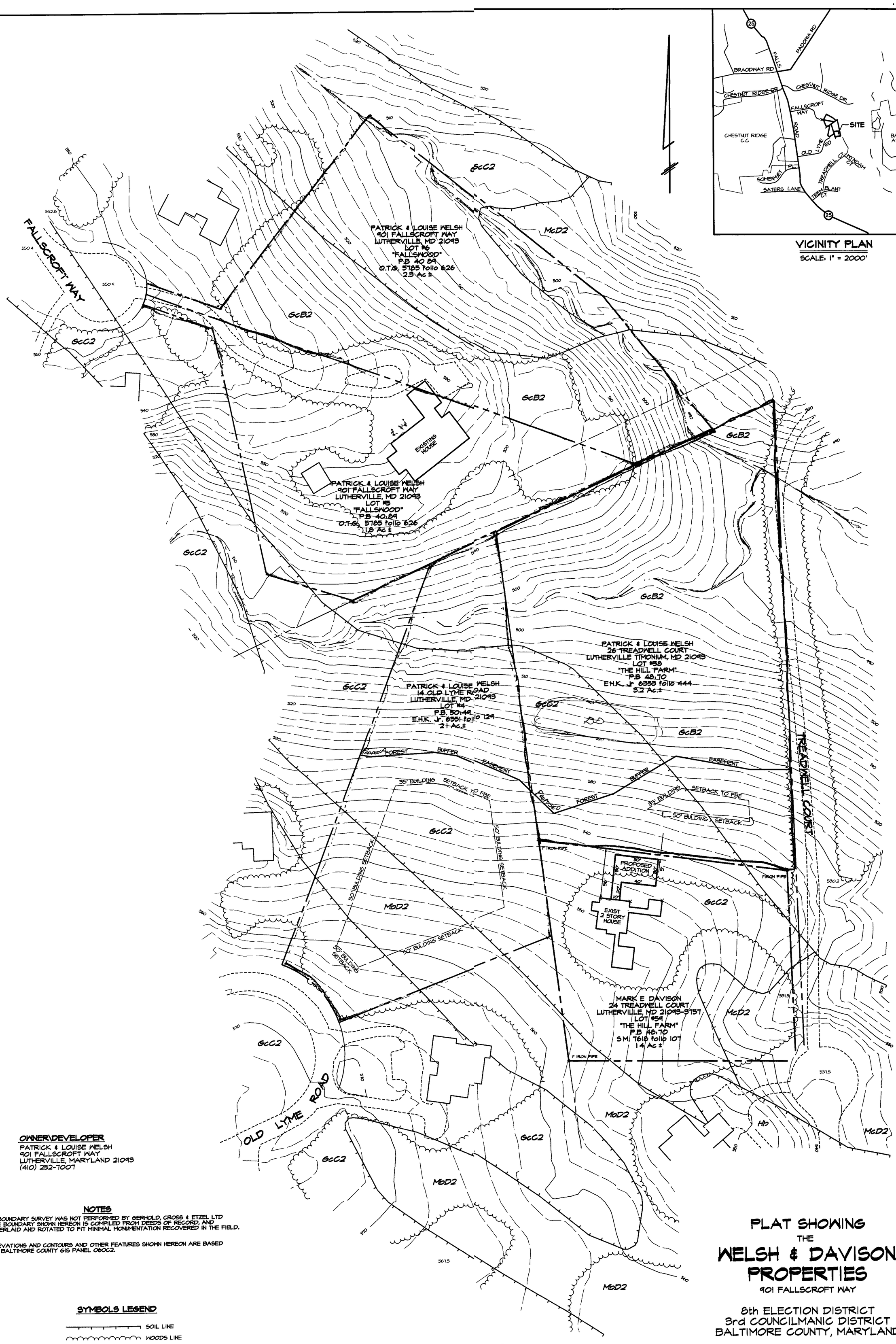
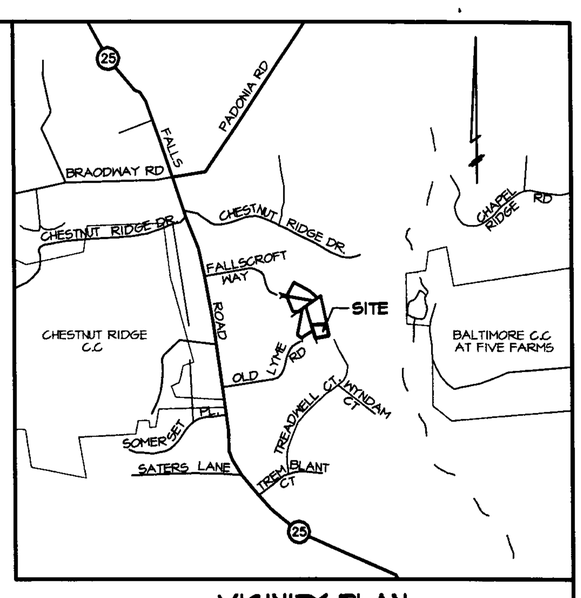
Prot. #1





VICINITY PLAN

SCALE: 1" = 2000'

OWNER\DEVELOPER

PATRICK & LOUISE WELSH
901 FALLSCROFT WAY
LUTHERVILLE, MARYLAND 21093
(410) 252-7007

NOTES

A BOUNDARY SURVEY WAS NOT PERFORMED BY GERHOLD, CROSS & ETZEL LTD
THE BOUNDARY SHOWN HEREON IS COMPILED FROM DEEDS OF RECORD, AND OVERLAID AND ROTATED TO FIT MINIMAL MONUMENTATION RECOVERED IN THE FIELD.

ELEVATIONS AND CONTOURS AND OTHER FEATURES SHOWN HEREON ARE BASED ON BALTIMORE COUNTY GIS PANEL 060C2.

SYMBOLS LEGEND

SOIL LINE
WOODS LINE
EXISTING PAVING
EXISTING DWELLING
PROPERTY LINE
CONTOURS

GRAPHIC SCALE 1"=50'
0 50 100 150

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
GcB2	Slight	Slight	Moderate: slope
GcC2	Moderate: slope	Moderate: slope	Severe: slope
Ho	Severe: high water table, flooding hazard	Severe: high water table, flooding hazard	Severe: high water table; flooding hazard
MoD2, McD2	Severe: slope	Severe: slope	Severe: slope

PLAT SHOWING THE WELSH & DAVISON PROPERTIES

901 FALLSCROFT WAY

8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

SCALE 1"= 50' DATE. JANUARY 24, 2001

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

Prot No 1

PLOT DATE 1/26/2001	TECHNICIAN CRN	FILE NAME X:\WelshFal\zonsurv.pro

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Prot #1
2/26/02

18E12

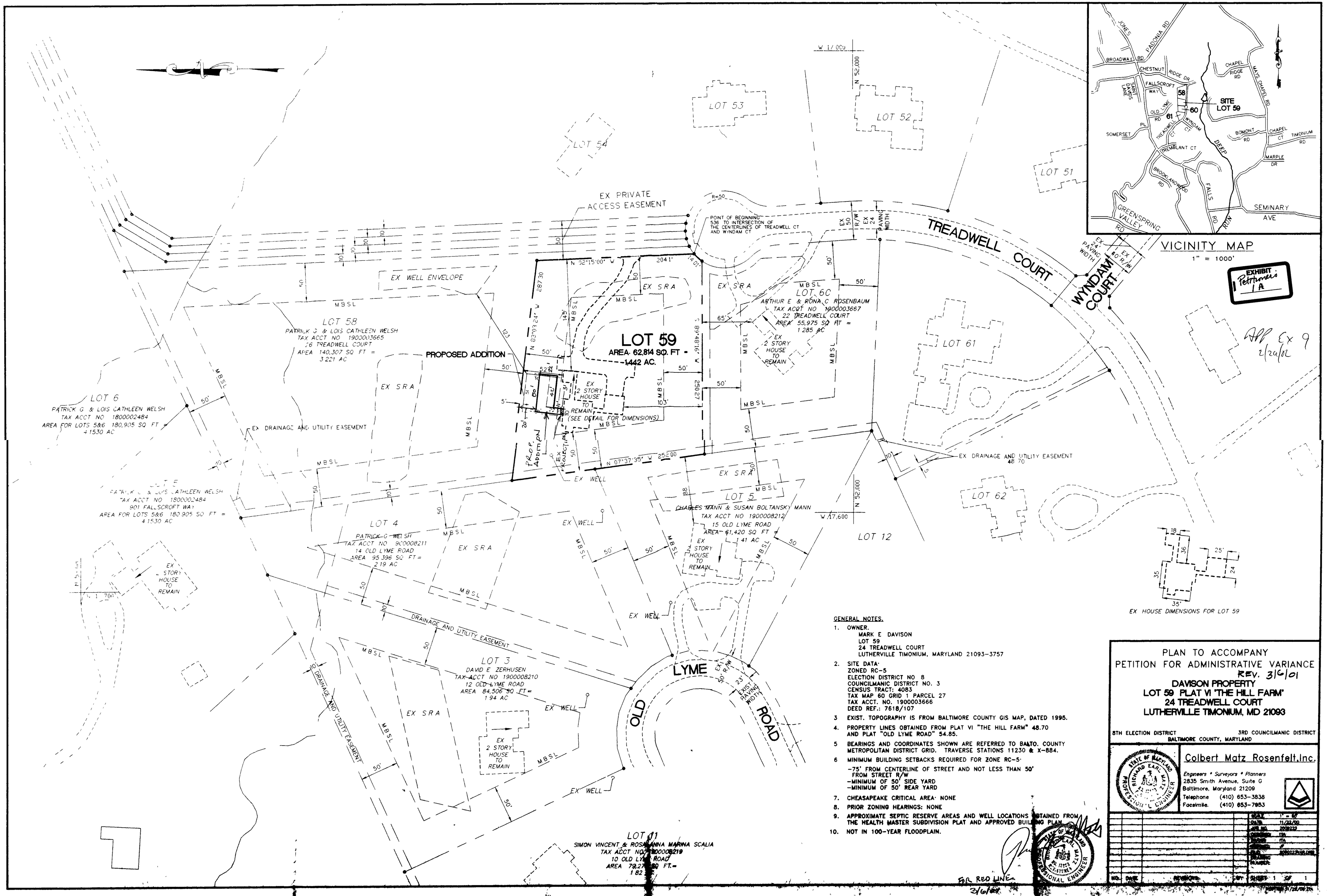


EXHIBIT Petitioner's A

App Ex 9 2/26/01

GENERAL NOTES.

1. OWNER.
   MARK E DAVISON
   LOT 59
   24 TREADWELL COURT
   LUTHERVILLE TIMONIUM, MARYLAND 21093-3757
2. SITE DATA·
   ZONED RC-5
   ELECTION DISTRICT NO 8
   COUNCILMANIC DISTRICT NO. 3
   CENSUS TRACT: 4083
   TAX MAP 60 GRID 1 PARCEL 27
   TAX ACCT. NO. 1900003666
   DEED REF.: 7618/107
3. EXIST. TOPOGRAPHY IS FROM BALTIMORE COUNTY GIS MAP, DATED 1995.
4. PROPERTY LINES OBTAINED FROM PLAT VI "THE HILL FARM" 48.70 AND PLAT "OLD LYME ROAD" 54.85.
5. BEARINGS AND COORDINATES SHOWN ARE REFERRED TO BALTO. COUNTY METROPOLITAN DISTRICT GRID. TRAVERSE STATIONS 11230 & X-884.
6. MINIMUM BUILDING SETBACKS REQUIRED FOR ZONE RC-5·
   -75' FROM CENTERLINE OF STREET AND NOT LESS THAN 50' FROM STREET R/W
   -MINIMUM OF 50' SIDE YARD
   -MINIMUM OF 50' REAR YARD
7. CHEASAPEAKE CRITICAL AREA· NONE
8. PRIOR ZONING HEARINGS: NONE
9. APPROXIMATE SEPTIC RESERVE AREAS AND WELL LOCATIONS OBTAINED FROM THE HEALTH MASTER SUBDIVISION PLAT AND APPROVED BUILDING PLAN.
10. NOT IN 100-YEAR FLOODPLAIN.

FOR RED LINE 3/6/01

PLAN TO ACCOMPANY
PETITION FOR ADMINISTRATIVE VARIANCE
REV. 3/6/01

DAVISON PROPERTY
LOT 59 PLAT VI 'THE HILL FARM'
24 TREADWELL COURT
LUTHERVILLE TIMONIUM, MD 21093

8TH ELECTION DISTRICT — 3RD COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

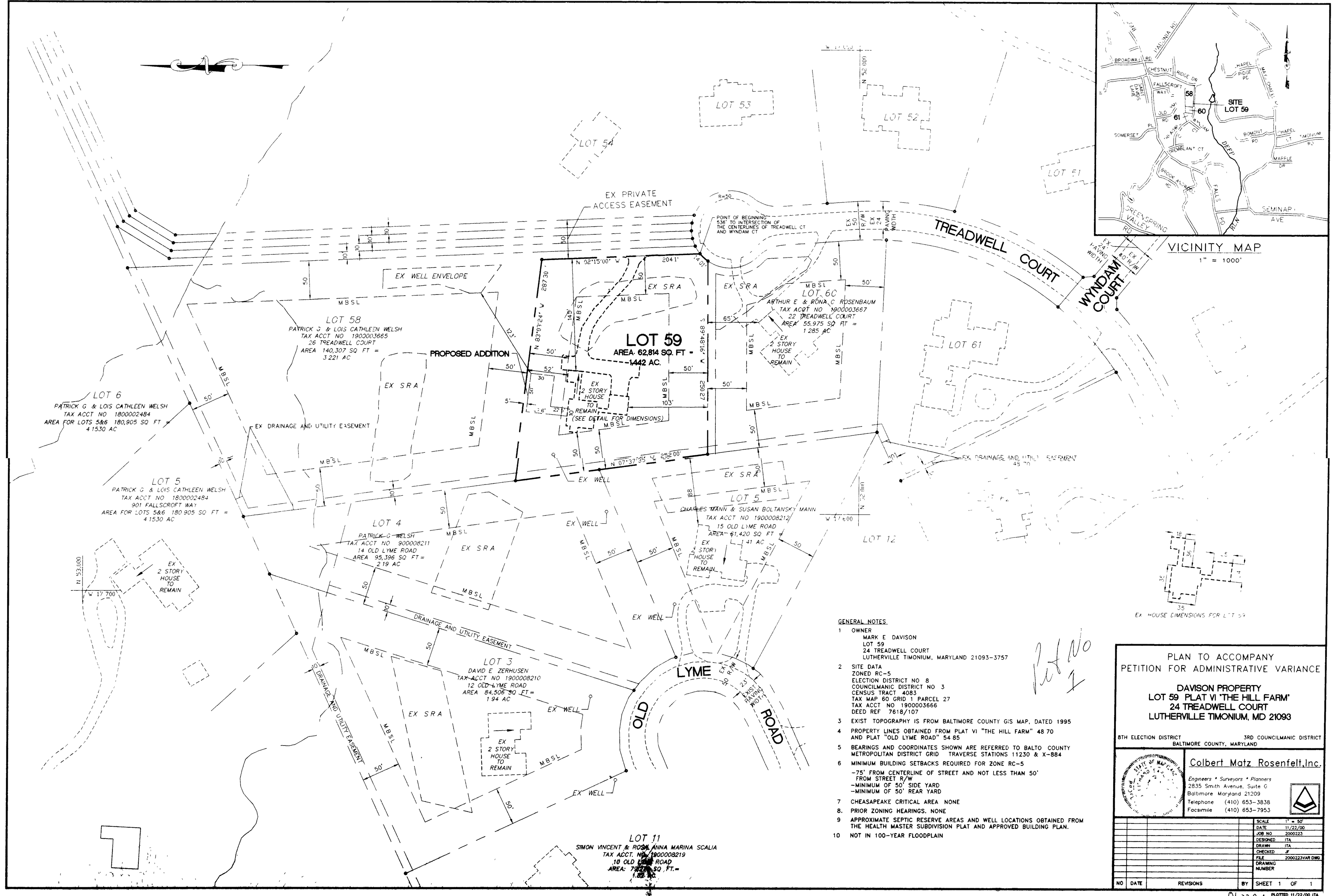
STATE OF MARYLAND — RICHARD EARL MATZ — PROFESSIONAL ENGINEER

Colbert Matz Rosenfelt, Inc.
Engineers * Surveyors * Planners
2835 Smith Avenue, Suite G
Baltimore, Maryland 21209
Telephone (410) 653-3838
Facsimile. (410) 653-7953

SCALE	1" = 60'
DATE	11/22/00
JOB NO.	2008222
DESIGNED	TBA
DRAWN	ITA
CHECKED	GF
FILE	2008222PLAT.DWG
DRAWING NUMBER	

NO.	DATE	REVISION	BY	SHEET 1 OF 1

PRINTED 3/22/01 ITA



GENERAL NOTES

1 OWNER
MARK E DAVISON
LOT 59
24 TREADWELL COURT
LUTHERVILLE TIMONIUM, MARYLAND 21093-3757

2 SITE DATA
ZONED RC-5
ELECTION DISTRICT NO 8
COUNCILMANIC DISTRICT NO 3
CENSUS TRACT 4083
TAX MAP 60 GRID 1 PARCEL 27
TAX ACCT NO 1900003666
DEED REF 7618/107

3 EXIST TOPOGRAPHY IS FROM BALTIMORE COUNTY GIS MAP, DATED 1995

4 PROPERTY LINES OBTAINED FROM PLAT VI "THE HILL FARM" 48 70 AND PLAT "OLD LYME ROAD" 54 85

5 BEARINGS AND COORDINATES SHOWN ARE REFERRED TO BALTO COUNTY METROPOLITAN DISTRICT GRID TRAVERSE STATIONS 11230 & X-884

6 MINIMUM BUILDING SETBACKS REQUIRED FOR ZONE RC-5
-75' FROM CENTERLINE OF STREET AND NOT LESS THAN 50' FROM STREET R/W
-MINIMUM OF 50' SIDE YARD
-MINIMUM OF 50' REAR YARD

7 CHEASAPEAKE CRITICAL AREA NONE

8. PRIOR ZONING HEARINGS. NONE

9 APPROXIMATE SEPTIC RESERVE AREAS AND WELL LOCATIONS OBTAINED FROM THE HEALTH MASTER SUBDIVISION PLAT AND APPROVED BUILDING PLAN.

10 NOT IN 100-YEAR FLOODPLAIN

Pet No 1

PLAN TO ACCOMPANY
PETITION FOR ADMINISTRATIVE VARIANCE

DAVISON PROPERTY
LOT 59 PLAT VI "THE HILL FARM"
24 TREADWELL COURT
LUTHERVILLE TIMONIUM, MD 21093

8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

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Baltimore Maryland 21209
Telephone (410) 653-3838
Facsimile (410) 653-7953

NO	DATE	REVISIONS	BY

SCALE	1" = 50'
DATE	11/22/00
JOB NO	2000223
DESIGNED	ITA
DRAWN	ITA
CHECKED	JF
FILE	2000223VAR DWG
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SHEET 1 OF 1	

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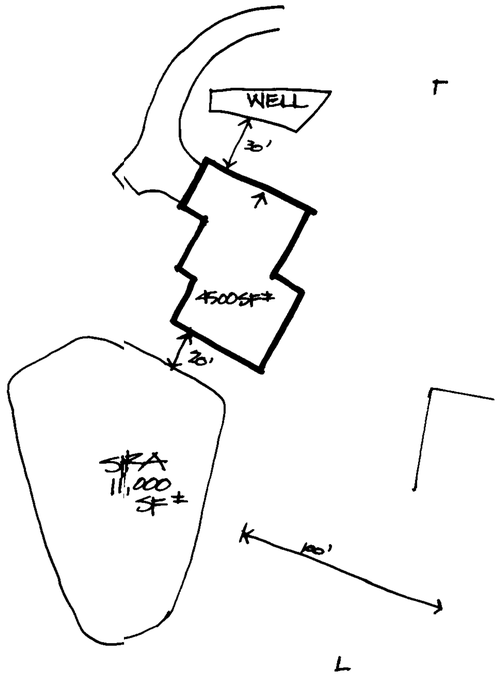

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