ORDER REGEIVED FOR FILING Date 800/12 FOR FILING 39 IN RE: PETITION FOR VARIANCE

NE/S Beachwood Road, 700' NW of the c/l

Beachwood Road

(4116 Beachwood road) 15th Election District

7th Council District

James A. Weimer Petitioner BEFORE THE

ZONING COMMISSIONER

* OF BALTIMORE COUNTY

Case No. 02-573-A

* * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, James A. Weimer. The Petitioner seeks relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit accessory structures (screened gazebo and swimming pool) to be located in the front yard in lieu of the required rear yard. 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 was James Weimer, property owner. Rondalyn Lotz and William Titus, adjacent property owners on either side of the property, appeared as Protestants in the matter.

Testimony and evidence presented revealed that the subject property is a waterfront lot, approximately 50 feet wide and 184 feet deep, located with frontage on Back River and adjacent to the north side of Beachwood Road in eastern Baltimore County. The property contains a gross area of 0.219 acres, more or less, zoned D.R.5.5 and is improved with a single family dwelling. In addition to the dwelling, there are several accessory structures on the site. Although Mr. Weimer has resided on the property since 1998, the property has been in his family for a number of years. In fact, Mr. Weimer indicated that when he acquired the property in 1998, he razed the existing dwelling and constructed a new single family dwelling thereon.

At issue in the instant case are two accessory structures that are located between the house and the water. Due to the unique characteristics of waterfront property, the front yard is defined as that area between the dwelling and the water. Within that yard area, the Petitioner

recently constructed a 10' x 13' gazebo-type structure not far from the side property line adjoining the Titus property. Additionally, there is an above-ground swimming pool, 18' in diameter, which is located 7 feet from the side property line adjoining the Lotz property. Apparently, it was during the construction of the gazebo that a complaint was registered with the Code Enforcement Division of the Department of Permits and Development Management and the Petitioner was advised to file the instant Petition to resolve the matter. Pursuant to Section 400.1 of the B.C.Z.R., accessory structures such as the gazebo and swimming pool must be located in the rear yard.

Mr. Weimer testified that in order to use his property effectively and enjoy the view of the water, the swimming pool and gazebo could only be located in his front yard. He does not believe that they obstruct his neighbors' view and requested that variance relief be granted to permit them to remain where located.

Mrs. Lotz and Mr. Titus testified in opposition to the request. In addition, they submitted numerous photographs of the subject property and improvements thereon. Mrs. Lotz and Mr. Titus both argued that the pool and gazebo block their view of the water and impedes their enjoyment of their respective properties. They urge that the Zoning Commissioner deny the request for variance.

It is to be noted that the subject property has a significant zoning history. Specifically, in Case No. 92-187-A, Mr. Weimer's father, James W. Weimer, petitioned for variance relief from the same regulation as set forth above (Section 400.1 of the B.C.Z.R.) In that case, the elder Mr. Weimer sought variance relief to permit a screened house to be located in the front yard near the water. After the requisite public hearing, Deputy Zoning Commissioner Timothy Kotroco granted the variance. Mrs. Lotz took an appeal of that decision to the County Board of Appeals, which affirmed the grant of the variance. On further appeal by Mrs. Lotz to the Circuit Court, the Board's decision was affirmed by Order of Judge Thomas J. Bollinger on August 11, 1993. Mrs. Lotz later appealed the case to the Court of Special Appeals. In an unreported 13-page decision, the Court of Special Appeals reversed the relief and denied the variance. In its decision, the Court held that Mr. Weimer did not meet the requirements for variance relief to be granted under Section 307 of the B.C.Z.R.

Remarkably, the Petitioner's son now comes before me seeking identical relief following this lengthy litigation. Although the present owner was not a party to that case, Mr. Weimer's father was the owner/Petitioner in the prior case. It is simply inconceivable that the Petitioner would install any accessory structure in his front yard without first obtaining the requisite permit and/or zoning relief given the prior zoning history of his property. Although the proposed structures are different from what was proposed by Mr. Weimer's father, the decision of the Court of Special Appeals is compelling in this case.

Based upon the testimony and evidence presented, I am persuaded that the Petition for Variance should be denied. There was no evidence in the record that the property is unique, as required by <u>Cromwell v. Ward</u>, 102 Md. App. 691 (1995). Moreover, the testimony and evidence presented was persuasive that a grant of the relief would cause detrimental impact on the adjacent properties. I concur with Mrs. Lotz and Mt. Titus that their views will be blocked if the existing improvements are allowed to remain. Thus, for these reasons, the variance 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 day of August, 2002 that the Petition for Variance seeking relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit accessory structures (screened building and above-ground swimming pool) to be located in the front yard in lieu of the required rear yard, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the screened building and above-ground swimming pool be removed from the front yard and the property brought into compliance with the B.C.Z.R. within 120 days of the date of this Order.

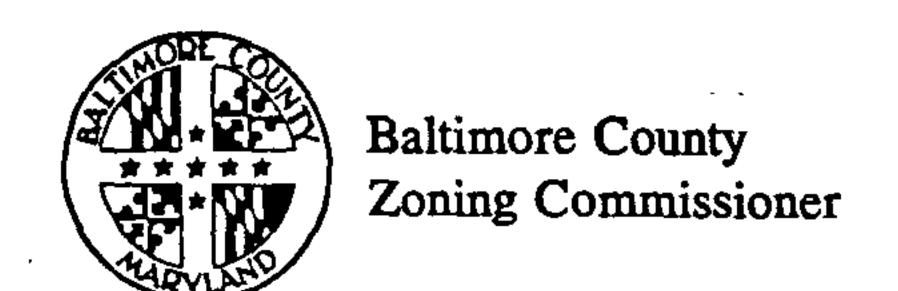
Any appeal of this decision must be filed within thirty (30) days of the date of this

Order.

AWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

LES:bjs



August 20, 2002

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

Fax: 410-887-3468

Mr. James A. Weimer 4116 Beachwood Road Baltimore, Maryland 21222

RE: PETITION FOR VARIANCE

N/S Beachwood Road, 700' NW of the c/l Beachwood Road

(4116 Beachwood Road)

15th Election District – 7th Council District

James A. Weimer - Petitioner

Case No. 02-573-A

Dear Mr. Weimer:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance 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: Mrs. Rondalyn Lotz, 4116 Beachwood Road, Baltimore, Md. 21222 Mr. William Titus, 4114 Beachwood Road, Baltimore, Md. 21222 Chesapeake Bay Critical Areas Commission, 1804 West Street, Suite 100, Annapolis, Md. 21401

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



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 4116 Buch wood foud which is presently zoned D.P. S.S

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 400.1 (pczp)

TO PERMIT ACCESSORY BUILDINGS (SCREENED BUILDING AND 1900L) IN THE FRONT YARD IN LIEU OF THE REQUIRED REAR YARD.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate

- hardship or practical difficulty) a. Due to the high volume of black flies and mosquitos, and now the nile virus threat, the screened building was a necessity to be able to enjoy the waterfront.
- b. Due to the pollution that exists in the Bay caused by factory dumping, and most recently the raw sewerage from a pumping station problem, the pool construction was the only means to be on the water and enjoy the water.
- c. Through conversations with adjoining homeowners, the general consensus is supportive of the Property is to be posted and advertised as prescribed by the zoning regulations. property development and do not I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

feel that granting relief would be detrimental to the neighborhood welfare.

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:

Date

	Name - Type or Print	
	Signature	
	Address	Telephone No.
	City State Attorney For Petitioner:	Zip Code
	Name - Type or Print	
	Signature	
FOR FILING	Company	<u> </u>
一一一	Address	Telephone No.
IVE DEF	City	Zip Code
REC/EIV	esse No. <u>02-573-A</u>	· · · · · · ·
ORDER	RE 9/15/98	

1 --- 1 O --- -- (-1-

<u>Legal Owner(s):</u>
Name - Type or Print 1. 1.2
Name - Mipe or Print
Signature
Name - Type or Print
Signature
4116 Beach wood Poad (410) 388-2772
Address Telephone No.
Balthmore, MO 21222
City State Zip Code
Representative to be Contacted:
Soft Rite Surveying luc
200 E. John Ruad Room 101 410 828 9060
Address Telephone No.
Towson, MD 21286
City State Zip Code
OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING

Date

UNAVAILABLE FOR HEARING Reviewed By D.THOMPSON

ZONING DESCRIPTION FOR #4116 BEACHWOOD ROAD

BEGINNING AT A POINT ON THE NORTHEAST SIDE OF BEACHWOOD ROAD WHICH
IS 50 FEET WIDE AT THE DISTANCE OF 700 FEET NORTHWEST OF THE
CENTERLINE OF BEACHWOOD ROAD WHICH IS 50 FEET WIDE. BEING LOT # 17 IN
THE SUBDIVISION OF "BEACHWOOD" AS RECORDED IN BALTIMORE COUNTY
PLAT BOOK #10, FOLIO #123, CONTAINING 9,550 SQUARE FEET. ALSO KNOWN
AS #4116 BEACHWOOD ROAD AND LOCATED IN THE 15TH. ELECTION DISTRICT,
7TH. COUNCILMANIC DISTRICT.

J. TILGHMAN DOWNEY, JR. .

BALTIMORE COUNTY, MARYLAND OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT	No. 14359	
DATE (0 10 03). ACCOUNT	001 0066 150	1.20/2002 6/19/2002 11:22:46 15:55 USE PROTE OF DISHER
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FROM DERNADETE MOSKUNAS	5.	8
FOR ITEM # 518 05-573-A 4116 WEACHWOOD RD.	4116 BEACHWOOD RD.	Darringre County, Naryland
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	HOMPSON	
WHITE SCASHIER TO PINK - AGENCY COSTOW - CUSTOMER THE THE SCASHIER THE STATE OF THE		CASHIER'S VALIDATION

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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: #02-573-A
4116 Beachwood Road
NE/S Beachwood Road
700' NW of centerline of
Beachwood Road
15th Election District
7th Councilmanic District
7th Countil accessory building and pool) in the
front yard in lieu of the required rear yard.
Hearing: Monday, August
6, 2002 at 11:00 a.m. in
8, 2003 at 11:00 a.m. in

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
(2) For information concerning the file and/or
Hearing, Contact the Zoning
Hearing, Contact the Zoning
Hearing, Contact the Zoning
Review Office at (410) 8873391.

OF PUBLICATION H

2005

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

5

The Jeffersonian

Catonsville Times Arbutus Times

Times Towson

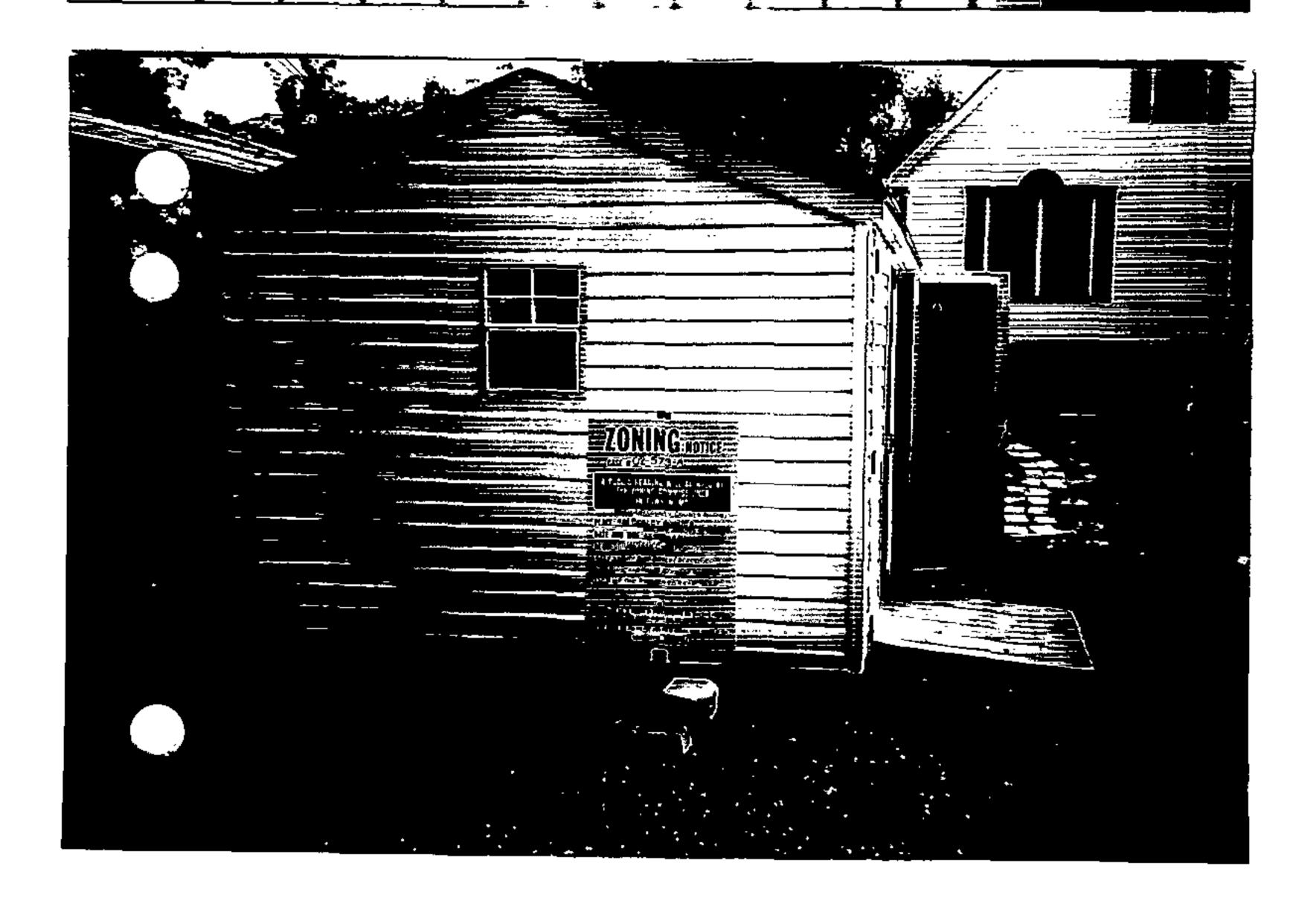
Owings Mills Times

UNE Booster/Reporter

☐ North County News

Wulling.

LEGAL ADVERTISING



ZONING MOTICE

CASE # 02-573-A

PUBLIC HEARING WILL BE HELD THE ZONING COMMISSIONER И

ROOM 407, COUNTY COURTS BLDG.

PLACE: 401 BOSLEY AVENUE

MONDAY, AUGUST 5, 2002

REQUEST: VARIANCE- TO PERMIT

ACCESSORY BUILDINGS (SCREENED

BUILDING AND POOL) IN FRONT YARD IN

EU OF THE REQUIRED REAR YARD

I TO SPLETZEY ON STREET CONSTITUTES LIVE SOMETIMES VECESSARY.
TO CONFIRM RELIGIAL CALL MAY-1351

D AMD PROF CHARL DAY OF READER, WINEST PERALTY OF LAST

HANDICAPPED ACCESSIBLE

CERTIFICATE OF OSTING

•	RE: Case No.: <u>02-575-A</u>
	Petitioner/Developer:
	JAMES WELMER
	Date of Hearing/Closing: 8-5-02
Baltimore County Department of Permits and Development Managemen County Office Building, Room 111 111 West Chesapeake Avenue Towson, MD 21204	ì
Attention: Ms. Gwendolyn Stephens	-
Ladies and Gentlemen:	
were posted conspicuously on the prop	ties of perjury that the necessary sign(s) required by law perty located at
The sign(s) were posted on	(Month, Day, Year)
	Sincerely, Sincerely, (Signature of Sign Poster and Date) (Signature of Sign Poster and Date) GARLAND E. MOORE (Printed Name) 3225 RYERSON CIRCLE (Address)
JUL 2 2 2002 DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT	BALTIMORE, MD, 21227 (City, State, Zip Code) (40) 242-4263 (Telephone Number)

TO: PATUXENT PUBLISHING COMPANY

Thursday, July 18, 2002 Issue - Jeffersonian

Please forward billing to:

James A Weimer 4116 Beachwood Road

Baltimore MD 21222

410 388-2772

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: 02-573-A 4116 Beachwood Road

NE/S Beachwood Road, 700' NW of centerline of Beachwood Road

15th Election District – 7th Councilmanic District

Legal Owner: James Weimer

Variance to permit accessory buildings (screened building and pool) in the front yard in lieu of the required rear yard.

HEARING: Monday, August 5, 2002 at 11:00 a.m. in Room 407, County Courts

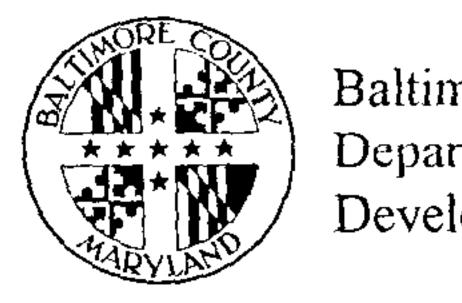
Building, 401 Bosley Avenue

January Estated
Lawrence E. Schmidt

LAWRENCE E. SCHMIDT GOZ 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

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

Fax: 410-887-5708

July 2, 2002

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: 02-573-A 4116 Beachwood Road

NE/S Beachwood Road, 700' NW of centerline of Beachwood Road

15th Election District – 7th Councilmanic District

Legal Owner: James Weimer

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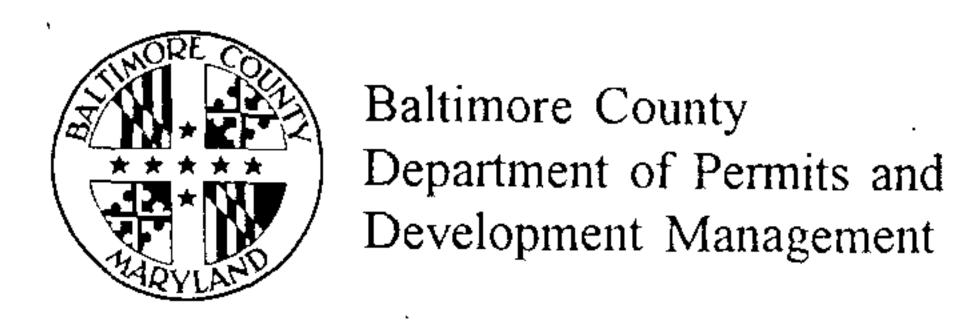
Building, 401 Bosley Avenue

Arnold Jablon ゅっこ Director

C: James A Weimer, 4116 Beachwood Road, Baltimore 21222 Site Rite Surveying Inc, 200 E Joppa Road, Room 101, Towson 21286

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, JULY 20, 2002.

- (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.



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

August 2, 2002

James A Weimer 4116 Beachwood Road Baltimore MD 21222

Dear Mr. Weimer:

RE: Case Number: 02-573-A, 4116 Beachwood Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on June 19, 2002.

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. 602

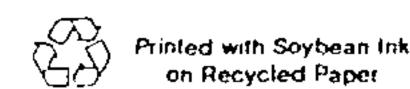
W. Carl Ruchard. Jr.

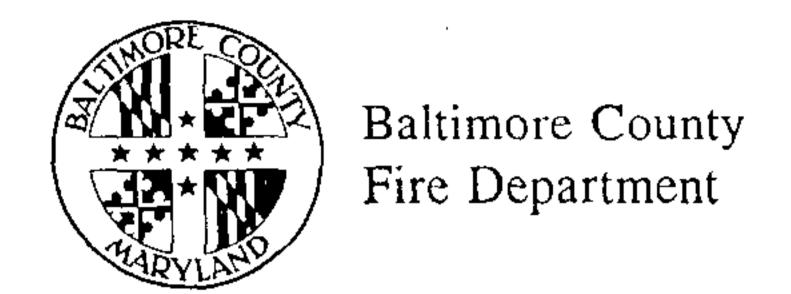
Supervisor, Zoning Review

WCR: gdz

Enclosures

c: Site Rite Surveying Inc, 200 E Joppa Road, Room 101, Towson 21286 People's Counsel





Office of the Fire Marshal 700 East Joppa Road Towson, Maryland 21286-5500 410-887-4880

June 24,2002

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

ATTENTION: George Zahner

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF June 24, 2002

Item No.: See Below

Dear Mr. Zahner:

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

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

563,564,566-569,572-574

REVIEWER: LIEUTENANT JIM MEZICK, Fire Marshal's Office

PHONE 887-4881, MS-1102F

cc: File

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Arnold Jablon, Director

DATE: August 20, 2002

Department of Permits & Development Mgmt.

FROM:

Robert W. Bowling, Supervisor

Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For July 1, 2002 Item No. 573

The Bureau of Development Plans Review has reviewed the subject zoning item.

The flood protection elevation for the site is 10.4 feet.

In conformance with Federal Flood Insurance requirements, the first floor or basement floor must be at least 1 foot above the floodplain elevation in all construction.

In accordance with Bill No. 18-90, Section 26-276, filling within a floodplain is prohibited.

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

The building engineer shall require a permit for this project.

Building shall be designed and anchored to prevent flotation collapse or lateral movement of structure with materials resistant to flood damage.

Flood-resistant construction shall be in accordance with requirement of B.O.C.A. Inter Building Code adopted by the county.

RWB:CEN:jrb

cc: File

ZAC-7-1-2002-ITEM NO 573-822002

BALTIMORE COUNTY, MARYLAND DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

ГО:	Arnold Jablon
FROM:	R. Bruce Seeley (BS) 765
DATE:	July 26, 2002
SUBJECT:	Zoning Item 573 Address 4116 Beachwood Road (Weiner Property)
Zonin	g Advisory Committee Meeting of June 24, 2002
	epartment of Environmental Protection and Resource Management has no ents on the above-referenced zoning item.
an exte	epartment of Environmental Protection and Resource Management requests ension for the review of the above-referenced zoning item to determine the to which environmental regulations apply to the site.
	epartment of Environmental Protection and Resource Management offers lowing comments on the above-referenced zoning item:
	Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).
	Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).
<u>X</u>	Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).
<u>Additi</u>	ional Comments:
See attached o	comments

Réviewer:

Keith Kelley

Date: July 22, 2002

CBCA Zoning Comments (zoning item # 573)

The property is located within the Limited Development Area (LDA), or Resource
Gonservation Area (RCA), or Intensely Developed Area (IDA) of the Chesapeake Bay Critical Area (CBCA).
This proposal must use best management practices, which reduce pollutant loadings by 10%
Man-made impervious surfaces are limited to 15% for lots greater than ½ acre in size.
Man-made impervious surfaces are limited to 25% for lots less than ½ acre in size.
Mitigation is required if exceeding the 25% impervious surface limit. Impervious surfaces are limited to 25% of the lot & 500 square feet or 31.25% of the lot. Otherwise, a Critical Area Administrative Variance (CAAV) is required.
If permitted development on a property currently exceeds impervious surface limits, that percentage may be maintained during redevelopment of the property.
15% forest must be established or maintained. This equates to 3 trees for a lot of this size
Any tree removed in the buffer for this structure must be replaced on a 1:1 basis.
All downspouts must discharge rainwater runoff across a pervious surface such as a lawn.
The lot is in a Buffer Management Area (BMA). Mitigation (planting trees, removing impervious area, or paying a fee-in-lieu) is required for the placement of the proposed structure within 100' of tidal waters.
If the lot is unimproved, then the proposed dwelling cannot go any closer to the water than the neighboring dwelling farthest away from the water.
If the lot is improved, then the proposed dwelling can go as close to the water as the existing dwelling.
A Critical Area Administrative Variance (CAAV) is required for the placement of the proposed structure within 100' of tidal waters, tidal wetlands, stream, or within 25' of non-tidal wetlands.
A Critical Area Administrative Variance (CAAV) is required since the proposed principal structure cannot honor the required 35' residential building setback or 25' commercial building setback from the 25' or 100' buffer.
Kdk#14/cbcazoningcomments

X X

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

Arnold Jablon, Director

DATE: July 2, 2002

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT:

Zoning Advisory Petition(s): Case(s) 02-512, 02-521, 02-541, 02542, 02-560, 02-

571, & 02-573

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

Prepared by:

Section Chief:

AFK/LL:MAC



Maryland Department of Transportation State Highway Administration

Parris N. Glendening Governor

John D. Porcari Secretary

Parker F. Williams Administrator

Date: 6.25.02

Mr. George Zahner Baltimore County Office of Permits and Development Management County Office Building, Room 109 Towson, Maryland 21204

RE:

Baltimore County Item No.

Dear. Mr. Zahner:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

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

Very truly yours,

1. Hell

McDonald Jr., Chief Engineering Access Permits Division

DATE	Ξ:	June 26, 2002		
TO:		W. Carl Richards, Jr. Zoning Review Supervi	sor	
FRON	1 :	Rick Wisnom, Chief Division of Code Inspec	ctions & Enforce	ement
SUBJ	ECT:	Item No.: Legal Owner/Petitioner Contract Purchaser: Property Address: Location Description:		James Weimer N/A 4116 Beachwood Rd. N/E side Beachwood Rd. 700 ft N/W of centerline of Beachwood Rd.
	Please			02-3746 James Weimer on is the subject of an active violation case. ase notify the following person(s) regarding the
	ng date:	•	0,1	
NAM	E .			ADDRESS
the vi		ition, please find attached ase, for review by the Zor		y of the following pertinent documents relative to ner's Office:
X	1.	Complaint letter/memo/	email/fax (if ap	plicable)
X	2.	Complaint Intake Form	Code Enforcen	nent Officer's report and notes
X	3.	State Tax Assessment p	rintout	
	4.	State Tax Parcel Map (i		
	5.	MVA Registration print	tout (if applicab	le)
	6.	Deed (if applicable)		
	7.	Lease-Residential or Co	` -	plicable)
	8.	Photographs including of		
X	9.	Correction Notice/Code		
	10.	Citation and Proof of So		able)
	11.	Certified Mail Receipt (, ,	0.00
	12.			ng Officer (if applicable)
	13.	-		tice/Property Lien Sheet (if applicable)
	14.	Complete Chronology of	of Events, begin	ning with the first complaint through the

After the public hearing is held, please send a copy of the Zoning Commissioner's order to Helene Kehring in Room 113 in order that the appropriate action may be taken relative to the violation case.

Billing Notice/Property Lien Sheet (if applicable).

RSW/hr

C: Code Enforcement Officer

The second secon	ODE ENT	ORCEMENT R		NICH	<u>ئ</u>
DATE: 5/3/102	INTAKE BY:	CASE #:_	02-374	INSPEC:	15
COMPLAINT 6///	6 BEACH W	1000 Ku		<u> </u>	
	<u>,</u>		_ ZIP CODE:_	2/22 DIS	ST:
COMPLAINANT NAME:	- Fil	PHONE #: (H))	(W)	
ADDRESS:				ZIP CODE:	2127
PROBLEM:	Bulboing W	MOUT	MARMI		
IC THIC A DENITAL LINES	2 37770	3 10			<u> </u>
IS THIS A RENTAL UNIT IF YES, IS THIS SECTION OWNER/TENANT INFORMATION:		NO NO			
TAX ACCOUNT #:	5-06-5	72-130	ZONINO	3:	. ·
INSPECTION: 6/3/02	VZSTRO	SITE SUR	eens Ac	on Beta	a ca
INSPECTION: 6/3/62	VZSTZD	5.77e 54R	eens Ro	on Bezz	y ca
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Baltimore County Department of Permits and Development Management Code Inspections and Enforcement County Office Building 111 West Chesapeake Avenue Towson, MD 21204

Code Enforcement:

410-887-3351

410-887-3620

Building Inspection:

410-887-3953

Plumbing Inspection: Electrical Inspection:

410-887-3960

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation/Case No. Property No. Zoning: Zoning:
Name(s):
UAMES WELMEY
7824 CHARPOMONTH.
Address: BALT. MJ. 2/220 - 2702
Violation Location: 4/16 Beach Moon Rd.
DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:
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100/ of di Kulture BEING BUILT ON
WATER SIDE OF HOUSE
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YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:
On or defort: 6/3/02
FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR
EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF \$200, \$500, OR \$1000 PER DAY, PEI
VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.
Print Name Kowe
INSPECTOR:
STOP WORK NOTICE
PURSUANT TO INSPECTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORLD UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAI
RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT
THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN:
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MANAGORA TO THE TAXABLE PROPERTY OF THE PROPER

RA1001B

DATE: 05/3 2002 STANDARD ASSESSMENT INQUIRY (1)

TIME: 10:24:52

PROPERTY NO. DIST GROUP CLASS OCC. HISTORIC DEL LOAD DATE 15 06 572130 15 3-3 34-00 N NO 05/06/02

WEIMER JAMES A DESC-1.. IMPS

DESC-2.. BEACHWOOD

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5/30/02

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At 4116 So we a would appreciate it very much

that you would ched in To This matter AS

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RECEIVED

02-1457

MAY 3 0 2002

DEPT OF TEXASTERS

RE; PETITION FOR VARIANCE
4116 Beachwood Road, NE/S Beachwood Rd, 700' NW
of c/l Beachwood Rd
15th Election District, 7th Councilmanic

Legal Owner: James Weimer Petitioner(s)

- * BEFORE THE
- * ZONING COMMISSIONER
- * FOR
- * BALTIMORE COUNTY
- * Case No. 02-573-A

# ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order. 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 1st day of July, 2002 a copy of the foregoing Entry of Appearance was mailed to Bernadette L. Moskunas, Site Rite Surveying, Inc., 200 E. Joppa Road, Room 101, Towson, MD 21286, representative for Petitioners.

PETER MAX ZIMMERMAN

is letter is in sweet to an non a serson complaining neighborhood. This complaint a screenhouse being, my house watersiele of Seachwood Model in Galle W-21222 The complain us struining to neighbors This seron does not represent the neighborhood. This screenhouse does not block the waterrowd my neighbors and below is a les It mis neighbors signatures and belebosses contesting two this fac attached is a coord of this letter that was summeted to Balto County. Mane: PAULWDillow address. 4126 BEACHWOOD R.D. More: 4/10.477-1467 4128 BeAchwood Rd 410-477-1896

Over

3. Mane: Mr & Mr. Hord Vands address: 4110 Beachewood Fel BALT mo 21272 Phone: 410-477-2969 4. Mure: ERNEST & LINDA MUELLER afeliess: 4124 Bushwood Rd 410-388-0589 5. Mume: Michael wayne Glock afflices: 4112 Beach wood Rd. Phone: 410-388-1220 adduss 14120 BEACHWOOD RD kirl: BALTIMORE, MO 21222

Kondalyn Lotz BAUTIMORE, MD 2129?

Zoning commissioner 401 Bosley Ave Sutte 405 Towson md 21204

July 23,2002

you are formally being contacted, about zoning hearing 02573A JAMES WEIMER 4116 BEACHWOOD ROAD, TBALTIMORE, MARUJand 21222, Inthe 15th Election District, 7th Council Manie District. Enclosed you will find brief # 1543 Court of special Appeals of maryland-Rakowski-Lotz

V Weinter.

Please be aware the case firmly states the Weimers cannot put accesory structures in the Front yard of this said residence. Any structures

are in-violation according to the court of.

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Situations on this Particular Respectfully.

CC. Paris Glendain Ing aprenor.

# Zoning Inspector

Bames Weimer.

Please remove your posting-hearing. Sign. Located at 4116 Beachwood Rd. Baltimore md 21222.

Theyor Kyou are IN Molation from
the court of Special, appeals and Maryland Law.

Case brief 1543- Rakowski-Lotz

Please remove your signs and vs wemer. proceed with notice to the we mers they must Remove all Structures Located in the front yard of the said property emmidately.

Phank-you.

Rondalyn V Hot.

IN RE: PETITION FOR SPECIAL HEARING

NE/S Beachwood Road 1,000 ft.

NW of Lynhurst Road

4116 Beachwood Road 15th Election District

7th Councilmanic District

James W. Weimer Petitioner

BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

CASE No. 93-374-SPH

********

*

*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property located at 4116 Beachwood Road in the Beachwood subdivision of Baltimore County. The Petition was filed by the property owner, James W. Weimer. The Petitioner seeks approval of a designation of the property for the nonconforming use of 2 dwellings on this one .22 acre lot with a 35 ft. setback between them. The relief is more described on Petitioner's Exhibit No. 2, the plat to accompany the Petition for Special Hearing.

As noted above, the property is .22 acres in size and is zoned This is a waterfront property which abuts Back River. The proper-D.R.5.5. ty is improved by three structures thereon. In the center of the lot is an existing 21 ft. x 34 ft. house which is occupied by Mr. Weimer. To the front (water side) of the lot is a small existing screened house which is 12 ft. x 14 ft. To the rear (roadside) is a small 12 ft. x 24 ft. structure which is identified on the site plan as an existing bungalow.

The zoning history of the property is also unique. Within case No. 92-187-A, the Petitioner came before Deputy Zoning Commissioner Timothy M. Kotroco, requesting a variance from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing accessory structure to be located in the front yard in lieu of the required rear yard. The subject

Date Mary Maria

structure involved in that case was the screenhouse, which is located near the water. After the requisite public hearing, and upon consideration of the testimony and evidence presented, Deputy Commissioner Kotroco granted the variance. His decision was appealed to the County Board of Appeals which, likewise, granted the variance. The Board's decision was subsequently appealed to the Circuit Court for Baltimore County and was affirmed by Order of Judge Thomas J. Bollinger on August 11, 1993. Apparently, a further appeal has been taken from the Court's Order to the Court of Special Appeals of Maryland. That appeal is, at this time, pending.

The instant case is unrelated to this prior litigation. Instead, it deals with the structure located next to the roadway identified as the existing bungalow. Apparently, that house is now rented by Mr. Weimer. In that the D.R.5.5 zoning designation does not allow two dwellings on the same lot, the Petitioner seeks permission to continue the two dwelling use of the property pursuant to the Petition for Special Hearing as a nonconforming use.

The matter was originally scheduled for public hearing before this Zoning Commissioner on June 3, 1993. At that time, Mr. Weimer appeared. There were no Protestants. During my questioning of the Petitioner at that time, he indicated that he had acquired the property with his wife in approximately 1964. Since then, he indicated that the bungalow was "occasionally" rented and that there had been tenants "very seldomly". In that the Petitioner did not appear to appreciate the nature of the proof necessary to consider the Petition, I continued the public hearing. Further, an adjoining property owner, Rhonda Rakowski, has been actively contesting the case presently before the Court of Special Appeals since its inception before the Deputy Zoning Commissioner. In that she was not present at the first public hearing, the matter was also continued to allow her to participate.

Mr. Weimer and Ms. Rakowski appeared at the subsequent hearing date held for this case on September 10, 1993. At that time, Mr. Weimer testified as to the history of the property. As before, he indicated that he and his wife purchased the property and moved into same in the mid 1960s. Moreover, on September 10, 1993, he stated that the bungalow house had been continuously rented since 1964. Unfortunately, however, he was unable to present any personal testimony about the use of the property prior to the date of his acquisition. That is, he had no personal knowledge of the property until he and his wife purchased same. He did, however, provided documentation from the State of Maryland Department of Assessments. This documentation, which is frankly difficult to decipher, allegedly shows that two houses existed on the property since June 12, 1945. The records are silent, however, as to whether the houses have been continuously utilized and rented as two dwellings since that time.

Additionally, Ms. Rakowski testified at the September hearing. She indicated that she was born in this neighborhood in 1955 and has been familiar with the property since early childhood. She disputed Mr. Weimer's testimony in September and concurred with his remarks made at the first hearing date that the bungalow has been rented only occasionally. She indicated that there were long gaps of time when the bungalow was not occupied. Moreover, she is distressed that Mr. Weimer may be able to utilize both structures as dwellings when her parents were told some years ago that her property could not be so utilized.

In addition to the testimony and evidence offered at the public hearing, I have also reviewed the case file from case No. 92-87-A. I believe it significant to note that on the site plan submitted in that case, the structure now identified as the bungalow was identified as a garage.

As indicated above, the matter comes before me as a Petition for Special Hearing seeking the designation of a two dwelling use as nonconform-A nonconforming use is identified in Section 101 of the B.C.Z.R. Therein the term is defined as "a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use." Applying that definition to the instant case, it is to be noted that D.R.5.5 zone does not permit two dwellings on the same Thus, in order for the two dwellings to be permitted, they must property. have existed prior to the adoption of the zoning classification which prohibits same. That is, only if the use of the two dwellings as apartments predates the zoning of the property prohibiting such a use, may the use contin-In other words, the Petitioner seeks to "grandfather" this use. Moreover, Section 104 of the B.C.Z.R. governs nonconforming uses and their appli-Therein, it is provided that a nonconforming use cannot be abancation. doned or discontinued for a period more than one year or more. Further, there can be no change in the character of the nonconforming use.

In reviewing the history of the zoning designation of this property, the zoning maps disclose that the site has been zoned D.R. for many years. Previously, it was zoned M.L. Further, a review of the original zoning regulations adopted by Baltimore County, effective January 2, 1945, discloses that multi-dwellings were not permitted on any M.L. lot less than 10,000 sq. ft. The total area of this lot is 9,750 sq. ft. Therefore, in order for the nonconforming use to be permitted in this case, the Petitioner must adduce testimony and evidence that the site has been nonconforming since prior to January 2, 1945 and that said use has continued uninterruptedly since then.

Date Cary Car Funda

The Petitioner's proof fails on both counts. There is no substantial testimony and evidence before me that the two dwelling character of this lot existed prior to January 2, 1945. Moreover, based on the Petitioner's inconsistent testimony, as well as that offered by Ms. Rakowski, I am not persuaded that the use has continued uninterruptedly since that time. Therefore, the Petition for Special Hearing must be denied. It is to be noted that I make this judgment based on the narrow issue and facts presented. It appears that the apartment use of the bungalow is not detrimental to the locale. However, that is not the issue before me. I must, and have, decided this case based on the issue presented and the testimony and evidence elicited about that issue at the public hearings.

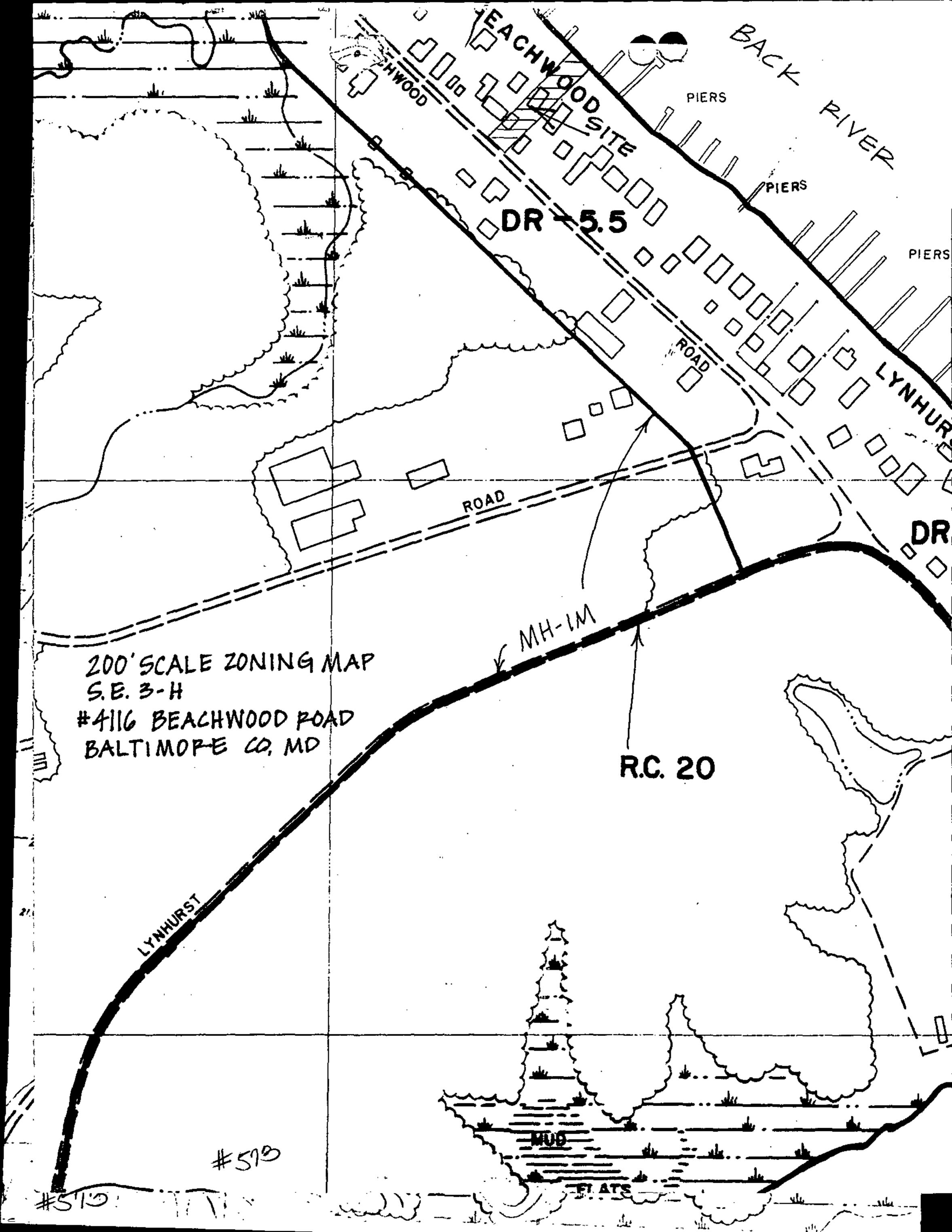
Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the Petition for Special Hearing should be denied.

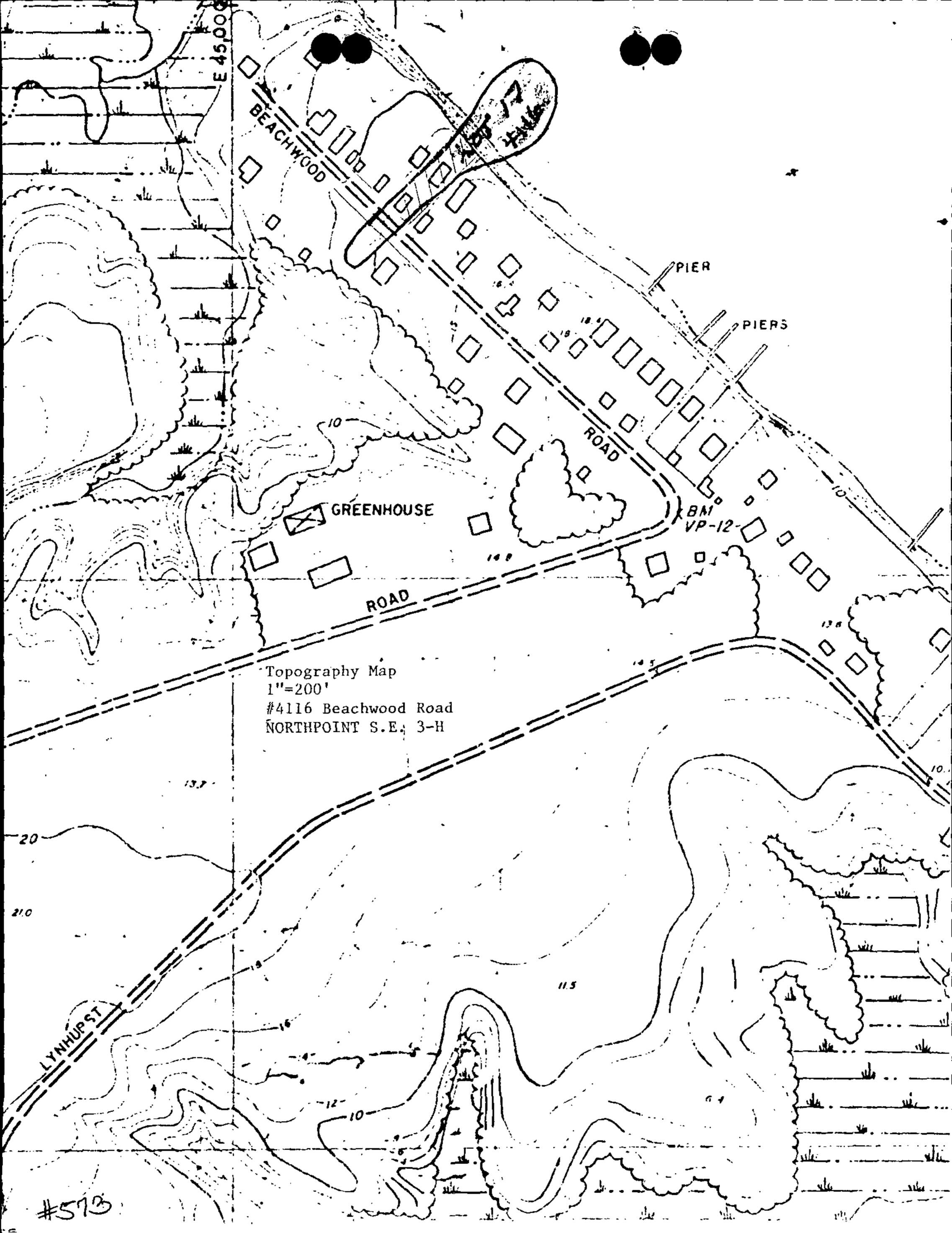
THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 30 day of September, 1993 that, pursuant to the Petition for Special Hearing, approval of a nonconforming use of 2 dwellings on this one .22 acre lot with a 35 ft. setback between them, be and is hereby DENIED.

LES:mmn

LAWRENCE E. SCHMIDT Zoning Commissioner for Baltimore County

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IN THE

## Court of Special Appeals of Maryland

SEPTEMBER TERM, 1993

No. 1543

RONDALYN RAKOWSKI
(now known as RONDALYN LOTZ)

Appellant

JUL 2 # 2002

JAMES W. WEIMER, et al.

Appellees

Appeal from the Circuit Court for Baltimore County, Maryland (Thomas J. Bollinger, Judge)

BRIEF OF APPELLANT

Thomas J. Gisriel
HODES, ULMAN, PESSIN & KATZ, P.A.
901 Dulaney Valley Road
Suite 400
Towson, Maryland 21204
(410) 938 - 8800

Attorneys for Appellant

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#### IN THE

#### COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 1993

No. 1543

Rondalyn Rakowski (now known as Rondalyn Lotz)

Appellant

v.

James W. Weimer, et al.

Appellees

Appeal from the Circuit Court for Baltimore County, Maryland (Thomas J. Bollinger, Judge)

### Statement of the Case

This matter arises from a request by James W. Weimer for a zoning variance to permit construction of a screenhouse in the front yard of his waterfront property located at 4116 Beachwood Road in Baltimore County. The screenhouse is considered an "accessory building" under the Baltimore County Zoning Regulations. (See definition Section 101). Section 400.1 of the Baltimore County Zoning Regulations permits accessory buildings only in rear yards. Mr. Weimer sought a variance for relief from that provision.

On December 3, 1991, the Deputy Zoning Commissioner of Baltimore County granted the Weimers' request for a zoning variance over the objection of Ms. Rondalyn Rakowski (now known as Rondalyn Lotz), the resident of 4118 Beachwood Road, the adjoining property. (E. 3-10). Ms. Rakowski appealed that decision to the Baltimore County Board of Appeals, which held a <u>de novo</u> hearing and affirmed the grant of the variance on October 21, 1992. (E. 11-13).

Ms. Rakowski appealed the Board of Appeals' decision to the Baltimore County Circuit Court. The basis of that appeal was that the Board of Appeals lacked the power to grant the requested variance, that the Board of Appeals failed to make required findings of fact supporting its decision, and that the variance granted violates the minimum set-back for an accessory building set forth in the Baltimore County Zoning Regulations.

In a three-page Opinion and Order (E. 14-16), Judge Thomas J. Bollinger of the Baltimore County Circuit Court affirmed the Board of Appeals, finding that there was substantial evidence to support the Board's decision. The Circuit Court failed to address whether the Board had the authority to grant the requested variance, whether the Board's findings of fact were sufficient, or whether the granted variance violated the minimum set-back for an accessory building.

### <u>Ouestions Presented</u>

- I. Do the Baltimore County Zoning Regulations authorize the granting of a variance to permit an accessory building in a front yard?
- II. Did the Board of Appeals make adequate findings of fact to support its decision?
- III. Did the Petitioner meet his burden of proof to justify granting the variance?
- IV. Does the granted variance violate the minimum set-back from the side lot line for an accessory building?

### Statement of Facts

In September, 1991, Mr. and Mrs. James W. Weimer employed their nephew, Greg Hribar, to take down an old screenhouse located in their front yard and construct a new one. (E. 25-28). The original screenhouse was built in 1972. (E. 28). The Weimers did not obtain any permit from the County to take down the old screenhouse or build the new screenhouse. (E. 26). In approximately October, 1991, the Weimers received a stop-work order on the screenhouse. (E. 29). Thereafter, they applied for the variance at issue in this case to permit them to complete construction of the screenhouse.

The Weimers' screenhouse is the only screenhouse in the neighborhood between the various houses and the water. (E. 26-27).

There are no structures comparable to this screenhouse in the neighborhood facing the water. (E. 30, 45). The testimony indicated that the lack of a screenhouse on the various other properties in the neighborhood did not cause any practical difficulty for those persons nor any unreasonable hardship. (E. 45-46).

The evidence regarding the distance of the screenhouse from the property line dividing the Weimer and Rakowski properties is disputed; however, all testimony indicated that the screenhouse is less than two and one-half (2 1/2) feet from the property line. Ms. Rakowski testified that the distance from the property line to the screenhouse is 2 feet and 1/16 of an inch. (E. 41). property survey indicates that the distance from the property line to the screenhouse is 2.16 feet. (E. 70). Mr. Hribar has testified that the distance from the property line to the screenhouse is 24 inches. (E. 61). The Board of Appeals made reference to Ms. Rakowski's testimony at page 2 of its Opinion (E. 12), but made no findings of fact on this issue. Neither the Board nor the Circuit Court made any reference to the fact that Section 400.1 of the Baltimore County Zoning Regulations permits an accessory building to be no closer than two and one-half feet from the side lot line.

### Argument

# I. The Requested Variance Is Not Permitted By The Baltimore County Zoning Regulations.

In Section 307.1 of the Baltimore County Zoning Regulations ("BCZR"), the Baltimore County Council granted the Zoning Commissioner and the County Board of Appeals power to grant certain variances. That Section gives the Board of Appeals and the Zoning Commissioner the power to grant variances ". . . from height and area regulations, from off-street parking regulations, and from sign regulations." BCZR §307.1 also specifically limits the authority of the Zoning Commissioner and the Board of Appeals to grant variances, stating: "They shall have no power to grant any other variances."

It is fundamental that the Zoning Commissioner and Board of Appeals must follow Baltimore County Zoning law, and are certainly not empowered to change that law or ignore it. <u>United Parcel v. People's Counsel</u>, 93 Md. App. 59, 81 (1992). Indeed, Article 25A, Section 5(U) of the Maryland Code, which empowers chartered counties to establish a county board of appeals, authorizes those boards of appeal to render decisions on a "zoning variation" only under laws or ordinances enacted by the county council.

The same Article 25A, Section 5(U), grants courts the power to reverse a decision of the Board of Appeals if the Board's decision "is not in accordance with law." Where, as is the case here, the question presented to a reviewing court is a question of law, the Court's review is expansive and the Court may substitute its

judgment for that of the administrative agency. Harford County v. McDonough, 74 Md. App. 119 (1988); Gray v. Anne Arundel County, 73 Md. App. 301, 309 (1987).

The legal question raised by this appeal is whether the variance at issue in this case is a variance which has been authorized by the Baltimore County Council. Appellant has specifically raised this issue before the Board of Appeals and the Circuit Court. Neither, however, has seen fit to address this issue.

In order for this variance to survive judicial scrutiny, it must be a variance from height and area, off-street parking or sign regulations. BCZR §307.1. The Regulation from which the variance is granted in this matter is Section 400.1, Accessory Buildings in Residence Zones. The County Council has codified this provision within Article 4 of the Baltimore County Zoning Regulations entitled "Special Regulations."

The critical portion of BCZR §400.1 from which Mr. Weimer has sought the variance is the requirement that accessory buildings ". . be located only in the rear yard . . . " The Weimer screenhouse is located in the front yard. (E. 11, 27).

Certainly, the regulation from which Mr. Weimer seeks a variance is neither an off-street parking regulation nor a sign regulation. This rather obvious conclusion is supported by how the County Council has structured and designated the Zoning Regulations. One entire section of the Zoning Regulations, Section 409, deals with off-street parking, and is so designated by the

County Council. Similarly, another entire section of the Zoning Regulations, Section 413, deals with signs, and is so designated by the County Council. The regulation at issue in this case, BCZR §400.1, is not contained within either Section 409 or Section 413.

The County Council has also specifically designated certain regulations as height regulations. (See, for example, Section 1A01.3, and Section 1B01.2). Height regulations are rather self-explanatory. They regulate how high a structure can be. For example, BCZR §1A01.3, which is designated a height regulation, sets a maximum height of thirty-five (35) feet in an R.C.2 zone. The regulation from which Mr. Weimer seeks a variance has nothing to do with height, and has not been designated a height regulation by the County Council.

Thus, if the variance at issue in this case is to survive, it must be justified as an "area" regulation. The term, "area regulation," is not defined in the Baltimore County Zoning Regulations. Guidance as to what is an area regulation is found by examining what the County Council has designated an "area regulation." In BCZR §1A01.3B, subdivision lot density, lot size, set-back requirements and principal dwellings per lot are designated "area regulations". In BCZR §1B01.2, general density, bulk, building separation and open space regulations are designated "area regulations."

The Regulation at issue in this case, BCZR §400.1, is not designated as an area regulation by the Baltimore County Council, and is not comparable to the regulations it has so designated.

Instead, the County Council has designated BCZR §400.1 a use regulation.

BCZR §400.1 has been codified by the County Council within Article 4 "Special Regulations" of the Zoning Regulations. The County Council has designated Article 4 in its entirety as use regulations:

### Section A400 -- PURPOSE

Certain uses, whether permitted as of right or by special exception, have singular, individual characteristics which make it necessary, in the public interest, to specify regulations in greater detail than would be feasible in the individual use regulations for each or any of the zones or districts. This article, therefore, provides such regulations.

Section B400 -- APPLICATION OF THIS ARTICLE'S PROVISIONS

The provisions of this article apply only to principal uses except as otherwise specified (as in Item 405.4C.12) or unless the provision implicitly relates to accessory usage (as in Section 405A).

Judicial decisions regarding variances have recognized the distinction between use variances and area variances. Indeed, the courts have enforced provisions of zoning ordinances which prohibit the granting of a use variance. Anderson v. Board of Appeals, 22 Md. App. 28, 39 (1974).

Maryland courts apply a higher burden of proof to use variances because ". . . a use variance . . . changes the character of the zoned district, and an area variance . . . does not."

Anderson v. Board of Appeals, supra, 22 Md. App. at 38.

The County Council has recognized that permitting an accessory building in a front yard changes the character of the front yard. Accessory buildings, by their nature, are characteristic of rear yards rather than front yards. Thus, the County Council designated the regulation limiting accessory buildings to rear yards, rather than front yards, as a use regulation, not an area regulation.

The cardinal rule for the courts in construing a statute is "... to ascertain and carry out the legislative intent and in ascertaining that intent the court considers the language of an enactment in its natural and ordinary signification." Harden v. Mass Transit Administration, 277 Md. 399, 406 (1976).

A court may not insert or omit words to make a statute express an intention not evidenced in its original form.

Harden v. Mass Transit Administration, supra, 277 Md. at 406.

The Baltimore County Council has expressly designated BCZR \$400.1 as a use regulation rather than an area regulation. The County Council has also expressly limited variances to area regulations. The BCZR does not permit variances of use regulations. This Court previously recognized and enforced a prohibition against use variances. It should do so again in this Case.

The Baltimore County Council has expressly limited the power to grant variances to height and area regulations, off-street parking regulations and sign regulations. The County Council has designated the regulation at issue in this case a use regulation which is not a regulation for which a variance can be granted.

Neither the Board of Appeals nor the Zoning Commission has been granted the authority by the County Council to grant the variance requested in this case. Therefore, the Board's grant of the variance in this case must be reversed.

# II. The Board of Appeals Failed to Specify The Reasons For Its Decision And Failed To Make The Findings Of Fact That Are Required.

The Board of Appeals based its grant of the variance in this case on two provisions, Section 307.1 and Section 307.2. Both of these provisions and Article 25A, Section 5(U) of the Maryland Code require the Board to make specific findings of fact to support the granting of a variance, and to state the reasons for its decision.

Article 25A, Section 5(U) of the Maryland Code states that:
"... upon any decision by the County Board of Appeals, it shall
file an opinion which shall include a statement of facts found and
the grounds for its decision."

Section 307.1 of the Baltimore County Zoning Regulations requires that "any order of the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance." Section 307.1 requires findings regarding specific issues, including the "special circumstances or conditions [which] exist that are peculiar to the land or structure which is the subject of the variance request", that "strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship" and that the grant of the

requested variance would be "in strict harmony with the spirit and intent of said . . . regulations."

BCZR §307.2 requires that:

[A]ny order granting a variance pursuant to this subsection shall contain findings of fact which shall include the following;

- 1. That special conditions or circumstances exist that are peculiar to the land or structure within the Critical Area of the County;
- 2. That strict compliance with the Critical Area regulations would result in practical difficulty, unreasonable hardship, or severe economic hardship;
- 3. That strict compliance with the Critical Area regulations will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County;
- 4. That the granting of a variance will not confer upon an applicant any special privilege that would be denied by the Critical Area regulations to other lands or structures within the Critical Area of the County;
- 5. That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property;
- 6. That the granting of a variance will be in harmony with the general spirit and intent of the Critical Area regulations of the County; and
- 7. That the variance conforms to the requirements as stated in Section 500.14 B.C.Z.R.

In its Opinion in this matter, the Board of Appeals failed to make the required findings of fact and failed to state the reasons for its decision. The Board's opinion summarized the testimony before it, then merely concluded:

The testimony and the exhibits indicate that the screenhouse is merely a continuation of the site being used for a screenhouse which has existed on the property for at least twenty years without a complaint. In addition, said testimony and exhibits are sufficient to indicate to the Board that Sections 307.1, 307.2, and 500.14 of the B.C.Z.R. have been complied with.

(E. 12).

In the judicial review of an administrative action, a court may uphold an agency order only if it is sustained by the agency's findings and for the reasons stated by the agency. Motor Vehicle Administration v. Mohler, 318 Md. 219, 231 (1990); Baltimore Horitage v. City of Baltimore, 316 Md. 109, 113 (1989). The reviewing court may not uphold an agency's decision if a record of the facts on which the agency acted or statement of reasons for its action is lacking. Board of County Commissioners for Prince Goorge's County v. Ziegler, 244 Md. 224, 229 (1966); Mortimer v. Howard Research, 83 Md. App. 432 (1990).

Without a reasoned analysis, a reviewing court cannot determine the basis of an agency's action. In such an instance, the case should be remanded for the purpose of having the

deficiencies supplied. <u>Board of County Commissioners for Prince</u> <u>George's County v. Ziegler, supra, 244 Md. App. 229; Mortimer v.</u> <u>Howard Research, supra.</u>

This Court has previously criticized a Board of Appeals stating:

Despite repeated admonitions by the Court of Appeals that the findings of administrative boards are not to be limited to conclusions couched in the terms of the ordinance itself but rather are to include specific findings of fact that support their conclusions, the Board of Appeals in this case set forth its conclusions in its statement and decision in a boilerplate form employing the terms of the ordinance itself without setting forth any specific findings of fact.

Anderson v. Board of Appeals, supra, 22 Md. App. at 36-37, n.5. In this case, the Board of Appeals has not even supplied the boilerplate from the ordinance.

As explained elsewhere in this Brief, Appellant believes there are strong reasons why this case should be reversed. Should this Court find reversal is not appropriate, affirmance based on the lack of findings and analysis below is simply not appropriate. In that event, this Court should remand this case to the Board of Appeals for the necessary findings of fact.

# III. The Record Shows That The Burden Of Proof For The Variance Was Not Met

As is set forth above, the regulation from which Mr. Weimer seeks a variance is a use regulation.

Use variances are customarily concerned with "hardship" cases, where the land cannot yield a reasonable return if used only in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance, . . . Where the standard of undue hardship applies, the applicant, in order to justify the grant of the variance, must meet three criteria:

- 1) If he complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property. . . Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance.
- 2) The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district.
- 3) The hardship was not the result of the applicant's own actions.

Anderson v. Board of Appeals, supra, 22 Md. App. at 38-39 (citations omitted). The Court has characterized this burden as "... the burden of showing a taking in a constitutional sense ... Anderson v. Board of Appeals, supra, 22 Md. App. at 39.

The record shows that Mr. Weimer utterly failed to meet this burden. The Weimers could use their property as a residence without the screenhouse, just as all of their other neighbors do. (E. 26-27, 30, 45-46). Similarly, there are no hardships the Weimers would suffer which are peculiar to their property if they, like their neighbors, were unable to erect the screenhouse between their residence and the water.

The only hardship to be suffered by Mr. Weimer as a result of application of BCZR §400.1 to him is that he would be unable to

rebuild the screenhouse, which he originally built in 1972. (E. 28).

It bears emphasis that this screenhouse never had any legal sanction. It was illegal the day it was originally built in 1972. The regulation prohibiting the screenhouse in the front yard dates from 1955.

The screenhouse was not a nonconforming use, because a nonconforming use must have been legal at some time. (See definition of nonconforming use BCZR §101). Wilson v. Town of Elkton, 35 Md. App. 417 (1977).

The existence of the screenhouse on Mr. Weimer's property is entirely self-created. A hardship which is self-created cannot be the basis for granting a variance. Anderson v. Board of Appeals, supra, 22 Md. App. at 39; Wilson v. Town of Elkton, supra, 35 Md. App. at 427-428.

The record in this case clearly establishes that Mr. Weimer failed to meet his burden of proving an unnecessary hardship which deprived him of the reasonable use of his land. Under these circumstances, this Court must reverse the grant of the easement.

Anderson v. Board of Appeals, supra, 22 Md. App. at 41-42.

For the reasons set forth above, the Baltimore County Board of Appeals lacks the authority to grant the variance requested. Even if the Board has the authority to grant the requested variance, however, Mr. Weimer failed to meet his burden of proving an unreasonable hardship which deprived him of the reasonable use of his land. Therefore, the grant of the variance should be reversed.

# IV. The Variance Granted Violates The Minimum Set-Back For An Accessory Building From The Side Lot Line

Section 400.1 of the Baltimore County Zoning Regulations states in part that: "In no case shall they [accessory buildings] be located less than two and one-half feet from any side or rear lot lines...."

In its Opinion, the Board noted that Ms. Rakowski had testified that the screenhouse in this matter was 2 feet and 1/16 inch from her property line. (E. 12, 41). The only other evidence in the record regarding this issue is the testimony of Greg Hribar that the screenhouse is 24 inches from the property line (E. 61), and that the screenhouse is 2.16 feet from the property line (E. 70).

Again, the Board of Appeals made absolutely no findings of fact regarding the distance of the screenhouse from the side lot line. There is a complete absence of any evidence in the record which would support a finding that the screenhouse is at least two and one-half feet from the property line as is required by Section 400.1 of the Baltimore County Zoning Regulations.

An argument can be raised that the Board has the authority to grant an easement from this set-back. Set-backs in other contexts have been designated "area regulations" by the County Council. (e.g., BCZR §1A01.3B.3). The plain language of the regulation, however, indicates otherwise. The County Council expressly stated

"in no case" shall an accessory building be located less than two and one-half (2 1/2) feet from a side lot line.

In light of the fact that the variance as granted violates the Baltimore County Zoning Regulations by allowing an accessory building closer than two and one-half (2 1/2) feet from the property line, that decision is contrary to law and should be reversed.

### Conclusion

The decision of the Baltimore County Board of Appeals in this matter is virtually a textbook case of what an administrative agency should not do. It has purported to grant a zoning variance which it lacks the authority to grant under Section 307.1 of the Baltimore County Zoning Regulations. The variance it has granted pormits an accessory building too close to the side lot line in violation of Section 400.1 of the Baltimore County Zoning Regulations. The Board of Appeals failed to make the findings of fact and statements of their reasons as required by Section 307.1 and Section 307.2 of the Baltimore County Zoning Regulations and Article 25A, Section 5(U) of the Annotated Code of Maryland. Finally, the party seeking the variance failed to meet his burden of proof.

Accordingly, Appellant Rondalyn Rakowski requests that this court reverse the October 21, 1992 Opinion and Order of the Baltimore County Board of Appeals and the August 11, 1993 Opinion

and Order of the Circuit Court for Baltimore County in this matter, or, in the alternative, to remand this matter to the Baltimore County Board of Appeals for appropriate findings of facts and statements of reasons for its conclusion.

Thomas J./ Gisriel

HODES, ULMAN, PESSIN & KATZ, P.A. 901 Dulaney Valley Road, Suite 400 Towson, Maryland 21204 (410) 938-8800

Attorney for Appellant, Rondalyn Rakowski

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of January, 1994, a copy of the Appellant's Brief and Joint Record Extract was hand delivered to Mr. and Mrs. James W. Weimer, 4116 Beachwood Road, Baltimore, Maryland 21222 and to Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

Thomas J. Gisriel

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APPENDIX

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## (U) County Board of Appeals

To enact local laws providing (1) for the establishment of a county board of appeals whose members shall be appointed by the county council; (2) for the number, qualifications, terms, and compensation of the members; (3) for the adoption by the board of rules of practice governing its proceedings; and (4) for the decision by the board on petition by any interested person and after notice

and opportunity for hearing and on the basis of the record before the board, of such of the following matters arising (either originally or on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, or subject to amendment or repeal by, the county council, as shall be specified from time to time by such local laws enacted under this subsection: An application for a zoning variation or exception or amendment of a zoning ordinance map; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and the assessment of any special benefit tax: Provided, that upon any decision by a county board of appeals it shall file an opinion which shall include a statement of the facts found and the grounds for its decision. Any person aggrieved by the decision of the board and a party to the proceeding before it may appeal to the circuit court for the county which shall have power to affirm the decision of the board, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice may require. Any party to the proceeding in the circuit court aggrieved by the decision of the said court may appeal from such decision to the Court of Special Appeals. The review proceedings provided by this subsection shall be exclusive.

100.3A-The residential zones and zoning classifications as previously changed in Subsection 100.3 are further changed; the R.40, R.20, R.10, R.6, R.G., and R.A. zones and zoning classifications established before the effective date of this subsection by the official zoning maps and amendments thereto and by Subsection 100.1 as previously enacted are also changed; and all of them are redesignated on the effective date of this subsection as set forth below. Any requirement, stipulation, or designation with respect to said classifications in any law, ordinance, regulation, private agreement, or official zoning map shall be applied to or construed as the corresponding D.R. zoning classification, as follows, to the full extent of consistent applicability:

Zones heretofore classified as R.40 are now classified as D.R. 1;

Zones heretofore classified as R.20 are now classified as D.R. 2;

Zones heretofore classified as R.10 are now classified as D.R. 3.5;

Zones heretofore classified as R.6 are now classified as D.R. 5.5;

Zones heretofore classified as R.G. are now classified as D.R. 10.5;

Zones heretofore classified as R.G. are now classified as D.R. 10.5;

100.4--The location of any zone boundary, unless indicated by dimensions shown on the zoning map, shall be determined by use of the map scale shown thereon and scaled to the nearest foot. [B.C.Z.R., 1955.]

Findtion 101-DEFINITIONS [B.C.Z.R., 1955.]

[Bill No. 100,1970.]

Words used in the present tense include the future; words in the singular number include the plural number; the word "shall" and mandatory. For the purposes of these Regulations, certain terms and words are defined as follows: [B.C.Z.R., 1955.]

Accessory Building: One which is subordinate and customarily incidental to and on the same lot with a main building. A trailer shall not be considered an accessory building. A structure connected to a principal building by a covered passageway or building. [B.C.Z.R., 1955.]

Lot, Corner: A lot abutting on and at the intersection of two or more streets. [B.C.Z.R., 1955.]

Lot, Interior: A lot other than a corner or through lot. [B.C.Z.R., 1955.]

Lot, Through: A lot having its front and rear yards each abutting on a street. [B.C.Z.R., 1955.]

Lot Depth: The mean horizontal distance between the front and rear lot lines. [B.C.Z.R., 1955.]

Lot of record: A parcel of land with boundaries as recorded in the Land Records of Baltimore County on the same date as the effective date of the zoning regulation which governs the use, subdivison, or other condition thereof. [Bill No. 100, 1970.]

Marina: A modern boat basin, restricted to recreational marine craft of all types, with facilities for one or more of the following: berthing, launching, and securing such craft, and permitting incidental minimum provision for refueling and emergency servicing, and also land (out-of-water) storage as provided in subsection 417.7. [Bill No. 64, 1963.]

["Motel or Motor Court" and definition deleted by Bill No. 1984.]

Noighborhood: A coherent urban area generally comprising the dwellings for a residential population of approximately 1,000 to 1,000 families and a more-or-less central concentration of the public facilities and business uses serving their everyday or achool-recreation center) and a supermarket or grocery store.

Nonconforming Use: A legal use that does not conform to a special regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically forming use described by the adjective "nonconforming" is a nonconforming use. [B.C.Z.R., 1955; Bill No. 18, 1976.]

Nonindustrial use: Any use other than an industrial, quasiindustrial, or industry-related use. [Bill No. 178, 1979.]

Nursery School: A school or a level within a school providing educational instruction for children between two and four years old. [Bill No. 47, 1985.]

Office: The term "office" does not include a bank, a post chandise is stored on or sold from the premises. [Bill No. 13, 1980.]

#### 1A01.3---HEIGHT AND AREA REGULATIONS [Bill No. 98-75]

- A. Height regulation. No structure hereafter erected in an R.C. 2 zone shall exceed a height of 35 feet, except as otherwise provided under Section 300. [Bill No. 98-75]
- B. Area regulations. [Bill No. 178-79]
  - 1. Subdivision lot density. No lot of record lying within an R.C. 2 zone and having a gross area of less than 2 acres may be subdivided. No such lot having a gross area between 2 and 100 acres may be subdivided into more than 2 lots (total), and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of 1 lot for each 50 acres of gross area. In cases where land in single ownership is crossed by existing or proposed roads, rights-of-way, or easements, the portions of land on either side of the road, right-of-way, or easement shall not be considered separate parcels for the purpose of calculating the number of lots of record with the exception that any zoning petition site plan, subdivision plan or record plat filed with or approved by the county between November 27, 1979 and October 1, 1990 shall not be so affected and be considered valid, provided as to any zoning petition pending on appeal, that it be upheld on appeal. [Bill No. 178-79; Bill No. 199-1990]
  - Lot size. A lot having an area less than 1 acre may not be created in an R.C. 2 zone. [Bill No. 178-79]
  - 3. Setback requirements. No principal structure or dwelling (whether or not it is a principal structure) in an R.C. 2 zone may be situated within 75 feet of the centerline of any street or within 35 feet of any lot line other than a street line.

    [Bill No. 178-79]
  - 4. Principal dwellings per lot. No more than 1 principal dwelling is permitted on any lot in an R.C. 2 zone. [Bill No. 178-79]

### 1A01.4--MARYLAND AGRICULTURAL LAND PRESERVATION PROGRAM

The use or development of land in an agricultural district established in accordance with Section 2-509 of the agricultural article of the Annotated Code of Maryland, 1974, 1979 Cumulative Supplement, shall be governed by agricultural land preservation provisions

- 1801.2.--General Density, Bulk, Building Separation, Open Space, and Other Height and Area Standards and Regulations. {Bill No. 100, 1970.}
  - A. Density Controls. {Bill No. 100, 1970.}
    - 1. Application of Maximum Density Standards to Tract in One Zone. The maximum gross residential density permitted in any one D.R. zone shall control only as applied to the total gross residential acreage within a subdivision tract, and shall not apply to or establish minimum areas of lots created by subdivision within such tract. {Bill No. 100, 1970.}
    - 2. Application to Tract Divided by Zone Boundary. In D.R. 10.5, D.R. 16, or in any nonresidential zone which allows residential development, wherever a single tract is divided by a zone boundary so that portions of such tract lie within D.R. zones of different classification, the total number of dwelling or density units permitted, as determined by multiplying the gross acreage of each portion by the maximum density permitted under Subsection 1802.2 in the zone within which that portion lies and totalling the results, shall be permitted without further regard to the zone boundary, and the units may be distributed over the tract as though it were in a single zone. {Bill No. 100, 1970; Bill No. 2, 1992.}
  - B. Bulk Regulations. {Bill No. 100, 1970.}
    - 1. Detached and Attached Buildings. In the application of the provisions of this article, buildings shall be considered as detached if there are no above-grade structural connections between them. If buildings are, in fact, structurally connected above grade, they shall be considered as mutually attached buildings if divided by lot lines, or as one building if situated on a single lot. {Bill No. 100, 1970; Bill No. 2, 1992.}
    - Building Lengths. The building lengths have been described in accordance with Section 504.2, Comprehensive Manual of Development Policies. {Bill No. 100, 1970; Bill No. 2, 1992.}

- C. Building Setback Requirements. (Bill No. 2, 1992.)
  - 1. Except as otherwise may be provided under standards adopted pursuant to Section 504.2, the minimum setbacks and heights shall be as set forth in the following tables:

a.

PRINCH	VONRE PAL BU IN D.	SID)SI HAD)IN R.ZO	G.SETT G.SETT	BACKS
·	Front	Side Yard Interior	Corner Street Side	Rear
D.R. 1	70	40	65	50
D.R. 2	60	30	50	40
D.R. 3.5	50	20	35	30
D.R. 5.5	40	20	35	30
D.R. 10.5	25	20	, <b>35</b>	50
D.R. 16	30	25	25	30

[Bill No. 2, 1992]

b.		
	SINGLE FAMILY DETACHED. TWO-FAMILY	
	ALTERNATIVE SITE DESIGN DWELLINGS	

·	18.1& 2 Zones	DR. 35. 55. 105 & 78 Zonos		Noo-Traditions Al DR Zonos
From front building face to:				•
Public street right-of-way,	_			4 ==
or property line	25	25	25	15 25
Arterial or Collector			<del>_</del>	
From side building face to:			_	
Side building face	30	16<20 high		16<20 high
		20 > 20 high	١,	20 > 20 high
Public street right-of-way	25	1 <i>5</i>	15	15
Paving of a private road	30	25	25	25
Tract boundary	25	15	15'	15
From rear building tace to:				
Rear property line	30"	30	20	50
Public street right-of-way	307	20	207	507
Additional Setbacks: Setbacks for buildings local adjacent to arterial roadwar shall be increased by an			•	•

This table lists minimum setback requirements and building heights for urban residential use. For a fuller explanation of these and other requirements, consult the Comprehensive Manual of Development Policies.

[Bill No. 2, 1992]

•		2.12 5 4				
7		3.77	7 <b>7 2</b>		10000000	House
L						

From front building face to:	
Public street right-of-way, or property line	
Garage units	25
Non-garage units	
Perpendicular parking	13"
Parallel parking	15'
From side building face to:	
Side building face	25', 20' *
Publicatreet right-of-way	25
- Individual Control of the Control	
From rear building face to:	
Rear property line or	30'
Public street right-of-way	45
Any building face to:	
Tract boundary	30'
Additional Setbacks:	
Setbacks for buildings located adjacent	
to arterial roadways shall be incressed by	
an additional 20 feet.	
This table lists minimum setback requirements and	building heights
for urban residential use. For a fuller explanation of	
consult the Comprehensive Manual of Development	

^{*}See C.M.D.P. Section II, Single-i amily Attached

[Bill No. 2, 1992]

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# CARRIAN CONTINUES

Building face to building face: (there are two fronts)	6-07
Building face to public street:	25
Side building face to side building face:	
t' of setback per t' of height to soffit line of tallest building.	Not less than 40'
Building face to trect boundary:	40
Additional setbecks:	
Seibacks for buildings located adjacent	
to arterial roadways shall be incressed by an additional 20 feet.	· · · · · · · · · · · · · · · · · · ·
This table lists minimum setback requirements	and hullding heights for

[Bill No. 2, 1992]

### e. Multi-Family Building

Building tace to building face: (front or rear)	45
Building face to public atrest right-of-way	25
Side building face to side building face: I' of setback per I' of height to soffit line of tailest building.	
	Not less than 30'
Building face to tract boundary: Front or rear building face	
Side building face	40
	30
idditional extbacks: Setbacks for buildings located adjecent to arte incressed by an additional 20 feet.	rist roadweys chail be

{Bill No. 2, 1992.}

- 2. Under the provisions adopted pursuant to the authority of Section 504.2, development in D.R. zones may be made subject to additional standards of lot area, yard space, open-space distribution, building distribution, or other aspects or characteristics of site planning or project design. Such standards shall be based upon specified existing, prospective, or stipulated conditions or circumstances of development, and shall be designed to further the specific purposes of this article and the purposes of these zoning regulations in general. {Bill No. 2, 1992.}
- 3. Local open space. Local open space tracts in D.R. zones shall be designed, established, and maintained in accordance with the standards, guidelines and procedures set forth in the Baltimore County Local Open Space Manual as enabled in Section 22-283 of the Code. {Bill No. 2, 1992.}
- {C. Open Space. Building Separation, and Other Area Standards. {Bill No. 100, 1970; repealed by Bill No. 126, 1992.}}

304.7--The director of zoning administration shall establish appropriate fee schedules. {Bill No. 47, 1992.}

Section 305--REPLACEMENT OF DESTROYED OR DAMAGED DWELLINGS (B.C.Z.R., 1955; repealed by Bill No. 124, 1991; re-enacted by Bill No. 214, 1991.)

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

Section 306--MINOR PUBLIC UTILITY STRUCTURES [B.C.Z.R., 1955.]

Minimum lot area regulations in any zone shall not apply to repeater, booster, or transformer stations, or small community dial offices. [B.C.Z.R., 1955; Resolution, November 21, 1956.]

Section 307--VARIANCES [B.C.Z.R., 1955; Bill No. 107, 1963.]

307.1--The zoning commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations and from sign regulations, only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in pratical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the zoning regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking, or sign regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare. They shall have no power to grant any other variances. Before granting any variance, the zoning commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the zoning commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance. {B.C.Z.R., 1955; Bill No. 107, 1963; No. 32, 1988; Bill No. 2, 1992.}

307.2--In addition to the authority and limitations set forth in Section 307.1 above, within the Chesapeake Bay Critical Area, the zoning commissioner, or upon appeal, the Board of Appeals of of Baltimore County, shall have the power to authorize the expansion

of those uses in existence at the time of the effective date of this subsection: any order granting a variance pursuant to this subsection shall contain findings of fact which shall include the following: [Bill No. 32, 1988.]

- 1. That special conditions or circumstances exist that are peculiar to the land or structure within the critical area of the county; [Bill No. 32, 1988.]
- 2. That strict compliance with the critical area regulations would result in practical difficulty, unreasonable hardship or severe economic hardship; [Bill No. 32, 1988.]
- J. That strict compliance with the critical area regulations will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the critical area of the county; [Bill No. 32, 1988.]
- 4. That the granting of a variance will not confer upon an applicant any special privilege that would be denied by the critical area regulations to other lands or structures within the critical area of the county; (Bill No. 32, 1988.)
- 5. That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property; [Bill No. 32, 1988.]
- 6. That the granting of a variance will be in harmony with the general spirit and intent of the critical area regulations of the county; and [Bill No. 32, 1988.]
- 7. That the variance conforms to the requirements as stated in Section 500.14, B.C.Z.R. [Bill No. 32, 1988.]

ARTICLE 4--SPECIAL REGULATIONS [B.C.Z.R., 1955.]

Section A400--PURPOSE [Bill No. 18, 1976.]

Certain uses, whether permitted as of right or by special exception, have singular, individual characteristics which make it necessary, in the public interest, to specify regulations in greater detail than would be feasible in the individual use regulations for each or any of the zones or districts. This article, therefore, provides such regulations. [Bill No. 40, 1967.]

Section B400--APPLICATION OF THIS ARTICLE'S PROVISIONS [Bill No. 18, 1976.]

The provisions of this article apply only to principal uses except as otherwise specified (as in Item 405.4C.12) or unless the provision implicitly relates to accessory usage (as in Section 405A). [Bill No. 18, 1976.]

Section 400--ACCESSORY BUILDINGS IN RESIDENCE ZONES. [B.C.Z.R., 1955; Bill No. 27, 1963.]

- 400.1--Accessory buildings in residence zones, other than farm buildings (Section 404) shall be located only in the rear yard and shall occupy not more than 40% thereof. On corner lots they shall be located only in the third of the lot farthest removed from any street and shall occupy not more than 50% of such third. In no case shall they be located less than 2 1/2 feet from any side or rear lot lines, except that two private garages may be built with a common party wall straddling a side interior property line if all other requirements are met. The limitations imposed by this section shall not apply to a structure which is attached to the principal building by a covered passageway or which has one wall or part of one wall in common with it. Such structure shall be considered part of the principal building and shall be subject to the yard requirements for such a building. [B.C.Z.R., 1955; Bill No. 27, 1963.]
- 400.2--Accessory buildings, including parking pads, shall be set back not less than 15 feet from the center line of any alley on which the lot abuts. [B.C.Z.R., 1955; Bill No. 2, 1992.]
- 400.3--The height of accessory buildings, except as noted in Section 300 shall not exceed 15 feet. [B.C.Z.R., 1955.]

Section 409--OFFSTREET PARKING AND LOADING [Bills No. 26, 1988; No. 36, 1988.]

### 409.1 Applicability

- A. All structures built and all uses established hereafter shall provide accessory off-street parking and loading in accordance with the following regulations. When an existing structure or use is enlarged, accessory off-street parking and loading shall be provided in accordance with the following regulations for the area or capacity of such enlargement.
- B. Those projects which have CRG approval prior to the effective date of these regulations may modify their plans to satisfy these regulations or may proceed under the regulations in effect at the time of said approval.
- C. Those projects for which a building permit has been submitted but not approved may modify their plans to satisfy these regulations or proceed under the regulations in effect at the time of said submittal.

#### 409.2 Plan

At the time of application for a building permit for the erection or enlargement of any building for which off street parking or loading spaces are required, a plan shall be provided at an appropriate level of detail showing such parking or loading spaces, including the means of access and interior circulation both from the standpoint of the project itself and in relation to its surroundings.

### 409.3 Parking Space Dimensions

Minimum off-street parking space dimensions shall be as follows:

-	Angled <u>Parking</u>	Parallel Parking	
Standard Space	8 1/2' x 18'	7 1/2' x 21'	
Small Car Space	7 1/2' × 16'	7 1/2' × 18'	

Small car spaces shall be designated as such and clearly marked to indicate the intended use.

- 413.1--The following signs are permitted in any zone, as limited in Section 413.5 (see also Section 14-26 of the Baltimore County Code, 1968, and Section 600 of these Regulations); if illuminated they shall be of an enclosed lamp design, nonflashing, containing no colored illumination, and may also be of the reflector type: [B.C.Z.R., 1955 and Bill No. 172, 1977.]
  - A. A sign indicating the name or number of the owner and/or premises or the accessory use of a dwelling for a home occupation or for professional purposes, provided that such sign shall not exceed one square foot in area; [B.C.Z.R., 1955.]
  - B. One bulletin board on church, school, or college property, not over 30 square feet in area; [B.C.Z.R., 1955.]
  - C. A sign on a farm, noting the sale of articles grown or produced on the premises, provided that such sign shall not exceed 30 square feet in area, shall be at least 10 feet from any public right-of-way and at least 50 feet from the nearest corner of a road intersection; [B.C.Z.R., 1955.]
  - D. A sign, not exceeding 15 square feet in area, in connection with an apartment building or project in which a rental office is located; also for a dwelling converted into a tearoom or restaurant; [B.C.Z.R., 1955.]
  - E. Directional or information signs of a public or quasi-public nature, not exceeding 15 square feet in area. Such signs shall contain no advertising matter, and shall not be illuminated, but may be of the beaded reflector type. They may state: [B.C.Z.R., 1955.
    - 1. Name or location of a community or of a public or quasipublic institution or other building, or the name of
      place of meeting of an official or civic body, such as a
      Chamber of Commerce or Rotary or Kiwanis Club.
      [B.C.Z.R., 1955.]
    - Temporary signs noting an event of general interest such as a county fair, public or general election, horse show, etc. Such sign shall be removed within ten days after the event. B.C.Z.R., 1955.]
    - 3. Signs--directional, informational, or warning in character, involving no advertising aspect, and each not exceeding 25 square feet in area. [B.C.Z.R., 1955.]

respect to the same property or any part of that property until at least eighteen months have passed from the date of the final order relating to the previous petition, whether that order is issued by the zoning commissioner or deputy zoning commissioner, by the Board of Appeals, or by a court of competent jurisdiction considering the petition on appeal. [B.C.Z.R., 1955; Bill No. 144, 1959; No. 25, 1978.]

- 500.13--He shall keep accurate records of all proceedings pending before him and before the Board of Zoning Appeals 18 and such records shall be open to public inspection in his office. He shall keep an accurate account of all money received by the zoning department 19 and shall turn the same over to the chief clerk and auditor of the county commissioners. 20 [B.C.Z.R., 1955.]
- 500.14--Within the Chesapeake Bay Critical Area: [Bill No. 32, 1988.]
  - A. No decision may be rendered by the zoning commissioner on any petition for special exception, variance or special hearing unless the zoning commissioner has received from the director of the Department of Environmental Protection and Resource Management written recommendations, which shall be prepared in consultation with the director of the Office of Planning and Zoning, describing how the proposed request would: [Bill No. 32, 1988.]
    - 1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; [Bill No. 32, 1988.]
    - 2. Conserve fish, wildlife, and plant habitat; and [Bill No. 32, 1988.]
    - 3. Be consistent with established land use policies for development in the Chesapeake Bay critical area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts. [Bill No. 32, 1988.]
  - B. The recommendations shall be provided to the zoning commissioner within thirty (30) days after the department is notified by certified mail, return receipt requested, by the petitioner of the filing of the petition with the office of the zoning commissioner, unless the department by written request

by written request to the Zoning Commissioner, with good cause shown, moves that additional time not to exceed an additional thirty (30) days is required to prepare and file said recommendations with the Zoning Commissioner. [Bill No. 32, 1988.]

- C. After receiving the recommended findings specified in paragraph A, and scheduling the hearing, the Zoning Commissioner shall send to the Chesapeake Bay Critical Area Commission a complete copy of the application and the recommended findings and the hearing notice. Before copy of an application from the applicant or the local approving authority, the Commission will in accordance with Natural Resources Article, Section 8-1811 send Zoning Commissioner. A failure of the Commission to send Article Section 8-1211(b)(3) and subparagraph D below inapplicable as to that petition. [Bill No. 32, 1988.]
- D. The Zoning Commissioner shall not render a decision on any such petition of which a copy must be sent to the Commission until the Zoning Commissioner has received notice of receipt by the Commission, and any such decision in violation of this paragraph shall be null and void. [Bill No. 32, 1988.]
- E. A copy of the opinion and order deciding the application shall promptly be sent by the Zoning Commissioner to the Critical Area Commission. [Bill No. 32, 1988.].









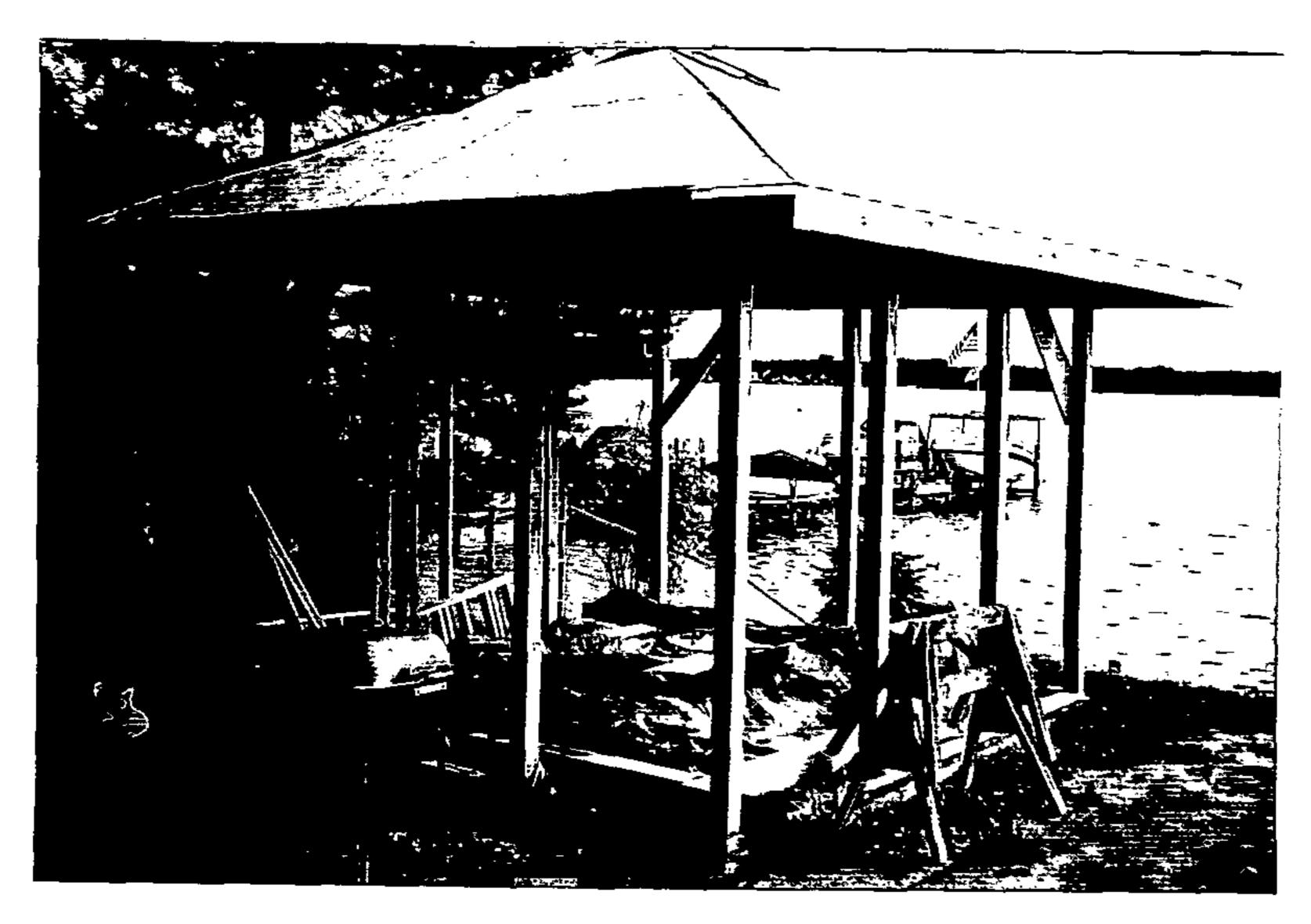




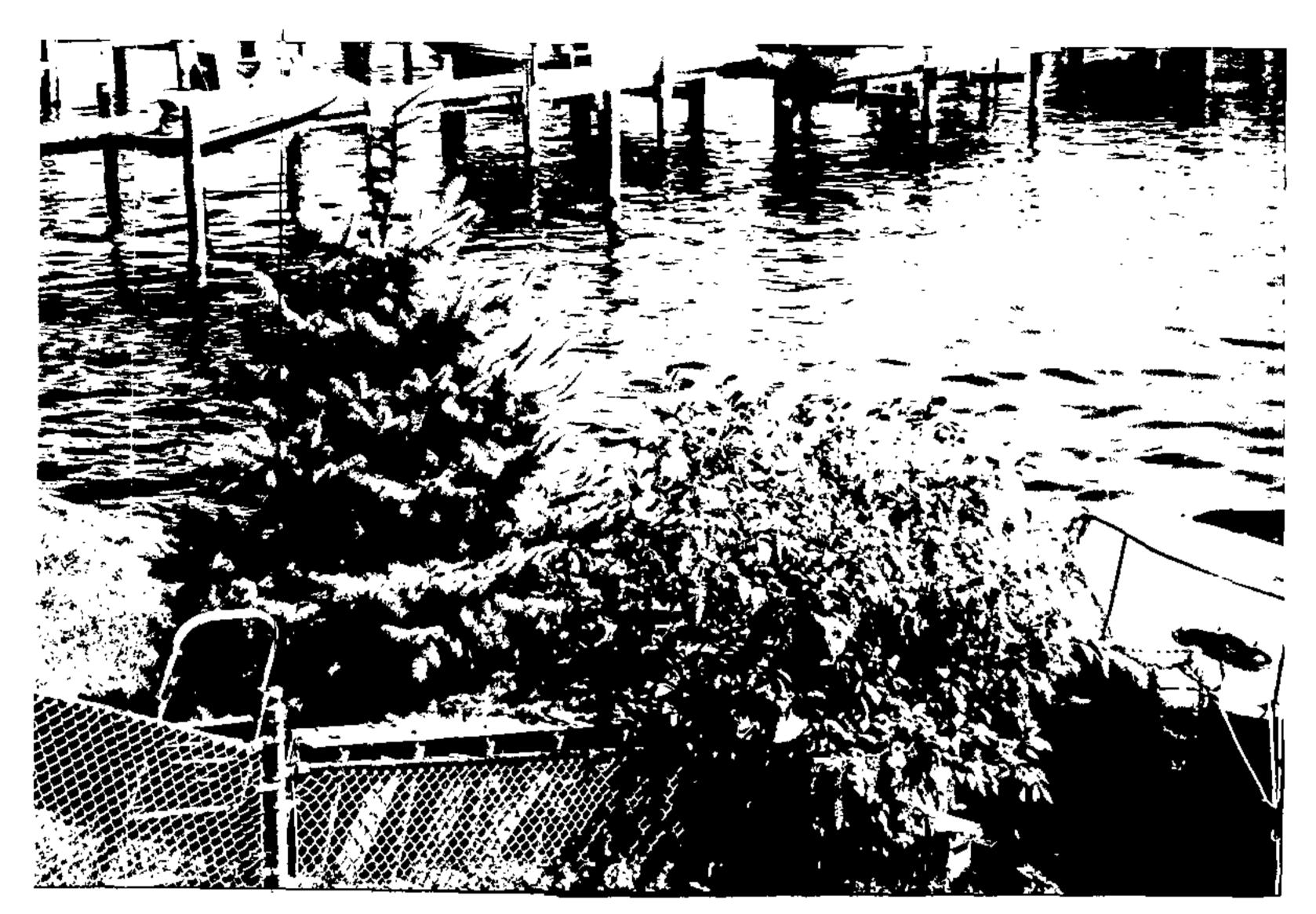
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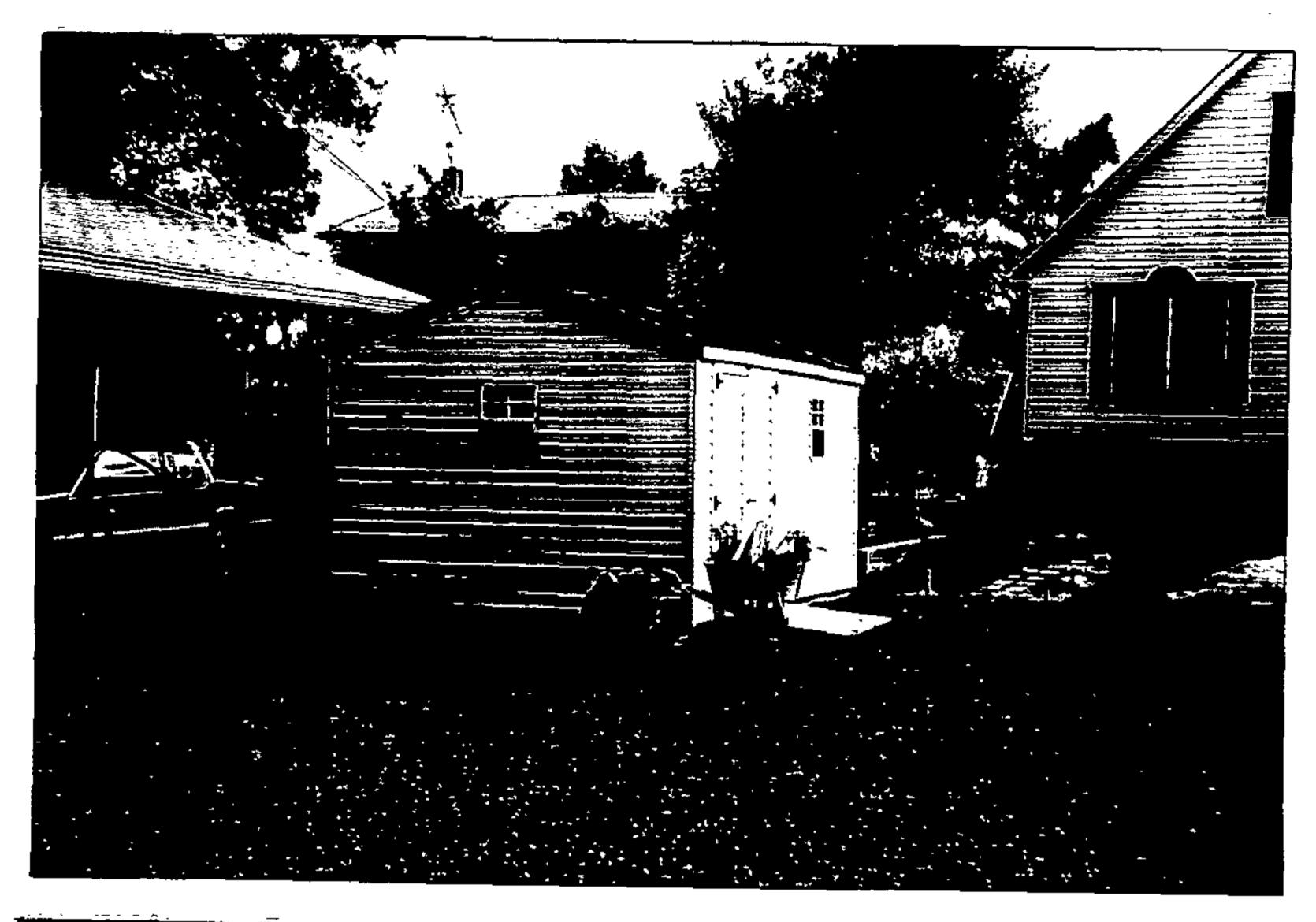


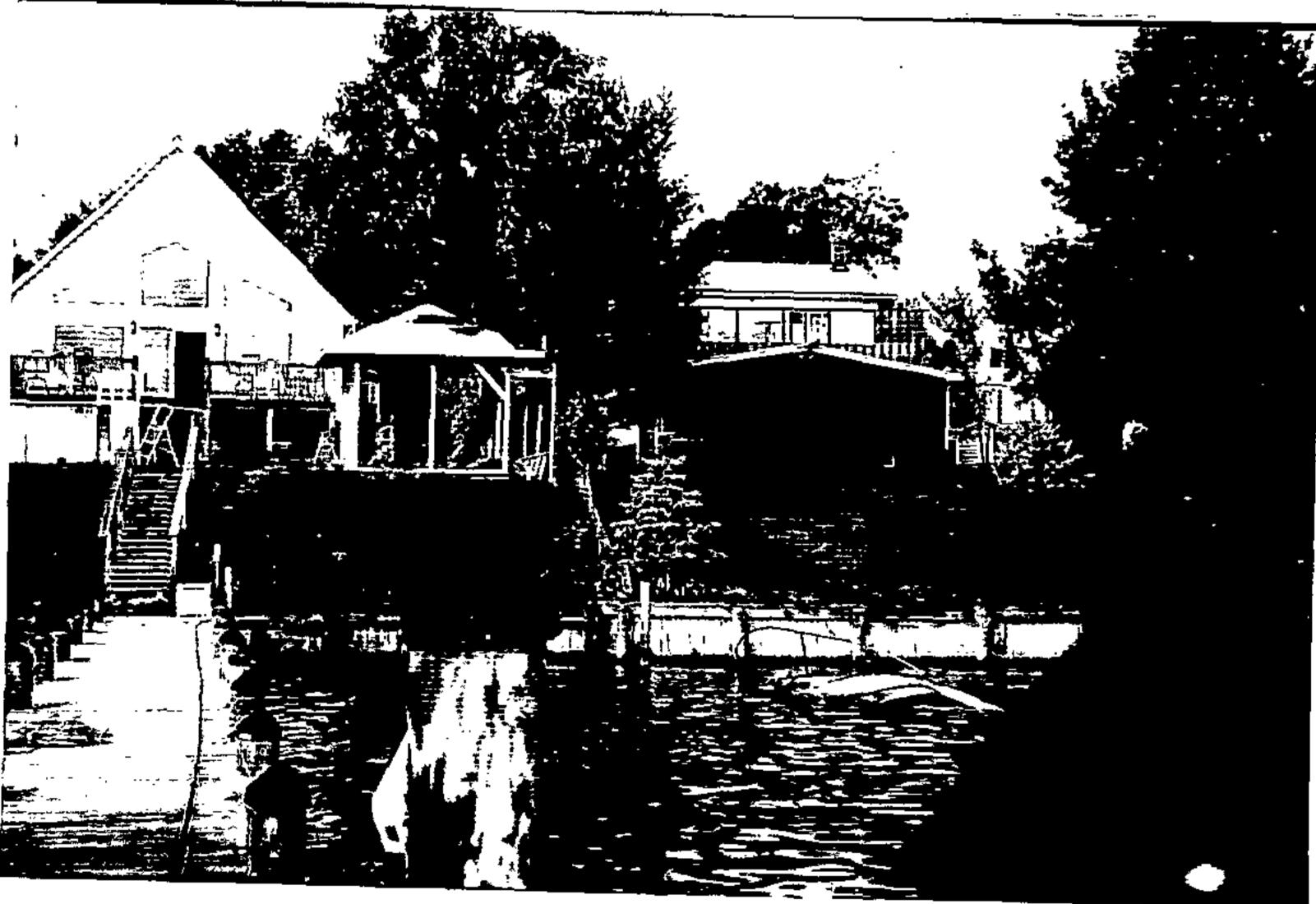


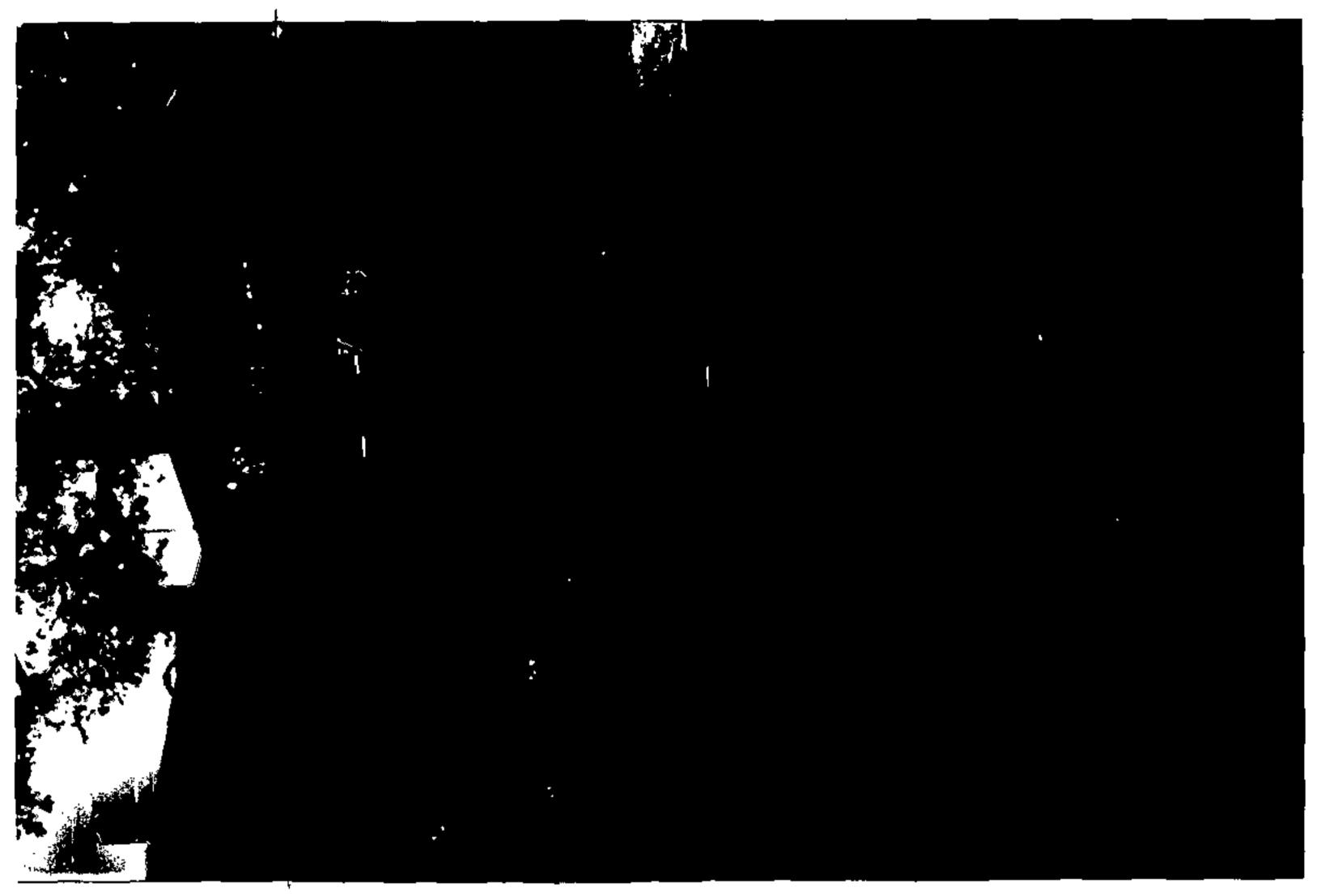




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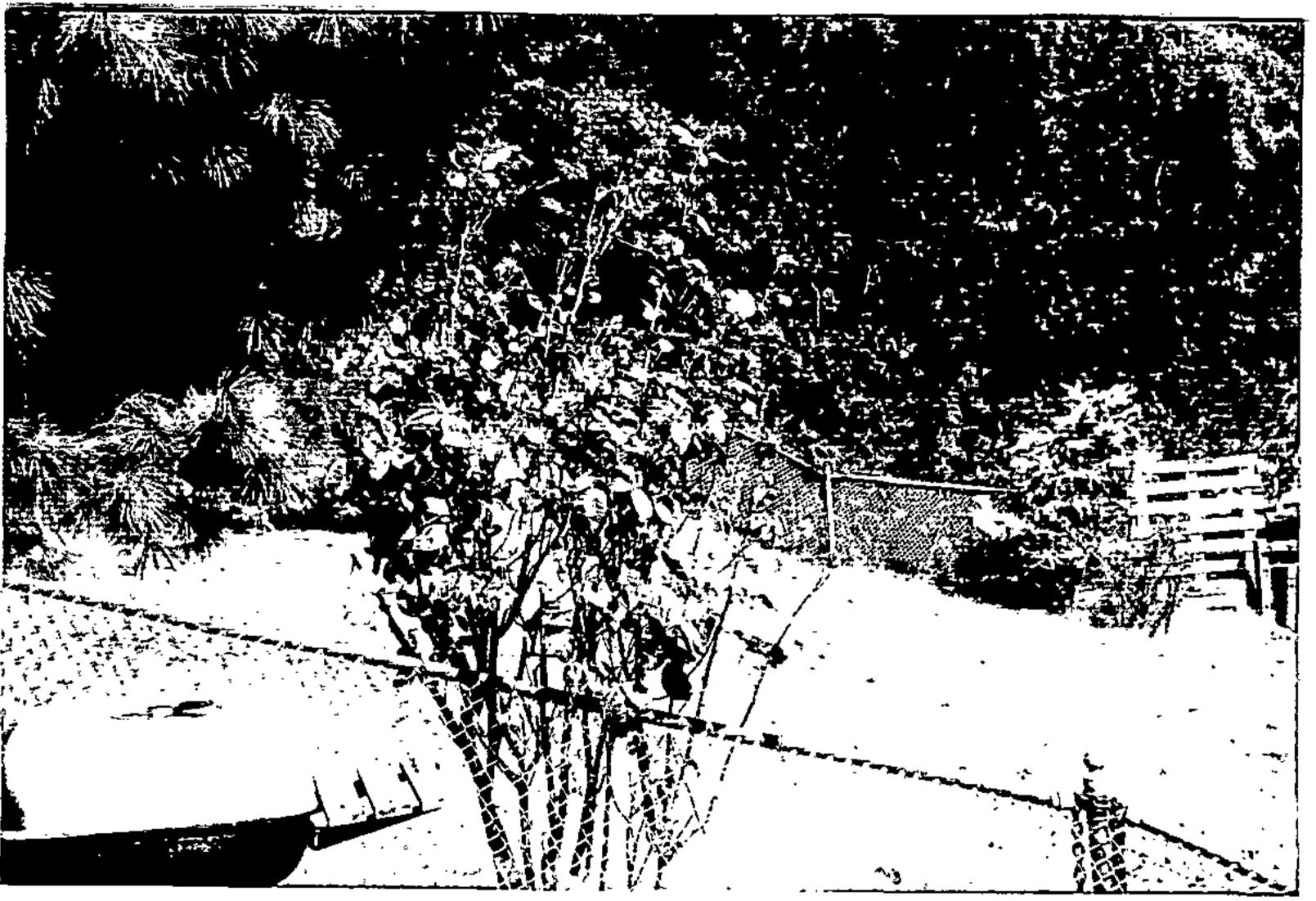




















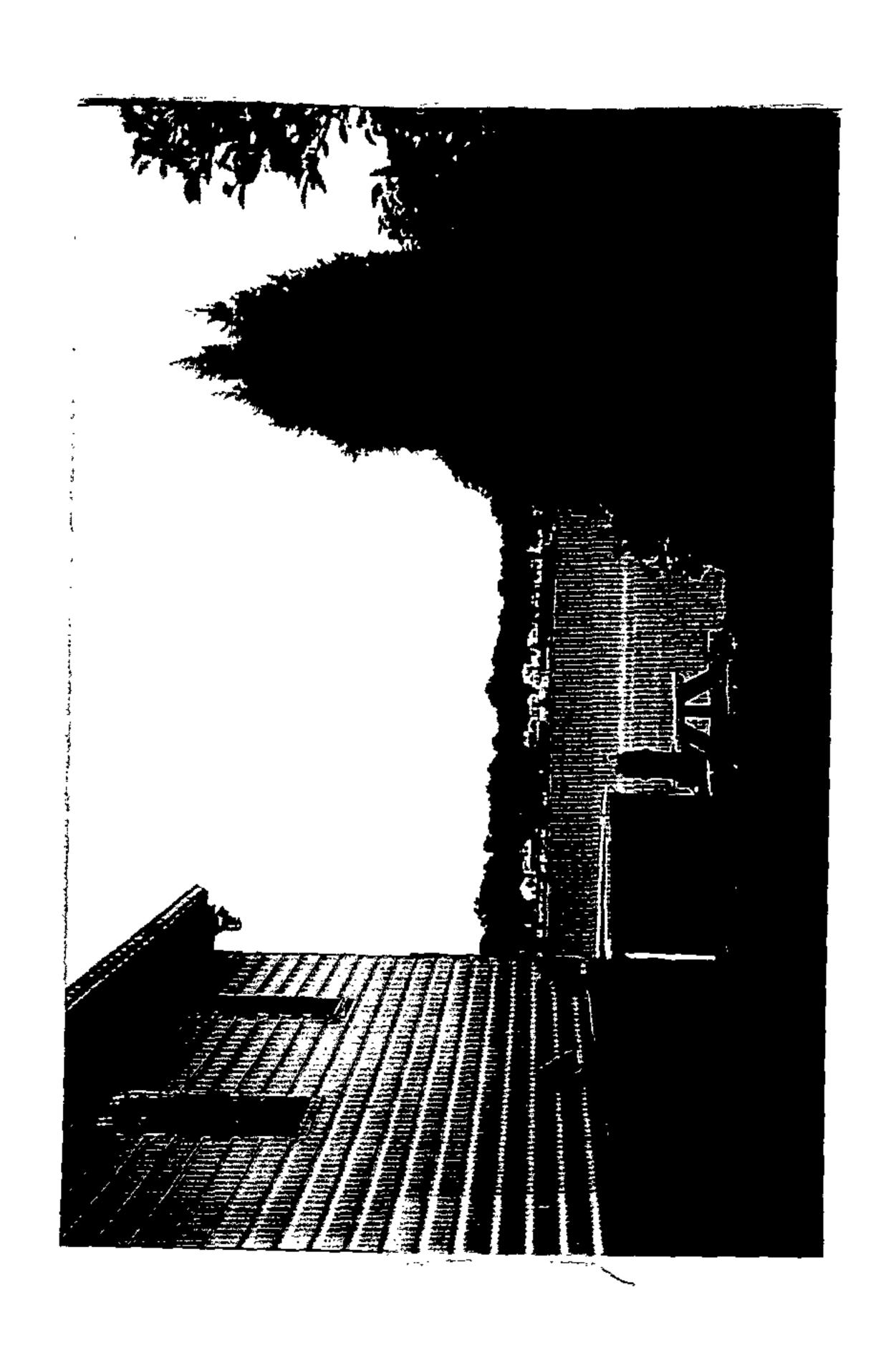








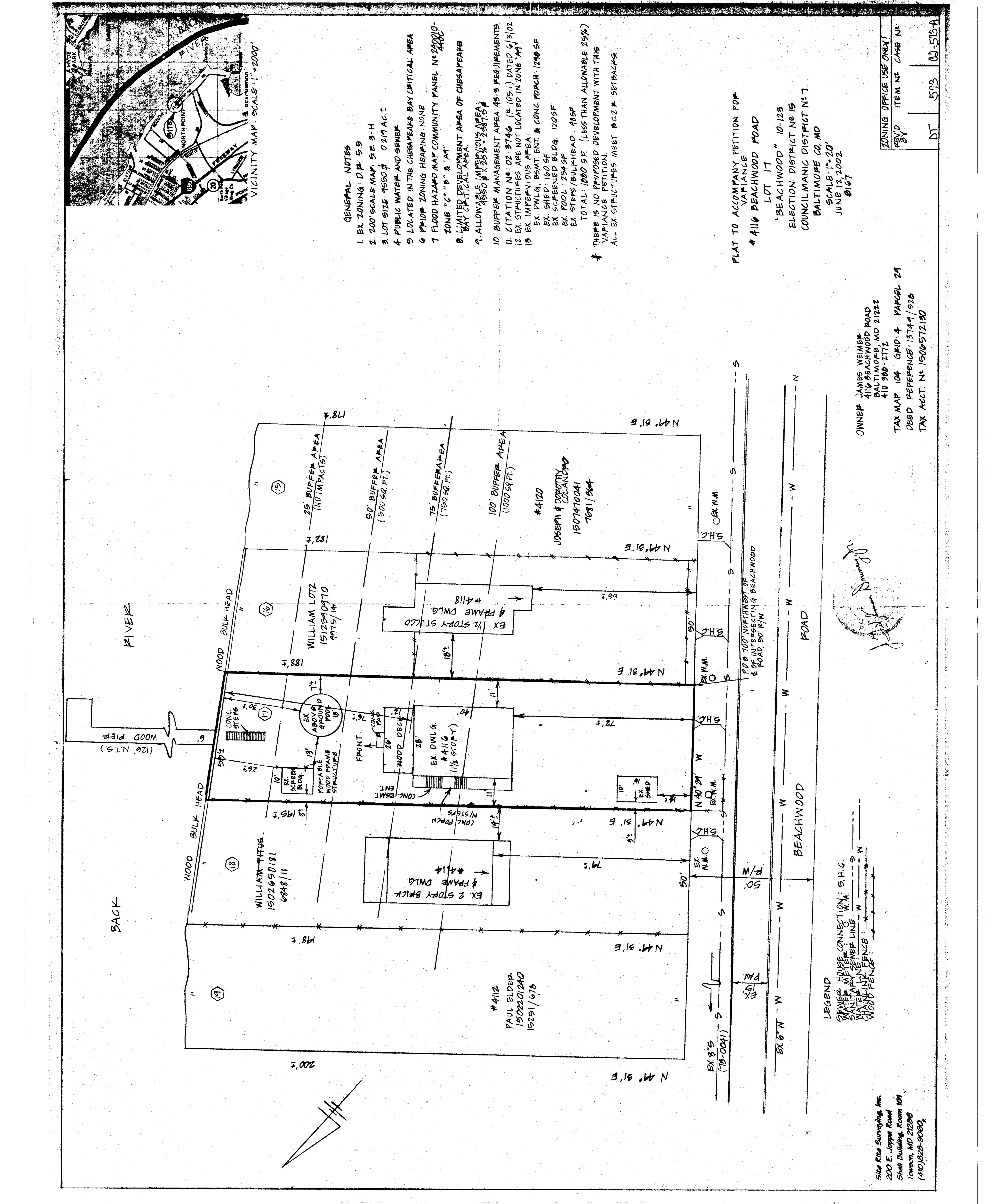





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