

IN RE: PETITION FOR SPECIAL HEARING
SW/Corner White Marsh Road and
Glen Arbor Drive
(Church Property, XIV-392)
14th Election District
6th Council District

St. Peter's Lutheran Church of Fullerton
Owner; Prestige Development, Inc.,
Contract Purchaser/Developer

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 01-452-SPH

*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owner of the subject property, St. Peter's Lutheran Church of Fullerton, and the Contract Purchaser/Developer, Prestige Development, Inc., through their attorney, David K. Gildea, Esquire. The Petitioners request a special hearing to approve an amendment to the previously approved development plan and Order issued in prior Case No. XIV-392, and a waiver, pursuant to Section 26-172 of the Baltimore County Code, of Section 26-272 thereof, namely, Division 4 "General Design Standards and Requirements." Specifically, the Petitioners request a waiver from the requirements of the Baltimore County Local Open Space Manual, Sections III.D and III.C, respectively, as follows: a) to permit the approved active Homeowners Association (H.O.A.) open space to remain in its current undisturbed condition and be classified as passive H.O.A. open space as shown on the plan; and, b) to permit grades of a portion of the passive H.O.A. open space to exceed 10%. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Richard A. Ortt and John E. Foard, representatives of St. Peter's Lutheran Church of Fullerton, property owners, and Alan Klatsky, a principal with Prestige Development, Inc., Developer. Also appearing on behalf of the Petitioners were David Martin, Landscape Architect who prepared the site plan for

ORDER RECEIVED FOR FILING

Date

By

this property, and David K. Gildea, Esquire, attorney for the Petitioners. Appearing as a Protestant in the matter was Jan M. Cook, a representative of Baltimore County's Department of Recreation and Parks. Prior to the hearing, Counsel for the Petitioner submitted to the undersigned Zoning Commissioner a Memorandum in Support of the Petition for Special Hearing. Subsequent to the hearing, Counsel for the Petitioners submitted a Supplemental Memorandum in Support of the Petition for Special Hearing, and a Memorandum in Opposition thereto was received from Baltimore County's Office of Law.

The undersigned Zoning Commissioner is familiar with this property by virtue of the prior proceedings in Case No. XIV-392, pursuant to Title 26 of the Baltimore County Code and the development regulations contained therein. The subject property contains approximately 9.0 acres in area, zoned D.R.3.5, and is located on the south side of White Marsh Road, not far from the White Marsh Mall complex. Presently, the property is owned by St. Peter's Lutheran Church of Fullerton; however, is under contract of sale to Prestige Development, Inc., who proposes to develop the site with 24 single family dwellings, one of which is existing. The property contains an area of forests and steep slopes and is generally unimproved but for the existing dwelling referenced above. Proposed vehicular access into the site will be by way of a new public road known as Glen Arbor Drive, which will lead into the site from the south from a recently approved development known as Glen Arbor. Glen Arbor Drive will cross through the interior of the property and ultimately access White Marsh Road on the north side of the development.

As noted above, this project was subject to the development review process, pursuant to Title 26 of the Code. This included a concept plan conference on June 12, 2000, a community input meeting on July 25, 2000, and a development plan conference on October 18, 2000. The Hearing Officer's Hearing was conducted on November 9, 2000, following which the undersigned issued an Opinion and Development Plan Order on November 22, 2000. That Order approved the development plan subject to certain restrictions. Among those restrictions was the requirement that the Developer pay a fee to the County inasmuch as the open space provided on the plan did not meet the requirements of the Department of Recreation and Parks. Additionally, it was

required that the Developer maintain the active and passive open space areas as shown on the plan in their current natural state. That is, there was to be no clearing or grading of those areas. Those conditions were implemented as the result of testimony and evidence presented at the hearing, as summarized in the Opinion and Order issued in that matter. Specifically, the Developer's consultant, David Martin, stated that although portions of the site would be cleared and graded for development, an area of mature vegetation was to be left undisturbed and designated as active open space. Although admitting that this open space did not meet County requirements, Mr. Martin testified that it would be "criminal" to destroy the mature trees and grade that area. Testimony was also received from Mr. Cook verifying that the project did not meet County standards. Specifically, he noted that the County required that active open space have a grade of no more than 4% and that passive open space could have a grade of no more than 10%.

In my judgment, the original decision reached in this matter was an appropriate resolution of the issue. That decision allowed the retention of the mature trees and vegetation, which was favored not only by the Developer, but also neighbors in the area. However, the decision recognized that the plan did not meet County standards and thus, provided revenue to Baltimore County so that off-site areas of active open space could be developed.

The Developer was apparently dissatisfied with this decision and, pursuant to a Motion for Reconsideration, requested a revision to the November 22, 2000 Order. The Developer's Motion for Reconsideration was endorsed by the Department of Recreation and Parks. Essentially, under the Motion, the Developer and the Department of Recreation and Parks jointly requested that the plan be amended to require strict compliance with the provisions of the Local Open Space Manual. At that time, the Developer agreed to clear and grade the areas of open space as required by law. The Motion for Reconsideration was granted by my Order of December 27, 2001. However, the Developer has had another change of heart and filed the instant Petition for Special Hearing, requesting the same waiver of the local open space requirements as originally sought.

The Petition for Special Hearing presents a number of difficult legal issues. First, it is to be noted that the Petition seeks relief by way of a waiver, pursuant to Section 26-172 of the

ORDER RECEIVED FOR FILING
Date 9/16/01
By [Signature]

Baltimore County Code. In relevant part, that Section states that the Hearing Officer may grant a waiver, only **at the request of a Department Director**. Moreover, Section 26-172 provides that only waivers from the requirements of **Divisions 3, 4 and 5** of the development regulations may be granted. Section 26-172 also establishes the criteria that the Hearing Officer need apply in considering any waiver request. Not unexpectedly, the definitions set out in Sections 26-1 and 26-168 of the County Code do not define "request." However, Webster's Third New International Dictionary defines request as, "The act of asking for something", or "an expressed desire."

In interpreting the term "request" in the past, the Hearing Officers have broadly construed "requests for waivers" by Department Directors. Frequently, the requests have been generated by a property owner/developer, with the active or tacit concurrence of a Department Director. This interpretation was applied with the intention of providing flexibility to Developers and Baltimore County so that Divisions 3, 4 or 5 standards could be waived when conditions so warranted. In this case, Baltimore County urges strict interpretation of the waiver request and argues that the waiver sought within the instant Petition was not requested by a Department Director. That is, the County points out that neither John Weber, Director of the Department of Recreation and Parks, or Arnold F. (Pat) Keller, III, Director of the Office of Planning, affirmatively seeks the waiver. To the contrary, the Petitioner argues that the request does not require affirmative support and that the written Zoning Advisory Committee (ZAC) comments submitted by those departments suffice as a request of a Department Director.

A second issue raised in this case relates to exactly what requirements are being waived. It is clear that Section 26-172 of the Code permits the Hearing Officer to grant a waiver of only those requirements contained in Divisions 3, 4 and 5 of the development regulations. Divisions 3, 4 and 5 generally encompass Code Sections 26-236 through 26-305. Included in those Divisions are Sections 26-271(open space), 26-272 (purposes of open space), 26-273 (plans for open space), and 26-283 (adoption of development manuals).

In this instance the Petitioner/Developer argues that the waiver is from the general requirements set out in Sections 26-271 through 26-273 which require open space and enumerate

ORDER RECEIVED FOR FILING
Date 9/16/01
By Pop

the purposes and plans therefor. Also, the Petitioner notes that Section 26-283 requires the creation of certain manuals in order to implement the standards and requirements set forth in the Code. Section 26-283(b)(4) of the Code specifically requires that the Office of Planning and the Department of Recreation and Parks prepare a manual for open space requirements. Indeed, a Local Open Space Manual was adopted by Baltimore County on February 22, 2000. Within the introductory background/purposes Section of the Manual, it is noted that it was prepared in response to the requirements of Section 26-283(c)(4) of the Code. Moreover, Section III of the Local Open Space Manual, sets out the standards which must be adhered to by all Developers.

It is clear that Section 26-172 of the Code authorizes the Hearing Officer to grant certain waivers. It is equally clear that Sections 26-271 through 26-273 of the Code fall within Division 4 of the development regulations and therefore, can be waived, in certain circumstances. Moreover, since the Local Open Space Manual was adopted, pursuant to Section 26-283 of the Code, which also falls within Division 4 of the regulations, the provisions thereof may likewise be waived by the Hearing Officer. However, prior to deciding whether a proper request by a Department Director has been made in this case and, if so, whether a waiver should be granted in this case, pursuant to the requirements of Section 26-172 of the Code, another Code Section need be considered. Specifically, the Baltimore County Council enacted, by Bill #110-99, an Adequate Public Facilities Act. This Act has been codified within Sections 26-491 through 26-500 of the Code. Section 26-498 specifically sets out the requirements under the Adequate Public Facilities Act for recreational space. Moreover, it is obvious that the Adequate Public Facilities Act, as codified in Section 26-498 of the Code, is not within Divisions 3, 4 and 5 of the development regulations. The provisions of Section 26-498 of the Code might be considered to some as repetitive of the Local Open Space Manual. Specifically, Section 26-498 strictly defines active open space and passive open space, as does the Manual, and sets out the grades allowed for each (active - 4%; passive - 10%).

It is my judgment that a Developer need comply with **all** of the County requirements in addressing this issue. These include the general overview requirements in Section 26-271 through

26-273 of the Code, the more detailed requirements contained in the Local Open Space Manual, and lastly, the requirements of Section 26-498 of the Code. Moreover, it is clear that the standards in Sections 26-271 through 26-273 and the Local Open Space Manual can be waived under certain circumstances by the Hearing Officer, pursuant to Section 26-172. The Hearing Officer has the authority to waive those requirements because they fall under, or enacted, pursuant to the requirements of Divisions 3, 4 or 5 of the development regulations. However, insofar as the Adequate Public Facilities Act and Section 26-498 of the Code, that Section is outside Divisions 3, 4 and 5 and therefore cannot be waived, pursuant to Section 26-172. Moreover, there is no mechanism set out within the language of Council Bill #110-99 by which those provisions can be waived by the Hearing Officer.

In this case, since the Developer need comply with those requirements, the waiver requested within its Petition for Special Hearing cannot be granted. A grant of the Petition would effectively waive the requirements of the Adequate Public Facilities Act, which is beyond the scope of the Hearing Officer's authority. Simply stated, although the Local Open Space Manual and the requirements contained in Division 4 of the development regulations can be waived, consideration of the appropriateness of the request and the merits of same cannot be granted here, because the Developer need comply with the Adequate Public Facilities Act and the provisions of Section 26-498 of the Code. Since the Developer's request on its face will not so comply, the Petition for Special Hearing must be denied.

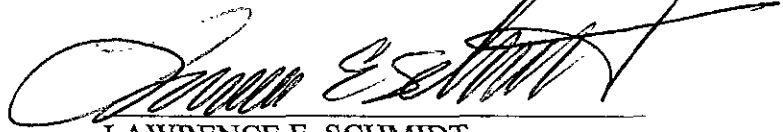
Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 6th day of September, 2001 that the Petition for Special Hearing seeking approval of an amendment to the previously approved development plan and Order issued in prior Case No. XIV-392 to reflect the proposed modifications, and a waiver, pursuant to Section 26-172 of the Baltimore County Code, of Section 26-272 thereof, namely, Division 4 "General Design Standards and Requirements", specifically, Sections III.D and III.C of the Baltimore County Local Open

ORDER RECEIVED FOR FILING
Date 9/6/01
By [Signature]

Space Manual, to, a) permit the approved active Homeowners Association (H.O.A.) open space to remain in its current undisturbed condition and be classified as passive H.O.A. open space as shown on the plan; and, b) to permit grades of a portion of the passive H.O.A. open space to exceed 10%, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

The Petitioners 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

ORDER RECEIVED FOR FILING

Date 9/6/11

By [Signature]



Baltimore County
Zoning Commissioner

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

September 7, 2001

David K. Gildea, Esquire
301 N. Charles Street, Suite 800
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL HEARING
SW/Corner White Marsh Road and Glen Arbor Drive
(Church Property, XIV-392)
14th Election District – 6th Council District
St. Peter's Lutheran Church of Fullerton, Owner; Prestige Dev. Corp., Contract Purchaser
Case No. 01-452-SPH

Dear Mr. Gildea:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been denied, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Richard A. Ortt, President, St. Peter's Lutheran Church of Fullerton
3303 Delpha Court, Baltimore, Md. 21234
Mr. Alan Klatski, Prestige Development, Inc.
5 Spring Forest Court, Owings Mills, Md. 21117
Mr. David Martin, G.W. Stephens & Assoc., 1020 Cromwell Bridge Rd, Towson, Md. 21286
Mr. Jan Cook, Department of Recreation & Parks
Office of Planning; People's Counsel; Case File

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



IN RE: DEVELOPMENT PLAN HEARING *	BEFORE THE
S/S White Marsh Road, N of Bucks	
Schoolhouse Road (Church Property) *	HEARING OFFICER
14 th Election District	
6 th Council District *	OF BALTIMORE COUNTY
St. Peter's Lutheran Church *	Case Nos. 01-452-SPH
of Fullerton, Owners;	XIV-392
Prestige Development, Inc. *	
Contract Purchaser/Developer	

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PETITION FOR SPECIAL HEARING**

Prestige Development, Inc. ("Prestige"), Contract Purchaser/Developer, hereby submits this Supplemental Memorandum in Support of Petition for Special Hearing.

I. Summary of Evidence Presented at Hearing on June 27, 2001.

At the Hearing Officer's hearing held on June 27, 2001, Prestige presented evidence to support the granting of a waiver pursuant to Baltimore County Code Section 26-172. Alan Klatsky testified as the Developer/Contract Purchaser and David Martin testified as an expert in the field of landscape architecture. A summary of that evidence is as follows:

1. Alan Klatsky reminded the Hearing Officer that the surrounding community testified at the Hearing Officer's Hearing on November 9, 2000 that they would rather see the retention of the mature forest instead of the clearing and grading for a half acre active open space area.
2. Alan Klatsky testified that the proposed community will be called, "The Woods at Glen Arbor." The existing trees will be used as an amenity for the community which will differentiate it from the other communities in the area. The mature trees have been, and will be, used as a marketing device to attract families to this

community. The mature trees are an amenity that, once destroyed, will be difficult to replace.

3. Alan Klatsky and David Martin testified that in the place of the cleared mature trees, a one half acre active open space with a large surrounding retaining wall will be required under the strict interpretation of the Local Open Space (LOS) Manual. The retaining wall will be approximately 4 to 12 feet high. The retaining wall will provide an attractive nuisance for children. The retaining wall will significantly degrade the quality of the community overall and will make marketing efforts of the community considerably more difficult. Families will not want to buy a house in a community where there is an undersized open space area surrounded by large retaining walls.

4. David Martin testified that if the mature upland species of trees are preserved, a passive recreational area could be created to serve the community. Trails could be created through the woods with picnic benches, and other passive recreational activities. The recreational space within the woods would be used by the residents. Alan Klatsky testified the Pine Valley Swim Club is across White Marsh Road from Prestige's proposed community. Homeowners in the community will be able to use Pine Valley Swim Club for their active recreational activities, if they so choose.

5. David Martin opined that the size, scope and nature of the proposed open space area, in light of the fact that a significant retaining wall will need to be built for a small (1/2 acre) recreational area, does not justify requiring Prestige to meet the strict compliance of the LOS Manual. It is nonsensical to create large retaining walls for an undersized active open space area.

6. David Martin opined that the granting of the waiver would be within the scope, purpose, and intent of the Development Regulations. Mr. Martin testified the overall purpose and intent of Development Regulations is to create liveable communities for future generations. He testified that the trees requested to be cleared by Department of Recreation and Parks ("DRP") are an upland species of mature trees and are adjacent to the forest conservation area. These areas of mature trees bound White Marsh Road and create a nice amenity. Mr. Martin opined that the creation of an undersized active open space area that would require the clearing and grading of mature forest, and the creation of large retaining walls surrounding a large portion of active open space is nonsensical and does not serve the purpose and intent of the Development Regulations. Mr. Klatsky and Mr. Martin both testified that requiring them to build active open space with retaining walls will create a sub-par community. The Development Regulations were not enacted to create sub-par communities for the sake of meeting the strict interpretation of the Regulations. The County created waivers and variance mechanisms for situations where the strict interpretation of the Regulations created a sub-par community. This development is a prime example of logic behind creating waiver requirements.

The only witness in opposition of the granting of the waiver was Jan Cook of the DRP. When asked by the Hearing Officer, "Will the local open space be worthwhile ...," Mr. Cook did not respond directly but, rather, stated that the proposed area would not be the best place for active open space. David Martin and Alan Klatsky both testified about the agreement of the placement of the open space area in its present location. Further, the location of the open space was approved pursuant to the Hearing Officer's hearing which approved the Development Plan previously.

II. There Were Two "Requests of a Department Director" in the Instant Matter.

There was some discussion at the Hearing Officer's hearing on June 27, 2001 regarding the language, "at the request of a Department Director" found in Baltimore County Code ("BCC") Section 26-172. There were two "requests of a Department Director" in the instant matter; namely, (1) from the Director of Planning, and, (2) from the Director of Permits and Development Management.

The Director of Planning issued a "Summary of Recommendations" dated May 29, 2001 regarding the waiver. The Summary of Recommendations is similar to any Summary of Recommendations which the Director provides for waiver hearing, pursuant to BCC Section 26-172.

Recently, there has been several BCC Section 26-172 waiver hearings regarding the demolition of properties listed on the Maryland Historic Trust Inventory. BCC Section 26-278 (A Division IV Requirement), provides that such properties must be preserved. Applicants may always seek waivers pursuant to BCC Section 26-172 of the "must be preserved" language of BCC Section 26-278.

In such situations, the Director of Planning issues a "comment" with a Summary of Recommendations. Nowhere in any of the Summary of Recommendations for any of these BCC Section 26-278 waiver hearings is there any language that affirmatively stated that the Department Director "requested" a hearing. See attached Exhibit 1. In all such circumstances, the Director of Planning simply made a recommendation which was ultimately found to be a "request" by the hearing officer.

In the instant matter, there was a recommendation by the Director of Planning. This recommendation should be found as a "request of a Department Director" as all

other recommendations on similar waivers have been accepted as “requests of a Department Director.” See attached Exhibit 2.¹

Additionally, the request by the Director of the Department of Permits and Development Management for the Hearing Officer to hear this matter is also a “request of a Department Director.” The language of “at the request of a Department Director” is simply a mechanism for the matter to reach the Hearing Officer. It is clear from the language that a Department Director, for whatever reason, could request a Hearing Officer to grant a waiver.

However, it would be illogical to find that property owners could not, through the Department of Permits and Development and through a Petition for Special Hearing, specifically request a waiver. The administrative practice for such cases is for the property owner to file a Petition for Special Hearing to the Director of Permits and Development Management, and the filing of such and the forwarding to the Hearing Officer by the Department of Permits and Development Management is deemed to be “a request of a Department Director.” To hold otherwise would deny property owners the due process right to seek waivers from the strict compliance of certain regulations. Certainly, it is not the intent of the BCC statutory scheme to deny individual property owners that right.

III. The Hearing Officer Has the Authority to Grant Baltimore County Code Section 26-172 Waivers of Specific Regulations Found in LOS Manual.

DRP asserts that the specific provisions of the LOS Manual are to be viewed as iron clad and that there is absolutely no flexibility in crafting waivers or variances from

¹ The language of BCC Section 26-172 does not require a “favorable recommendation” or even a “recommendation.” Instead, the language used is “a request.” There need not be favorable recommendations for the Hearing Officer to have jurisdiction over the matter.

the specific sections. In other words, DRP contends that there must always be strict compliance of the LOS Manual, without exception. DRP recognizes no situation that would justify not strictly complying with all of the standards of the LOS Manual.

DRP is incorrect in its assertions. The Baltimore County Council did not intend, nor did it create, a statutory scheme where there must always be strict compliance with the LOS Manual and that no circumstances justify not strictly complying with the LOS Manual.

The Baltimore County Council created a statutory scheme wherein the requirements of the LOS Manual could be waived. Specifically, the first sentence of the LOS Manual states:

The Local Open Space ("LOS") Manual has been prepared in response to the requirements of Section 26-283(c)(4) and (f) of the Baltimore County Code, 1988, as amended, Bill 110-99, and as outlined in the Baltimore County Master Plan.

Baltimore County Code Sections 26-283(c) and (f) are found in Title 26 (Planning, Zoning, and Subdivision Control), Article 5 (Development Regulations), Division IV (General Design Standards and Requirements). Baltimore County Code Section 26-283 is entitled "Adoption of Development Manuals." Section 26-283(a) states, "In order to **implement the standards and requirements set forth in this division**, the County shall prepare development manuals in accordance with the requirements of this Section and submit same to the Planning Board for its action under subsection (c) of this Section." (emphasis added).

The LOS Manual is but one of many Manuals required to be drafted, reviewed, and approved to implement the standards and requirements of the Development

Regulations. Other such Manuals include a Stormwater Management Policy Manual, Design Manual, Landscape Manual, etc.

All of the standards and requirements found in the various Manuals listed in Section 26-283 can be waived pursuant to Baltimore County Code Section 26-172.

Section 26-172(a) states:

At the request of the Department Director, the Hearing Officer may grant a waiver of any or all **requirements of Division III, IV, and V ...** (emphasis added).

The standards and requirements of the various Manuals are all Division IV requirements. As such, all of these requirements can be waived by the Hearing Officer upon the meeting of certain criteria which will be discussed further below.

There is a mechanism that permits DRP to waive all requirements of the LOS Manual, including the most important requirement, the dedication of the Developer's property to the County. In situations where the County does not require the dedication of property, the Developer is permitted to pay a fee in lieu and receive a waiver of the entire Manual.

In the instant case, Prestige is still dedicating its property to the County. This is property that could otherwise be used for lots in a reconfigured site design and has value. In the instant matter, the principle requirement of the LOS Manual, the dedication of property to the County for recreational purposes, will be met. The property could be used for passive recreational activities if the waiver is granted.

Prestige simply is requesting that particular requirements of the LOS Manual be waived to create a better community. Prestige will not own the land and will not be able to use it. If the waiver is granted, the land will be used for recreational purposes in the spirit of the LOS Manual.

Article IX of Title 26 – Adequate Public Facilities

Bill No. 110-99 created a new Article IX, Adequate Public Facilities law. Bill 110-99 was enacted on December 30, 1999. Section 5 of the Bill stated:

AND BE IT FURTHER ENACTED, that the Office of Planning and the Department of Permits and Development Management shall adopt Regulations as required by this Act on or before February 15, 2000.

On February 22, 2000, the Baltimore County Council adopted the Baltimore County LOS Manual, which Manual is at issue.

The LOS Manual provisions govern the LOS requirements. Section 26-283(d)(4) specifically instructs:

The Office of Planning and Zoning and the Department of Recreation and Parks shall jointly prepare a Manual of design and administration of the open space requirements set forth in Sections 26-272 through 26-274 of these Regulations and submit same to the Planning Board within six months of the effective date of this Article.

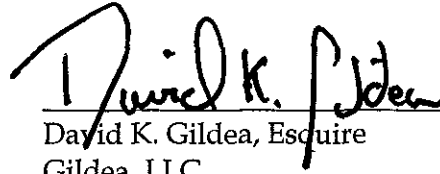
Section 26-283(a) specifically provides that the standards and requirements are to be found in the Development Manual, such as the LOS Manual.

As the requirements of all of the Manuals, including the LOS Manual, are found in Division IV, clearly the Hearing Officer has the ability to grant waivers of those requirements pursuant to Baltimore County Code Section 26-172. Bill 110-99 simply provided framework for the LOS Manual. One should look to the LOS Manual, not Bill 110-99, for the proper implementation of the LOS requirements.

For the foregoing reasons, Prestige Development, Inc. respectfully requests that

the Hearing Officer grant the waiver.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David K. Gildea", is written over a horizontal line.

David K. Gildea, Esquire

Gildea, LLC

301 N. Charles St., Suite 800

Baltimore, MD 21201

(410)234-0070

Attorneys for Petitioner

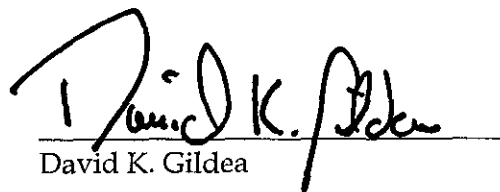
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of July, 2001, a copy of the foregoing Supplemental Memorandum in Support of Petition for Special Hearing was mailed first class, postage prepaid, to:

Lawrence E. Schmidt (via hand delivery)
Zoning Commissioner for Baltimore County
4th Floor
401 Bosley Avenue
Towson, MD 21204

Jan M. Cook,
Engineering Associate
Baltimore County Department of Recreation and Parks
Capital Planning and Development
301 Washington Ave.
Towson, MD 21204

Amanda Stakem Conn
Assistant County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, MD 21204


David K. Gildea

GILDEA, LLC
301 NORTH CHARLES STREET
SUITE 800
BALTIMORE, MARYLAND 21201
FAX 410-234-0072
www.gildeallc.com

DAVID K. GILDEA
DIRECT NUMBER
410-234-0070
DAVIDGILDEA@GILDEALLC.COM

SEBASTIAN A. CROSS
DIRECT NUMBER
410-234-0071
SCROSS@GILDEALLC.COM

July 13, 2001

Via Hand Delivery

Lawrence E. Schmidt
Baltimore County Zoning Commissioner
4th Floor
401 Bosley Avenue
Towson, MD 21204

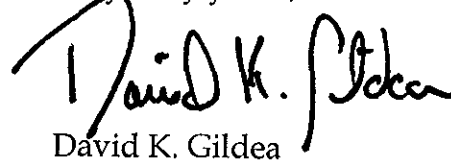
Re: Prestige Development
Case Nos.: 01-452-SPH and XIV-392

Dear Zoning Commissioner Schmidt:

You will please find enclosed a Supplemental Memorandum in Support of Petition for Special Hearing.

Should you have any questions or comments, please contact me. With kind regards, I am

Very truly yours,


David K. Gildea

DKG:bhb

CC: Mr. Jan M. Cook
Amanda Stakem Conn, Esquire
Mr. Alan Klatsky, Prestige Development
David Martin, L.A.

Enclosure



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at "The Church Property" See Case Number XIV-392

which is presently zoned DR
RE-3.5

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

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

See attached.

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

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

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

Contract Purchaser/Lessee:

Prestige Development, Inc.

(Type or Print Name)

Signature By: Alan Klatski

5 Spring Forest Court

Address

Owings Mills, MD 21117

City

State

Zipcode

Attorney for Petitioner.

Gildea, LLC and

David K. Gildea

(Type or Print Name)

Signature

301 N. Charles St., Suite 800

Address

Phone No.

Baltimore, Md 21201 (410)234-0070

City

State

Zipcode

Legal Owner(s):

St. Peter's Lutheran Church of

(Type or Print Name) Fullerton

Signature By: Pres. of Saint Peter's

RICHARD A. ORT

(Type or Print Name)

Signature

3303 DELPHA COURT 410-661-3973

Address

Phone No

BALTO.

MD

21234

City

State

Zipcode

Name, Address and phone number of representative to be contacted

Gildea, LLC and David K. Gildea

Name

301 N. Charles St., Suite 800

Address

Phone No

Baltimore, MD 21201 (410)234-0070

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: JRF DATE 4/25/01

ORDER RECEIVED FOR FILING
Date 4/20/01
By [Signature]

01-452-SPH



Attachment to Petition for Special Hearing

1. An amendment of the previously approved Development Plan and Order in Case Number XIV-392.
2. A waiver pursuant to County Code Section 26-172 to waive a requirement of Division 4 "General Design Standards and Requirements," namely, Section 26-272. Specifically, that the Hearing Officer waive:
 - (a) The requirement of Baltimore County Local Open Space Manual, Section III.D – to permit the approved active H.O.A. open space to remain in its current undisturbed condition and be classified as passive H.O.A. open space as shown on the Plat to Accompany Petition for Special Hearing; and,
 - (b) The requirement of the Baltimore County Local Open Space Manual Section III.C – to permit grades of a portion of the passive H.O.A. open space to exceed 10% (as shown on the Plat to Accompany Petition for Special Hearing).

ORDER RECEIVED FOR FILING

Date _____

By _____

FROM THE OFFICE OF
GEORGE WILLIAM STEPHENS, JR. AND ASSOCIATES, INC.
CONSULTING ENGINEERS • LAND PLANNERS • LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD • TOWSON, MARYLAND 21286-3396

April 25, 2001

Description to Accompany
Special Hearing Request
Church Property Development Plan

Beginning at a point at the centerline intersections of Whitemarsh Road (60' wide) and Glen Arbor Drive (50' wide), thence N 50 degrees 32 minutes 29 seconds W, 36.85 feet to a Point of Beginning located at the Northeast corner of the subject property thence leaving said Point of Beginning along the following courses:

1. South 20 degrees 32 minutes 29 seconds West, 357.99 feet, thence
2. South 81 degrees 18 minutes 22 seconds West, 683.10 feet, thence
3. North 3 degrees 48 minutes 23 seconds East, 696.79 feet, thence
4. South 86 degrees 31 minutes 49 seconds East, 27.39 feet, thence
5. South 80 degrees 36 minutes 47 seconds East, 38.58 feet, thence
6. South 72 degrees 49 minutes 55 seconds East, 581.07 feet, thence
7. South 65 degrees 47 minutes 40 seconds East, 64.05 feet, thence
8. South 55 degrees 58 minutes 24 seconds East, 91.23 feet back to the Point of Beginning.

Containing 8.98 acres more or less.

NOTE: The above description is for zoning purposes only and is not to be used for contracts, conveyances, or agreements.



452

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 92965

DATE 4-25-01 ACCOUNT 001-006-6150

AMOUNT \$ 250.00

RECEIVED FROM: George William Stephens
The church Property XIV-392 ITEM #452
FOR: Special Hearing TAKEN BY: JRF

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

PAYMENT ACTUAL TIME
4/25/2001 4/25/2001 10:07:14
REG 0001 CASHIER JRIC JAR DRIVER 1
--> RECEIPT # 042631 OFLN
Dep 5 528 ZONING VERIFICATION
CR NO. 092965

Recpt Tot 250.00
250.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

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: #01-452-A

Whitemarsh Road & Glen Arbor Drive

S/S Intersections Whitemarsh Road & Glen Arbor Drive

14th Election District - 6th Councilmanic District

Legal Owner(s): Richard A. Ortt

Contract Purchaser: Alan Klatski

Special Hearing: to amend previously approved Development Plan and Order in Case Number XIV-302; to waive a requirement of Division 4 (General Design Standards & Requirements); to permit the approved active H.O.A. open space to remain in its current undisturbed condition and be classified as passive H.O.A. open space shown on the Plat to Accompany Petition for Special Hearing; to permit grades of a portion of the passive H.O.A. open space to exceed 10%.

Hearing: Wednesday, June 27, 2001 at 2:00 p.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/6/687 June 12

C474453

CERTIFICATE OF PUBLICATION

6/14/ 2001

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 6/12/ 2001.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

P. J. Wilkinson
SPECIAL AGENT

CERTIFICATE OF POSTING

RE: Case No.: 01-452-A

Petitioner/Developer: ALAN KLATSKI

Date of Hearing/Closing: June 27, 2001

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 WHITEMARSH RD AND
GLEN ARBOR DRIVE

The sign(s) were posted on June 12, 2001
(Month, Day, Year)

Sincerely,

SSG Robert Black 6/12/01
(Signature of Sign Poster and Date)

SSG ROBERT BLACK

(Printed Name)

1508 Leslie Rd

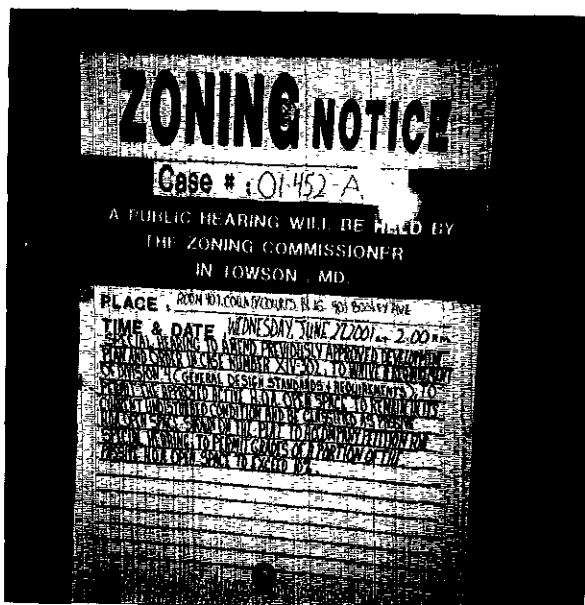
(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)



**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 01-452-SPH
Petitioner: Prestige Development, Inc
Address or Location: The Church Property

PLEASE FORWARD ADVERTISING BILL TO:

Name: David K. Gilboa
Address: 301 North Charles St. Suite 800
Baltimore, MD. 21201
Telephone Number: (410) 234-0070



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

May 23, 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: 01-452-A

Whitemarsh Road & Glen Arbor Drive

S/S Intersections Whitemarsh Road & Glen Arbor Drive

14th Election District – 6th Councilmanic District

Legal Owner: Richard A Ortt

Contract Purchaser: Alan Klatski

Special Hearing to amend previously approved Development Plan and Order in Case Number XIV-302; to waive a requirement of Division 4 (General Design Standards & Requirements); to permit the approved active H.O.A. open space to remain in its current undisturbed condition and be classified as passive H.O.A. open space shown on the Plat to Accompany Petition for Special Hearing; to permit grades of a portion of the passive H.O.A. open space to exceed 10%.

HEARING: Wednesday, June 27, 2001 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon GJZ
Director



C: David K Gildea, 301 N Charles Street, Suite 800, Baltimore 21201
Richard A Ortt, St Peter's Lutheran Church of Fullerton, 3303 Delpha Court,
Baltimore 21234
Alan Klatski, Prestige Development Inc, 5 Spring Forest Court, Owings Mills 21117

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, JUNE 12, 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.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, June 12, 2001 Issue – Jeffersonian

Please forward billing to:

David K Gildea
301 N Charles Street
Suite 800
Baltimore MD 21201

410 234-0070

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: 01-452-A

Whitemarsh Road & Glen Arbor Drive

S/S Intersections Whitemarsh Road & Glen Arbor Drive

14th Election District – 6th Councilmanic District

Legal Owner: Richard A Ortt

Contract Purchaser: Alan Klatski

Special Hearing to amend previously approved Development Plan and Order in Case Number XIV-302; to waive a requirement of Division 4 (General Design Standards & Requirements); to permit the approved active H.O.A. open space to remain in its current undisturbed condition and be classified as passive H.O.A. open space shown on the Plat to Accompany Petition for Special Hearing; to permit grades of a portion of the passive H.O.A. open space to exceed 10%.

HEARING: Wednesday, June 27, 2001 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue



Lawrence E. Schmidt

LAWRENCE E. SCHMIDT GDZ
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



Baltimore County
Department of Permits and
Development Management

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

June 22, 2001

David K Gildea
Gildea LLC
301 N Charles Street
Suite 800
Baltimore MD 21201

Dear Mr. Gildea:

RE: Case Number: 01-452-SPH, Whitmarsh Road & Glen Arbor Drive

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on April 25, 2001.

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. G D Z
Supervisor, Zoning Review

WCR: gdz

Enclosures

c: Richard A Ortt, St Peter's Lutheran Church of Fullerton, 3303 Delpha Court,
Baltimore 21234
Alan Klatski, Prestige Development Inc, 5 Spring Forest Ct, Owings Mills 21117
People's Counsel



Jim
6/27

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 29, 2001

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

MAY 31

SUBJECT: The Church Property

INFORMATION:

Item Number: 01-452

Petitioner: St. Peter's Church of Fullerton

Zoning: DR 3.5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The subject property is known as the Church Property, (PDM #XIV-392) a major development of 24 single-family dwellings in a DR 3.5 zone. The hearing officer approved the development plan on November 22, 2000 and later on December 27, 2000 issued an amended order via a motion to reconsider. That order amended restrictions 1 and 2 of the November 22, 2000 order stating "The Developer shall be required to provide areas of open space acceptable to the Department of Recreation and Parks, in accordance with the requirements contained in the presently enacted Local Open Space Manual."

The subject request is a special hearing to amend the prior approval in order to waive Baltimore County Recreation and Parks standards as indicated in the Local Open Space Manual. Specifically, the developer would like the approved active open space to be categorized as passive open space and to allow the open space to remain in its current condition, with grades that exceed 10%.

SUMMARY OF RECOMMENDATIONS:

The Office of Planning concurs with the Department of Recreation and Parks with regard to the need to provide useable active open space in accordance with the Local Open Space Manual with grades that do not exceed 4%. Therefore, this office recommends that the waiver should be denied.

Prepared by: Martha Cunningham

Section Chief: Jeffrey W. Long
AFK:MAC:

RE: PETITION FOR SPECIAL HEARING
Whitemarsh Road, S/S Whitemarsh Rd & Glen Arbor Dr
14th Election District, 6th Councilmanic

Legal Owner: St. Peter's Lutheran Church of Fullerton
Contract Purchaser: Prestige Development, Inc.
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 01-452-SPH

* * * * *

ENTRY OF APPEARANCE

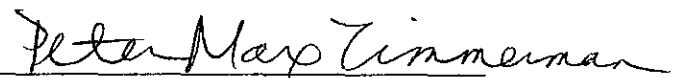
Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order. **All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.**


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of June, 2001 a copy of the foregoing Entry of Appearance was mailed to David K. Gildea, Esq., Gildea, LLC, 301 N. Charles Street, Suite 800, Baltimore, MD 21201, attorney for Petitioner(s).


PETER MAX ZIMMERMAN



Baltimore County
Zoning Commissioner

July 3, 2001

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

David K. Gildea, Esquire
301 N. Charles Street, Suite 800
Baltimore, Maryland 21201

RE: PETITION FOR SPECIAL HEARING
S/S White Marsh Road, N of Bucks Schoolhouse Road
(Church Property/Development Plan Case No. XIV-392)
14th Election District – 6th Council District
St. Peter's Lutheran Church of Fullerton, Owners;
Prestige Development, Inc., Contract Purchasers - Petitioners
Case No. 01-452-SPH

Dear Mr. Gildea:

This letter is to confirm that by agreement between you and Ms. Amanda Conn of Baltimore County's Office of Law, the deadline for submitting a response to your Memorandum in Support of Petition for Special Hearing in the above-captioned matter has been extended to Friday, July 13, 2001.

In the event anyone has any questions in the meantime, please feel free to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt", is written over a horizontal line.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Ms. Amanda Conn, Office of Law
Mr. Jan Cook, Department of Recreation & Parks
Case File

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



Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

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

DATE: December 1, 2000

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

SUBJECT: No. 1812 Cottage Lane (Greenspring Valley National Register Historic District)

INFORMATION

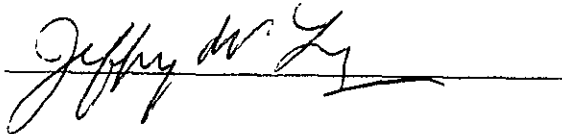
Item Number: 01-197-SPH
Petitioner: Louis Price (Owner)
Zoning: RC -2
Requested Action: Special Hearing

RECOMMENDATIONS ON THE PROPOSAL

The "Louis B. Price House" is listed on the Maryland Historic Trust (MHT) Inventory as MHT # BA 1653 as a contributing structure in the Greenspring Valley National Register Historic District.

At their meeting on November 9, 2000, the LPC unanimously agreed to recommend a finding to the hearing officer that the addition as proposed was consistent with Section 26-278, must be preserved.

Section Chief:



AFK:KA:kra

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

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

DATE: June 13, 2000

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

SUBJECT: No. 6501 Charles Street

INFORMATION

Item Number: 00-473-SPH
Petitioner: Rob Hoffman (attorney)
Zoning: DR 2
Requested Action: Special Hearing

RECOMMENDATIONS ON THE PROPOSAL

The "Sheppard Pratt Gatehouse" is listed on the Maryland Historical Trust Inventory as #BA 212 and on the National Register of Historic Places.

At their meeting on May 11, 2000, the LPC unanimously agreed to recommend to the hearing officer a finding that the proposed removal of the mid-twentieth century frame addition is consistent with Section 26-278, "must be preserved."

Section Chief: Jeffrey W. Long

Form prepared by: Patricia Ahe

AFK:KA:kra

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 22, 2000

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

SUBJECT: No. 9551 Philadelphia Road

INFORMATION

Item Number: 00-425-SPH
Petitioner: Rob Hoffman (legal representative)
Zoning: BL/DR16/ML-IM
Requested Action: Special Hearing

RECOMMENDATIONS ON THE PROPOSAL

The "Diegel House" is listed on the Maryland Historic Trust (MHT) Inventory as MHT # BA 2095.

At their meeting on May 11, 2000, the Landmarks Preservation Commission (LPC) unanimously agreed not to oppose the issuance of a waiver for the demolition of this structure. Additionally, the LPC unanimously agreed that if a waiver from Sec. 26-278 is granted, that the demolition be conditioned on the submittal of "HABS II" level of photographic documentation as approved by the County Historian.

Section Chief: _____

AFK:KA:rlh

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: April 18, 2000

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

SUBJECT: No. 408 Delaware Avenue

INFORMATION

Item Number: 00-321-SPHA
Petitioner: Keith Franz (contract/purchaser)
Zoning: BM-CT
Requested Action: Special Hearing to raze a historic structure

RECOMMENDATIONS ON THE PROPOSAL

The structure located at No. 408 Delaware Avenue is listed on the Maryland Historic Trust (MHT) Inventory as the "J. F. Scharf House," MHT # BA 1472.

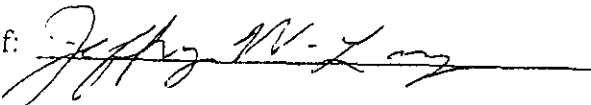
Ms. Abe informed Ms. Moskunas (project representative) in February 2000 that this item was scheduled for LPC review at their April 13, 2000 meeting.

At their April 13, 2000 meeting, the LPC unanimously agreed to recommend against demolition, in the absence of any presentation or other evidence from the applicant on which to base an opinion.

Ms. Abe will be contacting Ms. Moskunas to re-schedule the proposal for LPC review.

Section Chief:

AFK:KA:rlh



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 20, 2000

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

SUBJECT: No. 24 Sagewood Court (or 14803 York Road)

INFORMATION

Item Number: 00-318-SPH

Petitioner: David Sutphen (Contract purchaser)

Zoning: RC 4

Requested Action: Special Hearing

RECOMMENDATIONS ON THE PROPOSAL

In 1972, the "Sax House," No. 24 Sagewood Court (or 14803 York Road), was listed on the Maryland Historic Trust (MHT) Inventory as # BA 630. Additionally, the historic house is subject to Condition No. 1 in the *Hearing Officer's Opinion and Development Plan Order* in Case NO. VIII-679, issued February 1997.

On February 10, 2000 the LPC unanimously agreed to defer a recommendation on this proposal until a technical committee site visit to the property on February 22, 2000. Mr. Sutphen revised his plans according to the technical committee recommendations and submitted the revised plans to the LPC for their review at their March 9, 2000 meeting.

On March 9, 2000, the LPC unanimously agreed to recommend to the hearing officer a finding that Mr. Sutphen's revised plans (as referenced in the attached letter) are consistent with Section 26-278, "must be preserved."

Section Chief: _____

AFK:KA:kra

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 28, 1999

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

SUBJECT: No. 437 E. Pennsylvania Avenue

INFORMATION

Item Number: 00-235-SPH
Petitioner: John Reisinger (Buildings Engineer)
Zoning: DR 10.5
Requested Action: Special Hearing

RECOMMENDATIONS ON THE PROPOSAL

The "Jacob House," MHT # BA 061 is located in East Towson, one of the county's historic african-american settlements.

On April 8, 1999 the Landmarks Preservation Commission (LPC) heard testimony from Mr. Gearing regarding his proposal to rebuild the partially burnt historic structure and to retain the original log portion in the rear, which was not affected by the fire.

Councilmember Wayne Skinner attended the meeting to request that the commission postpone their recommendation until additional community input was obtained on this issue. The LPC agreed.

Mr. Gearing attended a community meeting convened by the Councilman, in East Towson on May 4, 1999, at which the LPC Administrative Secretary was present. The community representatives requested that Mr. Gearing provide full plans and elevations so they could properly review his proposal. Mr. Gearing has not yet provided those plans. The LPC has taken no further action on this issue, pending receipt of plans and specifications for the reconstruction of this structure.

The Office of Planning concurs with the community to recommend the retention of the original log portion as part of any approved plans; and requests that, to achieve consistency with the neighborhood's heritage, the exterior design of any new structure on the site be made subject to approval by the Director of Planning in consultation with the LPC.

Section Chief: _____

AFK:KA:kra

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

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

DATE: November 29, 1999

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

SUBJECT: No. 1853 Reisterstown Road

INFORMATION

Item Number: 00-193-SPH
Petitioner: Deborah Dopkin (attorney)
Zoning: BL
Requested Action: Special Hearing

RECOMMENDATIONS ON THE PROPOSAL

On October 14, 1999 the Landmarks Preservation Commission (LPC) held a public hearing to consider placing the "Brewster-Keller" House, MHT # BA 690, 1853 Reisterstown Road, on the preliminary landmarks list.

The Commission determined that the structure did not meet any of the criteria necessary for landmarks list status. The Commission unanimously agreed to recommend to the hearing officer that the LPC takes no exception to the demolition permit, pending full photographic documentation and drawings of the structure per MHT standards, as approved by the County Historian.

Section Chief: _____

AFK:KA:rlh

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: June 25, 1999

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

SUBJECT: No. 228 Old Padonia Road

INFORMATION

Item Number: 99-492
Petitioner: Bill Kraft (Owner)
Zoning: BM
Requested Action: Special Hearing

RECOMMENDATIONS ON THE PROPOSAL

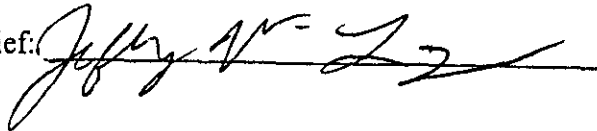
The "Thomas Fortune House," MHT # BA 1791, is a national register eligible property that was listed in the Maryland Historical Trust Inventory in 1979. It is a cut limestone-marble structure built between 1854 and 1866 by Thomas Fortune, a master stonemason.

At their meeting on June 10, 1999, the LPC reviewed the demolition proposal for the structure and heard testimony from the owners and the contract purchaser's legal representative. The LPC also heard testimony from Paul McKean, a protestant representing the Baltimore County Historic Trust (see attached correspondence).

The Commission first voted to hold a public hearing on August 12, 1999 to consider listing the structure on the preliminary landmarks list. After testimony from Mrs. Kraft, the LPC reconsidered this motion and instead agreed to make the following recommendation to the Hearing Officer in regards to the proposed demolition:

The LPC stated that they recognize the historical significance of this structure, but given the particular circumstances of the subject case, they would not take a position on the demolition. If demolition is approved, the LPC recommends that it be conditioned on the submittal of national register level photographic documentation, as approved by the County Historian. In addition, the LPC recommends that demolition approval be limited solely to the subject property's current owner (William and Mary Kraft) and prospective contract purchaser (Ferdinand H. Onnen, Jr.).

Section Chief:



KA:kra

cc: Mr. and Mrs. Kraft

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: June 11, 1999

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

SUBJECT: No. 10301 Liberty Road

INFORMATION

Item Number: 99-447
Petitioner: Chuck Merritt (Project Representative)
Zoning: RC- 5
Requested Action: Special Hearing

RECOMMENDATIONS ON THE PROPOSAL

This historic structure, "Plains of Paran," is listed on the Maryland Historical Trust Inventory as MHT BA # 17. The house was listed on the inventory as a notable historic structure in 1965, at the suggestion of Mr. Herrera, then president of the Baltimore County Historical Society. According to John McGrain's research, the oldest part of the house was likely built between 1788 and 1798. The house has been not been habitable since 1978, but enough ruins exist to provide a photographic record on the structure that may reveal important information on the County's architectural history.

At their meeting on March 11, 1999, the Commission unanimously agreed to recommend approval of the demolition of the structure, conditioned on the submittal of photographic documentation, prepared to National Register standards as approved by the County Historian. We will be sending the photographic documentation requirements under separate cover to Chuck Merritt, project representative.

Section Chief: _____

KA:kra

cc: Chuck Merritt

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 19, 1999

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

SUBJECT: 9621 and 9627 Belair Road

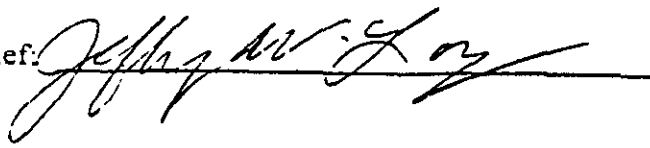
INFORMATION

Item Number: 405
Petitioner: Whiteford, Taylor & Preston
Zoning: BL, BLR, and DR 3.5
Requested Action: Special Hearing

RECOMMENDATIONS ON THE PROPOSAL -The properties located at 9621 and 9627 Belair Road are listed on the Maryland Historical Trust Inventory as the "Baltimore Embroidery Factory" (No. BA 907), and the "Tanner House" (No. BA 2626), respectively.

At their meeting on May 13, 1999, the Landmarks Preservation Commission agreed not to oppose the issuance of a waiver from Section 26-278, "must be preserved." The LPC recommended that the demolition be conditioned on the submittal of photographic documentation, prepared to National Register standards as approved by the County Historian.

Section Chief:



KA:kra

cc: Scott Barhight

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 10, 1999

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

SUBJECT: No. 14140 Falls Road

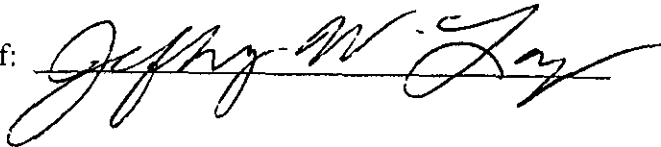
INFORMATION

Item Number: 99-329
Petitioner: Anilkumar and Beverly Hoffberg (owners)
Zoning: RC - 2
Requested Action: Administrative Special Hearing

RECOMMENDATIONS ON THE PROPOSAL

On December 10, 1998 the LPC reviewed the Hoffberg's proposal to raze the frame portion of their historic house, "Talhof," (MHT # BA 1101) for the purpose of constructing an addition. The LPC unanimously agreed to recommend to the hearing officer that the proposed addition be found to be consistent with the requirement that the structure be preserved, and that a waiver be issued for the demolition, conditioned on submittal of photo-documentation as approved by the County Historian.

Section Chief:



KA:kra

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 16, 1998

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

SUBJECT: 412 Delaware Avenue

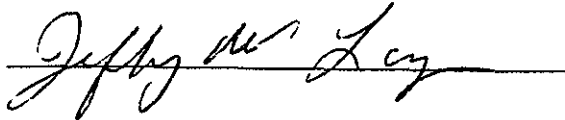
INFORMATION

Item Number: 214
Petitioner: M & H Developers, Inc. (Vince Moskunas)
Zoning: BM-CT
Requested Action: Special Hearing

RECOMMENDATIONS ON THE PROPOSAL – The property located at 412 Delaware Avenue is listed on the Maryland Historical Trust Inventory as the "J. Hunt House" (ca. 1851-1875), No. BA 1473.

At their meeting on December 10, 1998, the Landmarks Preservation Commission agreed to recommend to the Hearing Officer that a waiver be issued. The LPC recommended that the demolition be conditioned on the submittal of photographic documentation, prepared to National Register standards as approved by the County Historian.

Section Chief:



KA:rlh

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 1, 1998

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

SUBJECT: 12231 Long Green Pike

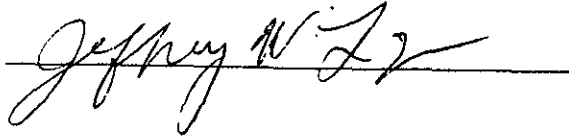
INFORMATION

Item Number: 195
Petitioner: Patrick O'Keefe
Zoning: RC-2
Requested Action: Special Hearing

RECOMMENDATIONS ON THE PROPOSAL – The property located at 12231 Long Green Pike is listed on the Maryland Historical Trust Inventory as the "McComas House" (ca. 1851-1875), No. BA 1906.

At their meeting on November 12, 1998, the Landmarks Preservation Commission unanimously agreed to recommend to the Hearing Officer the issuance of a waiver pursuant to Section 26-278. LPC recommended that issuance of the demolition permit be conditioned on the submittal of photographic documentation, prepared to National Register standards as approved by the County Historian, and that the buildings engineer make a determination on the condition of the building (see attached).

The Office of Planning does not believe that Section 26-172 (a) (1) would be the appropriate authority to allow demolition of this historic structure. The Office of Planning is aware of the petitioner's assertion of economic hardship. If, therefore, the hearing officer wishes to grant a waiver under Section 26-172 (a) (2), the Planning office concurs with the LPC's recommendations for conditions on the issuance of the demolition permit.

Section Chief: 
KA:kra

c: Robert C. Scott, Landmarks Preservation Commission

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 1, 1998

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

SUBJECT: 1721 E. Joppa Road

INFORMATION

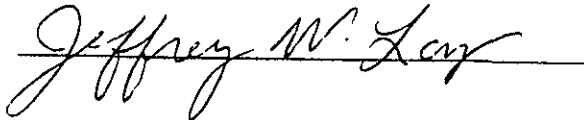
Item Number: 193
Petitioner: Scott Barhight
Zoning: BR
Requested Action: Special Hearing

RECOMMENDATIONS ON THE PROPOSAL – The property located at 1721 E. Joppa road is listed on the Maryland Historical Trust Inventory as "Baynesville School" (ca. 1914), No. BA 2870.

At their meeting on November 12, 1998, the Landmarks Preservation Commission agreed to recommend to the Hearing Officer that a waiver be issued. The LPC recommended that the demolition be conditioned on the submittal of photographic documentation, prepared to National Register standards as approved by the County Historian.

The Office of Planning does not believe that Section 26-172 (a) (1) would be the appropriate authority to allow demolition of this historic structure. The Office of Planning is aware of the petitioner's assertion of economic hardship. If, therefore, the hearing officer wishes to grant a waiver under Section 26-172 (a) (2), the Office of Planning concurs with the LPC's recommended conditions for issuance of the demolition permit.

Section Chief:



KA:kra

c: Robert C. Scott
Landmarks Preservation Commission

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: October 9, 1998

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

SUBJECT: 8012 Belair Road

INFORMATION

Item Number: 92
Petitioner: Stuart Kaplow
Zoning: BL-AS/DR 5.5
Requested Action: Special Hearing
Hearing Date: Tuesday, October 13, 1998

COMMENTS ON PROCEDURE - The petition requests a Special Hearing "to approve a waiver pursuant to Sections 26-171, 26-172(b), BCC of Sections 26-203(c)(8) and 26-278...." The first reference is incorrectly stated and the second two are inappropriate.

1. Section 26-171 lists the situations in which a proposed development qualifies for a complete exemption from the requirements in Division 2. A waiver might be granted (pursuant to the authority in Section 26-172) in conjunction with a finding of eligibility under Section 26-171, but a waiver could not be granted "pursuant to" the latter section.
2. Subsection 26-172(b) only authorizes waivers from the requirement that a development plan be submitted and be subject to approval through a Hearing Officer's hearing. It does not authorize a waiver from Section 26-278; that waiver could be granted only under the authority of Subsection 26-172(a). If the proposed construction must be subject to the development regulations at all, it should qualify for a limited exemption under Section 26-171, making the granting of a waiver under subsection 26-172(b) unnecessary.
3. Subsection 26-203(c)(8) is merely a requirement that, if the property is on one of the referenced lists, that information must be labeled on the development plan. If this particular property is processed through a limited exemption (instead of the 26-172(b) waiver), the matter is moot. Even if a development plan is somehow required, this waiver would be ineffectual because it merely deletes the information requirement; the waiver cannot change the fact that the property is on the list, which is the circumstance that would cause the need for compliance with Section 26-278.

MEMO TO: Arnold Jablon
DATE: October 9, 1998
SUBJECT: 8012 Belair Road
Page 2

92

RECOMMENDATIONS ON PROCEDURE - The Petition should be amended, at no prejudice or further cost of delay to the petitioner, to request an approval of a waiver from compliance with Section 26-278 if justified by the findings required to be made pursuant to subsection 26-172 (a) (1) or (2).

RECOMMENDATIONS ON THE PROPOSAL - The property located at 8012 Belair Road, called the "Hotel Fullerton", is listed on the Maryland Historical Trust Inventory as No. BA 2621. At their meeting on September 10, 1998, the Landmarks Preservation Commission recommended approval for the demolition of this structure.

The Office of Planning recommends approval of a waiver from compliance with Section 26-278 with the finding that compliance with these regulations would cause unnecessary hardship. The structure is in poor condition (the County has condemned the top floors of the structure), and has also been altered over the years to the extent that very little remains of the original historic fabric.

Section Chief:

Jeffrey W. Long

AFK:JL:KA:rlh

c: Robert C. Scott
Landmarks Preservation Commission

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: October 9, 1998

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

SUBJECT: 311 E. Pennsylvania Avenue

INFORMATION

Item Number: 93
Petitioner: Towson Properties
Zoning: BM-CT
Requested Action: Special Hearing

COMMENTS ON PROCEDURE - The petition requests a Special Hearing "to approve a waiver pursuant to Sections 26-171, 26-172(b), BCC of Sections 26-203(c)(8) and 26-278...." The first reference is incorrectly stated and the second two are inappropriate.

1. Section 26-171 lists the situations in which a proposed development qualifies for a complete exemption from the requirements in Division 2. A waiver might be granted (pursuant to the authority in Section 26-172) in conjunction with a finding of eligibility under Section 26-171, but a waiver could not be granted "pursuant to" the latter section.
2. Subsection 26-172(b) only authorizes waivers from the requirement that a development plan be submitted and be subject to approval through a Hearing Officer's hearing. It does not authorize a waiver from Section 26-278; that waiver could be granted only under the authority of Subsection 26-172(a). If the proposed construction must be subject to the development regulations at all, it should qualify for a limited exemption under Section 26-171, making the granting of a waiver under subsection 26-172(b) unnecessary.
3. Subsection 26-203(c)(8) is merely a requirement that, if the property is on one of the referenced lists, that information must be labeled on the development plan. If this particular property is processed through a limited exemption (instead of the 26-172(b) waiver), the matter is moot. Even if a development plan is somehow required, this waiver would be ineffectual because it merely deletes the information requirement; the waiver cannot change the fact that the property is on the list, which is the circumstance that would cause the need for compliance with Section 26-278.

MEMO TO: Arnold Jablon
DATE: October 9, 1998
SUBJECT: 311 E. Pennsylvania Avenue
Page 2

93

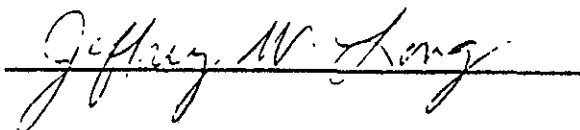
RECOMMENDATIONS ON PROCEDURE - The Petition should be amended, at no prejudice or further cost of delay to the petitioner, to request approval of a waiver from compliance with Section 26-278 if justified by the findings required to be made pursuant to subsection 26-172 (a)(1) or (2).

RECOMMENDATIONS ON THE PROPOSAL -

Special hearing (Case No. 99-93-SPH) involves a proposal for a demolition of MHT Inventory # BA 1722, "Bellview" (ca. 1850-1853). At their meeting on October 8, 1998, the Landmarks Preservation Commission unanimously recommended approval for the demolition of this structure, conditioned that the applicant submits photographic documentation of the structure, prepared to National Register standards and approved by the County Historian.

The Office of Planning recommends approval of a waiver from compliance with Section 26-278 with the finding that compliance with these regulations would cause unnecessary hardship. The structure is in poor condition and has lost the majority of its original historic fabric and decorative elements.

Section Chief:



AFK:JL:KA:rlh

c: Robert C. Scott
Landmarks Preservation Commission

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: September 17, 1998

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

SUBJECT: 6814 Belair Road

INFORMATION

Item Number: 68
Petitioner: Mass Transit Administration
Zoning: BL-CCC
Requested Action: Special Hearing
Hearing Date: Monday, September 21, 1998, 9:00 a.m.

COMMENTS ON PROCEDURE - The petition requests a Special Hearing "to approve a waiver pursuant to Sections 26-171, 26-172(b), BCC of Sections 26-203(c)(8) and 26-278...." The first reference is incorrectly stated and the second two are inappropriate.

1. Section 26-171 lists the situations in which a proposed development qualifies for a complete exemption from the requirements in Division 2. A waiver might be granted (pursuant to the authority in Section 26-172) in conjunction with a finding of eligibility under Section 26-171, but a waiver could not be granted "pursuant to" the latter section.
2. Subsection 26-172(b) only authorizes waivers from the requirement that a development plan be submitted and be subject to approval through a Hearing Officer's hearing. It does not authorize a waiver from Section 26-278; that waiver could be granted only under the authority of Subsection 26-172(a). If the proposed construction must be subject to the development regulations at all, it should qualify for a limited exemption under Section 26-171, making the granting of a waiver under subsection 26-172(b) unnecessary.
3. Subsection 26-203(c)(8) is merely a requirement that, if the property is on one of the referenced lists, that information must be labeled on the development plan. If this particular property is processed through a limited exemption (instead of the 26-172(b) waiver), the matter is moot. Even if a development plan is somehow required, this waiver would be ineffectual because it merely deletes the information requirement; the waiver cannot change the fact that the property is on the list, which is the circumstance that would cause the need for compliance with Section 26-278.

MEMO TO: Arnold Jablon
DATE: September 17, 1998
SUBJECT: 6814 Belair Road
Page 2

#68

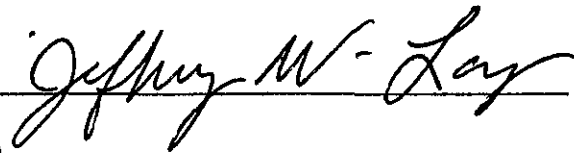
RECOMMENDATIONS ON PROCEDURE - The Petition should be amended, at no prejudice or further cost of delay to the petitioner, (a) to request a finding that the development qualifies for a limited exemption (Sec. 26-171) and (b) to achieve one of two alternatives, either:

1. A ruling that, on its merits, the proposed construction of the addition does comply with intent of the "must be preserved" requirement in Section 26-278; or
2. Approval of a waiver from compliance with Section 26-278 if justified by the findings required to be made pursuant to subsection 26-172 (a)(1) or (2).

RECOMMENDATIONS ON THE DEVELOPMENT - The property at 6814 Belair Road, called the "Overlea Bus Loop Waiting Station", is listed on the Maryland Historical Trust Inventory as BA No. 2772.

At their meeting on September 10, 1998, the Landmarks Preservation Commission recommended approval of the demolition and reconstruction plans for this station.

Section Chief:



AFK:JL:KA:rlh

c: Robert C. Scott, Chairman
Landmarks Preservation Commission

IN RE: DEVELOPMENT PLAN HEARING *	BEFORE THE
S/S White Marsh Road, N of Bucks	
Schoolhouse Road (Church Property) *	ZONING COMMISSIONER
14 th Election District	
6 th Council District *	OF BALTIMORE COUNTY
St. Peter's Lutheran Church *	Case No. XIV-392
of Fullerton, Owners;	
Prestige Development, Inc. *	
Contract Purchaser/Developer	

JUN 25

MEMORANDUM IN SUPPORT OF PETITION FOR SPECIAL HEARING

Prestige Development, Inc. ("Prestige"), Contract Purchaser/Developer, submits this Memorandum in support of its Petition for Special Hearing and requests the following relief: an amendment to the previously approved Development Plan and Order in Case Number XIV-392 to waive the requirement of Article 5, Division 4, "General Design Standards and Requirements," of the Baltimore County Zoning Code to permit the approved active H.O.A. open space to remain in its current undisturbed condition and be classified as passive H.O.A. open space and that the fee in lieu of providing active local space be waived. Also petitioner asks to permit grades of a portion of the passive open space to exceed 10%.

I. BACKGROUND

In the November 22, 2000 Order, the Zoning Commissioner approved the proposed Development Plan subject, inter alia, to the following conditions:

1. Developer shall be required to pay a fee to the County inasmuch as the open space provided does not meet Department of Recreation & Parks (R&P) standards. This fee shall be determined R&P in accordance with the Adequate Public Facilities Law and the Local Open Space Manual.
2. The Developer shall maintain the active open space and passive open space areas as shown on the Plan in their current, natural state. There shall be no clearing and/or grading of those areas.

It is undisputed that the open space set aside on the subject Development Plan meets the area requirements of the Development Regulations. Those Regulations, however, require active open space to be cleared and meet a specific grade. This area in question is presently wooded. As the hearing examiner noted,

“I am appreciative of the Developer’s perspective that the area of mature forest should be retained. This sentiment was indeed endorsed by those members of the community who are present... In my judgment, the area of active open space as proposed should remain in its natural state and not be further cleared and graded.”

Thus, all parties are in agreement that it is preferable and in the public interest that the area dedicated for open space remain in its nature condition.

Prestige could grade the open space in question, but for aesthetic reasons and in accordance with the wishes of the community, the developer proposes that this not be required. At the same time, the area is dedicated for open space and the developer has accepted the economic loss engendered but not utilizing that area for residential lots. County representatives present stated on the record that there is no physical reason that the grading requirement could not be complied with and that the Plan would then be in full compliance with the open space regulations.

Prestige filed a Motion for Reconsideration which was ruled upon on December 27, 2000. In his order, Mr. Lawrence E. Schmidt stated Prestige should be required to provide open space in accordance with the requirements of the Open Space Manual. If this open space was not provided, the fee which would be imposed under the Adequate Facilities law would be approximately \$33,000.00,¹ a substantial penalty for maintaining the land in its current natural state. Prestige requests this fee in lieu of providing active open space be waived due to the fact that open space is being provided (albeit not as

¹ 24,315 square feet x \$1.38 (attached fee schedule) = \$33,554.70.

active open space). Imposing this fee on a developer, would serve as a an illogical double penalty in that Prestige would be both providing open space and subject to a fine for not providing open space. Such a result would not be in keeping with the intention and purpose of the requirements contained in the Open Space Manual.

II. BALTIMORE COUNTY OPEN SPACE REQUIREMENTS ZONING ORDINANCES

A. Baltimore County Zoning Regulations require all subdivisions provide open space in their subdivision plan proposals.

Section 26 of the Baltimore County Code, Planning, Zoning, and Subdivision Control, outlines both the purpose of open space requirements in its regulations and the procedures by which a developer must comply with this open space requirement.

Section 26-207 states,

The purpose of providing for local open space tracts are to offer recreational opportunities close to home, **to enhance the appearance of neighborhoods through preservation of natural green spaces**, to counteract the effects of over congestion and monotony, and to encourage participation of all age groups in the use and care of local open space tracts in new residential subdivisions. Local parks, small recreation areas, and other small open spaces in a planned neighborhood pattern are intended to **conserve local spots of natural beauty**, to provide structure to the neighborhood design, to add to the sense of spaciousness, to encourage cooperative relationships between neighbors, to help promote the public health, safety, morals, and welfare of the people residing nearby, and to **aide in stabilizing property values**. (emphasis added)

Section 26-273 further provides that,

No plan for the proposed residential development of land shall be approved unless such plan provides for local open space parcels of suitable size, location, shape, and topography with convenient pedestrian access, such parcels to be incorporated in the design of the plan through (1) of the approved methods for applying lot allocation and design standards as set forth in the open space manual.

Baltimore County also provided these open space requirements of the Local Open Space Manual shall be adopted as County policy pursuant to Section 26-283(4) of the Baltimore County Zoning Code.

The Open Space Manual establishes the standards and procedures that guide the Department of Recreation & Parks ("the Department") in the creation and management of local open space and greenway systems in Baltimore County. Section III(B) of the open space manual defines active local open space and passive local open space. Section III(B)(6) states that active local space is,

an area suitable for interactive play, and/or for gatherings of 10 or more people, that are relatively flat, open, dry, and unencumbered by easements, outside of environmentally constrained areas. Grading shall be less than 4%.

Section III(7) defines passive open space as,

open or sparsely wooded areas with less than a 10% grade, suitable for non-interactive recreational uses, including walking, picnicking, or sitting.

The Local Open Space Manual also requires an applicant for a subdivision to provide a minimum of 1,000 square feet per dwelling unit of open space. This open space is further broken down into the first 650 square feet of the open space dedicated as active open space (in parcels not less than 20,000 square feet and located on the site of the development), and the remaining 350 square feet of open space may be dedicated as active or passive open space or a combination thereof.

Although Prestige has provided local open space in the amount of 24,000 square feet, this open space is characterized by an old growth forest which adds to the character and aesthetic value of the proposed subdivision. Prestige and the surrounding community believe it would be in the subdivision's best interests to maintain this open

space as it currently exists. Allowing this space to maintain its natural state would result in this parcel being defined as passive local open space by the Baltimore County Open Space Manual.

A waiver of this active to passive space ratio would best serve the public interest. Requiring roughly 65% of this passive local open space be cleared of its old growth forest to satisfy a general objective requirement for active local space would not be in keeping with the spirit and intent of the Open Space Manual. Therefore, Prestige asks that a waiver to the specific provision of Section III(D)(calculating local open space), be granted in order to preserve the natural state and aesthetic value of this old growth forest.

**III. WAIVER FROM SPECIFIC REQUIREMENTS OF BOTH THE ZONING CODE
AND THE OPEN SPACE MANUAL IS ALLOWED UNDER SECTION 26-172 OF
THE BALTIMORE COUNTY ZONING CODE.**

A. Baltimore County Code Waiver Provision.

Section 26-172 (Waivers) of the Baltimore County Code, provides:

- (a) At the request of a department director, the hearing officer may grant a waiver of any or all requirements of Division 3, 4, and 5 of these regulations if the hearing officer finds that:
 - (1) (a) the size, scope and nature of the proposed development does not justify strict compliance with these regulations;
 - (b) a waiver would be within the scope, purpose, and intent of these regulations; and,
 - (c) all other county laws, ordinances, and regulations have been complied with; or,
 - (2) compliance with these regulations would cause unnecessary hardship.
 - (3) a waiver shall be in accordance with the floodplain management regulations.

The previously listed open space provisions of the Planning, Zoning and Subdivision Control section of the Baltimore County Code (26-172, 26-273, and 26-283(4)) are all contained in Article 5, and as such, these requirements may be waived

under Section 26-172. Prestige does not request that all of the requirements be waived but rather only request that a waiver of the limited calculation employed in the Open Space Manual.

B. Prestige Fulfills the Requirements Necessary to Receive a Waiver of the Calculation Process of the Open Space Requirements.

Section 26-172(a)(1) contains three requirements necessary to be satisfied in order for a waiver to be considered for a subdivision. Prestige fulfills all three requirements outlined in this Section beginning with the primary requirement that, "the size, scope and nature of the proposed development does not justify strict compliance with these regulations." The purpose of Baltimore County's Open Space Manual is stated as "to enhance the appearance of neighborhoods through the preservation of natural green spaces," and "protect the visual integrity of the landscape." BALTIMORE COUNTY LOCAL OPEN SPACE MANUAL I(A), II(B)(*emphasis added*). Prestige, by preserving the natural foliage provided on this open space plot, is indeed both preserving the natural green spaces on the lot and protecting the visual integrity of the landscape in keeping with the intention of the Open Space Manual.

The importance placed on tree preservation has long been held by various legislatures to be worthy of laws promulgated to protect trees due to both environmental and zoning concerns.² Many communities recently have enacted stronger ordinances to protect existing trees and vegetation. See EDWARD H. ZIEGLER, JR., THE LAW OF ZONING AND PLANNING, 16-1, *et seq.* (4TH ED. 2000). Preserving such trees serves aesthetic, environmental and economic benefits for the subdivision and also the community at large. Maryland recognized the importance of tree preservation with its

² See, e.g. Review of Tree Preservation Ordinance
<http://www.ci.sunnyvale.ca.us/www2/downloads/1997-09/97-372.txt>.

enactment in 1991 of the country's first "tree bill," with extensive provisions requiring forest preservation and reforestation on both private and public lands. ANN. CODE OF MD., Tit. 5 §1606 (1991)(now codified as Section 14-405 of the Baltimore County Code).³

The benefits of tree preservation are readily apparent and quantifiable. Preserving trees adds to the beauty and appearance of neighborhoods which, although these benefits can be stated simply as aesthetic, can be demonstrated through more direct effects in the community. Trees benefit a subdivision by helping to break up the hard edges of buildings and walls, which aides to unify diverse architectural elements and create a formal pleasant pattern along streets. See. ZIEGLER, JR., at 16-8(4TH ED. 2000). Also, in keeping with the goals of the local open space manual, preserving trees creates a distinctiveness and special identity to the proposed subdivision by Prestige. See ZIEGLER, JR. at 16-10(4TH ED. 2000).

Among the environmental benefits to the community are maintaining soil erosion, providing water pollution control, providing wind breaks, and decreasing air pollution. ZIEGLER, JR. at 16-10-16(4TH ED. 2000). Economic values attributed to tree preservation are an increase in real estate values,⁴ savings in energy and water costs,⁵ and an overall increased quality of life.⁶ All of these factors together combine to illustrate that the nature of providing the original foliage on a small scale would not require strict compliance with the active/passive open space calculation.

³ This Bill provides a goal of "no net loss" of trees, and required that any development over a specified size must preserve a set percentage of trees on the property. Edward H. Ziegler, Jr., The Law of Zoning and Planning, 16-3(4th ed. 2000)

⁴ Numerous studies have been done that show conclusively that people are going to pay more for treed lots. See Ziegler, Jr. at 16-8(4th ed. 2000).

⁵ The City of Tucson, Arizona, for example, demonstrated that for every dollar spent to maintain trees, \$2.62 worth of benefits were returned in the form of energy savings, dust reduction, and the slowing of stormwater runoff. ZIEGLER, JR. at 16-19(4TH ED. 2000).

⁶ A study recently revealed that trees were viewed by residents as one of the most important contributors to the city's quality of life. Ziegler, Jr. at 16-20(4th ed. 2000).

When analyzing the second prong that a waiver would be within the scope, **purpose**, and **intent** of these regulations we must first look at the stated intent and purpose contained in the local open space manual. Stated previously, the goal within the Manual is clearly defined as “preservation of natural green spaces; to counteract the effects of urban congestion and monotony” and “to promote design that is visually attractive and enhances the sense of community.” The Baltimore County Code Section on Planning, Zoning and Subdivision Control also emphasizes similar purpose for providing open space. Section 26-272 provides open space serves “to enhance the appearance of neighborhoods through preservation of **natural green spaces**, to counteract the effects of urban congestion and monotony, ... [and] **conserve** local spots of natural beauty.” These values placed on providing open space are also emphasized in Article 5 of Section 26-135 “Development Regulations, Purposes” of the Baltimore County Code where it is provided open spaces are necessary:

- (9) To encourage the wise use and management of natural resources throughout the county in order to **preserve the integrity, stability, and beauty of the community and the value of property.**
- (10) **To preserve the natural beauty and topography** of the county and to ensure appropriate development with regard to these **natural features.**
- (11) To provide for open spaces in order to offer recreational opportunities close to home.
- (12) To enhance the appearance of neighborhoods **through the preservation of natural green spaces.**

Baltimore County Code Section 26-167. (*emphasis added*)

Therefore, clearing these trees, rather than preserving them, to maintain an arbitrary ratio of active versus passive land space would counteract the purpose and intent of not only the open space manual, but also the Baltimore County Code. Clearing this forest would not only destabilize the natural scenic environmental stability of the neighborhood, but also would deprive many potential homeowners an amenity they

were drawn to when purchasing their homes. Furthermore, imposing a fee in lieu of providing this active open space also can be seen to transgress the intention of the statute for developers to provide open space. This fee is intended to be imposed where a developer can not realistically comply with the open space requirements and is not intended to penalize a developer for preserving the existing natural open landscape.

The final prong of the first requirement of Section 26-172, "that all other county laws, ordinances, and regulations have been complied with," has also been satisfied by Prestige. As stated in the hearing officer's Opinion of the Development Plan Order dated November 22, 2000, "I found the Plan passes muster on the Development Review Regulations." No other deficiencies with the presented Plan have been presented to Prestige. Therefore, the subdivision has fulfilled all necessary legal requirements established by the Baltimore County Code and the only point of contention for the subdivision is the specific requirement from which Prestige requests a waiver.

C. Undue Hardship Will Be Encountered by Prestige Development and Prestige has Satisfied of Floodplain Requirements.

Without a waiver, Prestige will be required destroy the natural forest growth classified as passive open space. This presents an undue hardship for Prestige, as this old growth forest is the amenity which many homebuyers find most appealing about their new neighborhood. Clearing the forest would present undue hardship by removing a valuable resource and an essential component of the development. Furthermore, once these trees are cleared, they can not be easily replaced.

This development does not exist in a floodplain and as such the floodplain requirements have been satisfied.

D. Similar Waivers Have Been Provided For in Lieu of Fulfilling Other Zoning Requirements.

Baltimore County Code Section 14-155 provides for a waiver from stormwater management requirements stating:

The Director of the Department of Environmental Protection and Resource Management or his designated representative may grant a waiver of the stormwater management requirements for the individual developments.

Similar types of waivers are allowed for other development requirements of the Baltimore County Code. These waivers include exemption from standards dealing with floodplain management (26-670), individual water supplies (35-39), forest conservation (14-405), PUD development plans (26-206), and historic landmarks (26-540). Allowing a waiver in this circumstance from a specific provision of a Local Open Space Manual of Baltimore County would be in keeping with equitable remedies provided to developers from fulfilling requirements of the zoning code that would not beneficially impact a community.

**II. ALLOWING A WAIVER WOULD BE IN KEEPING WITH THE MARYLAND DECISIONS REGARDING
OPEN SPACE REQUIREMENTS WITHIN A SUBDIVISION**

In *City of Annapolis v. Waterman*, 357 Md. 484, 745 A.2d 1000 (2000), the Court of Appeals dealt with a similar land dedication for open space required by the Baltimore County Open Space Manual by a subdivision developer. In dealing with this open space dedication, the Court of Appeals broke down open space dedication into two distinct entities; a subdivision exaction and a subdivision reservation.

The Court explained a subdivision exaction typically takes two forms: (1) a statutory dedication, or (2) a payment in fee in lieu of such dedication.⁷ The Court distinguished the exactions by stating that these dedications, “Ordinarily involve the conveyance of an interest of land by the fee owner *to the public*; usually to a local government having jurisdiction over the land. See Waterman *supra* at 506, 745 A.2d at 1011 (*emphasis in original*).

The Court went on to state, “reservation, on the other hand, involves no conveyance but restricts the right of a subdivider and others to use the land for anything but the restricted purpose.” *Id.* Therefore, if the land is not dedicated for a public use but simply limits the subdivider’s use in the land as existing only as open space, the Court of Appeals would call this dedication a reservation or a subdivision requirement. The legality of any open space requirement depends on the nature of the dedication of land. This distinction focuses between use of the land by the public in general, or merely to members of the subdivision with limits on its use.

This distinction by the Court of Appeals is important because the justification required by a government entity to require a dedication/exaction differs from the justification necessary for a reservation/condition. The subdivision dedication or “fee in lieu” is a form of exaction and is subject to the two-part Nolan/Dolan exaction test handed down from the Supreme Court.⁸ This test requires any exaction to have, (1) an “essential nexus” to a legitimate state interest; and (2) be “roughly proportionate” to the projected impacts of the proposed development of the community. A subdivision

⁷ These land dedications are for providing local open space in the form of recreational space to a subdivision.

⁸ Nolan v. California Coastal Comm’n, 43 U.S. 825, 107 Sup. Ct. 3141 (1987); Dolan v. City of Tigard, 512 U.S. 374, 114 Sup. Ct. 2309 (1994).

condition, on the other hand, is subject to the two part Lucas test⁹ of (1) whether a public purpose exists and, if so, (2) whether the regulation or condition deprives the owner of all viable economic use of the property at issue. It seems as though the Open Space Manual only requires a subdivider to set aside the required space as an open space and not dedicate this land to an overall public use. This type of subdivision condition would seem logically to employ the Lucas test. However, the “fee in lieu” of fulfilling this requirement outlined in Section III(H) of the Open Space Manual classify this type of dedication as an exaction/dedication of land which needs to satisfy the two part Nolan/Dolan test.

The “fee in lieu” of dedication of open land existing as an exaction was made clear by the Supreme Court of California in Ehrlich v. City of Culver City, 12 Cal. 4th 854, 911 P.2d 429, 50 Cal. Rep. 2nd 242 (1996). In Ehrlich, the Court also dealt with a land dedication of open space or payment in lieu of dedicating the land. *See Ehrlich supra*. Although the land was not being dedicated to the public, the California Supreme Court employed the Dolan/Nolan test because it likened the “fee in lieu” of dedication as a monetary exaction similar to a property exaction in that the funds received went to the public as whole. Therefore, although the land itself was not dedicated to the public, the fact that the funds were being held for public acquisition of future lands characterized the fee in lieu as an exaction type taking. *See Ehrlich* at 433, 50 Cal. Rep. 2nd at 246.

The Waterman court also recognized this fee in lieu would rise the requirement to an exaction in its statement, “A subdivision dedication exaction requires the developer to give the public a right to use a portion of this property or **gives one of the incidents**

⁹ Lucas v. South Carolina Coastal Council, 112 Sup. Ct. 2886 (1992).

of ownership (e.g., and “in lieu” fee) to the public at large to use.” Waterman at 506-7, 745 A.2d at 1011. (emphasis added).

This type of payment requirement in the Open Space Manual is in fact an exaction under Maryland law, and, therefore, must be roughly proportionate to the projected impacts on the community in order to satisfy the Nolan/Dolan test. The Open Space Manual reaffirms this is a standard guiding the amount of payment in Section III(H)(2) when it states the fee should be **reasonably proportionate** to offset the costs to the county. Also, the Manual further provided these payments (fee in lieu) shall be spent only for the acquisition and development of local open space parcels. In Prestige’s circumstances, open space has already been provided by Prestige thereby eliminating the necessity for the county to require any additional open space. This open space exists, and will remain to exist as open space, albeit not as active open space as defined by the Baltimore County Local Open Space Manual.

A waiver of this \$33,000.00 fee imposed on Prestige would satisfy the Nolan/Dolan test as this fee would not be “roughly proportionate” to the community impact, as no new open space is required to be purchased, having been provided by Prestige. In fact this fee in lieu of dedication imposed by the open space manual would, in the instant case, be totally irrational when looking at the purpose of the regulation itself. If this fee were to be incorporated, Prestige would have both provided open space, and paid a fee in lieu of providing such space. This fee is only to be imposed when a developer has not and can not provide the adequate open space within the development. As stated previously, Prestige is dedicating over 24,000 square feet for open space, thus imposing a fee seems to be unnecessarily penalizing Prestige twice.

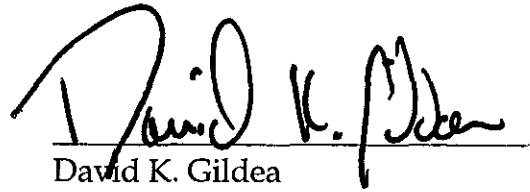
Therefore, this fee would not be roughly proportionate to any needs of the public and such a fee would exist as an unjust taking by the County going against the legality of such open space provisions handed down from the Supreme Court.

CONCLUSION

Prestige Development, Inc., requests a waiver from the "General Design Standards and Requirements" of the Baltimore County Zoning Code to permit the open space provided in the subdivision to remain in its current undisturbed condition with grades in certain portions exceeding 10%. Waivers of the type requested are provided for by Section 26-172 and is in keeping with similar equitable relief allowed from development requirements. Allowing this open space to remain as passive open space would provide aesthetic, environmental and economic benefits to the both the subdivision and the community at large. Allowing for this waiver would also satisfy the intent and goals of the open space requirements of Baltimore County by preserving the natural green spaces of the subdivision and allowing home purchasers to appreciate this valuable amenity to the neighborhood. This waiver from the "fee in lieu" would satisfy the requirements necessary for a jurisdiction to impose open space requirements established by the Supreme Court of the United States and affirmed by the Maryland Court of Appeals. This relief is requested in order to provide Baltimore County, Prestige Development and the affected community the most efficient resolution in fulfilling open space requirements.

WHEREFORE, Prestige Development, Inc. asks for a waiver from the requirement of Division 4 (General Design Standards & Requirements); to permit the approved active H.O.A. open space to remain in its current undisturbed condition and be classified as passive H.O.A. open space shown on the Plat to Accompany Petition for

Special Hearing; and to permit grades of a portion of the passive H.O.A. open space to exceed 10%.

A handwritten signature in black ink, appearing to read "David K. Gildea", written over a horizontal line.

David K. Gildea
Sebastian A. Cross
Gildea, LLC
301 North Charles Street
Suite 800
Baltimore, Maryland 21201
(410)234-0070

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of June, 2001, a copy of the foregoing Memorandum in Support for Special Hearing was hand delivered to Lawrence E. Schmidt, Zoning Commissioner for Baltimore County, Suite 405, County Courts Building, 401 Bosely Avenue, Towson, Maryland 21204. A copy was also mailed, first-class, postage paid to, St. Peter's Lutheran Church of Fullerton, 7910 Belair Road, Baltimore Maryland, 21236; Ronald Blavatt, Esquire, 210 N. Charles Street, Baltimore Maryland, 21202; Mr. And Mrs. Michael Reynolds, 18 Perry Ridge Court, Baltimore, Maryland, 21237; Mr. Tom Seymour, 7719 Babikow Road, Baltimore, Maryland, 21237; Ms. Peggy Winchester, 5012 Shirleybrook, Baltimore, Maryland, 21237; Mr. Joe Bourne, 16 Perry Ridge Court, Baltimore, Maryland, 21237; Ms. Mary Tyner, 4716-A White Marsh Road, Baltimore, Maryland, 21237; Ms. Jack Dieter, 5026 White Marsh Road, Baltimore, Maryland 21237, and Ms. Christine K. Rorke, Project Manager, Department of Permit and Development Management, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

A handwritten signature in black ink, appearing to read 'S. Cross', written over a horizontal line.

Sebastian A. Cross



Baltimore County
Office of Law

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

July 3, 2001

Via Facsimile

Lawrence E. Schmidt, Esq.
Zoning Commissioner for Baltimore County
Suite 405 County Courts Building
401 Bosley Avenue
Towson, MD 21204

RE: Special Hearing (Church Property)
Prestige Development, Inc., Contract Purchasers/Developer
Case No. XIV - 392

Dear Commissioner Schmidt:

Thank you for the opportunity to file a memorandum concerning the above referenced property. It is our understanding from the Department of Recreation and Parks that the deadline for filing a memorandum is July 6, 2001. The Baltimore County Office of Law is currently in the process of preparing a brief in this case. We would respectfully request that we be granted additional time to file and would like to have until Friday, July 13, 2001 to do so.

Thank you for your consideration of this matter. If you have any questions, I can be reached at (410) 887-4420.

Sincerely,


Amanda Stakem Conn
Assistant County Attorney

cc. David K. Gildea, Esq.
Jean Tansey
Jan Cook



IN RE: DEVELOPMENT PLAN HEARING	*	BEFORE THE
S/S White Marsh Road, N of Bucks		
Schoolhouse Road (Church Property)	*	ZONING COMMISSIONER
14 th Election District		
6 th Council District	*	OF BALTIMORE COUNTY
St. Peter's Lutheran Church	*	Case No. XIV-392
of Fullerton, owners:		
Prestige Development, Inc.	*	
Contract Purchaser/Developer		

311 13

**BALTIMORE COUNTY'S RESPONSE TO PRESTIGE'S
MEMORANDUM IN SUPPORT FOR SPECIAL HEARING FILED JUNE 25, 2001**

The Motion for Reconsideration was filed by Prestige Development, Inc. ("Prestige") on December 27, 2000. The Hearing Officer ruled on December 27, 2000 that:

The Developer shall be required to provide areas of open space acceptable to the Department of Recreation and Parks, in accordance with the requirements contained in the presently enacted Open Space Manual.

The Hearing Officer should uphold his December 27, 2000 ruling as we will explain.

Prestige is prohibited by the Baltimore County Code and the Local Open Space Manual from paying a fee to the local open space account in lieu of dedicating the active open space.¹ Section 26-498 provides for the circumstances when a fee may be paid:

- (d) Unless the development is adjacent to a county or state park, if the residential development contains 20 or fewer dwelling units, an applicant may pay a fee to the local open space revenue account instead of dedicating the first 650 square feet as required in subsection (c)(2) of this section.
- (e) (1) The department of recreation is adjacent to a county or state park, if the residential development contains 20 or fewer dwelling units, an applicant may pay a fee to the local open space revenue account instead of dedicating the first 650 square feet as required in subsection (c)(2) of this section if:
 - (i) the development is located in a CT district, a RAE zone or the development is an elderly housing facility as defined in the zoning regulations or dormitories for the housing of not less than 50 students attending an accredited higher education institution; and

¹The County Council adopted the Local Open Space Manual on February 22, 2000.

- (ii) the department of recreation and parks determines that there is no suitable land to meet the open space requirements.

The Local Open Space Manual contains the same requirements for fees. See Local Open Space Manual Section H. p. 8.

None of these circumstances exist which would allow Prestige to pay a fee in lieu of providing the active open space since the subdivision contains more than 20 units and it is not located in a CT district or a RAE zone.² The Hearing Officer recognized that Prestige does not qualify for the payment of a fee when he rescinded his original Order that required Prestige to pay a fee in lieu of providing the active open space that meets the requirements of the Adequate Public Facilities Law ("APFL"), open and not less than a 4% grade, if Prestige wanted to leave the 24,000 square foot parcel that they want to dedicate as active open space in its natural wooded state.

In their Memorandum in support of the Petition for Special Hearing, Prestige has requested a waiver of the active to passive open space ratio. Memorandum at p. 5. Indeed, they request that 24,000 square feet that they intend to dedicate as active open space not be required to meet the requirements of active open space – open, dry and unencumbered and grading of not less than 4% and be classified as passive open space. §26-498(a)(2). In other words, Prestige wants to be relieved of the requirement to provide active open space on the property.

The Hearing Officer does not have the authority to waive the amount of active open space required nor does he have the ability to alter the ratio of active open space to passive open space required. Neither APFL nor the Local Open Space Manual allow for such a waiver. For that matter, the Department of Recreation and Parks does not have the authority to grant the waiver requested by Prestige. If the County Council intended to vest such power in the Hearing Officer or the Department, they would have granted the Officer or the Department the authority to do so in the statute. It is clear from the APFL and the Manual that the circumstances under which waivers and the payment of fees can be granted is very limited.

For example, the Department is granted the authority under §26-498 to waive the amount of passive open space required if there is no suitable land available but there is no corresponding waiver for active open space. Indeed, when a statute expresses a general rule, here, that active open space must be provided, followed by one or more exceptions, §26-498(d) and (e) stated above, then a court cannot add to that list of exceptions. *Taylor v. Friedman*, 344 Md. 572, 689 A.2d 59, 63 (1997). Thus, the Hearing Officer does not have the statutory authority to grant the relief requested by Prestige.

Prestige then argues in the Memorandum that a waiver can be granted under §26-172 and the Memorandum outlines how Prestige believes it fulfills the requirements for a waiver under this section. The Hearing Officer also does not have the authority to waive the open space requirements

²The Church property is located in a density residential zone.

under §26-172 of the Baltimore County Code, because this section does not apply to this case. The relevant part of §26-172 provides:

(a) *At the request of a department director*, the hearing officer may grant a waiver of any or all requirements of *division 3, 4 and 5* of these regulations if the hearing officer finds that:

- (1) a. The size, scope and nature of a proposed development does not justify strict compliance with these regulations;
- b. A waiver would be within the scope, purpose and intent of these regulations; and
- c. All other county laws, ordinances and regulations have been complied with; or
- (2) Compliance with these regulations would cause unnecessary hardship.
- (3) A waiver shall be in accordance with the flood plain management regulations.

Emphasis added.

First, a "department director" has not requested a waiver of the local open space requirements. John Weber, the director of the Department of Recreation and Parks, has not requested a waiver nor has any other department director. Prestige, the developer, has requested the waiver. Thus, the predicate for the use of a waiver under §26-172 does not exist since Prestige is not a "department director."³

Second, the specific requirements of open space are found in Article IX of Title 26 of the Baltimore County Code. Section 26-172 states that the hearing officer may grant a waiver of any or all of the requirement of "division 3, 4, and 5" of these regulations. See Attached table of contents for Title 26. Divisions 3, 4, and 5 are found in Article V of Title 26. As a result, the active open space requirements found in §26-498(c) may not be waived under §26-172 since they are not found in Article V, Divisions 3, 4, and 5. Prestige cites §§26-273 as a section concerning open space in these Divisions that may be waived. Section 26-273 does not relate to the specific open space requirements such as the amount of square feet that must be provided and the physical requirements that land must meet before being classified as open space. This section simply provides that a development plan may not be approved unless it provides for open space parcels to be incorporated in the plan design. Moreover, the second section that Prestige cites, §26-283(4), delegates to the Department the authority to prepare the Local Open Space Manual. The mere reference to the

³The acceptance of the petition for a special hearing, the scheduling of the hearing or the filing of any comments by a department or any other administrative procedure relating to the special hearing does not constitute a "request of a department director." Only an affirmative statement on the record or a written document by a department director requesting a waiver satisfies the requirements of 26-172. Neither of those has occurred.

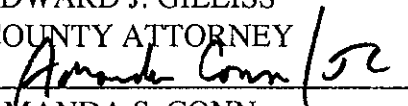
Manual in this section does not make the entire manual subject to the waiver provision. Indeed, the specific requirement for local open space found in §26-498 and the Local Open Space Manual prevail over any general statement about open space found in Divisions 3, 4, and 5. *See Prince George's County v. Fitzhugh*, 308 Md. 384, 519 A.2d 1285, 1289 (1987) (specific terms of a statute covering a given subject matter prevail over general language on the same subject in another statute).

The bottom line is that Prestige must comply with the requirements of the APFL and the Manual i.e., Prestige will have to grade the 24,000 square foot parcel that they currently intend to use to meet the active open space parcels regardless of the price or they can use other property that they planned for homes to meet the active open space requirement and build the homes on the current wooded 24,000 square foot parcel set aside for open space.⁴ To authorize a waiver of the active open space requirement would be contrary to the intent of the County Council which wanted to "employ [local open space] parcels to provide sites suitable for limited 'close to home' active recreational use." Local Open Space Manual at Section B. p. 2.

Finally, Prestige invokes *City of Annapolis v. Waterman*, 357 Md. 484, 745 A.2d 1000 (2000), see Prestige's memo at 10. Prestige treats the Hearing Officer to a disquisition on its binding him to grant a waiver. Id. at 10-14. Given that the Hearing Officer is powerless to grant the waiver that Prestige requests, discussion of *Waterman* is unnecessary.

Respectfully submitted,

EDWARD J. GILLISS
COUNTY ATTORNEY


AMANDA S. CONN

Assistant County Attorney
400 Washington Avenue, Room 219
Baltimore, MD 21204
410-887-4420

Attorney for Baltimore County, Md.

⁴Jan Cook of the Department of Recreation and Parks advised Prestige on June 12, 2000 at the concept plan conference and again on October 18, 2000 at the development plan conference that the wooded parcel they proposed to set aside as active open space would not meet the requirements of the statute and Manual and suggested that they use lots 4, 5, and 6 to meet the active open space requirement because these lots could be easily graded along with the adjacent roadway. It is clear from the final development plan and their request for a Special Hearing that Prestige continually has ignored that advice.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of July, 2001, a copy of Baltimore County's Response to Prestige's Memorandum in Support for Special Hearing Filed June 25, 2001, was sent via First Class U.S. Mail, postage prepaid, to:

St. Peter's Lutheran Church of Fullerton
7910 Belair Road
Baltimore, MD 21236

Ronald Blavatt, Esquire
210 N. Charles Street
Baltimore, MD 21202

Mr. and Mrs. Michael Reynolds
18 Perry Ridge Court
Baltimore, MD 21237

Mr. Tom Seymour
7719 Babikow Road
Baltimore, MD 21237

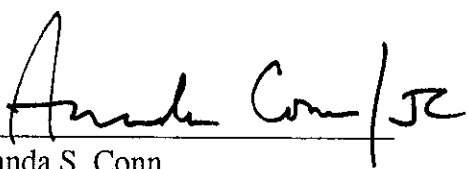
Ms. Peggy Winchester
5012 Shirleybrook
Baltimore, MD 21237

Mr. Joe Bourne
16 Perry Ridge Court
Baltimore, MD 21237

Ms. Mary Tyner
4716-A White Marsh Road
Baltimore, MD 21237

Mr. Jack Dieter
5026 White Marsh Road
Baltimore, MD 21237

Ms. Christine K. Rorke
Project Manager
Department of Permit and Development
Management
111 W. Chesapeake Avenue
Towson, MD 21204


Amanda S. Conn

Title 26

PLANNING, ZONING AND SUBDIVISION CONTROL*

Article I. In General

- Sec. 26-1. Definitions.
- Sec. 26-2. Office of planning and community conservation.
- Sec. 26-3. Director of planning; deputy director of planning; zoning commissioner; deputy zoning commissioner; director of community conservation.
- Secs. 26-4—26-30. Reserved.

Article II. Planning Board

- Sec. 26-31. Meetings; rules of procedure.
- Sec. 26-32. Powers and duties generally; reimbursement of expenses.
- Sec. 26-33. Reference of matters to planning board by county executive or county council.
- Sec. 26-34. Recommendation of planning board advisory only.
- Sec. 26-35. Additional powers.
- Sec. 26-36. Authority to contract with consultants; assistance from other departments.
- Secs. 26-37—26-65. Reserved.

Article III. Planning

Division 1. Generally

- Sec. 26-66. Effect of proposals in master plan on applications for building permits or for approval of preliminary subdivision plans.
- Secs. 26-67—26-80. Reserved.

Division 2. Master Plan

- Sec. 26-81. Procedure for adoption; general purpose.
- Sec. 26-82. Scope.
- Sec. 26-83. Matters to be considered in preparation.
- Sec. 26-84. Coordination of development of county.
- Sec. 26-85. Action on specific projects.
- Secs. 26-86—26-115. Reserved.

Article IV. Zoning

- Sec. 26-116. Powers of county.
- Sec. 26-117. Validation of existing zoning regulations.
- Sec. 26-118. Record and copies of rules, regulations, etc.; certified copies of rules, etc., as evidence.
- Sec. 26-119. Penalty for violation of regulations, etc.
- Sec. 26-120. Injunctive proceedings.
- Sec. 26-121. Civil penalty for zoning violations.

***Charter references**—Office of planning and zoning, § 522 et seq.; people's counsel to defend master plan, zoning, etc., § 524.1.

Cross references—Aviation commission to advise planning and zoning authorities, § 2-331; advertising and signs, tit. 3; buildings and building regulations, tit. 7; community development, tit. 9; recording of plats by the clerk of the circuit court, § 11-87; environmental protection and resource management, tit. 14; housing, tit. 18; roads, bridges and sidewalks, tit. 31; solid waste, tit. 32; water and sewers, tit. 35.

State law references—Planning and zoning generally, Ann. Code of Md. arts. 25A, § 5(X); 66B.

BALTIMORE COUNTY CODE

- Sec. 26-122. Division of county into districts, etc.; uniformity of regulations.
- Sec. 26-123. Preparation of zoning regulations, zoning maps and growth allocation procedure.
- Sec. 26-123.5. Comprehensive zoning map process fees.
- Sec. 26-124. Action by county council on adoption of zoning regulations and zoning maps and Chesapeake Bay Critical Area map procedures.
- Sec. 26-125. County council action on regularly revised zoning map.
- Sec. 26-126. Planning board reports.
- Sec. 26-127. Authority of zoning commissioner to provide for special exceptions and variances.
- Sec. 26-128. Files on zoning commissioner's hearing proceedings; basis of zoning commissioner's decision.
- Sec. 26-129. Review of zoning commissioner's decisions by board of appeals.
- Sec. 26-130. Zoning commissioner's docket.
- Sec. 26-131. Books and papers.
- Sec. 26-132. Appeals to county board of appeals.
- Sec. 26-133. Appeals from the county board of appeals.
- Sec. 26-134. Correction of zoning map.
- Sec. 26-135. Authority of director of permits and development management.
- Secs. 26-136--26-165. Reserved.

Article V. Development Regulations

Division 1. Generally

- Sec. 26-166. Development policies.
- Sec. 26-167. Purposes.
- Sec. 26-168. Definitions.
- Sec. 26-169. Scope of regulations.
- Sec. 26-170. General exemption.
- Sec. 26-171. Limited exemptions.
- Sec. 26-172. Waivers.
- Sec. 26-173. Transfer of land in unapproved or expired subdivision.
- Sec. 26-174. Recording unapproved plat.
- Sec. 26-175. Enforcement and remedies.
- Sec. 26-176. Failure of county agency to act.
- Sec. 26-177. Fees.
- Sec. 26-178. Rules of procedure.
- Sec. 26-179. Delinquent accounts.
- Sec. 26-180. Compliance with other laws and regulations.
- Sec. 26-181. Code references.
- Secs. 26-182--26-200. Reserved.

Division 2. Development Review and Approval Process

- Sec. 26-201. General provisions.
- Sec. 26-202. Preparation of the concept plan.
- Sec. 26-203. The development plan.
- Sec. 26-204. Preliminary review.
- Sec. 26-205. County review.
- Sec. 26-206. Development plan approval.
- Sec. 26-206.1. Combined zoning and plan approval hearing.
- Sec. 26-207. Referral to planning board.
- Sec. 26-208. Procedure before planning board.
- Sec. 26-209. Appeals from final action on a plan.
- Sec. 26-210. Expiration of plan approval.
- Sec. 26-211. Amendments to plan.
- Sec. 26-212. Public works agreement to conform to plan.
- Sec. 26-213. Plat—Required.

PLANNING, ZONING AND SUBDIVISION CONTROL

- Sec. 26-214. Same—Requirements for approval and recordation.
- Sec. 26-215. Same—Procedure for approval.
- Sec. 26-216. Time limit for validity of subdivision plats.
- Sec. 26-217. Extension of time limit for validity of subdivision plats and approved plans.
- Sec. 26-218. Development management.
- Sec. 26-219. Baltimore County design review panel.
- Sec. 26-220. Exchange of fee simple real property and easements.
- Secs. 26-221—26-235. Reserved.

Division 3. Public and Private Improvements

- Sec. 26-236. Regulations.
- Sec. 26-237. Obligations of applicant.
- Sec. 26-238. County participation.
- Sec. 26-239. Public works agreement required, waiver.
- Sec. 26-240. Public works agreement.
- Sec. 26-241. Construction of improvements.
- Sec. 26-242. Completion of public improvements.
- Sec. 26-243. Private improvements; security.
- Sec. 26-244. Deferral of public improvements.
- Sec. 26-245. Nonperformance.
- Sec. 26-246. Fees and assessments for privately financed utilities; notice.
- Sec. 26-247. Notice.
- Sec. 26-248. Security
- Sec. 26-249. Reduction of security.
- Secs. 26-250—26-260. Reserved.

Division 4. General Design Standards and Requirements

- Sec. 26-261. Compliance.
- Sec. 26-262. Street system.
- Sec. 26-263. Street design and construction.
- Sec. 26-264. Parking, signs, benches and transit facilities.
- Sec. 26-265. Pedestrian and bicycle paths.
- Sec. 26-266. Panhandle driveways.
- Sec. 26-267. Water supply.
- Sec. 26-268. Sewerage.
- Sec. 26-269. Drainage
- Sec. 26-270. Other utilities.
- Sec. 26-271. Open space
- Sec. 26-272. Purposes of open space.
- Sec. 26-273. Plans for open space.
- Sec. 26-274. Landscaping.
- Sec. 26-275. Grading and sediment control.
- Sec. 26-276. Floodplain and wetland protection.
- Sec. 26-277. Slope protection and soils.
- Sec. 26-278. Preservation of natural or historic features.
- Sec. 26-279. Street layout generally.
- Sec. 26-280. Names of development and streets.
- Sec. 26-281. Designated areas.
- Sec. 26-282. Compatibility
- Sec. 26-283. Adoption of development manuals.
- Secs. 26-284—26-300. Reserved.

Division 5. Reclamation of Property

- Sec. 26-301. Reclamation development plan.
- Sec. 26-302. Prefiling conference.
- Sec. 26-303. Planning board action.

BALTIMORE COUNTY CODE

- Sec. 26-304. Amendments, renewals.
- Sec. 26-305. Use and development of reclamation property.

Division 6. Planned Unit Developments

- Sec. 26-306. Review
- Sec. 26-307. Annual review of PUD-C map; applicability.
- Secs. 26-308—26-365. Reserved.

Article VI. Reserved

- Secs. 26-366—26-400. Reserved.

Article VII. Commercial District Management Authorities

- Sec. 26-401. Definitions.
- Sec. 26-402. Creation.
- Sec. 26-403. License fees.
- Sec. 26-404. Prohibitions.
- Secs. 26-405—26-435. Reserved.

Article VIII. Chesapeake Bay Critical Area Requirements

- Sec. 26-436. Legislative findings.
- Sec. 26-437. Purposes.
- Sec. 26-438. Definitions.
- Sec. 26-439. Official critical area map.
- Sec. 26-440. Purpose and intent of overlay areas
- Sec. 26-441. Scope of regulations.
- Sec. 26-442. Critical area findings and plan requirements or critical area projects.
- Sec. 26-443. Plats and protective covenants.
- Sec. 26-444. Management requirements and building setbacks for critical area resources.
- Sec. 26-445. Scope and applicability of design requirements.
- Sec. 26-446. Clustering.
- Sec. 26-447. Nontidal and tidal wetlands
- Sec. 26-448. Nontidal wetland protection.
- Sec. 26-449. Buffers.
- Sec. 26-450. Cutting trees or vegetation in the buffer.
- Sec. 26-451. Habitat protection areas
- Sec. 26-452. Development in intensely developed areas.
- Sec. 26-453. Development in limited development area, RC-20 and RC-50 zones.
- Sec. 26-454. Water-dependent facilities.
- Sec. 26-455. Piers, boathouses and nonwater-dependent structures.
- Sec. 26-456. Structures on piers.
- Sec. 26-457. Shore erosion protection works.
- Sec. 26-458. Approval of permits.
- Sec. 26-459. Enforcement.
- Sec. 26-460. Civil penalties.
- Sec. 26-461. Appeals.
- Sec. 26-462. Criminal penalties.
- Sec. 26-463. Liability for expenses caused by violation.
- Sec. 26-464. Additional remedies for violation.
- Secs. 26-465—26-490. Reserved.

PLANNING, ZONING AND SUBDIVISION CONTROL

Article IX. Adequate Public Facilities

- Sec. 26-491. Legislative intent.
- Sec. 26-492. Definitions
- Sec. 26-493. Overcrowded school districts.
- Sec. 26-494. Transportation.
- Sec. 26-495. Water.
- Sec. 26-496. Sewer.
- Sec. 26-497. Storm water management.
- Sec. 26-498. Recreational space.
- Sec. 26-499. Conditional development approval.
- Sec. 26-500. Fees appeals.
- Secs 26-501—26-530. Reserved.

Article X. Historical and Architectural Preservation

- Sec 26-531. Definitions.
- Sec. 26-532. Purpose.
- Sec. 26-533. Landmarks preservation commission—Composition
- Sec. 26-534. Same—Term; initial appointments.
- Sec. 26-535. Same—Vacancies.
- Sec 26-536. Same—Officers.
- Sec. 26-537. Same—Reimbursement of expenses; assistance from other departments
- Sec. 26-538. Same—Meetings; quorum; records.
- Sec. 26-539. Creation of historic districts.
- Sec. 26-540. Compilation and maintenance of landmarks list; removal therefrom.
- Sec. 26-541. Action by commission on changes to county-owned structures
- Sec. 26-542. Permit required for changes to designated privately owned structures.
- Sec. 26-543. Demolition by neglect.
- Sec. 26-544. Action by commission on changes to privately owned structures—Building engineer to refer applications to commission.
- Sec. 26-545. Same—Certificate of appropriateness or notice to proceed required.
- Sec. 26-546. Same—Public hearing.
- Sec. 26-547. Same—Determinations.
- Sec. 26-548. Same—Consideration of other structures in immediate neighborhood.
- Sec 26-549. Same—Referral of application back to building engineer.
- Sec. 26-550. Same—Building engineer bound by the determination of the commission.
- Sec. 26-551. Same—Issuance of permit postponed for structures on preliminary landmarks list.
- Sec. 26-552. Applicability of article.
- Sec. 26-553. Appeal from decision of the commission.
- Sec. 26-554. Circuit court empowered to enjoin.
- Sec. 26-555. Penalties for violations.
- Sec. 26-556. Power of commission to solicit funds.
- Sec. 26-557. Appropriations for the commission.
- Sec. 26-558. Contracts of sale; notice to buyer.
- Sec. 26-559. Preliminary and final historical landmarks lists.
- Secs. 26-560—26-660. Reserved

Article XI. Floodplain Management Program

- Sec. 26-661. Policy.
- Sec. 26-662. Definitions.
- Sec 26-663. Floodplain area (FPA).

BALTIMORE COUNTY CODE

- Sec. 26-664. FPA revisions, etc.
- Sec. 26-665. FPA boundary disputes.
- Sec. 26-666. Information to be shown on plats.
- Sec. 26-667. Flood control and water resources management projects.
- Sec. 26-668. Development in the 100-year tidal floodplain area.
- Sec. 26-669. Houses removed from floodplains.
- Sec. 26-670. Waivers.
- Secs. 26-671—26-730. Reserved.

Article XII. Reserved

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

Alan Klatsky

5 Spring Forest Ct. Owings Mills 21117

David K. Gildea

301 N. Charles St. Suite 800
Baltimore, Md. 21201

Richard A. Ortiz

3303 DELPHA COURT 21234
ST PETER'S LUTHERAN CHURCH

John E. Foard

4519 Fitch Ave 21236
ST PETER'S LUTHERAN Church

DAVID MARTIN

OW STEPHENS. 1020 CRAWWELL BRIDGE
TOWSON 21286



PLEASE PRINT CLEARLY

BALTIMORE COUNTY REPRESENTATIVES
SIGN-IN SHEET

NAME

ADDRESS

JAN M. COOK

RECREATION & PARKS



[illegible]

1. ALL COMMENTS FOLLOWS THE COMMUNITY MEETING ARE INCLUDED IN THE MINUTES OF THE MEETING. COMMENTS THAT WERE NOT PRESENTED AT THE MEETING WILL BE INCLUDED IN THE RECORD OF THE BEST OF PLANNING & DEVELOPMENT MANAGEMENTS PROJECT MANAGER AND CHAIRMAN. COMMUNITY MEETING WERE HELD FOR THIS PROJECT AT THE WHITE MARSH TRAIL LIBRARY ON JULY 25, 2009, AND MONITORED BY CHRIS KOKKE REPRESENTING BALTIMORE COUNTY.
3. GENERAL COMMENTS SUBMITTED BY THE COMMUNITY INCLUDED:
 - A. THE PROPOSED STATUS OF EXISTING VEGETATION ALONG WHITE MARSH ROAD AND BY FERRY RIDGE ROAD.
 - B. ROAD IMPROVEMENT REQUIREMENTS TO WHITE MARSH ROAD.
 - C. ROAD IMPROVEMENT REQUIREMENTS TO FERRY RIDGE ROAD.

[illegible][illegible][illegible]

Subsequent to the receipt of the Developer's Motion, the undersigned Zoning Commission Officer received input from the Department of Recreation and Park. That agency's position is the Developer's Motion to the extent that the requirements of the Local Open Space Manual should not be waived. That is, the Department requests that the Developer be required to comply with the provisions of the Local Open Space Manual and provide means of both active and passive open space as required therein. Both parties agree that the Order should be amended, at least to require compliance with the Local Open Space Manual.

Under the circumstances, I will grant the Motion for Reconsideration and amend the Order of November 22, 2000 to delete Restrictions Nos. 1 and 2 thereof, and replace same with new language as set forth below.

THEFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County that the Motion for Reconsideration in the above-captioned matter, be and the same is hereby GRANTED; and, this 21st day of December, 2000 that the Motion for Reconsideration in the above-captioned

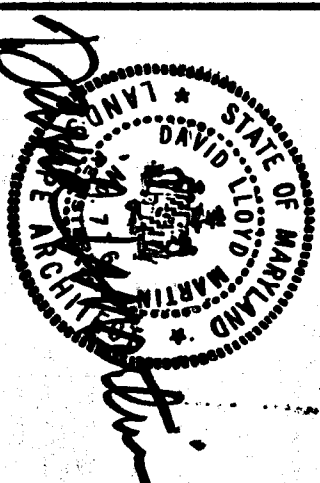
IT IS FURTHER ORDERED that Restrictions Nos. 1 and 2 of the Order issued November 22, 2000 shall be amended to read as follows:

"The Developer shall be required to provide areas of open space acceptable to the Department of Recreation and Parks, in accordance with the requirements contained in the presently enacted Local Open Space Manual."

Any appeal of this decision must be taken in accordance with Section 26-209 of the Baltimore County Code.


LAWRENCE E. SCHMIDT
Zoning Commissioner/Hearing Officer
for Baltimore County

GWS
GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
1020 CROMWELL BRIDGE ROAD

[illegible]

REQUIRED PLANNING UNITS		ADJUSTED ROOMS	
INTERIOR ROADS	0 PLU / 20' F.W.	1 PLU / 40' F.W.	0.80 PLU
SCREENING	0 PLU / 10' F.W.	1 PLU / 20' F.W.	0.92 PLU
STREET & PUBLIC USE	0 PLU / 10' F.W.	0.56 F.W. / 15'	0.57 PLU
PLANNING UNITS PROVIDED	EXISTING	NEW	
MAJOR PARKING	11	64	0.80 PLU
MINOR PARKING	15	40	0.50 PLU
SCREENING	56	86	0.93 PLU
STREET & PUBLIC USE	51	30	0.57 PLU
TOTAL PLU PROVIDED	117	170	2.80 PLU

The diagram illustrates a plan view of a three-lane road with a central dashed line and two solid edge lines. Three vehicles are shown traveling away from the viewer. The leftmost vehicle has a width of 20' MIN. The middle vehicle has a width of 30' MIN. The rightmost vehicle has a width of 25' MIN. Lane markings include a center dashed line, side walk lines, and a 50' dimension between the center dashed line and the side walk line. A 30' dimension is also indicated between the side walk line and the edge line.

SCALE: 1" = 500'

LEGEND
TRACT BOUNDARY
PARCEL LINES

EXISTING NORTH OF WAY LINE	EXISTING SOUTH OF WAY LINE
EASEMENT	EXISTING TREELINES
ZONING LINE	EXISTING SOIL CLASSIFICATION
EXISTING 5' CONTOUR	EXISTING 5' CONTOUR
EXISTING 5' CONTOUR	WETLAND LIMIT LINE
FOREST BUFFER EASEMENT	SPECIMEN TREE
MAJOR DECIDUOUS TREE	MAJOR DECIDUOUS TREE
MINOR DECIDUOUS TREE	EVERGREEN TREE
SHRUB	PROP. STREET LIGHT
PASSEY OPEN SPACE OF	

- (a) The requirements of the Baltimore County Local Open Space Manual, Section III.1 – to permit the approved active H₂O₂ open space to remain in its current established condition and be classified as passive H₂O₂ open space as shown on the Plan to Accepting Action for Special Handling;
- (b) The requirements of the Baltimore County Local Open Space Manual, Section III.2 – to permit a portion of a portion of the approved active H₂O₂ open space to be converted to passive H₂O₂ open space as shown on the Plan to Accepting Action for Special Handling;
- (c) The requirements of the Baltimore County Local Open Space Manual, Section III.3 – to permit the approved active H₂O₂ open space to be converted to passive H₂O₂ open space as shown on the Plan to Accepting Action for Special Handling;

PLAT TO ACCOMPANY
PETITION FOR
SPECIAL HEARING

CHURCH PROPERTY

BALI MOKE COUNCIL, 1,
 ELECTION DISTRICT - 14
 SCALE 1" = 50'
 MARK LAND
 COUNCILMANIC DISTRICT - 6
 DATE: APRIL 24, 2001

#457

PDM # XIV-392

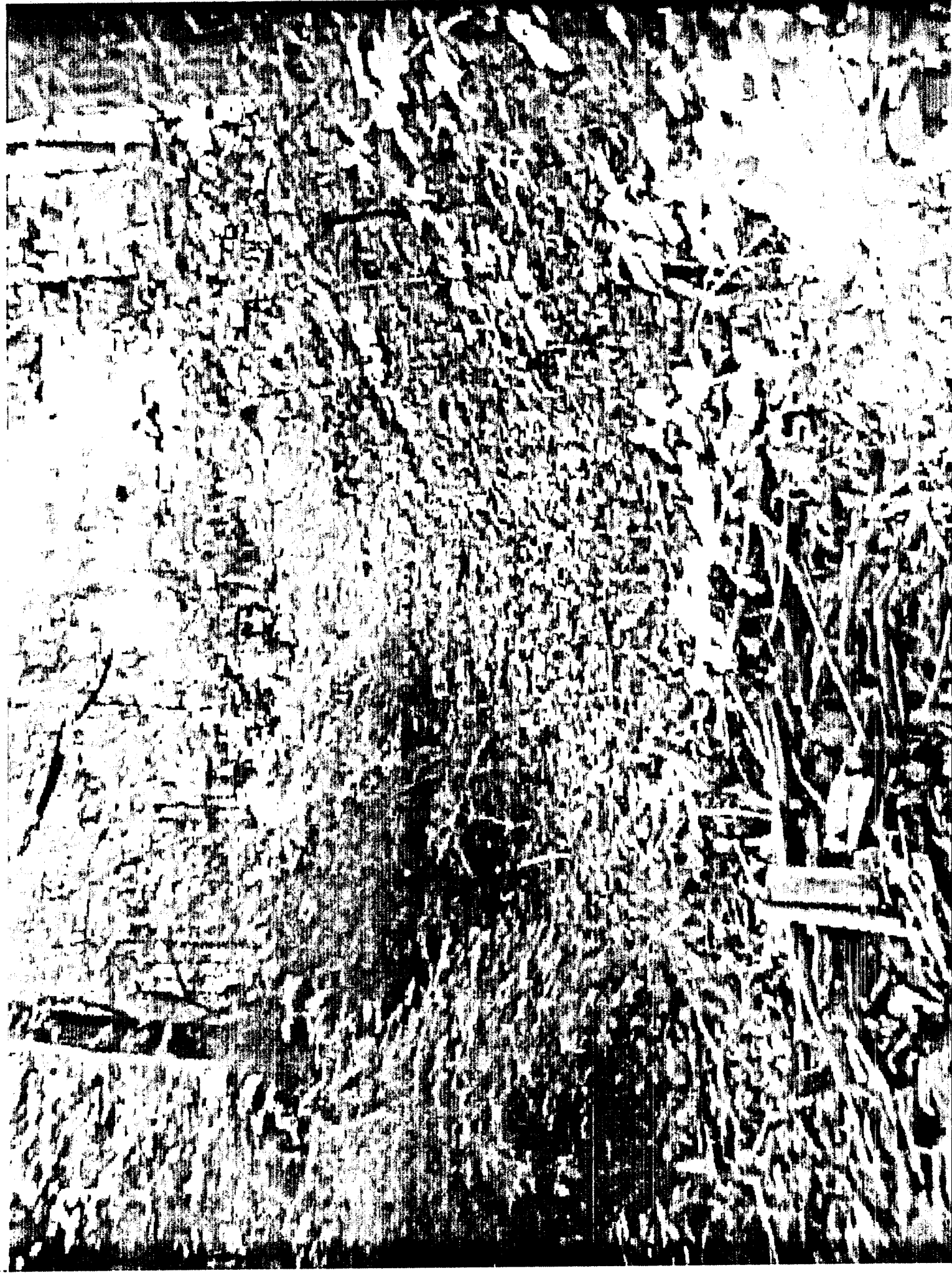
1. NOVEMBER 22, 2000 DEVELOPMENT PLAN FOR THE CHURCH PROPERTY APPROVED BY THE ZONING COMMISSIONER/HEARING OFFICER FOR BALTIMORE COUNTY
2. DECEMBER 27, 2000 ZONING COMMISSIONER/HEARING OFFICER ISSUED AN AMENDED ORDER
3. FEBRUARY 9, 2001 DMC NUMBER 012901E DIST. H466

5. FEBRUARY 9, 2001 DRC NUMBER 012901E DIST. 1406

\\add\53\5special_judging.01 Apr. 25, 2001 08:32.4



"A" EXISTING CONDITIONS IN OPEN SPACE AREA



"B" EXISTING CONDITIONS IN OPEN SPACE AREA



"C" EXISTING CONDITIONS IN OPEN SPACE AREA



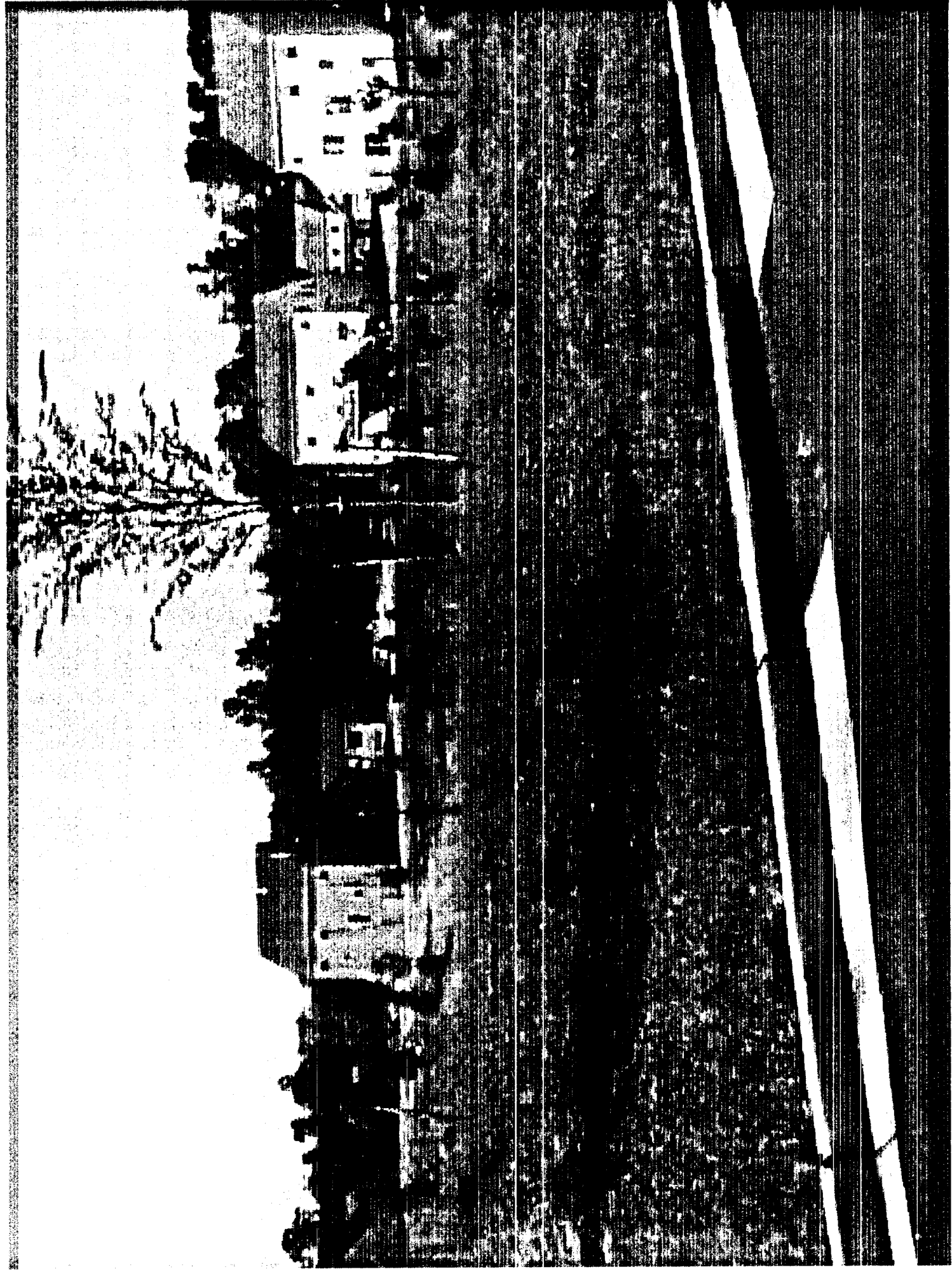
"D" EXISTING CONDITIONS IN OPEN SPACE AREA



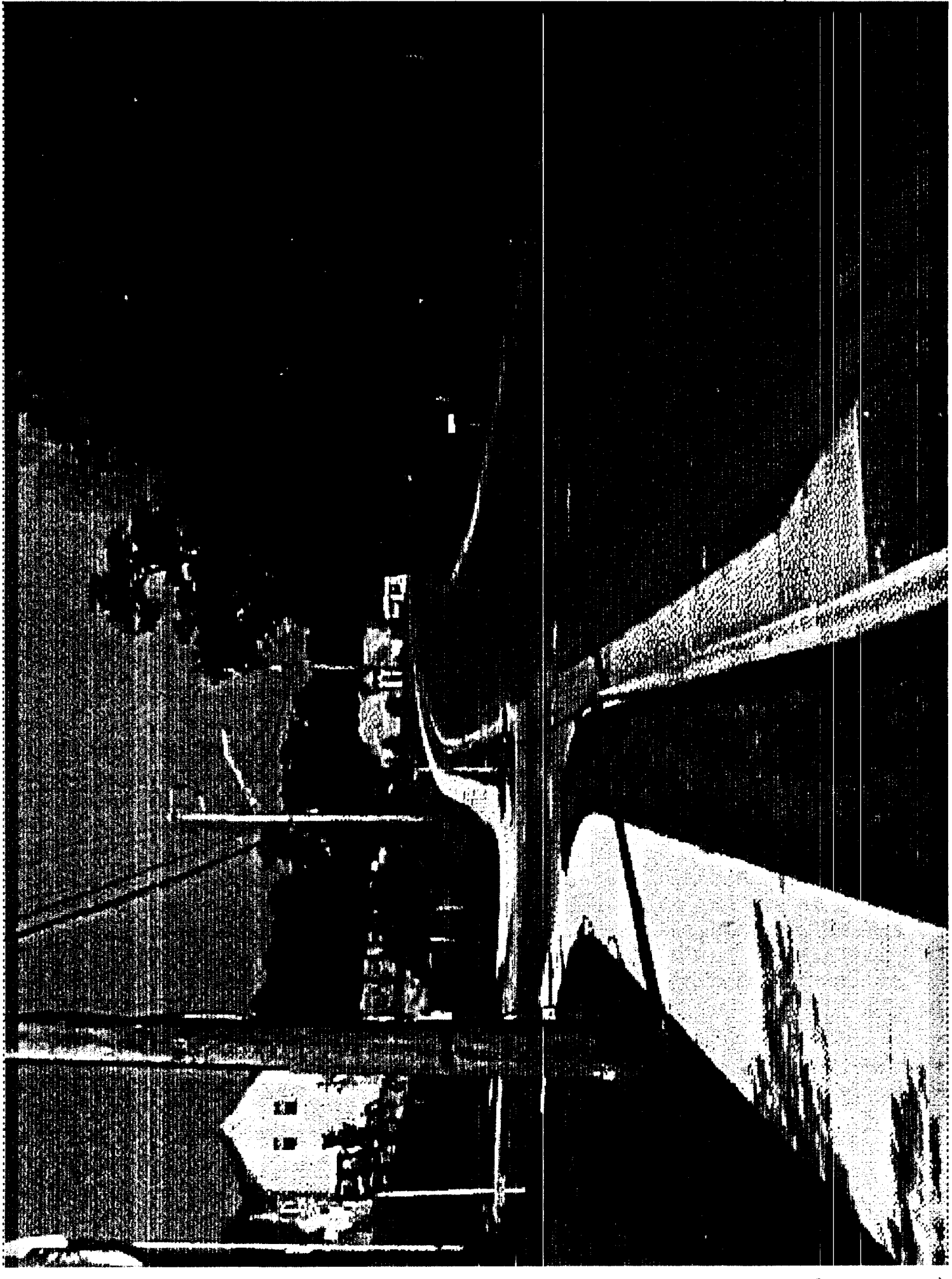
"E" EXISTING CONDITIONS IN OPEN SPACE AREA



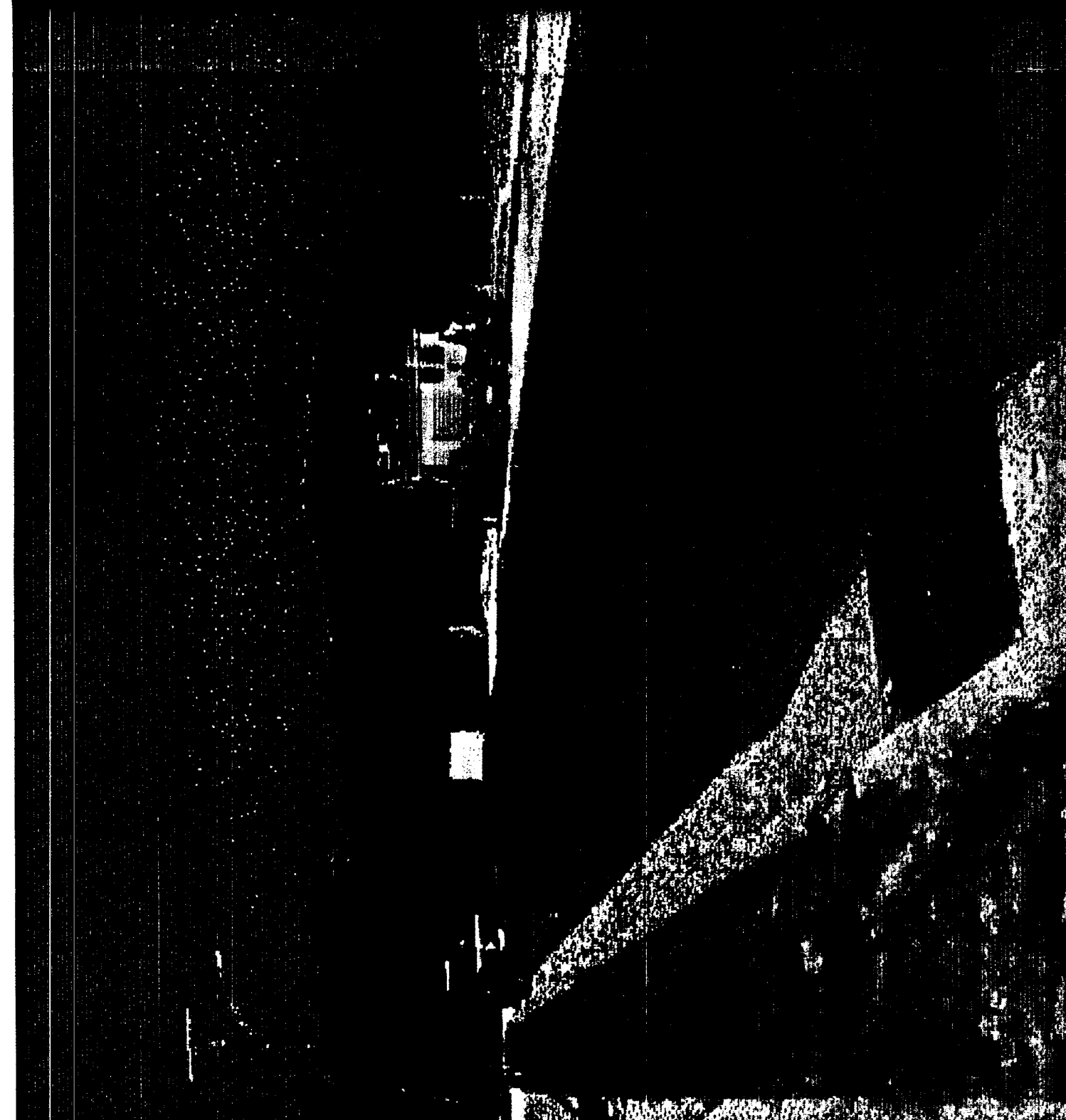
"F" NOTTINGHAM'S DEVELOPMENT UNDER CONSTRUCTION



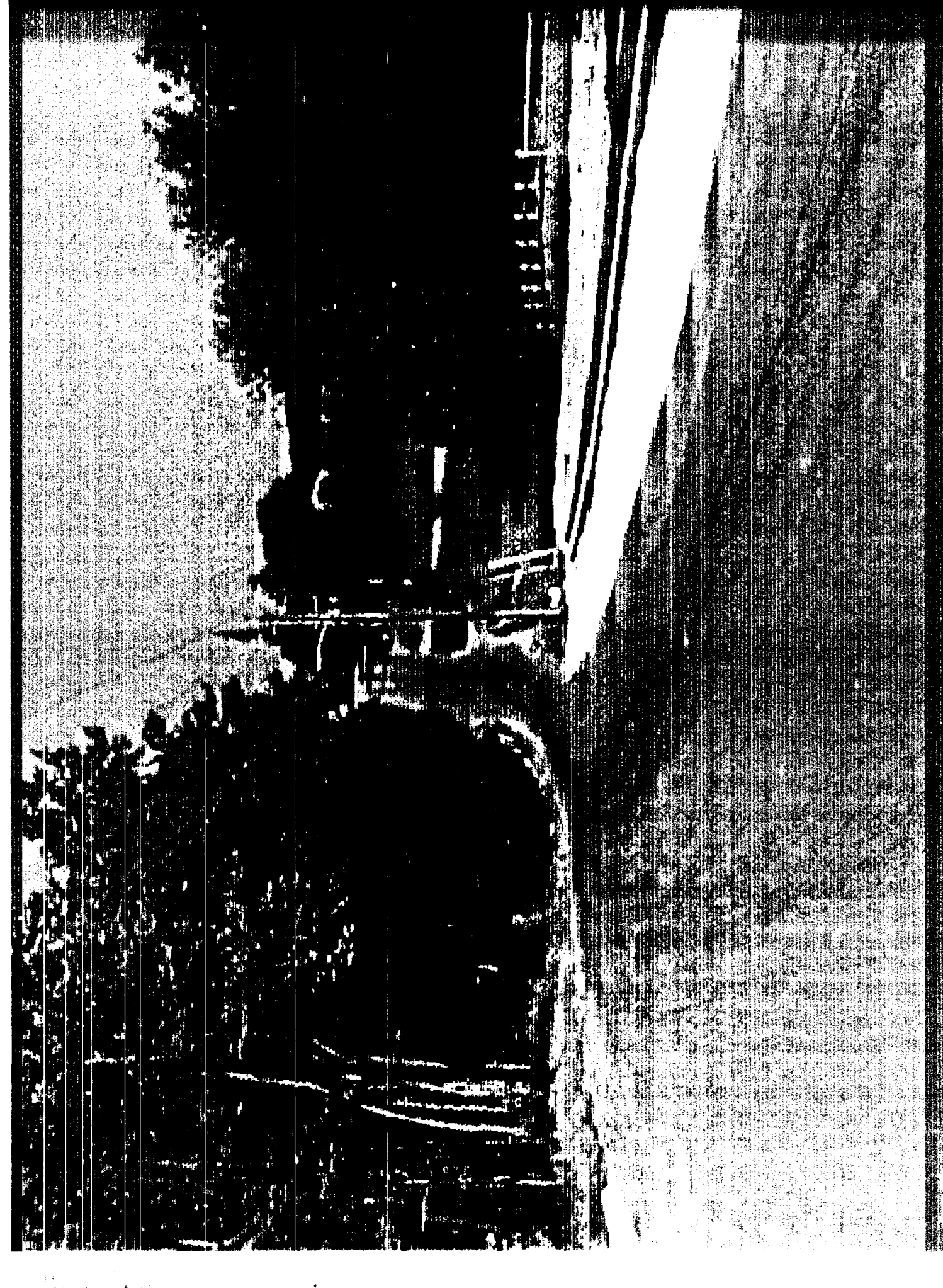
"G" NOTTINGHAM'S DEVELOPMENT UNDER CONSTRUCTION



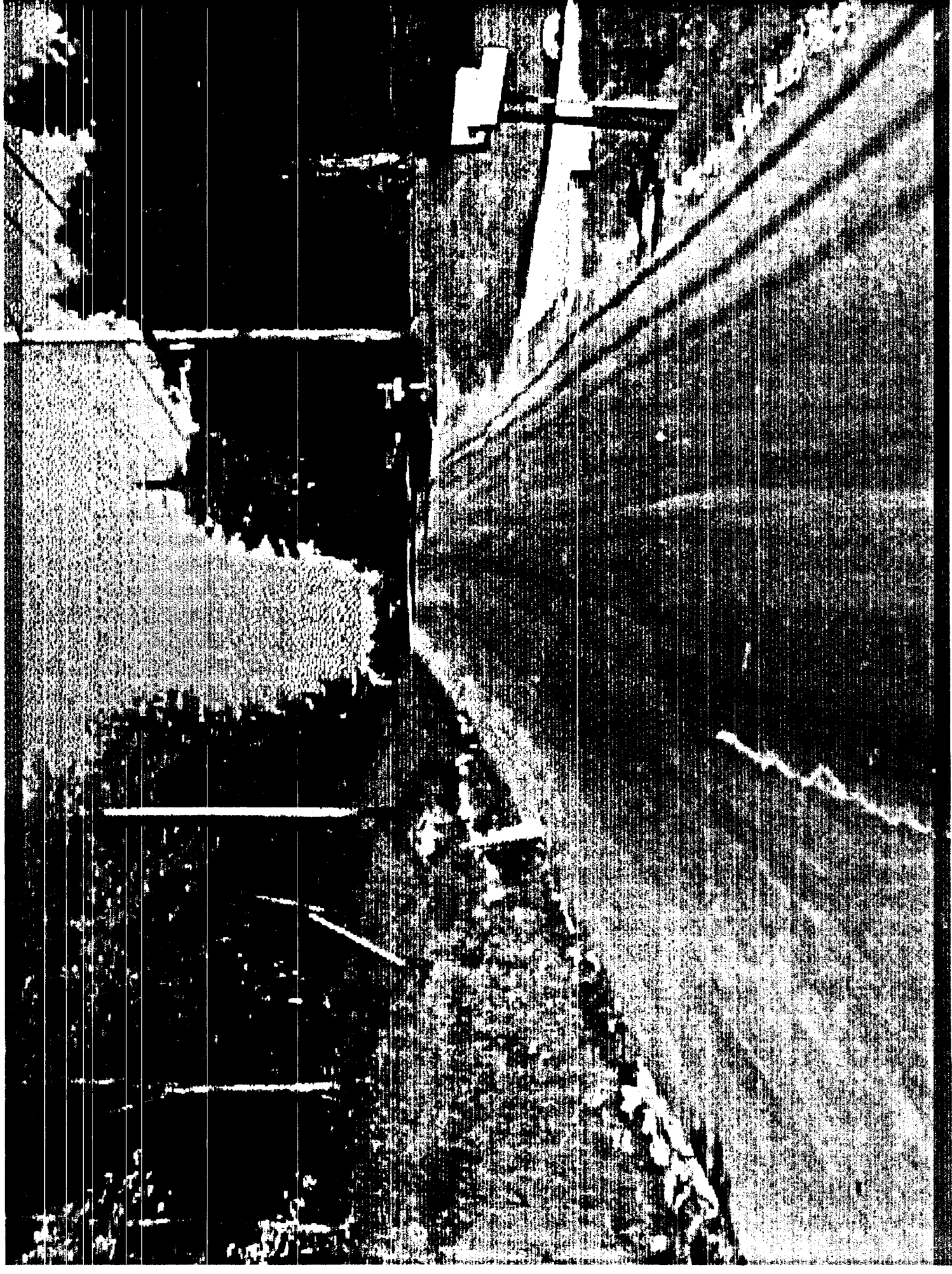
"H" NOTTINGHAM'S DEVELOPMENT UNDER CONSTRUCTION



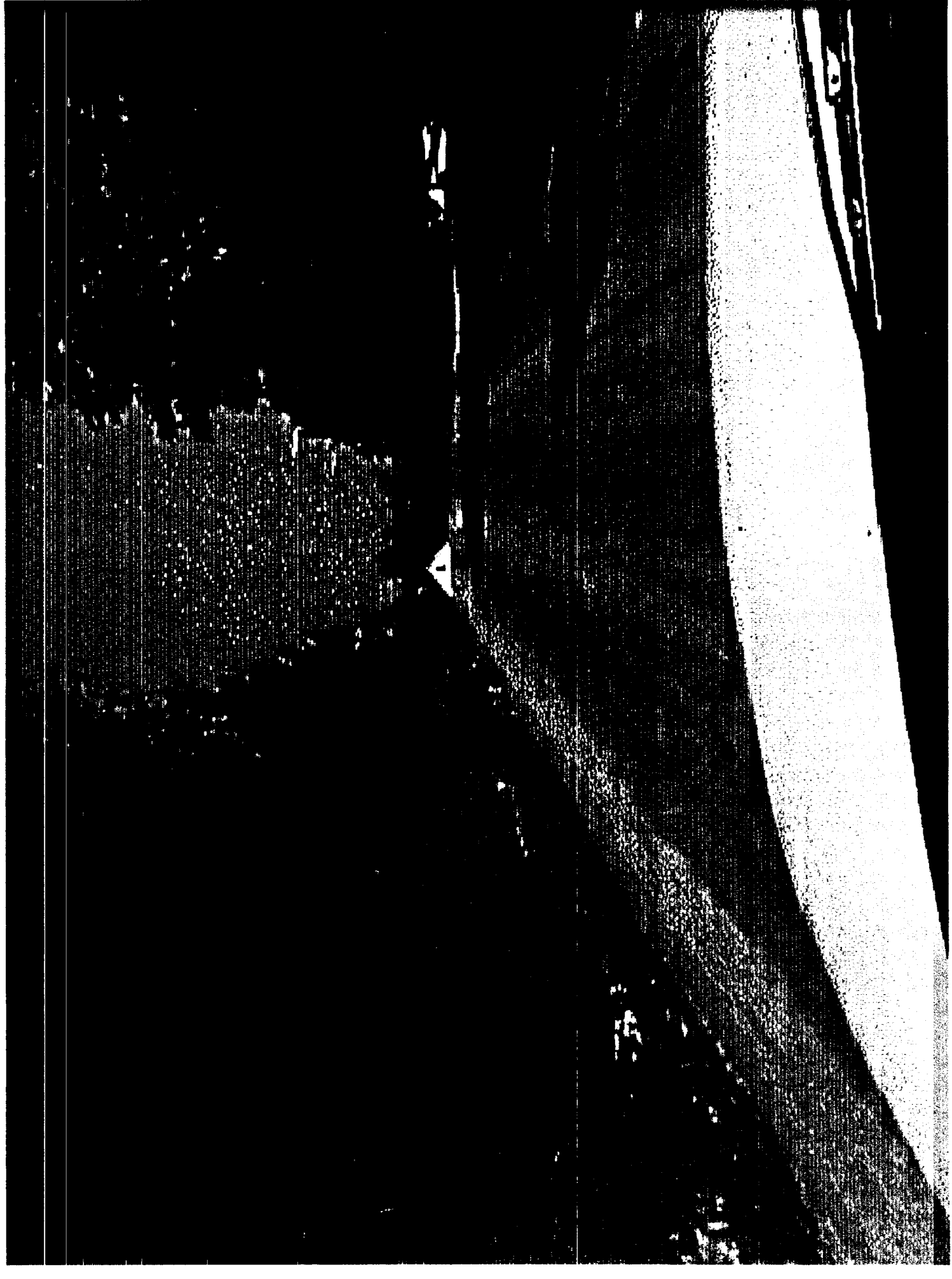
"I" NOTTINGHAM'S DEVELOPMENT UNDER CONSTRUCTION



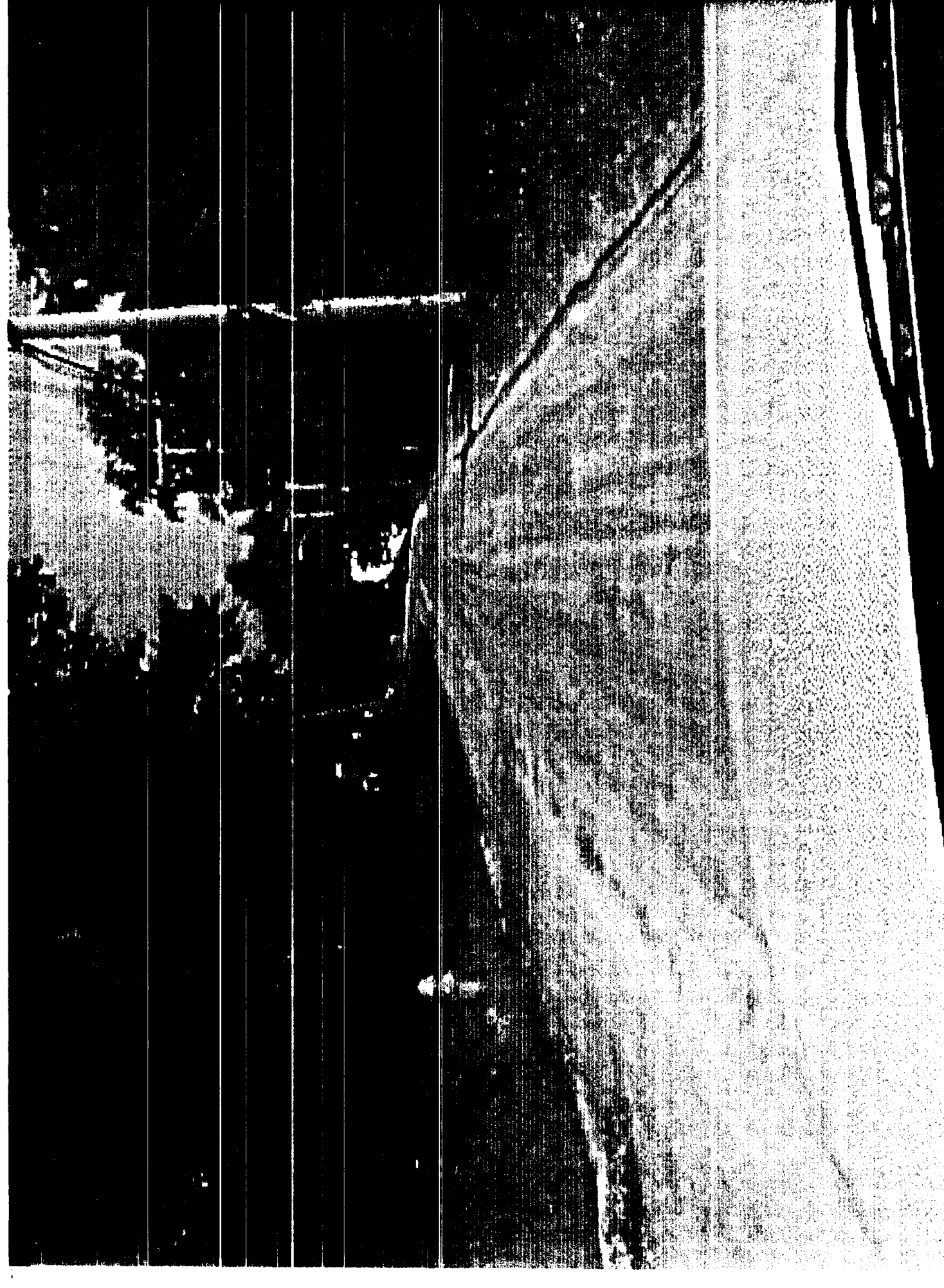
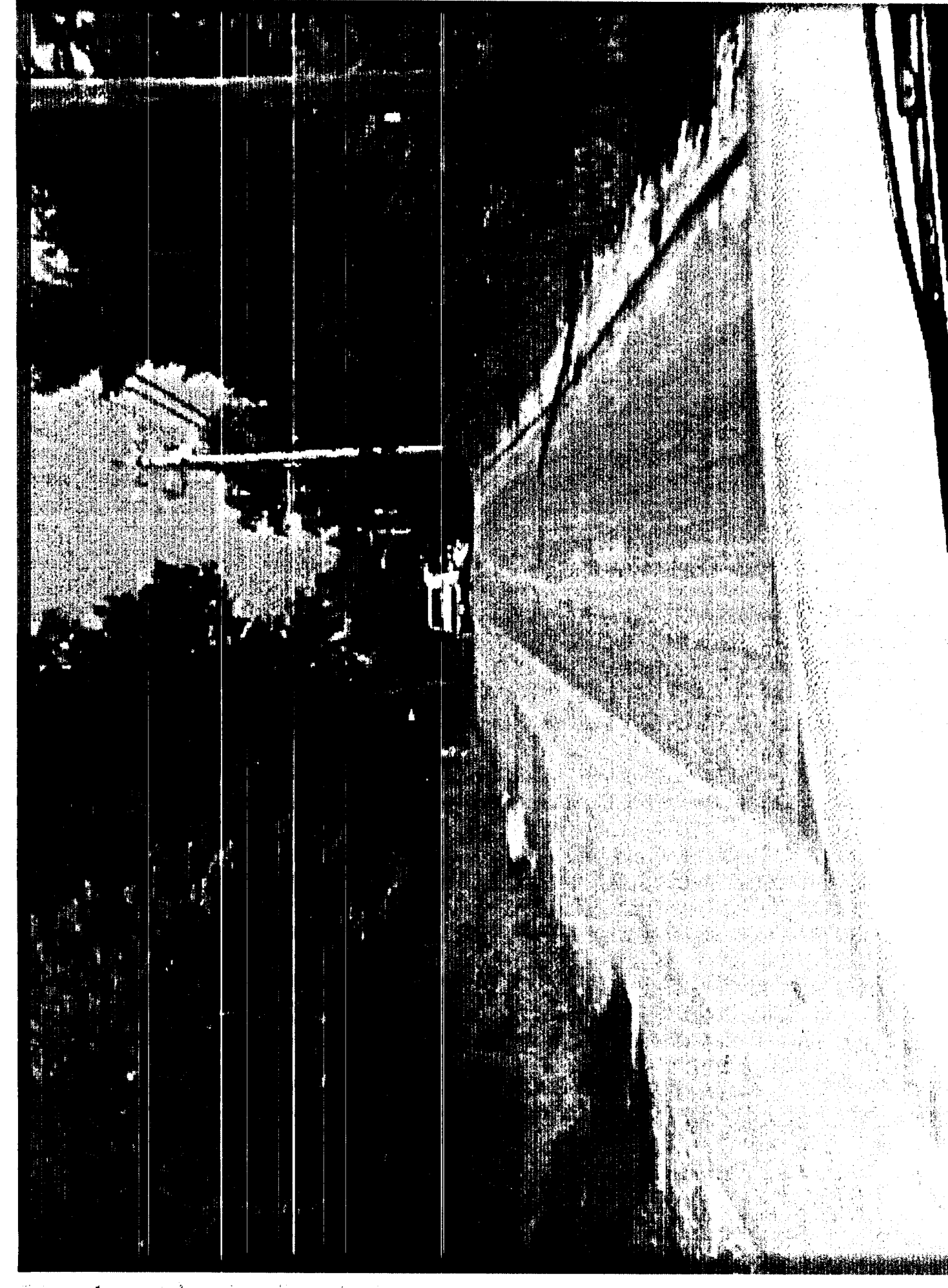
"J" GLEN ARBOR NORTH FOREST CONSERVATION AREA



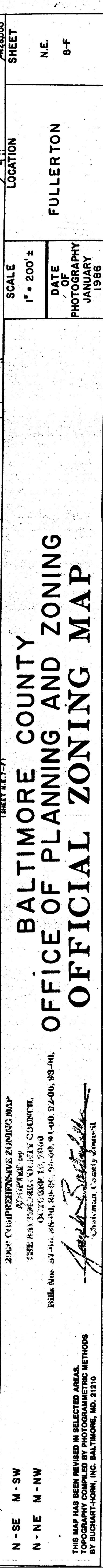
"K" GLEN ARBOR NORTH FOREST CONSERVATION AREA



"L" EAST END OF THE CHURCH PROPERTY ON WHITEMARSH RD.



PHOTOGRAPHIC SURVEY
of
THE WOODS OF GLEN ARBOR
aka
CHURCH PROPERTY



**BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP**

2000 COMPREHENSIVE ZONING MAP
 AS APPEARED BY
 THE SAN FRANCISCO COUNTY COUNCIL
 ON SEPTEMBER 15, 2000
 BILL NO. 57-00, 58-00, 59-00, 60-00, 61-00, 62-00, 63-00,

N - SE M - SW
N - NE M - NW

**HIS MAP HAS BEEN REVISED IN SELECTED AREAS.
OPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS**