

DAVID F. ALBRIGHT, SR., et al.

\* IN THE

\* COURT OF APPEALS

\* OF MARYLAND

v.

\* Petition Docket No. 310  
September Term, 2006

KEVIN MICHELS, et al.

\* (No. 1603, Sept. Term, 2004  
Court of Special Appeals)

### O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answers filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

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Chief Judge

DATE: October 18, 2006

03-160

GO/PMZ

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

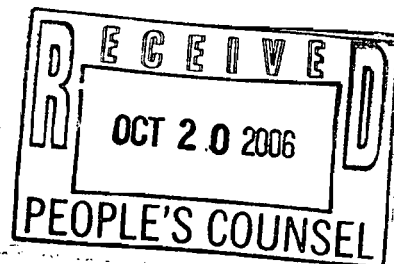
DIRECT DIAL  
410-321-4640

LAW OFFICES  
**LEVIN & GANN**  
A PROFESSIONAL ASSOCIATION  
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8<sup>th</sup> Floor  
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410-321-0600  
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ELLIS LEVIN (1893-1960)  
CALMAN A. LEVIN (1930-2003)

October 19, 2006

West Wind, LLC  
c/o Mr. Kevin C. Michels  
213 Old Padonia Road  
Cockeysville, Maryland 21030



**Re:   Petition for Writ of Certiorari  
      Order of Court of Appeals**

Dear Kevin:

I am pleased to provide to you a copy of the Order of the Maryland Court of Appeals denying the Petition for Writ of Certiorari as filed by Mr. Albright. This was the last pleading available to Mr. Albright. Therefore, the appeal by Mr. Albright of the decision of the County Board of Appeals is now final and not subject to further review.

Upon your receipt and review of this letter and the enclosed Order, should you have any questions, as always, please do not hesitate to contact me.

Very truly yours,

*Howard L. Alderman, Jr.*  
Howard L. Alderman, Jr.

HLA/pal  
Enclosure  
c/enc: County Board of Appeals for Baltimore County  
      R. Taylor McLean, Esquire  
      William A. Niermann, M.D.  
      Bruce E. Doak, RPLS  
      Peter Max Zimmerman, People's Counsel

G:\Clients\West Wind, LLC (14151)\west wind15.ltr.wpd

**Dictated by Howard  
Alderman  
but signed in his absence  
to avoid delay.**



8/24/04

PETITION OF DAVID F.  
ALBRIGHT, Sr. et al.

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE COUNTY  
BOARD OF APPEALS OF  
BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION  
OF NANCY WEHR NIERMANN-LEGAL  
OWNER; KEVIN MICHELS/WEST WIND LLC-  
C.P. FOR SPECIAL HEARING ON PROPERTY  
LOCATED ON THE N/SIDE OF BERWICK  
AVENUE (1210 BERWICK)

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE COUNTY  
\* CASE NO: 03-C-04-000239

\* \* \* \* \*  
**ORDER**

Based upon the Court's review of the record in this case, a review of the applicable law, a consideration of the arguments of counsel at the hearing, and for the reasons set forth in the Memorandum Opinion filed concurrently herewith, it is thereupon this 27 day of August, 2004, by the Circuit Court for Baltimore County, Maryland,

**ORDERED** that the judgment of the County Board of Appeals shall be and the same is hereby **AFFIRMED**.

**True Copy Test**

SUZANNE MENSCH, Clerk

Per

Mary B. Rose  
Assistant Clerk

Ruth A. Jakubowski, Judge

Date: 8/27/04

COPIES TO BE  
MAILED BY CLERK

**RECEIVED**

AUG 31 2004

BALTIMORE COUNTY  
BOARD OF APPEALS

**FILED** AUG 30 2004

PETITION OF DAVID F.  
ALBRIGHT, Sr. et al.

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE COUNTY  
BOARD OF APPEALS OF  
BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION  
OF NANCY WEHR NIERMANN-LEGAL  
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\* \* \* \* \*

\* IN THE

\* CIRCUIT COURT

\* FOR

\* BALTIMORE COUNTY

\* CASE NO: 03-C-04-000239

RECEIVED

AUG 31 2004

BALTIMORE COUNTY  
BOARD OF APPEALS

### MEMORANDUM OPINION

This matter came before the Court regarding the Petition of David F. Albright, Sr., for judicial review of the decision of The County Board of Appeals ("Board"). Respondents answered the Petitioners request. A hearing was held before this Court on August 18, 2004, at which time arguments were presented by the parties' respective counsel. This Court has reviewed all pleadings and memorandums. For the reasons set forth below, this Court finds that the Judgement of the County Board of Appeals shall be **AFFIRMED.**

### Background

Respondent/Legal Owner Nancy Wehr Niermann/Contract Purchaser, Kevin Michels/West Wind, LLC, filed a request that the Zoning Commissioner for Baltimore County determine that the Owner's real property located at 1210 Berwick Avenue is an "undersized" lot. The Zoning Commissioner granted the requested relief on December 20, 2002. The Petitioner, David F. Albright, et al, noted a timely appeal of the Commissioner's Order to the County Board of Appeals for Baltimore County. At the de

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*novo* hearing held by the Board, the Respondents presented one expert and two lay witnesses. The Petitioner presented no testimony or evidence.

The Board issued its written Opinion on December 8, 2003, approving the subject property as an undersized lot, subject to the same 3 conditions as were contained in the Commissioner's Order. Petitioner filed this timely appeal of the Board's Opinion with this Court.

### **Issues Presented for Review**

1. Did the Board err in approving the subject property as an undersized lot?

### **Scope of Review**

A final decision of a county zoning board must be upheld on review if it is not premised upon an error of law and if the agency's conclusions reasonably may be based on the facts proven. The reviewing court cannot substitute its own judgment for that of the zoning board and must accept the zoning board's factual conclusions if they are based on substantial evidence and if reasoning minds could reach the same conclusion on the record. *Columbia Road Citizens' Ass'n v. Montgomery County*, 98 Md. App. 695, 698 (1994).

For purposes of judicial review, substantial evidence means more than a "scintilla of evidence" such that a reasonable person could come to more than one conclusion in such a situation, the issue to be considered is "fairly debatable: and the reviewing court may not substitute its judgment for that of the agency. *Realty Improvement Ass'n v. Sycamore Realty Co., Inc.*, 105 Md. App. 701, 714, 661 A.2d 182 (1995).

### Discussion

Respondents argued that the Board correctly determined that the subject property § 304, BCZR, empowers the Board of Appeals to approve an undersized lot as buildable if it meets the three tests set forth below. In addition he asserts that they do meet the tests as required and their evidence is uncontradicted. §304.1 stipulates that:

A one-family detached or semi-detached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
- B. All other requirements of the height and area regulations are complied with; and
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

Petitioner argued that the subject lot is too narrow and that the area requirement calculation must not include any of the paved portion of Berwick Road. Petitioner contends that § 304 is not the correct procedure and that a building permit filing is mandatory. In addition, he argues that the fact that the lot has been vacant for many years is proof in itself that it is unbuildable.

The Board found that the subject property met the requirements for an undersized lot as indicated in 304.1, (BCZR, 1955; Bill No. 47, 1992). See County Board of Appeals decision p. 5-6. The Board, in its Opinion, held that "the law provides that if all three tests are met, the Petitioners are permitted to develop an undersized or insufficient width lot in Baltimore County."

This Court finds that the Board had sufficient evidence to support its finding. Pursuant to §304.1, the Board found that the Respondents met the first test (A) in that the subject property was established by deed recorded in Baltimore County Land Records on May 27, 1943 as evidenced by Exhibits 3,4, and 5.

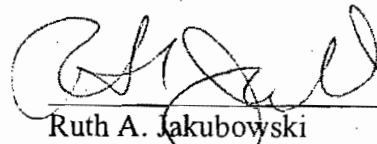
In addition, the Board also found that the Respondents met the second test (B) since testimony and evidence supported the facts that the lot in question met the designated front, rear and side yard setback requirements. In addition, the Board found that Mr. Doak's expert testimony that the Respondents own the centerline of Berwick Road was persuasive. The calculations of 21,216 square feet more than meet the requirement that the lot be no less than 20,000 square feet in total area.

Finally, the Board found that the testimony and evidence was uncontradicted by the fact that the Respondents do not own sufficient adjoining land to bring the undersized lot into compliance, thus satisfying test C.

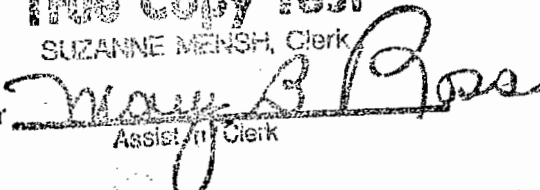
As a result, since all three tests were met, the law provides that Respondents are permitted to develop an "undersized" or insufficient width" lot in Baltimore County.

This Court finds no error in the Board's determination that the subject property meets the requirements for an undersized lot as indicated in §304.1. The Board had substantial evidence as provided by the record, exhibits, and testimony. In addition, this Court finds that reasoning minds could reasonably reach the Board's conclusion from facts in the record before the agency, and by the evidence presented.

For the reasons set forth herein, the decision of County Board of Appeals of Baltimore County shall be **AFFIRMED**.

  
Ruth A. Jakubowski, Judge  
8/27/04

Copies to be mailed by Clerk  
Lawrence S. Wescott, Panel Chairman  
David F. Albright, Esq.  
Howard L. Alderman, Jr., Esq.

**True Copy Test**  
SUZANNE MENSCH, Clerk  
Per   
Assistant Clerk

5/10/04

**IN RE: IN THE MATTER OF NANCY WEHR  
NIERMANN & KEVIN MICHELS/  
WEST WIND, LLC  
1210 Berwick Road**

***NANCY WEHR NIERMANN, Owner/Respondent***

***KEVIN MICHELS, WEST WIND LLC, Contract  
Purchaser/Respondent***

**[CBA-03-160-SPH]**

**IN THE  
CIRCUIT COURT**

**FOR**

**BALTIMORE COUNTY**

**Case No.: 03-C-04-000239**

**RESPONDENTS' MEMORANDUM**

Kevin Michels and West Wind LLC, a Maryland limited liability company ("Contract Purchaser"), and the Estate of Nancy Wehr Niermann<sup>1</sup>, ("Owner") (Contract Purchaser and Owner are referred to collectively herein as "Respondents"), by and through their undersigned legal counsel and in accordance with Maryland Rule 7-207 hereby respond to the Memorandum filed by David F. Albright, Sr., *et al* (referred to collectively hereafter as the "Protestants") in the above-captioned matter.

**STATEMENT OF THE CASE**

This case concerns a request filed by the Respondents that the Zoning Commissioner for Baltimore County, pursuant to the broad authority granted to him under Section 500.7 of the *Baltimore County Zoning Regulations* ("BCZR"), determine that the Owner's real property located at 1210 Berwick Avenue (the "subject property") is an

<sup>1</sup> Ms. Niermann passed away earlier this year, therefore her estate is the Owner of the subject property and the proper, substituted party to this appeal.

“undersized” lot. After a full day of testimony, the Zoning Commissioner granted the requested relief by written *Findings of Fact and Conclusions of Law* dated December 20, 2002 (the “Commissioner’s Order”). Apparently dissatisfied with the Commissioner’s determination, the Protestants noted a timely appeal of the Commissioner’s Order to the County Board of Appeals for Baltimore County (the “Board”). At the *de novo* hearing held by the Board<sup>2</sup> the Respondents presented one expert and two lay witnesses and the Protestants presented no testimony or evidence whatsoever.

Based on the uncontradicted testimony and evidence of the Respondents, the Board issued its written Opinion on December 8, 2003 (the “Board’s Opinion”) approving the subject property as an undersized lot, subject to the same 3 conditions as were contained in the Commissioner’s Order. The Protestants, again apparently dissatisfied with the decision, filed a timely appeal of the Board’s Opinion with this Court.

### **THE EVIDENCE**

#### ***Bruce E. Doak, Licensed Property Line Surveyor***

The Respondents called Bruce E. Doak, a Maryland licensed Property Line Surveyor and principal at the surveying and land planning firm of Gerhold, Cross and Etzel, who was accepted as a expert, without objection, in surveying, zoning and planning

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<sup>2</sup> Section 501.6 of the BCZR provides, in pertinent part, that “[a]ppeals from the Zoning Commissioner shall be heard by the board of zoning appeals *de novo*.”



issues. (TR. 7)<sup>3</sup> Mr. Doak, who has visited the property numerous times, prepared the Plan to Accompany the Petition for Special Hearing depicting the subject property in the graphical manner required by the BCZR, which plan was accepted as Petitioner's Exhibit 1.<sup>4</sup> (TR. 8-9) Mr. Doak testified without contradiction that the subject property as described in the title deed to the Owner is 21,216 square feet in size. (TR. 10) The deed for the subject property calls to the centerline of Berwick Avenue, a 14 to 15 foot wide (TR. 46; 48), paved roadway maintained by Baltimore County.<sup>5</sup> (TR. 22) If the portion of the subject property occupied by the publicly maintained roadway is excluded from the overall area of the subject property, the remainder is 20,573 square feet in size. (TR. 10)

The width of the subject property parallel to the paved area of Berwick Avenue is, according to the deed, 97.34 feet. (TR. 11) Based on a current survey of the subject property, its width parallel to Berwick Avenue is 97.15 feet. (TR. 29-30)

### The Deeds

The current, title deed to the Owner is dated June 18, 1990 and recorded at Liber 8522, folio 589 [Petitioners' Ex. 3]. (TR. 14-15) The "BEINGS" clause in the title deed

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<sup>3</sup> References to a specific page of the transcript of the proceedings before the Board will be referred to herein as (TR #).

<sup>4</sup> Although they are the Respondents at this level, the Owner and Contract Purchaser were the Petitioners at the *de novo* appeal hearing held by the Board.

<sup>5</sup> Compare the property of Mr. Albright *et al.* The Albright property does not call to the centerline but binds on a dedicated 30 foot wide right of way for Berwick Avenue in front of the Albright Property. (TR. 43; 78)

makes reference to a prior deed, dated May 21, 1974 and recorded in Liber 5448, folio 224 [Petitioners' Ex. 4]. (TR. 15) This prior deed also contains a "BEINGS" clause which references a deed dated May 27, 1943 and recorded at Liber 1288, folio 464 (TR. 16), being the deed by which the subject property was created. [Petitioners' Ex. 5] (TR. 17).

**The Minimum Requirements to Construct a Home**

Mr. Doak testified that BCZR Section 1B02.3C.1 sets forth the minimum setback and area requirements for a lot of ground created before 1955 and zoned DR-2<sup>6</sup> to be improved with a residential dwelling. According to Mr. Doak, those minimum requirements are as follows:

Net Lot Area per Dwelling Unit: 20,000 square feet  
Width of Lot at Front Property Line: 100 feet  
Front Yard Depth: 40 feet  
Rear Yard Depth: 40 feet  
Side Yard Width: 15 feet

(TR. 12-13)

The subject property meets all of these standards other than the minimum lot width of 100 feet. (TR. 13) The Owner does not own sufficient adjoining land to add to the subject property to have it meet the 100 foot requirement. (TR. 18)

**Gross - Net Lot Area**

The Owner had no role in establishing the lot lines of the subject property. (TR.

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<sup>6</sup> Density Residential - 2: two residential lots can be created per acre.

18) Mr. Doak has extensive experience in working with the definitions of Gross Lot Area and Net Lot Area with respect to the BCZR.<sup>7</sup> (TR. 19) In Mr. Doak's experience, Net Area is calculated by excluding any portion of property that is subject to a recorded right of way. (TR. 20) With respect to the subject property, Mr. Doak's examination of the public/land records reveals that there has never been any dedication of any portion of the subject property as a right of way for Berwick Avenue. (TR. 21) Likewise there is no separate right of way plat to evidence dedication. (TR. 22) In Mr. Doak's experience, if there is no dedicated right of way or dedicated ownership to the County and the title deed calls to the centerline of any roadway adjoining the property, the net area of a property is the same as the gross area described in the deed. (TR. 22-23). Applying the net/gross area concepts to the subject property, Mr. Doak testified without contradiction that they are the same and that the area of the subject property is 21, 116 square feet. (TR. 23)

Anticipating an issue that would be raised by the Protestants, Mr. Doak testified that the area of Berwick Avenue (a publicly maintained street) located within the deed boundaries of the subject property [from the centerline to the edge of paving along the entire frontage] is 740 square feet. Even if the 740 square feet is subtracted from the land area of the subject property, the remaining size is 20,573 square feet, well in excess of

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<sup>7</sup> Section 101 - Definitions of the BCZR defines Net Area as "Land area not including area of land in public streets or other fee-simple public rights-of-way."

the minimum 20,000 square feet required. (TR. 24-5)

**BCZR Section 304 & Zoning Commissioner's Policy Manual**

BCZR Section 304.1A<sup>8</sup> has relevance to the relief requested by the Respondents. The subject property was created before March 30, 1955. (TR. 31) Other than the 100 foot lot width, the subject property meets all other height and area requirements of the BCZR. (TR. 31) The Owner does not own sufficient, adjoining land to add to the subject property to make the lot width a minimum of 100 feet. (TR. 31; 36) The Owner has not owned within the past six (6) years any adjoining property that would have permitted her to increase the lot width of the subject property to 100 feet. (TR. 36)

Mr. Doak is familiar with the *Zoning Commissioner's Policy Manual* ("Policy Manual") adopted as part of the Code of County Regulations.<sup>9</sup> In connection with the application of BCZR § 304 to various properties, Mr. Doak consults and utilizes the portion of that Policy Manual applicable to the "Use of Undersized Single Family Lots".<sup>10</sup> (TR. 35) On cross-examination, Mr. Doak noted that the Owner's mother did own property adjacent to the subject property during the period from May 21, 1974 to December 7, 1976. (TR. 66; 68)

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<sup>8</sup> BCZR § 304 is included in the record as Petitioner's Ex. 8 (TR. 35)

<sup>9</sup> The compilation of the policies, rules and regulations of the various agencies of Baltimore County, adopted as the *Code of County Regulations* pursuant to *Baltimore County Code*, Article VIII, Section 2-416 *et seq.*

<sup>10</sup> The relevant portion of the Policy Manual is included in the record as Petitioners' Ex. 10.

***Nancy Wehr Niermann, Owner***

Ms. Niermann was the owner of the subject property at the time the Petition for Special Hearing was signed. (TR. 79-80) Ms. Nierman testified, without contradiction or objection, that the subject property is located in a Ruxton neighborhood where there exists improved, residential lots ranging in size from 15,000 square feet to 33,000 square feet. (TR. 84) Ms. Niermann testified and offered photographic evidence<sup>11</sup> of the types of homes that exist in the neighborhood where the subject property is located, many of which are larger than the home proposed on the subject property. (TR. 85-92)

***Kevin Michels, Builder and Member of West Wind LLC, Contract Purchaser***

Mr. Michels testified that he participated in the hearing before the Zoning Commissioner and identified the proposed house plans introduced before the Commissioner as Petitioners' Ex. 4. Without objection from Protestants, those house plans were accepted by the Board<sup>12</sup> as those of the home to be constructed on the subject property. (TR. 100-01) Mr. Michels testified further that the proposed home will be compatible with homes in the neighborhood of the subject property. (TR. 102)

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<sup>11</sup> Petitioners' Ex. 14A-H

<sup>12</sup> Petitioners's Ex. 15

## **LEGAL ARGUMENT**

### ***The Board Correctly Determined that the Subject Property Meets the Requirements of BCZR Section 304***

The Baltimore County Council gave broad authority to the Zoning Commissioner and the Board to “determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.” BCZR § 500.7 (Emphasis added.) This broad authority has been recognized most recently by the Maryland Court of Appeals in the case of *Marzullo v. Kahl*, 366 Md. 158, 165 (2001). The Owner and the Contract Purchaser in this case filed a zoning Petition for Special Hearing requesting that the Zoning Commissioner approve the subject property as an undersized lot pursuant to BCZR § 304<sup>13</sup>.

The current codification of Section 304.1 provides:

Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
- B. All other requirements of the height and area regulations are complied with; and
- C. The owner of the lot does not own sufficient adjoining land to

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<sup>13</sup> It is important to note that the Respondents sought approval of the subject property as an undersized lot (as to lot width) only pursuant to BCZR § 304.1 and not pursuant to any other provision of BCZR § 304.

**conform to the width and area requirements** contained in these regulations.

(Emphases added.)

The evidence before the Board was substantial, overwhelming and uncontradicted:

- A: the deed for the subject property was recorded in 1947 – eight years before 1955;
- B: all other BCZR requirements pertaining to height and area are met – the subject property is greater than 20,000 square feet even if the land area occupied by the publicly maintained roadway is excluded from the area calculation; and
- C: the Owner does not own any adjoining land, although for a period of approximately two years, the Owner's predecessor in title did own adjoining land. However, that period was over twenty years ago, well beyond the adopted six year period adopted in the *Code of County Regulations*

The Board, in its written Opinion, held that “the law provides that, if all three tests above are met, the Petitioners are permitted to develop an ‘undersized’ or ‘insufficient width’ lot in Baltimore County.” Board’s Opinion at 6. The Protestants have failed, completely, to even attempt to argue that the Board’s ruling is based on unsubstantial evidence. No doubt that is because the only evidence before the Board is that offered in support of the relief requested. A recent decision of the Maryland Court of Appeals has held that:

It is a clearly established rule in the law of zoning that a court may not substitute its judgment for that of the Zoning Board.’ *Dorsey Enterprises, Inc. v. Shpak*, 219 Md. 16, 23, 147 A.2d 853, 857 (1959). Chief Judge Hammond wrote for the Court in *State Ins. Comm'r v. National Bureau of*

*Casualty Underwriters*, 248 Md. 292, 309, 236 A.2d 282, 292 (1967), that 'under ... [either] of the standards the judicial review essentially should be limited to whether a reasoning mind reasonably could have reached the factual conclusion the agency reached. (alteration added).'

Whether reasoning minds could reasonably reach a conclusion from facts in the record is the essential test. If such a conclusion is sufficiently supported by the evidence, then it is based upon substantial evidence. Forty years ago in *Snowden v. Mayor and City Council of Baltimore*, 224 Md. 443, 447-48, 168 A.2d 390, 392 (1961), we noted that:

The substantial evidence test "means that the reviewing court's inquiry is whether on the record the agency could reasonably make the finding." ... Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The heart of the fact finding process often is the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. "The Court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness." [Citation omitted.]

Over twenty years later we opined, 'if the evidence makes the issue of harm fairly debatable, the matter is one for the Board's decision, and should not be second-guessed by an appellate court.' *Board of County Commissioners for Cecil County v. Holbrook*, 314 Md. 210, 218, 550 A.2d 664, 668 (1988). [Citations omitted.]

In *White v. North*, 356 Md. 31, 44, 736 A.2d 1072, 1079 (1999), we much more recently restated the general standard of review that:

In judicial review of zoning matters, including special exceptions and variances, "the correct test to be applied is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions. [Citations omitted.] For its conclusion to be fairly debatable, the administrative agency overseeing the variance decision must have "substantial evidence" on the record supporting its decision. [Citations omitted.]

*Lewis v. DNR*, 377 Md. 382, 405-407 (2003).



The Protestants had no evidence to present in contradiction of the facts in this case. The Board conducted a thorough review of the facts and evidence before it, met in open, public deliberation as required by the State Open Meetings Act and rendered a decision containing the required findings and conclusions of law. Although it is less than clearly stated on appeal to this Court, apparently the Protestants suggest that the Board committed an error of law by failing to apply the holdings in *Cromwell v. Ward* and *Friends of the Ridge v. BGE*.<sup>14</sup> It is clear from the Protestants' arguments before the Zoning Commissioner, the Board and now in their Memorandum filed with this Court, that the Protestants are unaware of the law applicable to this case. The "undue hardship" provision of *Cromwell* applies in the review of a use variance instead of an area variance – neither of which are relevant to the issues presented in this case – there is no variance relief even requested. This is Special Hearing case for determination of rights under the BCZR. Likewise, the doctrine of "merger" explained and applied in the *Friends of the Ridge* case is inapposite to the relief sought by the Respondents.

There was no error of law by the Board. There is no basis for this Court to substitute its judgment for that contained in Board's Opinion that is based on fairly debatable, overwhelming and substantial evidence.

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<sup>14</sup> Protestants' Memorandum to this Court at 4-5.

***The Protestants Received Notice of the Relief Requested and Failed to Preserve for Review any Challenge of the County Initiated Notice***

The Protestants participated in the hearing before the Zoning Commissioner and before the Board of Appeals. Obviously, the posting of the subject property with the required zoning sign and the legal advertising by Baltimore County of the relief requested was effective in providing notice. Baltimore County requires that all persons seeking any form of zoning relief to complete a form agreeing to pay the costs of legal advertising of the zoning hearing. That form<sup>15</sup> provides in pertinent part as follows:

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

The County advertised the hearing held by the Zoning Commissioner and the Petitioners paid the cost thereof. The only evidence before the Board was that the subject property was posted properly. On re-direct examination, Mr. Doak noted that the subject property was posted as required under the BCZR. (TR. 75) There is absolutely no testimony or evidence offered by the Protestants before the Board that the advertising by Baltimore County of the Zoning Commissioner's hearing was in any way improper. The Protestants

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<sup>15</sup> A copy of the County's advertising form, downloaded and printed from the Baltimore County, Department of Permits and Development Management's web site is included as Exhibit A to this Memorandum.

failed to preserve any such allegation in the proceedings before the Board (no testimony or evidence) and, thus, before this Court. Even assuming, *arguendo*, that the alleged issue had been properly preserved, the Protestants cannot deny that they had actual notice of the proceedings and ample time to present whatever testimony and evidence in support of their position that they desired. The Court of Appeals has held:

While failure of an administrative board to give proper notice is jurisdictional and in some circumstances may be fatal, *Cassidy v. Board of Appeals*, 218 Md. 418, 421-422, 146 A.2d 896 (1958), the requirement of notification purposed to inform may be satisfied by actual knowledge, *Clark v. Wolman*, 243 Md. 597, 600, 221 A.2d 687 (1966), **especially when it is acted upon.**

*McLay v. Maryland Assemblies, Inc.*, 269 Md. 465, 477 (1973) (Emphasis added.)

The Protestants had actual **notice** and knowledge of the proceedings and participated at each lower level. Do they now claim that they were not informed of the proceedings? Notice of the requested zoning relief was given by the County and the Protestants, in exercise of the rights afforded them by the County Council, challenged that relief. In two, separate forums the challenge of the Protestants has failed. In both challenges they failed to present any testimony or evidence of prejudice or of improper advertising notice. The decision of the Board should be affirmed.

### **CONCLUSION**

The Protestants do not want a home built on the property next to their home. In their attempt to retain what is, no doubt, existing open space they attempt to deny the Owner the right to have the Zoning Commissioner and the Board determine whether or not the subject property meets the requirements of an undersized lot (lot width) pursuant

to BCZR § 304.1.

Being completely unable to refute deeds recorded in the Land Records of Baltimore County they attempt to argue that the regulations adopted by the County are improper or inapplicable. They failed before the Commissioner and, except for limited cross-examination of Respondent's witnesses, did not participate before the Board – no witnesses or other evidence of any nature was presented to the Board by the Protestants.

The Board's Opinion is legally sound, complies with the requirements of the County Charter, the County Code and the decisions of the appellate courts of this State. The Board's Opinion is based on substantial evidence and is not to be disturbed on appeal.

For all of the foregoing reasons, the Respondents request that this Honorable Court affirm in every detail the Board's Opinion.

Respectfully submitted,



Howard L. Alderman, Jr.

Levin & Gann, P.A.

8<sup>th</sup> Floor, Nottingham Centre

502 Washington Avenue

Towson, Maryland 21204

410.321.0600 [voice]

410.296.2801 [fax]

[Halderman@LevinGann.com](mailto:Halderman@LevinGann.com) [e-mail]

Attorneys for Respondents

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10th day of May, 2004, a copy of the foregoing Respondents' Memorandum was mailed via First-Class, United States Mail to the following:

David F. Albright, Sr., Esquire  
Albright & Goertemiller, LLC  
120 East Baltimore Street, Suite 2150  
Baltimore, MD 21202

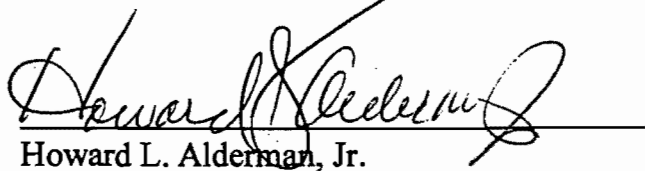
County Board of Appeals of Baltimore County  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, MD 21204

West Wind, LLC  
Mr. Kevin C. Michels  
213 Old Padonia Road  
Cockeysville, Maryland 21030

The Estate of Nancy Wehr Niermann  
c/o William Niermann, MD  
6511 Darnell Road  
Baltimore, Maryland 21204

The Estate of Nancy Wehr Niermann  
R Taylor McLean, Esquire  
Royston, Mueller, McLean & Reid, LLP  
102 W Pennsylvania Ave, Suite 600  
Towson, MD 21204-4510

Bruce E. Doak, RPLS  
Gerhold, Cross & Etzel, Ltd.  
320 East Towsontown Boulevard, Suite 100  
Towson, Maryland 21286

  
Howard L. Alderman, Jr.

5/10/04

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

DIRECT DIAL  
410-321-4640

LAW OFFICES  
**LEVIN & GANN**  
A PROFESSIONAL ASSOCIATION  
NOTTINGHAM CENTRE  
502 WASHINGTON AVENUE  
8<sup>th</sup> Floor  
TOWSON, MARYLAND 21204  
410-321-0600  
TELEFAX 410-296-2801

ELLIS LEVIN (1893-1960)  
CALMAN A. LEVIN (1930-2003)

May 10, 2004

Clerk, Civil Department  
Circuit Court for Baltimore County  
401 Bosley Avenue, 2<sup>nd</sup> Floor  
Baltimore, Maryland 21204

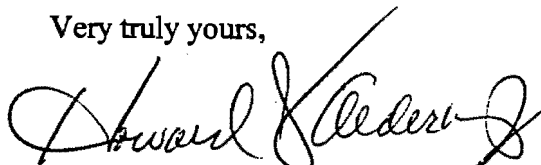
RE: *Administrative Appeal - In the Matter of Nancy Wehr Niermann and  
Kevin Michels/West Wind, LLC*  
*Respondents' Memorandum*  
Circuit Court Case No.: **03-C-04-000239**

Clerk:

Enclosed, please find the original of Respondent's Memorandum in the above-referenced matter. Please docket this Memorandum and place it in the Court's file. This matter is scheduled for hearing on June 24, 2004.

Thank you.

Very truly yours,

  
Howard L. Alderman, Jr.

HLA/gk

Enclosure

c (w/encl.): The Estate of Nancy Wehr Niermann  
West Wind, LLC/ Kevin C. Michels  
David F. Albright, Sr., Esquire  
County Board of Appeals for Baltimore County  
Bruce E. Doak, PLS

RECEIVED AND FILED

2004 MAY 10 A 9 46

CLERK OF THE CIRCUIT COURT  
BALTIMORE COUNTY

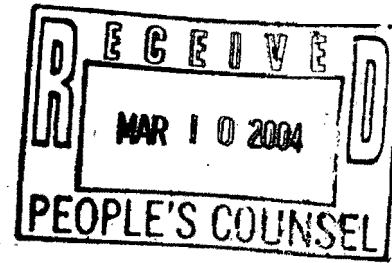
**RECEIVED**

MAY 11 2004

BALTIMORE COUNTY  
BOARD OF APPEALS

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF:  
DAVID F. ALBRIGHT, SR., ESQUIRE  
JODY ALBRIGHT  
DOUGLAS A. SCRIVENER  
FELICIA B. ALBRIGHT  
1214 BERWICK ROAD  
BALTIMORE, MD 21204



FOR JUDICIAL REVIEW OF THE OPINION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204

CIVIL ACTION  
No. 3-C-04-0239

IN THE MATTER OF  
**NANCY WEHR NIERMAN - LEGAL OWNER**  
KEVIN MICHAEL/WEST WIND LLC - CP  
1210 BERWICK ROAD

9<sup>th</sup> ELECTION DISTRICT  
5<sup>th</sup> COUNCILMANIC DISTRICT

CBA CASE NO.: 03-160-SPH

PROCEEDINGS BEFORE THE ZONING COMMISSIONER  
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY:

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the  
Petition for Judicial Review directed against it in this case, herewith transmits the record of  
proceedings had in the above-entitled matter, consisting of the following certified copies or original  
papers on file in the Department of Permits and Development Management and the Board of  
Appeals of Baltimore County:

**ENTRIES FROM THE DOCKET OF THE BOARD APPEALS  
AND DEPARTMENT OF PERMITS & LICENSES OF BALTIMORE COUNTY**

**03-160-SPH**

|                    |                                                                                                                                                                                                                           |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| September 27, 2002 | Petition for Special Hearing Request Nancy W. Niernann, 6511 Darnell Road, Baltimore, MD 21204, Legal Owner requesting approval of an undersized lot, pursuant to Section 304 of the Baltimore County Zoning Regulations. |
| October 11         | Notice of Zoning Hearing                                                                                                                                                                                                  |
| October 17         | Entry of Appearance filed by People's Counsel for Baltimore County                                                                                                                                                        |
| October 28         | Certificate of Posting                                                                                                                                                                                                    |
| October 29         | Certificate of Publication                                                                                                                                                                                                |
| November 8         | ZAC Summary of Comments                                                                                                                                                                                                   |
| November 12        | Hearing Held before the Zoning Commissioner                                                                                                                                                                               |
| December 24        | Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Special Hearing Request GRANTED with restrictions.                                                                                |
| January 22, 2003   | Notice of Appeal from Jody Albright, David Albright, Felicia Albright and Douglas Scrivener – Owners of Lot 1214 Berwick Road.                                                                                            |
| October 16         | Board of Appeals convened for Hearing                                                                                                                                                                                     |

**Petitioner's Exhibits**

- 1 Site Plan
- 2 Baltimore County Zoning Regulation § 1B02 - page 1B-23
- 3 Deed dated June 18, 1990 by and between Nancy T. Wehr and Nancy Wehr Niernan. Re: Berwick Avenue
- 4 Deed dated May 21, 1974 by and between H. Erin Jones and Ellen P. Jones and Frederick L. Weir and Nancy T. Wehr. Re: Berwick Avenue



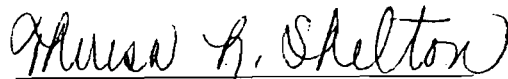
- 5 Deed dated May 27, 1943 by and between Albertus Cotton and Florence Cotton and H. Edwin Jones and Ellen Jones. R : Berwick Avenue
  - 6 General Provisions   101 page 1-7 AREA, NET
  - 7 Findings of Fact and Conclusions of Law, dated December 24, 2002, by the Zoning Commissioner on case 03-160-SPH
  - 8 Section 304 Use of Undersized Single-Family Lots pages 3-3, 3-4 and 3-5
  - 9 Inter-Office Correspondence dated October 10, 2003 to Timothy Kotroco, Director PDM from Arnold F. "Pat" Keller III, Director, Office of Planning
  - 10 Section 304 – Use of Undersized Single-Family Lots  
Page 3-3
  - 11 Plat of Frederick T. Wehr Property
  - 12 Metropolitan Regional Information Systems, Inc., Public Record, 8 pages, dated 02/24/02 of various TAX ID numbers.
  - 13 Eight (8) Letters of Support
  - 14A – 14H Photographs on 8X10 paper
  - 15 Plans for proposed building on subject property
- October 29 Board of Appeals held Public Deliberation
- December 8 Opinion issued by the Board of Appeals GRANTING the Petition for Special Hearing with conditions.
- January 7, 2004 Petition for Judicial Review filed in the Circuit Court for Baltimore County by David F. Albright, Sr., Esquire, on behalf of David F. Albright, Sr., Esquire, Jody Albright, Douglas A. Scrivener and Felicia B. Albright, Petitioners. Civil Action Case No.: 3-C-04-0239
- January 14 Certificate of Notice sent to interested parties.
- March 9 Transcript of Proceedings filed.

March 10

Record of Proceedings filed in the Circuit Court for  
Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which  
said Board acted are hereby forwarded to the Court, together with exhibits entered before the Board.

Respectfully submitted,



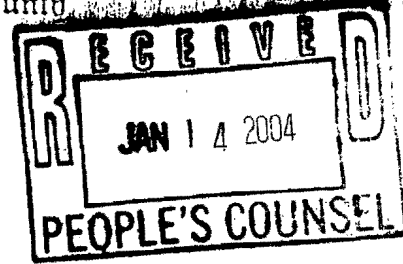
Theresa R. Shelton, Legal Secretary  
County Board of Appeals of Baltimore County  
400 Washington Avenue, Room 49  
Towson, MD 21204 (410) 887-3180

- c. David F. Albright, Sr., Esquire, et al  
Nancy W. Nierman  
Bruce Doak  
Kevin Michaels  
Howard Alderman, Jr., Esquire  
Peter Max Zimmerman



County Board of Appeals of Baltimore County

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



January 14, 2004

Howard Alderman, Jr., Esquire  
502 Washington Avenue  
Nottingham Centre, 8<sup>th</sup> Floor,  
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-04-0239  
Petition for Judicial Review  
*Nancy Wehr Nieman – Legal Owner*  
*Kevin Michels/West Wind LLC - CP*  
CBA Case No.: 03-160-SPH

Dear Mr. Alderman, Jr.:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on January 7, 2004 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-04-0239.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

*Theresa R. Shelton*  
Theresa R. Shelton  
Legal Secretary

/trs

Enclosure

c. David F. Albright, Sr., Esquire  
Jody Albright  
Douglas A. Scrivener  
Felicia B. Albright  
Nancy W. Nieman  
Bruce Doak  
Kevin Michaels  
Pat Keller, Director / Planning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy Kotroco, Director / PDM  
Peter Max Zimmerman / People's Counsel for Baltimore County

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF:  
DAVID F. ALBRIGHT, SR., ESQUIRE  
JODY ALBRIGHT  
DOUGLAS A. SCRIVENER  
FELICIA B. ALBRIGHT  
1214 BERWICK ROAD  
BALTIMORE, MD 21204

FOR JUDICIAL REVIEW OF THE OPINION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204

CIVIL ACTION  
No. 3-C-04-0239

IN THE MATTER OF  
NANCY WEHR NIERMAN – LEGAL OWNER \*  
KEVIN MICHAEL/WEST WIND LLC – CP  
1210 BERWICK ROAD

9<sup>th</sup> ELECTION DISTRICT  
5<sup>th</sup> COUNCILMANIC DISTRICT

CBA CASE NO.: 03-160-SPH

\* \* \* \* \*

**CERTIFICATE OF NOTICE**

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

David F. Albright, Sr., Esquire  
Albright & Goertemiller, LLC, 120 East Baltimore Street, Suite 2150,  
Baltimore, MD 21202

David F. Albright, Esquire, et al  
Albright & Goertemiller, LLC, 120 East Baltimore Street, Suite 2150,  
Baltimore, MD 21202

Jody Albright  
1214 Berwick Road, Towson, MD 21204

Douglas A. Scrivener  
1214 Berwick Road, Towson, MD 21204

Felicia B. Albright  
1214 Berwick Road, Towson, MD 21204

Nancy W. Nierman  
6511 Darnell Road, Baltimore, MD 21204

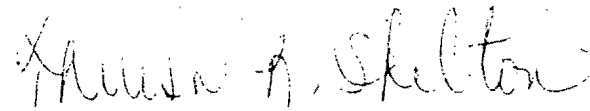
Bruce Doak  
Gerhold Cross & Etzel, LTD, 320 E Towsontown Blvd.,  
Towson, MD 21286

Kevin Michaels  
West Wind LLC, 213 Old Padonia Road, Cockeysville, MD 21030

Howard Alderman, Jr., Esquire  
502 Washington Avenue, Nottingham Centre, 8<sup>th</sup> Floor,  
Towson, MD 21204

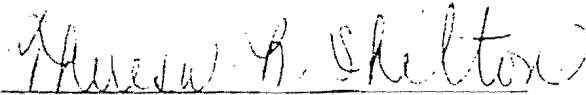
Peter Max Zimmerman  
People's Counsel for Baltimore County, Old Courthouse, Room 47,  
400 Washington Avenue, Towson, Maryland 21204

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.



Theresa R. Shelton, Legal Secretary  
County Board of Appeals, Room 49  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410-887-3180)

**I HEREBY CERTIFY** that a copy of the foregoing Certificate of Notice has been mailed to David F. Albright, Esquire, Albright & Goertemiller, LLC, 120 East Baltimore Street, Suite 2150, Baltimore, MD 21202; David F. Albright, Esquire, et al, Albright & Goertemiller, LLC, 120 East Baltimore Street, Suite 2150, Baltimore, MD 21202; Jody Albright, 1214 Berwick Road, Towson, MD 21204; Douglas A. Scrivener, 1214 Berwick Road, Towson, MD 21204; Felicia B. Albright, 1214 Berwick Road, Towson, MD 21204; Nancy W. Nierman, 6511 Darnell Road, Baltimore, MD 21204; Bruce Doak, Gerhold Cross & Etzel, LTD, 320 E Towsontown Blvd., Towson, MD 21286; Kevin Michaels, West Wind LLC, 213 Old Padonia Road, Cockeysville, MD 21030; Howard Alderman, Jr., Esquire, 502 Washington Avenue, Nottingham Centre, 8<sup>th</sup> Floor, Towson, MD 21204; and Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, this 14<sup>th</sup> day of January, 2004.



Theresa R. Shelton, Legal Secretary  
County Board of Appeals, Room 49  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410-887-3180)



County Board of Appeals of Baltimore County

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

January 14, 2004

David F. Albright, Sr., Esquire  
Albright & Goertemiller, LLC  
120 East Baltimore Street  
Suite 2150,  
Baltimore, MD. 21202

RE: **Circuit Court Civil Action No. 3-C-04-0239**  
**Petition for Judicial Review**  
*Nancy Wehr Nierman - Legal Owner*  
*Kevin Michels/West Wind LLC - CP*  
CBA Case No.: 03-160-SPH

Dear Mr. Albright, Sr.:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with the Maryland Rules.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton  
Legal Secretary

/trs

Enclosure

c. Jody Albright  
Douglas A. Scrivener  
Felicia B. Albright  
Nancy W. Nierman  
Bruce Doak  
Kevin Michaels  
Howard Alderman, Jr., Esquire  
Peter Max Zimmerman

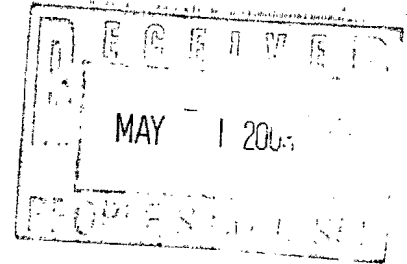
HOWARD L. ALDERMAN, JR.  
halderman@LevinGann.com

DIRECT DIAL  
410-321-4640

LAW OFFICES  
**LEVIN & GANN**  
A PROFESSIONAL ASSOCIATION  
NOTTINGHAM CENTRE  
502 WASHINGTON AVENUE  
8<sup>th</sup> Floor  
TOWSON, MARYLAND 21204  
410-321-0600  
TELEFAX 410-296-2801

cd-  
prz  
ELLIS LEVIN (1893-1960)  
CALMAN A. LEVIN (1930-2003)

April 28, 2003



Kathleen C. Bianco, Administrator  
County Board of Appeals of Baltimore County  
400 Washington Avenue, Old Courthouse Room 49  
Towson, Maryland 21204

*Re: Nancy Wehr Niermann, Owner  
West Wind, LLC, Contract Purchaser  
1210 Berwick Road  
Case No.: 03-160-SPH  
Unavailability of Witness*

Dear Ms. Bianco:

I returned to my office to find a Notice of Assignment dated April 21, 2003 in the above-referenced case. At present, this matter is assigned for Tuesday, August 19, 2003. I have been advised by one of our key witnesses, Bruce E. Doak, RPLS of Gerhold, Cross & Etzel, Ltd., that he will be out of the State during the entire second and third weeks of August. Therefore, I am requesting that this matter be rescheduled. To assist you in your rescheduling, I must advise that I will be out of the State from August 2, 2003 through and including August 11, 2003.

Should you or any member of the Board desire additional information in rescheduling this matter, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr.

HLA/pal

cc: Ms. Nancy Wehr Neirmann  
West Wind, LLC  
David F. Albright, Esquire  
Bruce E. Doak, RPLS  
Peter M. Zimmerman, People's Counsel

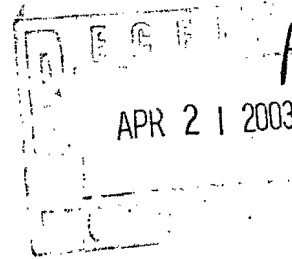
G:\Clients\West Wind, LLC (14151)\bianco-k.ltr.wpd





County Board of Appeals of Baltimore County

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



CD?  
PC not involved  
PHZ

**Hearing Room – Room 48**  
Old Courthouse, 400 Washington Avenue

April 21, 2003

NOTICE OF ASSIGNMENT

CASE #: 03-160-SPH

IN THE MATTER OF: NANCY WEHR NIERMANN – Legal Owner;  
KEVIN MICHELS, WEST WIND LLC - CP  
1210 Berwick Road  
9<sup>th</sup> Election District; 5<sup>th</sup> Councilmanic District

12/24/02 – Z.C.'s Order in which the requested relief was GRANTED with restrictions.

ASSIGNED FOR:

TUESDAY, AUGUST 19, 2003 at 10:00 a.m.

**NOTICE:** This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

**IMPORTANT:** No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco  
Administrator

|    |                                           |                                    |
|----|-------------------------------------------|------------------------------------|
| c: | Counsel for Appellants /Protestants       | : David F. Albright, Esquire       |
|    | Appellants /Protestants                   | : Jody Albright, et al             |
|    |                                           | c/o David F. Albright, Esquire     |
|    | Counsel for Petitioners                   | : Howard L. Alderman, Jr., Esquire |
|    | Petitioners                               | : Nancy Wehr Niermann              |
|    |                                           | Kevin Michels /West Wind LLC       |
|    | Bruce E. Doak /Gerhold Cross & Etzel Ltd. |                                    |
|    | Office of People's Counsel                |                                    |
|    | Pat Keller, Planning Director             |                                    |
|    | Lawrence E. Schmidt, Zoning Commissioner  |                                    |
|    | Arnold Jablon, Director /PDM              |                                    |



Baltimore County  
Department of Permits and  
Development Management

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

January 24, 2003

Ms. Nancy Niermann  
6511 Darnall Road  
Baltimore, MD 21204

Dear Ms. Niermann:

RE: Case No. 03-160-SPH, 1210 Berwick Avenue

Please be advised that an appeal of the above-referenced case was filed in this office on January 22, 2003 by David Albright on behalf of Jody Albright, Felicia Albright, and Douglas Scrivener. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

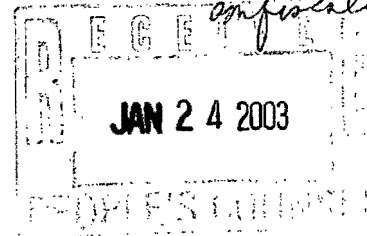
If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Arnold Jablon  
Director

*We will not participate  
in appeal. No public interest.*  
AJ:rlh PMZ

- c: Lawrence E. Schmidt, Zoning Commissioner  
Arnold Jablon, Director of PDM  
People's Counsel  
Kevin Michels, West Wind, LLC, 213 Old Padonia Road, Cockeysville 21030  
Bruce E. Doak, Gerhold Cross & Etzel, 320 E. Towsontown Blvd., Towson 21286  
Howard Alderman, Levin & Gann, 502 Washington Avenue, Towson 21204



*single property*  
*not involved*  
*below width*  
*confiscation issue*



## APPEAL

Petition for Special Hearing  
1210 Berwick Road  
N/side of Berwick Avenue opposite Wehr Road  
15<sup>th</sup> Election District – 5<sup>th</sup> Councilmanic District  
Nancy Wehr Niermann - Legal Owner  
Kevin Michels, West Wind, LLC - Contract Purchaser  
Case No.: 03-160-SPH

Petition for Special Hearing (September 27, 2002)

Zoning Description of Property

Notice of Zoning Hearing (October 11, 2002)

Certification of Publication (The Jeffersonian issue October 29, 2002)

Certificate of Posting (October 28, 2002 posted by Bruce Doak)

Entry of Appearance by People's Counsel (October 17, 2002)

Petitioner(s) Sign-In Sheet  
One Sheet

Protestant(s) Sign-In Sheet  
One Sheet

Citizen(s) Sign-In Sheet  
One Sheet

Zoning Advisory Committee Comments

### Petitioners' Exhibits:

1. Plan to Accompany Petition for a Special Hearing
- 2a. Copy of 6/22/90 Title
- 2b. Copy from Title Guarantee Company
- 2c. Copy of Will
3. Copy of Findings & Conclusions from Dep. Zoning Commissioner
4. Elevation Drawings
5. Letter from Miles & Stockbridge

### Protestants' Exhibits:

1. Order of Dismissal from Board of Appeals
3. Boundary Survey
4. Lot Survey

### Miscellaneous (Not Marked as Exhibits):

1. Plat with photographs
2. Post-Hearing Statement
3. Letters from residents of Berwick Rd.

Zoning Commissioner's Order (December 24, 2002 – GRANTED subject to the following restrictions)

Notice of Appeal received on January 22, 2003 from David Albright on behalf of Jody Albright, David Albright, Felicia Albright and Douglas Scrivener

c: People's Counsel of Baltimore County, MS #2010  
Lawrence Schmidt, Zoning Commissioner  
Arnold Jablon, Director of PDM  
Nancy Wehr Niermann, 6511 Darnall Road, Baltimore 21204  
David Albright, Albright & Goertemiller, LLC, 120 E. Baltimore Street,  
Suite 2150, Baltimore 21202

date sent 1/24/03 rlh

## EXHIBIT "A"

### DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

#### ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

---

---

#### For Newspaper Advertising:

Item Number or Case Number: \_\_\_\_\_

Petitioner: \_\_\_\_\_

Address or Location: \_\_\_\_\_

#### PLEASE FORWARD ADVERTISING BILL TO:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

1/15/04

IN RE: IN THE MATTER OF NANCY WEHR  
NIERMANN & KEVIN MICHELS/  
WEST WIND, LLC  
1210 Berwick Road

*NANCY WEHR NIERMANN, Owner/Respondent*  
*KEVIN MICHELS, WEST WIND LLC, Contract*  
*Purchaser/Respondent*

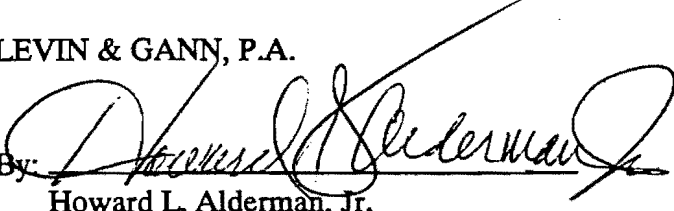
IN THE  
CIRCUIT COURT  
  
FOR  
BALTIMORE COUNTY  
  
Case No.: 03-C-04-000239

[CBA-03-160-SPH]

**RESPONSE TO PETITION FOR JUDICIAL REVIEW**

Kevin Michels and West Wind LLC, a Maryland limited liability company, and Nancy Wehr Niermann, all of whom were parties below before the County Board of Appeals for Baltimore County, by and through the undersigned legal counsel and in accordance with Maryland Rule 7-204 hereby serve notice that they intend to participate in the above-captioned appeal.

LEVIN & GANN, P.A.

By: 

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

Attorneys for Respondent

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BALTIMORE COUNTY  
BOARD OF APPEALS

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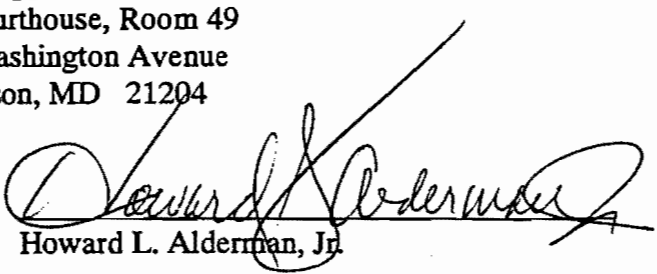
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15<sup>th</sup> day of January, 2004, a copy of the foregoing Response to Petition for Judicial Review was mailed via First-Class, United States Mail to the following:

David F. Albright, Sr., Esquire  
Albright & Goertemiller, LLC  
120 East Baltimore Street, Suite 2150  
Baltimore, MD 21202

and

County Board of Appeals of Baltimore County  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, MD 21204

  
Howard L. Alderman, Jr.

12/8/03  
IN THE MATTER OF  
THE APPLICATION OF  
NANCY WEHR NIERMANN - LEGAL OWNER;  
KEVIN MICHELS /WEST WIND LLC - C.P.  
FOR SPECIAL HEARING ON PROPERTY  
LOCATED ON THE N/SIDE OF BERWICK  
AVENUE OPPOSITE WEHR ROAD  
(1210 BERWICK ROAD)  
9<sup>TH</sup> ELECTION DISTRICT  
5<sup>TH</sup> COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. 03-160-SPH

\* \* \* \* \*

### OPINION

This matter comes before the Baltimore County Board of Appeals on a timely appeal brought by the Appellants /Protestants Jody Albright, et al, resulting from a decision by the Zoning Commissioner dated December 24, 2002, to grant with restrictions a Petition for building application/undersized lot pursuant to § 304, *Baltimore County Zoning Regulations* (BCZR) at the subject site, 1210 Berwick Road, 9th Election District, 5th Councilmanic District.

The Appellants /Protestants were represented before the Board by David F. Albright, Esquire. Howard L. Alderman, Jr., Esquire, appeared on behalf of Petitioner /Legal Owner Nancy Wehr Niermann and Petitioner /Contract Purchaser, Kevin Michels /West Wind, LLC.

This case was heard *de novo* before the Board on October 16, 2003, and deliberated in open session on October 29, 2003.

The first witness for the Petitioners was Bruce Doak, Gerhold Cross & Etzel, 320 E. Towsontowne Blvd., Baltimore, MD 21286. Mr. Doak was qualified and accepted by the Board as an expert in zoning, planning and development, and as a surveyor with planning and zoning expertise. There was no objection from Mr. Albright.

The witness offered the Plan to Accompany the Petition for Special Hearing as Petitioners' Exhibit #1. Mr. Doak testified that he had visited the site four or five times and that the plan, as sealed by him, reflects the title and deed of the subject property.

He described the location as the north side of Berwick Road in the neighborhood of Ruxton, an area of single family dwellings. The subject lot is roughly a rectangular shape containing .49 acre, more or less, with a depth of 228 feet on the west boundary, 214 feet on the east, 96.34 feet across the rear boundary, and a width of 97.34 feet fronting Berwick Road. According to Mr. Doak's testimony, the area of the lot is 20,573 square feet outside of the paved portion of Berwick Road, but a total of 21,216 square feet in actuality because the deed extends the property line to the center of Berwick Road. The property is zoned D.R. 2.

As Petitioners' Exhibit #2 Mr. Doak submitted § 1B02 BCZR which, in pertinent part, sets out the area requirements for building a single-family dwelling in the D.R. 2 zone. Mr. Doak opined that the subject property meets all requirements except for the minimum lot width of 100 feet.

Mr. Doak then offered into evidence three deeds (Petitioners' Exhibits 3, 4 & 5) tracing the chain of ownership of the subject lot back to May 27, 1943. Mr. Doak opined that Ms. Niemann does not own any adjacent property nor had she altered the lot lines of the subject property at any time in her ownership.

He further noted that no dedicated right-of-way is reflected in any description found in the above mentioned deeds. It was Mr. Doak's expert opinion that, where no right-of-way is dedicated, the net area goes to the center of the road. Therefore, the gross area of the subject lot is 21,216 square feet, which includes 740 square feet maintained by the county as part of Berwick Road, a public road.

Mr. Doak submitted as Petitioners' Exhibit # 6 § 101 of the BCZR which defines "net area." He also offered the decision from below as Petitioners' Exhibit # 7. Petitioners' Exhibit # 8 was § 304 of the BCZR which sets forth the standards under which an undersized lot is buildable. Mr. Doak explained that this regulation is relevant here because the subject property



was recorded before March 30, 1955; it meets all pertinent height and area requirements except the frontage; and the owner does not own other property which would permit compliance with the regulations.

Mr. Doak also offered the interoffice correspondence of Arnold F. "Pat" Keller, III, Director of Planning, dated October 10, 2003 (Petitioners' Exhibit # 9) which supports the petition before the Board. He also submitted the Baltimore County Policy Manual section 304 which speaks to the use of undersized single family lots (Petitioners' Exhibit #10).

In his expert opinion, Mr. Doak testified that Ms. Niemann had not owned any adjacent property in the last 6 years which would have permitted her to bring the lot into compliance, nor would building on this lot result in any increase in density. The requested relief of 97.34 feet in lieu of the required 100 foot front lot width is a minimal request which cannot be obtained in any other way and falls within the spirit and intent of the BCZR.

On cross-examination by Mr. Albright, Mr. Doak testified that Berwick Road is a public road which does not qualify as a "road by prescription" in his expert opinion. Mr. Doak also stated that the Petitioners had not filed for a building permit to date and that they did need a positive ruling in this case in order to build the proposed single family dwelling.

He further agreed with Mr. Albright that the County holds a dedicated 30-foot right-of-way in front of the Albright property, and that the Albright property had been created out of several parcels which had belonged to the Wehr family. In fact, Mr. Doak testified, Nancy T. Wehr, Ms. Niemann's mother, currently lives on the opposite side of Berwick Road from the subject property as shown on Petitioners' Exhibit #1. On redirect from Mr. Alderman, Mr. Doak clarified that the Petitioners' deed differs from that of the Albright property in that the Niemann property is titled to the center of Berwick Road without a dedicated right-of-way.

The next witness was Nancy Wehr Niemann, 6511 Darnall Road, Baltimore, MD 21204. Ms. Niemann testified that she is the owner of the subject property. She first submitted into evidence (Petitioners' Exhibit # 12) public records from the Metropolitan Information Systems, Inc., showing undersized lots on Berwick Road which have been built on. She also submitted letters of support from neighbors (Petitioners' Exhibit #13) and photos (Petitioners' Exhibits 14 A-H) showing nearby houses. Ms. Niemann opined that the houses shown in the photographs were all larger than the house proposed for the subject lot. She also testified that she had never owned any property adjacent to the subject property.

Mr. Albright then cross-examined Ms. Niemann on the size of adjoining lots and some smaller houses in the area. Ms. Niemann agreed that there were some lots that are larger than the subject property and some houses that are smaller than what is proposed. On redirect by Mr. Alderman, Ms. Niemann testified that her photos were limited to those houses bordering the subject property.

Petitioner Kevin Michels was the next to testify. He is the principal in West Wind LLC, located at 213 Old Padonia Road, Cockeysville, MD 21030. He submitted as Petitioners' Exhibit #15 the plans for the house proposed for the subject property. He indicated that he has been in the building business since 1995 and it is his opinion that the house proposed is compatible with the neighborhood.

On cross-examination Mr. Michels testified that he met with Lynn Lanham of the Office of Planning to review the house plans. He said that he has not filed for a building permit.

Mr. Albright, counsel for the Appellants /Protestants, did not present any witnesses or evidence.

In closing Mr. Alderman argued that § 304, BCZR, empowers the Board of Appeals to approve an undersized lot as buildable if it meets the three tests set forth. It is the contention of

the Petitioners that they do meet the tests as required and that their evidence is uncontradicted by the Appellants. Further the posting was done properly and the Petitioners have met their burden.

Mr. Alderman noted that the Zoning Commissioner attached three conditions to his ruling and that the Petitioners will not object to the conditions imposed.

In opposition Mr. Albright argued that the subject lot is too narrow and that the area requirement calculation must not include any of the paved portion of Berwick Road. He also emphasized that § 304 is not the correct procedure in this case and that a building permit filing is mandatory. In addition, Mr. Albright contended, the fact that the lot has been vacant for many years is proof in itself that it is unbuildable.

Upon review the Board accepts unanimously the testimony and evidence presented and hereby finds that the subject property meets the requirements for an undersized lot as indicated in § 304.1, (BCZR, 1955; Bill No. 47, 1992). Section 304.1 stipulates that:

A one-family detached or semi-detached dwelling may be erected on a lot having an area or width at the building line less than that required by the are regulations contained in these regulations if:

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

It is clear to this Board that the Petitioners have met the first test (A) in that the subject property was established by deed recorded in Baltimore County Land Records on May 27, 1943.

The testimony of Mr. Doak and Ms. Niermann was supported by the evidence of Petitioners' Exhibits #3, #4, and #5.

The second test (B) speaks to all other height and area requirements. Testimony and evidence support the facts that the lot in question meets the designated front, rear and side yard

setback requirements. Mr. Doak's expert testimony that the Petitioner owns to the centerline of Berwick Road was also persuasive. Therefore the calculation of 21,216 square feet more than meets that requirement that the lot be no less than 20,000 square feet in total area.

Finally the testimony and evidence is uncontradicted by fact that the Petitioners do not own sufficient adjoining land to bring the undersized lot into compliance. Therefore they satisfy test C.

As a result the law provides that, if all three tests above are met, the Petitioners are permitted to develop an "undersized" or "insufficient width" lot in Baltimore County.

The Board hereby GRANTS the special hearing request for approval of the subject property as an undersized lot under § 304, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) Prior to the issuance of any building permits, the Petitioners shall submit building elevation drawings of the proposed dwelling and a landscape plan to the Office of Planning for review and approval. The landscape plan shall provide sufficient screening to buffer the proposed dwelling from the adjacent properties on both sides.
- 3) When applying for any permits, the site plan filed must reference these cases and set forth and address the restrictions of this Order.

### ORDER

THEREFORE, IT IS THIS 8th day of December, 2003 by the

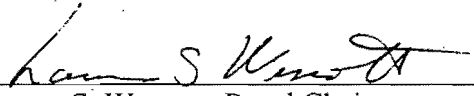
County Board of Appeals of Baltimore County

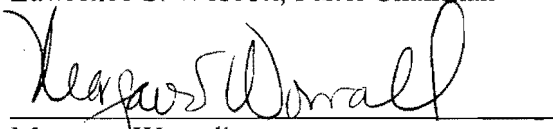
**ORDERED** that the Petition for Special Hearing for building application /undersized lot at the subject site, 1210 Berwick Road, pursuant to § 304 of the *Baltimore County Zoning Regulations* (BCZR) be and the same is hereby **GRANTED**, subject to the following conditions:

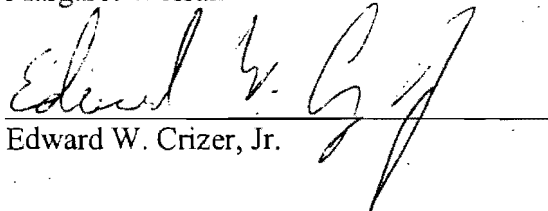
- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) Prior to the issuance of any building permits, the Petitioners shall submit building elevation drawings of the proposed dwelling and a landscape plan to the Office of Planning for review and approval. The landscape plan shall provide sufficient screening to buffer the proposed dwelling from the adjacent properties on both sides.
- 3) When applying for any permits, the site plan filed must reference these cases and set forth and address the restrictions of this Order.

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

**COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
Lawrence S. Wescott, Panel Chairman

  
Margaret Worrall

  
Edward W. Crizer, Jr.



## County Board of Appeals of Baltimore County

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

December 8, 2003

David F. Albright, Esquire  
ALBRIGHT & GOERTEMILLER, LLC  
120 E. Baltimore Street  
Suite 2150  
Baltimore, MD 21202

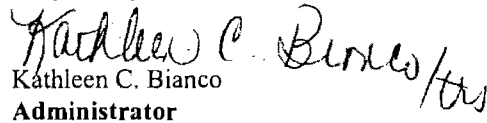
RE: *In the Matter of: Nancy Wehr Niermann – Legal Owner;  
West Wind, LLC – CP / Case No. 03-160-SPH*

Dear Mr. Albright:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules of Procedure*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

  
Kathleen C. Bianco  
Administrator

Enclosure

c: Jody Albright, et al  
c/o David F. Albright, Esquire  
Howard L. Alderman, Jr., Esquire  
Nancy Wehr Niermann  
Kevin Michels /West Wind LLC  
Bruce E. Doak /Gerhold Cross & Etzel Ltd.  
Office of People's Counsel  
Pat Keller, Planning Director  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Jody Albright, et al

12/24/02  
IN RE: PETITION FOR SPECIAL HEARING  
NW/Corner Berwick & Wehr Roads  
(1210 Berwick Road)  
9<sup>th</sup> Election District  
4<sup>th</sup> Council District

Nancy W. Niermann, Owner;  
Kevin Michels, West Wind, LLC,  
Contract Purchasers

\* BEFORE THE  
\* ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 03-160-SPH  
\*

\* \* \* \* \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owner of the subject property, Nancy W. Niermann, and the Contract Purchasers, West Wind, LLC, by Kevin Michels. The Petitioners request a special hearing to approve the subject property as an undersized lot, pursuant to Section 304 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Nancy Niermann, property owner; Kevin Michels, a principal member of West Wind, LLC, Contract Purchasers; and Howard L. Alderman, Jr., Esquire, attorney for the Petitioners. Also present were Bruce E. Doak, the Registered Land Surveyor who prepared the site plan for this property, and Frederick T. Weir, who resides across the street from the subject site. Appearing in opposition to the request were several residents from the surrounding locale, including David and Josephine Albright, who own the adjacent property at 1214 Berwick Road, and their daughter, Felicia Albright and her husband, Doug Scrivener, who reside on that property. Also appearing in opposition were Leza Ebeling, and David and Margaret Owens, who reside across from the subject site at 1217 Berwick Road. In addition, Anne J. Malone, who owns the adjacent property known as

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By [Signature]

1208 Berwick Road, appeared as an interested person, as did Peggy Squitieri, on behalf of the Ruxton-Riderwood-Lake Roland Area Improvement Association.

The subject property under consideration is an irregularly shaped parcel, located on the north side of Berwick Road, across from Wehr Road and just east of Rider Hill Road in Ruxton. The property contains 0.49 acres, more or less, zoned D.R.2 and is presently unimproved. The property is currently under contract of sale to Kevin Michels, a builder and principal in West Wind, LLC. Mr. Michels proposes to develop the property with a two-story single family dwelling as shown on Petitioner's Exhibit 1.

The standards for development of D.R. zoned land are set out in Section 1B02.3C of the B.C.Z.R. The minimum area required for a lot zoned D.R.2 is 20,000 sq.ft. The subject property is 21,216 sq.ft. in area. Thus, the lot meets that area requirement. Additionally, Section 1B02.3.C of the B.C.Z.R. establishes certain minimum setbacks. These are that any dwelling must be situated a minimum 40 feet from both the front/street and rear property lines. Again, an examination of the site plan shows that the proposed dwelling will be located 103 feet from the front property line and 66 feet from the rear property line. In this regard, there was some question raised about the location of the front property line insofar as same may be within the bed of Berwick Avenue. Whatever the dispute, it is clear that the proposed dwelling will be setback significantly more than the 40 feet required and thus easily meets those setback requirements. More importantly, the testimony of Bruce Doak, a licensed surveyor, was persuasive that the Petitioner owns property to the centerline of Berwick Road. Thus, I find that the lot area and setbacks as shown on the plan are accurate.

Section 1B02.3 of the B.C.Z.R. also sets out the side yard setback requirements. Each side yard setback must be a minimum 15 feet and when combined, the total side yards must total 40 feet. Thus, an applicant can submit building plans for a dwelling setback 20 feet from both sides, or 15 feet and 25 feet, etc. Compliance is determined for so long as each setback is a minimum of 15 feet and when added together the total setbacks equal 40 feet or more. In this case, the site plan shows a 15-foot setback will be provided to the east adjacent to 1208 Berwick

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By [Signature]



Avenue, and a 25-foot setback towards the west adjacent to 1214 Berwick Avenue. Thus, it is clear that the Petitioners' lot satisfies the area requirements and meets all property line setbacks. In addition to those standards, the lot must also be a minimum 100 feet wide. The site plan submitted shows a lot width of 97.34 feet across the front property line, and 96.34 feet across the rear. Thus, the lot fails to comply with this requirement.

Testimony and evidence offered also established that the instant case is not the first time that a Petition for zoning relief has been filed for this property. Specifically, Ms. Niemann and a different contract purchaser (Kristen F. and James R. Culp) filed a Petition seeking approval of an undersized lot under Case No. 02-223 (SPH) (see Petitioner's Exhibit 3) which was considered by Deputy Zoning Commissioner Timothy M. Kotroco. By his opinion and Order dated February 7, 2002, Commissioner Kotroco granted the Petitioners' request to construct a single family dwelling on the lot consistent with the site plan submitted in that case. Further evidence offered revealed that the Albrights filed an appeal of that matter to the Board of Appeals. Ultimately, the Petitioners withdrew their Petition in Case No. 02-223 (SPH) and the appeal was dismissed. The Board of Appeals issued an order on April 18, 2002 in which it ruled that any relief granted by Deputy Commissioner Kotroco was rendered null and void and provided that the Petition was withdrawn and dismissed without prejudice (emphasis added).

The Board's Order is of note in this case. The fact that the prior Petition was dismissed without prejudice is dispositive to a finding that the current Petition is properly filed and may be considered. Additionally, although the general principles of res judicata provide that an identical issue may not be relitigated, the fact that a different party is involved in this case (West Wind, LLC) renders the doctrine of res judicata inapplicable. (See Davis v. Frederick Co. Board of County Commissioners, 25 Md. App. 68 (1975)).

The relief requested in the instant case is filed under a Petition for Special Hearing. Indeed, a review of the Protestants' Post Trial Memorandum indicates that there is some confusion by the opponents as to the nature of the relief requested and applicable provisions of the B.C.Z.R. The Office of the Zoning Commissioner is authorized to grant variance relief from the regulations

contained in the B.C.Z.R. by Section 26-127 of the Baltimore County Code. This variance authority allows the Zoning Commissioner to vary the strict application of the height and area requirements contained in the B.C.Z.R. Thus, the Zoning Commissioner could grant a variance from the building width requirements, pursuant to that authority. When a Petition for Variance is filed and considered, the standards set out in Section 307 of the B.C.Z.R. are applied. That Section requires that the Zoning Commissioner make certain findings in order to grant relief. Specifically, the Zoning Commissioner must determine that special circumstances or conditions exist that are peculiar to the land or structure that is the subject of the zoning request. Additionally, it must be shown that strict compliance with the regulation would result in a practical difficulty or unreasonable hardship upon the property owner. Finally, variances can only be granted if in strict harmony with the spirit and intent of the regulations and only in such a manner so as not to result in any injury to the public health, safety or general welfare of the locale. Section 307 of the B.C.Z.R. has been comprehensively considered by the appellate courts of this state, most notably in Cromwell v. Ward, 102 Md. App. 691 (1995) and Friends of the Ridge v. BG&E Co., 120 Md. App. 444 (1998).

In addition to the Zoning Commissioner's authority to grant variance relief, the Zoning Commissioner possesses other jurisdiction and authority pursuant to the Baltimore County Code and the B.C.Z.R. Among such authority is the consideration of Petitions for Special Hearing. Such Petitions are filed pursuant to Section 500.7 of the B.C.Z.R. Essentially, that Section authorizes the Zoning Commissioner to conduct such hearings as might be necessary for the proper enforcement and interpretation of the B.C.Z.R.

Relief sought under a Petition for Special Hearing is subject to a different standard than relief sought pursuant to a Petition for Variance. Whereas a Petition for Variance is considered pursuant to the requirements of Section 307 of the B.C.Z.R. as described above, a Petition for Special Hearing is not subject to those requirements. In this case, special hearing relief is sought pursuant to Section 304 of the B.C.Z.R. Section 304 of the B.C.Z.R. regulates the use of undersized single family dwelling lots in Baltimore County. The first zoning regulations were

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enacted in Baltimore County in 1945. Obviously, Baltimore County is an older jurisdiction and significant development existed in the County when the first zoning regulations were adopted. The drafters of the original version of the B.C.Z.R. recognized existing development and the fact that "lots of record" were recorded in the Land Records of Baltimore County prior to 1945.

The version of the B.C.Z.R. first enacted in 1945 was comprehensively amended and reenacted in 1955. The regulations promulgated in 1955 are essentially the same set of standards presently in effect, albeit the enactment of numerous amendments over the years. Section 304.1 of the B.C.Z.R. recognizes the existence of old lots of record and regulates same. That Section provides that a one family detached or semi-detached dwelling can be constructed on a lot having an area or width at the building line less than that required by the regulations, if three tests are met. First, such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955 thereby establishing that the lot existed in its current configuration prior to that date; second, that all other requirements of the height and area regulations have been complied with; and, third, that the lot owner does not own sufficient adjoining land to conform to the width and area requirements contained in the regulations. It is clear that this Section provides that if those three tests are met, a property owner can obtain a building permit for and develop an "undersized" or "insufficient width" lot in Baltimore County. Sections 304.2 through 304.7 of the B.C.Z.R. sets out the procedure under which requests filed pursuant to Section 304.1 shall be administered. Essentially, this Section requires the property owner to post a sign on the property for a period of 15 days advertising that the property owner is seeking relief, pursuant to Section 304. Within that 15-day period, any owner/occupant within 1,000 feet of the subject lot may request a public hearing. If a hearing is requested, same is heard by the Zoning Commissioner or Deputy Zoning Commissioner of Baltimore County. Pursuant to Section 304.4 of the B.C.Z.R., the Zoning Commissioner/Deputy Zoning Commissioner shall make a determination, "whether the proposed dwelling is appropriate." It is this standard which the Zoning Commissioner must apply in considering requests filed pursuant to Section 304.

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In this case, it was indicated that the Petitioners were well aware of the opposition of the opponents who participated in the prior case (#02-223 (SPH)). These opponents included members of the Albright and Owens families who reside or own property within 1000 feet of the subject lot. The Petitioners recognized the futility of posting the property for a period of 15 days and thereby soliciting a request for a public hearing by an adjacent property owner. In that no doubt the opponents would exercise that right, the Petitioners filed the Petition for Special Hearing in the instant case, seeking relief pursuant to Section 304, so that a public hearing would immediately be scheduled.

As to the three-pronged test set forth above, it is clear that the Petitioners have met the first requirement in that the lot at issue was established by deed recorded in the Land Records of Baltimore County on May 28, 1943. At the hearing in the instant case, the Petitioners submitted a series of deeds (Petitioner's Exhibits 2A, 2B and 2C) which collectively establish that the subject property existed as a lot of record in its current configuration prior to 1955. Thus, I easily find that the first standard has been met.

The second standard to be considered is whether the property meets all other area and height requirements. As noted above, it is also easily found that the Petitioners have met this requirement. As detailed above, the proposed dwelling meets the lot area requirements as well as the required front, rear and side property line setback requirements. The only deficiency in this case relates to the width of the lot.

The final test is to determine whether the owner of the lot owns sufficient adjoining land to conform to the width and area requirements contained in these regulations. The intent of this requirement is to no doubt prevent a property owner from creating multiple insufficiently sized adjacent lots from a single parcel. If an individual owns multiple adjacent lots that could be combined to meet all area and width standards, he/she cannot be afforded relief under Section 304 of the B.C.Z.R.

In this case, the testimony and evidence offered was clear that Ms. Niermann and West Wind, LLC do not own any adjacent property. That is, they cannot effectively "borrow" acreage

from an adjacent property to cure the insufficient width of the subject property. The Protestants contend that within the chain of title, the prior owners did own adjacent properties and therefore, the Petitioners do not qualify for relief. Although, it indeed appears that a prior owner in the 1970s did own several lots, including the subject property, this prior ownership does not impact the subject case.

The Baltimore County Zoning Commissioner's Policy Manual (ZCPM) was enacted pursuant to Sections 2-416 through 2-422 and 26-135 of the Baltimore County Code. The ZCPM was last adopted and approved by the County Council in 1992. The Policy Manual contains policies and other information that assists the reader in interpreting the B.C.Z.R. On Page 3-3 thereof, the requirements of Section 304 of the B.C.Z.R. are discussed. Therein, it is indicated that the Zoning Commissioner has traditionally applied the "six year rule" in considering adjacent property ownership. That rule holds that if a single owner of an undersized lot contiguous to another parcel owned by him has transferred ownership of that lot to another person, Section 304.C would apply, if such conveyance was within six years of the date of the filing of the Petition.

In this case, Ms. Niermann has owned the subject lot without owning adjacent property for over 20 years. Thus, the six-year rule set forth in Section 304.C of the B.C.Z.R. has been met. Having determined that each of the requirements set forth in Section 304 of the B.C.Z.R. have been satisfied, I am persuaded to approve the relief requested in the Petition for Special Hearing.

There are several other factors that are of note. Although not dispositive on the instant request, the decision of Deputy Commissioner Kotroco was sound. I concur with his finding that the construction of a dwelling on the subject undersized lot is appropriate and should be approved. Likewise, I agree that certain conditions should be attached to the grant of any relief. Specifically, the Petitioners should submit to the Office of Planning a landscape plan for their review and approval, taking into consideration appropriate landscaping to buffer adjacent properties. Additionally, the Petitioners should be required to submit building elevation drawings of the proposed dwelling to the Office of Planning for their review and approval. Additionally, I easily find that a grant of the request will not be detrimental to adjacent properties and does not adversely

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impact the health, safety and/or general welfare of the locale. I appreciate that some neighbors would like to continue to enjoy the open view afforded by this undeveloped lot. However, the owner should not be compelled to use this unimproved lot for her neighbors' benefit. More importantly, the lot and proposed house are consistent with other houses in the neighborhood. The lot is insufficiently wide by but a single yard, but is large enough in area that the proposed house will not inappropriately intrude upon adjacent dwellings. I easily find that the proposed dwelling is "appropriate" pursuant to Section 304.4 of the B.C.Z.R.

Also, the recently developed concept of smart growth deserves comment. That principle states that development should be geared toward existing communities with infrastructure in place, rather than the development of virgin and agriculturally used properties. Urban sprawl is a significant concern not only in Baltimore County but statewide. This is a typical smart growth-type case. The Ruxton community is a long-established subdivision with public improvements (sewer and water) in place. The lot is obviously not in agricultural use and is located in an existing residential community. This long-existing lot of record is appropriate for development.

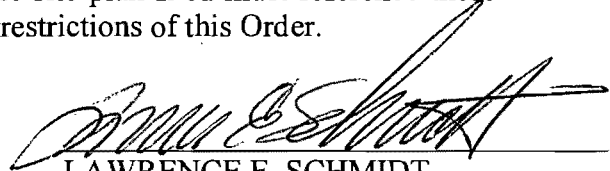
In sum, I am persuaded that the Petition for Special Hearing should be granted. I will impose reasonable conditions and restrictions upon the grant of the relief to mitigate the impacts of this development on adjacent properties. The Protestants' objections, both legal and practical, are simply without merit. Their desire to enjoy the open view afforded by this undeveloped lot is understandable, but does not adequately support a denial of the instant Petition.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 24<sup>th</sup> day of December, 2002 that the Petition for Special Hearing seeking approval of the subject property as an undersized lot, pursuant to Section 304 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

ORDER RECEIVED FOR FILING  
Date 12/24/02  
By [Signature]

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) Prior to the issuance of any building permits, the Petitioners shall submit building elevation drawings of the proposed dwelling and a landscape plan to the Office of Planning for review and approval. The landscape plan shall provide sufficient screening to buffer the proposed dwelling from the adjacent properties on both sides.
- 3) When applying for any permits, the site plan filed must reference these cases and set forth and address the restrictions of this Order.



LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING

Date

12/24/12

By



12/24



Baltimore County  
Zoning Commissioner

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

December 19, 2002

Howard L. Alderman, Jr., Esquire  
Levin & Gann  
502 Washington Avenue, Suite 800  
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING  
NW/Corner Berwick Road and Wehr Road  
(1210 Berwick Avenue)  
9<sup>th</sup> Election District – 4<sup>th</sup> Council District  
Nancy W. Niernan, Owner; West Wind, LLC, Contract Purchasers - Petitioners  
Case No. 03-160-SPH

Dear Mr. Alderman:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted, 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: Ms. Nancy W. Niernann, 6511 Darnall Road, Ruxton, Md. 21204  
Mr. Kevin Michels, West Wind, LLC  
213 Old Padonia Road, Cockeysville, Md. 21030  
Mr. Bruce E. Doak, Gerhold, Cross & Etzel  
320 E. Towsontown Blvd., Suite 100, Towson, Md. 21286  
The Albright Residence, 1214 Berwick Road, Towson, Md. 21204  
Mr. & Mrs. Margaret Owens, 1217 Berwick Road, Baltimore, Md. 21204  
Ms. Leza Ebeling, 1217 Boyce Avenue, Baltimore, Md. 21204  
Ms. Anne J. Malone, 790 46<sup>th</sup> Street (Gulf), Marathon, Fl. 33050  
Ms. Peggy Squitieri, RRLRAIA, P.O. Box 204, Riderwood, Md. 21139  
Office of Planning; People's Counsel; Case File

*See page 3  
Note: The deviation  
from lot width is  
minimal. PMZ  
No public interest  
in appeal.*

Come visit the County's Website at [www.co.ba.md.us](http://www.co.ba.md.us)







Baltimore County  
Zoning Commissioner

December 19, 2002

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

Howard L. Alderman, Jr., Esquire  
Levin & Gann  
502 Washington Avenue, Suite 800  
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING  
NW/Corner Berwick Road and Wehr Road  
(1210 Berwick Avenue)  
9<sup>th</sup> Election District – 4<sup>th</sup> Council District  
Nancy W. Nierman, Owner; West Wind, LLC, Contract Purchasers - Petitioners  
Case No. 03-160-SPH

Dear Mr. Alderman:

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

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Very truly yours,

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:bjs

cc: Ms. Nancy W. Niermann, 6511 Darnall Road, Ruxton, Md. 21204  
Mr. Kevin Michels, West Wind, LLC  
213 Old Padonia Road, Cockeysville, Md. 21030  
Mr. Bruce E. Doak, Gerhold, Cross & Etzel  
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Ms. Peggy Squitieri, RRLRAIA, P.O. Box 204, Riderwood, Md. 21139  
Office of Planning; People's Counsel; Case File

Come visit the County's Website at [www.co.ba.md.us](http://www.co.ba.md.us)



11/22/02

2/2/2002

**RE: PETITION FOR SPECIAL HEARING**  
**1210 Berwick Avenue**  
**N/s of Berwick Avenue, opposite Wehr Rd.**  
**9<sup>th</sup> Election District**  
**4<sup>th</sup> Councilmanic District**

**Legal Owner: Nancy W. Niermann**  
**Contract Purchaser: West Wind, LLC,**

*Petitioners*

**BEFORE THE**  
**ZONING COMMISSIONER**  
**FOR**  
**BALTIMORE COUNTY**  
**CASE NO.: 03-160-SPH**

---

---

**PETITIONERS' POST-HEARING**  
**STATEMENT IN LIEU OF CLOSING ARGUMENT**

Nancy W. Niermann, ("Owner") and West Wind, LLC, ("Contract Purchaser") (through its Authorized Member, Kevin C. Michels) (referred to collectively herein as the "Petitioners") file this Post-Hearing Statement in Lieu of Closing Argument at the direction of the Hearing Officer for Baltimore County at the conclusion of the hearing held on November 12, 2002.

**THE CASE**

Nancy W. Niermann ("Owner") is the fee simple owner of the property located at 1210 Berwick Avenue (the "subject property"). As shown on the Plan which accompanied the *Petition for Special Hearing* ("Petitioner's Exhibit No. 1), the subject property is presently zoned DR 2 and is comprised of 21,216 square feet. The subject property has a width, at the front property line parallel to Berwick Avenue, of 97.34 feet. The Petitioners filed the *Petition for Special Hearing* requesting that the Zoning Commissioner approve the subject property as a buildable, undersized lot of record.

A prior contract purchaser of the subject property had been granted relief to construct a new home on the subject property pursuant to a *Petition for Variance* filed in Case No. 02-223-A (the “prior zoning case”). While the variance relief was granted in that case, an appeal of the decision was filed by certain neighbors and before the required *de novo* hearing was held by the County Board of Appeals, that *Petition for Variance* was withdrawn without prejudice by the petitioners.

The *Baltimore County Zoning Regulations* “(BCZR”) set forth a procedure for posting of an undersized property in connection with a building permit sought thereon. If within the statutory period of time after posting no request for public hearing is made, the permit can be issued. BCZR §§ 304.4 & .5. However, if a proper request for a hearing is made or if the Director of Permits and Development Management determines unilaterally that a public hearing is necessary, the Zoning Commissioner is required to hold a public hearing to make a determination as to whether or not the proposed dwelling is appropriate. BCZR § 304.4 There is no procedure specified for obtaining that public hearing, either by way of *Petition for Variance* or *Petition for Special Hearing*.

Being aware of the prior request for public hearing (leading to the prior zoning case), the Petitioners in this case went directly to the public hearing stage by the filing of the *Petition for Special Hearing*. The Zoning Commissioner has broad authority under BCZR § 500.7 “to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations

....”

At the hearing held in this case, certain neighbors appeared and signed in as persons in opposition to the requested relief. Those individuals, including without limitation David F. Albright, Esq., *et al* (referred to collectively hereafter as the “Protestants”), suggested throughout the hearing [based on purported argument by Mr. Albright in his individual capacity] that the Petitioners were required to meet the standards of BCZR § 307.1, *McClean, Cromwell* (the “Protestants’ Authorities”) and their respective progeny when seeking a variance. However, apparently the Protestants were unaware that no variance relief is being sought by the Petitioners.

The Zoning Commissioner attempted to point out to the Protestants that the Petitioners had opted for relief by way of zoning special hearing, thereby subjecting the request to scrutiny under BCZR §§ 500.7 & 502.1. As such, the Protestants’ Authorities are inapposite – they do not apply to the relief requested.

In support of the Petition, the Petitioners presented the expert testimony of Bruce Doak who opined that the relief requested:

- would not be detrimental to the health, safety or general welfare of the community as the subject property is an existing lot of record, it is larger in size than many of the lots on Berwick Avenue that are already improved with single family dwellings and that any construction must meet all applicable county requirements
- would not tend to create congestion in roads, streets or alleys of the community as it involves the addition of only one, single-family detached home on a lot with just over 2 feet less frontage on a public roadway than required by the BCZR; if the width of the subject property at the roadway

was 100 feet (the minimum required), no more or less traffic would result

- would not create a potential hazard from fire, panic or other danger from a single-family dwelling on an existing lot of record
- would not overcrowd the land or cause an undue concentration of population – there are existing homes on lots on the same street of smaller size
- would not interfere with adequate provisions for schools, parks or other public amenities and facilities
- would not, given the size of the subject property and the location of the proposed home, interfere with adequate light and air
- is not inconsistent with the DR 2 zoning classification or the spirit and intent of the BCZR – the BCZR makes specific provisions for use of this type of pre-existing lot, a lot created before the inception of zoning in Baltimore County
- would not be inconsistent with the impermeable surface and vegetative retention provisions of the BCZR

The majority, if not all, of the testimony/evidence offered by the Protestants was concentrated around:

- ▶ whether or not the owner owned fee simple title of her lot of record to the centerline of Berwick Avenue
- ▶ whether or not the size of the lot of record was shown correctly on Petitioner's Exhibit No. 1
- ▶ how Petitioner's Exhibit No. 1 compared with an exhibit in the prior zoning case on the subject property and how it related to a drawing purportedly prepared for the Albright property to the west
- ▶ the incomprehensible difference between a "course" of one of the property lines shown on a prior, boundary survey and that stated in the deed to the owner and shown on Petitioner's Exhibit No. 1

- ▶ landscaping on the western, northern and eastern sides
- ▶ equalizing the distance of the building envelope in an east-west direction across the lot, recognizing that the proposed drive would be located on one side or the other
- ▶ the definition of certain of the exterior materials shown on the 15 sheets of building plans, elevations and drawings presented by the Contract Purchaser
- ▶ whether or not the proposed home would have a walk-out basement
- ▶ whether or not the Zoning Commissioner had the legal authority to hear the Petition as filed and/or grant the relief requested
- ▶ why the proposed dwelling and relief requested did not meet the standards applicable to the grant of a zoning variance
- ▶ at some point in time, many years ago, the subject property was in common ownership with a portion of one of the existing, adjoining parcels

The extent of ownership can be determined readily from the series of deeds entered into evidence on behalf of the Petitioners; the owner owns to the centerline of Berwick Avenue. *See* Petitioners' Exhibits No. 2A-C The size of the subject property is recited in each of the previous deeds and certified on the plan which accompanied the Petition and in expert testimony by a Maryland registered Property Line Surveyor – Mr. Doak. Moreover, Mr. Doak explained how current boundary line surveys often differ from old deed descriptions because of the advances made in the equipment used for surveying purposes. Mr. Doak also described how two surveyors could survey the same piece of property and describe it slightly different in a metes and bounds description. In

any event, Mr. Doak testified that in preparing Petitioners' Exhibit No. 1 he used the metes and bounds descriptions from the recorded deed instruments so that there could be no challenge to description shown – the description is as recorded in the Land Records of Baltimore County.

As testified to by Mr. Michels, the proposed home will not have a walk-out basement. With respect to landscaping and “centering” the home on the subject property, Mr. Michels had no objection to reasonable approaches to either issue, as long as the adjoining lot owners realized that moving the home would also move the driveway. Additionally, Mr. Michels (a recognized, quality builder) described how the *Southern Living* home proposed was completely appropriate with the neighborhood and how the proposed mix of exterior materials would complement and replicate materials used on many of the existing homes in the community.

As to the issue of prior common ownership of the subject property and a portion of one of the existing, adjoining parcels, Mr. Albright (a licensed attorney) and the rest of the Protestants are, apparently, unaware of the applicable provisions of the *Baltimore County Code of Maryland Regulations*. While the almost two year period of common ownership occurred in the mid-1970's, the uncontradicted testimony was that the current Owner had no common ownership interests during her period of ownership (i.e. since June 18, 1990; *see* Petitioners' Exhibit No. 2A.) Moreover, Baltimore County has developed and applied a “six year rule” when issues of commonality of ownership are

at issue. If the property was in common ownership within the six years prior to the hearing, the petitioner may be barred from relief for an undersized lot. (ZCMP § 304, *Code of County Regulations*). Clearly, the Owner's interest spans more than 12 years.

There are seven reported cases in Maryland which mention the Zoning Commissioner's authority pursuant to BCZR § 500.7:

- ▶ *Marzullo v. Kahl*, 366 Md. 158; 783 A.2d 169; 2001 Md. LEXIS 782 (2001), As Corrected November 7, 2001
- ▶ *Board of Child Care of Baltimore Annual Conference etc. v. Harker*, 316 Md. 683; 561 A.2d 219; 1989 Md. LEXIS 116(1989), As Amended August 9, 1989
- ▶ *Lawler v. Bart Realty Corp.*, 241 Md. 405; 216 A.2d 729; 1966 Md. LEXIS 727 (1966)
- ▶ *Marzullo v. Kahl*, 135 Md. App. 663; 763 A.2d 1217; 2000 Md. App. LEXIS 212 (2000); *but see* Court of Appeals decision above
- ▶ *Hayfields, Inc. v. Valleys Planning Council*, 122 Md. App. 616; 716 A.2d 311; 1998 Md. App. LEXIS 144 (1998)
- ▶ *United Parcel Serv. v. People's Counsel*, 93 Md. App. 59; 611 A.2d 993; 1992 Md. App. LEXIS 165 (1992), *rev'd and remanded* on other grounds, *United Parcel Serv. v. People's Counsel*, 336 Md. 569, 650 A.2d 226, 1994 Md. LEXIS 150 (1994)
- ▶ *Miller v. Forty West Builders, Inc.*, 62 Md. App. 320; 489 A.2d 76; 1985 Md. App. LEXIS 340 (1985)

In none of the cases listed have the appellate courts of this state ever challenged, criticized or negated the authority of the Baltimore County Zoning Commissioner to "to conduct such other hearings and pass such orders thereon as shall, in his discretion, be



necessary for the proper enforcement of all zoning regulations . . . .” BCZR § 500.7 As noted by the Zoning Commissioner in the instant case, the Petitioners have subjected themselves to a more stringent body of regulatory evaluation, that outlined in BCZR § 502.1.

Most of these cases merely mention the procedural use of what has been characterized as the Zoning Commissioner’s Special Hearing authority. The County Council, acting pursuant to the authority conferred pursuant to Article 25A §5, *Annotated Code of Maryland*, has adopted the BCZR with the Special Hearing authority included. The Protestants may dislike the procedural posture of the instant relief, however, their recourse is with the legislative body of the County.

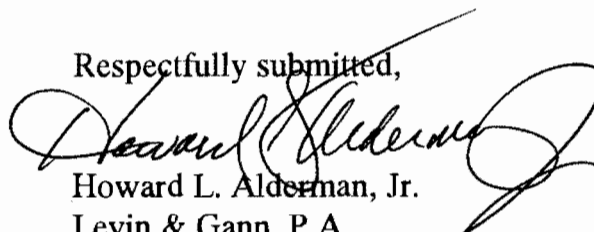
No credible testimony or other evidence was introduced to contradict or otherwise undermine the expert testimony of Mr. Doak regarding the BCZR § 502.1 standards. The only relevant testimony from the Protestants, if any there may be, pertained to the layout of the improvements on the subject property. In the prior zoning case, the requested relief granted approval for a single-family house with a **detached** garage; an issue that apparently caused much concern from adjoining and other neighbors. In the instant case, Mr. Michels has attempted to overcome that potential obstacle by the selection of a quality home design which incorporates the garage into the house footprint.

Zoning decisions, like planning decisions are not decided by neighborhood

plebiscite or mere numbers of people in support or opposition to requested relief. Rather, those decisions are based on the merits of the *relevant* testimony. A review of the relevant testimony in this case shows clearly that the applicable legal standards for granting the relief were met and that the proposed home is more than appropriate for the neighborhood.

For all of the foregoing reasons, the Special Hearing relief for approval of the subject property as a buildable, undersized lot should be approved.

Respectfully submitted,



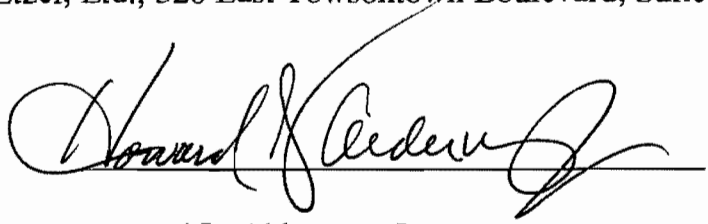
Howard L. Alderman, Jr.  
Levin & Gann, P.A.  
8<sup>th</sup> Floor, Nottingham Centre  
502 Washington Avenue  
Towson, Maryland 21204  
410.321.0600 [voice]  
410.296.2801 [fax]  
[Halderman@LevinGann.com](mailto:Halderman@LevinGann.com) [e-mail]

Attorneys for the Petitioners

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of November, 2002, a copy of the foregoing Petitioners' Post-Hearing Statement in Lieu of Closing Argument was mailed, postage prepaid, First Class United States Mail to: David F. Albright, Esquire, Albright & Goertemiller, LLC, 120 East Baltimore Street, Suite 2150, Baltimore, Maryland

21202; Ms. Nancy Wehr Niermann, 6511 Darnell Road, Baltimore, Maryland 21204; West Wind, LLC, 213 Old Padonia Road, Cockeysville, Maryland 21030; and to Bruce E. Doak, RPLS, Gerhold, Cross & Etzel, Ltd., 320 East Towsontown Boulevard, Suite 100, Towson, Maryland 21286.

A handwritten signature in cursive script, reading "Howard L. Alderman, Jr.", written over a horizontal line.

Howard L. Alderman, Jr.



# Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 1210 BERWICK AVENUE  
which is presently zoned D. R. 2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve AN UNDER SIZE LOT  
PURSUANT TO SECTION 304 OF THE BCZR.

GOVERNMENT SHEET

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

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

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

## Contract Purchaser/Lessee:

Kevin Michels

West Wind, LLC

Name - Type or Print

Kevin Michels

Signature

213 Old Padonia Road 410-561-8983

Address

Telephone No.

Cockeysville MD 21030

City

State

Zip Code

## Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

Telephone No.

State

Zip Code

## Legal Owner(s):

Nancy W. Hiermann

Name - Type or Print

NANCY W. NIERMANN

Signature

Name - Type or Print

Signature

6511 DARNALL ROAD

410-821-0855

Address

Telephone No.

BALTIMORE

MD

21204

City

State

Zip Code

## Representative to be Contacted:

BRUCE E. DOALY

GERHOLD CROSS & ETAL, LTD

Name

320 E. TOWSONTOWN BLVD

410-823-4476

Address

Telephone No.

TOWSON

MD

21286

City

State

Zip Code

## OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Reviewed By JCM

Date 9/27/02

Case No. 03-160-SPH

Date 9/15/98

By [Signature]

ORDER RECEIVED FOR FILING  
Date 9/15/98  
By [Signature]



# Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 1210 BERNICK AVENUE  
which is presently zoned D.C. 2

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PERSUANT TO SECTION 304 OF THE BCZR.

~~(SEE ATTACHED SHEET)~~

Property is to be posted and advertised as prescribed by the zoning regulations. I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

## Contract Purchaser/Lessee:

Kevin Michels  
West Wind, LLC  
Name - Type or Print

Kevin Michels  
Signature

213 Old Padonia Road 410-561-8983  
Address Telephone No.

Cockeysville MD 21030  
City State Zip Code

## Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

## Legal Owner(s):

Nancy W. Niermann  
Name - Type or Print

NANCY W. NIERMANN  
Signature

Name - Type or Print

Signature

6511 DARNALL ROAD 410-821-0855  
Address Telephone No.

BALTIMORE MD 21204  
City State Zip Code

## Representative to be Contacted:

BRUCE E. DRAK  
GERHOLD CROSS & ETZEL, LTD  
Name

320 E. TOWNSHOWN BLVD. 410-823-4470  
Address Telephone No.

TOWSON MD 21206  
City State Zip Code

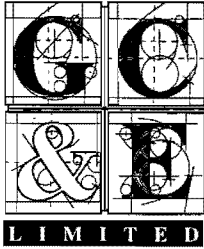
## OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING \_\_\_\_\_

UNAVAILABLE FOR HEARING \_\_\_\_\_

Reviewed By \_\_\_\_\_ Date \_\_\_\_\_

Case No. 03-0160-SPH



## Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286

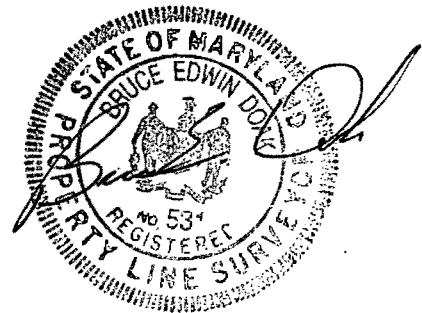
Phone: (410) 823-4470 • Fax: (410) 823-4473 • [www.gcelimited.com](http://www.gcelimited.com)

### ZONING DESCRIPTION 1210 BERWICK AVENUE

9<sup>TH</sup> Election District 4<sup>th</sup> Councilmanic District  
Baltimore County Maryland

Beginning for the same at a point in the centerline of Berwick Avenue, said point being 8 feet easterly from the centerline intersection of Berwick Avenue and Wehr Road, thence running westerly with the centerline of Berwick Avenue 1) South 80 degrees 14 minutes 00 seconds West 97.34 feet, thence leaving said road and running 2) North 01 degree 32 minutes 00 seconds West 228.41 feet, 3) North 88 degrees 28 minutes 00 seconds East 96.34 feet and 4) South 01 degree 32 minutes 00 seconds East 214.47 feet to the point of beginning,

Containing 0.49 of an acre of land, more or less.



**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: #03-160-SPH  
1210 Berwick Avenue  
N/S of Berwick Avenue opposite Wehr Road  
15th Election District  
5th Councilmanic District  
Legal Owner(s): Nancy W. Niermann

Contract Purchaser: Kevin Michels, West Wind, LLC

Special Hearing: to approve an undersized lot.

Hearing: Tuesday, November 12, 2002 at 9:00 a.m.  
in Room 106, Baltimore County Office Building, 111 W. Chesapeake Avenue, Towson 21204

LAWRENCE E. SCHMIDT  
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 10/827 Oct. 29 C571526

# CERTIFICATE OF PUBLICATION

10/31/2002

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 10/29/2002.

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



LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND  
OFFICE OF BUDGET & FINANCE  
MISCELLANEOUS RECEIPT

No. 21077

DATE 1/23/03 ACCOUNT 001-006-6150  
AMOUNT \$ 300.00

RECEIVED FROM: Albright & Gortemiller

FOR: \_\_\_\_\_

Appeal 03-160-SPH

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS ACTUAL TIME  
1/23/2003 1/23/2003 09:43:16

REG 4301 WALKIN JRIC JMR DRIVER 1  
>>R REIPT # 123569 1/23/2003 OFLN  
Dep 5 528 ZONING VERIFICATION  
CR 1. 021077

Recpt Tot \$300.00  
300.00 OK .00 CA  
Baltimore County, Maryland

CASHIER'S VALIDATION



BALTIMORE COUNTY, MARYLAND  
OFFICE OF BUDGET & FINANCE  
MISCELLANEOUS RECEIPT

160  
No. 17828

DATE

9.27.02

ACCOUNT

001-006-6150

AMOUNT

\$ 250.00

RECEIVED  
FROM:

Michels

1210 Bernick Rd

FOR:

SPH.

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

JCM

PAID RECEIPT

BUSINESS ACTUAL TIME

9/30/2002 9/30/2002 09:11:56

REG 4502 WALKIN JEAN JEE DRAWER 2

>> RECEIPT # 226754 9/30/2002 OFLN

Dep 5 528 ZODING VERIFICATION

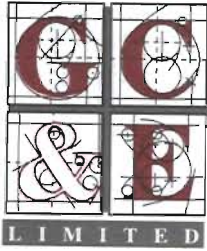
CR NO. 017828

Receipt Tot \$250.00

250.00 OK .00 CA

Baltimore County, Maryland

CASHIER'S VALIDATION



## Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286  
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

### CERTIFICATE OF POSTING

RE: CASE # 03-160-SPH

OWNER:

Nancy W. Niemann

PETITIONER/DEVELOPER:

Kevin Michels, West Wind, LLC

DATE OF HEARING:

November 12, 2002

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

ATTENTION: REBECCA HART

LADIES AND GENTLEMEN:

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

LOCATION  
1210 Berwick Avenue

DATE  
October 29, 2002

SIGNATURE OF SIGN POSTER

BRUCE DOAK

GERHOLD, CROSS & ETZEL, LTD  
SUITE 100  
320EAST TOWSONTOWN BLVD  
TOWSON, MARYLAND 21286  
410-823-4470 PHONE  
410-823-4473 FAX



POSTED ON: October 28, 2002

## ZONING NOTICE

CASE # 03-160-SPH

A PUBLIC HEARING WILL BE HELD BY  
THE ZONING COMMISSIONER  
IN TOWSON, MD.

PLACE: Room 106 County Center Building  
101 W. Chesapeake Avenue, Towson, MD

TIME & 5:00 pm Tuesday, November 12, 2002

**Special Hearing:**  
to approve an  
undersized lot.

10/28/2002



Baltimore County  
Department of Permits and  
Development Management

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

October 11, 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:** 03-160-SPH

1210 Berwick Avenue

N/s of Berwick Avenue opposite Wehr Road

15<sup>th</sup> Election District – 5<sup>th</sup> Councilmanic District

Legal Owner: Nancy W. Niemann

Contract Purchaser: Kevin Michels, West Wind, LLC

Special Hearing to approve an undersized lot.

**HEARING:** Tuesday, November 12, 2002 at 9:00 a.m. in Room 106, Baltimore County Office Building, 111 W. Chesapeake Ave, Towson 21204

Arnold Jablon  
Director

AJ:rlh

C: Nancy J. Niemann, 6511 Darnall Road, Baltimore 21204

Kevin Michels, West Wind, LLC, 213 Old Padonia Road, Cockeysville 21030

Bruce E. Doak, Gerhold, Cross & Etzel, 320 E. Towsontown Blvd., Towson 21286

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY OCTOBER 28, 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.



DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT  
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

---

---

For Newspaper Advertising:

Item Number or Case Number: 160

Petitioner: KEVIN MICHELS - WEST WIND, LLC

Address or Location: 1210 BERWICK AVENUE BALTIMORE MO 21204

PLEASE FORWARD ADVERTISING BILL TO:

Name: KEVIN MICHELS  
WEST WIND, LLC

Address: 213 OLD PRAIRIE ROAD  
COCKEYSVILLE, MO 21030

Telephone Number: 410-561-8383

Revised 2/20/98 - SCJ

**APPEAL SIGN POSTING REQUEST**

CASE NO.: 03-160-SPH

Nancy Wehr Niermann - LEGAL OWNERS

1210 Berwick Road, Towson, MD 21204

946  
15<sup>th</sup> ELECTION DISTRICT

APPEALED: 1/22/2003

**ATTACHMENT** – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

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

**CERTIFICATE OF POSTING**

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

Attention: Kathleen Bianco  
Administrator

RE: Case No.: 03-160 SPH OWNERS

Petitioner/Developer:  
  
\_\_\_\_\_

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

1210 Berwick Rd.

The sign was posted on 2/14, 2003

By:

Gary Freund  
(Signature of Sign Poster)

GARY FREUND  
(Printed Name)



# County Board of Appeals of Baltimore County

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

*PP'd do  
10/16/03 - reg'd  
keep Counsel for  
Petitioners*

## Hearing Room – Room 48

Old Courthouse, 400 Washington Avenue

April 21, 2003

### NOTICE OF ASSIGNMENT

CASE #: 03-160-SPH

IN THE MATTER OF: NANCY WEHR NIERMANN – Legal Owner;  
KEVIN MICHELS, WEST WIND LLC - CP  
1210 Berwick Road  
9<sup>th</sup> Election District; 5<sup>th</sup> Councilmanic District

12/24/02 – Z.C.'s Order in which the requested relief was GRANTED with restrictions.

### ASSIGNED FOR:

TUESDAY, AUGUST 19, 2003 at 10:00 a.m.

**NOTICE:** This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

**IMPORTANT:** No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco  
Administrator

c: Counsel for Appellants /Protestants  
Appellants /Protestants

: David F. Albright, Esquire  
: Jody Albright, et al  
c/o David F. Albright, Esquire

Counsel for Petitioners  
Petitioners

: Howard L. Alderman, Jr., Esquire  
: Nancy Wehr Niermann  
Kevin Michels /West Wind LLC

Bruce E. Doak /Gerhold Cross & Etzel Ltd.

Office of People's Counsel  
Pat Keller, Planning Director  
Lawrence E. Schmidt, Zoning Commissioner  
Arnold Jablon, Director /PDM



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

DIRECT DIAL  
410-321-4640

LAW OFFICES  
**LEVIN & GANN**  
A PROFESSIONAL ASSOCIATION  
NOTTINGHAM CENTRE  
502 WASHINGTON AVENUE  
8<sup>th</sup> Floor  
TOWSON, MARYLAND 21204  
410-321-0600  
TELEFAX 410-296-2801

ELLIS LEVIN (1893-1960)  
CALMAN A. LEVIN (1930-2003)

April 28, 2003

**RECEIVED**  
MAY 01 2003

**BALTIMORE COUNTY  
BOARD OF APPEALS**

Kathleen C. Bianco, Administrator  
County Board of Appeals of Baltimore County  
400 Washington Avenue, Old Courthouse Room 49  
Towson, Maryland 21204

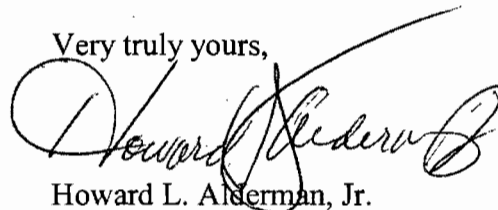
*Re: Nancy Wehr Niermann, Owner  
West Wind, LLC, Contract Purchaser  
1210 Berwick Road  
Case No.: 03-160-SPH  
Unavailability of Witness*

Dear Ms. Bianco:

I returned to my office to find a Notice of Assignment dated April 21, 2003 in the above-referenced case. At present, this matter is assigned for Tuesday, August 19, 2003. I have been advised by one of our key witnesses, Bruce E. Doak, RPLS of Gerhold, Cross & Etzel, Ltd., that he will be out of the State during the entire second and third weeks of August. Therefore, I am requesting that this matter be rescheduled. To assist you in your rescheduling, I must advise that I will be out of the State from August 2, 2003 through and including August 11, 2003.

Should you or any member of the Board desire additional information in rescheduling this matter, please do not hesitate to contact me.

Very truly yours,



Howard L. Alderman, Jr.

HLA/pal

cc: Ms. Nancy Wehr Neirmann  
West Wind, LLC  
David F. Albright, Esquire  
Bruce E. Doak, RPLS  
Peter M. Zimmerman, People's Counsel

G:\Clients\West Wind, LLC (14151)\bianco-k.ltr.wpd





## County Board of Appeals of Baltimore County

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

### Hearing Room – Room 48

Old Courthouse, 400 Washington Avenue

May 8, 2003

#### NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 03-160-SPH

IN THE MATTER OF: NANCY WEHR NIERMANN – Legal Owner;  
KEVIN MICHELS, WEST WIND LLC - CP  
1210 Berwick Road  
9<sup>th</sup> Election District; 5<sup>th</sup> Councilmanic District

12/24/02 – Z.C.'s Order in which the requested relief was GRANTED with restrictions.

which was assigned to be heard on 8/19/03 has been **POSTPONED** at the request of Counsel for Petitioner due to unavailability of key witness who will be out of town during that period; and has been

#### REASSIGNED FOR:

THURSDAY, OCTOBER 16, 2003 at 10:00 a.m.

**NOTICE:** This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

**IMPORTANT:** No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco  
Administrator

c: Counsel for Appellants /Protestants  
Appellants /Protestants

: David F. Albright, Esquire  
: Jody Albright, et al  
c/o David F. Albright, Esquire

Counsel for Petitioners  
Petitioners

: Howard L. Alderman, Jr., Esquire  
: Nancy Wehr Niermann  
Kevin Michels /West Wind LLC

Bruce E. Doak /Gerhold Cross & Etzel Ltd.

Office of People's Counsel  
Pat Keller, Planning Director  
Lawrence E. Schmidt, Zoning Commissioner  
Arnold Jablon, Director /PDM





## County Board of Appeals of Baltimore County

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

October 17, 2003

### NOTICE OF DELIBERATION

#### IN THE MATTER OF:

NANCY WEHR NIERMANN – Legal Owner;  
KEVIN MICHELS, WEST WIND LLC - CP  
Case No-03-160-SPH

Having heard this matter on 10/16/03, public deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, OCTOBER 29, 2003 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

**NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.**

Kathleen C. Bianco  
Administrator

c: Counsel for Appellants /Protestants : David F. Albright, Esquire  
Appellants /Protestants : Jody Albright, et al  
c/o David F. Albright, Esquire

Counsel for Petitioners : Howard L. Alderman, Jr., Esquire  
Petitioners : Nancy Wehr Niermann  
Kevin Michels /West Wind LLC

Bruce E. Doak /Gerhold Cross & Etzel Ltd.

Office of People's Counsel  
Pat Keller, Planning Director  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Director /PDM

**Copy to: 4-3-7**





Baltimore County  
Department of Permits and  
Development Management

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

November 8, 2002

Nancy W. Niermann  
6511 Darnall Road  
Baltimore, MD 21204

Dear Ms. Niermann:

RE: Case Number: 03-160-SPH, 1210 Berwick Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 27, 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.  
Supervisor, Zoning Review

WCR:rlh

Enclosures

c: People's Counsel  
Bruce E. Doak, Gerhold, Cross & Etzel, Ltd., 320 E. Towsontown Blvd., Towson 21286  
Kevin Michels, West Wind, LLC, 213 Old Padonia Road, Cockeysville 21030

Come visit the County's Website at [www.co.ba.md.us](http://www.co.ba.md.us)



**BALTIMORE COUNTY, MARYLAND**

**INTEROFFICE CORRESPONDENCE**

**TO:** Arnold Jablon, Director  
Department of Permits &  
Development Management

**DATE:** October 30, 2002

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

**SUBJECT:** Zoning Advisory Committee Meeting  
For October 21, 2002  
Item No. 159, 160, 161, 162, 163, 164,  
165, 166, 167, 168, 169, 170, and 172

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

RWB:CEN:jrb

cc: File

BALTIMORE COUNTY, MARYLAND  
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley *RBS/HGT*

DATE: November 6, 2002

Zoning Petitions

Zoning Advisory Committee Meeting of October 15, 2002

**SUBJECT:** NO COMMENTS FOR THE FOLLOWING ZONING ITEMS:

160, 162-165, 167-172



*Maryland Department of Planning*

*Parris N. Glendening*  
Governor

*Kathleen Kennedy Townsend*  
Lt. Governor

*Roy W. Kienitz*  
Secretary

*Mary Abrams*  
Deputy Secretary

October 16, 2002

Mr. George Zahner  
Baltimore County Department of Permits and Development Management  
111 West Chesapeake Avenue  
Room 111, Mail Stop #1105  
Towson MD 21204

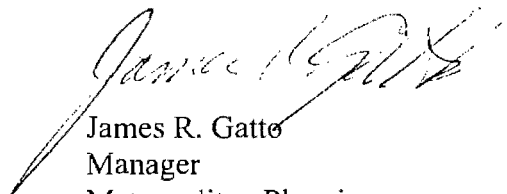
Re: Zoning Advisory Committee Agenda, 10/21/02 re: case numbers 03-159-SPHA, 03-160-SPH, 03-161-SPH, 03-162-A, 03-163-A, 03-164-A, 03-165-A, 03-166-A, 03-167-A, 03-168-A, 03-169-A, 03-170-A, 03-172-A

Dear Mr. Zahner:

The Maryland Department of Planning has received the above-referenced information on 10/15/02. The information has been submitted to Mr. Mike Nortrup.

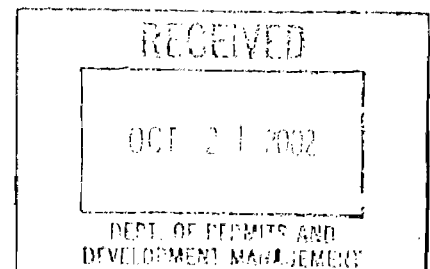
Thank you for your cooperation in this review process. Please contact me at 410.767.4550 or the above noted reviewer if you have any questions.

Sincerely,



James R. Gatto  
Manager  
Metropolitan Planning  
Local Planning Assistance Unit

cc: Mike Nortrup





**Maryland Department of Transportation**  
**State Highway Administration**

Parris N. Glendening  
Governor

John D. Porcari  
Secretary

Parker F. Williams  
Administrator

Date: 10.11.02

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

RE: Baltimore County  
Item No. 160 JCM

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,

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

My telephone number is \_\_\_\_\_

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

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



Baltimore County  
Fire Department

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

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

October 15, 2002

ATTENTION: George Zahner

Distribution meeting: 10/15/02

Location:

Item No.:

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.

7. The Fire Marshal's Office has no comments at this time, in reference to the following items: 159 & 160, 162-172

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

cc: File





# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

**TO:** Timothy M. Kotroco, Director  
Department of Permits and  
Development Management

**DATE:** October 10, 2003

RECEIVED  
POST-APPEAL

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

**SUBJECT:** 1210 Berwick Avenue

**INFORMATION:**

**Item Number:** 03-160

**Petitioner:** Thomas Donohue

**Zoning:** DR 2

**Requested Action:** Special Hearing for Undersized Lot

RECEIVED

OCT 15 2003

BALTIMORE COUNTY  
BOARD OF APPEALS

**SUMMARY OF RECOMMENDATIONS:**

An appeal of the decision rendered by the Zoning Commissioner for the subject property will be heard before the Board of Appeals on October 16, 2003.

The Office of Planning supported the initial request and reaffirms support of the petitioner's request to approve the subject property as an undersized lot, pursuant to Section 304 of the Baltimore County Zoning Regulations.

The applicant has submitted a site plan and building elevations (all sides) of the proposed structure to this office. The Office of Planning finds that the elevations are appropriate and consistent with other houses in the neighborhood.

**Section Chief:**



AFK/LL

RECEIVED  
POST-APPEAL

H  
11/12

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

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

**DATE:** October 29, 2002

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

**SUBJECT:** Zoning Advisory Petition(s): Case(s) 03-160, 03-162, 03-182, & 03-184

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:

Mark A. Cunningham

Section Chief:

Ryan K. Korman

AFK/LL:MAC

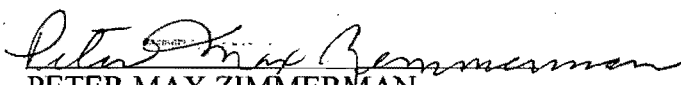
29 2002

|                                                                |   |                     |
|----------------------------------------------------------------|---|---------------------|
| RE: PETITION FOR SPECIAL HEARING                               | * | BEFORE THE          |
| 1210 Berwick Avenue                                            |   |                     |
| N/s of Berwick Ave. opposite Wehr Rd.                          | * | ZONING COMMISSIONER |
| 9 <sup>th</sup> Election District 4 <sup>th</sup> Councilmanic |   |                     |
| District                                                       | * | FOR                 |
| Legal Owner: Nancy W. Niermann                                 |   |                     |
| Contract Pur.: Kevin Michels, West                             | * | BALTIMORE COUNTY    |
| Wind, LLC                                                      |   |                     |
| Petitioner(s)                                                  | * | 03-160-SPH          |

\* \* \* \* \*

### ENTRY OF APPEARANCE

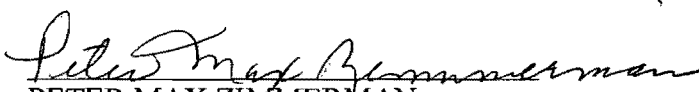
Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/ documentation filed in 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 17<sup>th</sup> day of October, 2002, a copy of the foregoing Entry of Appearance was mailed to Bruce E. Doak, GERHOLD, CROSS & ETZEL, LTD, 320 E. Towsontown Blvd., Towson, MD 21286 Representative for Petitioner(s).

  
 PETER MAX ZIMMERMAN  
 People's Counsel for Baltimore County



Baltimore County  
Department of Permits and  
Development Management

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

January 24, 2003

Ms. Nancy Niermann  
6511 Darnall Road  
Baltimore, MD 21204

Dear Ms. Niermann:

RE: Case No. 03-160-SPH, 1210 Berwick Avenue

Please be advised that an appeal of the above-referenced case was filed in this office on January 22, 2003 by David Albright on behalf of Jody Albright, Felicia Albright, and Douglas Scrivener. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

A handwritten signature in dark ink, appearing to read "Arnold Jablon", written over a faint circular stamp.

Arnold Jablon  
Director

AJ:rlh

c: Lawrence E. Schmidt, Zoning Commissioner  
Arnold Jablon, Director of PDM  
People's Counsel  
Kevin Michels, West Wind, LLC, 213 Old Padonia Road, Cockeysville 21030  
Bruce E. Doak, Gerhold Cross & Etzel, 320 E. Towsontown Blvd., Towson 21286  
Howard Alderman, Levin & Gann, 502 Washington Avenue, Towson 21204



## APPEAL

Petition for Special Hearing  
1210 Berwick Road  
N/side of Berwick Avenue opposite Wehr Road  
45<sup>th</sup> Election District – 5<sup>th</sup> Councilmanic District  
9th Nancy Wehr Niermann - Legal Owner  
Kevin Michels, West Wind, LLC - Contract Purchaser  
Case No.: 03-160-SPH

- ✓ Petition for Special Hearing (September 27, 2002)
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (October 11, 2002)
- ✓ Certification of Publication (The Jeffersonian issue October 29, 2002)
- ✓ Certificate of Posting (October 28, 2002 posted by Bruce Doak)
- ✓ Entry of Appearance by People's Counsel (October 17, 2002)

✓ Petitioner(s) Sign-In Sheet  
One Sheet

✓ Protestant(s) Sign-In Sheet  
One Sheet

✓ Citizen(s) Sign-In Sheet  
One Sheet

✓ Zoning Advisory Committee Comments

✓ Petitioners' Exhibits:

- ✓ 1. Plan to Accompany Petition for a Special Hearing
- ✓ 2a. Copy of 6/22/90 Title
- ✓ 2b. Copy from Title Guarantee Company
- ✓ 2c. Copy of ~~will~~ Deed
- ✓ 3. Copy of Findings & Conclusions from Dep. Zoning Commissioner
- ✓ 4. Elevation Drawings
- ✓ 5. Letter from Miles & Stockbridge

✓ Protestants' Exhibits:

- ✓ 1. Order of Dismissal from Board of Appeals
- ✓ 3. Boundary Survey
- ✓ 4. Lot Survey

No # 2

✓ Miscellaneous (Not Marked as Exhibits):

- ✓ 1. Plat with photographs
- ✓ 2. Post-Hearing Statement
- ✓ 3. Letters from residents of Berwick Rd.

✓ Zoning Commissioner's Order (December 24, 2002 – GRANTED subject to the following restrictions)

✓ \* Notice of Appeal received on January 22, 2003 from David Albright on behalf of Jody Albright, David Albright, Felicia Albright and Douglas Scrivener

c: People's Counsel of Baltimore County, MS #2010  
Lawrence Schmidt, Zoning Commissioner  
Arnold Jablon, Director of PDM  
Nancy Wehr Niermann, 6511 Darnall Road, Baltimore 21204  
David Albright, Albright & Goertemiller, LLC, 120 E. Baltimore Street,  
Suite 2150, Baltimore 21202

date sent 1/24/03 rlh

RECEIVED

JAN 24 2003

BALTIMORE COUNTY  
BOARD OF APPEALS

NANCY W. NIERMANN  
6511 DARNELL ROAD  
BALTIMORE MD 21204

*owner / person*

BRUCE E DOAK  
GERHOLD CROSS & ETZEL LTD  
320 E TOWSONTOWN BLVD  
TOWSON MD 21286

*Contact person*

KEVIN MICHELS  
WEST WIND LLC  
213 OLD PADONIA ROAD  
COCKEYSVILLE MD 21030

*Contract purch.*

DAVID F. ALBRIGHT, ESQUIRE  
ALBRIGHT & GOERTEMILLER, LLC  
120 EAST BALTIMORE STREET  
SUITE 2150  
BALTIMORE MD 21202

*Counsel for appellants*

JODY ALBRIGHT, ET AL  
C/O DAVID F. ALBRIGHT, ESQUIRE  
ALBRIGHT & GOERTEMILLER, LLC  
120 EAST BALTIMORE STREET  
SUITE 2150  
BALTIMORE MD 21202

*appellants*

JODY ALBRIGHT, ET AL  
1214 BERWICK ROAD  
TOWSON MD 21204

*appellants*

HOWARD ALDERMAN, JR.  
502 WASHINGTON AVENUE  
NOTTINGHAM CENTER, 8<sup>TH</sup> FLOOR  
TOWSON, MD 21204

*did not enter appeal  
but submitted the  
statement*

Case No. 03-160-SPH

In the Matter of: Nancy Wehr Niermann – Legal Owner;  
Kevin Michels, West Wind LLC – C.P.

SPH – To approve the subject property as an undersized lot pursuant to § 304 of the BCZR and more particularly as described on site plan submitted with Petition.

12/24/02 – Z.C.'s decision in which SPH was GRANTED subject to restrictions.

---

4/21/03 – Notice of Assignment sent to following; assigned for hearing on Tuesday, August 19, 2003 at 10:00 a.m.:

David F. Albright, Esquire  
Jody Albright, et al  
c/o David F. Albright, Esquire  
Howard L. Alderman, Jr., Esquire  
Nancy Wehr Niermann  
Kevin Michels /West Wind LLC  
Bruce E. Doak /Gerhold Cross & Etzel Ltd.  
Office of People's Counsel  
Pat Keller, Planning Director  
Lawrence E. Schmidt, Zoning Commissioner  
Arnold Jablon, Director /PDM

---

5/01/03 – Request for postponement filed by Howard Alderman, Jr., Esquire – key witness (Doak) will be out of state during that period; noting also that Mr. Alderman will be out of town 8/02 through 8/11/03.

---

5/08/03 – Notice of PP and Reassignment sent to parties; case reassigned to Thursday, October 16, 2003 at 10 a.m.

---

10/15/03 – Summary of Recommendations received from PDM – Memo from Pat Keller, Planning Director, to Timothy Kotroco, Director of PDM.

---

10/16/03 – Board convened for hearing (Wescott, Crizer, Worrall); concluded hearing; deliberation notice to be sent (10/29/03 at 9 a.m.)

---

10/17/03 – Notice of Deliberation sent to parties; assigned for Wednesday, October 29, 2003 at 9:00 a.m. FYI copy to 4-3-7.

---

10/29/03 – Board convened for deliberation (Wescott, Worrall, Crizer); granted special hearing request; order to be issued. Appellate period to run from date of written Order. (3)

---

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF:  
DAVID F. ALBRIGHT, SR., ESQUIRE  
JODY ALBRIGHT  
DOUGLAS A. SCRIVENER  
FELICIA B. ALBRIGHT  
1214 BERWICK ROAD  
BALTIMORE, MD 21204

FOR JUDICIAL REVIEW OF THE OPINION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204

CIVIL ACTION  
No. 3-C-04-0239

IN THE MATTER OF  
**NANCY WEHR NIERMAN – LEGAL OWNER**  
KEVIN MICHAEL/WEST WIND LLC – CP  
1210 BERWICK ROAD

9<sup>th</sup> ELECTION DISTRICT  
5<sup>th</sup> COUNCILMANIC DISTRICT

CBA CASE NO.: 03-160-SPH

PROCEEDINGS BEFORE THE ZONING COMMISSIONER  
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY:

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the  
Petition for Judicial Review directed against it in this case, herewith transmits the record of  
proceedings had in the above-entitled matter, consisting of the following certified copies or original  
papers on file in the Department of Permits and Development Management and the Board of  
Appeals of Baltimore County:

RECEIVED AND FILED

2004 MAR 10 P 12:14

CLERK OF THE CIRCUIT COURT  
BALTIMORE COUNTY

*Man*



**ENTRIES FROM THE DOCKET OF THE BOARD APPEALS  
AND DEPARTMENT OF PERMITS & LICENSES OF BALTIMORE COUNTY**

**03-160-SPH**

|                    |                                                                                                                                                                                                                            |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| September 27, 2002 | Petition for Special Hearing Request Nancy W. Niernmann, 6511 Darnell Road, Baltimore, MD 21204, Legal Owner requesting approval of an undersized lot, pursuant to Section 304 of the Baltimore County Zoning Regulations. |
| October 11         | Notice of Zoning Hearing                                                                                                                                                                                                   |
| October 17         | Entry of Appearance filed by People's Counsel for Baltimore County                                                                                                                                                         |
| October 28         | Certificate of Posting                                                                                                                                                                                                     |
| October 29         | Certificate of Publication                                                                                                                                                                                                 |
| November 8         | ZAC Summary of Comments                                                                                                                                                                                                    |
| November 12        | Hearing Held before the Zoning Commissioner                                                                                                                                                                                |
| December 24        | Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Special Hearing Request GRANTED with restrictions.                                                                                 |
| January 22, 2003   | Notice of Appeal from Jody Albright, David Albright, Felicia Albright and Douglas Scrivener – Owners of Lot 1214 Berwick Road.                                                                                             |
| October 16         | Board of Appeals convened for Hearing                                                                                                                                                                                      |

**Petitioner's Exhibits**

- 1 Site Plan
- 2 Baltimore County Zoning Regulation § 1B02 - page 1B-23
- 3 Deed dated June 18, 1990 by and between Nancy T. Wehr and Nancy Wehr Niernman. Re: Berwick Avenue
- 4 Deed dated May 21, 1974 by and between H. Erin Jones and Ellen P. Jones and Frederick L. Weir and Nancy T. Wehr. Re: Berwick Avenue

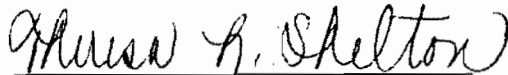
- 5 Deed dated May 27, 1943 by and between Albertus Cotton and Florence Cotton and H. Edwin Jones and Ellen Jones. Ré: Berwick Avenue
  - 6 General Provisions § 101 page 1-7 AREA, NET
  - 7 Findings of Fact and Conclusions of Law, dated December 24, 2002, by the Zoning Commissioner on case 03-160-SPH
  - 8 Section 304 Use of Undersized Single-Family Lots pages 3-3, 3-4 and 3-5
  - 9 Inter-Office Correspondence dated October 10, 2003 to Timothy Kotroco, Director PDM from Arnold F. "Pat" Keller III, Director, Office of Planning
  - 10 Section 304 – Use of Undersized Single-Family Lots Page 3-3
  - 11 Plat of Frederick T. Wehr Property
  - 12 Metropolitan Regional Information Systems, Inc., Public Record, 8 pages, dated 02/24/02 of various TAX ID numbers.
  - 13 Eight (8) Letters of Support
  - 14A – 14H Photographs on 8X10 paper
  - 15 Plans for proposed building on subject property
- October 29 Board of Appeals held Public Deliberation
- December 8 Opinion issued by the Board of Appeals GRANTING the Petition for Special Hearing with conditions.
- January 7, 2004 Petition for Judicial Review filed in the Circuit Court for Baltimore County by David F. Albright, Sr., Esquire, on behalf of David F. Albright, Sr., Esquire, Jody Albright, Douglas A. Scrivener and Felicia B. Albright, Petitioners. Civil Action Case No.: 3-C-04-0239
- January 14 Certificate of Notice sent to interested parties.
- March 9 Transcript of Proceedings filed.

March 10

Record of Proceedings filed in the Circuit Court for  
Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which  
said Board acted are hereby forwarded to the Court, together with exhibits entered before the Board.

Respectfully submitted,



Theresa R. Shelton, Legal Secretary  
County Board of Appeals of Baltimore County  
400 Washington Avenue, Room 49  
Towson, MD 21204 (410) 887-3180

- c. David F. Albright, Sr., Esquire, et al  
Nancy W. Nierman  
Bruce Doak  
Kevin Michaels  
Howard Alderman, Jr., Esquire  
Peter Max Zimmerman

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

PETITION OF:  
DAVID F. ALBRIGHT, SR., ESQUIRE  
JODY ALBRIGHT  
DOUGLAS A. SCRIVENER  
FELICIA B. ALBRIGHT  
1214 BERWICK ROAD  
BALTIMORE, MD 21204

FOR JUDICIAL REVIEW OF THE OPINION OF  
THE COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY  
OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204

IN THE MATTER OF  
**NANCY WEHR NIERMAN – LEGAL OWNER**  
KEVIN MICHAEL/WEST WIND LLC – CP  
1210 BERWICK ROAD

9<sup>th</sup> ELECTION DISTRICT  
5<sup>th</sup> COUNCILMANIC DISTRICT

CBA CASE NO.: 03-160-SPH

CIVIL ACTION  
No. 3-C-04-0239

RECEIVED AND FILED

2004 JAN 14 P 2:17

CLERK OF THE CIRCUIT COURT  
BALTIMORE COUNTY

**CERTIFICATE OF NOTICE**

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

David F. Albright, Sr., Esquire  
Albright & Goertemiller, LLC, 120 East Baltimore Street, Suite 2150,  
Baltimore, MD 21202

David F. Albright, Esquire, et al  
Albright & Goertemiller, LLC, 120 East Baltimore Street, Suite 2150,  
Baltimore, MD 21202

Jody Albright  
1214 Berwick Road, Towson, MD 21204

Douglas A. Scrivener  
1214 Berwick Road, Towson, MD 21204

Felicia B. Albright  
1214 Berwick Road, Towson, MD 21204

Nancy W. Nierman  
6511 Darnell Road, Baltimore, MD 21204

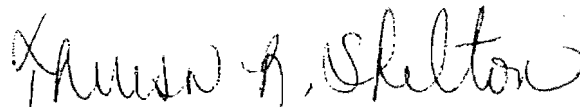
Bruce Doak  
Gerhold Cross & Etzel, LTD, 320 E Towsontown Blvd.,  
Towson, MD 21286

Kevin Michaels  
West Wind LLC, 213 Old Padonia Road, Cockeysville, MD 21030

Howard Alderman, Jr., Esquire  
502 Washington Avenue, Nottingham Centre, 8<sup>th</sup> Floor,  
Towson, MD 21204

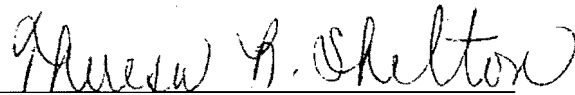
Peter Max Zimmerman  
People's Counsel for Baltimore County, Old Courthouse, Room 47,  
400 Washington Avenue, Towson, Maryland 21204

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.



Theresa R. Shelton, Legal Secretary  
County Board of Appeals, Room 49  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410-887-3180)

**I HEREBY CERTIFY** that a copy of the foregoing Certificate of Notice has been mailed to David F. Albright, Esquire, Albright & Goertemiller, LLC, 120 East Baltimore Street, Suite 2150, Baltimore, MD 21202; David F. Albright, Esquire, et al, Albright & Goertemiller, LLC, 120 East Baltimore Street, Suite 2150, Baltimore, MD 21202; Jody Albright, 1214 Berwick Road, Towson, MD 21204; Douglas A. Scrivener, 1214 Berwick Road, Towson, MD 21204; Felicia B. Albright, 1214 Berwick Road, Towson, MD 21204; Nancy W. Nierman, 6511 Darnell Road, Baltimore, MD 21204; Bruce Doak, Gerhold Cross & Etzel, LTD, 320 E Towsontown Blvd., Towson, MD 21286; Kevin Michaels, West Wind LLC, 213 Old Padonia Road, Cockeysville, MD 21030; Howard Alderman, Jr., Esquire, 502 Washington Avenue, Nottingham Centre, 8<sup>th</sup> Floor, Towson, MD 21204; and Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, this 14<sup>th</sup> day of January, 2004.



Theresa R. Shelton, Legal Secretary  
County Board of Appeals, Room 49  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410-887-3180)



# County Board of Appeals of Baltimore County

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

January 14, 2004

Howard Alderman, Jr., Esquire  
502 Washington Avenue  
Nottingham Centre, 8<sup>th</sup> Floor,  
Towson, MD 21204

**RE: Circuit Court Civil Action No. 3-C-04-0239  
Petition for Judicial Review**

*Nancy Wehr Nierman – Legal Owner*

*Kevin Michels/West Wind LLC - CP*

CBA Case No.: 03-160-SPH

Dear Mr. Alderman, Jr.:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on January 7, 2004 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-04-0239.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton  
Legal Secretary

/trs

Enclosure

c. David F. Albright, Sr., Esquire  
Jody Albright  
Douglas A. Scrivener  
Felicia B. Albright  
Nancy W. Nierman  
Bruce Doak  
Kevin Michaels  
Pat Keller, Director / Planning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy Kotroco, Director / PDM  
Peter Max Zimmerman / People's Counsel for Baltimore County



County Board of Appeals of Baltimore County

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

January 14, 2004

David F. Albright, Sr., Esquire  
Albright & Goertemiller, LLC  
120 East Baltimore Street  
Suite 2150,  
Baltimore, MD 21202

**RE: Circuit Court Civil Action No. 3-C-04-0239**  
**Petition for Judicial Review**  
*Nancy Wehr Nierman – Legal Owner*  
*Kevin Michels/West Wind LLC - CP*  
CBA Case No.: 03-160-SPH

Dear Mr. Albright, Sr.:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with the Maryland Rules.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton  
Legal Secretary

/trs

Enclosure

c.  
Jody Albright  
Douglas A. Scrivener  
Felicia B. Albright  
Nancy W. Nierman  
Bruce Doak  
Kevin Michaels  
Howard Alderman, Jr., Esquire  
Peter Max Zimmerman



IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF  
David F. Albright, Sr., Esq.  
Jody Albright  
Douglas A. Scrivener  
Felicia B. Albright  
1214 Berwick Rd.  
Baltimore, Maryland 21204

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE  
COUNTY BOARD OF APPEALS OF  
BALTIMORE COUNTY  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

IN THE CASE OF  
IN THE MATTER OF  
THE APPLICATION OF  
NANCY WEHR NIERMANN - LEGAL OWNER;  
KEVIN MICHELS/WEST WIND LLC - C. P.  
FOR SPECIAL HEARING ON PROPERTY  
LOCATED ON THE N/SIDE OF BERWICK  
AVENUE OPPOSITE WEHR ROAD  
(1210 BERWICK ROAD)  
9<sup>TH</sup> ELECTION DISTRICT  
5<sup>TH</sup> COUNCILMANIC DISTRICT

Case No. 03-160-SPH

**RECEIVED**

JAN 12 2004

BALTIMORE COUNTY  
BOARD OF APPEALS

Civil Action No.

C-04-0239

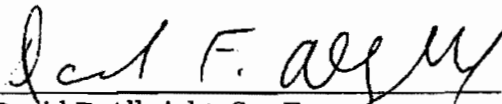
RECEIVED AND FILED

2004 JAN -7 P 2:07

CLERK OF THE CIRCUIT COURT  
BALTIMORE COUNTY

PETITION FOR JUDICIAL REVIEW  
OF THE DECISION OF THE  
COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

David F. Albright, Sr., Esq., Jody Albright, Douglas A. Scrivener and Felicia B. Albright, Petitioners and parties to the agency proceeding, request judicial review pursuant to Rule 7-201 *et seq.*, of the Opinion and Order of December 8<sup>th</sup>, 2003 of the County Board of Appeals of Baltimore County in case no. 03-160-SPH.

  
\_\_\_\_\_

David F. Albright, Sr., Esq.  
Albright & Goertemiller, LLC  
120 E. Baltimore Street  
Suite 2150  
Baltimore, MD 21202  
(410) 244-0350

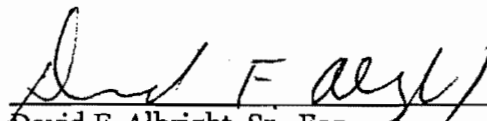
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of January, 2004 a copy of the foregoing Petition for Judicial Review of the Decision of the County Board of Appeals of Baltimore County was mailed, first class mail, postage prepaid, to:

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

Howard L. Alderman, Jr., Esq.  
Levin & Gann, P.A.  
Nottingham Centre, 8<sup>th</sup> Floor  
502 Washington Avenue  
Towson, Maryland 21204

  
\_\_\_\_\_

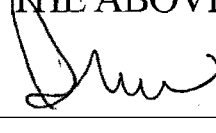
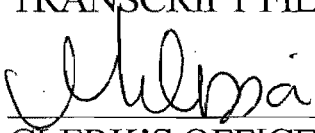
David F. Albright, Sr., Esq.

PETITION OF: DAVID ALBRIGHT, ET AL

CIVIL ACTION NO.: 3-C-04-0239

MATTER OF: NANCY WEHRNIERMAN

RECEIVED FROM THE COUNTY BOARD OF APPEALS, THE  
FILES AND EXHIBITS, THE BOARD'S RECORD EXTRACT AND  
TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE.



---

CLERK'S OFFICE

DATE: March 10, 2004

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY  
CIVIL ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 BOSLEY AVENUE  
P.O. BOX 6754  
TOWSON, MARYLAND 21285-6754

RECEIVED

FEB 06 2004

County Board Of Appeals Of Baltimore County The  
400 Washington Avenue  
Old Courthouse, Room 49  
Baltimore MD 21204

Assignment Date: 02/04/04

BALTIMORE COUNTY  
BOARD OF APPEALS

Case Title: In The Matter of: Falls Road Community Assn, et al  
Case No: 03-C-03-013020 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.

**You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:**

**SCHEDULING ORDER**

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 02/19/04
  2. All Motions (excluding Motions in Limine) are due by..... 04/04/04
  3. TRIAL DATE is..... 05/14/04
- Civil Non-Jury Trial: Start Time: 09:30AM; To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II  
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

cc: C William Clark Esq

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY  
CIVIL ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 BOSLEY AVENUE  
P.O. BOX 6754  
TOWSON, MARYLAND 21285-6754

RECEIVED  
MAR 24 2004

County Board Of Appeals Of Baltimore County The  
400 Washington Ave  
Baltimore MD 21204

Assignment Of Case To Track  
BALTIMORE COUNTY  
BOARD OF APPEALS

Case Title: In The Matter of: David F Albright Sr, et al  
Case No: 03-C-04-000239 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.

**You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:**

**SCHEDULING ORDER**

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 04/06/04
  2. All Motions (excluding Motions in Limine) are due by..... 05/15/04
  3. TRIAL DATE is..... 06/24/04
- Civil Non-Jury Trial: Start Time: 09:30AM; To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II  
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients **MUST** attend the settlement conference in person. All insurance representatives **MUST** attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs **MUST** be paid on the date of the settlement conference or trial.

cc: Nancy Wehr Niermann  
cc: David F Albright Esq

cc: Howard L Alderman Jr  
Issue Date 03/22/04

CIRCUIT COURT FOR BALTIMORE COUNTY  
Suzanne Mensh  
Clerk of the Circuit Court  
County Courts Building  
401 Bosley Avenue  
P.O. Box 6754  
Towson, MD 21285-6754  
(410)-887-2601, TTY for Deaf: (800)-735-2258  
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-04-000239

**RECEIVED**

AUG 31 2004

BALTIMORE COUNTY  
BOARD OF APPEALS

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE  
400 Washington Ave  
Baltimore, MD 21204

CIRCUIT COURT FOR BALTIMORE COUNTY  
Suzanne Mensh  
Clerk of the Circuit Court  
County Courts Building  
401 Bosley Avenue  
Towson, MD 21285-6754  
(410)-887-2601, TTY for Deaf: (800)-735-2258  
Maryland Toll Free Number (800) 938-5802

NOTICE TO PICKUP EXHIBITS

To: David F Albright Esq  
The Law Offices Of David F. Albright  
1122 Kenilworth Drive  
Suite 500  
Baltimore MD 21204

Case Number: 03-C-04-000239 AE  
Administrative Agency: 03-160-SPH

Case Title: In The Matter of: David F Albright Sr, et al

This is to notify you to withdraw your exhibits and or transcripts that were introduced into evidence during the trial of the above entitled case. If no request is received within the 35 days of the date issued, the exhibits and or transcripts will be disposed of in accordance with Maryland Rule 16-306 d 2.

Sincerely,

John H. Almond  
410-887-3494

When calling to inquire about your exhibits, ask for John.

If he is not available please leave a message about the exhibits with the case number, your name, and a phone number to return your call.

Date Issued: 08/06/07



CIRCUIT COURT FOR BALTIMORE COUNTY  
Suzanne Mensh  
Clerk of the Circuit Court  
County Courts Building  
401 Bosley Avenue  
P.O. Box 6754  
Towson, MD 21285-6754  
(410)-887-2601, TTY for Deaf: (800)-735-2258  
Maryland Toll Free Number (800) 938-5802

07/10/07

Case Number: 03-C-04-000239 AE  
Date Filed: 01/07/2004  
Status: Closed/Active  
Judge Assigned: To Be Assigned,  
Location :  
CTS Start : Target :

In The Matter of: David F Albright Sr, et al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

| Description           | Number       |
|-----------------------|--------------|
| Administrative Agency | 03-160-SPH   |
| Case Folder ID        | C04000239V01 |

INVOLVED PARTIES

| Type Num  | Name(Last,First,Mid,Title)           | Addr Str/End       | Pty. Disp.<br>Addr Update | Entered      |
|-----------|--------------------------------------|--------------------|---------------------------|--------------|
| PET 001   | Albright, David F, Sr                |                    | CT DO 08/30/04            | 01/08/04     |
|           |                                      | Party ID: 0640679  |                           |              |
|           | Capacity : Esq                       |                    |                           |              |
|           | Mail: 1214 Berwick Rd                | 01/08/04           | 01/08/04 CMS              | 01/08/04 CMS |
|           | Baltimore, MD 21204                  |                    |                           |              |
| Attorney: | 0801664 Albright, David F            | Appear: 01/08/2004 |                           | 01/08/04     |
|           | The Law Offices Of David F. Albright |                    |                           |              |
|           | 1122 Kenilworth Drive                |                    |                           |              |
|           | Suite 500                            |                    |                           |              |
|           | Baltimore, MD 21204                  |                    |                           |              |
|           | (410)823-5455                        |                    |                           |              |

| Type Num | Name(Last,First,Mid,Title)                                                                                                                                | Addr Str/End       | Pty. Disp.<br>Addr Update | Entered      |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|---------------------------|--------------|
| PET 002  | Albright, Jody                                                                                                                                            |                    | CT DO 08/30/04            | 01/08/04     |
|          |                                                                                                                                                           | Party ID: 0640680  |                           |              |
|          | Mail: 1214 Berwick Rd<br>Baltimore, MD 21204                                                                                                              | 01/08/04           | 01/08/04 CMS              | 01/08/04 CMS |
|          | Attorney: 0801664 Albright, David F<br>The Law Offices Of David F. Albright<br>1122 Kenilworth Drive<br>Suite 500<br>Baltimore, MD 21204<br>(410)823-5455 | Appear: 01/08/2004 |                           | 01/08/04     |
| PET 003  | Scrivener, Douglas A                                                                                                                                      |                    | CT DO 08/30/04            | 01/08/04     |
|          |                                                                                                                                                           | Party ID: 0640682  |                           |              |
|          | Mail: 1214 Berwick Rd<br>Baltimore, MD 21204                                                                                                              | 01/08/04           | 01/08/04 CMS              | 01/08/04 CMS |
|          | Attorney: 0801664 Albright, David F<br>The Law Offices Of David F. Albright<br>1122 Kenilworth Drive<br>Suite 500<br>Baltimore, MD 21204<br>(410)823-5455 | Appear: 01/08/2004 |                           | 01/08/04     |
| PET 004  | Albright, Felicia B                                                                                                                                       |                    | CT DO 08/30/04            | 01/08/04     |
|          |                                                                                                                                                           | Party ID: 0640683  |                           |              |
|          | Mail: 1214 Berwick Rd<br>Baltimore, MD 21204                                                                                                              | 01/08/04           | 01/08/04 CMS              | 01/08/04 CMS |
|          | Attorney: 0801664 Albright, David F<br>The Law Offices Of David F. Albright<br>1122 Kenilworth Drive<br>Suite 500<br>Baltimore, MD 21204<br>(410)823-5455 | Appear: 01/08/2004 |                           | 01/08/04     |
| RES 001  | Niermann, Nancy Wehr                                                                                                                                      |                    | CT DO 08/30/04            | 01/08/04     |
|          |                                                                                                                                                           | Party ID: 0640712  |                           |              |
|          | Capacity : Legal Owner                                                                                                                                    |                    |                           |              |
|          | Attorney: 0804260 Alderman, Howard L<br>Levin & Gann, P.A.<br>Nottingham Center 8th Fl<br>502 Washington Ave<br>Towson, MD 21204<br>(410)321-0600         | Appear: 05/13/2004 |                           | 05/13/04     |

| Type Num | Name(Last,First,Mid,Title)                                                                                                                        | Addr Str/End      | Pty. Disp.<br>Addr Update | Entered      |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|---------------------------|--------------|
| RES 002  | Michels, Kevin                                                                                                                                    |                   | CT DO 08/30/04            | 01/08/04     |
|          |                                                                                                                                                   | Party ID: 0640713 |                           |              |
|          | Attorney: 0804260 Alderman, Howard L<br>Levin & Gann, P.A.<br>Nottingham Center 8th Fl<br>502 Washington Ave<br>Towson, MD 21204<br>(410)321-0600 |                   | Appear: 01/20/2004        | 01/20/04     |
| RES 003  | West Wind L L C C P                                                                                                                               |                   | CT DO 08/30/04            | 01/08/04     |
|          |                                                                                                                                                   | Party ID: 0640714 |                           |              |
|          | Attorney: 0804260 Alderman, Howard L<br>Levin & Gann, P.A.<br>Nottingham Center 8th Fl<br>502 Washington Ave<br>Towson, MD 21204<br>(410)321-0600 |                   | Appear: 01/20/2004        | 01/20/04     |
| ITP 001  | County Board Of Appeals Of Baltimore County The                                                                                                   |                   | CT DO 08/30/04            | 01/08/04     |
|          |                                                                                                                                                   | Party ID: 0640677 |                           |              |
|          | Mail: 400 Washington Ave<br>Baltimore, MD 21204                                                                                                   | 01/08/04          | 01/08/04 CMS              | 01/08/04 CMS |
|          | Attorney: 0804260 Alderman, Howard L<br>Levin & Gann, P.A.<br>Nottingham Center 8th Fl<br>502 Washington Ave<br>Towson, MD 21204<br>(410)321-0600 |                   | Appear: 01/31/2005        | 01/31/05     |

### CALENDAR EVENTS

| Date     | Time   | Fac  | Event Description                      | Text SA | Jdg | Day | Of Notice | User ID |
|----------|--------|------|----------------------------------------|---------|-----|-----|-----------|---------|
| Result   |        |      | ResultDt By Result Judge               | Rec     |     |     |           |         |
| 06/24/04 | 09:30A | CR17 | Civil Non-Jury Trial                   | Y       | RAJ | 01  | /01       | KLS TF  |
|          |        |      | Cancelled/Vacated 06/23/04 E           |         |     |     |           |         |
| 08/18/04 | 09:30A | CR17 | Civil Non-Jury Trial                   | Y       | RAJ | 01  | /01       | KLS     |
|          |        |      | Held/Concluded 08/18/04 E R.Jakubowski | Y       |     |     |           |         |
|          |        |      | Stenographer(s): Janet A. Brown        |         |     |     |           |         |

**DISPOSITION HISTORY**

| Disp<br>Date | Disp<br>Code | Description     | Stage<br>Code | Description         | Activity<br>User | Date     |
|--------------|--------------|-----------------|---------------|---------------------|------------------|----------|
| 08/30/04     | DO           | Decree or Order | CT            | AFTER TRIAL/HEARING | MR               | 08/30/04 |

**JUDGE HISTORY**

| JUDGE ASSIGNED      | Type | Assign Date | Removal | RSN |
|---------------------|------|-------------|---------|-----|
| TBA To Be Assigned, | J    | 01/08/04    |         |     |

**DOCUMENT TRACKING**

| Num/Seq | Description                                                                                             | Filed    | Entered  | Party  | Jdg Ruling | Closed   | User ID |
|---------|---------------------------------------------------------------------------------------------------------|----------|----------|--------|------------|----------|---------|
| 0001000 | Petition for Judicial Review                                                                            | 01/07/04 | 01/08/04 | PET001 | TBA        | 08/30/04 | CMS MR  |
| 0001001 | Response To Petition For Judicial Review<br>Filed by RES002-Michels, Kevin, RES003-West Wind L L C C P. | 01/15/04 | 01/20/04 | RES002 | TBA        | 08/30/04 | NF MR   |
| 0002000 | Notice of Service of Discovery                                                                          | 01/14/04 | 01/15/04 | 000    | TBA        | 08/30/04 | NF MR   |
| 0003000 | *Transcript of Record from Adm Agency                                                                   | 03/10/04 | 03/14/04 | ITP001 | TBA        | 08/30/04 | CS MR   |
| 0004000 | Notice of Transcript of Record Sent                                                                     | 03/14/04 | 03/14/04 | ITP001 | TBA        | 03/14/04 | CS CS   |
| 0005000 | Notice of Transcript of Record Sent                                                                     | 03/14/04 | 03/14/04 | PET001 | TBA        | 03/14/04 | CS CS   |
| 0006000 | Notice of Transcript of Record Sent                                                                     | 03/14/04 | 03/14/04 | PET002 | TBA        | 03/14/04 | CS CS   |
| 0007000 | Notice of Transcript of Record Sent                                                                     | 03/14/04 | 03/14/04 | PET003 | TBA        | 03/14/04 | CS CS   |
| 0008000 | Notice of Transcript of Record Sent                                                                     | 03/14/04 | 03/14/04 | PET004 | TBA        | 03/14/04 | CS CS   |
| 0009000 | Notice of Transcript of Record Sent                                                                     | 03/14/04 | 03/14/04 | RES001 | TBA        | 03/14/04 | CS CS   |
| 0010000 | Notice of Transcript of Record Sent                                                                     | 03/14/04 | 03/14/04 | RES002 | TBA        | 03/14/04 | CS CS   |
| 0011000 | Notice of Transcript of Record Sent                                                                     | 03/14/04 | 03/14/04 | RES003 | TBA        | 03/14/04 | CS CS   |
| 0012000 | Scheduling Order                                                                                        | 03/22/04 | 03/22/04 | 000    | TBA        | 03/22/04 | KLS KLS |
| 0013000 | Memorandum                                                                                              | 04/09/04 | 04/13/04 | PET001 | TBA        | 04/13/04 | PKE PKE |
| 0014000 | Respondent's Memorandum                                                                                 | 05/10/04 | 05/13/04 | RES002 | TBA        | 05/13/04 | NF NF   |

Filed by RES002-Michels, RES003-West Wind L L C C P,  
RES001-Niermann

| Num/Seq | Description                                                                                                                                      | Filed    | Entered  | Party  | Jdg Ruling  | Closed   | User ID |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------|--------|-------------|----------|---------|
| 0014001 | Reply Memorandum of Petitioner Submitted under Maryland Rule 7-207                                                                               | 05/25/04 | 06/01/04 | PET001 | TBA         | 08/30/04 | NF MR   |
| 0015000 | Open Court Proceeding<br>Hon. Ruth Jakubowski - Hearing had. Dispo Sub-Curia. Opinion and Order to be filed.                                     | 08/18/04 | 08/18/04 | 000    | RAJ         | 08/30/04 | MK MR   |
| 0016000 | Memorandum opinion affirming the Judgment of the County Board of Appeals                                                                         | 08/30/04 | 08/30/04 | 000    | RAJ Granted | 08/27/04 | MR MR   |
| 0017000 | Order affirming the Judgment of the County Board of Appeals                                                                                      | 08/30/04 | 08/30/04 | 000    | RAJ Granted | 08/27/04 | MR MR   |
| 0018000 | Invoice 14293 sent to David P. Albright                                                                                                          | 09/02/04 | 09/02/04 | 000    | TBA         |          | CKC CKC |
| 0019000 | Docket entries sent to Board of Appeals of Baltimore County                                                                                      | 09/03/04 | 09/03/04 | 000    | TBA         |          | CVM CVM |
| 0020000 | *Notice of Appeal to COSA (12/338)<br>Filed by PET002-Albright, PET004-Albright, PET003-Scrivener, PET001-Albright                               | 09/24/04 | 09/24/04 | PET002 | TBA         |          | DR DR   |
| 0021000 | Pre Trial Hearing Letter Issued                                                                                                                  | 09/27/04 | 09/27/04 | 000    | TBA         | 09/27/04 | ED ED   |
| 0022000 | Order to proceed w/out prehearing conf.                                                                                                          | 12/03/04 | 12/03/04 | 000    | TBA         |          | ED ED   |
| 0023000 | Original Record sent to COSA<br>sent by certified mail, 1 volume, 2 trascripts, 1 brown envelope containing exhibits, # 7099 3220 0003 8141 0050 | 01/31/05 | 01/31/05 | 000    | TBA         |          | JD JD   |
| 0024000 | Receipt is hearby acknowledged of a petition for writ of certiorari by the Court of Appeals                                                      | 09/06/06 | 09/06/06 | 000    | TBA         | 09/06/06 | EMH     |
| 0025000 | Mandate Received from Court of Special Appeals affirming judgment                                                                                | 11/02/06 | 11/03/06 | 000    | TBA         |          | PH      |

**TICKLE**

| Code | Tickle Name          | Status | Expires  | #Days | AutoExpire | GoAhead | From | Type | Num | Seq |
|------|----------------------|--------|----------|-------|------------|---------|------|------|-----|-----|
| 1ANS | 1st Answer Tickle    | CLOSED | 01/15/04 | 0     | no         | no      | DANS | D    | 001 | 001 |
| 1YRT | One Year Tickle (Jud | CLOSED | 01/06/05 | 365   | no         | no      | DAAA | D    | 001 | 000 |
| EXPU | Exhibit Pickup Notic | CLOSED | 10/29/04 | 30    | no         | no      |      |      | 000 | 000 |

| Code | Tickle Name        | Status | Expires  | #Days | AutoExpire | GoAhead | From | Type | Num | Seq |
|------|--------------------|--------|----------|-------|------------|---------|------|------|-----|-----|
| SLTR | Set List For Trial | Done   | 01/15/04 | 0     | yes        | yes     | 1ANS | T    | 001 | 001 |

**EXHIBITS**

| Line # | Marked | Code | Description        | SpH | Sloc | NoticeDt | Disp | Dt | Dis | By |
|--------|--------|------|--------------------|-----|------|----------|------|----|-----|----|
| 000    |        | I    | BOX 396/CBA TRANSC |     |      |          |      |    |     | B  |

Offered By: ITP 001 County Board Of Appeals Of Ba

**DIFFERENTIATED CASE MANAGEMENT****TRACKS AND MILESTONES**

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes  
Assign Date: 03/22/04 Order Date : 03/22/04  
Start Date : 03/22/04 Remove Date:

| Milestone                                | Scheduled | Target   | Actual   | Status  |
|------------------------------------------|-----------|----------|----------|---------|
| Motions to Dismiss under MD. Rule 2-322  | 04/06/04  | 08/30/04 | CLOSED   |         |
| All Motions (excluding Motions in Limine | 07/09/04  | 08/30/04 | CLOSED   |         |
| TRIAL DATE is                            | 08/18/04  | 06/20/04 | 08/18/04 | REACHED |

**ACCOUNTING SUMMARY****NON-INVOICED OBLIGATIONS AND PAYMENTS**

| Date     | Rcpt/Initials    | Acct | Desc         | Debit | Credit | Method | Balance |
|----------|------------------|------|--------------|-------|--------|--------|---------|
| 01/08/04 | 200400000327/LMC | 1102 | CF-Civil Fil | .00   | 80.00  | CK     | -80.00  |
| 01/08/04 | 200400000327/LMC | 1265 | MLSC         | .00   | 10.00  | CK     | -90.00  |
| 01/08/04 | 200400000327/LMC | 1500 | Appearance F | .00   | 10.00  | CK     | -100.00 |
| 09/24/04 | 200400018826/JJ  | 1101 | CF-Civil Fil | .00   | 60.00  | CK     | -160.00 |
| 09/24/04 | 200400018826/JJ  | 1101 | CF-Civil Fil | .00   | 15.00  | CK     | -175.00 |
| 09/24/04 | 200400018826/JJ  | 1999 | CTSPAPP      | .00   | 50.00  | CK     | -225.00 |
| 10/19/04 | 200400020357/LMC | 1500 | Appearance F | .00   | 10.00  | CK     | -235.00 |

03-C-04-000239

Date: 07/10/07

Time: 11:13

Page: 7

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

DIRECT DIAL  
410-321-4640

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

ELLIS LEVIN (1893-1960)

November 22, 2002

**VIA HAND DELIVERY**

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

2/2/2002

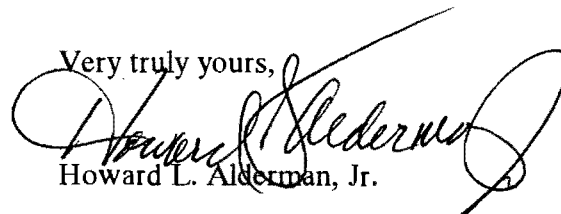
RE: *Niermann Property*  
Petition for Special Hearing  
Case Nos. 03-160-SPH  
Petitioners' Post-Hearing Statement In  
Lieu of Closing Argument

Dear Mr. Schmidt:

On behalf of Ms. Nancy W. Niermann, West Wind, LLC and Kevin C. Michels, its Authorized Member, I am pleased to submit the original and one copy of the Petitioners' Post-Hearing Statement in Lieu of Closing Argument in the above-referenced matter. Under copy of this letter I am forwarding one copy of that paper to the individuals shown below for their respective use and perusal.

Should you need any additional information regarding this matter or the enclosed paper, please call me at your earliest convenience.

Very truly yours,

  
Howard L. Alderman, Jr.

HLA/gk  
Enclosure

c (w/encl.): Ms. Nancy W. Niermann  
David F. Albright, Esquire  
West Wind, LLC  
Bruce E. Doak, RPLS



*✓ with H. Alderman*

**From:** "Howard Alderman" <halderman@levingann.com>  
**To:** "Timothy Kotroco" <TKotroco@co.ba.md.us>  
**Date:** 10/29/2004 2:48:36 PM

Tim:

Here are the two different provisions that I discussed with you this afternoon at lunch. I have this issue (although the appellant did not preserve it on appeal) pending before the Court of Special Appeals. The case originated as a Petition for Special Hearing/IN THE MATTER OF NANCY WEHR NIEMANN & KEVIN MICHELS/ WEST WIND, LLC, 1210 Berwick Road, Case No. 03-160-SPH and in Circuit Court as 03-C-04-000239. We have prevailed to date, however, it is something that you may wish to have addressed. Until this case, I never paid any attention to the advertising requirements.

Thanks for meeting at lunch and I will have some draft language to you next week regarding lots bounded on two or more sides with roadways or rights of ways.

Have a great weekend,  
 Howard

=====

Variance/Special Exception:

§ 32-3-302. SAME - HEARING REQUIRED; NOTICE.

(a) In general. Except as provided in §32-3-303 of this subtitle, the Department of Permits and Development Management shall schedule a public hearing on a petition for a variance or special exception for a date not less than 21 days and not more than 90 days after the petition is accepted for filing.

(b) Notice.

(1) The Department of Permits and Development Management shall ensure that notice of the time and place of the hearing relating to the property under petition be provided:

(i) By conspicuously posting the notice on the property for a period of at least 15 days before the date of the hearing; and

(ii) By a notice in at least one newspaper of general circulation at least 15 days before the hearing.

*9*

Special Hearing:

500.7 The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations. With respect to any zoning petition other than a petition for a special exception, variance or reclassification, the Zoning Commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing. If the petition relates to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. Whether or not a specific property is involved, notice shall be given for the same period of time in at least two newspapers of general circulation in the county. The notice shall describe the property, if any, and the action requested in the petition. Upon establishing a hearing date for the petition, the Zoning

*11.15.04*  
*\* need group opinion*

*To Carl & Kristen:  
 Check this out for me  
 T-*

# ALBRIGHT & GOERTEMILLER, LLC

Law Offices

120 East Baltimore Street  
Suite 2150  
Baltimore, Maryland 21202  
Telephone (410) 244-0350  
Facsimile (410) 244-0356

Writer's Direct Dial No.  
(410) 244-0354

E-Mail: dalbright@albrightlaw.com

January 21, 2003

HAND DELIVER

Mr. Arnold Jablon, Director  
PDM  
Baltimore County Office Building  
111 W. Chesapeake Avenue  
Room 111  
Towson, Maryland 21204

RE: In re: Petition for Special Hearing, Case No.: 03-160-SPH  
Nancy Wehr Niermann (Owner); Kevin Michels, West Wind, LLC (Contract  
Purchaser)

**NOTICE OF APPEAL OF DECISION DATED DECEMBER 24, 2002**

\* \* \*

Appellants: Jody Albright, David Albright, Felicia Albright and Douglas Scrivener,  
Owners of Lot 1214 Berwick Road

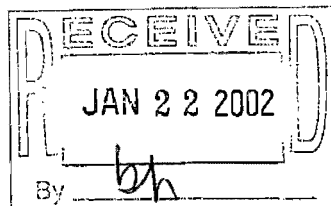
Dear Mr. Jablon:

Please consider this letter to be the formal request by the above named Appellants for appeal of the above-captioned decision dated December 24, 2002 regarding the lot on Berwick Road adjoining Lot 1214 Berwick Road. I am enclosing our check in the amount of \$300.00.

Please date stamp a copy of this letter and return same with the messenger.  
Thank you for your assistance in this matter.

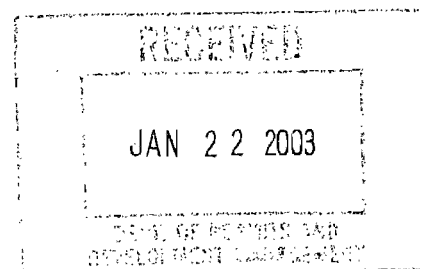
Very truly yours,

David F. Albright



DFA/fba  
Enclosure

Cc: Howard L. Alderman, Jr., Esquire, Attorney for Appellees



**Liza and James Ebeling  
1217 Boyce Avenue  
Baltimore, MD 21204**

November 22, 2002

Mr. Lawrence Schmidt  
Zoning Commissioner  
401 Bosley Avenue  
Room #405  
Towson, MD 21204

**RE: Case # 03160 SPH  
Special Hearing to Approve an undersized lot at 1210 Berwick Road**

Dear Mr. Schmidt:

We reside at 1217 Boyce Avenue. Our house is located directly behind the undersized lot at 1210 Berwick. We are writing to oppose the plans for the proposed house at 1210 Berwick Road. Our concerns are as follows:

**1. The Principle**

We have rules governing our neighborhoods to protect overdevelopment. If this development is approved, with a lot size less than the required 100 feet road frontage, it will set a precedent. What then is the absolute minimum? Is it 95 feet road frontage? 90? Or could it be 85? **There has to be a non-negotiable minimum lot size established and enforced.** There must be consistency in limits set and upheld in Baltimore County.

**2. The size, height, and position of the proposed house**

The homes directly surrounding the property are smaller in square footage and significantly shorter in height. In addition, two of the properties have much larger lots. This proposed house was not specifically designed for this lot. It will dwarf the other properties at 34 feet in height vs. the 27 feet height of the surrounding houses. It's square footage is 2,600 vs. 2,086 sf home on 1 1/2 acre property across the street and the 2050 sf. home on .84 acre beside.

No consideration was given to the Jones who will be only 22 feet away from the house in question. No thought was given to the Albrights whose 2 story house appears to be a one story because of the severe drop off (about 1 story) between their lot and the lot in question. Imagine a 34 foot house looming over their house!

222002

### **3. Neighborhood History**

The Wehr parents had been staunch supporters of open space. They continually fought development in the area. It is ironic that their children (Nancy Niermann and Fred Wehr) have digressed from that position now that they reside elsewhere. A very healthy profit has been enjoyed by the Wehr family as they sell off lots that the family has owned on Berwick (#1214 and #1216) and soon the Mother's home at 1209 Berwick. It would provide no hardship for this one lot to remain undeveloped and sold to neighbors as an unbuildable lot. In fact, many believe that was the intent of the deceased Mr. Wehr.

### **4. Screening**

No mention has been made about planting significant evergreen trees such as mature spruce trees to screen this property from the neighbors.

We live directly behind the property and have a pool behind our house. Our home was built with sliding glass doors on the entire back of our house with views of this lot. We purchased our home in May of 2001. We valued the privacy and beauty that this lot provided. The price we paid for our home was directly linked to the fact that 1210 Berwick was an undersized lot that could not be developed.

### **RELEVANCE OF THIS CASE**

**There is another current case on Berwick** whereby a developer has bought 2 properties (1401 Berwick and an adjacent property on LaBelle Avenue) with intent to tear down one of the homes and develop 4 new homes on the remaining acre and a half. Of important interest is the fact that these two homes are listed with the Maryland Historic Trust.

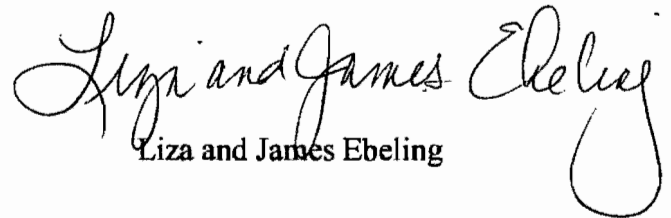
This pattern of development will continue because of three reasons. First, Ruxton is a desirable location which commands high real estate values. Second, developers have the wealth necessary to hire an attorney and fight these cases in court. And, third, because of a pro development agenda on the part of Baltimore County.

Your rulings have a tremendous impact upon our neighborhood. Are you aware that, unlike many other established neighborhoods, Ruxton has no single governing body to approve development and review architectural changes? Thus, the integrity of our community rests solely on the Zoning Commission guidelines. If the Zoning Commission continues to grant variances for undersized lots, a precedent is set. We must uphold the guidelines established by law about property size and building restrictions.

Unfortunately, it is clear that wealthy developers are going to continue to push the limits and we need to count on your office to uphold the laws established.

Thank you very much for reviewing this case. We appreciate your decision not to approve this undersized lot and your continued diligence in not granting special variances and upholding the established laws.

Sincerely,

A handwritten signature in cursive script that reads "Liza and James Ebeling". The signature is fluid and elegant, with a large loop at the end of the last name.

Liza and James Ebeling

# ALBRIGHT & GOERTEMILLER, LLC

Law Offices

120 East Baltimore Street  
Suite 2150  
Baltimore, Maryland 21202  
Telephone (410) 244-0350  
Facsimile (410) 244-0356

Writer's Direct Dial No.  
(410) 244-0354

E-Mail: dalbright@albrightlaw.com

November 22, 2002

## VIA HAND DELIVERY

22 Nov 2

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

Re: Property 1210 Berwick Road – 03-160-SPH

Dear Mr. Commissioner:

This letter is in reference to case number 03-160-SPH for the property at 1210 Berwick Rd. There are several additional points that we, who oppose the building on this lot, request that you consider.

1. The Petitioner is clearly using the wrong procedure to seek approval for building on an undersized lot. The specific provisions (section 304, et seq.) govern and protect both the public and the adjacent property. The attempted run around by the Petitioner violates the zoning rules and violates the Maryland Constitution. We object to this, as the provisions of section 304 are being totally ignored. However, in addition, the problem was created by the Petitioner's grantor, and since for a period of time between May 21, 1974 and December 7, 1976, Nancy T. Wehr (with her husband, until his death on December 2, 1975 and thereafter, individually, until December 7, 1976) owned sufficient adjoining property to make the subject lot at 1210 Berwick a full-sized lot. The present owner of 1214 Berwick Road obtained their title to this immediately adjacent land to the subject property through a chain of title directly from the common owner. Thus, the grantor of the subject property created in both chains of title a self-inflicted damage to the subject property, as well as a substantial benefit to 1214 Berwick Road. And, of equal importance, indeed, the present and prior owner of 1214 Berwick Road paid more for their property because they obtained more land.

Furthermore, all factual proof infers that the common ownership always treated (until a recent time period) the subject property as open space, and would not be

developed. The testimony and evidence in the earlier and present proceedings supports this.

Maryland case law is right on point and supports our view. For example, in Cromwell v. Ward, 102 Md. App. 691 (1995), Judge Cathell stated (p.700): "The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances...." These proceedings are in direct violation of the case law.

"(T)he hardship (must) not (be) the result of action taken by the appellant or a prior owner." (Emphasis added). (p.717). Under the circumstances in this case it is very difficult to see how the request or petition of the builder can be granted. The prior owner created the problem at 1210 Berwick Road, and under this clear legal pronouncement the petition should be denied.

Moreover, the case of Friends of the Ridge v. BG&E, 352 Md. 645 (1999), (Judge Cathell, delivered the opinion of the Court of Appeals, having been elevated to the highest court in Maryland between 1995 and 1999), explains an additional concept, that of merger which applies as well to this case (see p.654) and requires denial of the petition.

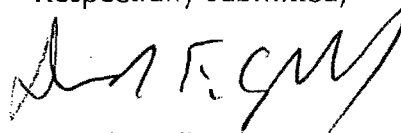
2. Mr. Doak does not possess the expertise to make the determinations that the requirements for 304 require.
- 3.. As a result of the erroneous bypassing of 304, other measures that are in place to protect the property owners of existing houses were negated. The neighbors that surround the subject property, all of whom were present, who would be most affected by this proposed house, were unable to study the plans set forth before the Commissioner. Considerable effort to contact the builder before the hearing was done, without any cooperation from the builder.
4. There are many unsettling aspects to this house. First the width of 52 and one half feet is very large for the lot. If you go to Berwick Rd. and really study the surrounding properties, you will see how close the houses would appear as opposed to all the houses one sees as one approaches the subject property from the beginning of the DR2 zoning. DR2 zoning starts at the intersection of Berwick Rd., LaBelle, and Locust. The overall impression is one of spaciousness and grace.
5. The proposed height of 34' is unmatched in this area. 1214 Berwick is partially below grade, so that from the front it is two stories, but the bulk of the house extends beyond the second level, and is above grade. The portion of 1214 that is above grade is approximately 12-13 feet high. Even though this is above grade, 1214

Berwick still sits approximately 7 feet below the property at 1210. The result is that the proposed house would rise 41' above the grade of 1214. The difference is considerable, and oppressive. We can only suggest to you that in this instance a house that rises 41' above the adjacent house will have vantage points into all living areas of the adjacent house. In addition, the height further complicates any kind of landscaping barriers, as they would have to be quite mature when planted. If changes to place the driveway to Mrs. Jones's side, then the vantage points will be that much more exacerbated.

6. Cemplank is not shown on the picture that Kevin Michaels submitted to RRLRAIA, and perhaps to the Zoning Office as well. What the builder has shown is totally brick, with no siding evidenced. In the prior Hearing for 02-223-A, the previous contract purchasers had to be very explicit, and were held to the exact plans that they had proposed. The plans that Kevin Michaels submitted for review to the County Office of Planning are not the plans he will use. In the brief time we were able to look over the plans during the five or ten minutes before the Hearing started, we found two obvious errors to his plans, which he admitted he had to change. It was in violation of the zoning rules to seek permission to build on an undersized lot before completing all the preliminary work.
7. We are very concerned about the look of the total neighborhood, and are very upset that a neighborhood that has inherent qualities to continue to be an extremely beautiful neighborhood can be destroyed by this unorthodox procedure.

We hope that the Commission will deny the petition. Thank you.

Respectfully submitted,



David F. Albright  
On behalf of owners of Berwick 1214

cc: Howard L. Alderman, Jr., Esq.  
Levin & Gann, P.A.  
Nottingham Centre  
8<sup>th</sup> Floor  
502 Washington Avenue  
Towson, MD 21204



# ALBRIGHT & GOERTEMILLER, LLC

Law Offices

120 East Baltimore Street  
Suite 2150  
Baltimore, Maryland 21202  
Telephone (410) 244-0350  
Facsimile (410) 244-0356

Writer's Direct Dial No.  
(410) 244-0354

E-Mail: dalbright@albrightlaw.com

January 21, 2003

HAND DELIVER

Mr. Arnold Jablon, Director  
PDM  
Baltimore County Office Building  
111 W. Chesapeake Avenue  
Room 111  
Towson, Maryland 21204

RE: In re: Petition for Special Hearing, Case No.: 03-160-SPH  
Nancy Wehr Niermann (Owner); Kevin Michels, West Wind, LLC (Contract  
Purchaser)

**NOTICE OF APPEAL OF DECISION DATED DECEMBER 24, 2002**

\* \* \*

Appellants: Jody Albright, David Albright, Felicia Albright and Douglas Scrivener,  
Owners of Lot 1214 Berwick Road

Dear Mr. Jablon:

Please consider this letter to be the formal request by the above named Appellants for appeal of the above-captioned decision dated December 24, 2002 regarding the lot on Berwick Road adjoining Lot 1214 Berwick Road. I am enclosing our check in the amount of \$300.00.

Please date stamp a copy of this letter and return same with the messenger.  
Thank you for your assistance in this matter.

Very truly yours,

David F. Albright

DFA/fba  
Enclosure

Cc: Howard L. Alderman, Jr., Esquire, Attorney for Appellees

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

DIRECT DIAL  
410-321-4640

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

ELLIS LEVIN (1893-1960)

November 22, 2002

**VIA HAND DELIVERY**

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

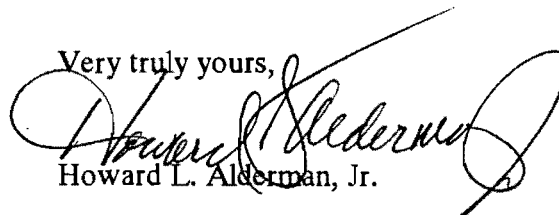
RE: *Niermann Property*  
Petition for Special Hearing  
Case Nos. 03-160-SPH  
Petitioners' Post-Hearing Statement In  
Lieu of Closing Argument

Dear Mr. Schmidt:

On behalf of Ms. Nancy W. Niermann, West Wind, LLC and Kevin C. Michels, its Authorized Member, I am pleased to submit the original and one copy of the Petitioners' Post-Hearing Statement in Lieu of Closing Argument in the above-referenced matter. Under copy of this letter I am forwarding one copy of that paper to the individuals shown below for their respective use and perusal.

Should you need any additional information regarding this matter or the enclosed paper, please call me at your earliest convenience.

Very truly yours,

  
Howard L. Alderman, Jr.

HLA/gk

Enclosure

c (w/encl.): Ms. Nancy W. Niermann  
David F. Albright, Esquire  
West Wind, LLC  
Bruce E. Doak, RPLS

11/19/02

11/12

1208 Berwick Road  
Ruxton MD 21204  
November 17, 2002

Dear Sir;

I am writing in reference to case #03-160-SPH - approval of an undersize lot - 1210 Berwick Road.

As a co-trustee of the adjoining property, 1208 Berwick Road, I am concerned over the aesthetic and economic impact, as well as the proximity of a proposed structure to be built on the property - 1210 Berwick Rd.

A building of the proposed size and location would significantly impose upon the privacy and comfort of the elderly co-trustee and resident, Ellen P. Jones, whose bedroom and living area would be 15 feet (minimum setback line) away, and would be shadowed by the taller structure. This would not only intrude on her personal privacy, but also prevent any possible view as well as obstruct any prevailing breeze previously enjoyed for 64 years by

this 90 year old woman.

The lay of the land suggests a more compactible structure be equidistant from all adjoining properties - north, south, east, west - and that the proposed building be modified so that the square footage be attained lengthwise (N-S) as opposed to sideways (E-W) as it is now. Presently, the plan seems intrusive to 1208 Berwick Road.

Even with a modified plan, a structure on this undersize lot should be surrounded by evergreen landscaping to preserve some modicum of privacy to adjoining properties.

It appears to me that the proposed building is contrary to the intent of the original zoning which contributed to the value and enjoyment of living in this area.

Sincerely,

Anne J. Malone  
ANNE JONES MALONE

**DAVID R. OWENS**  
**1217 BERWICK ROAD**  
**TOWSON, MD. 21204**  
**410-337-5123 - H**  
**443-573-4366 -W**

November 20, 2002

Commissioner Schmidt  
Baltimore County Zoning Commission  
Suite 405, County Courts Building  
Towson, MD. 21204

Re: 1210 Berwick Road

Dear Commissioner Schmidt:

*03-110-5PH*

Thank you for allowing some of the neighbors to present their feelings in the referenced case for a new house to be built on an undersized lot. Maintaining the open space and the rural character of Ruxton is an overriding concern of this neighborhood. I feel that the builder has not made enough effort to adapt this project to the location. He has simply taken the plans from a book instead of using an architect to try and work with the character of other houses in the neighborhood, and certainly no attempt has been made to creatively fit the house onto the topography of this site.

Even though the lot does not meet the required 100 foot frontage, the house has still been conveniently situated on the lot to take full advantage of minimum allowable 40 foot setbacks from the side yards of its neighbors. Also, no consideration has been made for the fact that the house to the east will only be 20 feet away from the proposed house. Furthermore, without the 15 feet along the front lot line that is in the county right of way for Berwick Road, the lot size would be under the required minimum lot size of 20,000 square feet for R-2 zoning.

In summary, I feel that the design of the house is not typical of the rural character of the neighborhood, and the massing of the structure on the lot is not appropriate especially considering the undersized nature of the property. Therefore, the plan should not be approved as presented. Thank you again for your consideration of this matter.

Sincerely,

  
David R. Owens

# *Belvedere Square*

Belvedere Square  
540 East Belvedere Avenue  
Suite 203  
Baltimore, MD 21212

Property Management Office 410-464-9773  
Fax: 410-464-~~9773~~ 6229

## **Fax Transmittal Form**

To  
*Commissioner Schmidt*  
*Balto. County Zoning*  
*Commissioner*

From *Dawn Owens*

Property Management Office 410-464-9773  
Fax: 410-464-~~9773~~ 6229

- ☐ Urgent  
☒ For Review  
☐ Please Comment  
☐ Please Reply

Date sent: *11/21/02*  
Time sent:

Number of pages including cover page: 2

Message:

LAW OFFICES  
**ALLEWALT & MURPHY, P.A.**

805 NORTH CALVERT STREET  
BALTIMORE, MD 21202-3798

(410) 727-6205

FAX (410) 625-4997

E-MAIL [allewalt@bellatlantic.net](mailto:allewalt@bellatlantic.net)

DONALD L. ALLEWALT  
EDWARD P. MURPHY  
HARRIS P. MURPHY  
TRACEY A. HARVIN

EASTERN SHORE OFFICE

HARRIS P. MURPHY

113 SPRING AVENUE

P.O. BOX 939

CHESTERTOWN, MD 21620

PHONE: 410-778-9220

FAX: 410-778-5711

E-MAIL: [hmlaw@dmv.com](mailto:hmlaw@dmv.com)

January 22, 2002

Ms. Nancy Niermann  
6511 Darnell Road  
Ruxton, Maryland 21204

Dear Ms. Niermann:

Pursuant to my phone conversation with Fred, this is to inform you that I, as a long-term resident of 1205 Berwick Road, have no objection to the granting of a variance to permit the construction of a single family dwelling on the property known as 1210 Berwick Road.

Very truly yours,

  
EDWARD P. MURPHY

EPM:kas

1207 Berwick Rd.  
Ruxton, Md. 21204

To whom it may concern:

Before we bought this lot in 1938, the land was vacant from 1204 to 1214. A few years later we bought the lot on the west side, known as 1210. Eventually we sold it to Frederick Wike of 1207 Berwick Rd. The lot was given to their daughter, Nancy Newman, about 12 years ago.

East of 1208 a house was built with the same amount of front footage as 1210, address 1206.

Because land has been vacant for many years does not mean it should stay vacant.

I would rather see a house at 1210 than a public use.

Respectfully,  
Ellen Padgett Jones  
(Mrs. H. Edwin Jones)



>>> TO WHOM IT MAY CONCERN <<<

As long-time residents at 1304 Berwick Road, starting in the fall of 1949, we have known the Wehr family for a long, long time and certainly have no objections to having Mrs. Niermann sell her lot, and the nice house built on it.

I understand that it is the third largest building lot out of nine on the hill, a lot of record for many many years, and Baltimore County has approved everything.

We support the sale of this lot.

*Frances B. Munsell*

*Alec Munsell -*

Frances B. Munsell

Alec Munsell

1304 Berwick Road

Baltimore, Md. 21204-6506

J. M. ZIMMERMAN, M. D.  
1202 BERWICK ROAD  
RUXTON, MD 21204  
(410) 825-3814

To whom it may concern:

This is to certify that the undersigned, owners and residents of 1202 Berwick Rd., support the sale of the lot at 1210 Berwick Rd. for the purpose of building a home on that site.

The lot is clearly of sufficient size to accomodate a residential dwelling.

  
Doris P. Zimmerman

  
Jack M. Zimmerman

1/3/02

Joseph Adams, and Linda Barr  
1405 Berwick Rd.  
Towson, MD 21204

January 26, 2002

Baltimore County Department of Planning

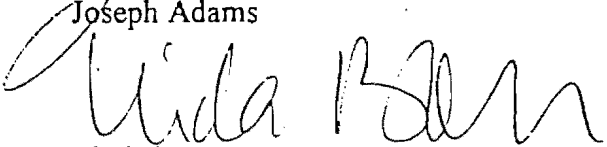
Re: residential lot between 1208 and 1214 Berwick Rd.

To Whom It May Concern:

We are writing as ten year residents of Berwick Rd to express our strong support for plans for a family to build a home on the aforementioned lot. The vacant lot currently detracts somewhat from the appearance and charm of the neighborhood. Also, new neighbors would represent a distinct benefit, especially a family with children such as the one proposing to move here. There is no overcrowding here so that would not be an issue. Our feelings are representative of the neighborhood in this matter.

Sincerely,

  
Joseph Adams

  
Linda Barr

MRS. GEORGE SCOTT WALLACE, JR.  
1200 BERWICK ROAD  
RUXTON, MARYLAND 21204

2 January 2002

To Whom It May Concern —

The lot at 1200 Berwick Road,  
owned by Nancy Niemann, is  
one of the largest lots on the  
hill. I have no objection to  
a house being built on this  
property —

— Jacques M. Wallace

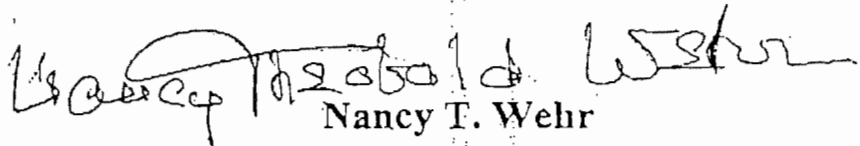
**TO WHOM IT MAY CONCERN:**

The lot at 1210 Berwick Road was created as a lot of record in 1943. My husband bought this lot in 1972 with the assumption that it was a "buildable lot".

This lot is over the square footage minimum required for DR 2 lots and is one of the largest of 9 lots on this end of Berwick Road (3<sup>rd</sup> largest).

I reside at 1209 Berwick Road and have no objection to a house being built on said property.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nancy T. Wehr", with a stylized flourish at the end.

Nancy T. Wehr

January 6, 2002

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## news &gt; obituaries

## Nancy Niermann, 76, real estate agent

ORIGINALLY PUBLISHED FEBRUARY 4, 2004

Nancy Niermann, who sold real estate and was an avid tennis player, died of cancer Friday at Gilchrist Center for Hospice Care. The Ruxton resident was 76.

Born Nancy deWolf Wehr in Baltimore and raised in Ruxton, she was a 1946 graduate of Bryn Mawr School and made her debut at the Bachelors Cotillon.

Mrs. Niermann sold real estate with Hill & Co. and was based at the Village of Cross Keys. She became a Realtor about 30 years ago and earlier had been associated with William H. Wilson in Roland Park.

Mrs. Niermann was a Maryland state seniors doubles champion about 10 years ago playing with Margo Shriver, the mother of tennis great Pam Shriver. She also taught tennis at the John Gardiner Tennis Ranch in Scottsdale, Ariz., while living there more than 30 years ago.

She was a member of the Mount Vernon and L'Hirondelle clubs and served on a Maryland House and Garden Pilgrimage committee. She also belonged to the Colonial Dames and the Society of Mayflower Descendants.

Services were held Monday at the Episcopal Church of the Good Shepherd, where she was a communicant.

Survivors include her husband of 29 years, Dr. William A. Niermann, a pediatric allergist; a son, Peter deWolf Smith of Stevenson; two daughters, Nancy deWolf Smith of Cockeysville and Wendell Smith Mullins of Ruxton; her mother, Nancy Theobald Wehr of Ruxton; a brother, Frederick Theobald Wehr of Baltimore; and two granddaughters. Her 1949 marriage to Dr. Ernest Wendell Smith ended in divorce.

- Talk about it
- E-mail it
- Print it
- Contact us

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- > Death notices
- > Submission guidelines



> Coming Sun  
> Subscri Sun

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# **TRANSCRIPT REQUEST**

Filed: January 7, 2004

RECEIVED: January 12, 2004

Case: *NANCY WEHR NIERMAN*

*03-160-SPH*

Hearing date(s): Testimony Heard on:

10-16-2003

Attorney for  
Petitioners:

DAVID F. ALBRIGHT SR., ESQUIRE  
410-244-0350

**Due Date: MARCH 9, 2004**

**THANK YOU**

January 12, 2004

FILE COPY

BULLETIN BOARD COPY

CAROLYN'S TAKE HOME COPY

PLEASE PRINT LEGIBLY.

## Revised 4/17/00:



CASE NAME \_\_\_\_\_  
CASE NUMBER \_\_\_\_\_  
DATE \_\_\_\_\_

CASE NAME \_\_\_\_\_  
CASE NUMBER \_\_\_\_\_  
DATE \_\_\_\_\_

[illegible]

PLEASE PRINT CLEARLY

CASE NAME NIERMAN Kratky  
CASE NUMBER 03-160-SP4  
DATE 12 NOV 02

## PETITIONER'S SIGN-IN SHEET

NAME

ADDRESS

CITY, STATE, ZIP

E-MAIL

Bruce E. Doak

GERHOLD CROSS ETZEL

320 E TOWSON TOWN BWO

TOWSON MD 21286

BDOAK@GCELIMITED.COM

Kevin C. Michels

~~MD~~

West Wind, LLC.

213 Old Padonia Rd

Cockeysville MD 21030

KC.Michels@CS.com

Howard L Alderman Jr

502 Washington Avenue

Levin & Gann, PA

Suite 800

TOWSON MD 21204

halderman@levinGann.com

Nancy Wehr NIERMAN

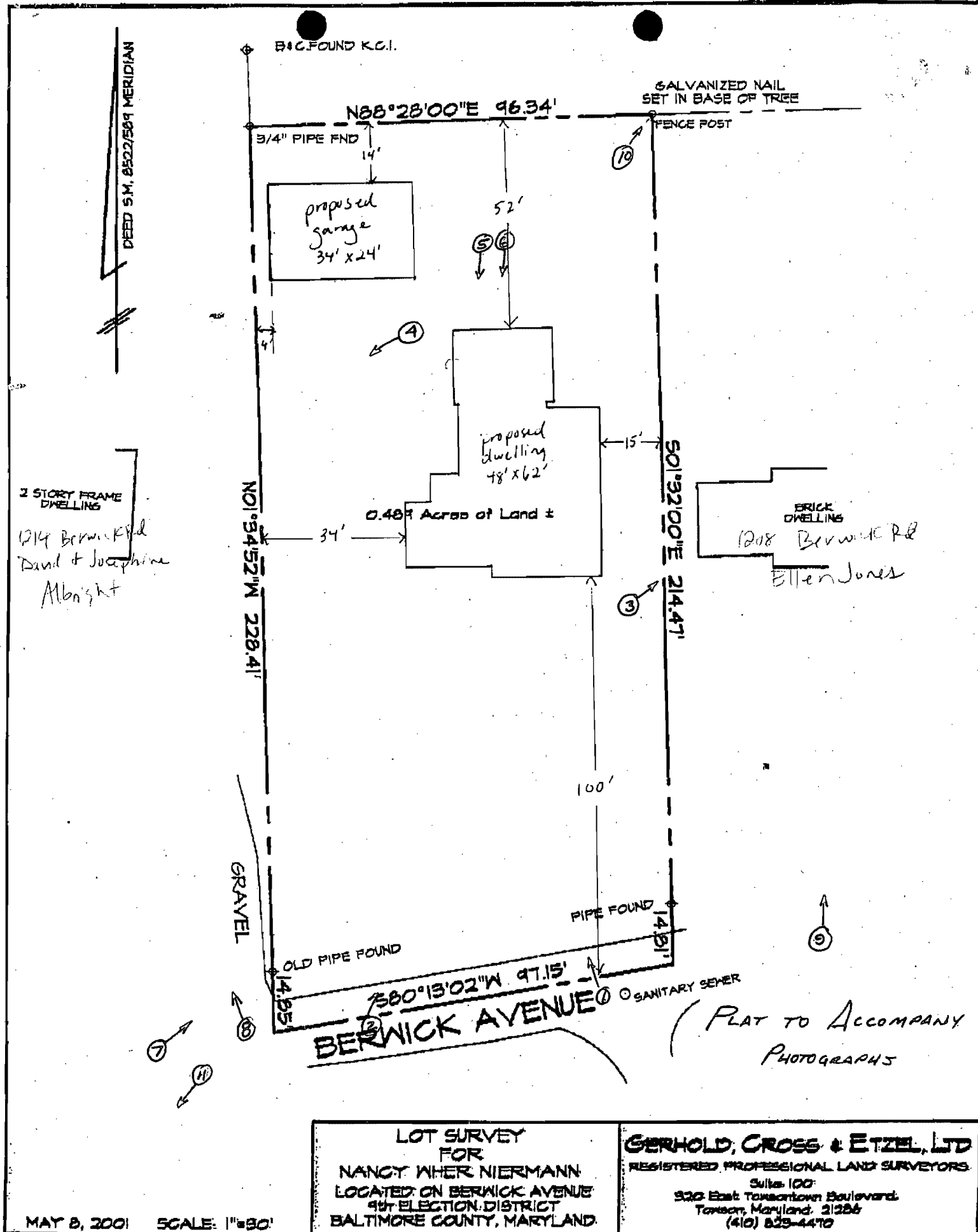
6511 DANWALL RD

Ruxton - 21204

FREDERICK T. WEHR

900 EDGEVALE RD

BALTO. 21210



LOT SURVEY  
FOR  
NANCY WHEE NIERMANN  
LOCATED ON BERWICK AVENUE  
4th ELECTION DISTRICT  
BALTIMORE COUNTY, MARYLAND

GERHOLD, CROSS & ETZEL, LTD  
REGISTERED PROFESSIONAL LAND SURVEYORS  
Suite 100  
520 East Towsontown Boulevard  
Towson, Maryland 21286  
(410) 829-4470

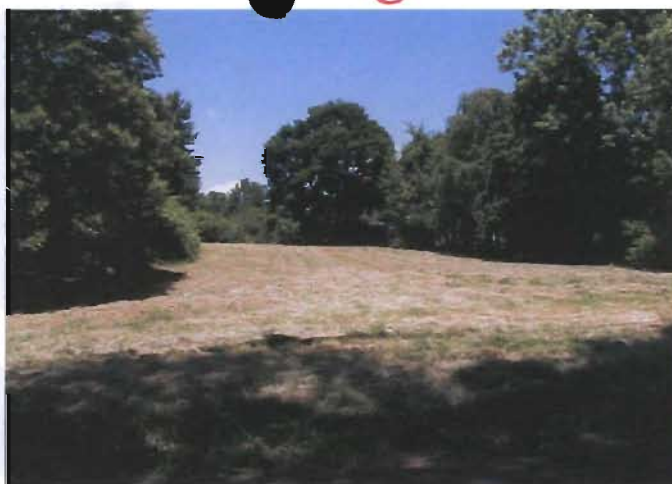
MAY 8, 2001 SCALE: 1"=30'

fax ID#: 04090910450081

①



②



③



④



⑤



⑥







7

This picture was taken on June 4, 2001.



8

This picture was taken on June 11, 2001.



**Abutters to Berwick Road lot.**

⑧



1214 Berwick Road  
Abutter to the West

⑨



1208 Berwick Road  
Abutter to the East

⑩



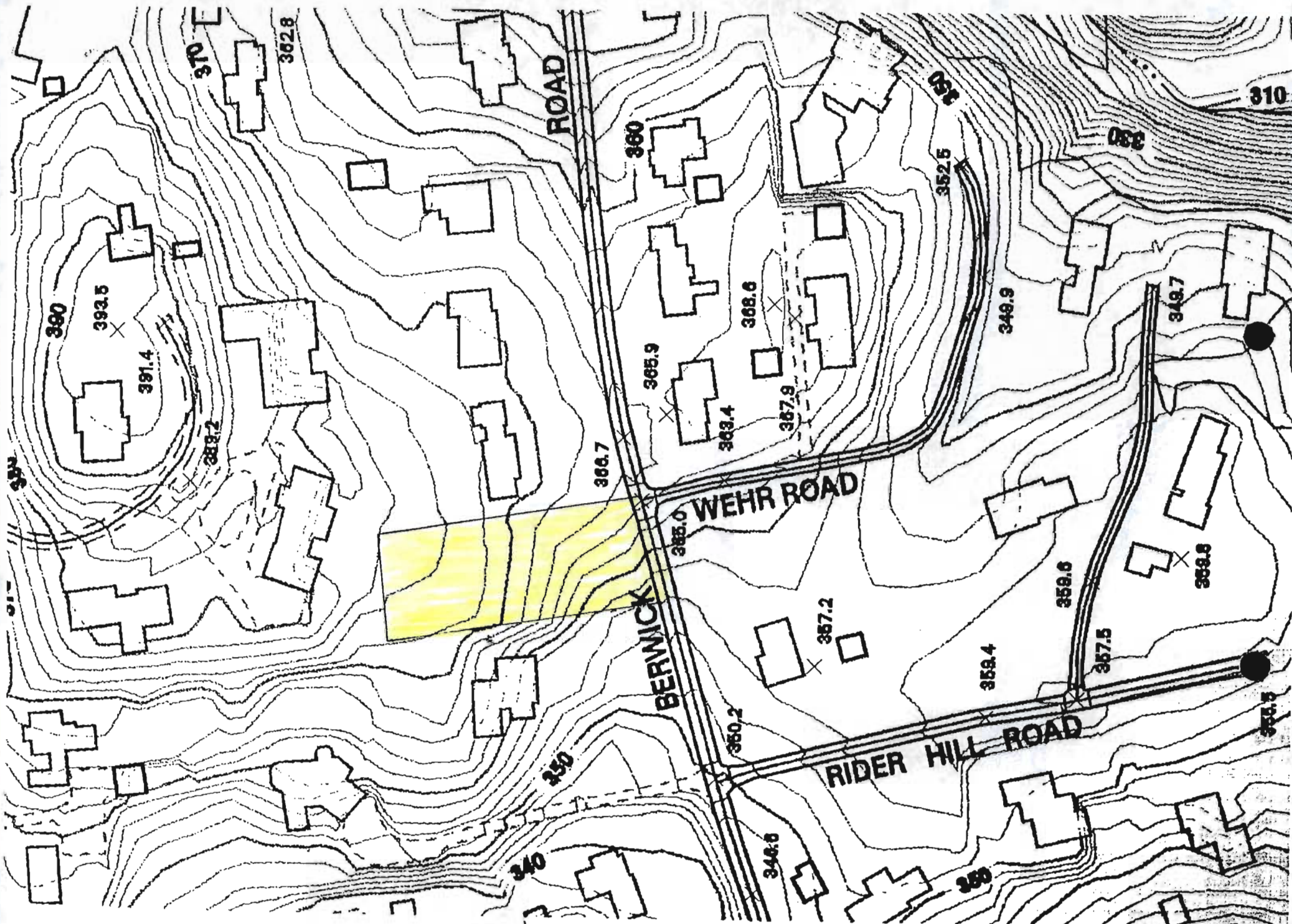
1217 Boyce Avenue  
Abutter to the North (backyard neighbor)

⑪



1217 Berwick Road  
Abutter to the South (across the street)



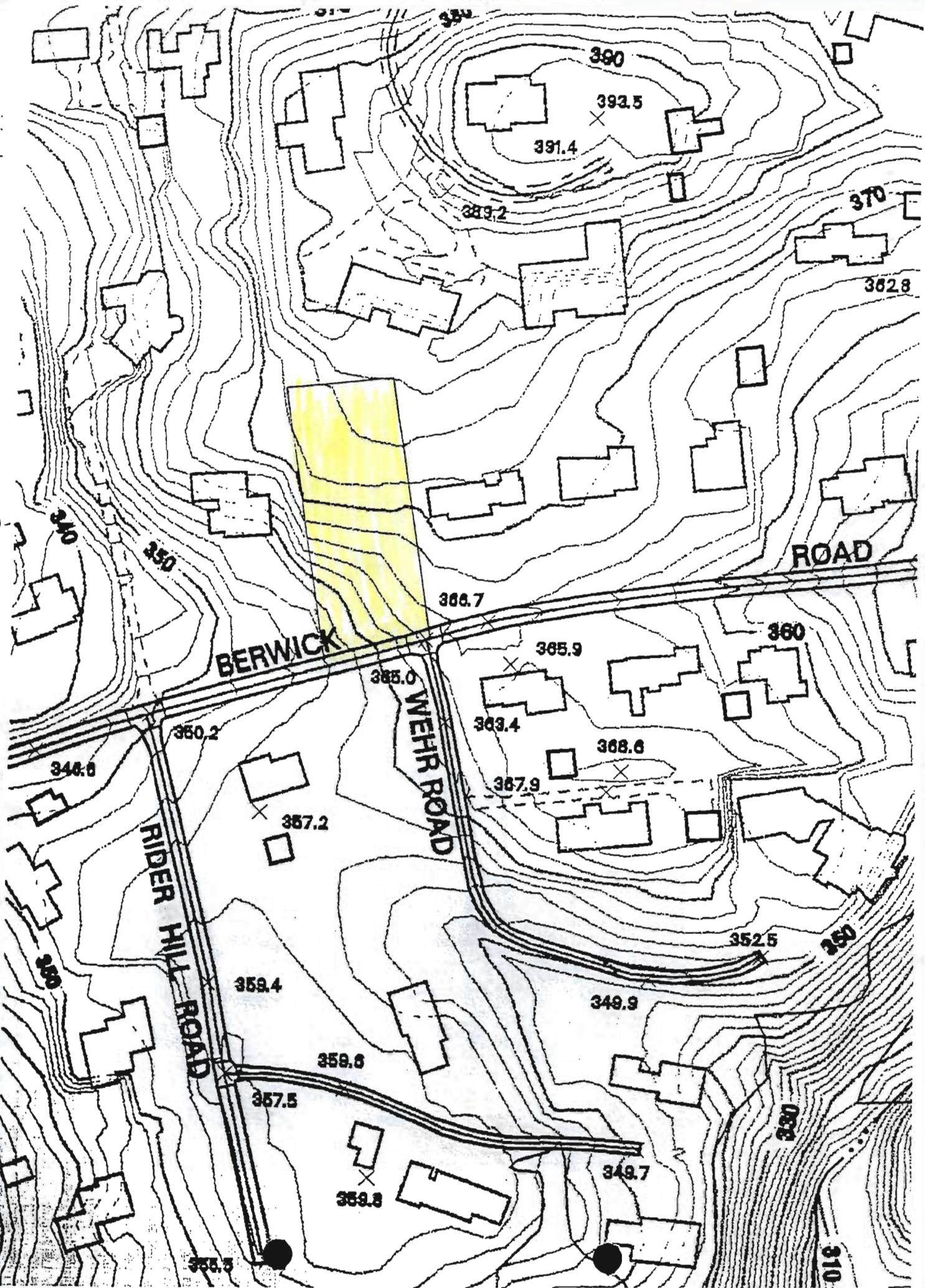


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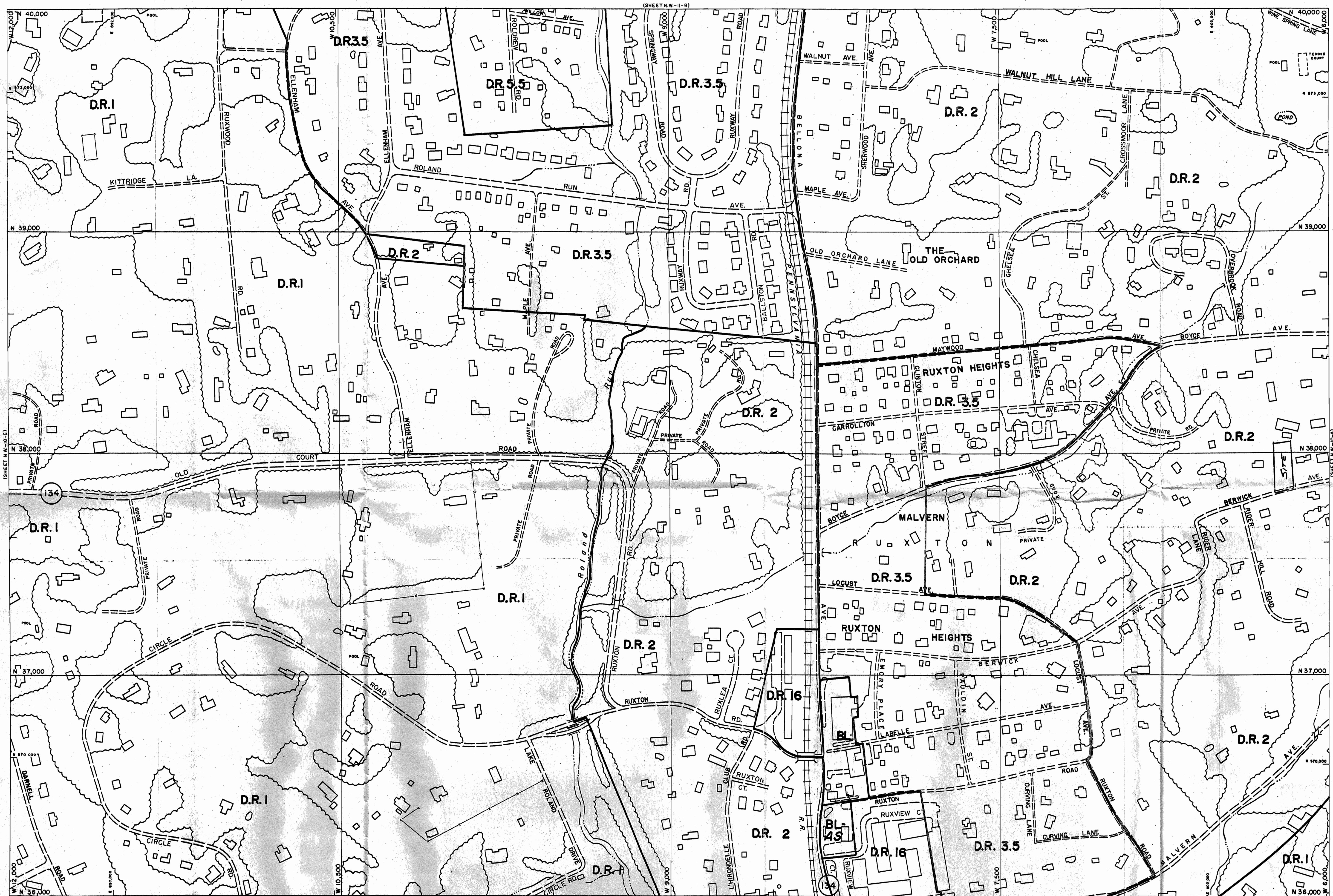
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1/2.  
-10-  
81







O-N-E  
S-S-E

2000 COMPREHENSIVE ZONING MAP  
ADOPTED BY  
THE BALTIMORE COUNTY COUNCIL  
OCTOBER 10, 2000  
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00

*Joseph Bartolotta*  
Chairman, County Council

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.  
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS  
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

# BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING OFFICIAL ZONING MAP

SCALE  
1" = 200' ±

DATE  
OF  
PHOTOGRAPHY  
JANUARY  
1986

LOCATION  
RUXTON

SHEET  
N. W.  
10-B

NW 10 B



LAWYER'S  
NOTES

(20030160)



County Board of Appeals of Baltimore County

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

437  
(3)

October 17, 2003

NOTICE OF DELIBERATION

IN THE MATTER OF:

NANCY WEHR NIERMANN - Legal Owner;  
KEVIN MICHELS, WEST WIND LLC - CP  
Case No-03-160-SPH

Having heard this matter on 10/16/03, public deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, OCTOBER 29, 2003 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco  
Administrator

c: Counsel for Appellants /Protestants : David F. Albright, Esquire  
Appellants /Protestants : Jody Albright, et al  
c/o David F. Albright, Esquire

Counsel for Petitioners : Howard L. Alderman, Jr., Esquire  
Petitioners : Nancy Wehr Niermann  
Kevin Michels /West Wind LLC

Bruce E. Doak /Gerhold Cross & Etzel Ltd.

Office of People's Counsel  
Pat Keller, Planning Director  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Director /PDM

Copy to: 4-3-7

Deliberation - Neumann

Oct. 29, 2003

Westcott - Petitioner meets 304.1

Albright is mistaken

- can't get blt. permit until lot determined

6-yr. rule applies

20,000 sq ft. requirement

- Doak expert testimony

- center to Brunswick

- no evidence to the contrary

Meets all but 100' width requirement

- 3' de minimus

All agree



County Board of Appeals of Baltimore County

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

**Hearing Room – Room 48**  
**Old Courthouse, 400 Washington Avenue**

May 8, 2003

**NOTICE OF POSTPONEMENT & REASSIGNMENT**

CASE #: 03-160-SPH

IN THE MATTER OF: NANCY WEHR NIERMANN – Legal Owner;  
KEVIN MICHELS, WEST WIND LLC - CP Contract Purchaser  
1210 Berwick Road  
9<sup>th</sup> Election District; 5<sup>th</sup> Councilmanic District

12/24/02 – Z.C.'s Order in which the requested relief was GRANTED with restrictions.

which was assigned to be heard on 8/19/03 has been **POSTPONED** at the request of Counsel for Petitioner due to unavailability of key witness who will be out of town during that period; and has been

**REASSIGNED FOR: THURSDAY, OCTOBER 16, 2003 at 10:00 a.m.**

**NOTICE:** This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

**IMPORTANT:** No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco  
Administrator

c: Counsel for Appellants /Protestants  
Appellants /Protestants

: David F. Albright, Esquire  
: Jody Albright, et al  
c/o David F. Albright, Esquire

Counsel for Petitioners  
Petitioners

: Howard L. Alderman, Jr., Esquire  
: Nancy Wehr Niermann  
Kevin Michels /West Wind LLC

Bruce E. Doak /Gerhold Cross & Etzel Ltd.

Office of People's Counsel  
Pat Keller, Planning Director  
Lawrence E. Schmidt, Zoning Commissioner  
Arnold Jablon, Director /PDM

CBA-03-160 SPH

Oct. 16, 2003

Howard Alderman - Pet. atty

David Albright - App. / Prot. atty.

Petitioner's Case -

Bruce Doak

Johold, Cross & Steel

300 E. Townsontown Blvd 21082

land surveying degree

- since 1978

- licensed in MD

- w/ G C+E - 11 yrs.

- one of owners

- handle develop. & zoning

Familiar w/ BCZR

ZC Policy Manual

Accepted as expert in zoning, planning & develop.

- surveyor w/ p & e expertise

[no objection]

Pet. #1

Prepared plan for hearing

- on size 4-5X

- reflects title & deed of property

- sealed by Doak

Property -

- LUXTON

- east of Billma

- n/s Brunswick

- east of Ridewood Rd.

- SFD

- rectangle - shape lot

- 20,573 sq. ft.

- inside of paved Brunswick

- total 21,216 sq. ft.

- perp line to center of Brunswick

- width along Brunswick

- 97.34'

- depth

- west 228'

east 214'

BCZR / B02.3

- DR 2

- min lot size before 1955

Per. #2

- B02.3

- C1 applicable

- min. per SFD = 30,000 sq.  
width 100'

- front yd. 40'

- side = 15'

sum = 40'

- rear = 40'

\*

Subj. property does not meet  
min. lot width of 100'

\*

Proposed for lot = 1 SFD

- garage incorporated into house

Per. #3

Deed from Nancy Wehr to Nancy  
Wehr Nehrmann

Per. #4

Deed prior to Wehr from Jones

- referred to in "beings" part of Per. #3

Per. #5

Deed - prior to #5

Cotton to Jones

May 27, 1943

- created the subject property

- part of land described

- subject prop. the same

Current owner has adj. property? No  
Nehrmann adjust lot lines? No

Any other unimproved lot of record w/  
97.34' on Brunswick? Not that I know of

\*

- makes it "unique" in general area

Net area vs. gross area w/ no dedicated

N-O-W

[Objection - no foundation - overruled]

- What is difference & how are they calculated

Net area - calculation of area of lot

which excludes any N-O-W or  
in fee ownership of road

Dedicated n-o-w along frontage? Not reflected  
in any descriptions in Pet 3-4-5

- no n-o-w plat in record

Brunswick Rd - Macadam is publicly maintained  
where no n-o-w, net area goes to center of  
road; so would gross area

∴ Gross area 21,216 sq. ft.

also the net area bc. no dedicated n-o-w

Publicly maintained portion of Brunswick

- 740 sq. ft

- 20,573 left

- still meets requirement for area

~~Pet. #1~~ DZC decision

[ Objection - withdrawn ∴ null & void  
Alderman withdraws case ]

Relief granted w DZC?

# 02-223-A

[ Objection - null & void - Pet. withdrew  
Relevance? SUSTAINED ]

# 03-160-SPH DZC decision

- on appeal here today

- Jack appeared

[ Objection - in record, not evidence in this case  
Ald. - CBA is denovo; just want ex h. #  
overruled ]

Difference bet deed & survey?

Small differences

- frontage 97.15 survey

- boundary survey not in records

Pet. #8 BCZR 304 - undersized lot

Relevance here? yes

- recorded before March 30, 1955

- all lot & area met except frontage  
owner doesn't own other property

OP recommendations

- submitted their comments for DZC & CBA



## Comments -

- Took rec'd copy below

Per. #9 Kelle's comments

[Objection - overruled]

Per. #10 Use of undersized lots - policy manual  
Nehrmann owned any adj. property in  
last 6 yrs. to bring into compliance?  
She has NOT

Opinion on requested relief

- any increase in density? NO, one dwelling

- relief from 100' road frontage

- no other way can be retained

- w/in spirit & intent of BCZR

Dect. 304 require variance? NO

- only public hearing if requested

## Abricht X

Exh. 8 304.1 - lot too narrow? YES.

Needs ruling to build? YES

We contend lot is too small? You did NOT  
take half road (15') off measurements

- no, just paving

- if took all of rd. less than 20,000? YES

Dedication of land to B. City. on my property? YES

30' in front of mine? YES

~~located~~ why not use 15'? Difference bet.

macadam paved area & n-o-w

- what's drawn on

- what B. City. owns by ded. n-o-w

Width of road (no n-o-w) in front of subj. property?

Common law - prescriptive rights?

- there at least 60 yrs.

Public streets do not include rights by prescription?

- when not in fee ownership by city -

gross & net are same

- not a road by prescription

Consider that road by prescription is a public road?

- not always, private person can have prescriptive right

- this is a public road

How wide paved area? 14'

Adequate for emergency vehicles?

[Objection - beyond cross - sustained]

Contention of width as public street?

Paving there at that location & width

for many years

Nothing on B. City records about

insufficiencies

Include shoulders? NO

Does filed SPH? YES.

For new builder? YES. not CP from old case wd

CP not filed for bldg. permit? NO

Res. #8 304.2

- did not file for bldg. permit

Houses adjacent have larger lots?

- some are, some aren't

- to east, they become smaller than subj. prop.

Predecessor in title to Mrs. Nelsman owned something else?

Yes, Albright prop. compiled from several different lots

- a strip of land

[Objection - relevance -

Albright - Mrs. Nelsman's mother owned

part of Albright prop. after 1955

- made decision to sell part

Exhibits may show title of subject prop.

- sold portion after 1955

Nelsman - Mrs. N. has not owned prop. during last 6 yrs.

[Assuming facts not evidence]

Was there ownership by Mrs. Nelsman or her mother of additional land?

Review of prop., any knowledge that predecessor owned adjacent land?

[Objection - no facts in evidence - overruled]

- Made copies of my research

Albright  
property

1950 - from McCongell to Fred. L. & Nancy Wehr

1953 - Fred L. & Nancy to Fred. T. & wife

1955 - Fred L. & Nancy to " next piece

1967 - Fred & Nancy T. to Fred T.

1976 - Nancy T. to Fred. T. & Grace

[Wehrs sold to Mongross who sold to Albright]

For 2 yrs. Nancy T. <sup>Wehr</sup> owned edges of Albright & adj.

May 21, 1974 & Dec. 7, 1976

[subj. prop]

Nancy T. Wehr, mother of Nancy W. Nisumman? yes,

Nancy T. Wehr lives across road? yes.

- shown on Per. #1

Posting different for SPH & 304?

- none required for 304

Aldeema address

How many zoning petitions Draft filed?

100-200 #

Issue # given to case? yes, 03-160-SPH

[Westcott - stipulate that]

Per. # 9 - Issue # correct? yes.

Posting requirements? for bldg. permit? yes

Here under SPH? yes

Posted for 15 days? yes

Prop. owned by Nancy T. Wehr today?

across & diagonal & on south? yes

3/4 bldg. permit issued area become more dense?

yes, taking a vacant area & adding a house

"Squishing" - drop it

Difference bet. width of paved road & r-o-w? yes

Paved section located w/in r-o-w? yes

Where no dedicated r-o-w but prescriptive

right to pass, r-o-w estab. beyond

parking? no

- # In front of Alb., dedicated n-o-w?  
- recognizes st. of public 30' in width  
- Albrights do NOT own into that 30'  
- Subj. prop. owns to center line  
Parted section? varies 14'-15'

Nancy Wehr Nisemann  
6511 Barnall Rd 21204

- Per. #12 - owner of subj. property  
- undersized lots on Brunswick  
- 8 pgs.

Per. #13 [Alb. objects - overruled]  
letters of support

Per. #14 A, - ~~14~~ Photos

- all bigger than house proposed
- except Albrights
- small house
- taken by NWN

# Never owned any other property  
Albright X

Include Nathans? yes  
- behind my lot

Have 33,000 sq. ft.? yes

NWN sold land

76 ac.

Albrights land larger?

> than acre, yes.

Been in Alb. since renovation? no

Purpose to show Nathans?

- proposed house smaller than others around there

1300 Brunswick abt. an acre? No, not that big

lots in photographs are larger? except for  
Ms. Jones adjacent

Aldeeman reduced

Collect. of photos, houses bordering Subj. prop.? yes

Per. #12 - other lots east in Brunswick

+ Per. 14

Per. # 12 different neighborhood?

No, all same neighborhood

Kevin Michels

West Wind LLC

213 Old Padonia 21030

Per. # 15 House plans

- proposed to be built

Met w/ OP

In bldg. since 1995

- built in area before

- opinion - this house compatible

[objection - overruled]

Aloult X

Anything to do w/ Per. #9?

Yes, called Lynn Harham &

she reviewed house plans

Filed for bldg. permit. No

## Alderman Closing

Sect. 500.7

- ZC + CBA power to conduct hearings on property
- catch all

Request appraisal as buildable, undersized lot  
Sect. 304.1

- area or width less than required
- if lot created before 1955
  - Per #3 deed
- if all other requirements met
- no evidence to contrary that req. are met
- owner does NOT own suff. land to comply
  - Per #1
  - Dock's testimony
  - Ms. NWN

- May 21, 1974 + Dec. 7, 1976 predecessor to current owner owned adjoining property to subj. site

Per. #10

ZC Policy Manual - part of Chp. regulations

- contains interpretation of 304.1
- equitable concept
  - in good faith
- can't transfer adj. land w/in 6 yrs + then cry "undersized" lot
- draw line @ 6 yrs.
  - to determine "good faith"

304.3

NWN - acquired property in 1990

- do NOT believe an issue today

Sect. 1B02.3c1 (?) Per. #2

- sets out undersized table, min. 20K sq. ft.

Per. #6 - defines "net area"

- Uncontroverted testimony by Dock

- where land owned to center line - no N-O-W  
net same as gross

- Berwick is public
- NWN no dedication of r-o-w
- deed calls to center line

## Prescriptive rights

- City maintains Berwick
- open to public more than 20 yrs.
- if City has pres. rights, it's to paved area City maintains
- even if paved removed, <sup>from</sup> lot, area still > 20K sq. ft.
- excess of min. lot size

## Width @ bldg. line

- doesn't comply
- only one
- Sec. 304 empowers CBA to approve as buildable, undersize lot
- met all tests
- uncontradicted

Pet. #4 - 97.34 @ s1

2.36 short of minimum

## Recent boundary survey

97.15 on front

2.85 short of min.

## Prescriptive rights refer to part used

- maintain & public uses paved section only

## Posting

- done properly
- no evidence to contrary

Pet. met burden

ZC attached 3 conditions

- discussed w/ Pet.
- will not object to conditions imposed
- no Pet. here today

## Albright Closing

SRET. 304 - wrong procedure

- must file for bldg. permit
- mandated

Circumvented op. provisions for undersized lots

- need arch. drawings

- know what will go on lot

SPH - catch all for what isn't covered

- undersized lot is covered

not too narrow

- is undersized

not too small

- took off 30' rd. would be < 20K sq. ft.

- Doak conceded

- must consider road to middle - 15'

Conceded either/or

- width or area

- they are deficient in both

Definition Per. #6

- treat Q and in street as both per &

gross contrary to Per. 6 definition

Per. have burden

- haven't proven that road only 14-15 road
- shoulder also used

30-foot road = Albright deed

- Brunswick Rd. considered by Ch. 2 30'

- < 20K if this width used

line of title

- C v. W

- cannot be unique if inflicted on self

- at one time had adequate land

- after 1955

- Per. #11 - carved out Albright lot

- knew what they were doing

Ask CBA to support

- vacant for many years proof in itself as unbuildable



## Rebuttal

Notice was before ZC

- not raised at that pt.
- prop. was signed; Alb. got notice
- no evidence to contrary

Cv. Ward

- Res. # 7

- not a variance case here

Prot. offers no authority as to how far to go back

- lot must be created before 1955

- then 6 yr - rule is applicable

Brimick

- varies 14-15'

- uncontradicted

- Alb. only got title to 30nd.

- Mr. W. owns ~~only~~ one to center

- R-O-W not dedicated

- only have prescriptive rt.

- testimony - City maintains paved section

- used by public

- no evidence that anybody has ever pulled off or used any part of Brimick in front of subj. prop.

Sec. 304 - paves

- not here under bldg. permit

- only undersized lot



County Board of Appeals of Baltimore County

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

**Hearing Room – Room 48**

Old Courthouse, 400 Washington Avenue

May 8, 2003

**NOTICE OF POSTPONEMENT & REASSIGNMENT**

CASE #: 03-160-SPH

IN THE MATTER OF: NANCY WEHR NIERMANN – Legal Owner;  
KEVIN MICHELS, WEST WIND LLC - CP  
1210 Berwick Road  
9<sup>th</sup> Election District; 5<sup>th</sup> Councilmanic District

12/24/02 – Z.C.'s Order in which the requested relief was GRANTED with restrictions.

which was assigned to be heard on 8/19/03 has been **POSTPONED** at the request of Counsel for Petitioner due to unavailability of key witness who will be out of town during that period; and has been

**REASSIGNED FOR:**

**THURSDAY, OCTOBER 16, 2003 at 10:00 a.m.**

**NOTICE:** This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

**IMPORTANT:** No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco  
Administrator

|                                        |                                    |
|----------------------------------------|------------------------------------|
| c: Counsel for Appellants /Protestants | : David F. Albright, Esquire       |
| Appellants /Protestants                | : Jody Albright, et al             |
|                                        | c/o David F. Albright, Esquire     |
| Counsel for Petitioners                | : Howard L. Alderman, Jr., Esquire |
| Petitioners                            | : Nancy Wehr Niermann              |
|                                        | Kevin Michels /West Wind LLC       |

Bruce E. Doak /Gerhold Cross & Etzel Ltd.

Office of People's Counsel  
Pat Keller, Planning Director  
Lawrence E. Schmidt, Zoning Commissioner  
Arnold Jablon, Director /PDM

10/16/03  
03-160-SPH. Pa Re Navy Wks. N. Norman -

Pt.

Howard Alderman

Protestants Appellant.

David Allwright For.  
Allwright & Coattall

Bruce Doak. Crs

Pastor's Council Doak & Edsel. - Principal  
Doak in land surveying. Licensed property, his Surveyor  
Huller. & adjacent.

Familiar with BCZR & DC Policy Manual.  
Survey 2000 & Plan 10000

Familiar with subject property  
Accepted as Expert in Survey 2000 & Plan.

Been to property 4-5 times.

Plan submitted under his control

Accuracy reflects Survey of property.

Pt Ex 1 - Plan of property.

Property in Repton. E of William W. of Charles  
N. of Norman

Single family & holdings.

Land area size is 20573 sq ft outside paved area  
of Beach Ave. Total Titled 21,216 sq ft  
Property line goes to center of Beach Ave.  
97.34. width.

Depth 228' West 204' along Front.

Min lot size in DR 2000 noted before 1955

1802.3 Cor. 1 - Table. minimum 20,000

Min width 100 ft. Depth 97.34

Property does not meet min lot width.

Pt Ex 2 - BCZR. 1802.3

proposed to construct one single family & hold  
Property has units all set back & brought  
requirements. Carport incorporated in house.  
Has recorded deed by which unit  
owner conveyed title.

Pt Ex 3 - Deed 6/18/1990. for Navy Wks. to Navy  
Norman

Edwin & wife  
Pet Ex 4. Prin Deal for ~~Edith~~ Jones to  
Frederick Wells.

Pet Ex 5 - Deal 5/27/43. from Cotton to Jones

Doak conducted boundary survey. Current owner  
does not own sufficient adjacent land to meet  
current front lot requirements.

Wells. & it at adjacent lot lines  
Does not know of any other lot in yard area  
long less than 100 ft of frontage

Doak has calculated gross area & net area

Net area - calculated. Jones of lot outside  
which excludes any area of road.

Pet Ex 6 - DCZR Sec 101.

No air over way in fee ownership. for  
Berwick Ave. of the Eastern of Berwick  
Ave.

But is Masada in full title and public part  
Net area & gross area is same if no  
deduction of lot.

Gross area 21214 sq ft.

Net area is also 21214 sq ft.

partially maintained area of Berwick is 740 sq ft in  
front of the property.

Taken at front <sup>paved</sup> intersection of Berwick Ave. & Sts.  
20573 sq  
ft

Partially in a ring having held previously on  
subject property  
Partially abut

Pet Ex 7 - Z.C. Deem in intent case.

\$mill difference in class & survey  
 dec 97.34 & 97.15 - only survey.

Pt Ex 8. Sec 304. B & Z R.

304.1 A - - Property rental lease 3/30/55

B - all conveyed with except 100 ft  
 parking

C - Owner does not have any other  
 property in mls.

Pt Ex 9 - Plany Dgt letter (I don't have)

Pt Ex 10 - Poly Mount. of Z.C.

Sec 304

Wishes has not owned any property in full lot  
 6 calendar years that would allow her  
 to add property to unit 100 ft square

If relief is approved it will not mean  
 a unit in property.

Know of no other way to obtain 200 ft  
 Relief is in spirit & intent of B & Z R.  
 Perhaps in C & H Platters.  
 Had a public hearing.

Cross - All right.

Road is too narrow.

In conversation with Paul the truck going off the  
 road. If truck off wheel 15 ft it would  
 be less than 20 ft.

A cutting but not down there was a 30 ft  
 distance to 15 ft cutting.

Road that cutting continues is 30 ft in fact?

Partially.

Difference between paved areas & request of any area  
 Right? any is ownership.

Road is 30 ft in fact? Partially is right

No right of way in fact of property  
 having use of road.

Prescription rights.

Road has been there at least 40 years

Common practices. When there is not a far crossing  
 by entry given is not well known.

He does not consider use of road by prescription  
 because of free crossing. This is not prescription

Road crosses between 14-15 ft walls

Does not include shoulders. Just includes  
 main area

Does not feel for special hearing in this matter  
 However, now content purchases

Has not felt fully explained

He did not feel for Bully point, before  
 fully for Special Hearing

Some lots east of subject property are smaller  
 than subject property.

At a point in time the subject property  
 was owned by same property owner as present.

For 2 years Mary T. Wheeler owned property in  
 real property books in 1974

May 1974 & 12/76. Mrs. Wheeler owned property  
 adjoining south of this. All right

This is subject property  
 Mrs. Wheeler and subject property is subject property

Mary T. Wheeler is mother of Mary Wheeler.  
 present owner.

Mother currently has a property  
 directly across St. from subject property.

Has lived there for 20 years.  
Unlawfully that

Knows there was a license in party for public  
house & for getting permit  
Does not know if protestants were given  
notice of request to oppose if living

### Redeem

Doubt has filed now the 200 200 ft.  
Pet is given in with. because can't. 03-160  
Doubt not pet.

304-3-- Response party

500.7-- Spent long requests. Property  
parties for 15 day prior to living

Property of Mary T. Weber - is on South  
side of Beavish

Today a warrant but property here is it also leaves  
more dense.

For his signature there is a license station  
prior section of red & request of living.

Presumptive rights parties to be admitted and  
road.

Presumptive rights do not apply to request  
of my legal paved section.

Alleged toll roadway does not go  
into 30 ft of Beavish Ave

Subject property goes 45 ft into  
Beavish Ave

Front section of Beavish is 44' to 15'

Mr. Mary Weber Merwin 657 Daniel Rd.

Owns property in question

Has attempted both prior hearings

Obtain other lot maps on Beavish Rd.

Set EX12 Meeting. David F. Fife. Sister Beavish  
of house on Beavish Ave

Sec 304.1 Mats request.

6 years supplies - Matins sold to Mary  
more than 6 years ago

Mats all requests except 100 ft ft

No waivers of the 30 ft request of any to  
Bernard Ave.

Preemption rights do not apply to  
request of way beyond paved road section

Paved section of R1 is 14 to 15' wide

Even w/o 15 ft of paved rd leaves over 20,000  
sq ft.

A bright way in interpretation of 304.1



Pet EX 13 - better of Sargent

Pet EX 14. A - house to left Allright house. go to a house behind Allright.

14 B - House directly behind Allright  
Facing on Bay Street - A dimly  
looking street property

14 C - Same property as 14 B.

14. D - Near Allright's house 1214. Parcel

14 - E - Another shot of Allright property

14 - F - West of Allright & Walter's house

14 - G - Same as 14 A.

14 - H - Same property behind 1214. on N.W. side.

All houses except the largest than house present.  
except Allright's that is smaller.

Mother has lived there since 1936

Has not owned any property adjacent to subject property

### Cross

of lot which Mother has. behind Allright.

Mother has 30,000 sq ft.

Mother has 76 acres.

Allright is little less than acre.

Has not been in Allright house since 1936.

House present to be built will be  
smaller than all houses surrounding

Ward's house lot

Re direct - Property in Pet EX 12 are all  
in one neighborhood

Mother of subject property National U.C.

Pet EX 15. Home Plans. for present house.

Next with office of Planning. to show the  
plans.

For house since 1995. Parcel in the  
neighborhood.

Owner -

And plan office look at plan again...  
include slope standards P. 9.

ORAL ARGUMENT

Alderman

Pt filed in 10.500.7.

Grass Bd power to combat being is rights  
of power over property in county. We enter call  
in applying zoning reg.

Pt requested approval of buildable unimproved  
lot

304.1. A May bill if lot created  
before 3/30/55 -

B still other requirements of height & area  
are consistent with

C. Owner does it on sufficient lot it  
conform to area with requirements.

Owner does it on existing lot.

Pt Ex 11 & Donahue testimony - 5/2/74 &

76 - preliminary oral testimony concerning

County codebook Z.C. policy manual as part  
of zoning reg.

Z.C. policy Manual part EX 10  
sub part 3.

Has to be in good faith in interpreting  
regs. Can't transfer existing lot which  
you may own w/in 6 years & still  
take advantage of unimproved lot.

Regs say look back <sup>6 years</sup> (see 304.3. of Z.C.  
Regs.

Measure subsequent property in 1990

Does not feel

Pt Ex 2 1300 Min lot size 20,000 sq ft

Not over - put EX 6

M.R. Dosh. When land moved to center line

of public street. such as Bench Ave

Where has been a for single deduction

of right of way.

No deduction of roadway. of H.R. &

No deduction of land area of parcel. note

of Road. - Not a gross area as per

County maintains Bench Ave.

County would only have entitlement to

that part of rd. owned by County  
Even if land area <sup>appears</sup> ~~is~~ road is removed  
they are still in excess of 20,000 sq ft

Under 304 -

A. Lot created before 1955

B. Complies with all other requirements other  
than width

C. Property owner has at least one property  
adjacent that could be used to  
widen lot

Under Sec 304. can approve - even if don't meet width  
& area requirements

97.34. width at front - full depth.

97.15 " under Dosh's survey

2.8 - 2.43 ft short

Prescribes right pertains to land used.

Parcel section ~~area~~ used. & only pertains  
the map can be used for property rights

Porty - property pertains, under Sec.

Z.C. attached 3 conditions. Pet has no  
objections to these 3 conditions.

Allright.

#1 Request to go into Section 304.

They don't want procedure. Must file  
belonging permit. Mandated procedure.

Nothing in my evidence for distribution & range  
etc. Planning & zoning here to low-which  
prohibits.

Special zoning procedure should not be.  
downward to change laws.

lot is undersized

Area too small. for road

If take off 30 ft. road be wider 20' wide.  
Don't get protection if it is too narrow as  
well as too small

Part Ex 6 - Not <sup>and</sup> in contour

Whether use 15 ft. 15 ft. Mr. Dosh  
says it is only gravel area.

Has not proven to local that 15 feet of  
gravel is enough & 15 ft. of gravel can  
be used in carrying the load.

Allright property is 30 ft road.  
Road to Allright property goes to 30 ft road.  
Feels if County maintains it it has  
title to road

Believes that there should be 25 ft  
cut off property.  
line of title.

Crowell v Ward. cites # 7 cases  
that property can't be unique.

Person can't inflict damages on themselves.  
Had subsequent lot to come out parcel  
that would be regular. After 1955.

When they did not retain sufficient land  
to make conforming lot.

P. 11. - Shows they curved at several feet. that  
could has been used for regular sized lot.  
'Ash Board' for ruling. That that lot  
has several vacant for so many years is proof  
that lot is unbuildable.

Notes under 500.7 is different from  
notes required under 304.2.

No notes given to surveyor.

Alderman -

Notes were not recorded before 2. C.  
\* Notes that is not.

No authority if land vacant lot is unbuildable.  
Council or Ward - look at 5 Church's  
design - Not necessary here  
lot created before 1955.

Look at 6 years rules.

Barber reserves for 14-15 ft.

Subject property - own out to center Rd.  
No pronging right if land is dedicated.

(20030160)



NANCY WEHR NIERMAN  
03-160-SFH

3-C

LAWYER'S  
NOTES  
EXHIBITS

October 16, 2003

Case # 03-160-SPH

Nancy Wehr Kiermann

Howard L. Alderman Jr.

Petitioners

David F. Albright

Protestants

Bruce E. Dook Licensed Surveyor  
handles development + zoning  
expert in development + zoning issues

Pet Ex 1 map of property made by  
witness

Property in question is located in Ruxton  
20,503 sq.ft. 21,266 sq.ft. The larger  
number is including the road

Pet Ex 2 Density Residential Zones Rules

Pet 3,45 Deeds + formal deeds

Net area is area total excluding right of  
ways + any co ownership

Ex 6. Net area law

Gross area is total excluding nothing

740 sq.ft. is total of Benwick ave  
that is the only right of way deducted

Ex 7. Hearing Officers Conclusion

Ex 8. Balto Co Zoning Regs.

Ex 9 Balto Co. Inter office Correspondence  
(Kotroco to Meller)

Ex 10 ~~use~~ 304 use of undersized single fam. lot.

Mr. Alderman has done a good job that the property is more  
than 20,000

October 16, 2003

Case # 03-160 -SPH

Nancy Wehr Niermann

Mr. Dook ~~cross~~ ex. by Mr. Albright

Mr. Albright is questioning how the surveying was done on the road. Mr. Albright is trying to prove the lot is under 20,000 sq. ft to stop the building on the lot.

This case is a new owner of the lot the Culps were the previous owners, currently there is no building ~~at~~ permit at this time for this property.

- Is this a self inflicted problem by selling lots this has not been proven to this point.

Ex 11 Mr. Albright's property plat

Mr. Nancy Wehr Niermann's mother lives in the house ~~also~~ diagonally on the southern side of said property

Mrs. Wehr has owned property for 2 years 74-76 in the plat labeled Ex 11

Squish was a term used to describe the density in the building of a house

Mr. Dook ~~counter~~ counter by Mr. Alderman

The right of way does not exceed the paving of the road the road is 14 to 15 wide it varies



Case # 03-166-SPH

Nancy Wehr Niermann

Mrs. Nancy Wehr Niermann ex by Mr. Alderman  
Ex. 12 Public Record of the size of lots  
on Berwick Rd

Ex. 13 Letters supporting the improvement  
on the land

Ex 14A-h pictures of said property

A Nathan Property

B

C

D Albright house

E Sugar property

F

G 1216 Nathan Property

H Sugar property 1216 Berwick

pictures were taken to show the houses are  
all larger than the proposed property

Mrs. Niermann handled the land sales

there is only one house that will be  
smaller 1208 Mrs Jones

The Nathan house is larger than the  
lot of proposed property

Mr. Kevin Michaels Builder & Plan Maker

Ex 15 the plans for the proposed house that will  
be built.

Mr. Michaels said the house will  
fit in with neighborhood and  
surrounding houses

X closing arguments

Mr. Alderman

507 P.C.2A is the law that protects property  
owners

October 16, 2003

Case# 03-160-SPH

Nancy Wehr Niermann

- Mr. Alderman can't  
property was divided before 1955  
Ex 10 para 3 of 304 6 years  
you can not have had sold a joining property  
to injure yourself,  
Ex 2 clearly states how to use undersized  
lots.
  - lot created before 1955
  - last 14 years, property owner has not  
owned property,
  - fits small lots requirement

Prescriptive rights are not necessarily owned  
by the county

Hearing officer has attached 3 conditions  
to the building on the said lot.

Mr. Albright closing argument

according to section 304 permit to  
build should be sought after before  
coming to this Board.

if you take off 30 ft the lot would  
be under 20,000 sq. feet

cannot use street for calculations

Berwick Rd is a 30 ft road owned by  
the county.

Was the three lot piece of property in question

Mr. Alderman

Cromwell vs. Ward pertains to variance only

October 16, 2003

Case# 03-60-SP11

Nancy Wehr Niermann

Berwick Ave is not a 30ft right of way, the road varies 14 to 15 ft

The county has only maintained the paved section.

507 is the section they are here not for a building permit

Verified 10/16/03

CBA-03-160 SPH

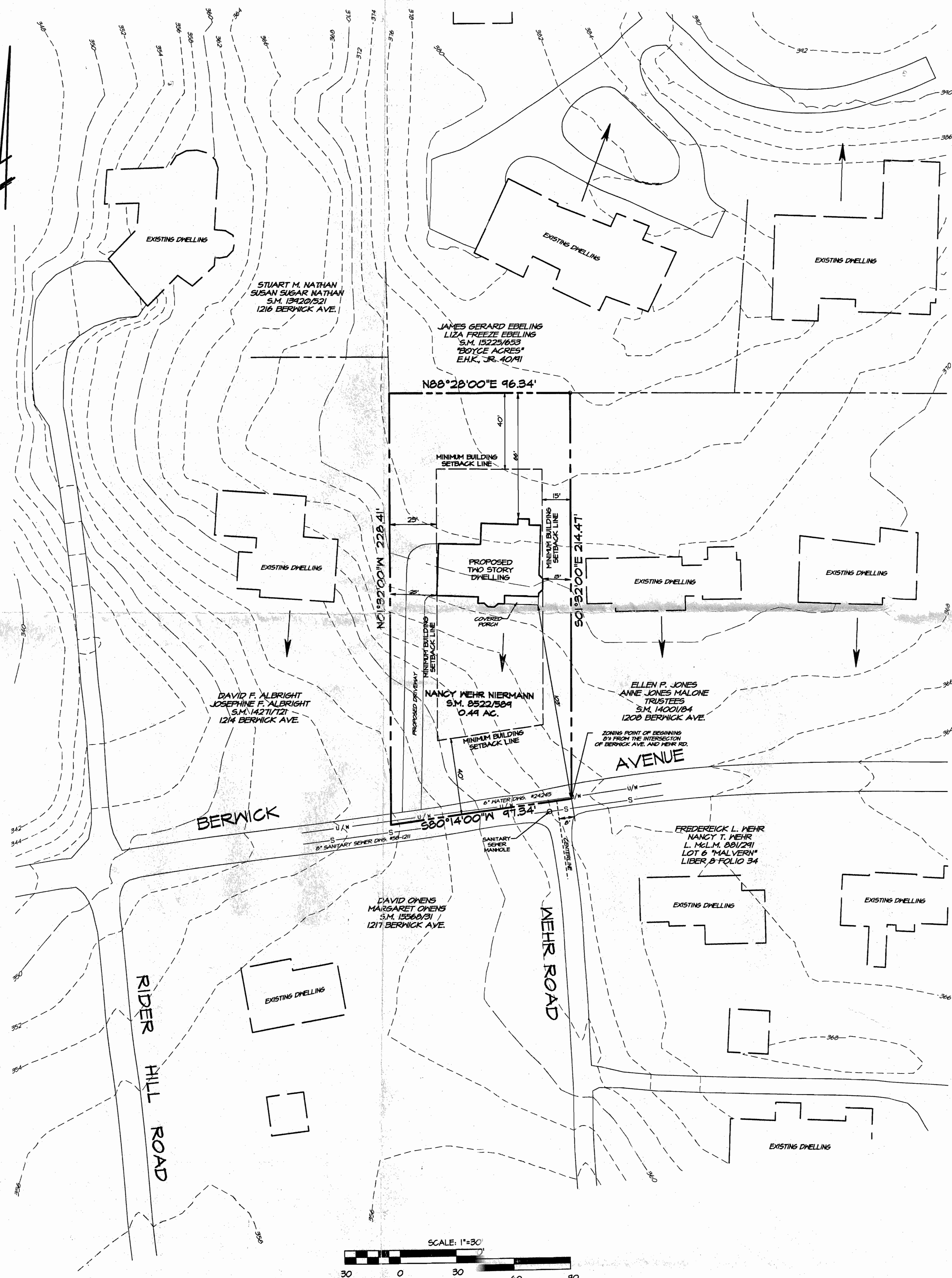
Oct. 16, 2003

## Exhibits

### Petitioners

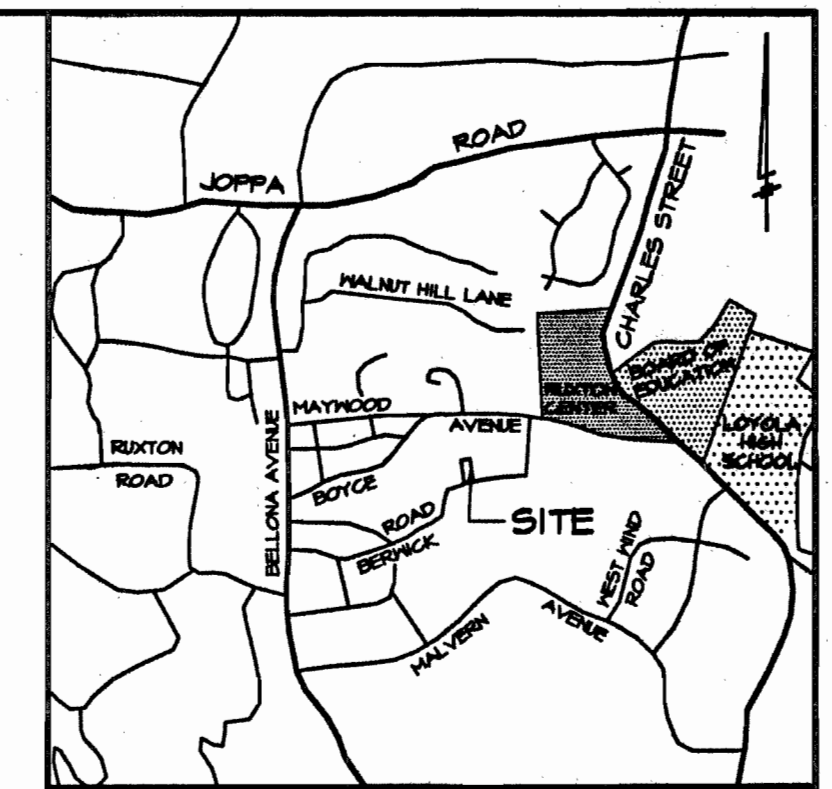
- ✓ 1. Site plan
- ✓ 2. BCZR 1302.3
- ✓ 3. Deed subject property from Nancy Wehr to Nancy Wehr Nissmann
- ✓ 4. Deed from Jones to Wehr
- ✓ 5. Deed from Cotton to Jones
- ✓ 6. Definition of "Area, Net"
- ✓ 7. ZC Decision #03-160-SPH
- ✓ 8. Section 304 BCZR
- ✓ 9. Comments to Kotroco from Keller 10/10/03
- ✓ 10. Section 304 - Use of undersized Single-Family lots
- ✓ 11. Frederick T. Wehr Property that was conveyed to Albrights
- ✓ 12. Metropolitan Regional Information Systems - Spg.
- ✓ 13. Letters of support
- ✓ 14. A. house back to 1216 Berwick  
B. 1214 ~~Bayer~~ <sup>Berwick</sup> Ave. behind subject lot  
C. same as B  
D. 1214 Berwick - David & Jos. Albright  
E. same as D  
F. 1300 Berwick Rd - further west  
G. 1216 same as A  
H. same as A
- ✓ 15. House plans for proposed bldg. on subject property





# LEGEND

- BUILDING
- BUILDING SETBACK LINE
- BOUNDARY LINE
- UNDERGROUND WATER LINE
- UNDERGROUND SEWER LINE
- MANHOLE



VICINITY MAP  
1" = 2000'

## GENERAL NOTES

- OWNER: NANCY MEHR NIEMANN  
BERNICK AVENUE ROAD  
BALTIMORE MD, 21204
- TAX ACCOUNT No. 09-10-450081
- TITLE DEED LIBER S.M. 8522/584  
TOTAL AREA = 21216.00 SQ. FT.
- THE PROPERTY IS ZONED D.R. 2
- 200' SCALE ZONING MAP No. NM 10 B.
- THE BOUNDARY SHOWN HEREON IS FROM THE TITLE DEED,  
A BOUNDARY HAS NOT BEEN PERFORMED BY GERHOLD CROSS & ETZEL LTD.
- FEATURES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY GIS PANEL 6462.
- CENSUS TRACT 4405.02 A.D.C. MAP & GRID 26-36  
WATERSHED 23 SUBWATERSHED 56  
SCHOOL DISTRICT 161 REGIONAL PLANNING DISTRICT 314
- THIS SITE IS SERVICED BY PUBLIC SEWER AND WATER.
- THIS SITE IS NOT IN THE CHESAPEAKE BAY CRITICAL AREA.
- NO PRIOR ZONING CASES.



Ref No 1

## PLAN TO ACCOMPANY A PETITION FOR A SPECIAL HEARING OF THE NIERMANN PROPERTY

1210 BERNICK AVENUE  
Deed Ref: S.M. 8522/584  
Tax Account No.: 09-10-450081  
Zoned: D.R. 2  
Tax Map 69; Grid 10; Parcel 439  
9th ELECTION DISTRICT  
4th COUNCILMANIC DISTRICT  
SCALE: 1"=30' DATE: SEPTEMBER 27, 2002

GERHOLD, CROSS & ETZEL, LTD  
REGISTERED PROFESSIONAL LAND SURVEYORS

Suite 100  
320 East Townsontown Boulevard  
Towson, Maryland 21286  
(410) 823-4470

COPYRIGHT 2002 BY GERHOLD, CROSS & ETZEL LTD.  
THIS PLAN IS PROTECTED BY COPYRIGHT. THE USE OF THIS  
PRODUCT IS STRICTLY PROHIBITED WITHOUT THE WRITTEN  
PERMISSION OF GERHOLD, CROSS & ETZEL LTD.

NOTE: THIS PLAN IS NOT INTENDED TO BE USED FOR STAKEOUT

| REVISION | DATE | PLAT DATE: 9/27/2002 | TECHNICIAN: K.DANNEFELSER | FILE NAME: X.NIERMANNZONING.pro |
|----------|------|----------------------|---------------------------|---------------------------------|
|          |      |                      |                           |                                 |
|          |      |                      |                           |                                 |



1B02.3 Special regulations for certain existing developments or subdivisions and for small lots or tracts in D.R. Zones.

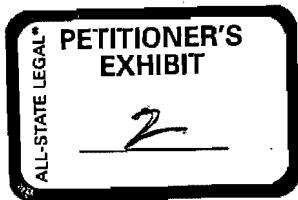
A. In D.R. Zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy and development of; alteration or expansion of structures upon; and administrative procedures with respect to:

1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Planning Commission and which has been used, occupied or improved in accordance with the approved subdivision plan;
2. Any land in a subdivision tract which was laid out in accordance with the regulations of residence zoning classifications now rescinded, for which a subdivision plan tentatively approved by the Planning Board remains in effect and which has not been used, occupied or improved in accordance with such plan;
3. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. Zone in which such tract is located;
4. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is less than one-half acre in area, regardless of the number of dwelling or density units permitted at the maximum permitted density in the zone in which it is located; or
5. Any lot or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission.

B. Standards applicable to existing developments, etc. The minimum standards for net area, lot width, front yard depth, single-side-yard width, sum of widths of both side yards, rear yard depth and height with respect to each use in a development described in Subsection A.1 above, shall be as prescribed by the zoning regulations applicable to such use at the time the plan was approved by the Planning Board or Commission; however, the same or similar standards may be codified under Section 504, and these standards shall thereupon control in such existing developments. Development of any subdivision described in Subsection A.2 shall be in accordance with the tentatively approved subdivision plan therefor. Standards for development of lots or tracts described in Subsection A.3, A.4 or A.5 shall be as set forth in Subsection C below.

C. Development standards for small lots or tracts.

1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:

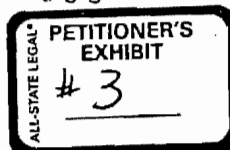


(OVER)

| Zoning Classification | Minimum Net Lot Area per Dwelling Unit (sq. ft.) | Minimum Lot Width (feet) | Minimum Front Yard Depth (feet) | Minimum Width of Individual Side Yard (feet) | Minimum Sum of Side Yard Widths (feet) | Minimum Rear Yard Depth (feet) |
|-----------------------|--------------------------------------------------|--------------------------|---------------------------------|----------------------------------------------|----------------------------------------|--------------------------------|
| D.R.1                 | 40,000                                           | 150                      | 50                              | 20                                           | 50                                     | 50                             |
| D.R.2                 | 20,000                                           | 100                      | 40                              | 15                                           | 40                                     | 40                             |
| D.R.3.5               | 10,000                                           | 70                       | 30                              | 10                                           | 25                                     | 30                             |
| D.R.5.5               | 6,000                                            | 55                       | 25                              | 10                                           | --                                     | 30                             |
| D.R.10.5              | 3,000                                            | 20                       | 10                              | 10                                           | --                                     | 50                             |
| D.R.16                | 2,500                                            | 20                       | 10                              | 25                                           | --                                     | 30                             |

2. Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504.

D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Section 1B01.3.A.7.



NO TITLE EXAMINATION  
NO CONSIDERATION

THIS DEED, Made this 18th day of June, in the year one thousand nine hundred and ninety (1990), by and between NANCY T. WEHR, party of the first part, hereinafter called GRANTOR and NANCY WEHR NIERMANN, her daughter, party of the second part, hereinafter called GRANTEE.

WITNESSETH: That in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey unto the said NANCY WEHR NIERMANN, her heirs and assigns, in fee simple, all that lot or parcel of land situate, lying and being in Baltimore County, State of Maryland, and described as follows:

BEGINNING for the same in the center line of Berwick Avenue, thirty feet wide, at the end of the third line of the land described in a deed from Albertus Cotton and wife to H. Edwin Jones, dated April 21, 1938 and recorded among the Land Records of Baltimore County in Liber C.W.B. Jr. No. 1029, folio 221, and running thence binding on the center line of Berwick Avenue south eighty degrees and fourteen minutes west ninety-seven and thirty-four one-hundredths feet to the end of the fourth line of the land described in a deed from Albertus Cotton and wife to William G. McConnel, dated April 12, 1943, and duly recorded among said Land Records of Baltimore County; thence binding reversely on said fourth line north one degree and thirty-two minutes west two hundred twenty-eight and forty-one one-hundredths feet to the beginning of said fourth line; thence running for a line of division, now made, north eighty-eight degrees, and twenty-eight minutes east ninety-six and thirty-four one-hundredths feet to the beginning of the third line in the deed to H. Edwin Jones first herein referred to, and thence running with and binding on said third line south one degree and thirty-two minutes east two hundred fourteen and forty-seven one-hundredths feet to the place of beginning.

BEING the same property conveyed to FREDERICK L. WEHR and NANCY T. WEHR, his wife, as tenants by the entireties, by H. EDWIN JONES and ELLEN P. JONES, his wife, by Deed dated May 21, 1974 and recorded among the Land Records of Baltimore County in Liber 5448, folio 224; the said FREDERICK L. WEHR having since departed this life on or about December 2, 1975, thereby vesting title to said property in Nancy T. Wehr, by operation of law.

THE party of the first part, Grantor herein, declares and affirms under the penalties of perjury that there is no consideration paid or to be paid for this transfer within in the meaning of MD. TAX PROP. CODE ANN. §12-103 or §13-203(as amended).

TOGETHER WITH the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above described lot or parcel of ground unto and to the use of the said party of the second part, her heirs and assigns, in fee simple.

AND the said party of the first part hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that she will Warrant Specially the title to the property hereby granted; and that she will execute such further assurances of the same as may be requisite or necessary.

WITNESS the hand and seal of the Grantor herein.

WITNESS:

*[Signature]*

*[Signature]* (SEAL)  
NANCY T. WEHR

RECEIVED FOR TRANSFER  
State Department of  
Assessments & Taxation  
for Baltimore County  
R 6-22-90

AGRICULTURAL TRANSFER TAX  
NOT APPLICABLE

SIGNATURE *[Signature]* DATE *[Signature]*

TRANSFER TAX NOT REQUIRED

County of Prince George's  
BALTIMORE COUNTY MARYLAND

*[Signature]*

Date 6-22-90

Sec 11-85 C



THE TITLE GUARANTEE COMPANY  
(Individual Form)

App. H-83742

LIBER 5448 PAGE 224

ALL-STATE LEGAL

EXHIBIT

#4

This DEED, Made this THIRTY-FIRST day of MAY, in the year one  
thousand nine hundred and seventy-four, by and between H. EDWIN JONES and  
ELLEN P. JONES, his wife, parties of the first part, Grantors; and FREDERICK L.  
WEHR and NANCY T. WEHR, his wife, parties of the second part, Grantees.

Witnesseth: that in consideration of the sum of Five Dollars, and other valuable considerations, the  
receipt whereof is hereby acknowledged, the said Grantor does hereby grant, convey, and assign unto  
the said Grantees, as tenants by the entireties, their assigns, and unto the survivor  
of them, his or her heirs and assigns, in fee simple, all that -----

----- lot(s) of ground  
situate in the Ninth Election District of Baltimore County, -----  
in the State of Maryland, and described as follows, that is to say:

BEGINNING for the same in the center line of Berwick Avenue, thirty feet wide, at  
the end of the third line of the land described in a deed from Albertus Cotton and wife to  
H. Edwin Jones, dated April 21, 1938 and recorded among the Land Records of Baltimore County  
in Liber C.W.B.Jr. No. 1029, folio 221, and running thence binding on the center line of  
Berwick Avenue south eighty degrees and fourteen minutes west ninety-seven and thirty-four  
one-hundredths feet to the end of the fourth line of the land described in a deed from  
Albertus Cotton and wife to William C. McConnel, dated April 12, 1943, and duly recorded  
among said Land Records of Baltimore County; thence binding reversely on said fourth line  
north one degree and thirty-two minutes west two hundred twenty-eight and forty-one one-  
hundredths feet to the beginning of said fourth line; thence running for a line of division,  
now made, north eighty-eight degrees, and twenty-eight minutes east ninety-six and thirty-  
four one-hundredths feet to the beginning of the third line in the deed to H. Edwin Jones  
first herein referred to, and thence running with and binding on said third line south one  
degree and thirty-two minutes east two hundred fourteen and forty-seven one-hundredths feet  
to the place of beginning.

BEING the same lot of ground which by Deed dated May 27, 1943 and recorded among  
the Land Records of Baltimore County in Liber R.J.S. No. 1288, folio 464, was granted  
and conveyed by Albertus Cotton and wife unto the within named Grantors.

204 2 0212 23

197.50.00

Liber: 1280

ALL-STATE LEGAL PETITIONER'S EXHIBIT

#5

464

( Notarial seal )

John J. Timanus

Notary Public

Recorded May 28 1943 at 1.30 P.M. & EXD

Per Robert J. Spittel

Clerk

( Rec By R D B )

( EXAMINERS S & P )

40335

Albertus Cotton and wife

Deed to

H. Edwin Jones and wife

U.S.S. \$2.20 S.R.T. \$1.60

This Deed Made this 27th day of May in the year one thousand nine hundred and forty three by and between Albertus Cotton and Florence A. Cotton his wife of Baltimore County in the State of Maryland parties of the first part and H. Edwin Jones and Ellen F. Jones his wife of Baltimore County in the State of Maryland

parties of the second part

Witnesseth that in consideration of the sum of five dollars (\$5.00) and other good and valuable considerations the receipt whereof is hereby acknowledged the said parties of the first part do hereby grant and convey unto the said parties of the second part as tenants by the entireties their assigns and unto the survivor or them his or her heirs and assigns in fee simple all that lot of ground situate in the Ninth Election District of Baltimore County in the State of Maryland and which by recent survey of Howard C. Sutton Surveyor dated May 8 1943 is more particularly described as follows

Beginning for the same in the centre of Berwick Avenue thirty feet wide at the end of the third line of the land described in a deed from Albertus Cotton and wife to H. Edwin Jones dated April 21 1938 and recorded among the Land Records of Baltimore County in Liber C W B Jr No 1029 folio 221 and running thence binding on the center line of Berwick Avenue south eighty degrees and fourteen minutes west ninety seven and thirty four one hundredths feet to the end of the fourth line of the land described in a deed from Albertus Cotton and wife to William G. McConnel dated April 12 1943 and duly recorded among said Land Records of Baltimore County thence binding reversely on said fourth line north one degree and thirty two minutes west two hundred twenty eight and forty one one hundredths

**ANIMAL BOARDING PLACE, CLASS B** — Any other animal boarding place not excluded under the general definition of "animal boarding place" above. [Bill No. 85-1967]<sup>2</sup>

**ANTIQUE SHOP** — A retail establishment for the sale of goods of a type that are often purchased by collectors and that may include furniture, pottery, glassware, jewelry, linens, tools, artworks and books which were manufactured at least 20 years in the past. Antique shop includes the outside display of merchandise offered for sale in front of the establishment on the same lot within five feet of the front porch of front building facade. [Bill Nos. 73-2000; 74-2000]

**ARCADE** — A building or part of a building in which five or more pinball machines, video games or other similar player-operated amusement devices are maintained. [Bill No. 29-1982]

**AREA, NET** — Land area (not including) area of land in public streets or other fee-simple public rights-of-way. [Bill No. 40-1967]

**ARTERIAL STREET** — A motorway or portion thereof which: is or is intended for travel to or from major employment centers, such as town centers; has or is intended to have, four or more lanes for moving traffic; is or is intended to be designed for traffic speeds of at least 40 miles per hour; has or is intended to have a right-of-way at least 66 feet wide; is not a freeway or an expressway; and has been designated as an arterial street (or as a boulevard or thoroughfare) by the Planning Board. [Bill No. 40-1967]

**ASSISTED-LIVING FACILITY** — A building, or a section of a building, or a residence that provides: (1) a residential environment assisted by congregate meals, housekeeping and personal services for persons 62 years of age or older, who have temporary or periodic difficulties with one or more essential activities of daily living, such as feeding, bathing, dressing or mobility, and for persons, regardless of age, who have physical or developmental disabilities; or (2) three daily meals in a family setting, housekeeping and personal services such as assistance with bathing, dressing or laundry for no more than 15 persons 62 years of age or older and which satisfies and complies with Section 432 of these regulations. Such a facility must be certified or licensed by the Maryland Office on Aging as is otherwise required in COMAR, Title 14.11.07. [Bill No. 188-1993]

- A. Where such services are located in a converted dwelling or other building that has not been enlarged to accommodate the facility by more than 25% of ground floor area within a period of five years prior to the date of application, it shall be referred to in these regulations as assisted-living facilities Class A. [Bill No. 188-1993]
- B. Where such services are located in a new building constructed for that purpose or in a dwelling or other building that has been enlarged to accommodate the facility by 25% or more of ground floor area within a period of five years prior to the date of application, it shall be referred to in these regulations as assisted living facilities Class B. [Bill No. 188-1993]

<sup>2</sup> Editor's Note: The following definitions, which originally followed this definition, were repealed as indicated: "antenna, long-wire" and "antenna, rigid-structure" were repealed by Bill No. 30-1998; "apartment building" and "apartment, group-house" were repealed by Bill No. 2-1992; "apartment house" was repealed by Bill No. 111-1968.

*p#2x6*

IN RE: PETITION FOR SPECIAL HEARING  
NW/Corner Berwick & Wehr Roads  
(1210 Berwick Road)  
9<sup>th</sup> Election District  
4<sup>th</sup> Council District

Nancy W. Niermann, Owner;  
Kevin Michels, West Wind, LLC,  
Contract Purchasers

\* BEFORE THE  
\* ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 03-160-SPH  
\*

\* \* \* \* \*



FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owner of the subject property, Nancy W. Niermann, and the Contract Purchasers, West Wind, LLC, by Kevin Michels. The Petitioners request a special hearing to approve the subject property as an undersized lot, pursuant to Section 304 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Nancy Niermann, property owner; Kevin Michels, a principal member of West Wind, LLC, Contract Purchasers; and Howard L. Alderman, Jr., Esquire, attorney for the Petitioners. Also present were Bruce E. Doak, the Registered Land Surveyor who prepared the site plan for this property, and Frederick T. Weir, who resides across the street from the subject site. Appearing in opposition to the request were several residents from the surrounding locale, including David and Josephine Albright, who own the adjacent property at 1214 Berwick Road, and their daughter, Felicia Albright and her husband, Doug Scrivener, who reside on that property. Also appearing in opposition were Leza Ebeling, and David and Margaret Owens, who reside across from the subject site at 1217 Berwick Road. In addition, Anne J. Malone, who owns the adjacent property known as

pl et 7

all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in D.R.2 Zones, 50 feet in D.R.3.5 Zones and 40 feet in D.R.5.5 Zones. In no case, however, shall nonresidential principal buildings have front yards of less depth than those specified therefor in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 Zones respectively. [Resolution, November 21, 1956]

- 303.2 In B.L., B.M. and B.R. Zones, the front yard depth of any building hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side, provided such adjoining lots are improved with permanent commercial buildings constructed of fire-resisting materials situate within 100 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all lots within 100 feet on each side thereof which are improved as described above.

#### Section 304

#### Use of Undersized Single-Family Lots [BCZR 1955; Bill No. 47-1992]

- 304.1 [Bill Nos. 64-1999; 28-2001] Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
- B. All other requirements of the height and area regulations are complied with; and
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

- 304.2 Building permit application.

- A. Any person desiring to erect a dwelling pursuant to the provisions of this section shall file with the Department of Permits and Development Management, at the time of application for a building permit, plans sufficient to allow the Office of Planning to prepare the guidelines provided in Subsection B below. Elevation drawings may be required in addition to plans and drawings otherwise required to be submitted as part of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Office of Planning in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.
- B. At the time of application for the building permit, as provided above, the Director of the Department of Permits and Development Management shall request comments from the Director of the Office of Planning (the "Director"). Within 15 days of receipt of a request from the Director of the Department of Permits and Development Management, the Director shall provide to the



**BALTIMORE COUNTY, MARYLAND****INTER-OFFICE CORRESPONDENCE**

**TO:** Timothy M. Kotroco, Director  
Department of Permits and  
Development Management

**DATE:** October 10, 2003

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

**SUBJECT:** 1210 Berwick Avenue

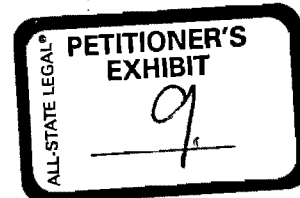
**INFORMATION:**

**Item Number:** 03-160

**Petitioner:** Thomas Donohue

**Zoning:** DR 2

**Requested Action:** Special Hearing for Undersized Lot

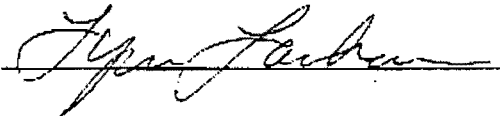


**SUMMARY OF RECOMMENDATIONS:**

An appeal of the decision rendered by the Zoning Commissioner for the subject property will be heard before the Board of Appeals on October 16, 2003.

The Office of Planning supported the initial request and reaffirms support of the petitioner's request to approve the subject property as an undersized lot, pursuant to Section 304 of the Baltimore County Zoning Regulations.

The applicant has submitted a site plan and building elevations (all sides) of the proposed structure to this office. The Office of Planning finds that the elevations are appropriate and consistent with other houses in the neighborhood.

**Section Chief:** 

AFK/LL

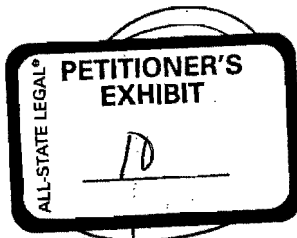
|                   |                 |         |              |            |   |
|-------------------|-----------------|---------|--------------|------------|---|
| Post-It® Fax Note | 7671            | Date    | 10/15        | # of pages | 1 |
| To                | Howard Alderman | From    | Lynn Larkin  |            |   |
| Co./Dept.         |                 | Co.     |              |            |   |
| Phone #           |                 | Phone # | 410-887-3480 |            |   |
| Fax #             | 410-296-2801    | Fax #   |              |            |   |

SECTION 304 -- USE OF UNDERSIZED SINGLE-FAMILY LOTS - Prior to the application for a building permit, the applicant must provide satisfactory documentation. The applicant may be required to furnish:

- a. a copy of the pre-1955 deed or subdivision plat;
- b. (no additions)
- c. contiguous ownership

It is obvious that Section 304 of the Baltimore County Zoning Regulations recognizes the existence of parcels of property that did not meet the minimum lot sizes mandated at the time the minimum lot size regulations were passed. To do otherwise would have the effect of rendering such undersized lots useless, and such legislation would be unconstitutional.

1. Section 304 B.C.Z.R., however, is silent as to when contiguous ownership would serve as a bar to its implementation, i.e., contiguous ownership in existence only at the time this regulation was passed or contiguous ownership in existence at that time and at any time thereafter.
2. It is therefore important to consider the intent of the owner who attempts to invoke the applicability of Section 304 BCZR. Each situation must be judged individually by the particular facts and circumstances presented. If the intent to avoid the regulations is obvious, Section 304c. cannot be invoked and variances must be required. An obvious method used is called "checkerboarding". The owner of a tract of land consisting of undersized lots makes conveyances of certain lots in order to create a pattern of ownership which qualifies each parcel as an undersized lot in a single and separate ownership, thereby avoiding the necessity of public hearing and notice for a variance. Often this is done by transferring title to members of the owner's family or to his business associates, e.g., to officers of the corporation which purchased the tract. Another method is to sell adjoining undersized lots which were recently purchased to individual, bona fide buyers. This would permit the new owner of a single undersized lot to build without a variance, where such permission would not have been granted to the owner of the entire tract.
3. If a single owner of contiguous undersized lots has purchased the property in good faith and without any intent to avoid the area requirements, 304c. may be used to allow the owner to build pursuant thereto. Good faith also must be determined by the facts and circumstances of each situation, but such factors as dates of purchase of the parcels, the purpose of the purchase, the intent of the purchase, can be utilized to so determine. This office has traditionally applied the "six year rule" to determine good faith, and that rule shall be one criteria to be used. The rule holds that if the single owner of an undersized lot contiguous to another parcel owned by him has transferred ownership of one to another, 304c. would apply if such new ownership has been held for a period of at least six years. This rule shall not preclude exceptions where it is clear, and equitable, that single ownership of contiguous property was not intended to avoid area requirements.
4. Ownership Information Including:
  - ( i ) a property tax computer printout for all adjacent properties, in addition to the subject property;
  - ( ii ) copies of the deeds for all adjacent properties, in addition to the subject property; and
  - (iii) a notarized affidavit stating that the applicant has had no financial interests for the prior six years in any adjacent properties.



Interpretation: The Zoning Commissioner retains the right Section 500.6 B.C.Z.R. to interpret whether the spirit and intent of these Regulations are being adhered to on a case-by-case basis (see Section 101 - Ownership Z.C.P.M., Page 1-23)

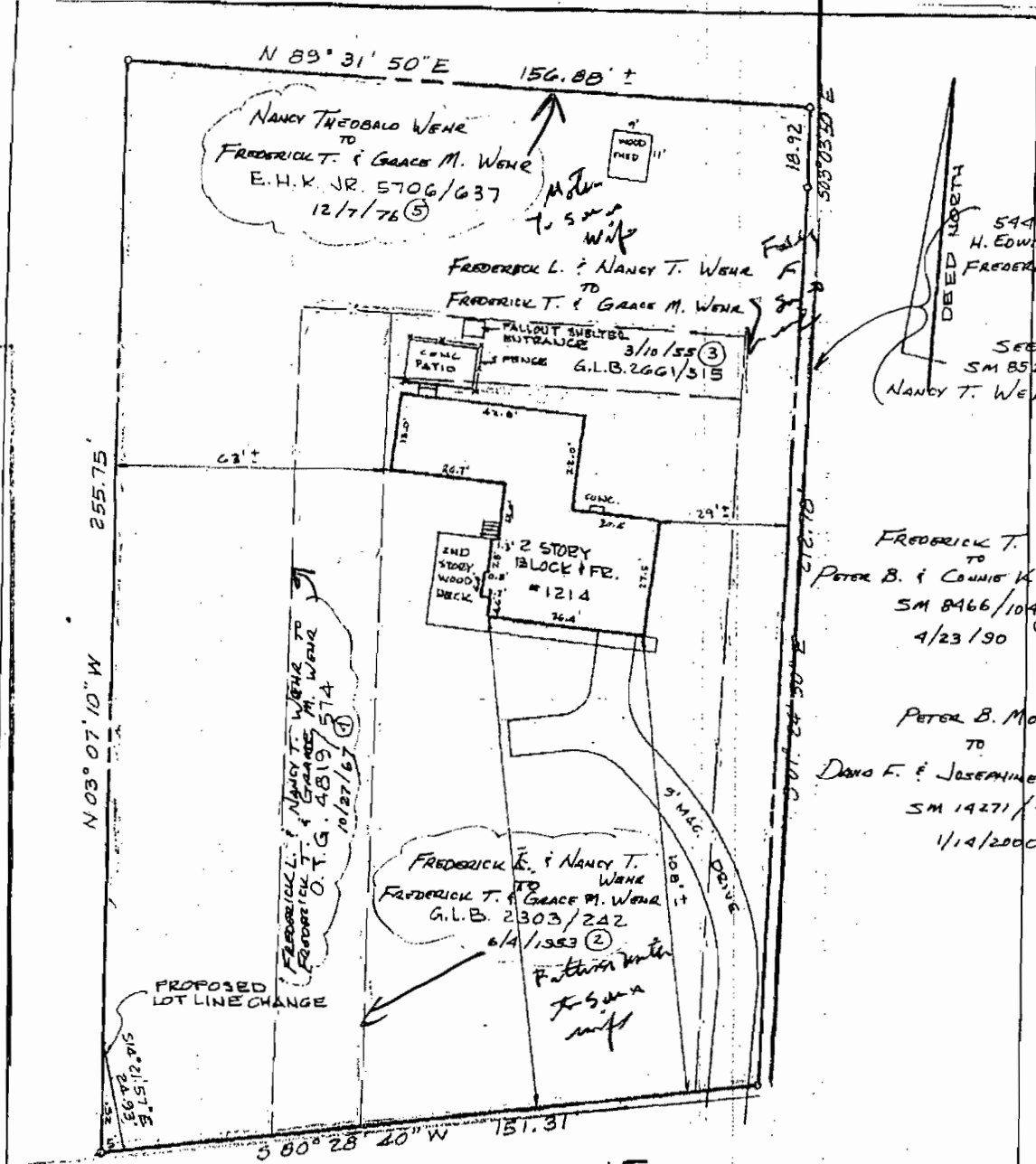
WILLIAM G. & JESSIE P. McCONNEL  
TO  
FREDERICK L. & NANCY T. WEHR  
TBS 1831/203  
9/29/50 ①

81/28/2002 16:48

4108215603

W NIERMANN

PAGE 02



BERWICK AVENUE  
(30' R/W)

CERTIFICATION PLAT  
OF THE  
FREDERICK T. WEHR PROPERTY  
3TH ELECT. DIST. BALTIMORE COUNTY, MD.

THIS IS TO CERTIFY that I have located the improvements on the lot shown hereon, and that said improvements exist, and that said improvements lie entirely within the boundaries, except as shown.

Per KIDDE CONSULTANTS, INC.  
THIS PLAT NOT INTENDED FOR USE IN THE ESTABLISHMENT OF  
PROPERTY LINES

KIDDE CONSULTANTS, INC.  
1020 Cromwell Bridge Road  
Baltimore, Maryland 21204

Scale: 1" = 30' Issued:

0189292A 54626C

Rev. 9/77 RJF301

PT EX 11



Tax ID#: 04090906200230

\*\* PUBLIC RECORD \*\*

Tax ID#: 04090906200230

County: BC

PROPERTY ADDRESS: 1200 BERWICK RD, , TOWSON, MD 21204-6504 Legal Subdiv/Neighborhood: MALVERN

OWNER: JACQUELINE M WALLACE, Phone #: (410) 823-7804 Abs Owner: N

MAIL ADDRESS: 1200 BERWICK RD, , BALTIMORE, MD 21204-6504

LEGAL DESCRIPTION: IMPSPT LT 2 MALVERN

Mag/Dist #: 9

Lot: 2

Block/Square: Tax Map:

Elec Dist: 9

Legal Unit #:

Grid: 11

Map: 69

Section:

Blk Suffix:

Subdiv Ph:

Addl Parcel Flag/#: /

Map Suffix:

Suffix:

Parcel: 479

Sub-Parcel:

TOTAL TAX BILL: \$2,983

State/County Tax: \$2,829

City Tax:

Tax Levy Yr: 2001

Front Foot Fee:

Spec Tax Assmt: \$154

Refuse:

Tax Rate: 1.20

Tax Class:

Homestd/Exempt Status:

Exempt Class: 000

Mult. Class:

**ASSESSMENT**

Year Assessed

Total Tax Value

Land

Improvement

Land Use

Taxable Assessment

1998

\$235,950

\$93,560

\$142,390

\$

State: \$

Previous

\$91,220

\$83,560

\$128,750

\$

Municipal: \$

Early

\$88,070

\$83,560

\$111,920

\$

City: \$

**DEED**

Deed Liber: 6729

Deed Folio: 798

Deed Type:

Transfer Date

Price

Grantor

Grantee

15-JUN-1984

\$145,000

FINLEY WILLIAM N, JR

WALLACE JACQUELINE M

**PROPERTY DESCRIPTION**

Year Built: 1952

Zoning:

Census Trct/Block: 490500/2

Irregular Lot:

Square Feet: 18,240

Acreage: 0.42

Land Use: Residential

Property Class: R

Plat Liber/Folio: 8/34

Property Card:

Quality/Grade: GOOD

Prop Use: RESIDENTIAL

Frontage: 1

**STRUCTURE DESCRIPTION**

Construction

Section 1

Section 2

Section 3

Section 4

Section 5

Story

Brick

Area

1B

1,728

Ext Wall: Brick/Stone

Roofing: Shingle - Composite

Foundation:

Stories: 1B

Units: 1

Style:

Year Remodeled: 1952

Total Building Area:

Living Area: 1,728

Base Sq Ft: 1,728

Model/Unit Type: SINGLE

**FAMILY UNIT**

Rooms:

Bsmt Type: Not Specified

Fireplaces: 1

Garage Type: Attached

Bedrooms:

Bsmt Tot Sq Ft: 1728

Fireplace Type: BRCK

Garage Sq Ft: 440

Full Baths: 2

Bsmt Fin Sq Ft:

Attic Type:

Gar Constr: FRAME

Half Baths: 0

Bsmt Unfin Sq Ft:

Attic Sq Ft:

Garage Spaces:

Baths: 2

Air Cond:

Gas:

Heat: Forced Air

Sewer: PUBLIC Fuel:

Electric:

Water: PUBLIC

Underground: Walls:

PA EX 12

01/10/02 THU 14:08 FAX 410 385 3700

BALTIMORE M &amp; S

002

CAMBRIDGE, MD  
COLUMBIA, MD  
EASTON, MD  
FREDERICK, MD

LAW OFFICES  
**MILES & STOCKBRIDGE P.C.**  
10 LIGHT STREET  
BALTIMORE, MARYLAND 21202-1487  
TELEPHONE 410-727-6484  
FAX 410-385-3700

MCLEAN, VA  
ROCKVILLE, MD  
TOWSON, MD  
WASHINGTON, D.C.

RICHARD D. BENNETT  
BALTIMORE PHONE: 410-385-3608  
WASHINGTON PHONE: 202-797-9600  
EMAIL: rbennett@milesstockbridge.com

January 10, 2002

**VIA FACSIMILE**

Mrs. Nancy Wehr Niemann

Facsimile No. 410-821-5603

Re: 1210 Berwick Road, Ruxton, Maryland

To Whom It May Concern:

It has come to my attention that some question has been raised as to the above-captioned lot and its suitability for the building of a home. I have lived at 1206 Berwick Road for almost 18 years and the lot at 1210 Berwick Road is almost the same lot size as the lot upon which I built my home 18 years ago.

The property at 1210 Berwick Road is a large open lot which is clearly suitable as a building lot. I have no objection to a home being built there. Indeed, the lots on the North side of Berwick - both 1210 and 1206 - tend to be larger than the lots on the South side of Berwick.

If I can answer any further questions, please do not hesitate to contact me.

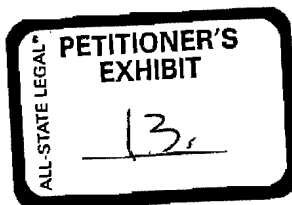
Sincerely,



Richard D. Bennett

RDB/klf

FROM 02-223-A  
(LOT ISSUE ONLY)



1216 Benwick  
- Built  
1993

14A



Left of Albright  
abuts 1210 property  
in back

3,504 sq ft Living Area



14 B



Σ behind property with swimming  
Pool behind it - Directly behind  
1210 Berwick - There is 2nd  
floor + slate roof  
1214 Boyce Ave  
Built 1978

14C



1214 Boyle -  
Directly Behind  
1210 Berwick  
Built 1978



14 D



Albright Benwick  
A 1214



14 E

1/2 Lot



1214 Albright Benwick N  
to left of 1210  
to E  
1214 Benwick N  
next and Touching  
1210 Benwick



14 #F



To left of Albright  
1300 Berwick



1216 Berwick 14H  
Built - 1993 ~~21~~ ~~14H~~



Left of Albright on  
Berwick - abuts 1210  
Lot in back behind  
Albright property at  
1214 Berwick



1216 Berwick  
Built 1993

146



backs up to 1210 Lot





DESIGNED FOR:  
**Southern Living**  
**PLANS**

*Fairmont Heights*  
**810**

Consists of  
**15 Sheets**

APPROVED BY:

PETITIONER'S  
EXHIBIT  
**A-0**

REVISIONS

THESE PLANS SHOULD BE REVIEWED BY A LOCAL ARCHITECT  
OR ENGINEER TO VERIFY THAT THEY MEET ALL LOCAL CODES.

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*Ref No 4*

PETITIONER'S  
EXHIBIT  
**UBA 715**



| DOOR SCHEDULE |            |      |                      |        |       |     |
|---------------|------------|------|----------------------|--------|-------|-----|
| NO.           | SIZE       | TYPE | DESCRIPTION          | CASING | IN    | OUT |
| 01            | 3'0"x6'8"  | EXT. | W/12" TR./10" SDLT.  | A*-P   | WM 3  | 1   |
| 02            | 18'0"x7'0" |      | PANEL GAR. DR.       | BRMD.  |       | 1   |
| 03            | 2'8"x6'8"  |      | 6 PANEL              | *C*-P  | BRMD. | 1   |
| 04            | 2'8"x6'8"  |      | 9 LITE               | *B*-P  | BRMD. | 1   |
| 05            | 5'0"x6'8"  |      | PR. ATRIUM W/12" TR. | *A*-P  | BRMD. | 1   |
| 06            | 2'2"x6'8"  |      | 6 PANEL AT GAR.      | *C*-P  |       | 1   |
| 07            | 3'0"x6'8"  |      | FRENCH               | *B*-P  | BRMD. | 1   |
| 08            | 2'0"x6'8"  | INT. | 6 PANEL              | *B*-P  | *B*-P | 1   |
| 09            | 2'6"x6'8"  |      |                      | *B*-P  | *B*-P | 2   |
| 10            | 2'6"x6'8"  |      |                      | *B*-P  | *B*-P | 1   |
| 11            | 2'6"x6'8"  |      | PANEL PKT. W/12" TR. | *A*-P  | *A*-P | 1   |
| 12            | 2'8"x6'8"  |      |                      | *A*-P  | *A*-P | 1   |
| 13            | 2'0"x6'8"  |      | 6 PANEL              | *C*-P  | *C*-P | 1   |
| 14            | 2'4"x6'8"  |      |                      | *C*-P  | *C*-P | 1   |
| 15            | 2'6"x6'8"  |      |                      | *C*-P  | *B*-P | 3   |
| 16            | 2'4"x6'8"  |      |                      | *C*-P  | *B*-P | 1   |
| 17            | 2'4"x6'8"  |      |                      | *C*-P  | *C*-P | 1   |
| 18            | 2'4"x6'8"  |      |                      | *B*-P  | *C*-P | 2   |
| 19            | 2'16"x6'8" |      |                      | *B*-P  |       | 1   |
| 20            | 2'8"x6'8"  |      |                      | *B*-P  | *B*-P | 1   |
| 21            | 4'0"x6'8"  |      | 4 PANEL BIFOLD       | *C*-P  |       | 1   |
| 22            | 2'6"x6'8"  |      | 6 PANEL PKT.         | *B*-P  | *B*-P | 1   |
| 23            | 2'0"       |      | GLASS DR.            | TILE   |       | 1   |
| 24            | 2'4"x6'8"  |      | 6 PANEL (215 ONLY)   | *C*-P  | *C*-P | (1) |
| 25            | 2'8"x6'8"  |      | 6 PANEL              | *C*-P  | *B*-P | 1   |
| 26            | 2'4"x6'8"  |      |                      | *C*-P  | *C*-P | 2   |
| 27            | 2'4"x6'8"  |      |                      | *C*-P  | *C*-P | 1   |
| 28            | 2'4"x6'8"  |      |                      | *C*-P  | *B*-P | 1   |
| 29            | 1'6"x6'8"  |      |                      | *C*-P  |       | 1   |
| 30            | 2'8"x6'8"  |      |                      | *C*-P  |       | 1   |
| 31            | 2'6"x6'8"  |      |                      | *C*-P  |       | 2   |
| 32            | 2'8"x6'8"  | EXT. | 9 LITE               | *B*-P  | *C*-P | 1   |
| 33            |            |      |                      |        |       |     |
| 34            |            |      |                      |        |       |     |

| WINDOW SCHEDULE |           |             |                          |      |
|-----------------|-----------|-------------|--------------------------|------|
| TYPE            | SIZE      | EXT. CASING | DESCRIPTION              | QTY. |
| A               | 2'8"x5'6" | 1x4 w/BB    | D.H.                     | 2    |
| B               | 2'0"x6'2" | BRMD.       | D.H.                     | 4    |
| C               | 2'8"x6'2" | BRMD.       | FIXED                    | 1    |
| D               | 2'8"x6'2" | 1x4 w/BB    | D.H.                     | 1    |
| E               | 2'4"x4'6" | BRMD.       | D.H.                     | 1    |
| F               | 2'2"x4'6" |             | D.H.(w/12" TR. AT GRTRM. | 2    |
| G               | 3'2"x6'2" |             | D.H. PAIR w/6" MULLS     | 1    |
| H               | 5'0"x6'2" |             | FIXED                    | 1    |
| I               | 2'8"x4'6" | 1x4 w/BB    | D.H.(BRMD. AT REAR)      | 6    |
| J               | 2'2"x4'6" | 1x4 w/BB    | D.H. PAIR                | 1    |
| K               | 2'4"x4'6" |             | DORMER D.H.              | 2    |
| L               | 2'2"x4'6" | 1x4 w/BB    | D.H. PAIR                | 1    |
| M               | 2'8"x6'2" | BRMD.       | D.H.                     | 2    |
| N               | 3'0"x6'2" |             | FIXED ARCHED HD.         | 1    |
| O               |           |             |                          |      |
| P               | 3'0"x6'2" |             | D.H.                     | 1    |
| Q               |           |             |                          |      |
| R               |           |             |                          |      |
| S               |           |             |                          |      |
| T               |           |             |                          |      |

| ELECTRICAL PLAN KEY |                                            |
|---------------------|--------------------------------------------|
|                     | Duplex Convenience Outlet                  |
|                     | Duplex Outlet Above Counter                |
|                     | Weatherproof Duplex Outlet                 |
|                     | Half-switched Duplex Outlet                |
|                     | Special Purpose Outlet                     |
|                     | Duplex Outlet in Floor                     |
|                     | 220 Volt Outlet                            |
|                     | Electric Door Operator                     |
|                     | Ceiling Mounted Incandescent Light Fixture |
|                     | Wall Mounted Incandescent Light Fixture    |
|                     | Recessed Incandescent Light Fixture        |
|                     | Exhaust Fan                                |
|                     | Exhaust Fan/Light Combination              |
|                     | Fluorescent Light Fixture                  |
|                     | Ceiling Fan/Light                          |

D.H.-DOUBLE HUNG  
CSMT-CASEMENT  
STAT-STATIONARY  
B.B.-BACKBAND  
BRMD/BM-BRICKMOULD  
TRAN-TRANSOM

#### DISCLAIMER

The purchaser of this plan is responsible for compliance with all local building codes and for ensuring that the plan is correctly adapted to accommodate local site conditions. The purchaser should consult with a local architect or engineer regarding these matters.

Before construction begins, the purchaser should thoroughly review this plan with the contractor, verify all dimensions, and report to the architect of the plan any errors, omissions, or questions for clarification.

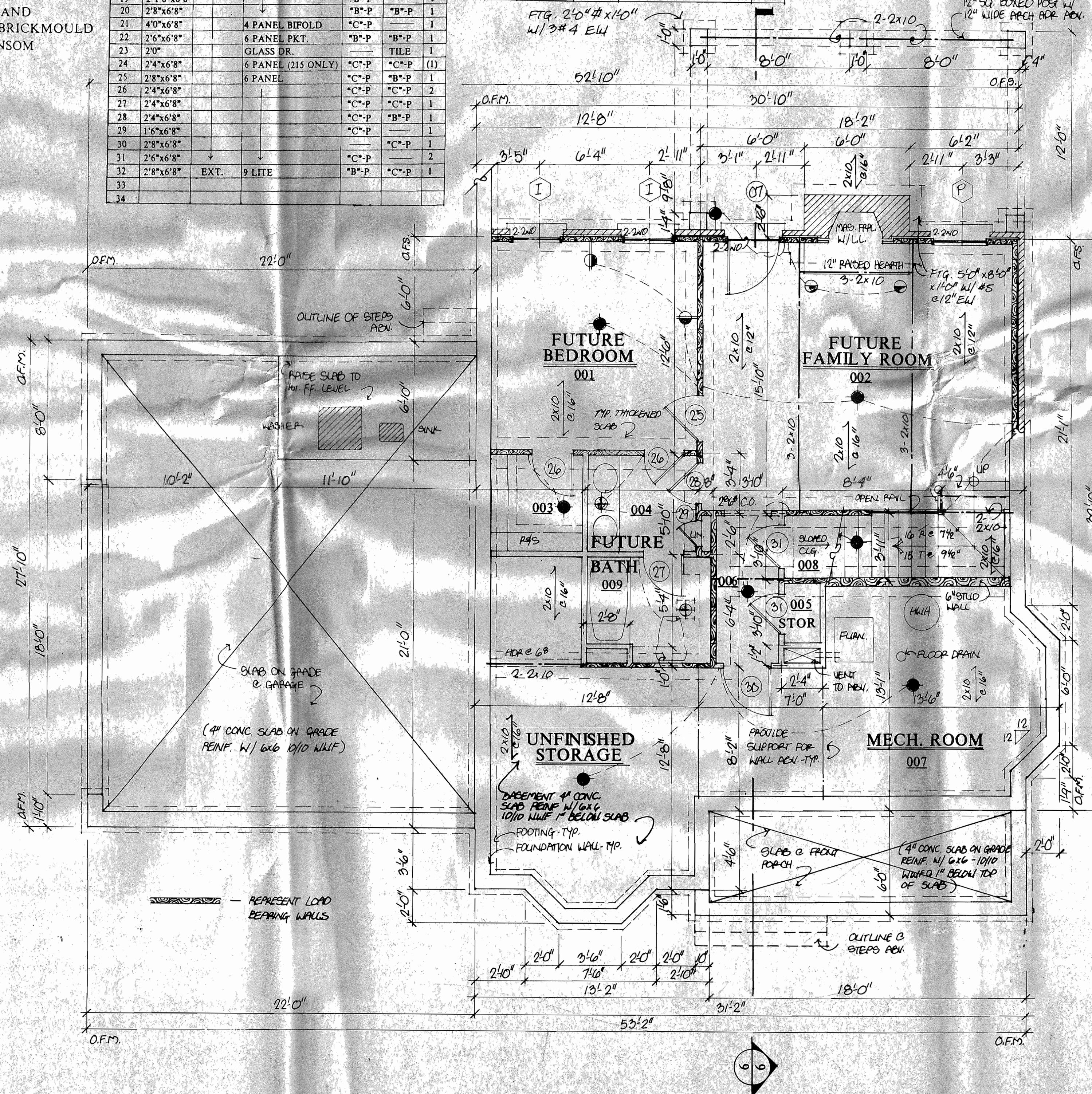
Before construction begins, the purchaser or contractor should verify all structural elements for the plan and site with local engineer.

The exact size, reinforcement and depth of all concrete footings must be determined by local soil conditions and acceptable practices for construction. The bottom of all footings should extend below frostline. Before construction begins, the purchaser of contractor should verify the design with a local engineer.

The purchaser of these plans understands all risks associated with adapting the plan to local sites affected by regional variations in climate, local site conditions, design needs and building codes. Neither Southern Living nor the architect of this plan may be held responsible for adapting this plan to local site conditions, design changes, construction means or methods, costs, workmanship, quality of materials or equipment utilized in the construction.

The purchaser is granted the right to build only one structure from this plan (or modified plan). This right extends to the original purchaser only and is not transferable.

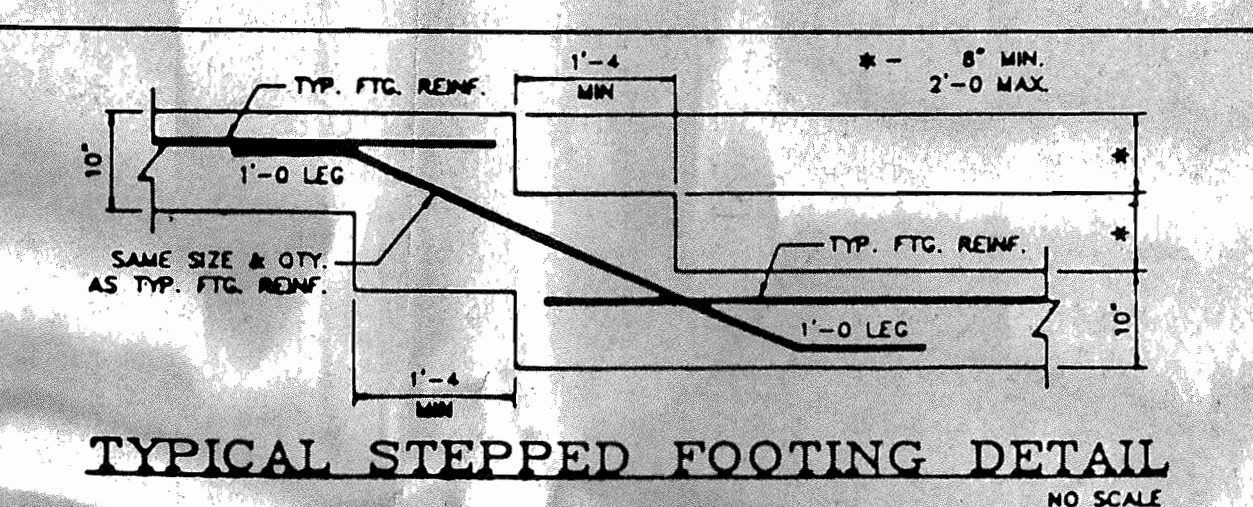
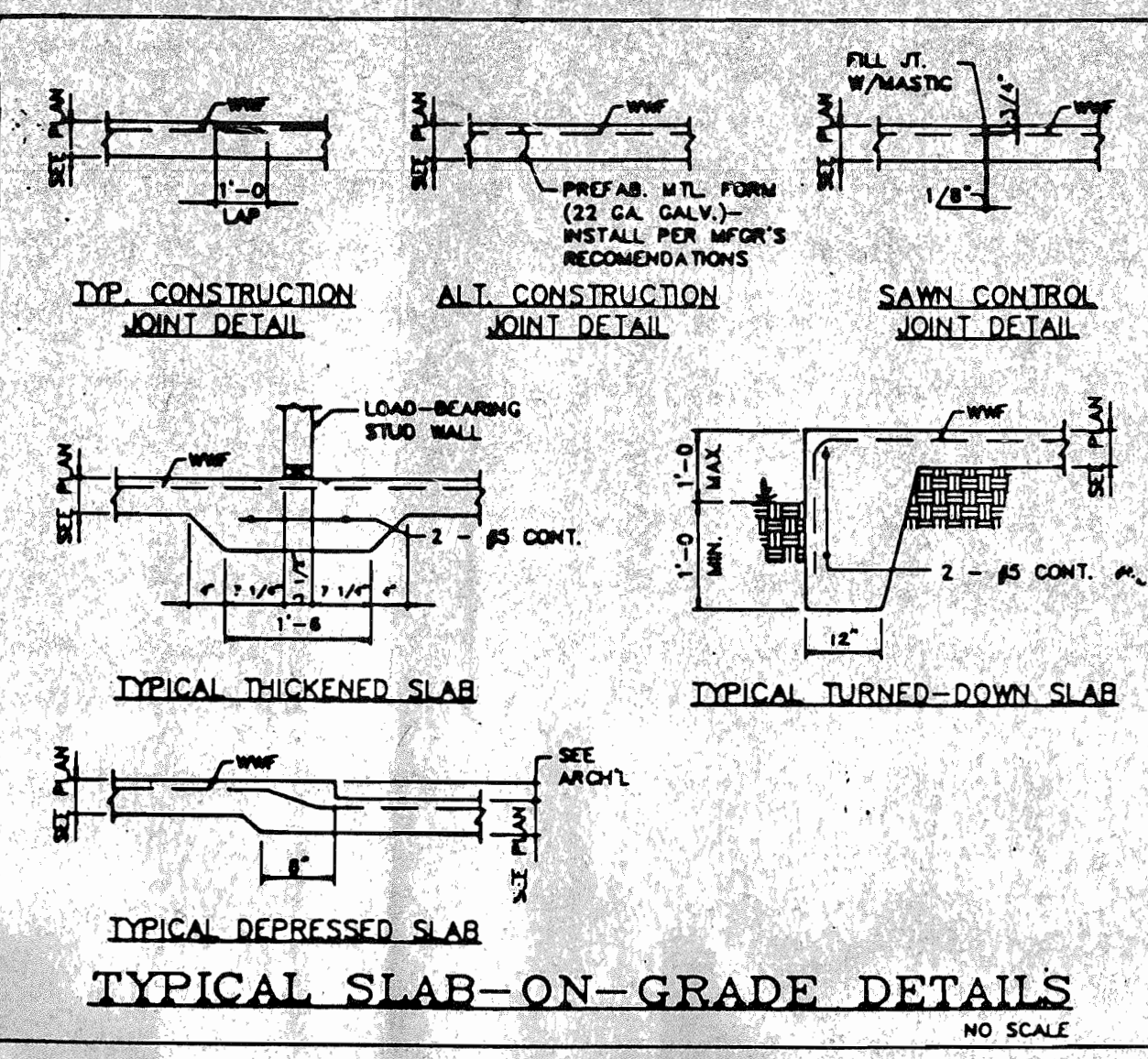
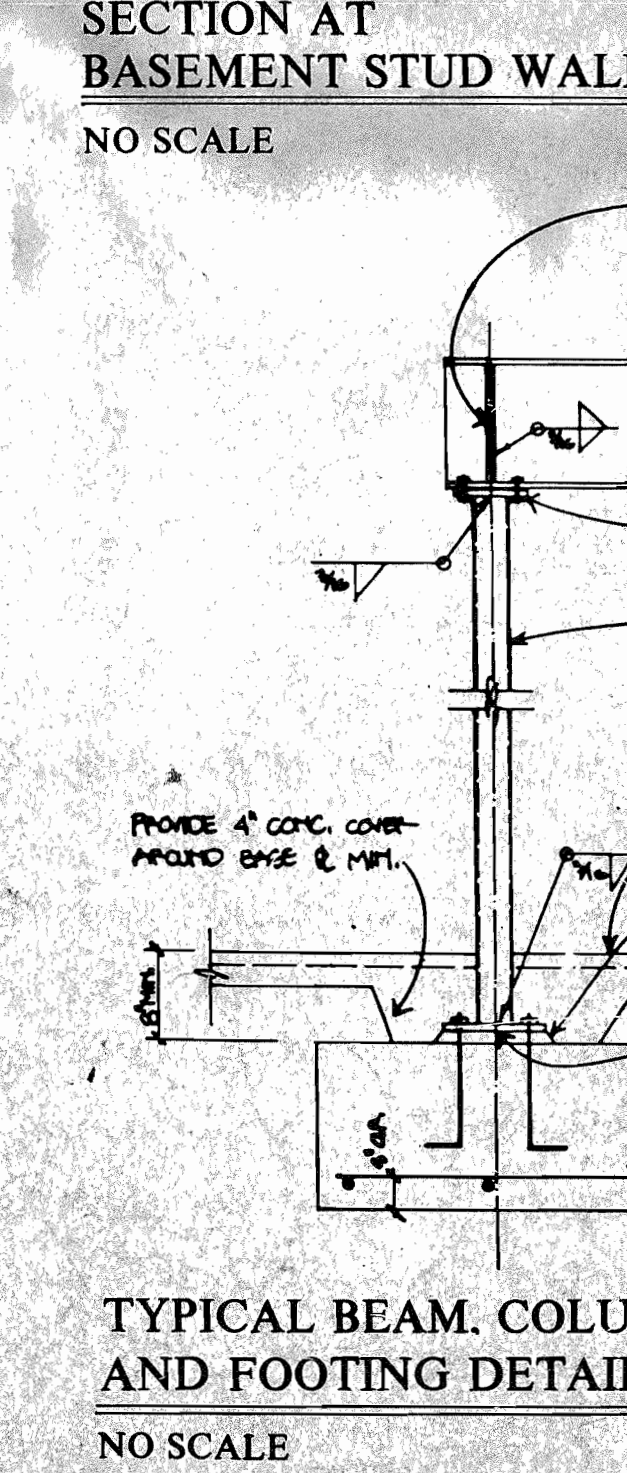
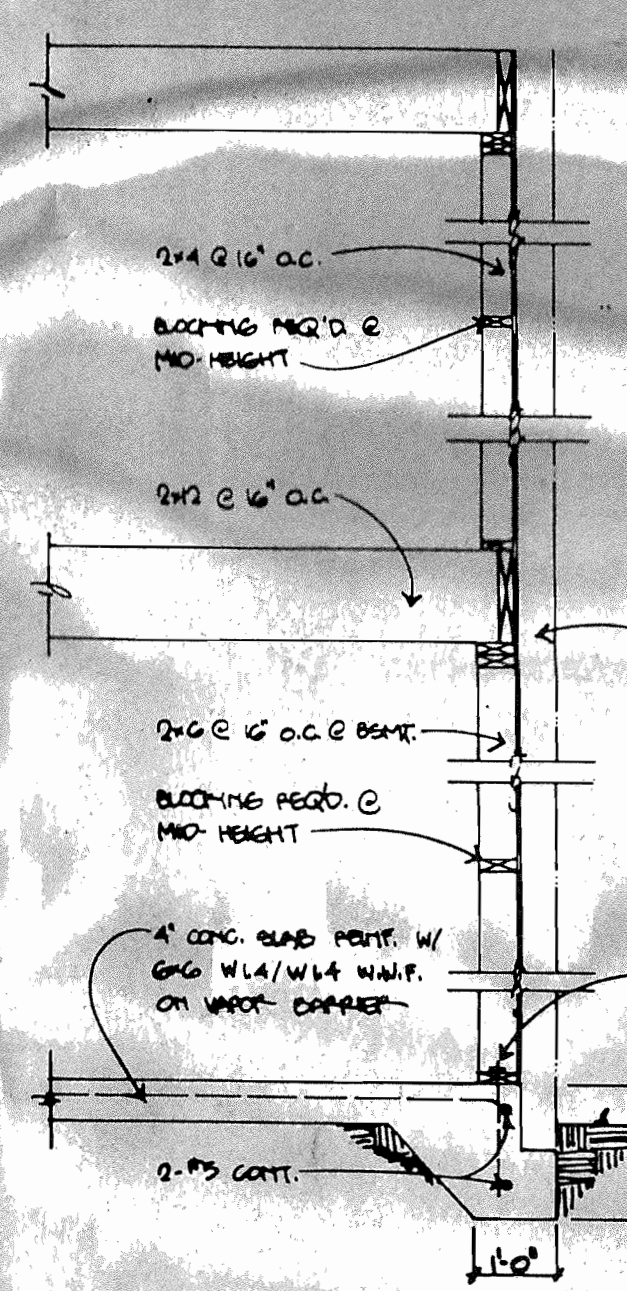
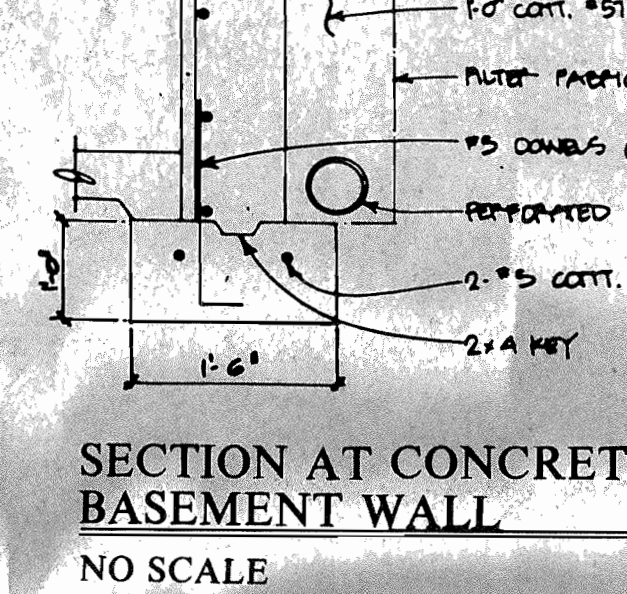
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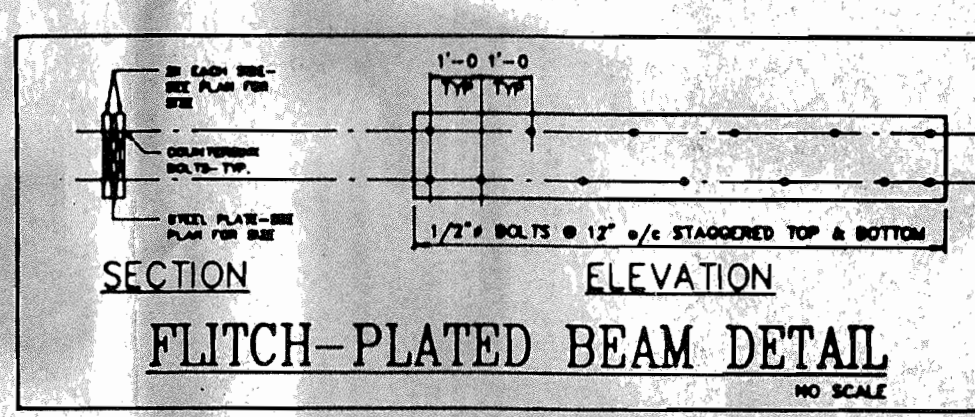
#### FOUNDATION/BASEMENT LEVEL FLOOR PLAN

SCALE: 1/4" = 1'-0" 9'-0" FOUNDATION WALL HGT.

NOTE: STRUCTURAL INFORMATION INCLUDED ON THIS SHEET.



| LINTEL SCHEDULE |                              |                                  |                           |                 |
|-----------------|------------------------------|----------------------------------|---------------------------|-----------------|
| OPENING WIDTH   | L FOR EACH 4" WALL THICKNESS | WALL THICKNESS AND REINFORCEMENT |                           |                 |
| MIN             | MAX                          | STEEL                            | CONCRETE BLOCK & CONCRETE |                 |
|                 |                              |                                  | DEPTH 4"WALL              | 8"WALL 12"WALL  |
| 0'-0"           | 2'-0"                        | L3-1/2 X 3 X 3/4                 | 7-5/8                     | 1#4 BOT 1#4 BOT |
| 2'-0"           | 3'-0"                        | L3-1/2 X 3 X 1/4                 | 7-5/8                     | 1#4 BOT 2#5 BOT |
| 3'-0"           | 5'-0"                        | L3-1/2 X 3 X 1/4                 | 7-5/8                     | 1#4 BOT 2#5 BOT |
| 5'-0"           | 8'-0"                        | L4 X 3-1/2 X 1/4                 | 7-5/8                     | 1#7 BOT 2#6 BOT |
| 8'-0"           | 10'-0"                       | L5 X 3-1/2 X 1/4                 | 7-5/8                     | 1#8 BOT 2#7 BOT |
| 10'-0"          | 12'-0"                       | L6 X 3-1/2 X 5/16                | 15-5/8                    | 1#8 BOT         |



#### GENERAL FRAMING NOTES:

- Hip, valley rafters and ridge boards to always be two 2x one size larger than rafters.
- All framing to be 16" o.c. unless otherwise noted.
- Roof decking to be 1/2" CDX plywood.
- Provide collar ties at upper 1/3 of vertical distance between ridge board and joists (48" o.c.).
- All rafters to be 2x8 at 16" o.c. based on 20# live load unless otherwise noted.
- All headers at first floor of two story plan to be double 2x12 minimum.
- Double floor joists under partition parallel to joist span.
- Provide "x" bridge at 8'-0" o.c. maximum for joists
- Provide double 2x8 strongback at ceiling joist spans over 10'-0".
- Provide solid blocking at mid height at all walls.
- All joists shall be stacked aligned over studs below.
- All lumber in contact with concrete or masonry shall be pressure treated.
- Anchor bolts shall be 1/2"x8" at 4'-0" o.c. and within 12" from the end of sills and corners. Provide minimum of 2 bolts per sill embedded 5 1/2" in footings.
- Provide rodent and insect proofing where all plumbing, wiring and vents pass through plates as per code.
- Provide continuous 2" eave vent for attic ventilation.
- Exterior openings, valleys and other areas specified on plans to have an approved flashing. Use 26 gauge G.I. flashing for all valleys 24" wide with roofs less than 4/12 pitch and for all shake roofs regardless of pitch. Use 18" wide flashing for roofs more than 4/12 pitch. Valley flashing shall have a splash rib, 1" in height for shake roofs and 3/4" high for other type of roofing.
- Exterior corners of structure to be braced with 1/2" CDX plywood.
- Use steel columns under each end of steel beams unless they bear on concrete wall. Use either TS 3x3x3/16 tube column or 3" standard pipe column in all cases. Where steel column does not bear on concrete wall or turn-down slab, use 2'-6"x2'-6"x1/4" isolated footing reinforced with 3-#4 each way in the bottom.
- All wood columns shown on any of the framing plans should extend down thru the levels below and terminate at the basement floor. Where these multiple 2x wood columns do not rest atop a concrete wall, the slab should be thickened 2'-0"x2'-0"x1'-0" deep and reinforced with 3-#4 each way in the bottom. This will be true for all 2x columns except those which fall on beams below designed to carry their load. In this case the columns will terminate at the beam.
- 2x12 at 16" o.c. will be used to frame all floors unless otherwise noted.
- 2x10 at 16" o.c. will be used to frame all ceilings at attic level unless otherwise noted.
- 2x4 at 16" o.c. will be used to frame all walls unless otherwise noted.

SHEET

OF 1

8

DESIGNED FOR:  
**Southern Living**  
**PLANS**

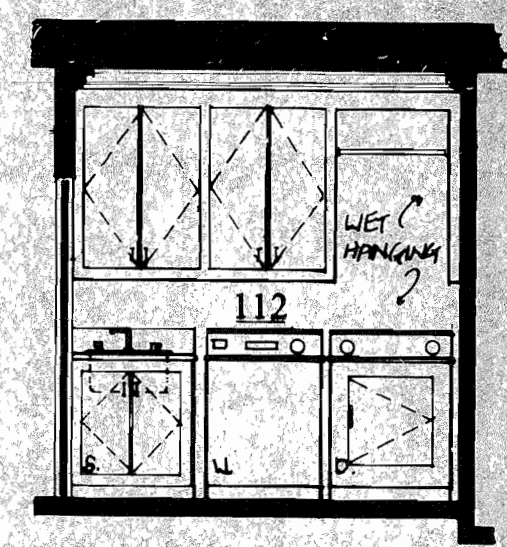
APPROVED BY:

REVISIONS

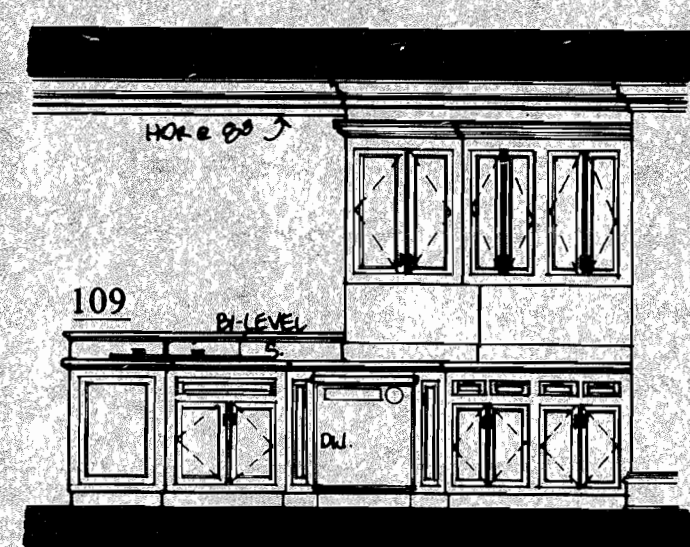
THESE PLANS SHOULD BE REVIEWED BY A LOCAL ARCHITECT OR ENGINEER TO VERIFY THAT THEY MEET ALL LOCAL CODES.

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L-1 LAUNDRY ELEVATION  
2 SCALE: 1/4" 1'-0"



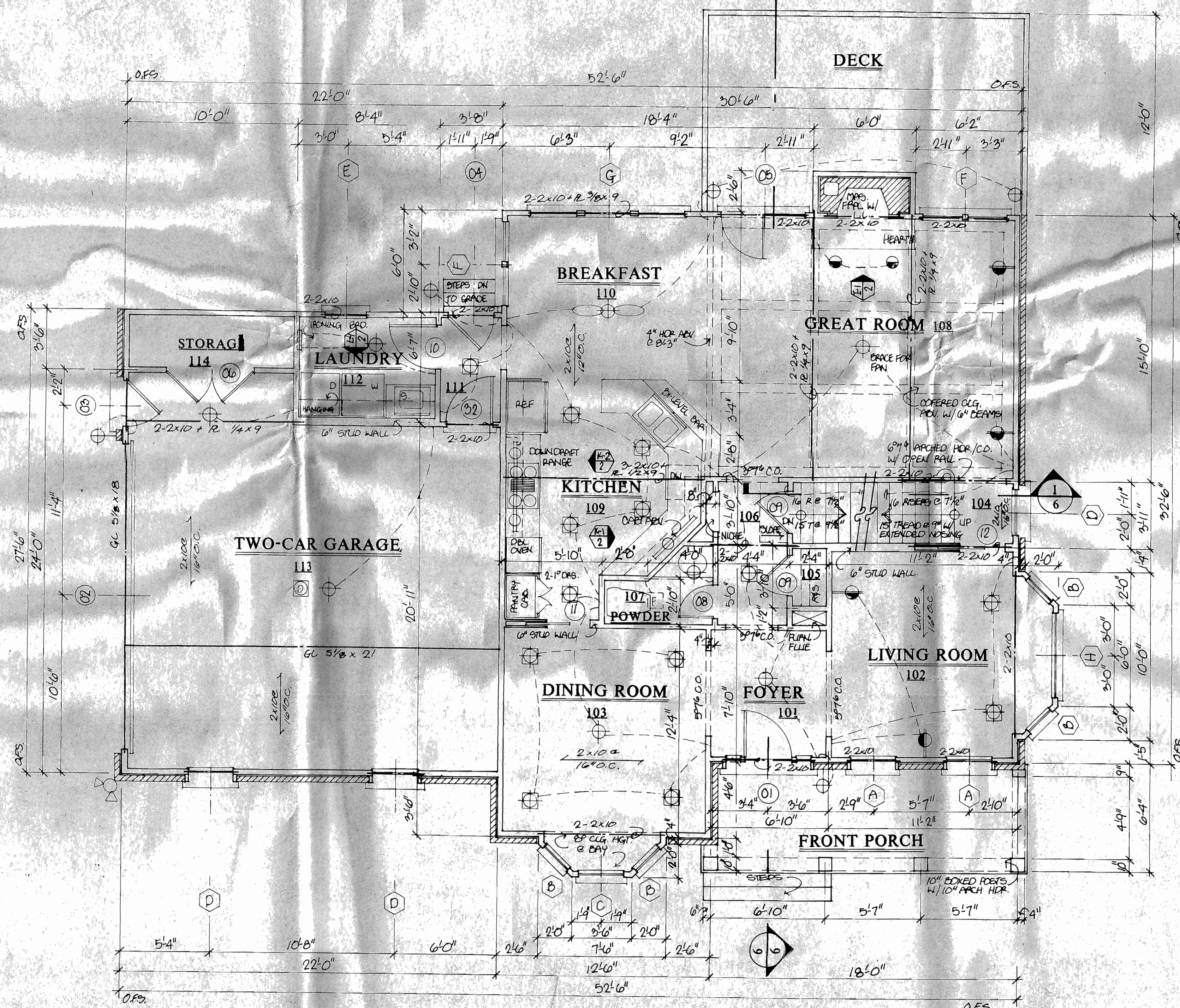
K-1 KITCHEN ELEVATION  
2 SCALE: 1/4" 1'-0"



K-2 KITCHEN ELEVATION  
2 SCALE: 1/4" 1'-0"



I-1 GREAT ROOM ELEVATION  
2 SCALE: 1/4" 1'-0"



NOTE: EXTEND JAMBS AT DOORS AND WDS. AT FRONT ELEV. TO ALIGN W/FACE OF BRICK.

FIRST LEVEL FLOOR PLAN

SCALE: 1/4" 1'-0" 9'-0" CEILING HGT.

NOTE: STRUCTURAL INFORMATION INCLUDED ON THIS SHEET.

| DOOR SCHEDULE |             |      |                      |        |       |      |
|---------------|-------------|------|----------------------|--------|-------|------|
| NO.           | SIZE        | TYPE | DESCRIPTION          | CASING |       | QTY. |
|               |             |      |                      | IN     | OUT   |      |
| 01            | 3'0"x6'8"   | EXT. | w/12" TR./10" SDLTS. | *A*-P  | WM 3  | 1    |
| 02            | 18'0"x7'0"  |      | PANEL GAR. DR.       |        | BRMD. | 1    |
| 03            | 2'8"x6'8"   |      | 6 PANEL              | *C*-P  | BRMD. | 1    |
| 04            | 2'8"x6'8"   |      | 9 LITE               | *B*-P  | BRMD. | 1    |
| 05            | 5'0"x6'8"   |      | FR. ATRIUM w/12" TR. | *A*-P  | BRMD. | 1    |
| 06            | 2'2"x6'8"   |      | 6 PANEL AT GAR.      | *C*-P  |       | 1    |
| 07            | 3'0"x6'8"   |      | FRENCH               | *B*-P  | BRMD. | 1    |
| 08            | 2'0"x6'8"   | INT. | 6 PANEL              | *B*-P  | *B*-P | 1    |
| 09            | 2'6"x6'8"   |      |                      | *B*-P  | *B*-P | 2    |
| 10            | 2'8"x6'8"   |      |                      | *B*-P  | *B*-P | 1    |
| 11            | 2'6"x6'8"   |      | PANEL PKT. w/12" TR. | *A*-P  |       | 1    |
| 12            | 2'8"x6'8"   |      |                      | *A*-P  | *A*-P | 1    |
| 13            | 2'0"x6'8"   |      | 6 PANEL              | *C*-P  | *C*-P | 1    |
| 14            | 2'4"x6'8"   |      |                      | *C*-P  | *C*-P | 1    |
| 15            | 2'6"x6'8"   |      |                      | *C*-P  | *B*-P | 3    |
| 16            | 2'4"x6'8"   |      |                      | *C*-P  | *B*-P | 1    |
| 17            | 2'4"x6'8"   |      |                      | *C*-P  | *C*-P | 1    |
| 18            | 2'4"x6'8"   |      |                      | *B*-P  | *C*-P | 2    |
| 19            | 2'1'6"x6'8" |      |                      | *B*-P  | *B*-P | 1    |
| 20            | 2'8"x6'8"   |      |                      | *B*-P  | *B*-P | 1    |
| 21            | 4'0"x6'8"   |      | 4 PANEL BIFOLD       | *C*-P  |       | 1    |
| 22            | 2'6"x6'8"   |      | 6 PANEL PKT.         | *B*-P  | *B*-P | 1    |
| 23            | 2'0"        |      | GLASS DR.            |        | TILE  | 1    |
| 24            | 2'4"x6'8"   |      | 6 PANEL (215 ONLY)   | *C*-P  | *C*-P | (1)  |
| 25            | 2'8"x6'8"   |      |                      | *C*-P  | *B*-P | 1    |
| 26            | 2'4"x6'8"   |      |                      | *C*-P  | *C*-P | 2    |
| 27            | 2'4"x6'8"   |      |                      | *C*-P  | *C*-P | 1    |
| 28            | 2'4"x6'8"   |      |                      | *C*-P  | *B*-P | 1    |
| 29            | 1'6"x6'8"   |      |                      | *C*-P  |       | 1    |
| 30            | 2'8"x6'8"   |      |                      | *C*-P  | *C*-P | 1    |
| 31            | 2'6"x6'8"   |      |                      | *C*-P  |       | 2    |
| 32            | 2'8"x6'8"   | EXT. | 9 LITE               | *B*-P  | *C*-P | 1    |
| 33            |             |      |                      |        |       |      |

| WINDOW SCHEDULE |             |             |                          |      |
|-----------------|-------------|-------------|--------------------------|------|
| TYPE            | SIZE        | EXT. CASING | DESCRIPTION              | QTY. |
| A               | 2'8"x5'6"   | 1x4 w/BB    | D.H.                     | 2    |
| B               | 2'0"x6'2"   | BRMD.       | D.H.                     | 4    |
| C               | 2'8"x5'2"   | BRMD.       | FIXED                    | 1    |
| D               | 2'8"x5'2"   | 1x4 w/BB    | D.H.                     | 3    |
| E               | 2'4"x4'6"   | BRMD.       | D.H.                     | 1    |
| F               | 2'2'4"x6'2" |             | D.H.(w/12" TR. AT GRTRM. | 2    |
| G               | 3'2'8"x6'2" |             | D.H. PAIR w/6" MULLS     | 1    |
| H               | 5'0"x6'2"   |             | FIXED                    | 1    |
| I               | 2'8"x4'6"   | 1x4 w/BB    | D.H.(BRMD. AT REAR)      | 6    |
| J               | 2'2'0"x4'6" | 1x4 w/BB    | D.H. PAIR                | 1    |
| K               | 2'4"x4'6"   |             | DORMER D.H.              | 2    |
| L               | 2'2'8"x4'6" | 1x4 w/BB    | D.H. PAIR                | 1    |
| M               | 2'8"x6'2"   | BRMD.       | D.H.                     | 2    |
| N               | 3'0"x6'2"   |             | FIXED ARCHED HD.         | 1    |
| O               |             |             |                          |      |
| P               | 3'0"x6'2"   |             | D.H.                     | 1    |
| Q               |             |             |                          |      |
| R               |             |             |                          |      |
| S               |             |             |                          |      |
| T               |             |             |                          |      |

D.H. = DOUBLE HUNG  
CSMT = CASEMENT  
STAT = STATIONARY  
B.B. = BACKBAND  
BRMD/BM = BRICKMOULD  
TRAN = TRANSOM

| Square Footage Breakdown |      |           |
|--------------------------|------|-----------|
| FIRST                    | 1164 | htd. s.f. |
| SECOND                   | 1436 | htd. s.f. |
| TOTAL                    | 2600 | htd. s.f. |
| - NOT INCLUDED -         |      |           |
| OPEN                     | -0-  | s.f.      |
| GARAGE/STORAGE           | 522  | s.f.      |

| ELECTRICAL PLAN KEY |                                            |
|---------------------|--------------------------------------------|
|                     | Duplex Convenience Outlet                  |
|                     | Duplex Outlet Above Counter                |
|                     | Weatherproof Duplex Outlet                 |
|                     | Half-switched Duplex Outlet                |
|                     | Special Purpose Outlet                     |
|                     | Duplex Outlet in Floor                     |
|                     | 220 Volt Outlet                            |
|                     | Electric Door Operator                     |
|                     | Ceiling Mounted Incandescent Light Fixture |
|                     | Wall Mounted Incandescent Light Fixture    |
|                     | Recessed Incandescent Light Fixture        |
|                     | Exhaust Fan                                |
|                     | Exhaust Fan/Light Combination              |
|                     | Fluorescent Light Fixture                  |
|                     | Ceiling Fan/Light                          |

- GENERAL NOTES:
- a. All dimensions are to face of stud or to face of masonry unless otherwise noted.
  - b. All angles are 45 degrees unless otherwise noted.
  - c. Contractor to verify all dimensions at construction site.
  - d. Purchaser is responsible for compliance with all local building codes and ordinances.
  - e. Bottom of all footings shall extend below frostline depth, verify depth.
  - f. Exact size and reinforcement of all concrete footings must be determined by local soil conditions and acceptable practices of construction. Verify design with local engineer.
  - g. Verify all structural elements with local engineer and building official.
  - h. Contractor to size electrical system to meet local code requirements.
  - i. Contractor to size heating and cooling loads as for local codes, climatic conditions and building orientation.
  - j. Plumbing materials and installation to be done in accordance with local requirements.

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FAIRMONT  
HEIGHTS  
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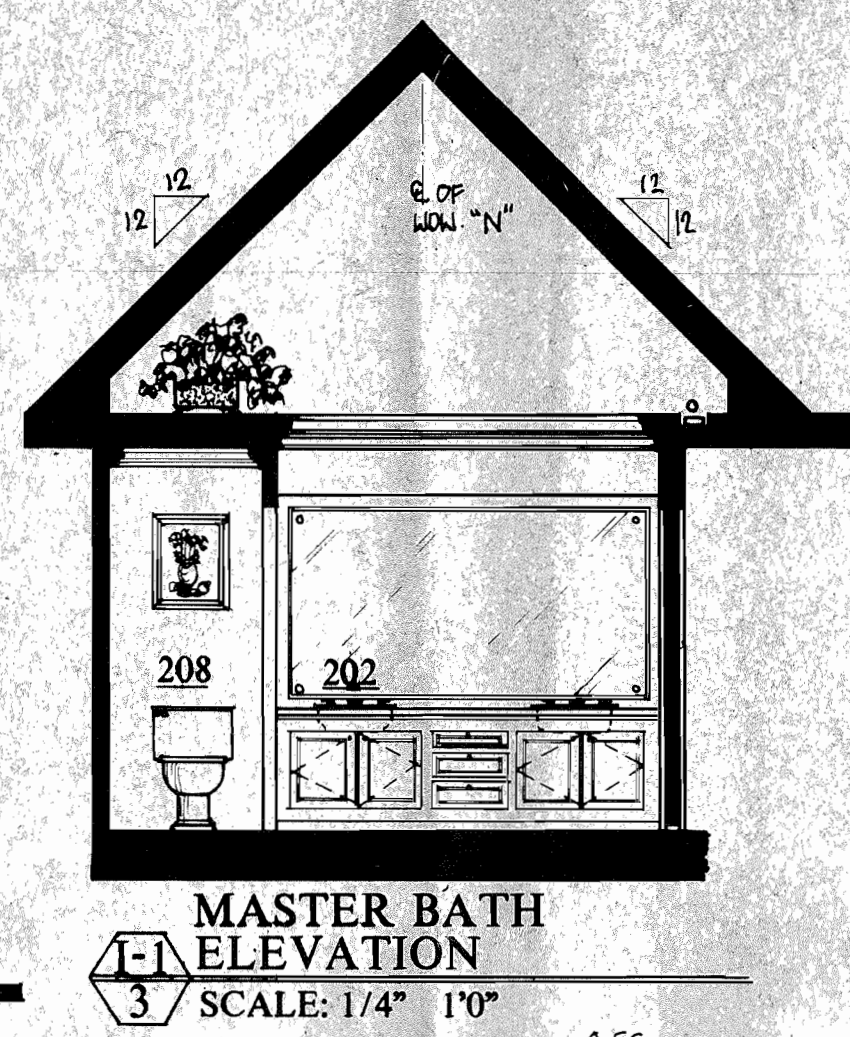
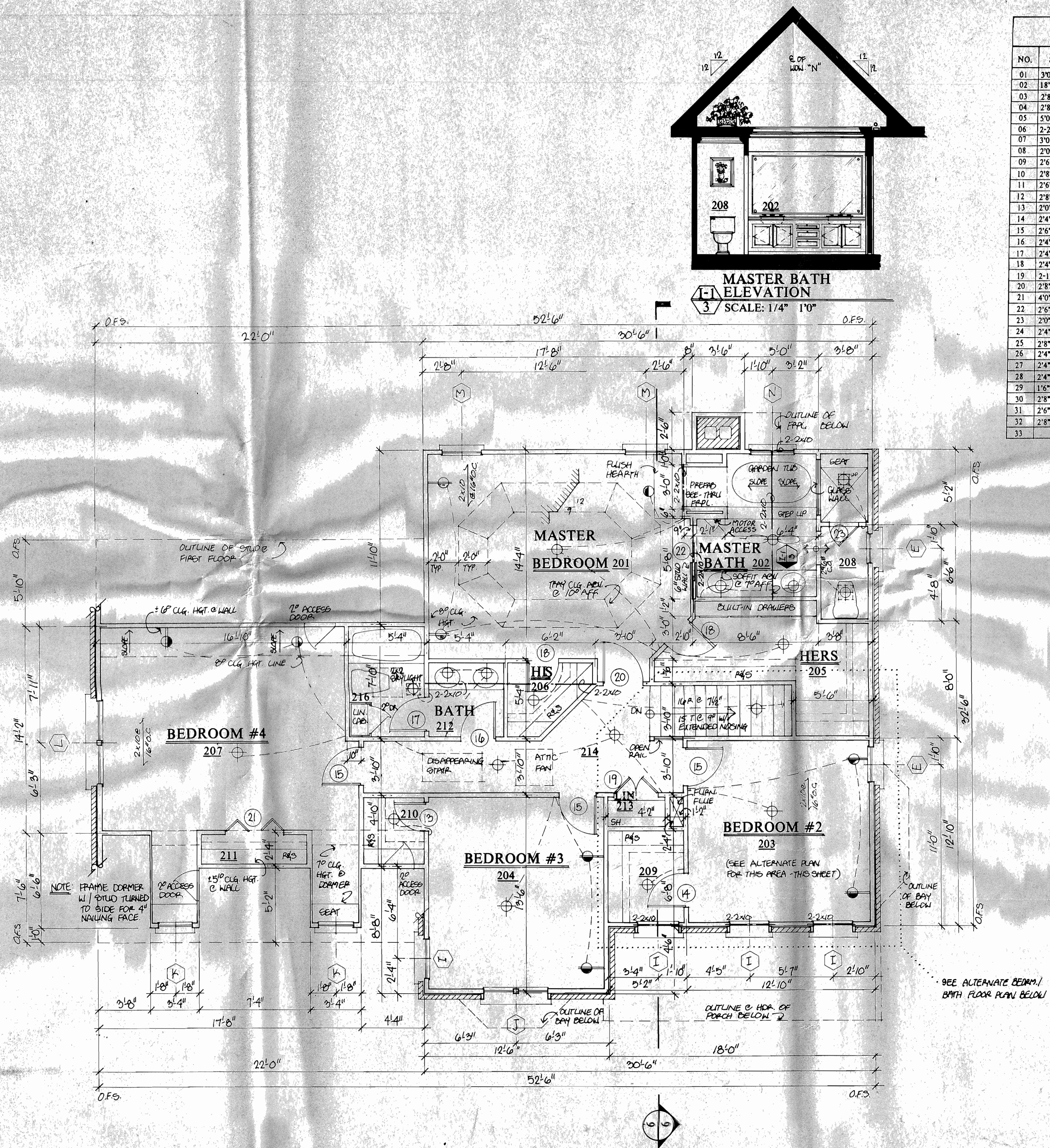
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OF 2  
8

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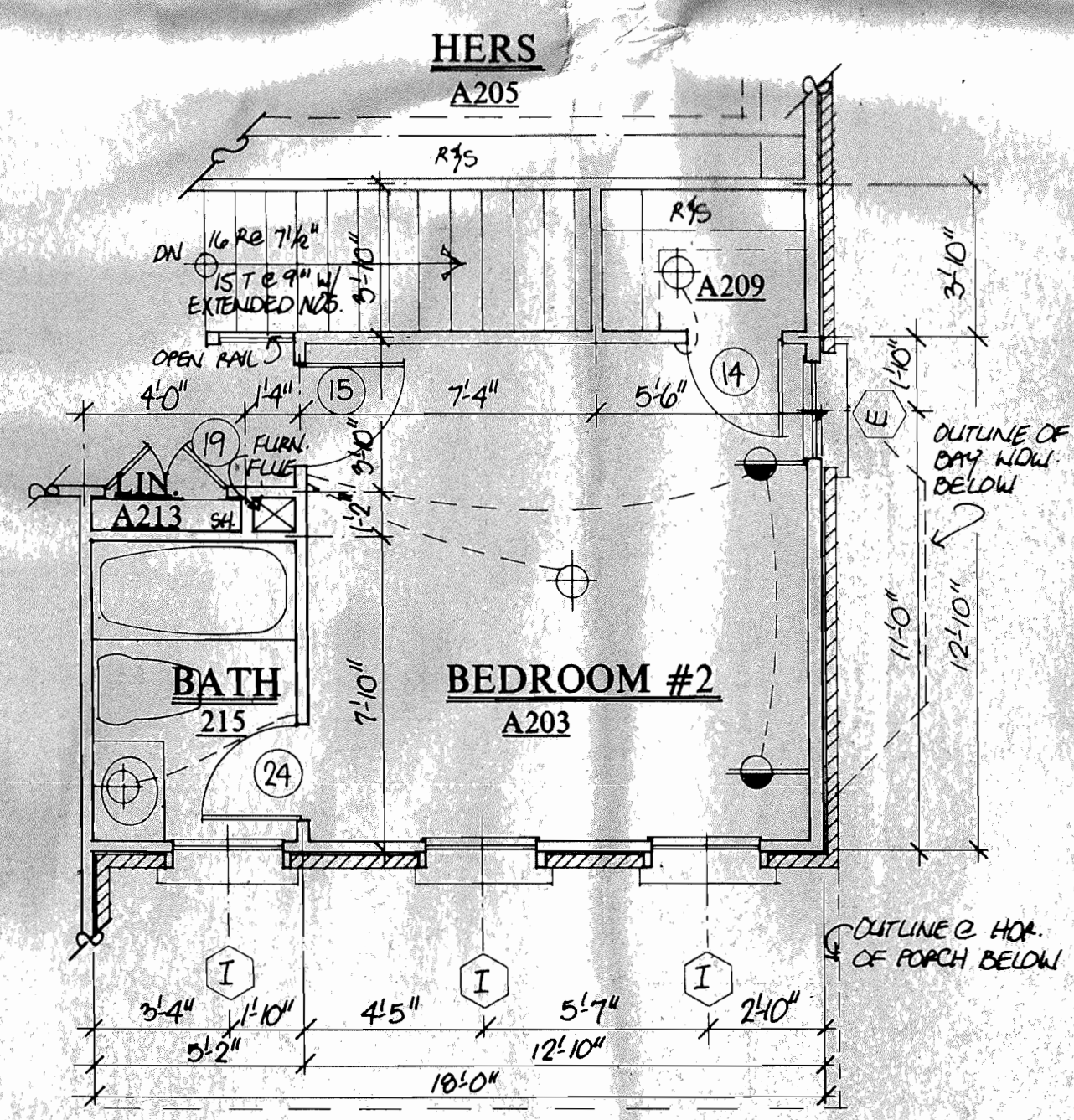


| DOOR SCHEDULE |             |      |                      |        |       |     |
|---------------|-------------|------|----------------------|--------|-------|-----|
| NO.           | SIZE        | TYPE | DESCRIPTION          | CASING | IN    | OUT |
| 01            | 3'0"x6'8"   | EXT. | W/12" TR./10" SDLS.  | "A"-P  | WM 3  | 1   |
| 02            | 18'0"x7'0"  |      | PANEL GAR. DR.       | BRMD.  |       | 1   |
| 03            | 2'8"x6'8"   |      | 6 PANEL              | "C"-P  | BRMD. | 1   |
| 04            | 2'8"x6'8"   |      | 9 LITE               | "B"-P  | BRMD. | 1   |
| 05            | 5'0"x6'8"   |      | FR. ATRIUM W/12" TR. | "A"-P  | BRMD. | 1   |
| 06            | 2'2'6"x6'8" |      | 6 PANEL AT GAR.      | "C"-P  |       | 1   |
| 07            | 3'0"x6'8"   |      | FRENCH               | "B"-P  | BRMD. | 1   |
| 08            | 2'0"x6'8"   | INT. | 6 PANEL              | "B"-P  | "B"-P | 1   |
| 09            | 2'6"x6'8"   |      |                      | "B"-P  | "B"-P | 2   |
| 10            | 2'8"x6'8"   |      |                      | "B"-P  | "B"-P | 1   |
| 11            | 2'6"x6'8"   |      | PANEL PKT. W/12" TR. | "A"-P  | "A"-P | 1   |
| 12            | 2'8"x6'8"   |      |                      | "A"-P  | "A"-P | 1   |
| 13            | 2'0"x6'8"   |      | 6 PANEL              | "C"-P  | "C"-P | 1   |
| 14            | 2'4"x6'8"   |      |                      | "C"-P  | "C"-P | 1   |
| 15            | 2'6"x6'8"   |      |                      | "C"-P  | "B"-P | 3   |
| 16            | 2'4"x6'8"   |      |                      | "C"-P  | "B"-P | 1   |
| 17            | 2'4"x6'8"   |      |                      | "C"-P  | "C"-P | 1   |
| 18            | 2'4"x6'8"   |      |                      | "B"-P  | "C"-P | 2   |
| 19            | 2'1'6"x6'8" |      |                      | "B"-P  |       | 1   |
| 20            | 2'8"x6'8"   |      |                      | "B"-P  | "B"-P | 1   |
| 21            | 4'0"x6'8"   |      | 4 PANEL BIFOLD       | "C"-P  |       | 1   |
| 22            | 2'6"x6'8"   |      | 6 PANEL PKT.         | "B"-P  | "B"-P | 1   |
| 23            | 2'0"        |      | GLASS DR.            |        |       | 1   |
| 24            | 2'4"x6'8"   |      | 6 PANEL (215 ONLY)   | "C"-P  | "C"-P | (1) |
| 25            | 2'8"x6'8"   |      | 6 PANEL              | "C"-P  | "C"-P | 1   |
| 26            | 2'4"x6'8"   |      |                      | "C"-P  | "C"-P | 2   |
| 27            | 2'4"x6'8"   |      |                      | "C"-P  | "C"-P | 1   |
| 28            | 2'4"x6'8"   |      |                      | "C"-P  | "B"-P | 1   |
| 30            | 1'6"x6'8"   |      |                      |        | "C"-P | 1   |
| 31            | 2'6"x6'8"   |      |                      | "C"-P  |       | 2   |
| 32            | 2'8"x6'8"   | EXT. | 9 LITE               | "B"-P  | "C"-P | 1   |
| 33            |             |      |                      |        |       |     |

D.H.=DOUBLE HUNG  
CSMT=CASEMENT  
STAT=STATIONARY  
B.B.=BACKBAND  
BRMD/BM=BRICKMOULD  
TRAN=TRANSOM

| WINDOW SCHEDULE |             |             |                           |      |
|-----------------|-------------|-------------|---------------------------|------|
| TYPE            | SIZE        | EXT. CASING | DESCRIPTION               | QTY. |
| A               | 2'8"x5'6"   | 1x4 w/BB    | D.H.                      | 2    |
| B               | 2'0"x6'2"   | BRMD.       | D.H.                      | 4    |
| C               | 2'8"x6'2"   | BRMD.       | FIXED                     | 1    |
| D               | 2'8"x5'2"   | 1x4 w/BB    | D.H.                      | 3    |
| E               | 2'4"x4'6"   | BRMD.       | D.H.                      | 1    |
| F               | 2'2'4"x6'2" |             | D.H.(w/12" TR. AT GRT.RM. | 2    |
| G               | 3'2'8"x6'2" |             | D.H. PAIR w/6" MULLS      | 1    |
| H               | 5'0"x6'2"   |             | FIXED                     | 1    |
| I               | 2'8"x4'6"   | 1x4 w/BB    | D.H.(BRMD. AT REAR)       | 6    |
| J               | 2'2'0"x4'6" | 1x4 w/BB    | D.H. PAIR                 | 1    |
| K               | 2'4"x4'6"   |             | DORMER D.H.               | 2    |
| L               | 2'2'8"x4'6" | 1x4 w/BB    | D.H. PAIR                 | 1    |
| M               | 2'8"x6'2"   | BRMD.       | D.H.                      | 2    |
| N               | 3'0"x6'2"   |             | FIXED ARCHED HD.          | 1    |
| O               |             |             |                           |      |
| P               | 3'0"x6'2"   |             | D.H.                      | 1    |
| Q               |             |             |                           |      |
| R               |             |             |                           |      |
| S               |             |             |                           |      |
| T               |             |             |                           |      |

| ELECTRICAL PLAN KEY |                                            |
|---------------------|--------------------------------------------|
|                     | Duplex Convenience Outlet                  |
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|                     | Duplex Outlet in Floor                     |
|                     | 220 Volt Outlet                            |
|                     | Electric Door Operator                     |
|                     | Ceiling Mounted Incandescent Light Fixture |
|                     | Wall Mounted Incandescent Light Fixture    |
|                     | Recessed Incandescent Light Fixture        |
|                     | Exhaust Fan                                |
|                     | Exhaust Fan/Light Combination              |
|                     | Fluorescent Light Fixture                  |
|                     | Ceiling Fan/Light                          |



SHEET

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FAIRMONT  
HEIGHTS  
810SC

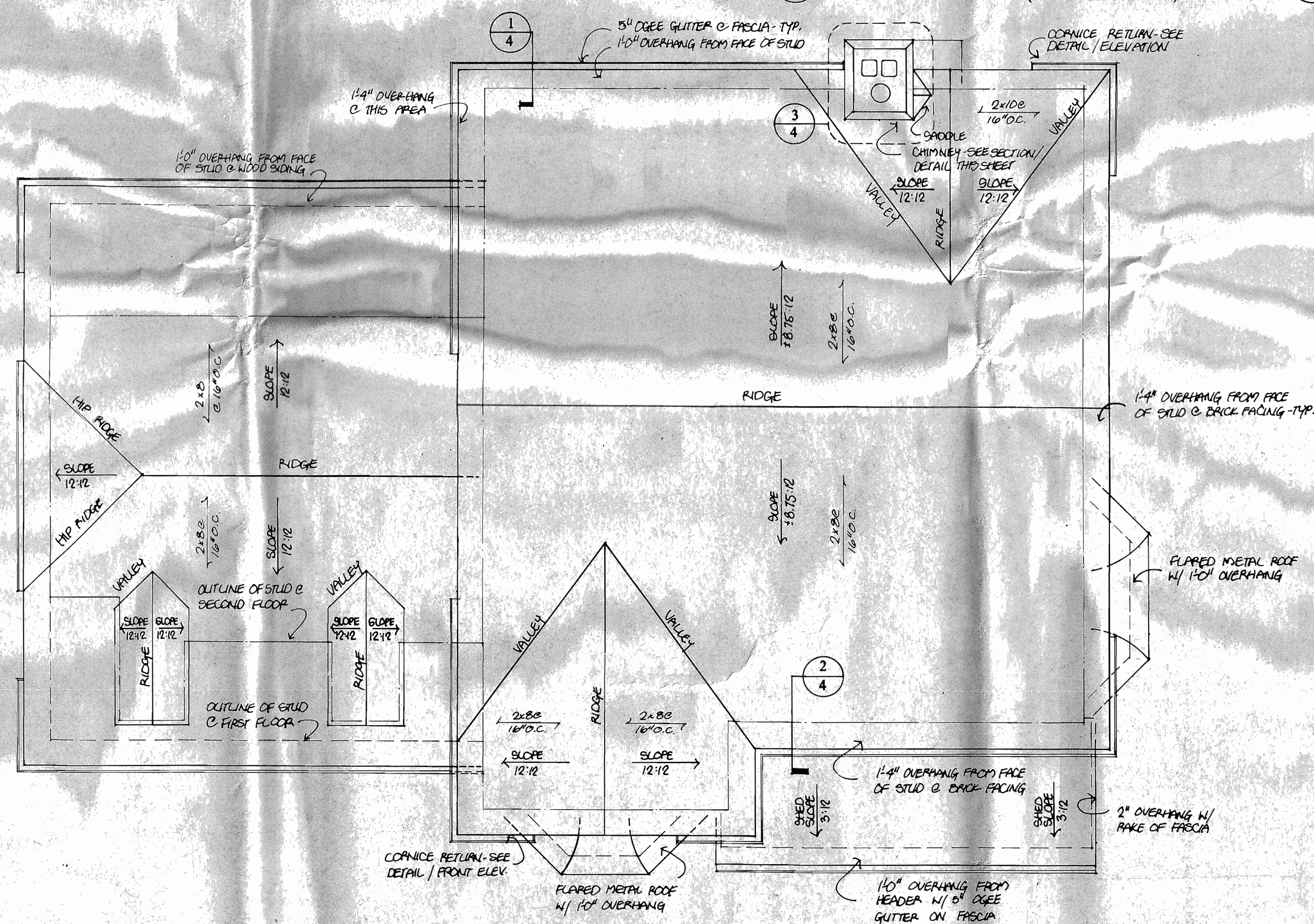
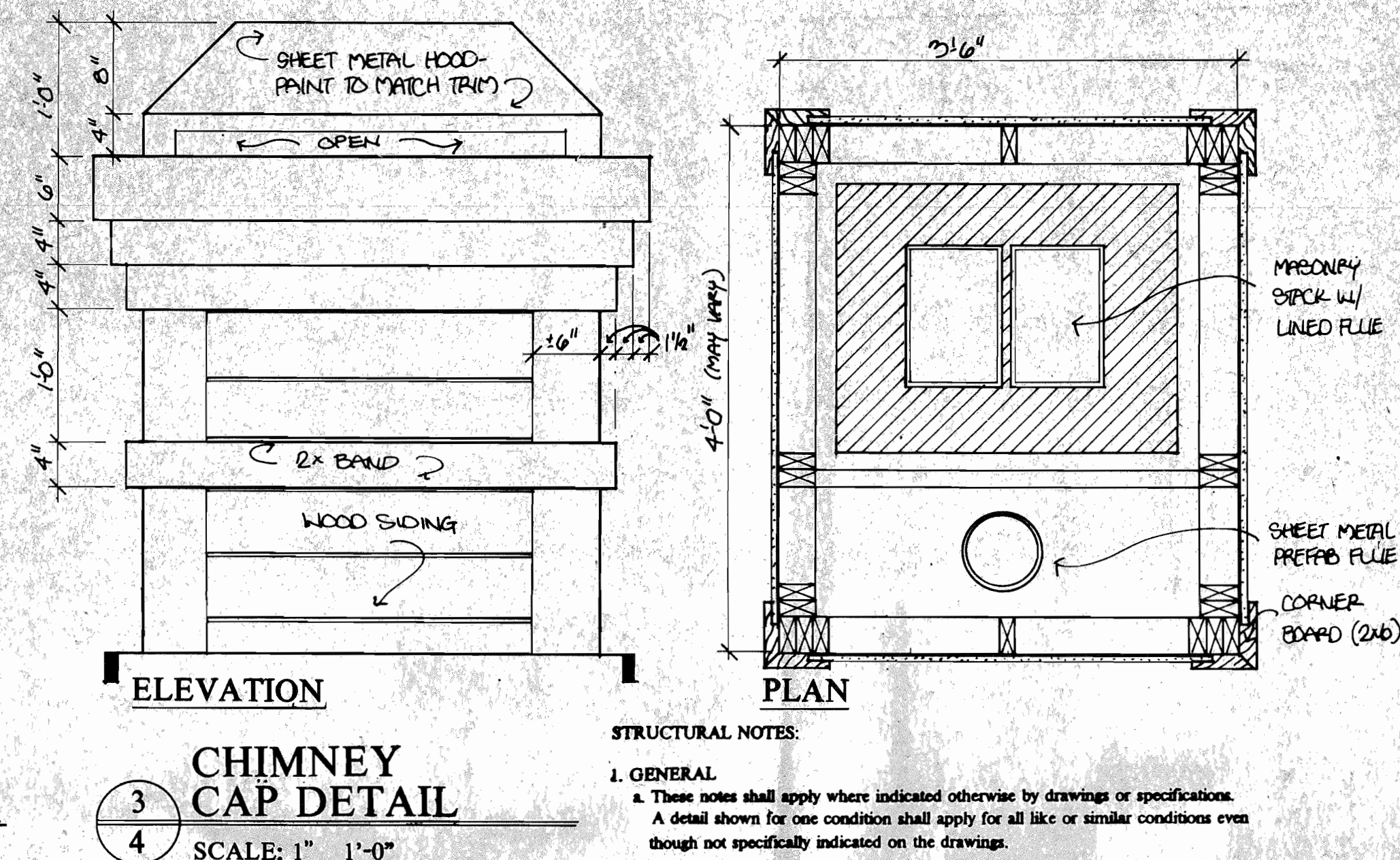
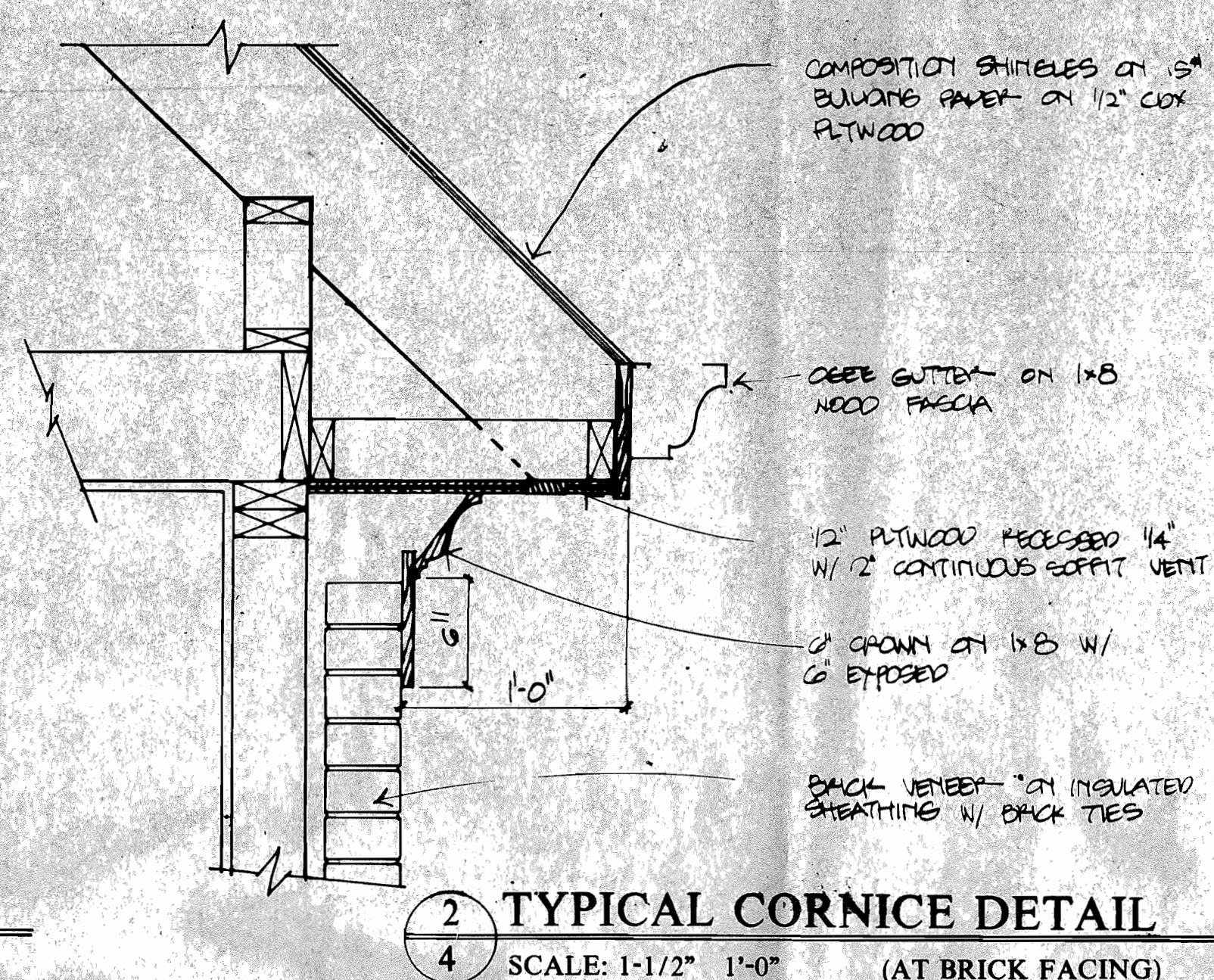
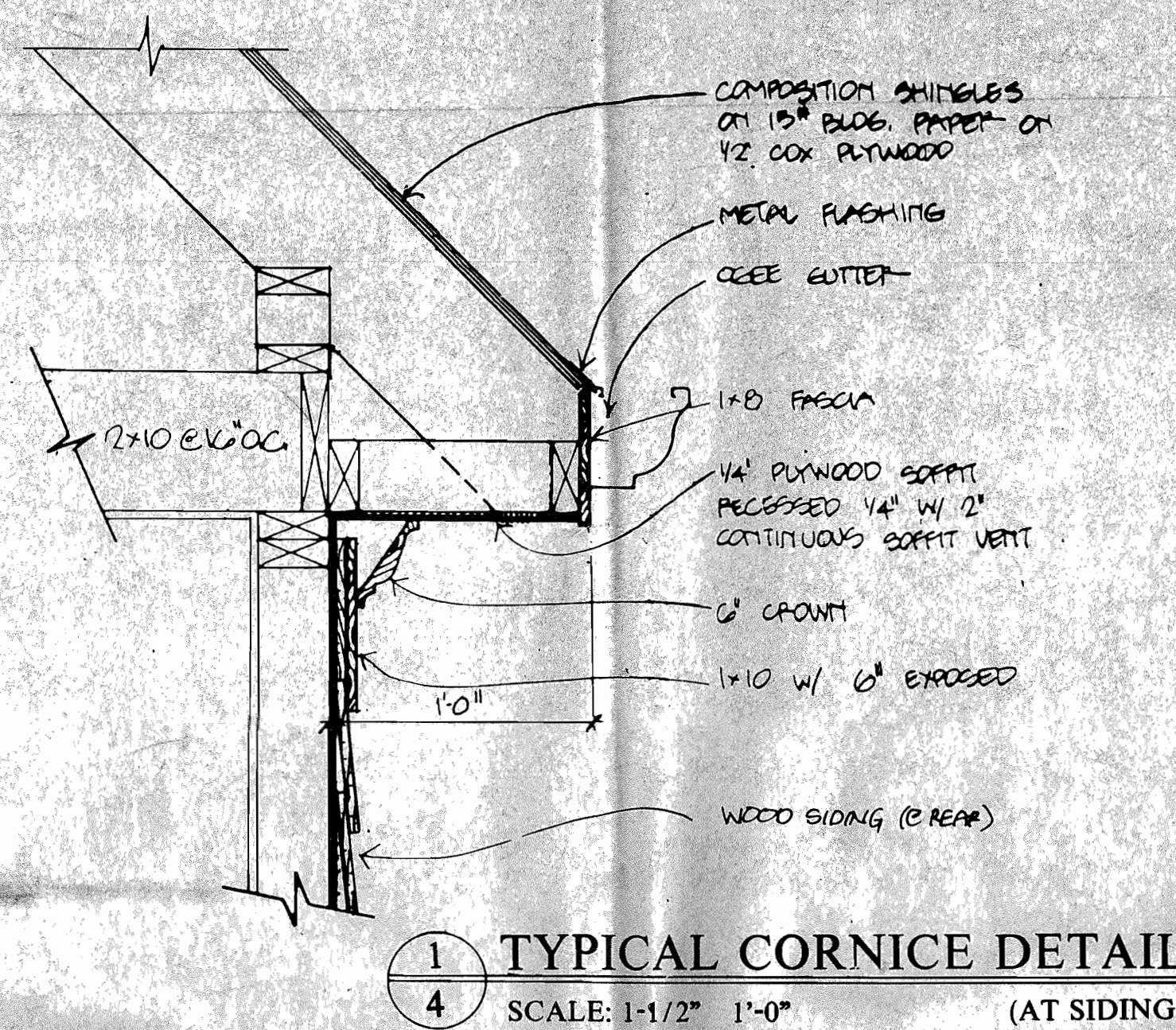
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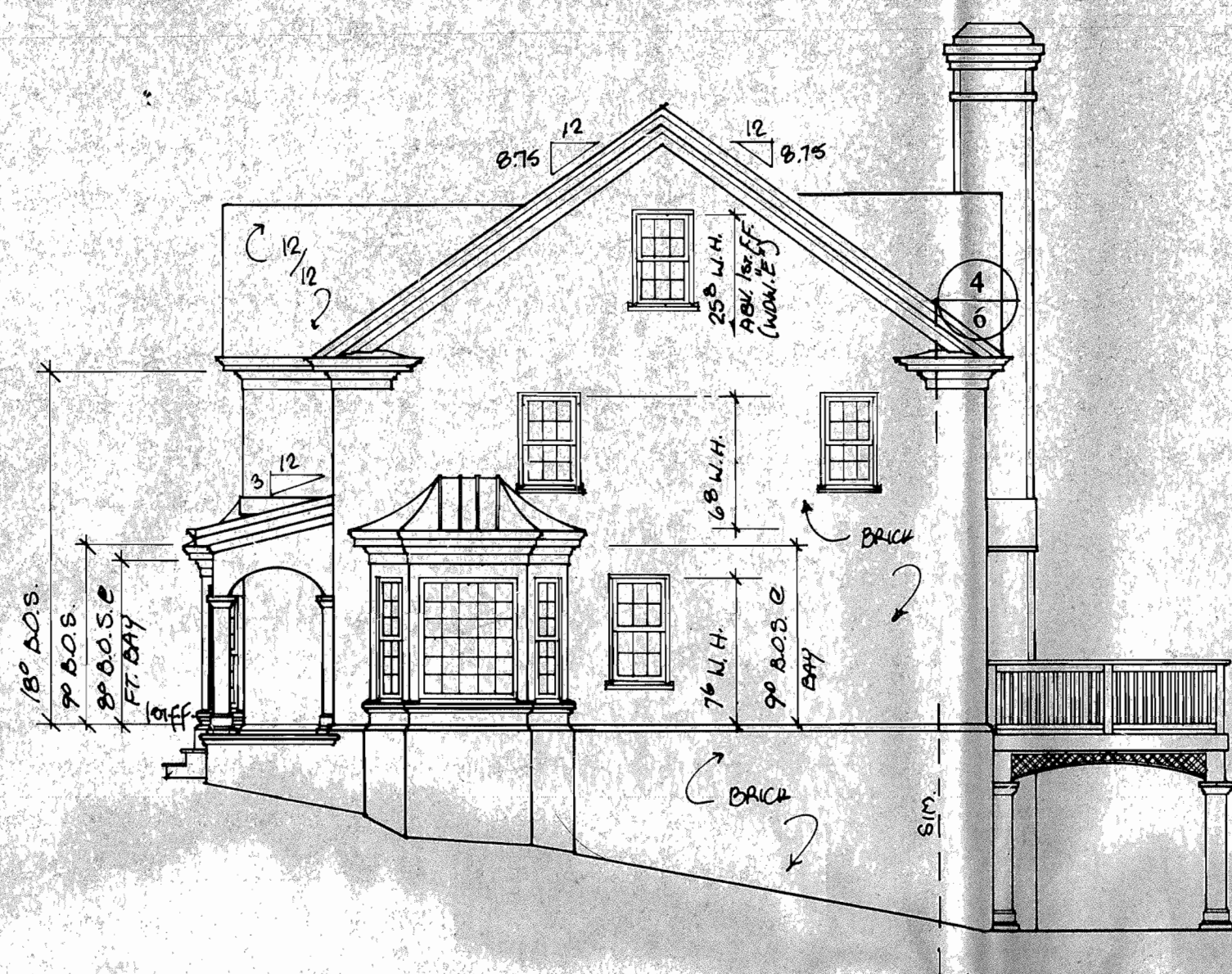




**STRUCTURAL NOTES:**

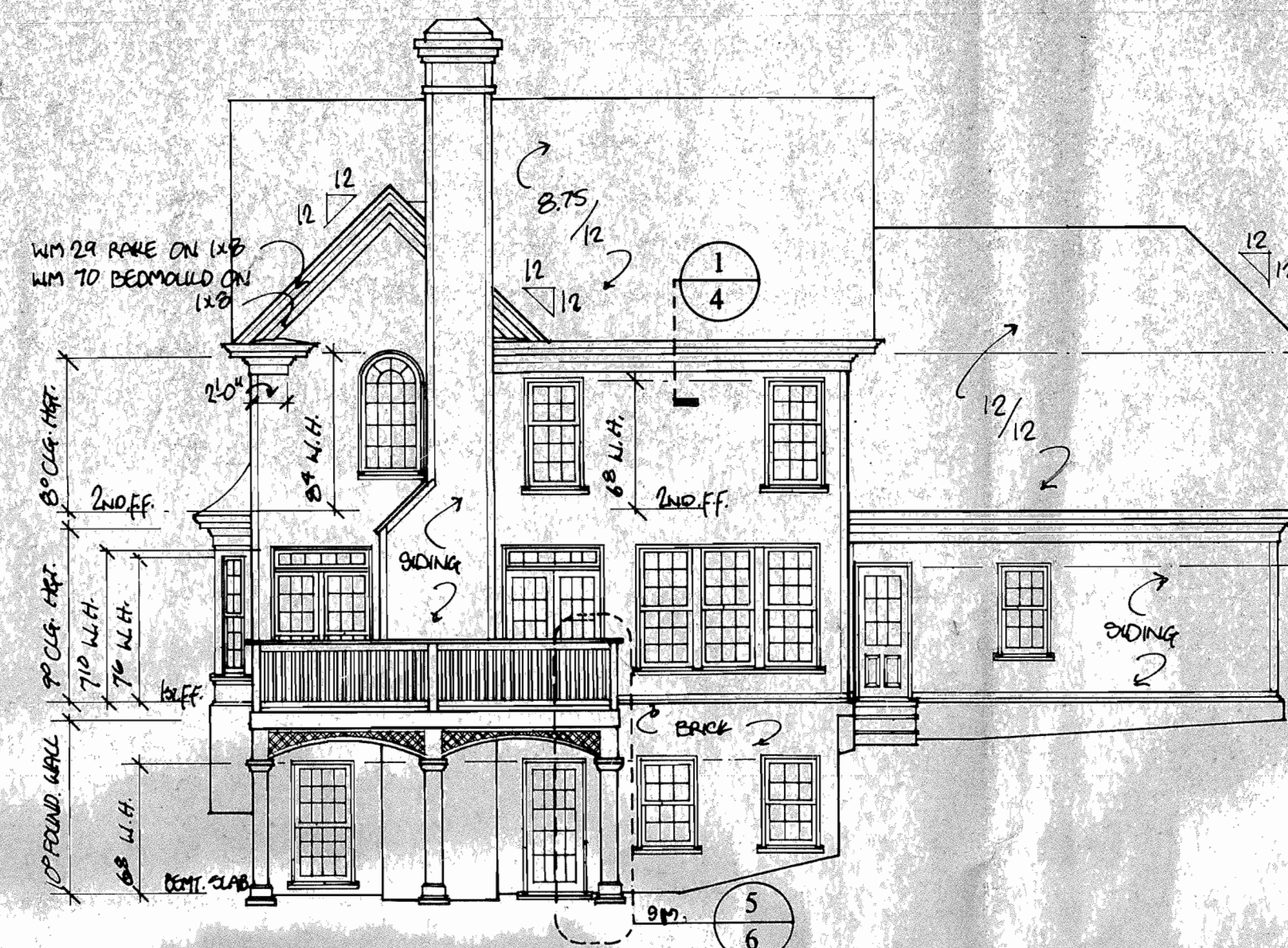
- # 1. GENERAL a. These notes shall apply where indicated otherwise by drawings or specifications. a. Detail shown for one condition shall apply for all like or similar conditions even though not specifically indicated on the drawings. b. The contractor shall provide adequate shoring and bracing for all the work during the construction period. c. Backfill against walls shall be deposited evenly against both sides of the wall until the lower finished grade is reached. 2. REINFORCED CONCRETE a. All concrete shall be Standard Weight 3000 psi compressive strength at 28 days unless noted otherwise. b. Construction or control joints shall be provided in slabs on grade so that the maximum area between joints shall be 800 square feet and the length not more than twice the width. c. Reinforcing bars shall conform to ASTM A-615. All bar sizes #3 and smaller shall be grade 40. Bar sizes #4 and larger shall be grade 60. d. Provide corner bars at all corners and intersections of footings beams and walls. e. All reinforcing bars indicated as continuous shall have basic class "C" tension lap (26" for #5 bars). f. Welded wire fabric shall conform to ASTM A-82 and A-185. Lap fabric a minimum of 6" at each splice. 3. STRUCTURAL STEEL a. Structural steel detailing, fabrication and erection shall be in accordance with the latest edition of the "Manual of Steel Construction" of the American Institute of Steel Construction. b. Structural steel shall conform to ASTM A-36. Cold formed, welded and seamless steel structural tubing in rounds and shapes shall conform to ASTM A-500. c. All connections except those indicated on the drawings as welded shall be made using 3/4 inch diameter ASTM A-325 bolts. Bolts shall be installed using the "turn of nut" method. d. Structural steel shop drawings shall give complete welding information using AWS symbols. Welding electrodes shall be type E70XX. e. All bearing plate anchors shall conform to the drawings and be A-307 steel or welded studs. Reinforcing bars shall not be used as anchors. 4. STRUCTURAL LUMBER a. Framing lumber specified on the structural drawings shall be #2 Southern Yellow Pine, kiln dried (MC-15%) or equal unless noted otherwise on the drawings. b. Wood framing shall conform to all local building codes as a minimum standard. c. Toe and end nailing may be allowed for bearing type connections unless otherwise noted on the drawings. All other connections shall be made using metal connectors. d. Provide bracing at 8'-0" o.c. maximum spacing and at all bearing points for all joists and rafters. e. Load bearing stud walls shall have horizontal bracing at 6'-0" o.c. maximum spacing. f. Studs and joists shall not be cut to install plumbing or wiring without adding metal or wood side pieces to strengthen the member to its original capacity. g. Joists and rafters shall be cut to have horizontal contact for the full width of the supporting member. h. Nail multiple member beams together with 16d nails at 12 inches on center staggered. i. Flitch plated beams noted on the drawings by utilizing 2x members with a plate shall be put together as shown on the typical detail using a steel plate of A-36 steel. 5. PREFABRICATED WOOD TRUSSES a. Trusses connected with light gauge metal plates shall be designed and fabricated in accordance with the Truss Plate Institute. b. Maximum allowable stress increase for short term loading equals 25%. c. Shop drawings shall be submitted to contractor for approval on each truss design. Each truss shop drawing indicating design loads and spacing shall bear the seal of a Registered Professional Engineer. d. For the state in which the structure is built, Floor and roof trusses shall have "x" bridging at 8'-0" o.c. maximum spacing. Roof truss "x" bridging shall be of 2x4's; floor trusses with 1x4's. A layout plan shall be provided to contractor to indicate the location of each truss and all bridging. d. Truss Design Loads: Roof Trusses: Top Chord LL---20psf DL---15psf Bot Chord DL---10psf Total Load-----45psf e. Floor Trusses: Top Chord LL---40psf DL--- 5psf Bot Chord DL--- 5psf Total Load-----50psf 6. FOUNDATION a. If, after excavation, the condition of the soil indicates a safe bearing capacity of less than 2500 PSF the contractor shall be notified and footings revised, if necessary. Column footings and wall footings shall be poured monolithically with adjacent footings at the same elevation. All footings shall be on original undisturbed soil where possible. Coordinate top of footing elevations with plumbing requirements. All fill within 10'-0" of the building limit shall be compacted to 95% Standard Proctor. Maximum uncompacted lift is 6". b. All reinforcing steel shall be of American manufacture conforming to local building ordinances, and ASTM standards. Where specified, rebar shall lap 40 bar diameters with a minimum of 2'-0". c. All reinforcing steel in footings shall be located 3" clear from bottom and sides of footing and 2" clear from top.





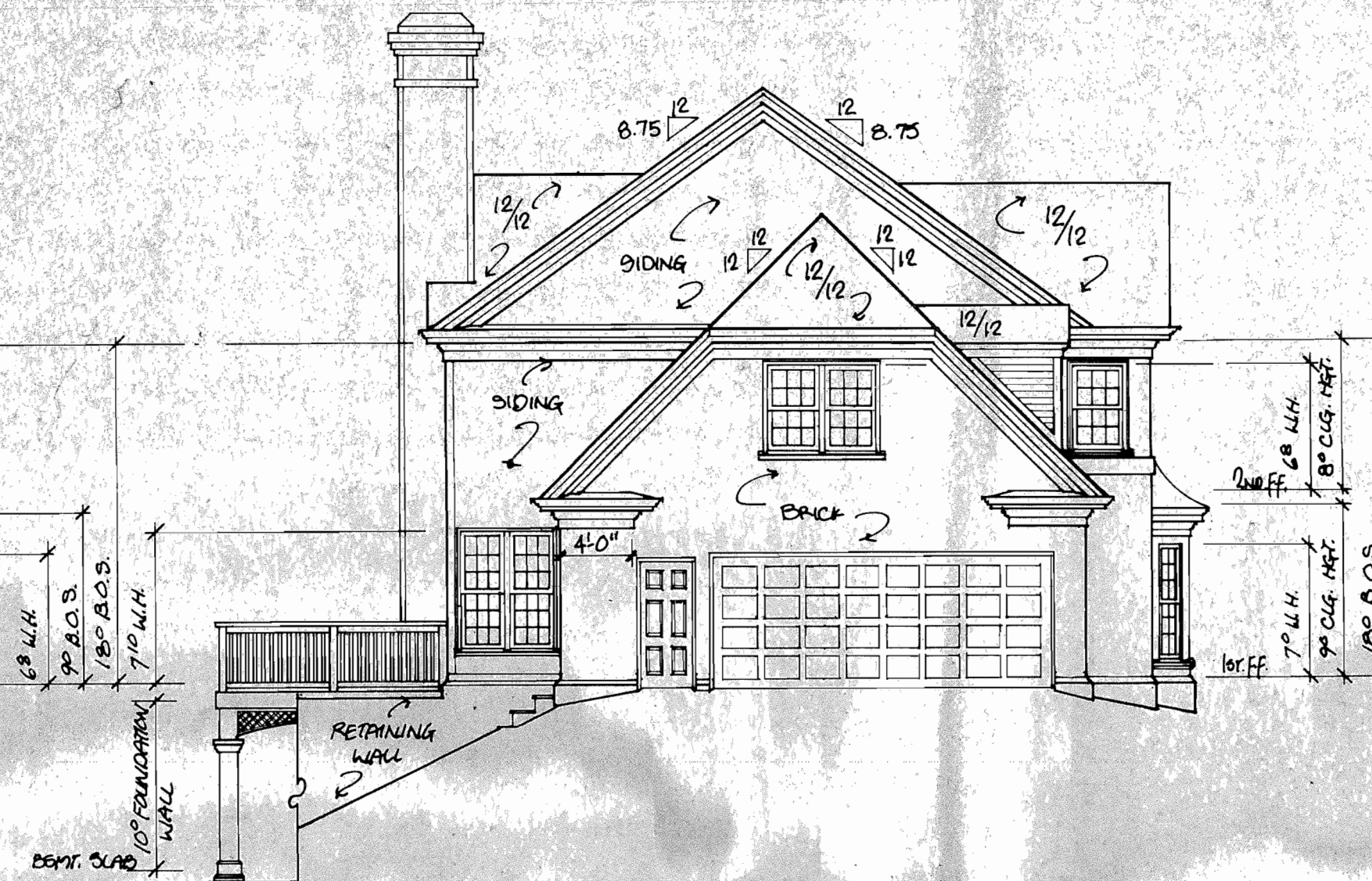
### RIGHT-SIDE ELEVATION

SCALE: 1/8" = 1'-0"



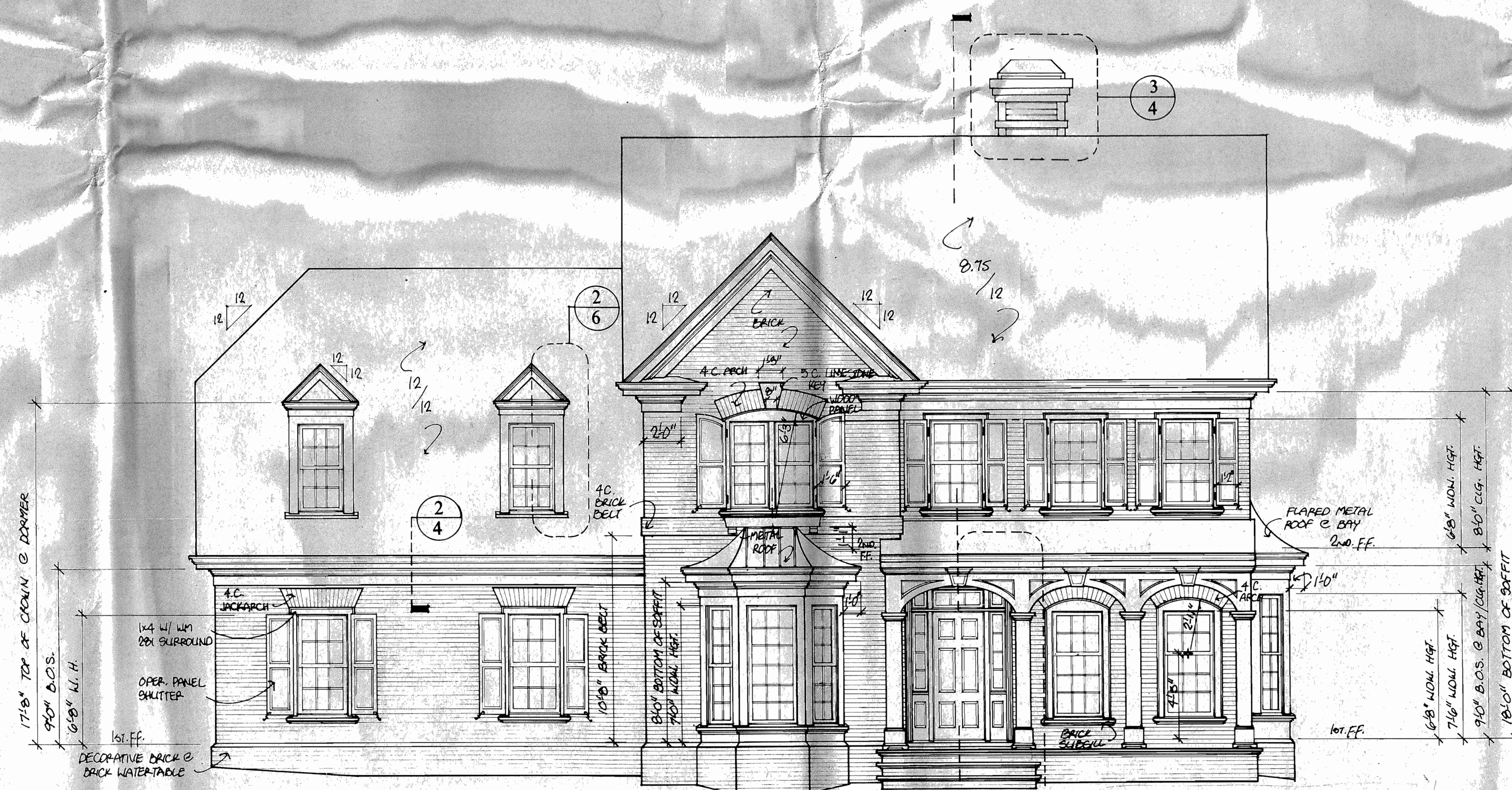
REAR ELEVATION

SCALE: 1/8" 1'-0"



LEFT-SIDE ELEVATION

SCALE: 1/8" 1'-0"



### FRONT ELEVATION

SCALE: 1/4" = 1'-0"

# TEETH

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FAIRMONT  
HEIGHTS  
810SC

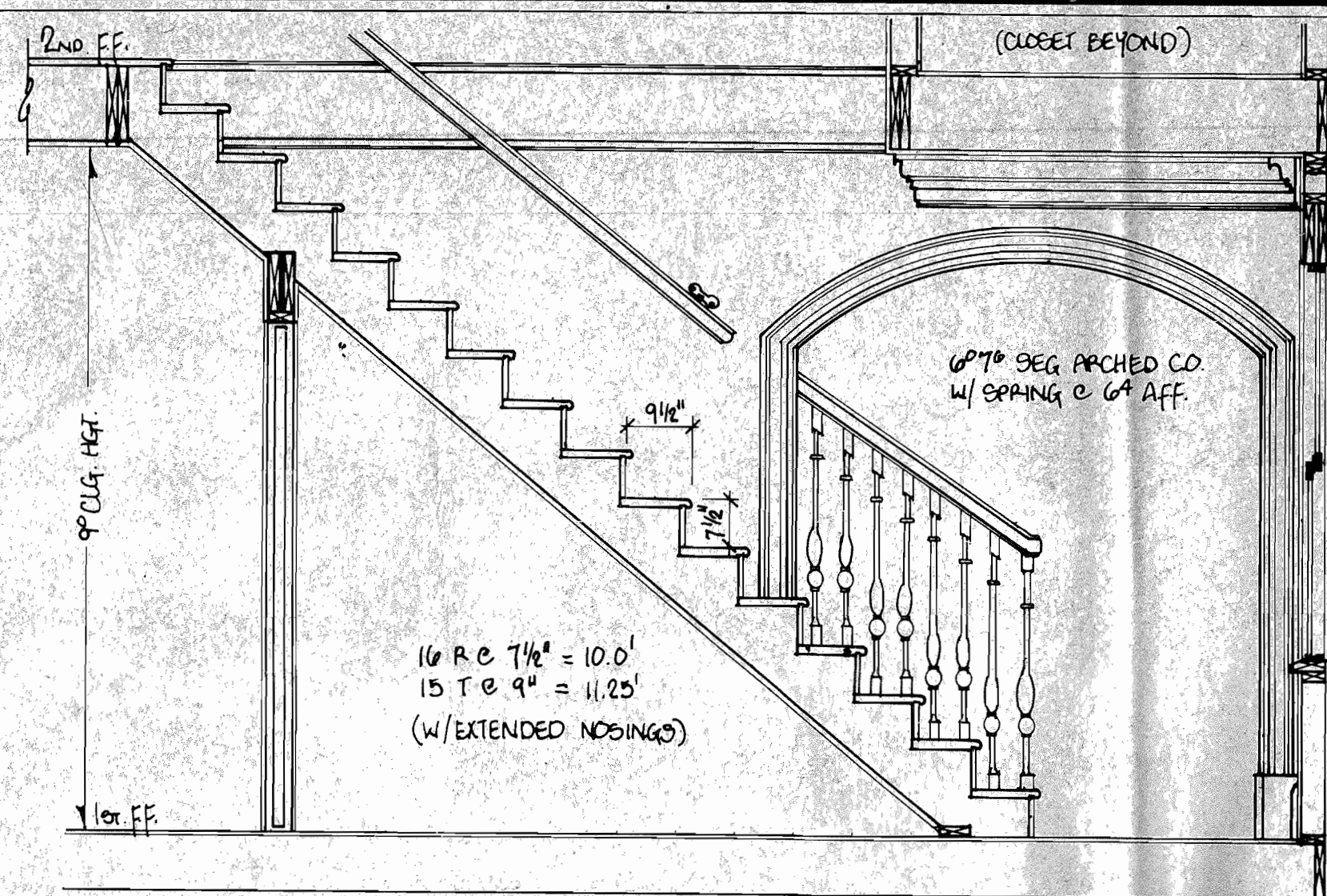
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**PLANS**

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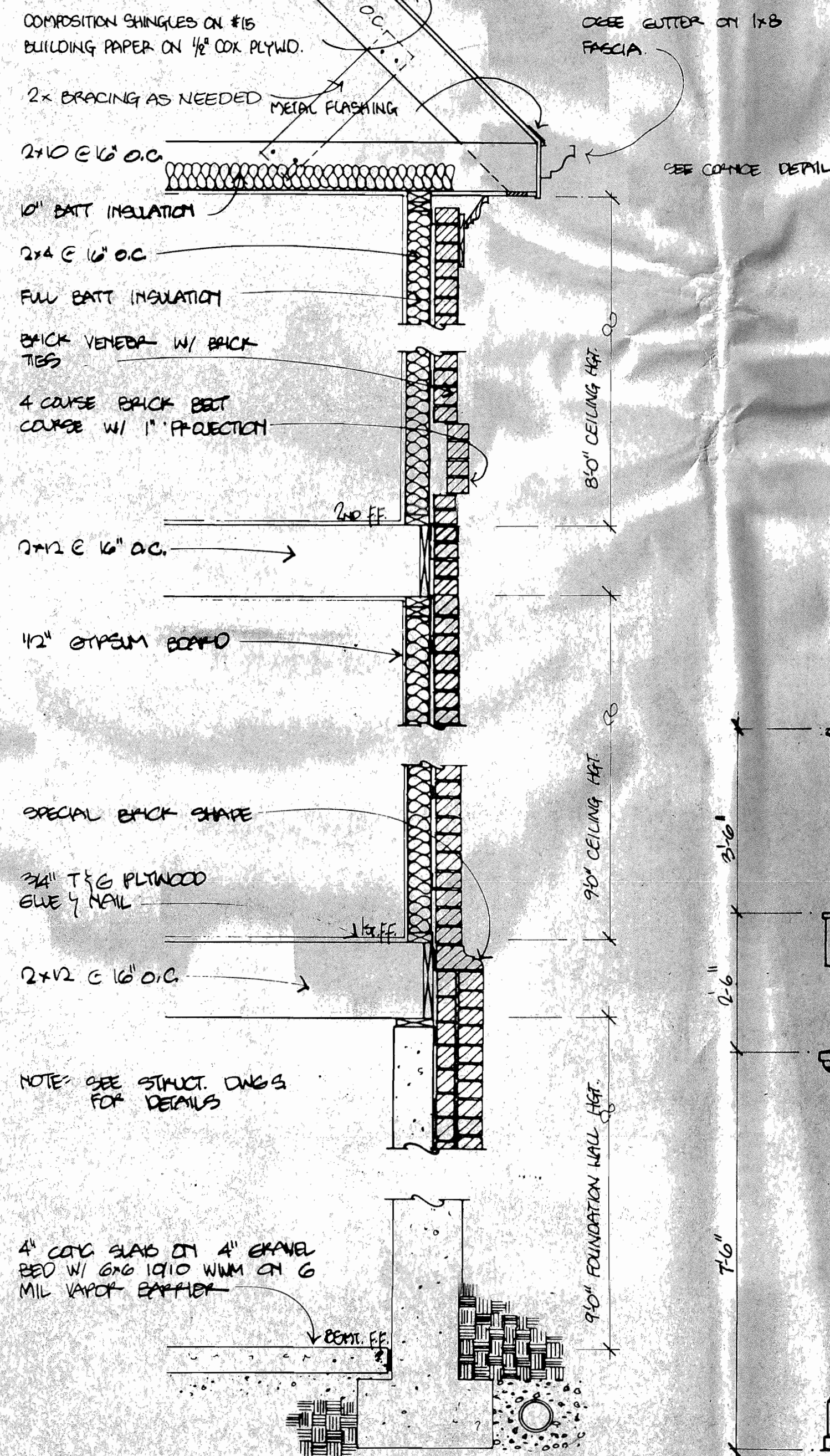
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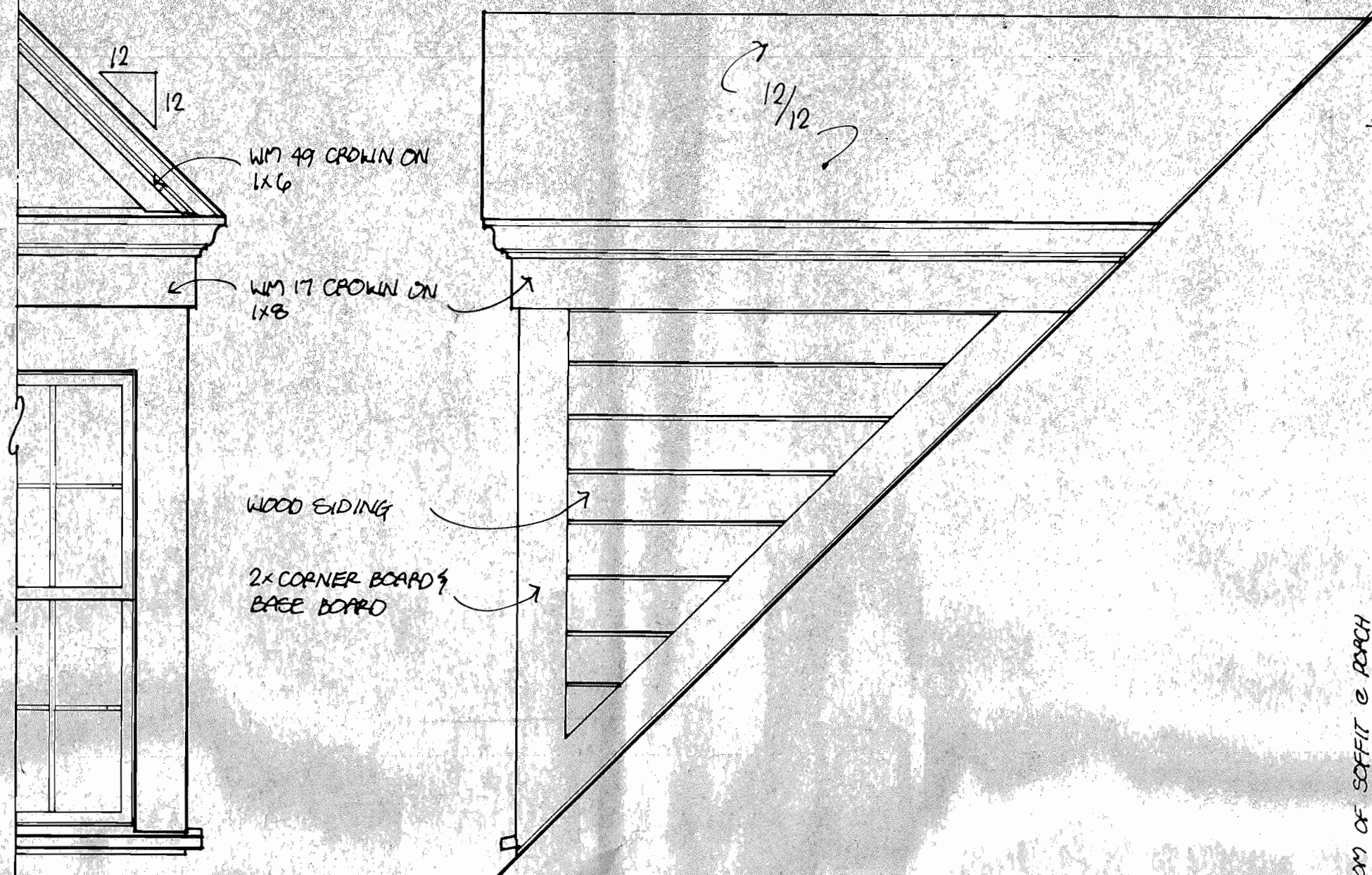




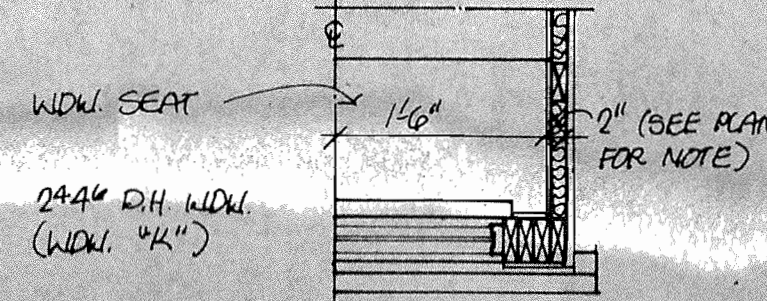
1 STAIR SECTION  
SCALE: 1/2" 1'-0"



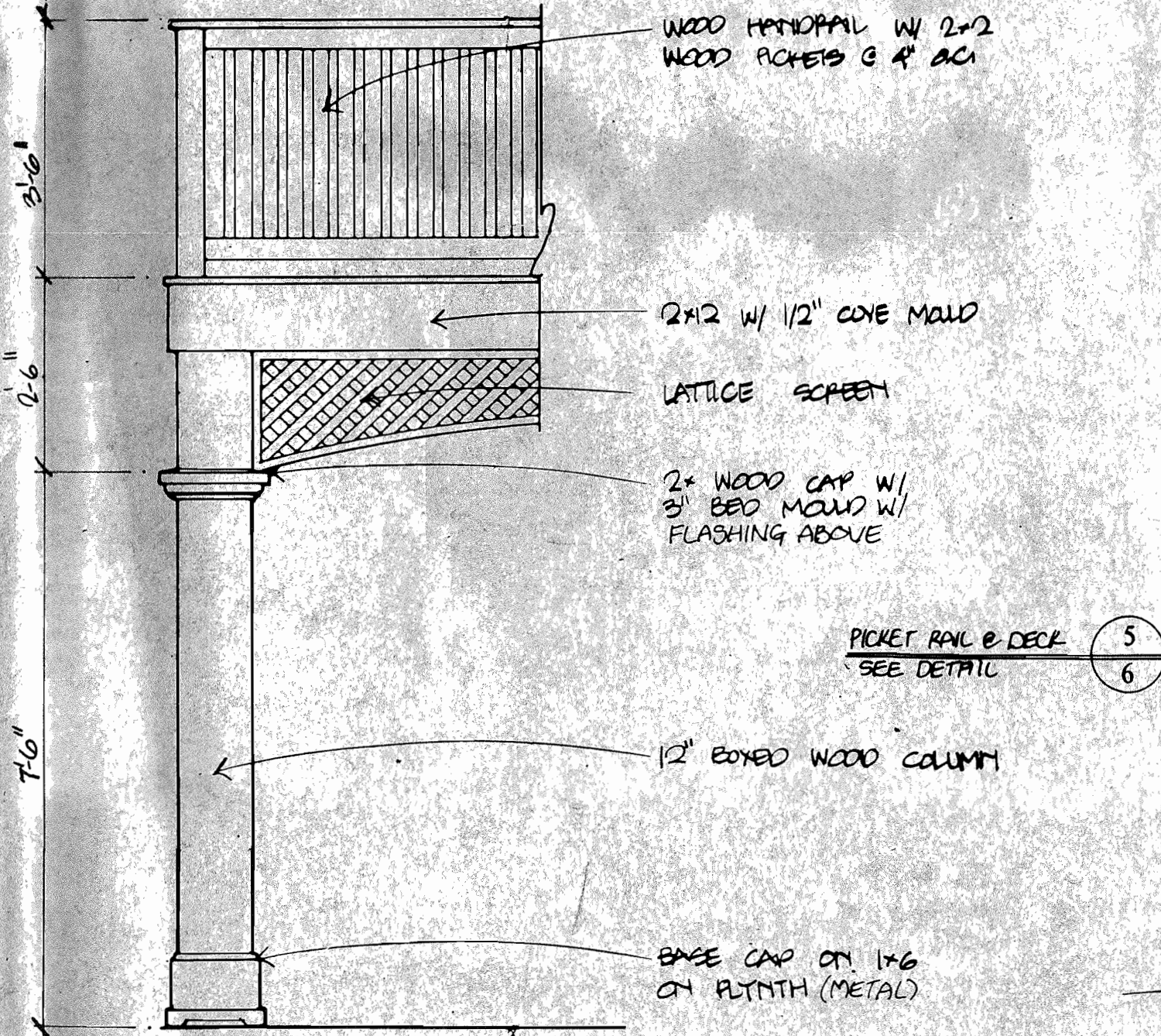
4 WALL SECTION  
SCALE: 3/4" 1'-0"



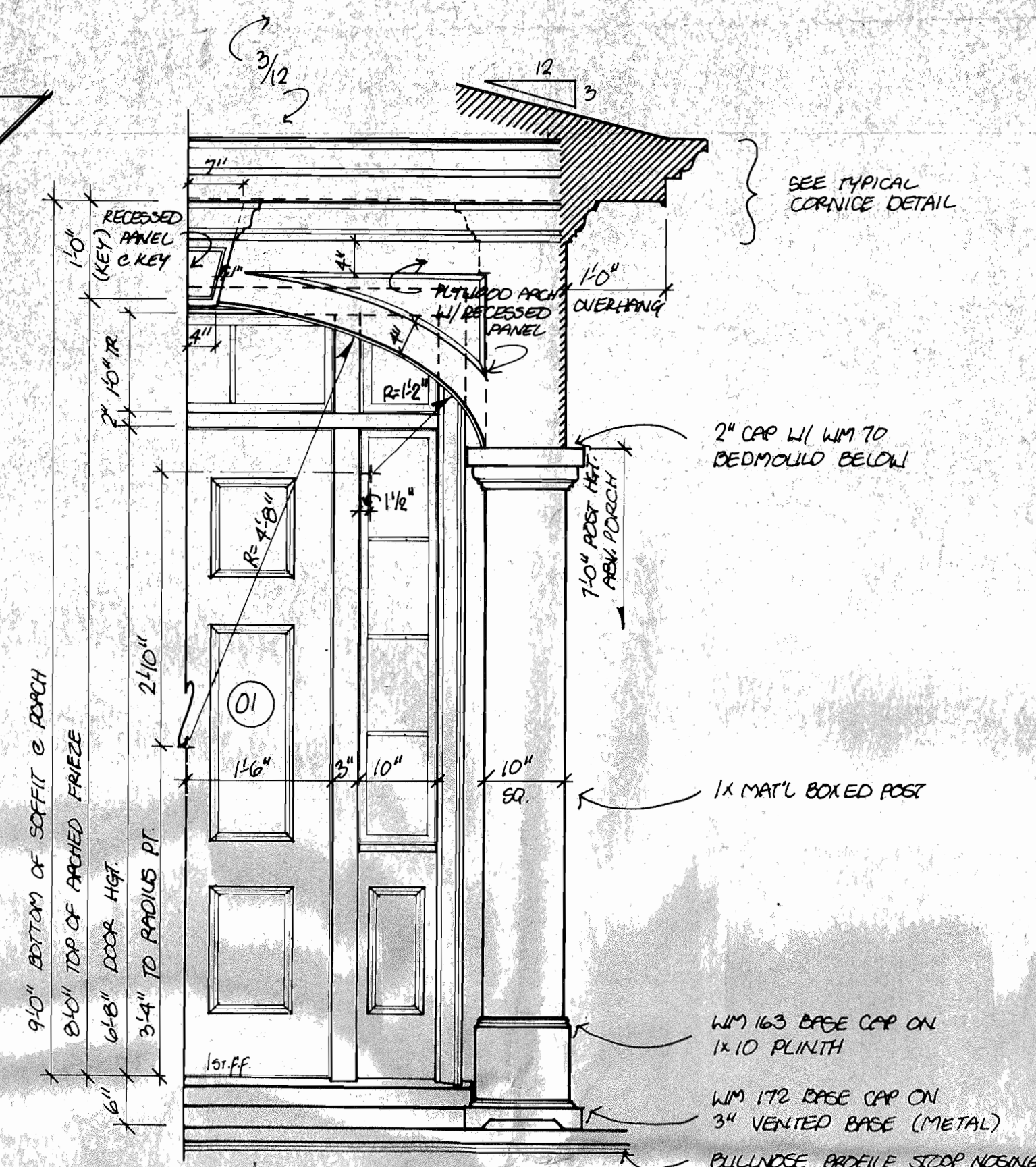
ELEVATION SIDE VIEW



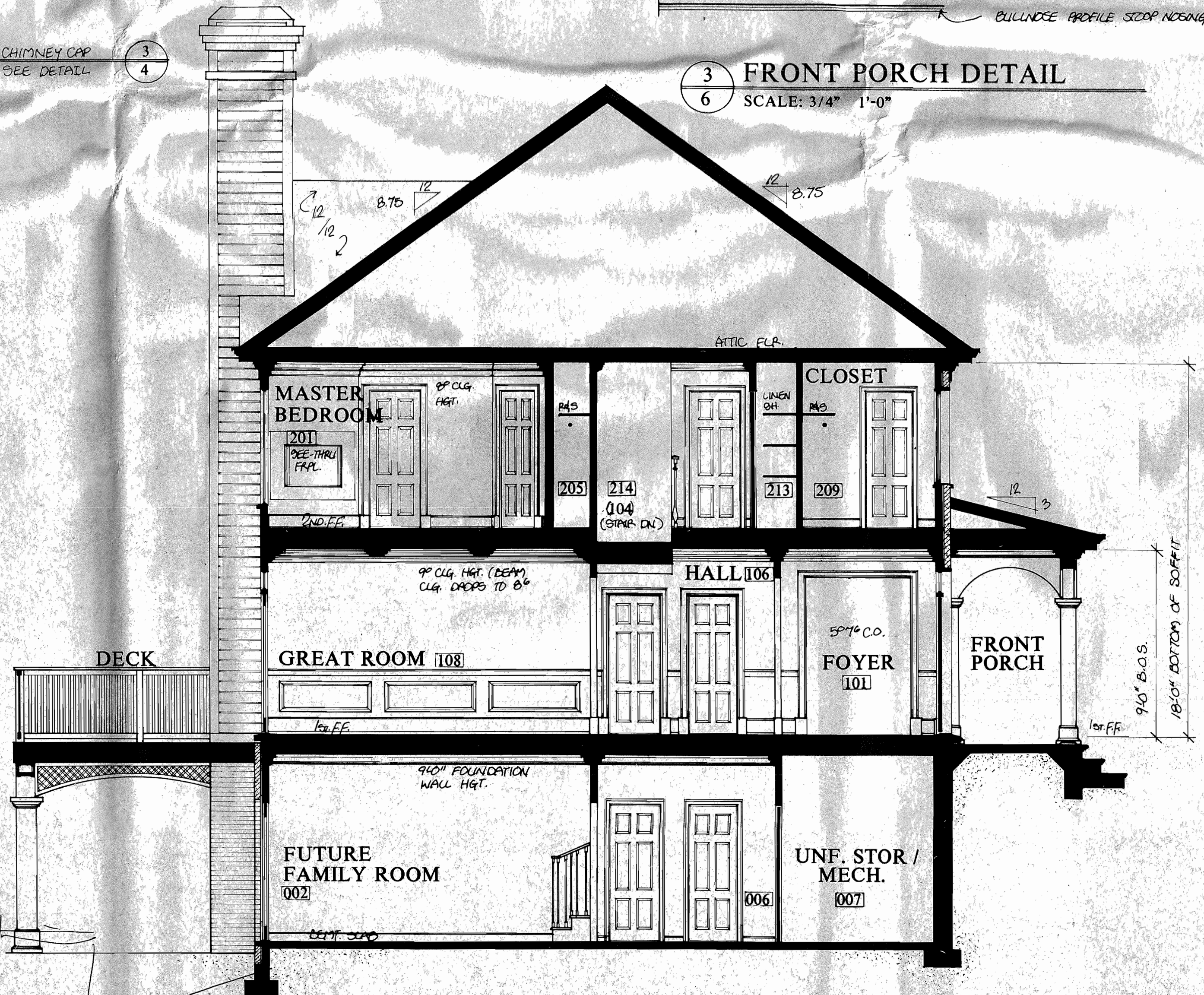
2 DORMER DETAIL  
SCALE: 3/4" 1'-0"



5 DECK DETAIL  
SCALE: 1/2" 1'-0"



3 FRONT PORCH DETAIL  
SCALE: 3/4" 1'-0"



6 BUILDING SECTION  
SCALE: 1/4" 1'-0"

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FAIRMONT

HEIGHTS  
810SC

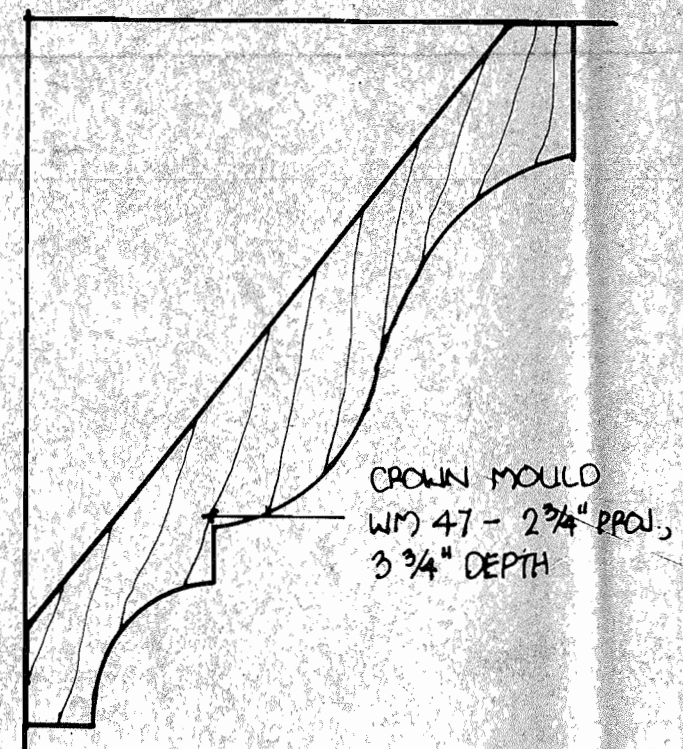
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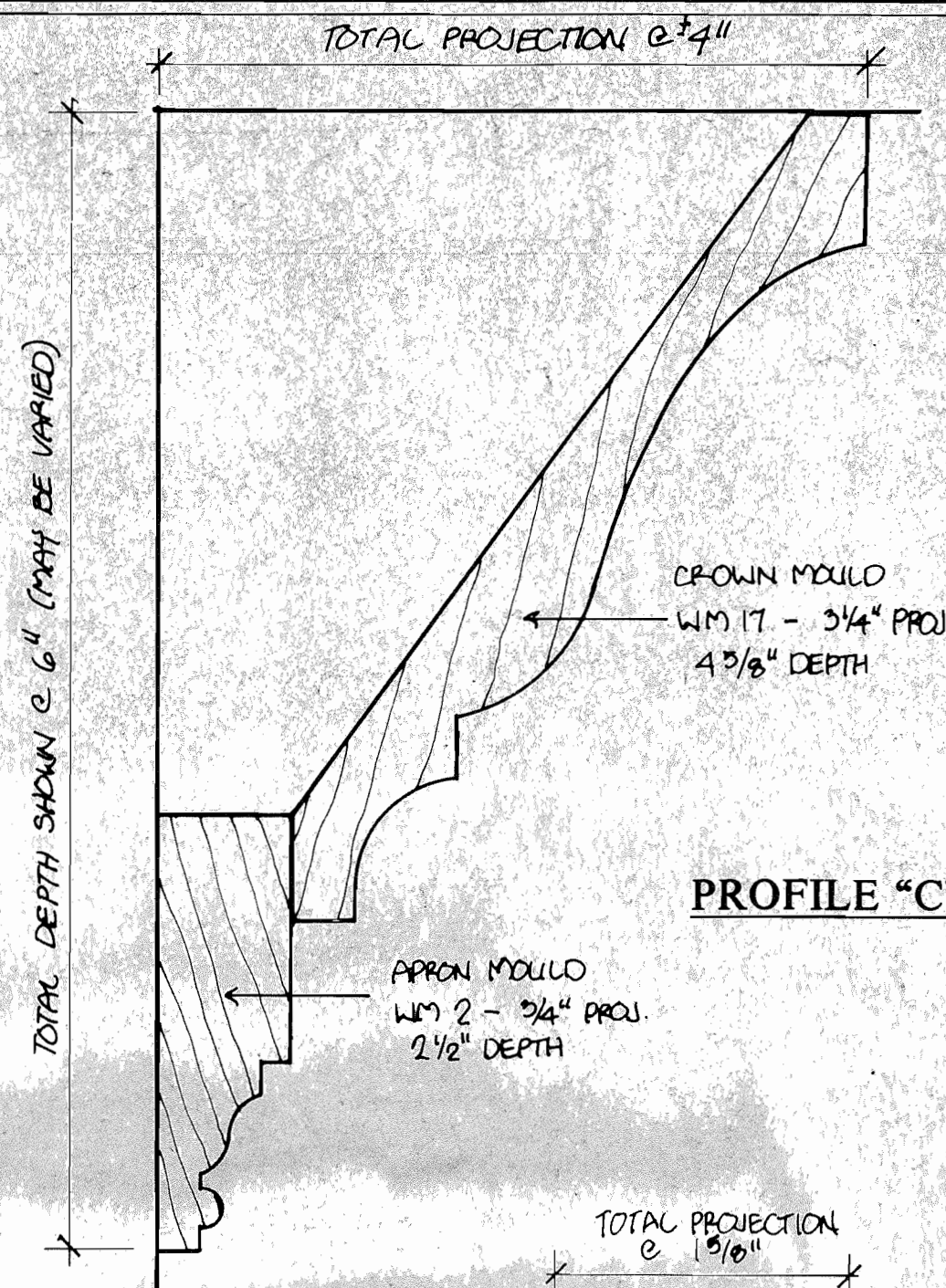




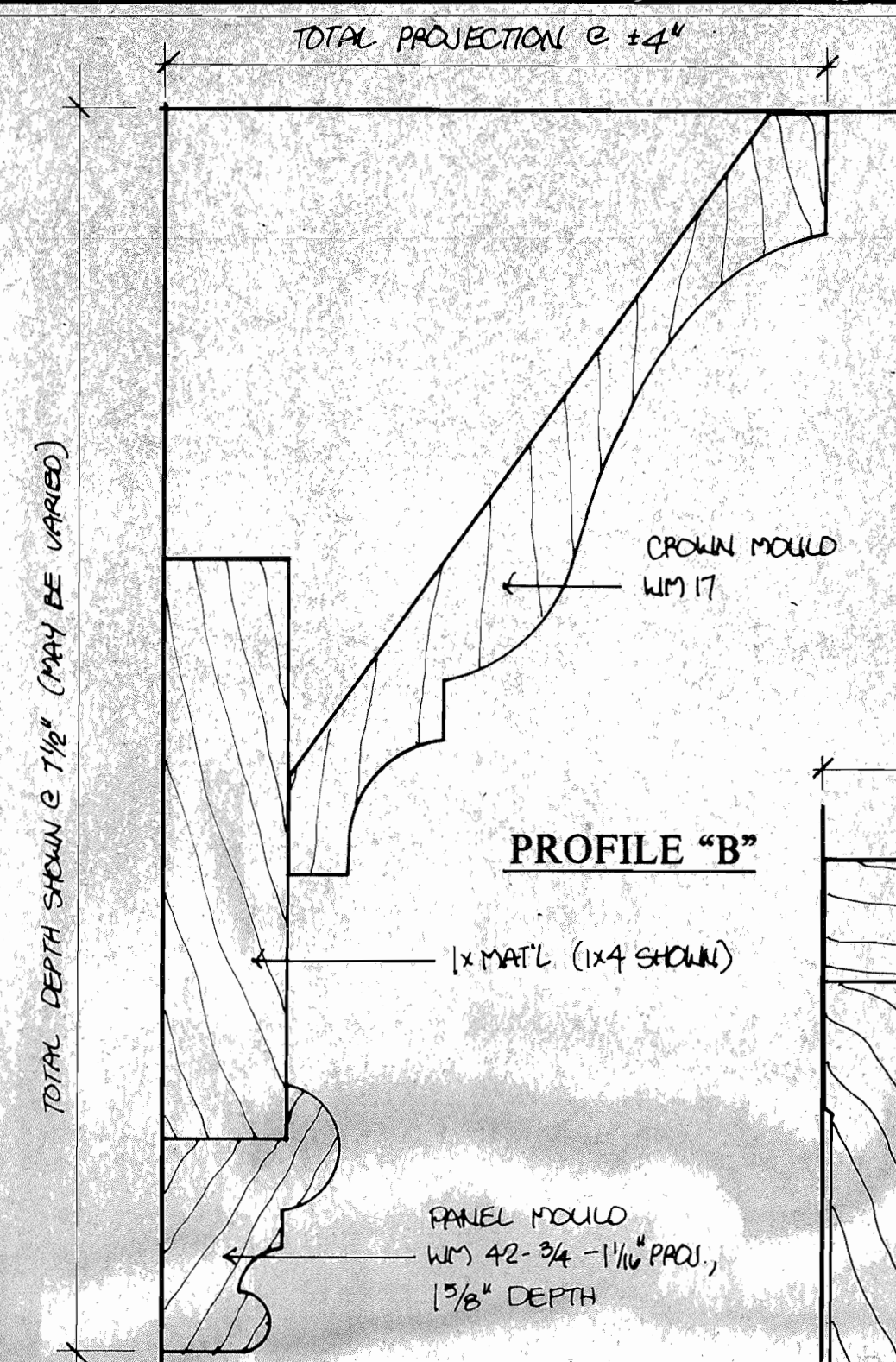
PROFILE "D"

TYPICAL CROWN PROFILES

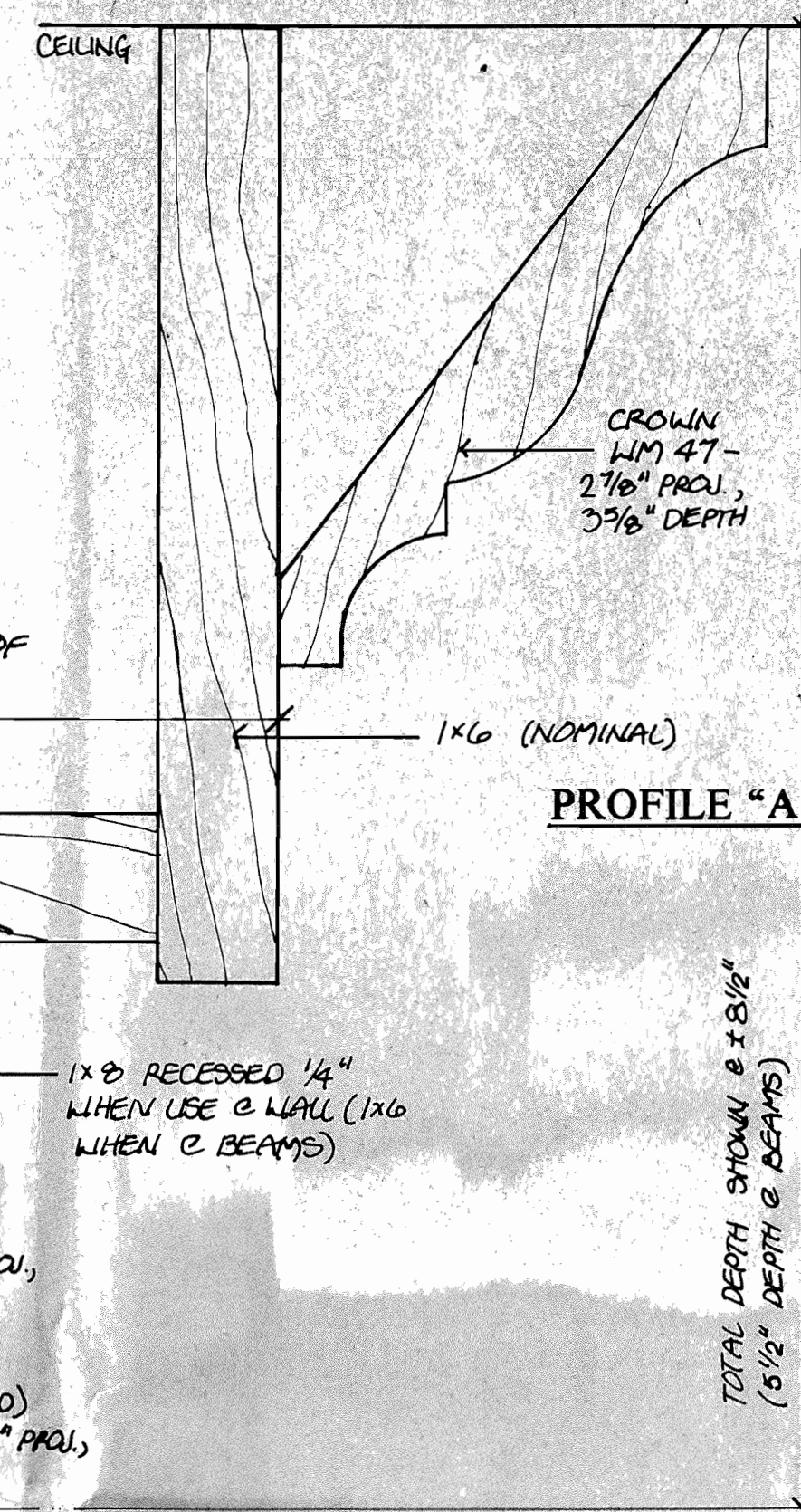
NOTE: ALL MOULDING PROFILES SHOWN AT FULL SCALE. "WM" REFERS TO WOOD MOULD.



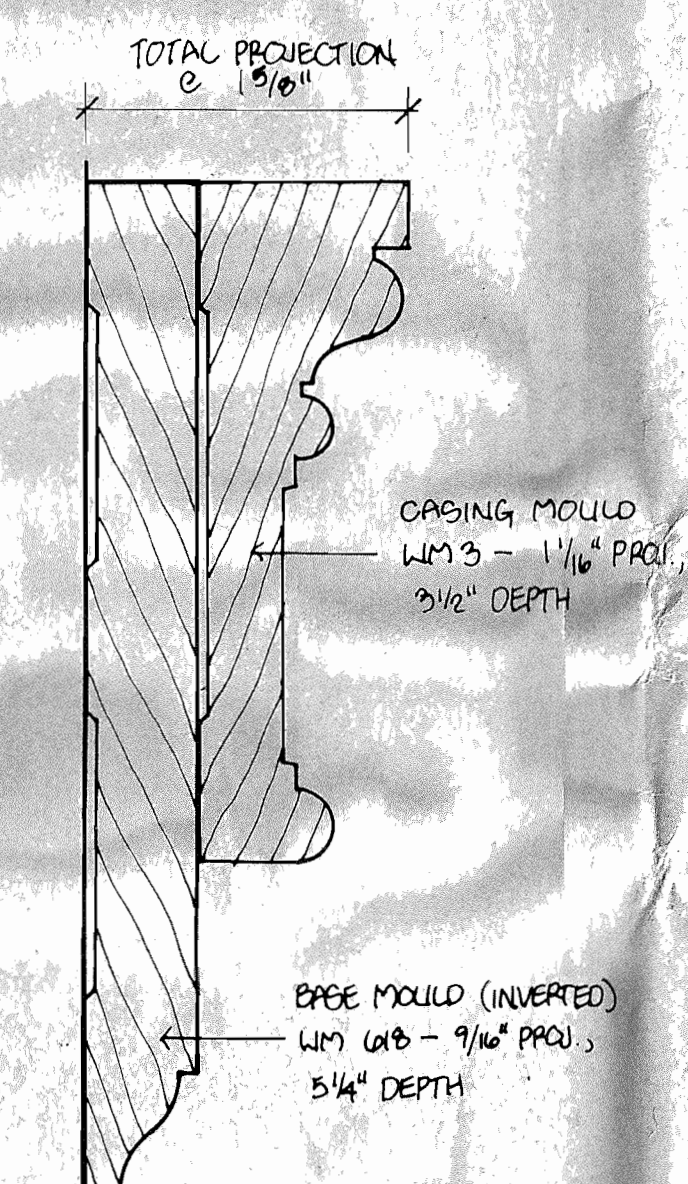
PROFILE "C"



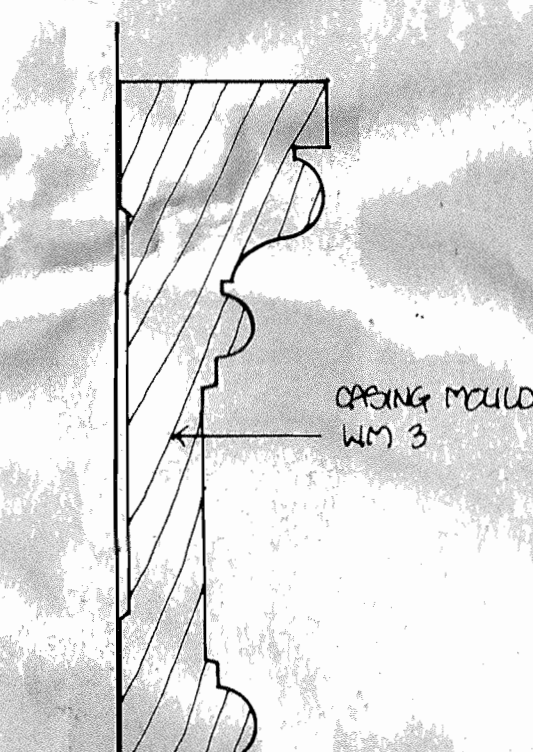
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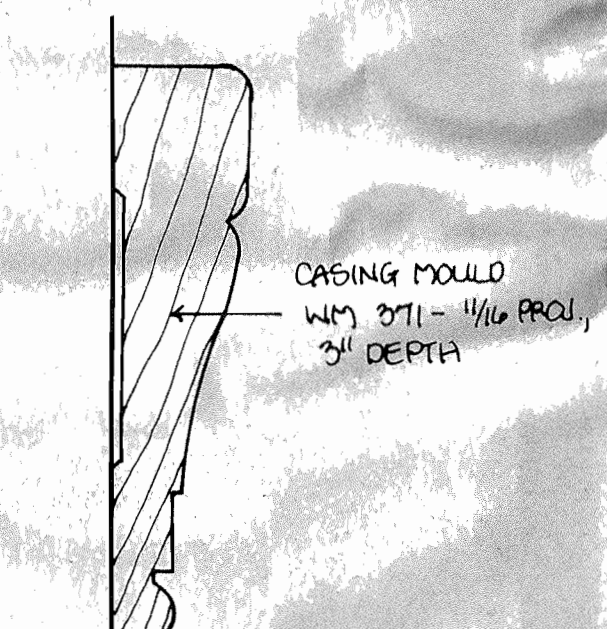
PROFILE "A"



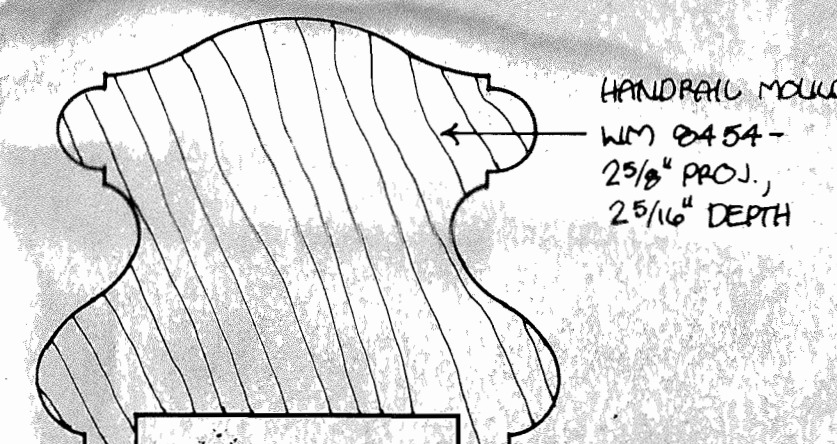
PROFILE "A"



PROFILE "B"

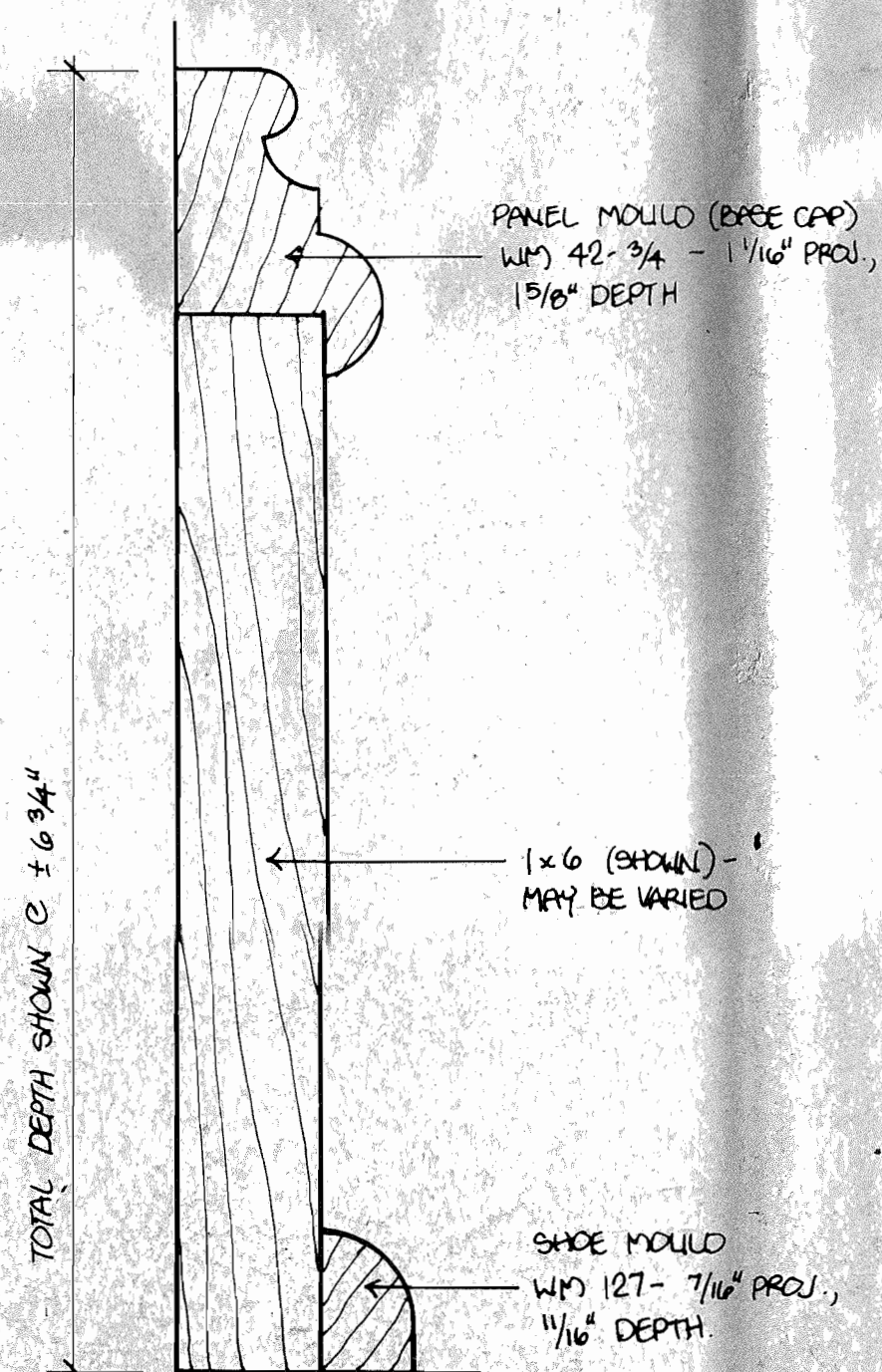


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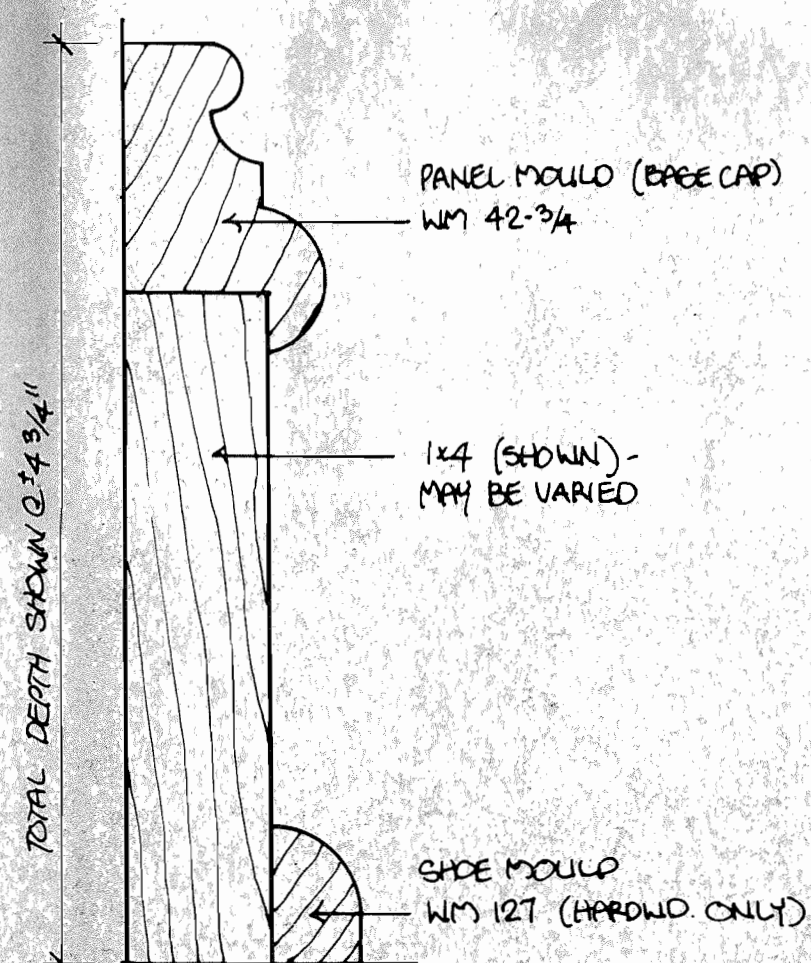


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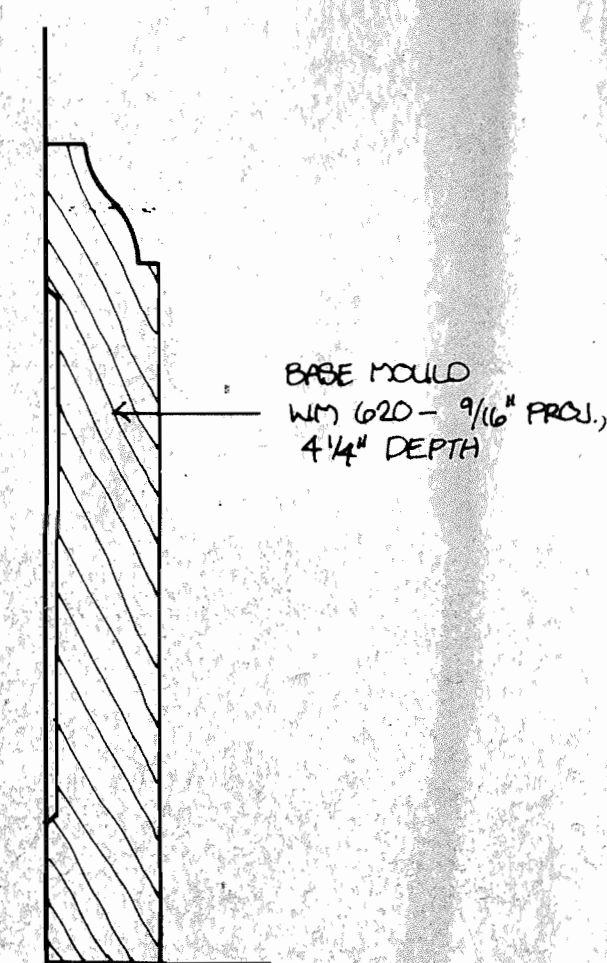
TYPICAL STAIR RAILING PROFILE



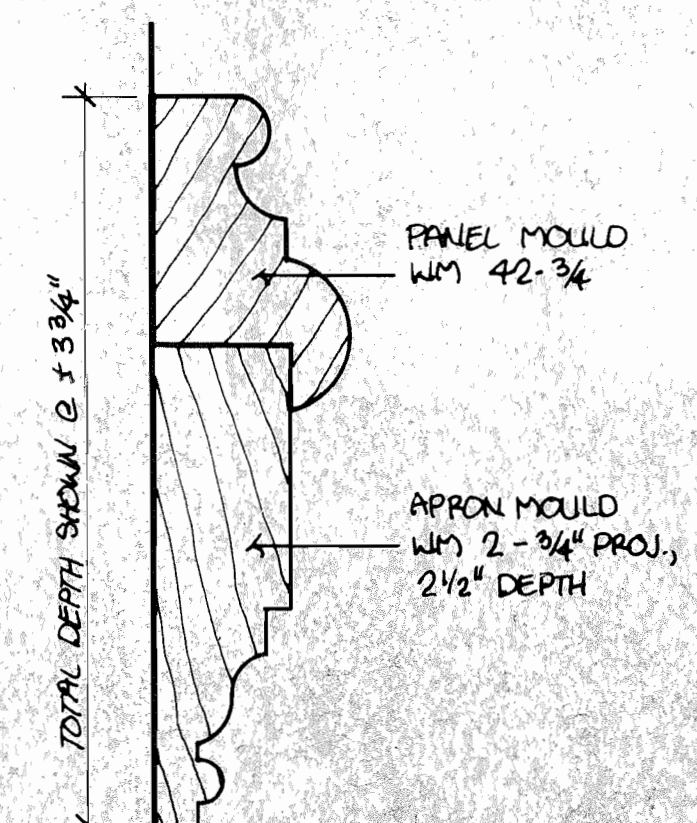
PROFILE "A"



PROFILE "B"



PROFILE "C"



PROFILE "A"  
TYPICAL CHAIRRAIL PROFILE

| ROOM FINISH SCHEDULE |                  |         |          |          |       |                |              |
|----------------------|------------------|---------|----------|----------|-------|----------------|--------------|
| NO.                  | ROOM NAME        | FLOOR   | WALLS    | CEILING  | CROWN | C. RAIL        | BASE         |
| 001                  | FUT. FAMILY ROOM | CARPET  | SR.-P    | SR.-P    | "D"-P |                | "C"-P        |
| 002                  | FUTURE BEDROOM   |         |          |          |       |                | RAILING "A"  |
| 003                  | CLOSET           |         |          |          |       |                |              |
| 004                  | BATH (VANITY)    |         |          |          | "D"-P |                | "C"-P        |
| 005                  | STORAGE          | VINYL   |          |          |       |                |              |
| 006                  | HALL             |         |          |          | "D"-P |                | "C"-P        |
| 007                  | MECH. ROOM       | SLAB    |          |          |       |                |              |
| 008                  | STORAGE          | VINYL   |          |          |       |                |              |
| 009                  | BATH (W/C & TUB) | TILE    | SR./TILE |          |       |                | TILE         |
| 010                  |                  |         |          |          |       |                |              |
| 011                  |                  |         |          |          |       |                |              |
| 012                  |                  |         |          |          |       |                |              |
| 013                  |                  |         |          |          |       |                |              |
| 014                  |                  |         |          |          |       |                |              |
| 101                  | FOYER            | HDWD.   | SR.-P    | SR.-P    | "B"-P | "A"-P          | "A"-P        |
| 102                  | LIVING ROOM      |         |          |          |       |                |              |
| 103                  | DINING ROOM      |         |          |          |       |                |              |
| 104                  | STAIR            | CARPET  |          |          |       |                | "B"-P        |
| 105                  | COAT             | HDWD.   |          |          |       |                | "C"-P        |
| 106                  | FRONT HALL       |         |          |          | "B"-P | "A"-P          | "A"-P        |
| 107                  | POWDER           |         |          |          | "C"-P |                | "B"-P        |
| 108                  | GREAT ROOM       |         |          | W/ BEAMS | "A"-P | "A"-P          |              |
| 109                  | KITCHEN          |         |          | SR.-P    | "C"-P |                |              |
| 110                  | BREAKFAST        |         |          |          | "C"-P | "A"-P          |              |
| 111                  | BACK HALL        | V. TILE |          |          | "D"-P |                | "C"-P        |
| 112                  | LAUNDRY          |         |          |          |       |                |              |
| 113                  | TWO-CAR GARAGE   | SLAB    |          |          |       |                |              |
| 114                  | STORAGE          |         |          |          |       |                |              |
| 115                  |                  |         |          |          |       |                |              |
| 116                  |                  |         |          |          |       |                |              |
| 117                  |                  |         |          |          |       |                |              |
| 118                  |                  |         |          |          |       |                |              |
| 201                  | MASTER BEDROOM   | CARPET  | SR.-P    | SR.-P    | "B"-P | "A"-P (OPTION) | "B"-P        |
| 202                  | MASTER BATH      |         |          |          | "C"-P |                | "C"-P        |
| 203                  | BEDROOM #2       |         |          |          | "D"-P |                | SAME AS A203 |
| 204                  | BEDROOM #3       |         |          |          |       |                | SAME AS A205 |
| 205                  | HERS             |         |          |          |       |                | SAME AS A205 |
| 206                  | HIS              |         |          |          |       |                |              |
| 207                  | BEDROOM #4       |         |          |          |       |                |              |
| 208                  | WATER CLOSET     | TILE    | SR./TILE |          |       |                | TILE         |
| 209                  | CLOSET           | CARPET  | SR.-P    |          |       |                | "C"-P        |
| 210                  | CLOSET           |         |          |          |       |                | SAME AS A209 |
| 211                  | CLOSET           |         |          |          |       |                |              |
| 212                  | BATH (VANITY)    |         |          |          | "D"-P |                |              |
| 213                  | LINEN            |         |          |          |       |                | SAME AS A213 |
| 214                  | HALL/STAIR       |         |          |          | "C"-P | "A"-P          | "B"-P        |
| 215                  | BATH             | TILE    | SR./TILE |          | "D"-P |                | RAILING "A"  |
| 216                  | BATH (W/C & TUB) |         |          |          |       |                | ALTERN. ONLY |
| 217                  |                  |         |          |          |       |                |              |

P = PAINT SR. = SHEETROCK S = STAIN

TYPICAL BASE PROFILES

APPROVED BY:

REVISIONS

DESIGNED FOR:  
Southern Living  
PLANS

THESE PLANS SHOULD BE REVIEWED BY A LOCAL ARCHITECT OR ENGINEER TO VERIFY THAT THEY MEET ALL LOCAL CODES.

FAIRMONT  
HEIGHTS  
810SC

SHEET

OF 7  
8



# GENERAL FRAMING NOTES:

- Hip, valley rafters and ridge boards to always be two 2x one size larger than rafters.
- All framing to be 16" o.c. unless otherwise noted.
- Roof decking to be 1/2" CDX plywood.
- Provide collar ties at upper 1/3 of vertical distance between ridge board and joists (48" o.c.).
- All rafters to be 2x8" at 16" o.c. based on 20# live load unless otherwise noted.
- All headers at first floor of two story plan to be double 2x12 minimum.
- Double floor joists under partition parallel to joist span.
- Provide "x" bridge at 8'-0" o.c. maximum for joists
- Provide double 2x8 strongback at ceiling joist spans over 10'-0".
- Provide solid blocking at mid height at all walls.
- All joists shall be stacked aligned over studs below.
- All lumber in contact with concrete or masonry shall be pressure treated.
- Anchor bolts shall be 1/2"x8" at 4'-0" o.c. and within 12" from the end of sills and corners. Provide minimum of 2 bolts per sill embedded 5 1/2" in footings.
- Provide rodent and insect proofing where all plumbing, wiring and vents pass through plated as per code.
- Provide continuous 2" eave vent for attic ventilation.
- Exterior openings, valleys and other areas specified on plans to have an approved flashing. Use 26 gauge G.I. flashing for all valleys 24" wide with roofs less than 4/12 pitch and for all shake roofs regardless of pitch. Use 18" wide flashing for roofs more than 4/12 pitch. Valley flashing shall have a splash rib, 1" in height for shake roofs and 3/4" high for other type of roofing.
- Exterior corners of structure to be braced with 1/2" CDX plywood.
- Use steel columns under each end of steel beams unless they bear on concrete wall. Use either TS 3x3x3/16 tube column or 3" standard pipe column in all cases. Where steel column doesnot bear on concrete wall or turn-down slab, use 2'-6"x2'-6"x1'-4" isolated footing reinforced with 3-#4 each way in the bottom.
- All wood columns shown on any of the framing plans should extend down thru the levels below and terminate at the basement floor. Where these multiple 2x wood columns do not rest atop a concrete wall, the slab should be thickened 2'-0"x2'-0"x1'-0" deep and reinforced with 3-#4 each way in the bottom. This will be true for all 2x columns except those which fall on beams below designed to carry their load. In this case the columns will terminate at the beam.
- 2x12 at 16" o.c. will be used to frame all floors unless otherwise noted.
- 2x10 at 16" o.c. will be used to frame all ceilings at attic level unless otherwise noted.
- 2x4 at 16" o.c. will be used to frame all walls unless otherwise noted.

# STRUCTURAL NOTES:

- GENERAL
  - These notes shall apply where indicated otherwise by drawings or specifications. A detail shown for one condition shall apply for all like or similar conditions even though not specifically indicated on the drawings.
  - The contractor shall provide adequate shoring and bracing for all the work during the construction period.
  - Backfill against walls shall be deposited evenly against both sides of the wall until the lower finished grade is reached.
- REINFORCED CONCRETE
  - All concrete shall be Standard Weight 3000 psi compressive strength at 28 days unless noted otherwise.
  - Construction or control joints shall be provided in slabs on grade so that the maximum area between joints shall be 800 square feet and the length not more than twice the width.
  - Reinforcing bars shall conform to ASTM A-615. All bar sizes #3 and smaller shall be grade 40. Bar sizes #4 and larger shall be grade 60.
  - Provide corner bars at all corners and intersections of footings beams and walls.
  - All reinforcing bars indicated as continuous shall have basic class "C" tension laps (26" for #5 bars).
  - Welded wire fabric shall conform to ASTM A-82 and A-185. Lap fabric a minimum of 6" at each splice.
- STRUCTURAL STEEL
  - Structural steel detailing, fabrication and erection shall be in accordance with the latest edition of the "Manual of Steel Construction" of the American Institute of Steel Construction.
  - Structural steel shall conform to ASTM A-36. Cold formed, welded and seamless carbon steel structural tubing in rounds and shapes shall conform to ASTM A-500.
  - All connections, except those indicated on the drawings as welded shall be made using 3/4 inch diameter ASTM A-325 bolts. Bolts shall be installed using the "turn of nut" method.
  - Structural steel shop drawings shall give complete welding information using AWS symbols. Welding electrodes shall be type E70XX.
  - All bearing plate anchors shall conform to the drawings and be A-307 steel or welded studs. Reinforcing bars shall not be used as anchors.

# 4. SRUCTURAL LUMBER

- Framing lumber specified on the structural drawings shall be #2 Southern Yellow Pine, kiln dried (MC=15%) or equal unless noted otherwise on the drawings.
- Wood framing shall conform to all local building codes as a minimum standard.
- Toe and end nailing may be allowed for bearing type connections unless otherwise noted on the drawings. All other connections shall be made using metal connectors.
- Provide bridging at 8'-0" o.c. maximum spacing and at all bearing points for all joists and rafters.
- Load bearing stud walls shall have horizontal bracing at 6'-0" o.c. maximum spacing.
- Studs and joists shall not be cut to install plumbing or wiring without adding metal or wood side pieces to strengthen the member to its original capacity.
- Joists and rafters shall be cut to have horizontal contact for the full width of the supporting member.
- Nail multiple member beams together with 16d nails at 12 inches on center staggered.
- Flitch plated beams noted on the drawings by multiple 2x members with a plate shall be put together as shown on the typical detail utilizing a steel plate of A-36 steel.

# 5. PREFABRICATED WOOD TRUSSES

- Trusses connected with light gage metal plates shall be designed and fabricated in accordance with the Truss Plate Institute.
- Maximum allowable stress increase for short term loading equals 25%.
- Shop drawings shall be submitted to contractor for approval on each truss design. Each truss shop drawing indicating design loads and spacing shall bear the seal of a Registered Professional Engineer for the state in which the structure is built. Floor and roof trusses shall have "x" bridging at 8'-0" o.c. maximum spacing. Roof truss "x" bridging shall be of 2x4's; floor trusses with 1x4's. A layout plan shall be provided to contractor to indicate the location of each truss and all bridging.
- Truss Design Loads:
  - Roof Trusses: Top Chord LL---20psf  
DL---15psf  
Bot Chord DL---10psf  
Total Load-----45psf
  - Floor Trusses: Top Chord LL---40psf  
DL--- 5psf  
Bot Chord DL--- 5psf  
Total Load-----50psf

# 6. FOUNDATION

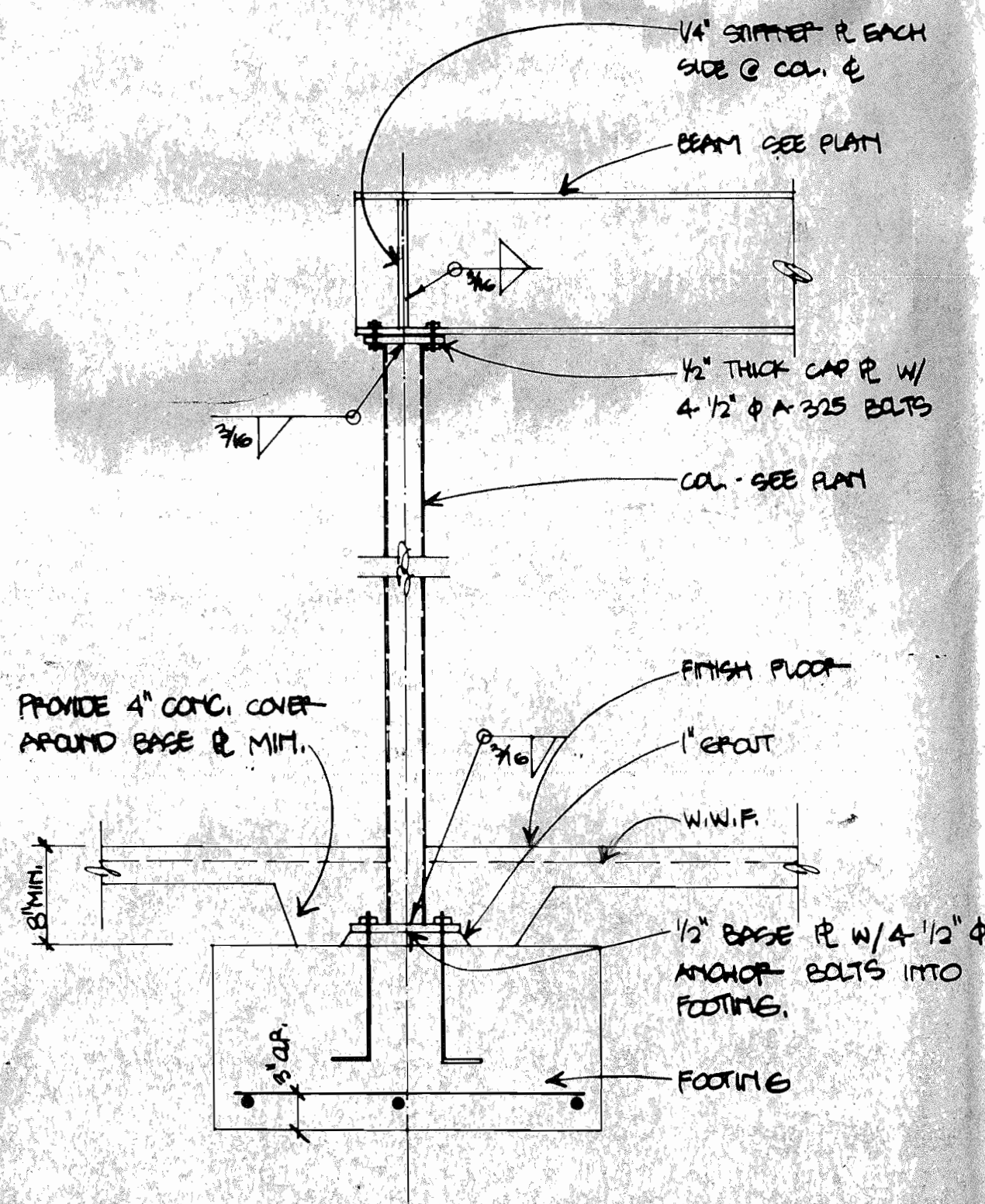
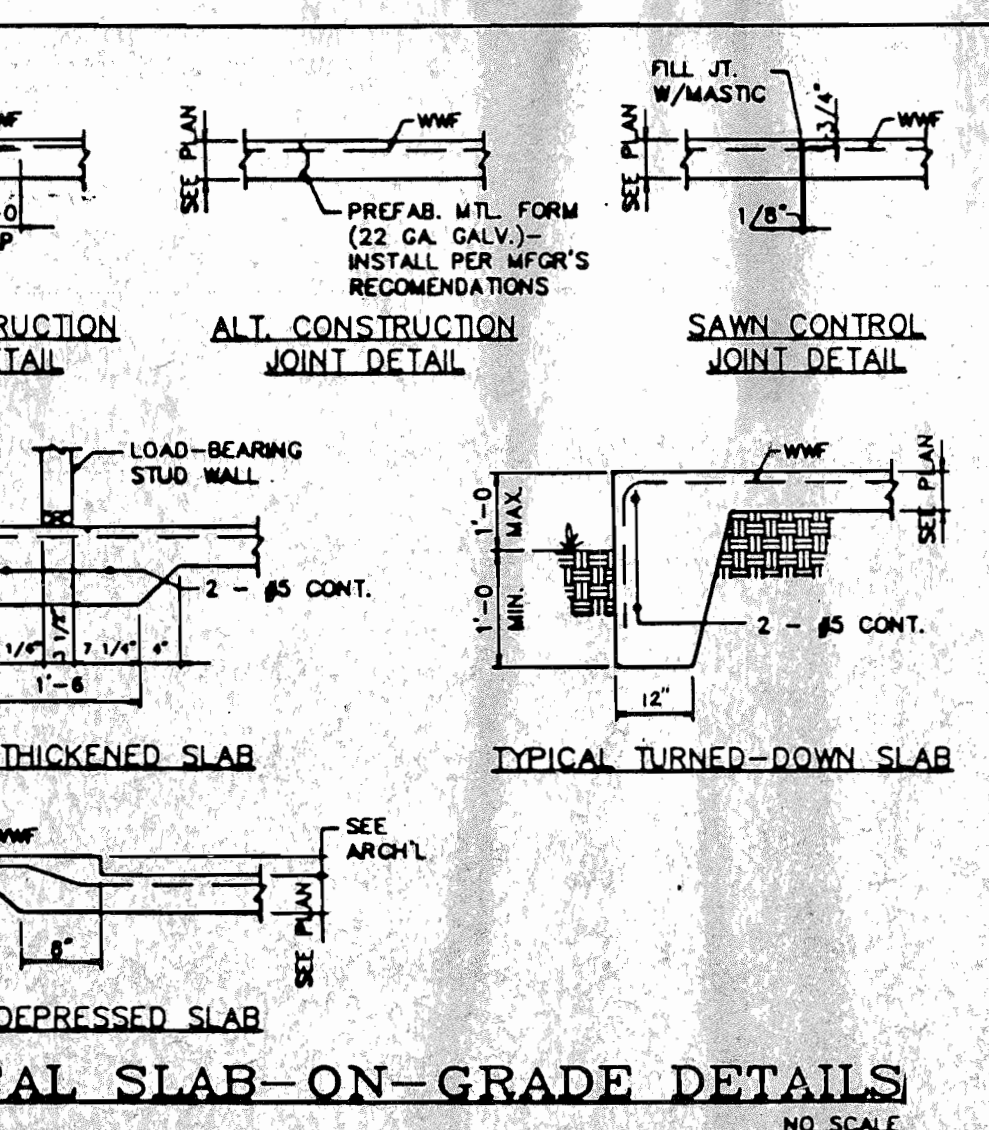
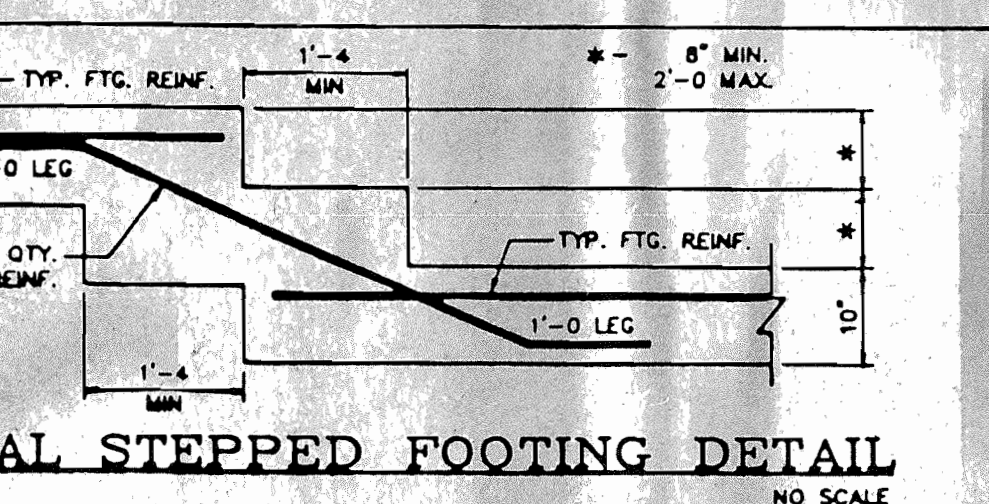
- If, after excavation, the condition of the soil indicates a safe bearing capacity of less than 2500 PSF the contractor shall be notified and the footings revised, if necessary. Column footings and wall footings shall be poured monolithically with adjacent footings at the same elevation. All footings shall bear on original undisturbed soil where possible. Coordinate top of footing elevations with plumbing requirements. All fill within 10'-0" of the building limit shall be compacted to 95% Standard Proctor. Maximum uncompacted lift is 6".
- All reinforcing steel shall be of American manufacture conforming to local building ordinances, and ASTM standards. Where spliced, rebars shall lap 40 bar diameters with a minimum of 2'-0".
- All reinforcing steel in footings shall be located 3" clear from bottom and sides of footing and 2" clear from top.

# GENERAL NOTES:

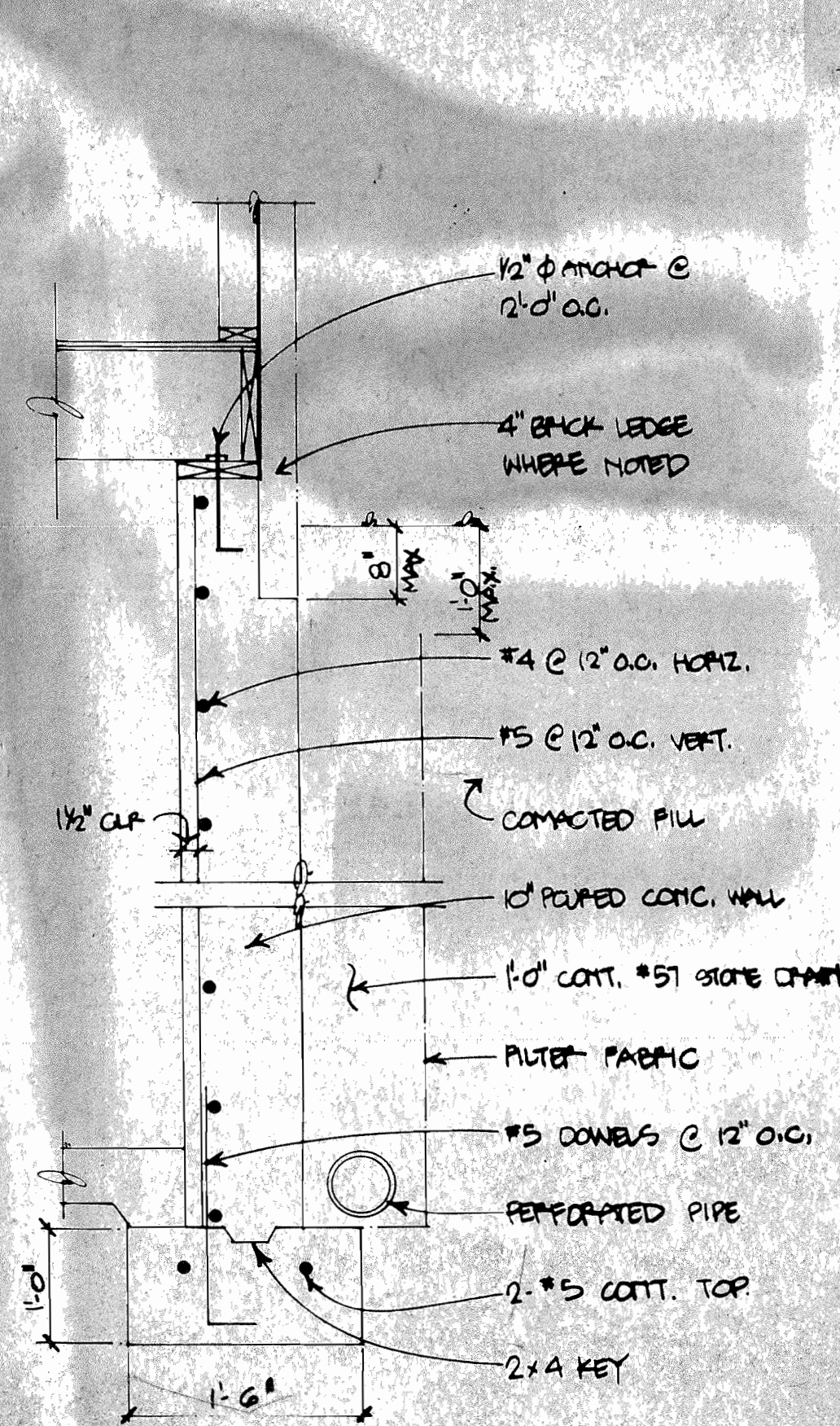
- All dimensions are to face of stud or to face of masonry unless otherwise noted.
- All angles are 45 degrees unless otherwise noted.
- Contractor to verify all dimensions at construction site.
- Purchaser is responsible for compliance with all local building codes and ordinances.
- Bottom of all footings shall extend below frostline depth, verify depth.
- Exact size and reinforcement of all concrete footings must be determined by local soil conditions and acceptable practices of construction. Verify design with local engineer.
- Verify all structural elements with local engineer and building official.
- Contractor to size electrical system to meet local code requirements.
- Contractor to size heating and cooling loads as for local codes, climatic conditions and building orientation.
- Plumbing materials and installation to be done in accordance with local requirements.

# ELECTRICAL PLAN KEY

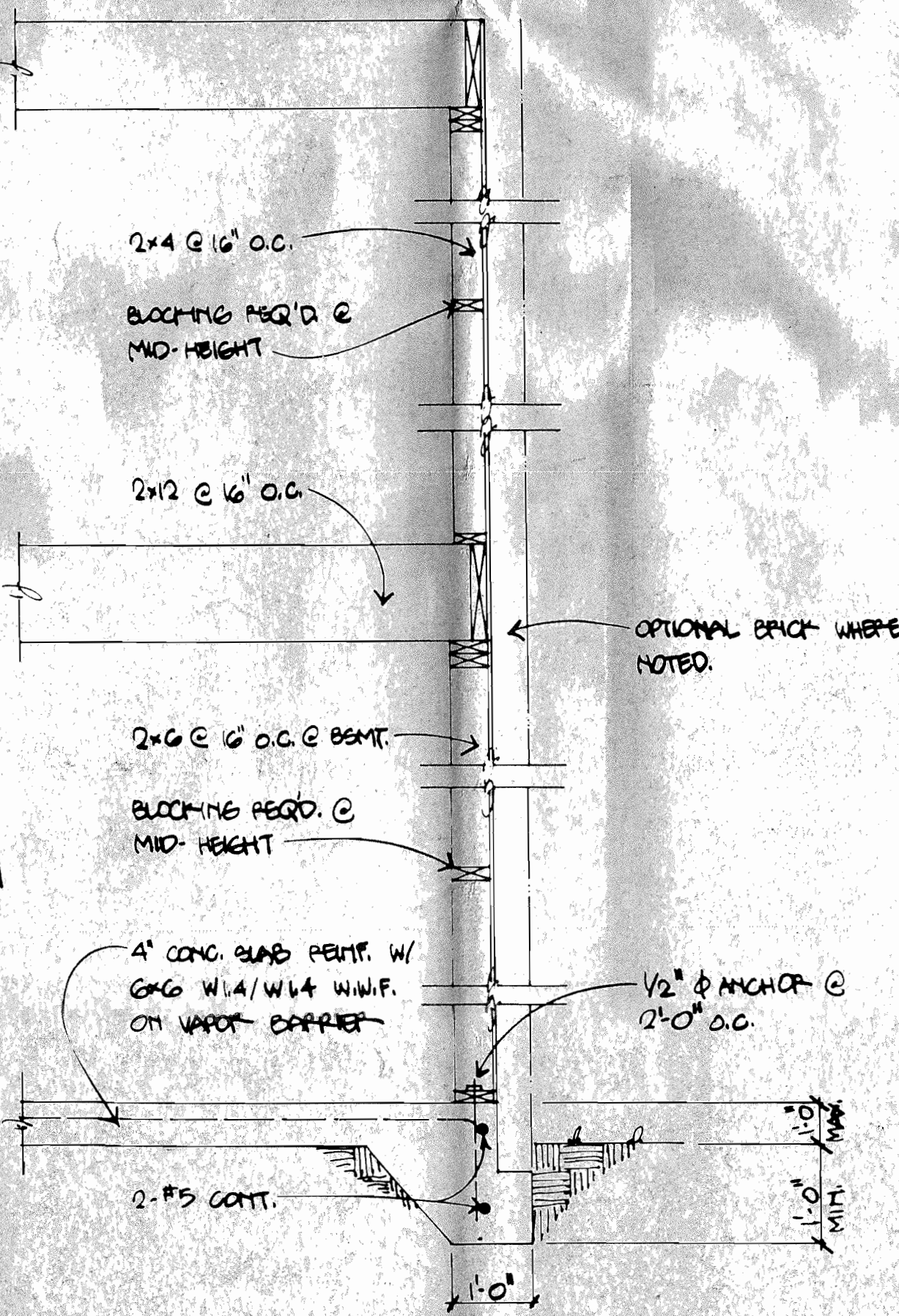
- Duplex Convenience Outlet
- Duplex Outlet Above Counter
- Weatherproof Duplex Outlet
- Half-switched Duplex Outlet
- Special Purpose Outlet
- Duplex Outlet in Floor
- 220 Volt Outlet
- Electric Door Operator
- Ceiling Mounted Incandescent Light Fixture
- Wall Mounted Incandescent Light Fixture
- Recessed Incandescent Light Fixture
- Exhaust Fan
- Exhaust Fan/Light Combination
- Fluorescent Light Fixture
- Ceiling Fan/Light



Typical Beam, Column and Footing Detail



Section at Concrete Basement Wall



Section at Basement Stud Wall

APPROVED BY:

REVISIONS

DESIGNED FOR:

Southern Living

PLANS

PLANS SHOULD BE REVIEWED BY A LOCAL ARCHITECT OR ENGINEER TO VERIFY THAT THEY MEET ALL LOCAL CODES.

FAIRMONT

HEIGHTS  
810SC

SHEET

OF 8

8

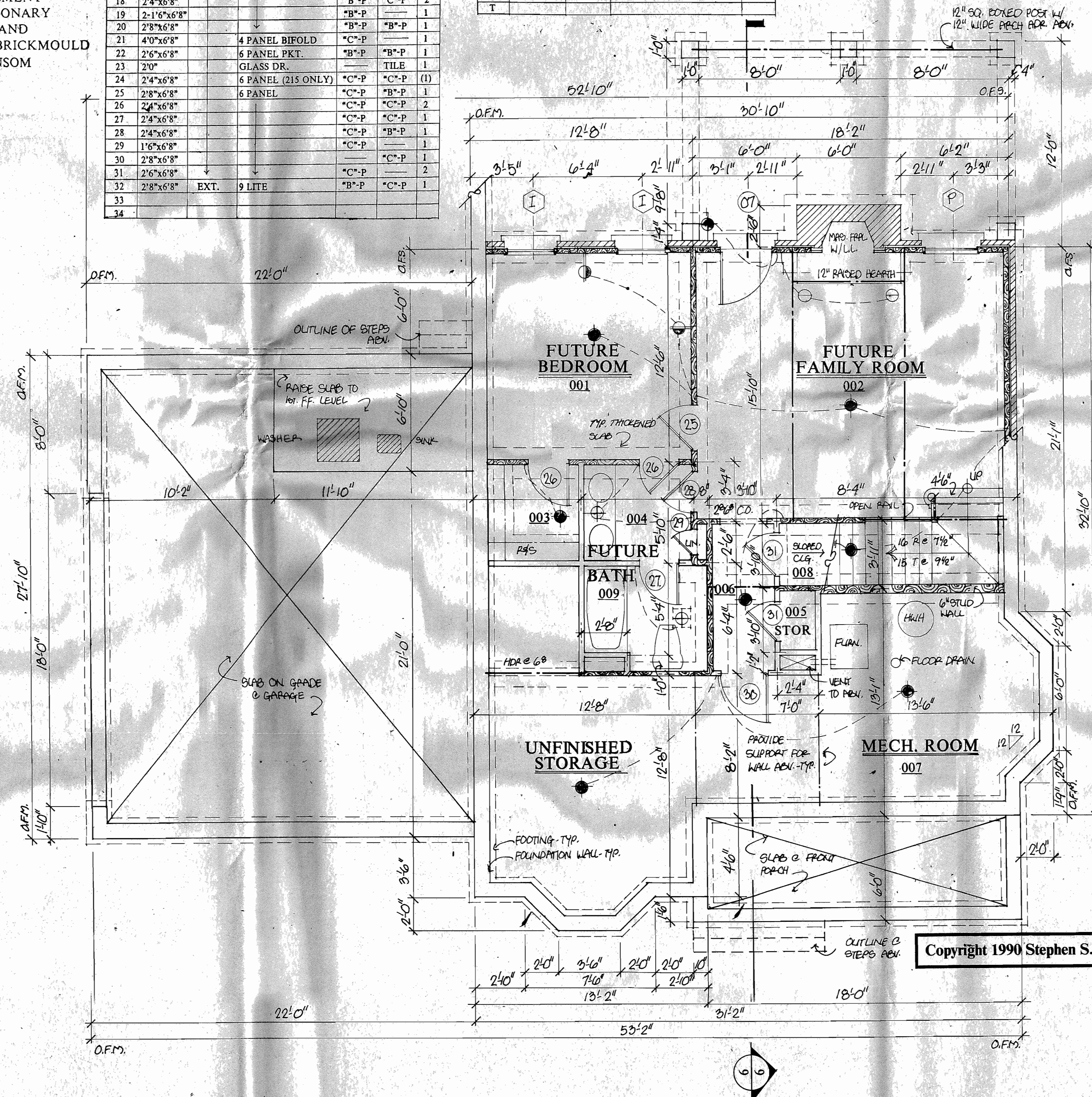


| DOOR SCHEDULE |            |      |                       |        |       |     |
|---------------|------------|------|-----------------------|--------|-------|-----|
| NO.           | SIZE       | TYPE | DESCRIPTION           | CASING | IN    | OUT |
| 01            | 3'0"x6'8"  | EXT. | W/12" TR./10" SD.LTS. | "A"-P  | WM 3  | 1   |
| 02            | 18'0"x7'0" |      | PANEL GAR. DR.        | "C"-P  | BRMD. | 1   |
| 03            | 2'8"x6'8"  |      | 6 PANEL               | "C"-P  | BRMD. | 1   |
| 04            | 2'8"x6'8"  |      | 9 LITE                | "B"-P  | BRMD. | 1   |
| 05            | 5'0"x6'8"  |      | FR. ATRIUM W/12" TR.  | "A"-P  | BRMD. | 1   |
| 06            | 2'2"x6'8"  |      | 6 PANEL AT GAR.       | "C"-P  |       | 1   |
| 07            | 3'0"x6'8"  |      | FRENCH                | "B"-P  | BRMD. | 1   |
| 08            | 2'0"x6'8"  | INT. | 6 PANEL               | "B"-P  | "B"-P | 1   |
| 09            | 2'6"x6'8"  |      |                       | "B"-P  | "B"-P | 2   |
| 10            | 2'8"x6'8"  |      |                       | "B"-P  | "B"-P | 1   |
| 11            | 2'6"x6'8"  |      | PANEL PKT. W/12" TR.  | "B"-P  | "A"-P | 1   |
| 12            | 2'8"x6'8"  |      |                       | "A"-P  | "A"-P | 1   |
| 13            | 2'0"x6'8"  |      |                       | "C"-P  | "C"-P | 1   |
| 14            | 2'4"x6'8"  |      | 6 PANEL               | "C"-P  | "C"-P | 1   |
| 15            | 2'6"x6'8"  |      |                       | "C"-P  | "B"-P | 3   |
| 16            | 2'4"x6'8"  |      |                       | "C"-P  | "B"-P | 1   |
| 17            | 2'4"x6'8"  |      |                       | "C"-P  | "C"-P | 1   |
| 18            | 2'4"x6'8"  |      |                       | "B"-P  | "C"-P | 2   |
| 19            | 2'4"x6'8"  |      |                       | "B"-P  | "B"-P | 1   |
| 20            | 2'8"x6'8"  |      |                       | "B"-P  | "B"-P | 1   |
| 21            | 4'0"x6'8"  |      | 4 PANEL BIFOLD        | "C"-P  |       | 1   |
| 22            | 2'6"x6'8"  |      | 6 PANEL PKT.          | "B"-P  | "B"-P | 1   |
| 23            | 2'0"       |      | GLASS DR.             | "C"-P  | "B"-P | 1   |
| 24            | 2'4"x6'8"  |      | 6 PANEL (215 ONLY)    | "C"-P  | "C"-P | (1) |
| 25            | 2'8"x6'8"  |      |                       | "C"-P  | "B"-P | 1   |
| 26            | 2'4"x6'8"  |      |                       | "C"-P  | "C"-P | 2   |
| 27            | 2'4"x6'8"  |      |                       | "C"-P  | "C"-P | 1   |
| 28            | 2'4"x6'8"  |      |                       | "C"-P  | "B"-P | 1   |
| 29            | 1'6"x6'8"  |      |                       | "C"-P  |       | 1   |
| 30            | 2'8"x6'8"  |      |                       | "C"-P  |       | 1   |
| 31            | 2'6"x6'8"  |      |                       | "C"-P  |       | 2   |
| 32            | 2'8"x6'8"  | EXT. | 9 LITE                | "B"-P  | "C"-P | 1   |
| 33            |            |      |                       |        |       |     |
| 34            |            |      |                       |        |       |     |

D.H.=DOUBLE HUNG  
CSMT=CASEMENT  
STAT=STATIONARY  
B.B.=BACKBAND  
BRMD/BM=BRICKMOULD  
TRAN=TRANSOM

| WINDOW SCHEDULE |             |          |                            |      |
|-----------------|-------------|----------|----------------------------|------|
| TYPE            | SIZE        | EXT.     | DESCRIPTION                | QTY. |
| A               | 2'8"x5'6"   | 1x4 w/BB | D.H.                       | 2    |
| B               | 2'0"x6'2"   | BRMD.    | D.H.                       | 4    |
| C               | 2'8"x6'2"   | BRMD.    | FIXED                      | 1    |
| D               | 2'8"x5'2"   | 1x4 w/BB | D.H.                       | 3    |
| E               | 2'4"x4'6"   | BRMD.    | D.H.                       | 1    |
| F               | 2'2"x4'6'2" |          | D.H.(w/12" TR. AT GRT.R.M. | 2    |
| G               | 3'2"x6'2"   |          | D.H. PAIR W/6" MULLS       | 1    |
| H               | 5'0"x6'2"   |          | FIXED                      | 1    |
| I               | 2'8"x4'6"   | 1x4 w/BB | D.H.(BRMD. AT REAR)        | 6    |
| J               | 2'2'0"x4'6" |          | D.H. PAIR                  | 1    |
| K               | 2'4"x4'6"   |          | DORMER D.H.                | 2    |
| L               | 2'2'8"x4'6" | 1x4 w/BB | D.H. PAIR                  | 1    |
| M               | 2'8"x6'2"   | BRMD.    | D.H.                       | 2    |
| N               | 3'0"x6'2"   |          | FIXED ARCHED HD.           | 1    |
| O               |             |          |                            |      |
| P               | 3'0"x6'2"   |          | D.H.                       | 1    |
| Q               |             |          |                            |      |
| R               |             |          |                            |      |
| S               |             |          |                            |      |
| T               |             |          |                            |      |

| ELECTRICAL PLAN KEY |                                            |
|---------------------|--------------------------------------------|
|                     | Duplex Convenience Outlet                  |
|                     | Duplex Outlet Above Counter                |
|                     | Weatherproof Duplex Outlet                 |
|                     | Half-switched Duplex Outlet                |
|                     | Special Purpose Outlet                     |
|                     | Duplex Outlet in Floor                     |
|                     | 220 Volt Outlet                            |
|                     | Electric Door Operator                     |
|                     | Ceiling Mounted Incandescent Light Fixture |
|                     | Wall Mounted Incandescent Light Fixture    |
|                     | Recessed Incandescent Light Fixture        |
|                     | Exhaust Fan                                |
|                     | Exhaust Fan/Light Combination              |
|                     | Fluorescent Light Fixture                  |
|                     | Ceiling Fan/Light                          |



NOTE: 1-DIMENSIONS AT FOUNDATION HAVE BEEN ADJUSTED TO ALLOW FOR LEDGE FOR BRICK FACING ABOVE.  
2-DIMENSIONS AT FOUNDATION HAVE NOT BEEN ADJUSTED FOR WATERTABLE.

FOUNDATION/BASEMENT LEVEL FLOOR PLAN  
SCALE: 1/4" = 1'-0"  
9'-0" FOUNDATION WALL HGT.

DISCLAIMER  
Purchaser is responsible for compliance with all local building codes and ordinances. Neither Southern Living nor Architect may be held responsible for local site conditions, or for construction means or methods, workmanship, quality of materials or equipment utilized in the construction of these drawings.  
Exact size and reinforcement of all concrete footings must be determined by local soil conditions and acceptable practices of construction. Verify design with local engineer. Bottom of all footings should extend below frostline - verify depth.  
Verify all structural elements for design and site with local engineer and building officials.  
These plans should be reviewed by a local architect or engineer to verify that they meet all local codes.

DESIGNED FOR:  
**Southern Living PLANS**

Fairmont Heights  
810

SHEET  
OF 9

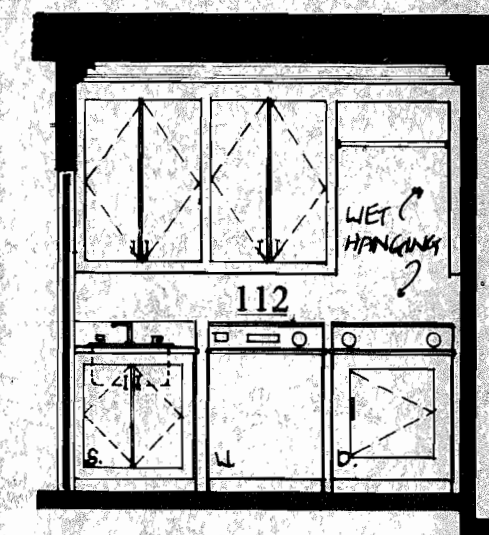
APPROVED BY:

REVISIONS

THESE PLANS SHOULD BE REVIEWED BY A LOCAL ARCHITECT OR ENGINEER TO VERIFY THAT THEY MEET ALL LOCAL CODES.

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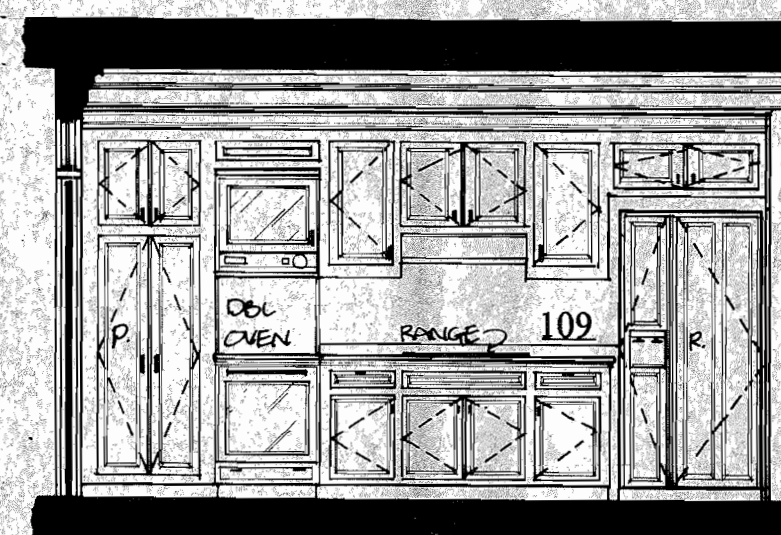




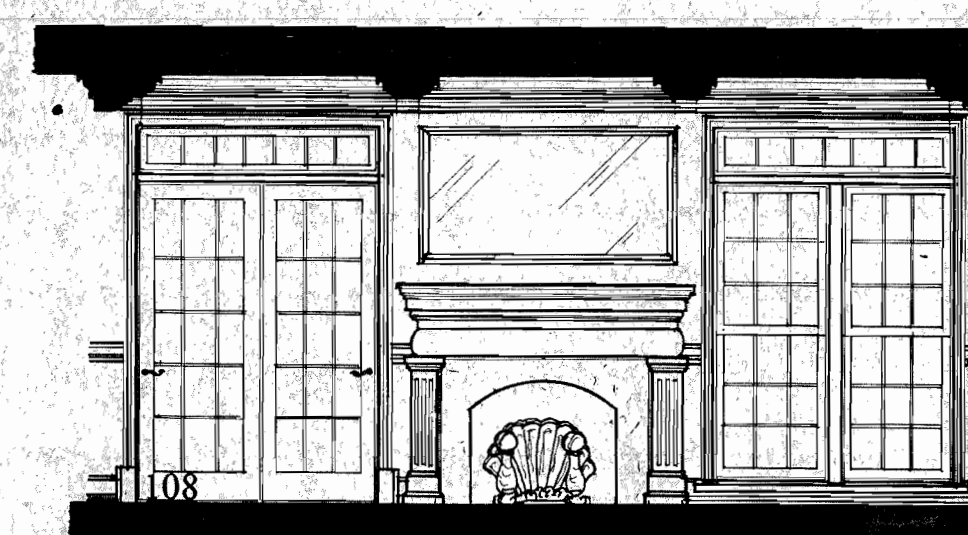
L-1 LAUNDRY ELEVATION  
2 SCALE: 1/4" 1'-0"



K-1 KITCHEN ELEVATION  
2 SCALE: 1/4" 1'-0"



K-2 KITCHEN ELEVATION  
2 SCALE: 1/4" 1'-0"



G-1 GREAT ROOM ELEVATION  
2 SCALE: 1/4" 1'-0"

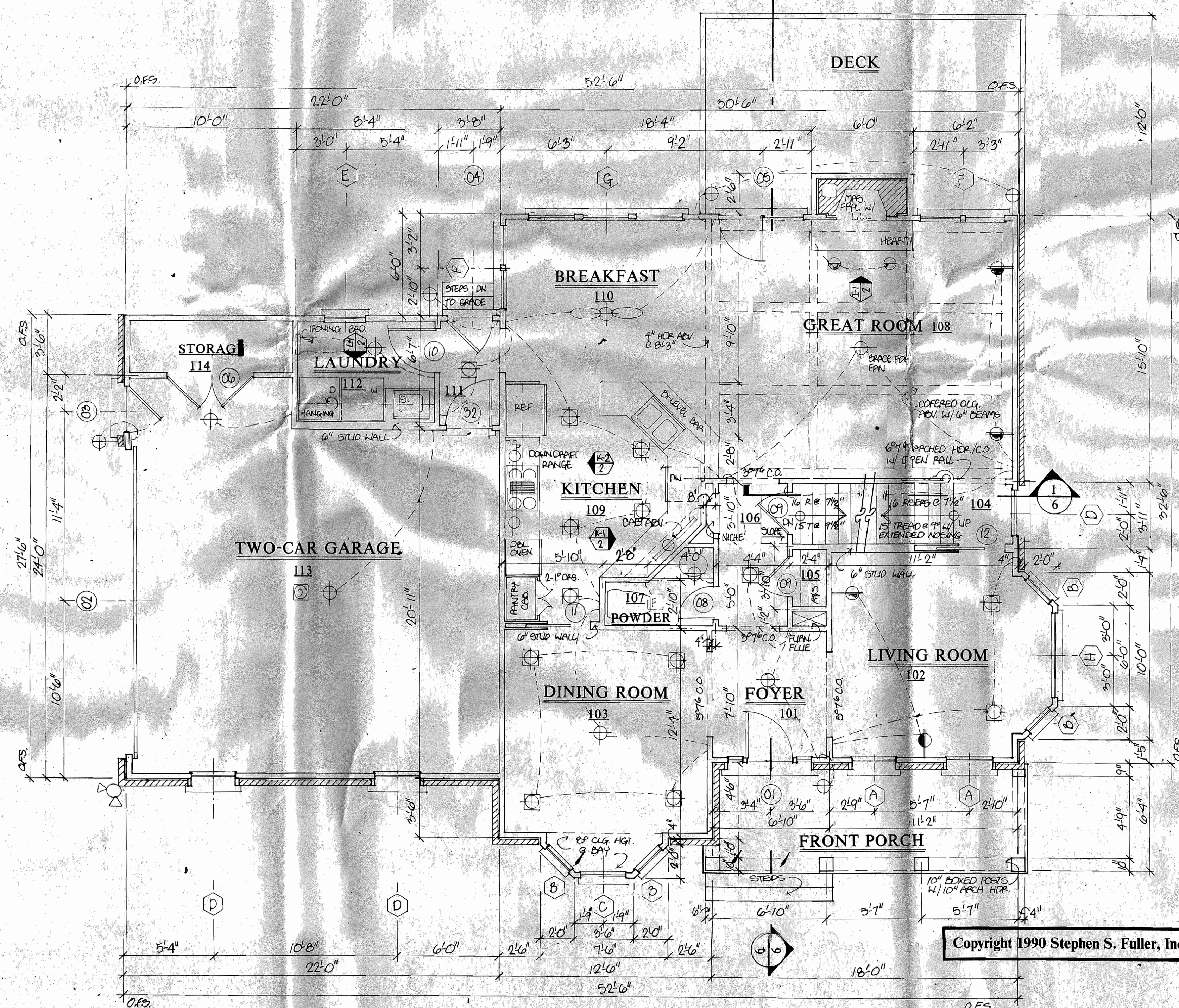
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Verify all structural elements for design and site with local engineer and building officials.

These plans should be reviewed by a local architect or engineer to verify that they meet all local codes.



NOTE: EXTEND JAMBS AT DOORS AND WDS. AT FRONT ELEV. TO ALIGN W/FACE OF BRICK.

#### FIRST LEVEL FLOOR PLAN

SCALE: 1/4" 1'-0" 9'-0" CEILING HGT.

| DOOR SCHEDULE |            |      |                      |        |       |     |
|---------------|------------|------|----------------------|--------|-------|-----|
| NO.           | SIZE       | TYPE | DESCRIPTION          | CASING | QTY.  |     |
| 01            | 3'0"x6'8"  | EXT. | w/12" TR./10" SDLT.  | "A"-P  | 1     |     |
| 02            | 18'0"x7'0" |      | PANEL GAR. DR.       | BRMD.  | 1     |     |
| 03            | 2'8"x6'8"  |      | 6 PANEL              | "C"-P  | BRMD. | 1   |
| 04            | 2'8"x6'8"  |      | 9 LITE               | "B"-P  | BRMD. | 1   |
| 05            | 5'0"x6'8"  |      | FR. ATRIUM w/12" TR. | "A"-P  | BRMD. | 1   |
| 06            | 2'2"x6'8"  |      | 6 PANEL AT GAR.      | "C"-P  |       | 1   |
| 07            | 3'0"x6'8"  |      | FRENCH               | "B"-P  | BRMD. | 1   |
| 08            | 2'0"x6'8"  | INT. | 6 PANEL              | "B"-P  | "B"-P | 2   |
| 09            | 2'0"x6'8"  |      |                      | "B"-P  | "B"-P | 1   |
| 10            | 2'8"x6'8"  |      | PANEL PKT. w/12" TR. | "B"-P  | "A"-P | 1   |
| 11            | 2'8"x6'8"  |      |                      | "A"-P  | "A"-P | 1   |
| 12            | 2'8"x6'8"  |      |                      | "C"-P  | "C"-P | 1   |
| 13            | 2'0"x6'8"  |      | 6 PANEL              | "C"-P  | "C"-P | 1   |
| 14            | 2'4"x6'8"  |      |                      | "C"-P  | "B"-P | 3   |
| 15            | 2'4"x6'8"  |      |                      | "C"-P  | "B"-P | 1   |
| 16            | 2'4"x6'8"  |      |                      | "C"-P  | "C"-P | 1   |
| 17            | 2'4"x6'8"  |      |                      | "C"-P  | "B"-P | 1   |
| 18            | 2'4"x6'8"  |      |                      | "C"-P  | "C"-P | 2   |
| 19            | 2'1"x6'8"  |      |                      | "B"-P  | "B"-P | 1   |
| 20            | 2'8"x6'8"  |      |                      | "B"-P  | "B"-P | 1   |
| 21            | 4'0"x6'8"  |      | 4 PANEL BIFOLD       | "C"-P  |       | 1   |
| 22            | 2'8"x6'8"  |      | 6 PANEL PKT.         | "B"-P  |       | 1   |
| 23            | 2'0"       |      | GLASS DR.            | TILE   |       | 1   |
| 24            | 2'4"x6'8"  |      | 6 PANEL (215 ONLY)   | "C"-P  | "C"-P | (1) |
| 25            | 2'8"x6'8"  |      |                      | "C"-P  | "B"-P | 1   |
| 26            | 2'4"x6'8"  |      | 6 PANEL              | "C"-P  | "C"-P | 2   |
| 27            | 2'4"x6'8"  |      |                      | "C"-P  | "C"-P | 1   |
| 28            | 2'4"x6'8"  |      |                      | "C"-P  | "B"-P | 1   |
| 29            | 1'6"x6'8"  |      |                      | "C"-P  |       | 1   |
| 30            | 2'8"x6'8"  |      |                      | "C"-P  | "C"-P | 1   |
| 31            | 2'6"x6'8"  | EXT. | 9 LITE               | "C"-P  |       | 2   |
| 32            | 2'8"x6'8"  |      |                      | "B"-P  | "C"-P | 1   |

#### Square Footage Breakdown

|                  |      |           |
|------------------|------|-----------|
| FIRST            | 1164 | hdt. s.f. |
| SECOND           | 1436 | hdt. s.f. |
| TOTAL            | 2600 | hdt. s.f. |
| - NOT INCLUDED - |      |           |
| OPEN             | -0-  | s.f.      |
| GARAGE/STORAGE   | 522  | s.f.      |

#### GENERAL NOTES:

- All dimensions are to face of stud or to face of masonry unless otherwise noted.
- All angles are 45 degrees unless otherwise noted.
- Contractor to verify all dimensions at construction site.
- Purchaser is responsible for compliance with all local building codes and ordinances.
- Bottom of all footings shall extend below frostline depth, verify depth.
- Exact size and reinforcement of all concrete footings must be determined by local soil conditions and acceptable practices of construction. Verify design with local engineer.
- Verify all structural elements with local engineer and building official.
- Contractor to size electrical system to meet local code requirements.
- Contractor to size heating and cooling loads as for local codes, climatic conditions and building orientation.
- Plumbing materials and installation to be done in accordance with local requirements.

| WINDOW SCHEDULE |             |             |                            |      |
|-----------------|-------------|-------------|----------------------------|------|
| TYPE            | SIZE        | EXT. CASING | DESCRIPTION                | QTY. |
| A               | 2'8"x5'6"   | 1x4 w/BB    | D.H.                       | 2    |
| B               | 2'0"x6'2"   | BRMD.       | D.H.                       | 4    |
| C               | 2'8"x6'2"   | BRMD.       | FIXED                      | 1    |
| D               | 2'8"x5'2"   | 1x4 w/BB    | D.H.                       | 3    |
| E               | 2'4"x4'6"   | BRMD.       | D.H.                       | 1    |
| F               | 2'2'4"x6'2" |             | D.H.(w/12" TR. AT GRT.RM.) | 2    |
| G               | 3'2'8"x6'2" |             | D.H. PAIR w/6" MULLS       | 1    |
| H               | 5'0"x6'2"   |             | FIXED                      | 1    |
| I               | 2'8"x4'6"   | 1x4 w/BB    | D.H.(BRMD. AT REAR)        | 6    |
| J               | 2'2'0"x4'6" | 1x4 w/BB    | D.H. PAIR                  | 1    |
| K               | 2'4"x4'6"   |             | DORMER D.H.                | 2    |
| L               | 2'2'8"x4'6" | 1x4 w/BB    | D.H. PAIR                  | 1    |
| M               | 2'8"x6'2"   | BRMD.       | D.H.                       | 2    |
| N               | 3'0"x6'2"   |             | FIXED ARCHED HD.           | 1    |
| O               |             |             |                            |      |
| P               | 3'0"x6'2"   |             | D.H.                       | 1    |
| Q               |             |             |                            |      |
| R               |             |             |                            |      |
| S               |             |             |                            |      |
| T               |             |             |                            |      |

D.H. = DOUBLE HUNG  
CSMT = CASEMENT  
STAT = STATIONARY  
B.B. = BACKBAND  
BRMD/BM = BRICKMOULD  
TRAN = TRANSOM

#### ELECTRICAL PLAN KEY

- Duplex Convenience Outlet
- Duplex Outlet Above Counter
- Weatherproof Duplex Outlet
- Half-switched Duplex Outlet
- Special Purpose Outlet
- Duplex Outlet in Floor
- 220 Volt Outlet
- Electric Door Operator
- Ceiling Mounted Incandescent Light Fixture
- Wall Mounted Incandescent Light Fixture
- Recessed Incandescent Light Fixture
- Exhaust Fan
- Exhaust Fan/Light Combination
- Fluorescent Light Fixture
- Ceiling Fan/Light

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**PLANS**

**Fairmont Heights**  
**810**

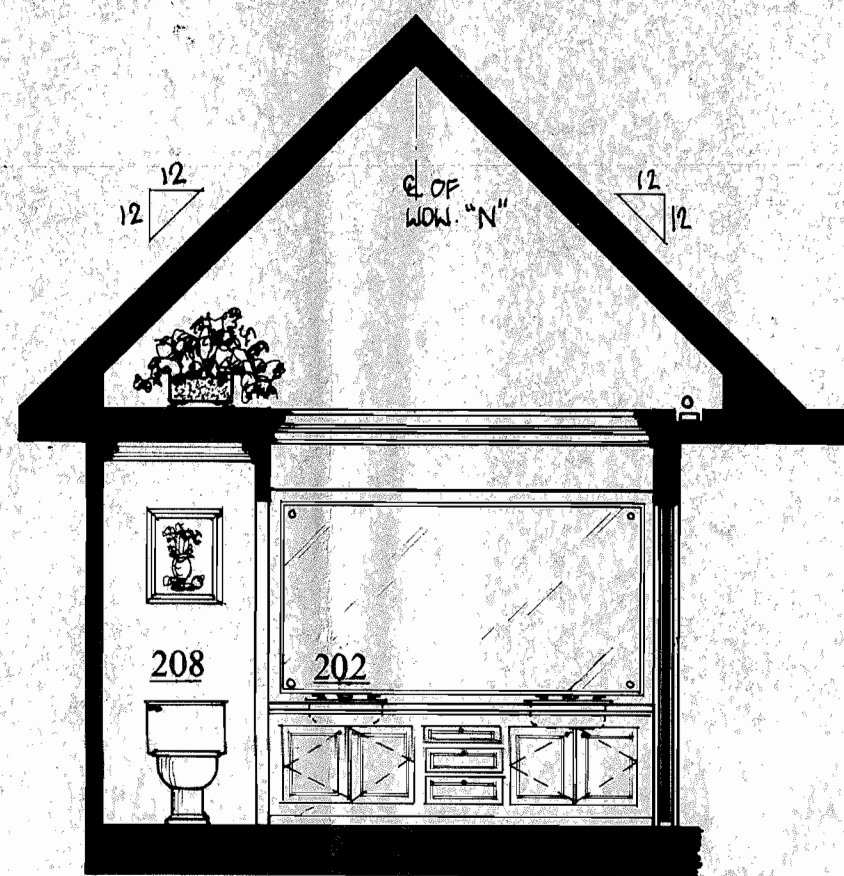
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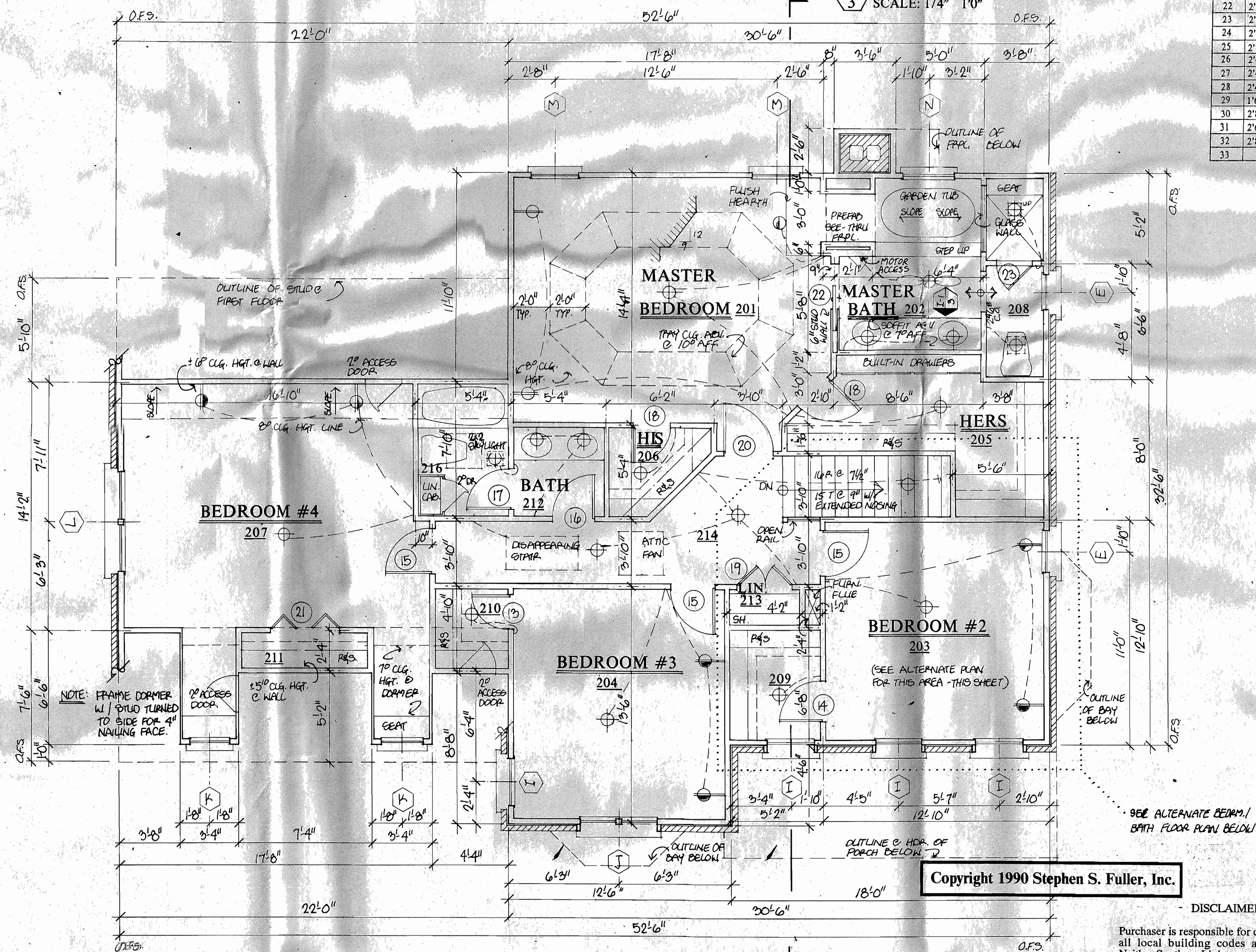
REVISIONS

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MASTER BATH  
ELEVATION  
SCALE: 1/4" 1'-0"



SECOND LEVEL FLOOR PLAN

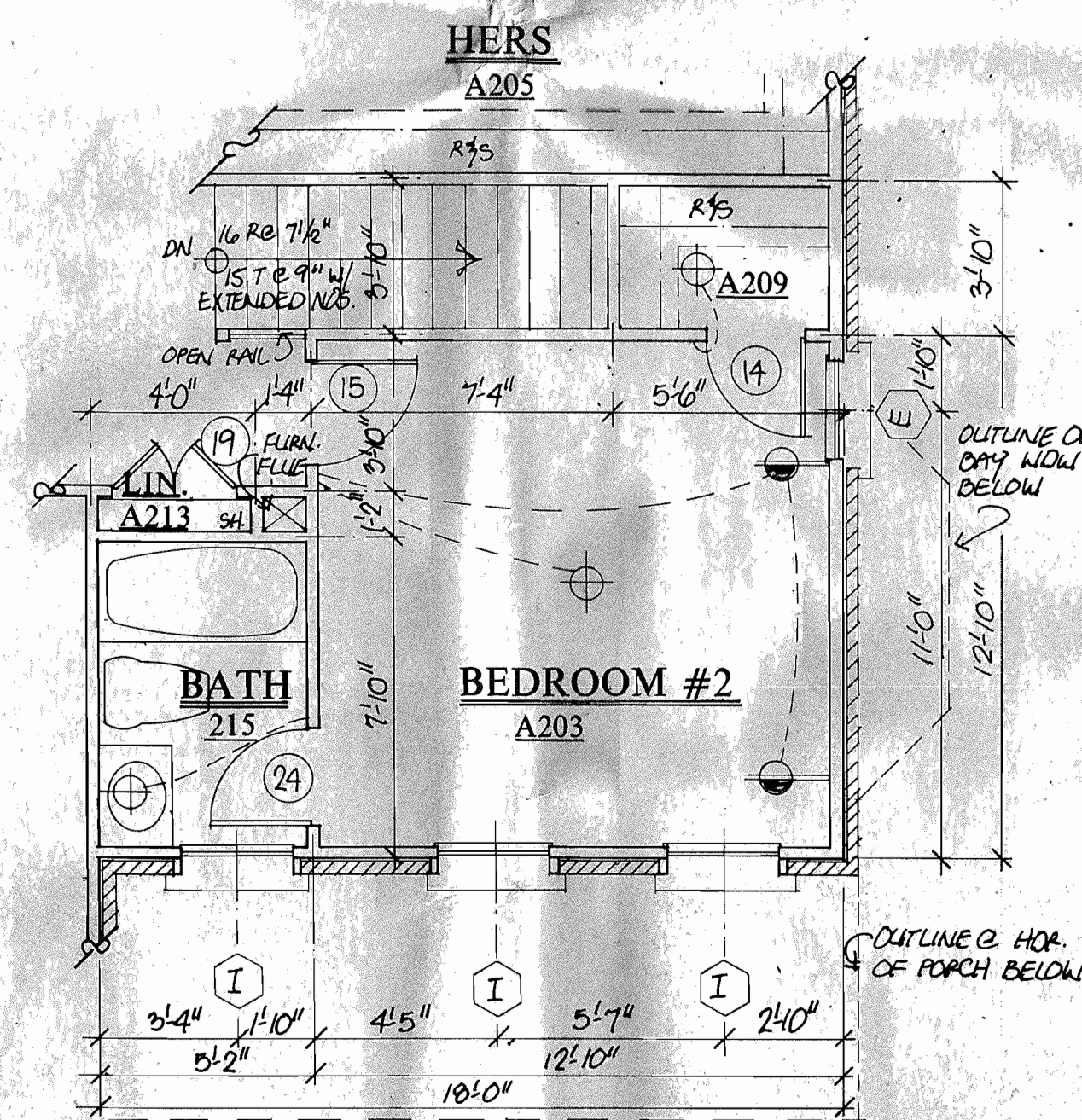
SCALE: 1/4" 1'-0" 8'-0" CEILING HGT.

| DOOR SCHEDULE |            |      |                      |        |       |     |
|---------------|------------|------|----------------------|--------|-------|-----|
| NO.           | SIZE       | TYPE | DESCRIPTION          | CASING | IN    | OUT |
| 01            | 3'0"x6'8"  | EXT. | w/12" TR./10" SDLT.  | "A"-P  | WM 3  | 1   |
| 02            | 18'0"x7'0" |      | PANEL GAR. DR.       | BRMD.  | 1     |     |
| 03            | 2'8"x6'8"  |      | 6 PANEL              | "C"-P  | BRMD. | 1   |
| 04            | 2'8"x6'8"  |      | 9 LITE               | "B"-P  | BRMD. | 1   |
| 05            | 5'0"x6'8"  |      | FR. ATRIUM w/12" TR. | "A"-P  | BRMD. | 1   |
| 06            | 2'2"x6'8"  |      | 6 PANEL AT GAR.      | "C"-P  |       | 1   |
| 07            | 3'0"x6'8"  |      | FRENCH               | "B"-P  | BRMD. | 1   |
| 08            | 2'0"x6'8"  | INT. | 6 PANEL              | "B"-P  | "B"-P | 1   |
| 09            | 2'6"x6'8"  |      |                      | "B"-P  | "B"-P | 2   |
| 10            | 2'8"x6'8"  |      |                      | "B"-P  | "B"-P | 1   |
| 11            | 2'6"x6'8"  |      | PANEL PKT. w/12" TR. | "B"-P  | "A"-P | 1   |
| 12            | 2'8"x6'8"  |      |                      | "A"-P  | "A"-P | 1   |
| 13            | 2'0"x6'8"  |      | 6 PANEL              | "C"-P  | "C"-P | 1   |
| 14            | 2'4"x6'8"  |      |                      | "C"-P  | "C"-P | 1   |
| 15            | 2'6"x6'8"  |      |                      | "C"-P  | "B"-P | 3   |
| 16            | 2'4"x6'8"  |      |                      | "C"-P  | "B"-P | 1   |
| 17            | 2'4"x6'8"  |      |                      | "C"-P  | "C"-P | 1   |
| 18            | 2'4"x6'8"  |      |                      | "B"-P  | "C"-P | 2   |
| 19            | 2'1"x6'8"  |      |                      | "B"-P  |       | 1   |
| 20            | 2'8"x6'8"  |      |                      | "B"-P  | "B"-P | 1   |
| 21            | 4'0"x6'8"  |      | 4 PANEL BIFOLD       | "C"-P  |       | 1   |
| 22            | 2'6"x6'8"  |      | 6 PANEL PKT.         | "B"-P  | "B"-P | 1   |
| 23            | 2'0"       |      | GLASS DR.            | "C"-P  | "C"-P | 1   |
| 24            | 2'4"x6'8"  |      | 6 PANEL (215 ONLY)   | "C"-P  | "B"-P | 1   |
| 25            | 2'6"x6'8"  |      | 6 PANEL              | "C"-P  | "C"-P | 2   |
| 26            | 2'4"x6'8"  |      |                      | "C"-P  | "C"-P | 1   |
| 27            | 2'4"x6'8"  |      |                      | "C"-P  | "B"-P | 1   |
| 28            | 2'4"x6'8"  |      |                      | "C"-P  | "B"-P | 1   |
| 29            | 1'6"x6'8"  |      |                      | "C"-P  | "C"-P | 1   |
| 30            | 2'8"x6'8"  |      |                      | "C"-P  | "C"-P | 1   |
| 31            | 2'6"x6'8"  |      |                      | "C"-P  |       | 2   |
| 32            | 2'8"x6'8"  | EXT. | 9 LITE               | "B"-P  | "C"-P | 1   |
| 33            |            |      |                      |        |       |     |

D.H. = DOUBLE HUNG  
CSMT = CASEMENT  
STAT = STATIONARY  
B.B. = BACKBAND  
BRMD/BM = BRICKMOULD  
TRAN = TRANSOM

| WINDOW SCHEDULE |             |             |                              |      |
|-----------------|-------------|-------------|------------------------------|------|
| TYPE            | SIZE        | EXT. CASING | DESCRIPTION                  | QTY. |
| A               | 2'8"x5'6"   | 1x4 w/BB.   | D.H.                         | 2    |
| B               | 2'0"x6'2"   | BRMD.       | D.H.                         | 4    |
| C               | 2'8"x6'2"   | BRMD.       | FIXED                        | 1    |
| D               | 2'8"x5'2"   | 1x4 w/BB.   | D.H.                         | 3    |
| E               | 2'4"x4'6"   | BRMD.       | D.H.                         | 1    |
| F               | 2'2'4"x6'2" |             | D.H. (w/12" TR. AT GRT. RM.) | 2    |
| G               | 3'2'8"x6'2" |             | D.H. PAIR w/6" MULLS         | 1    |
| H               | 5'0"x6'2"   |             | FIXED                        | 1    |
| I               | 2'8"x4'6"   | 1x4 w/BB.   | D.H. (BRMD. AT REAR)         | 6    |
| J               | 2'2'0"x4'6" | 1x4 w/BB.   | D.H. PAIR                    | 1    |
| K               | 2'4'4"x4'6" |             | DORMER D.H.                  | 2    |
| L               | 2'2'8"x4'6" | 1x4 w/BB.   | D.H. PAIR                    | 1    |
| M               | 2'8"x6'2"   | BRMD.       | D.H.                         | 2    |
| N               | 3'0"x6'2"   |             | FIXED ARCHD. HD.             | 1    |
| O               |             |             |                              |      |
| P               | 3'0"x6'2"   |             | D.H.                         | 1    |
| Q               |             |             |                              |      |
| R               |             |             |                              |      |
| S               |             |             |                              |      |
| T               |             |             |                              |      |

| ELECTRICAL PLAN KEY |                                            |
|---------------------|--------------------------------------------|
|                     | Duplex Convenience Outlet                  |
|                     | Duplex Outlet Above Counter                |
|                     | Weatherproof Duplex Outlet                 |
|                     | Half-switched Duplex Outlet                |
|                     | Special Purpose Outlet                     |
|                     | Duplex Outlet in Floor                     |
|                     | 220 Volt Outlet                            |
|                     | Electric Door Operator                     |
|                     | Ceiling Mounted Incandescent Light Fixture |
|                     | Wall Mounted Incandescent Light Fixture    |
|                     | Recessed Incandescent Light Fixture        |
|                     | Exhaust Fan                                |
|                     | Exhaust Fan/Light Combination              |
|                     | Fluorescent Light Fixture                  |
|                     | Ceiling Fan/Light                          |



ALTERNATE BEDROOM #2/  
BATH FLOOR PLAN

SCALE: 1/4" 1'-0"

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DESIGNED FOR:

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PLANS

Fairmont Heights  
810

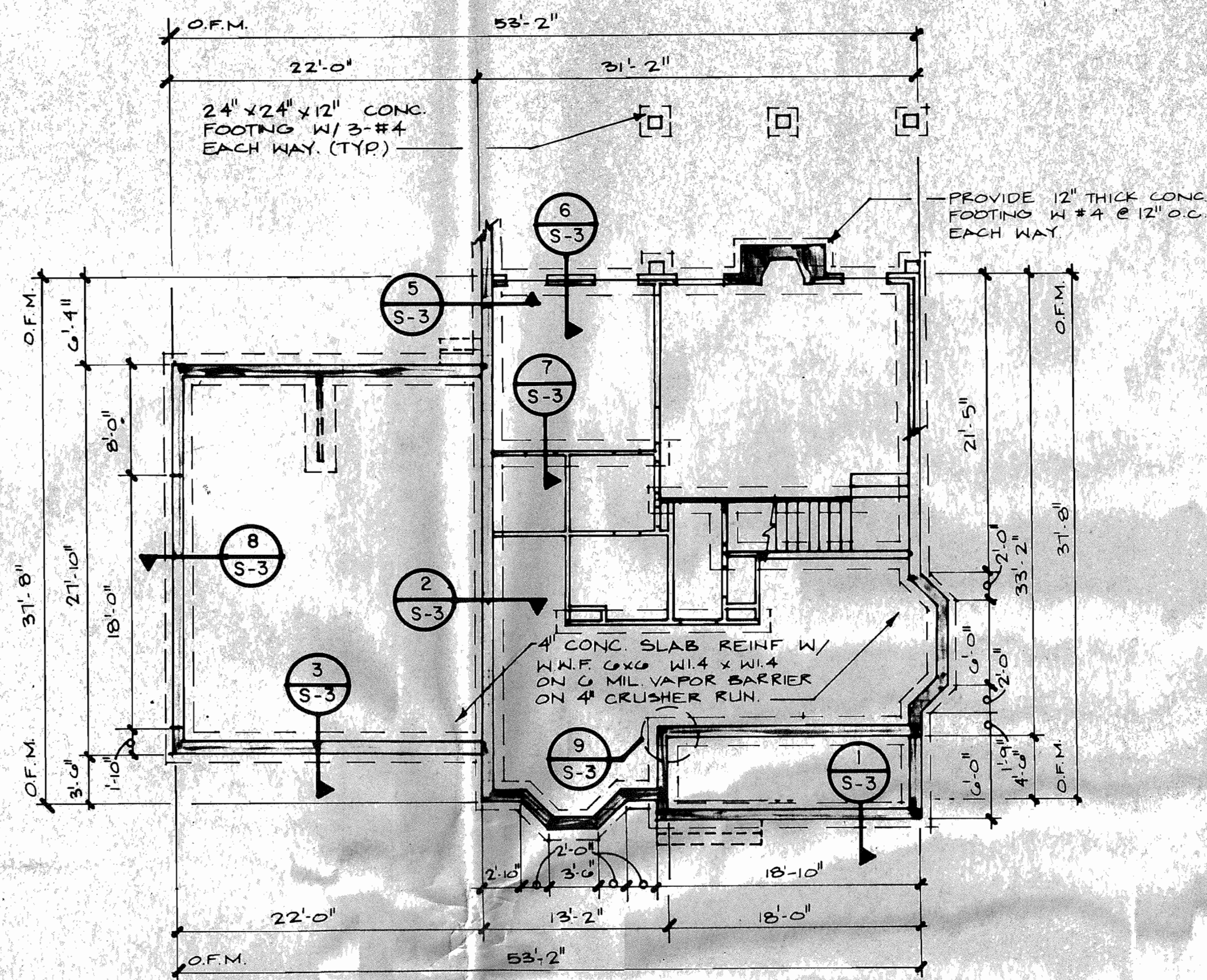
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OR  
ENGINEER TO VERIFY THAT THEY MEET ALL LOCAL CODES.

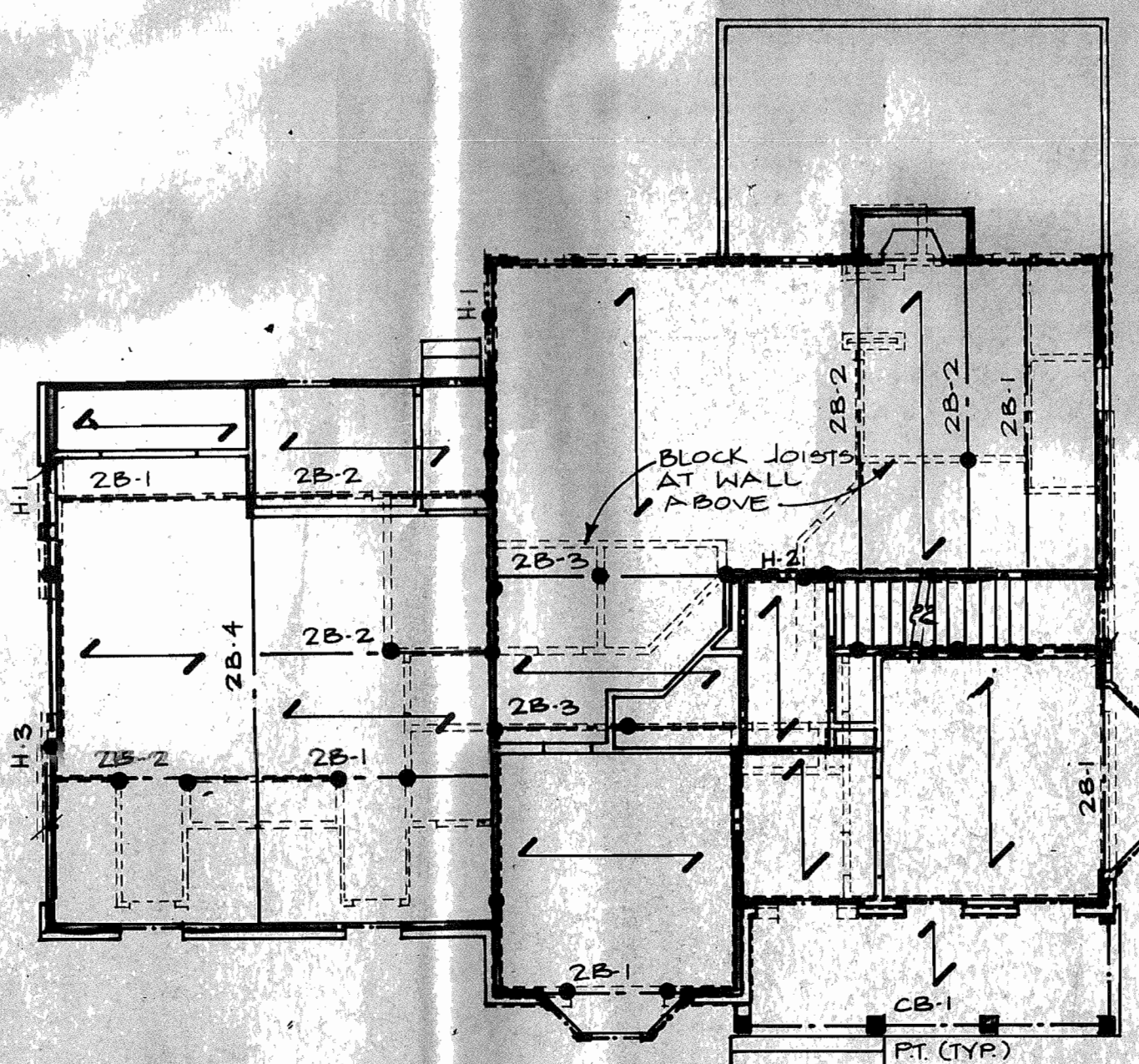
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1 FOUNDATION PLAN

- NOTE: 1. ALL PARTITIONS AT PERIMETER AND AT INTERIOR LOAD BEARING WALLS 2x8 @ 16" O.C. ON THIS LEVEL.
2. ALL OTHER PARTITIONS 2x4 @ 16" O.C. ON THIS LEVEL.
3. SEE ARCH. FOR LOCATION OF ALL INTERIOR PARTITIONS WITH FOOTINGS BELOW.



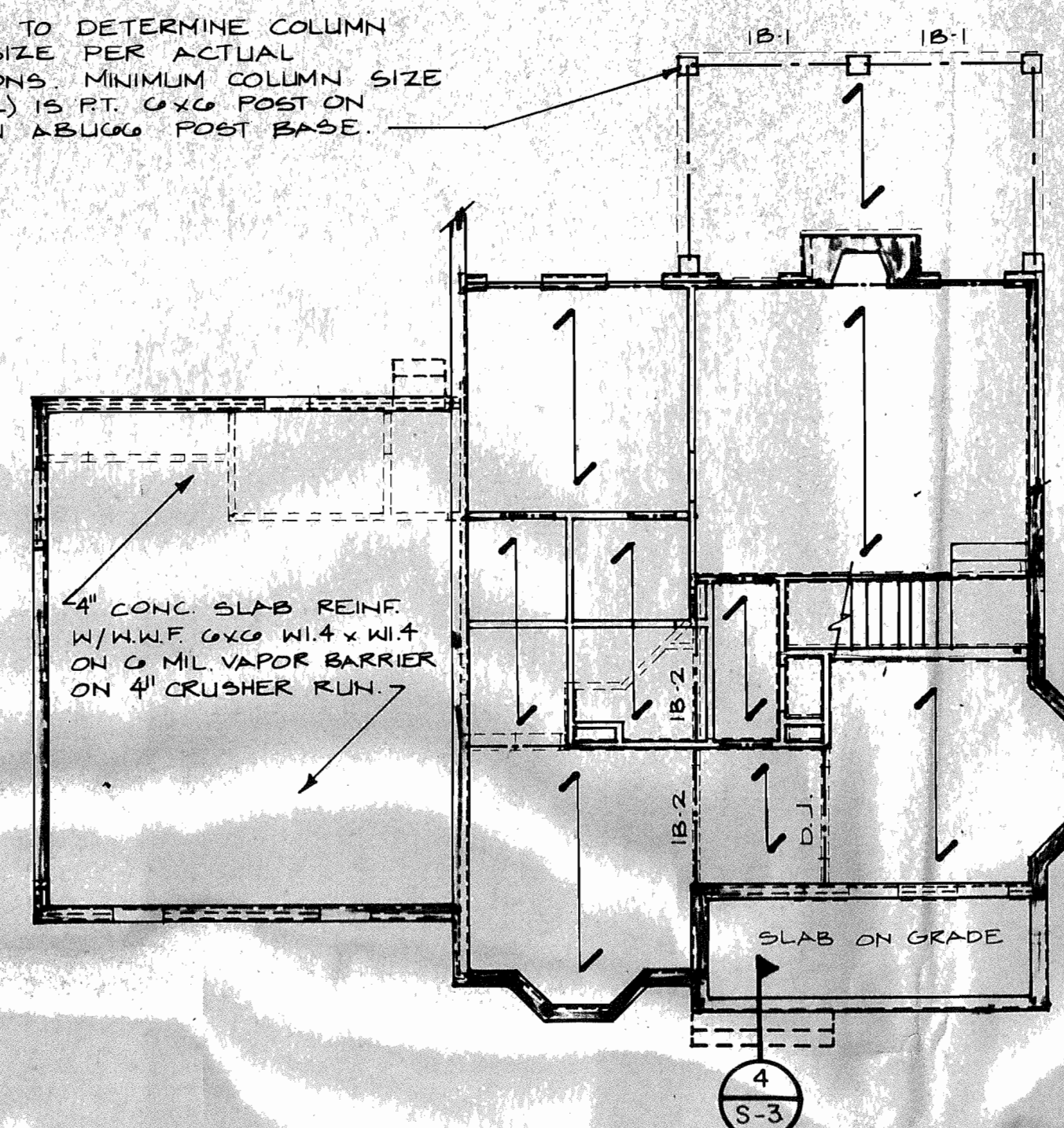
3 FIRST LEVEL CEILING/SECOND LEVEL FLOOR FRAMING PLAN

- NOTE: 1. ALL FLOOR JOISTS 2x12 @ 16" O.C. U.N.O.
2. ALL CEILING JOISTS 2x10 @ 16" O.C. U.N.O.
3. ALL HEADERS IN WALLS BEARING FLOOR JOISTS 2-2x10 U.N.O.
4. ALL HEADERS IN WALLS BEARING CEILING JOISTS 2-2x8 U.N.O.
5. FLOOR DECKED WITH 23/32" APA RATED STURD-I-FLOOR 24" O.C. SPAN RATING. SEE FASTENER SCHEDULE FOR NAILING.

| LEGEND |                               |
|--------|-------------------------------|
|        | BEARING WALL                  |
|        | WALL ABOVE LEVEL BEING FRAMED |
|        | WALL BELOW LEVEL BEING FRAMED |
|        | STACKING WALL                 |
|        | POINT LOAD FROM ABOVE         |
|        | SUPPORT BELOW                 |
|        | JACK TO WALL/BEAM BELOW       |
|        | FRAMING DIRECTION             |
|        | FRAMING DIRECTION BELOW       |
|        | BEAM/HEADER LINE              |
|        | STRONGBACK                    |
|        | FLOOR JOIST                   |
|        | CEILING JOIST                 |
|        | FIRST FLOOR BEAM              |
|        | SECOND FLOOR BEAM             |
|        | CEILING BEAM                  |
|        | ROOF BEAM                     |
|        | UNLESS NOTED OTHERWISE        |
|        | WIRE WELDED FABRIC            |
|        | DOUBLE JOIST                  |
|        | PRESSURE TREATED              |
|        | ON CENTER                     |
|        | AMERICAN PLYWOOD ASSOCIATION  |
|        | FLITCH PLATE                  |
|        | HEADER N°                     |
|        | EACH WAY                      |
|        | COLLAR TIES                   |

| BEAM SCHEDULE |                   |             |
|---------------|-------------------|-------------|
| MARK          | BEAM              | COMMENTS    |
| 1B-1          | 2-2x12            | SYP #2 FT.  |
| 1B-2          | 2-2x12            | SYP #2      |
| 2B-1          | 2-2x12            | SYP #2      |
| 2B-2          | 3-2x12            | SYP #2      |
| 2B-3          | 2-2x12W/4 FR      | FLITCH BEAM |
| 2B-4          | 5' x 20" S        | GLULAM      |
| CB-1          | 2-2x10            | SYP #2      |
| CB-2          | 3-2x10            | SYP #2      |
| CB-3          | 2-2x12            | SYP #2      |
| CB-4          | 3-2x12            | SYP #2      |
| CB-5          | 2-2x12 W/4 FR     | FLITCH BEAM |
| RB-1          | 2-2x12            | SYP #2      |
| H-1           | 2-2x12            | SYP #2      |
| H-2           | 2-1 3/4" x 9 1/2" | MICRO=LAM   |
| H-3           | 2-1 3/4" x 10"    | MICRO=LAM   |

BUILDER TO DETERMINE COLUMN TYPE & SIZE PER ACTUAL CONDITIONS. MINIMUM COLUMN SIZE (19' TALL) IS 18" X 18" POST ON SIMPSON ABLUGG POST BASE.



2 FIRST LEVEL FLOOR FRAMING PLAN

- NOTE: 1. ALL JOISTS 2x12 @ 16" O.C. U.N.O.
2. ALL DECK JOISTS 2x10 @ 16" O.C. U.N.O.
3. ALL HEADERS IN BEARING WALLS 2-2x10 U.N.O.
4. FLOOR DECKED WITH 23/32" APA RATED STURD-I-FLOOR SPAN RATING. SEE FASTENER SCHEDULE FOR NAILING.

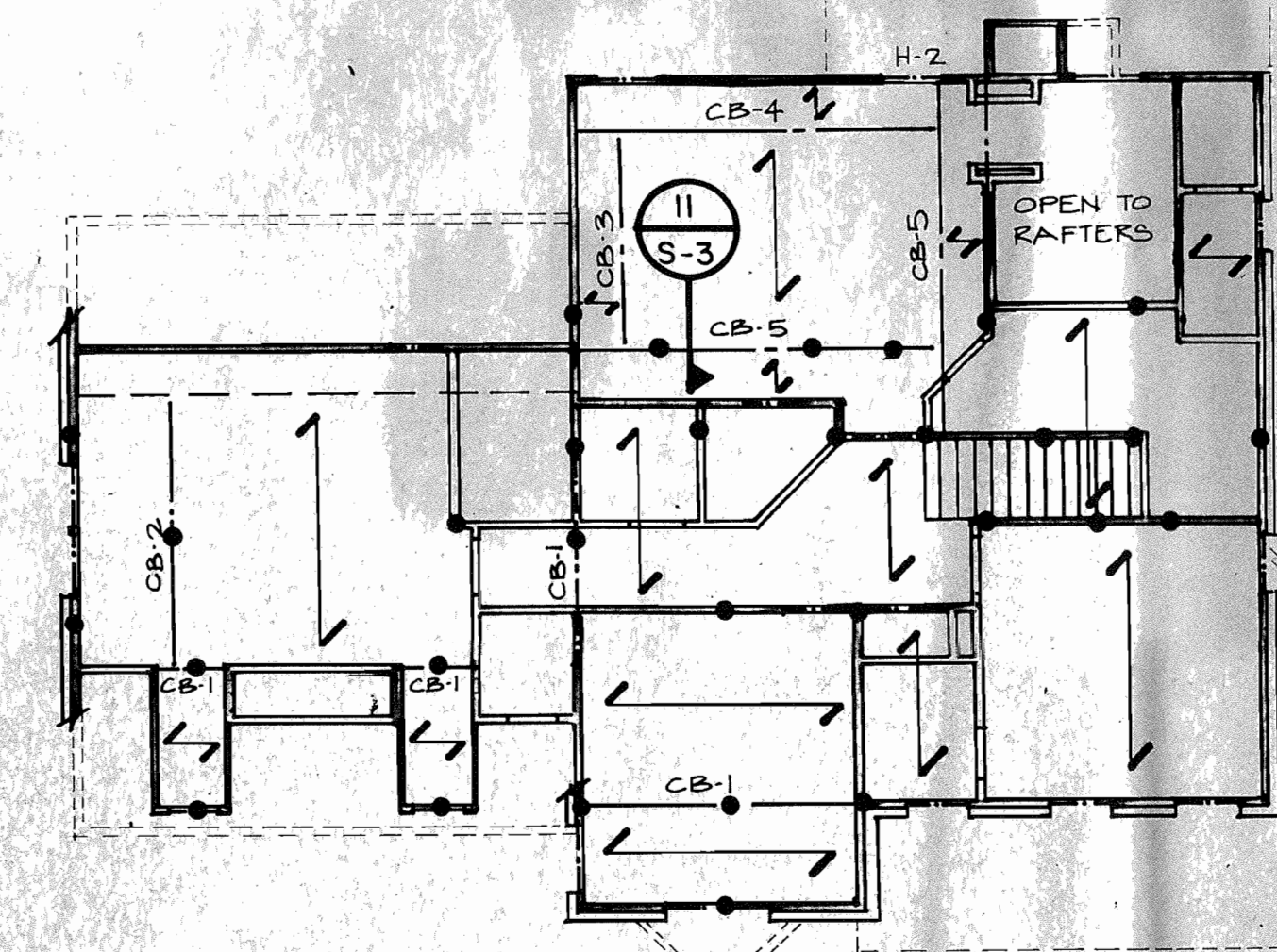
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Verify all structural elements for design and site with local engineer and building officials.

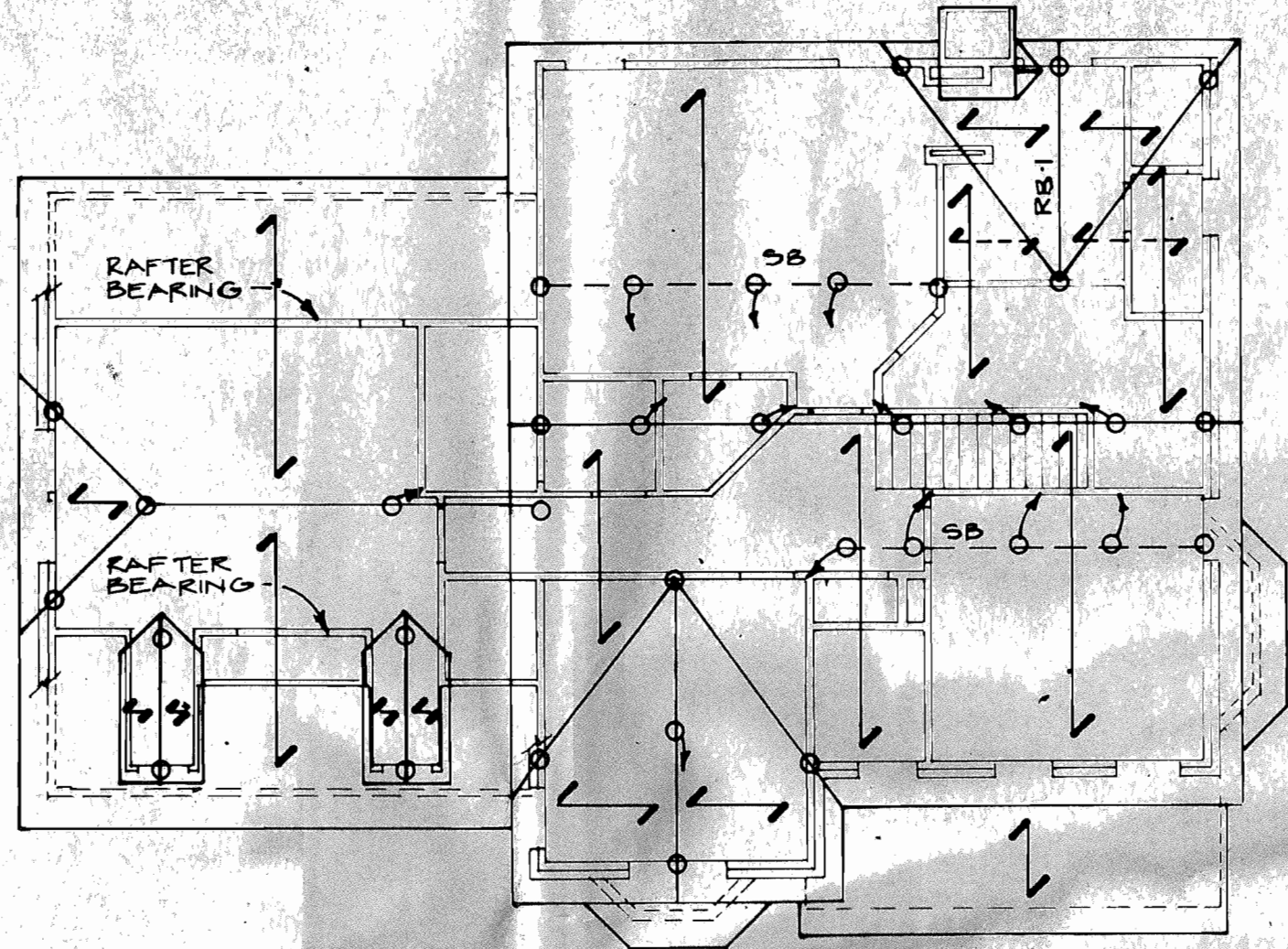
These plans should be reviewed by a local architect or engineer to verify that they meet all local codes.



4 SECOND LEVEL CEILING FRAMING PLAN

- NOTE: 1. ALL CEILING JOISTS 2x10 @ 16" O.C. U.N.O.
2. ALL HEADERS IN BEARING WALLS 2-2x8 U.N.O.





①  
S2

## ROOF FRAMING PLAN

- NOTE: 1. ALL RAFTERS 2x8 @ 16" O.C. UNO.  
2. ROOF DECKED WITH 19/32" APA RATED 40/20 SHEATHING. SEE FASTENER SCHEDULE FOR NAILING.  
3. ALL RIDGE BEAMS, HIP RIDGES AND VALLEYS 2x12 UNO.

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Verify all structural elements for design and site with local engineer and building officials.

These plans should be reviewed by a local architect or engineer to verify that they meet all local codes.

APPROVED BY:

REVISIONS

DESIGNED FOR:

**Southern Living**  
**PLANS**

SE PLANS SHOULD BE REVIEWED BY A LOCAL ARCHITECT OR ENGINEER TO VERIFY THAT THEY MEET ALL LOCAL CODES.

*Fairmont Heights*  
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REVISIONS

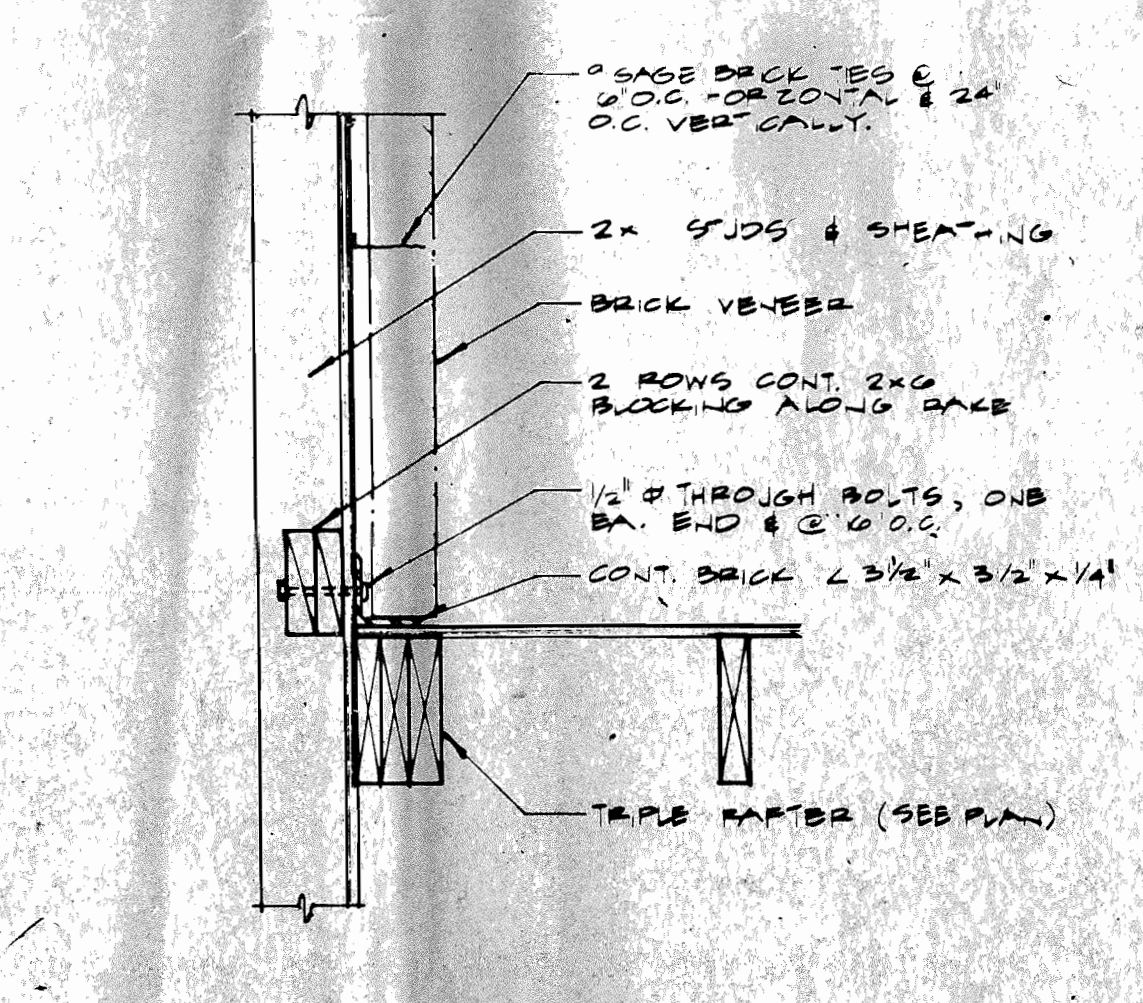
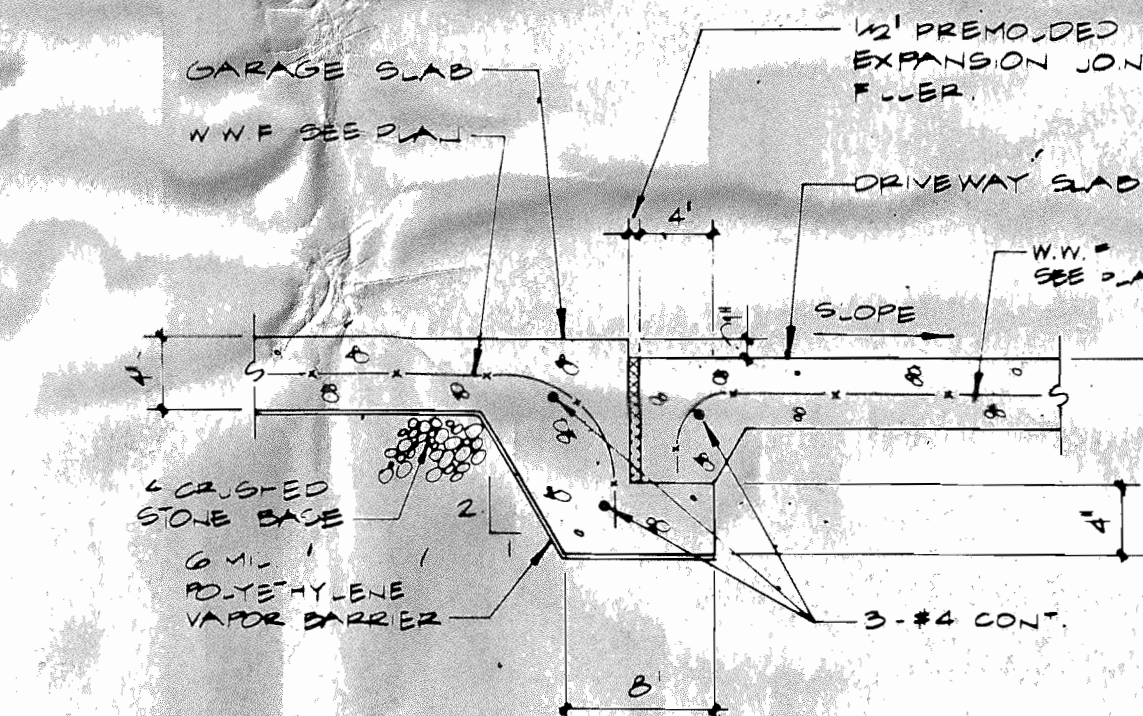
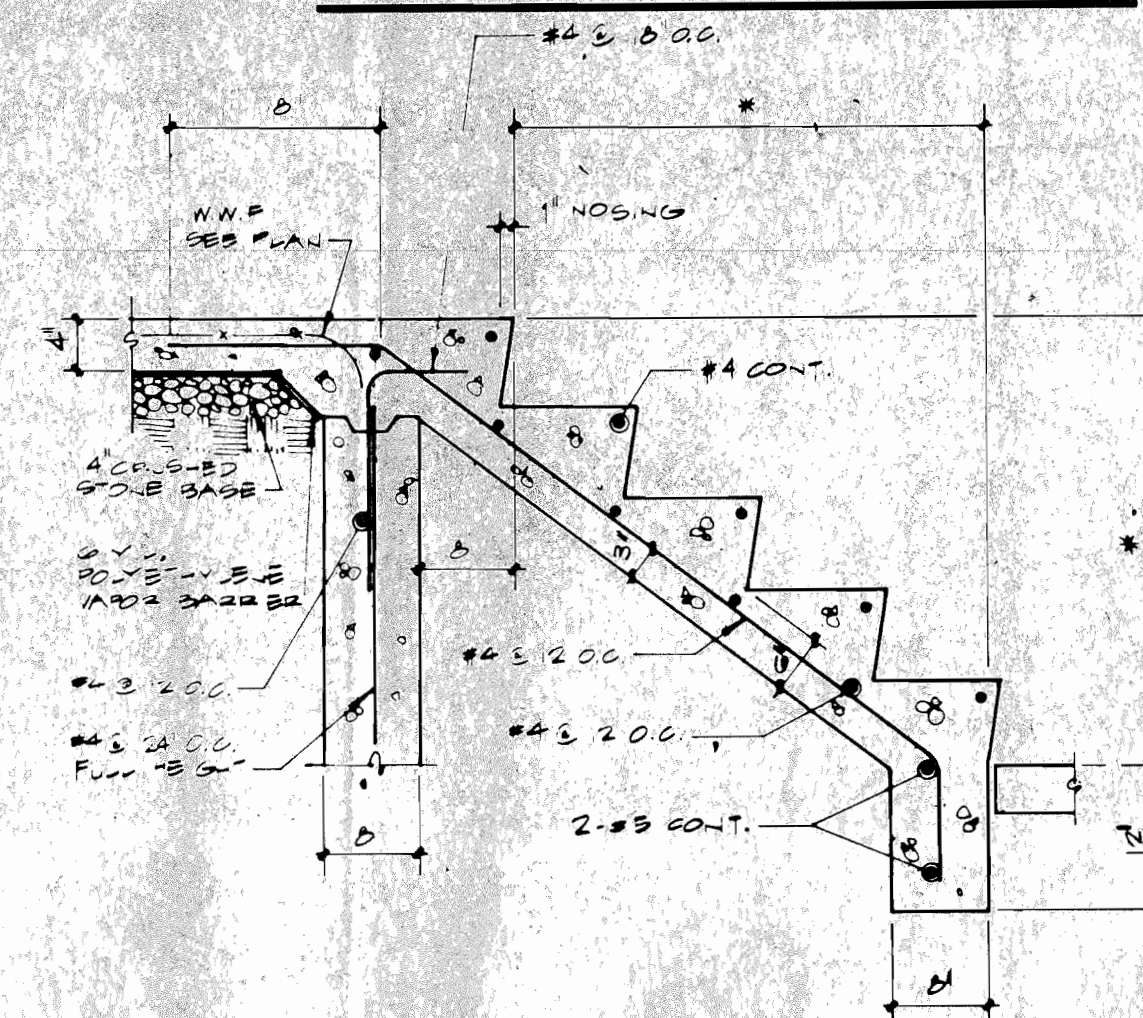
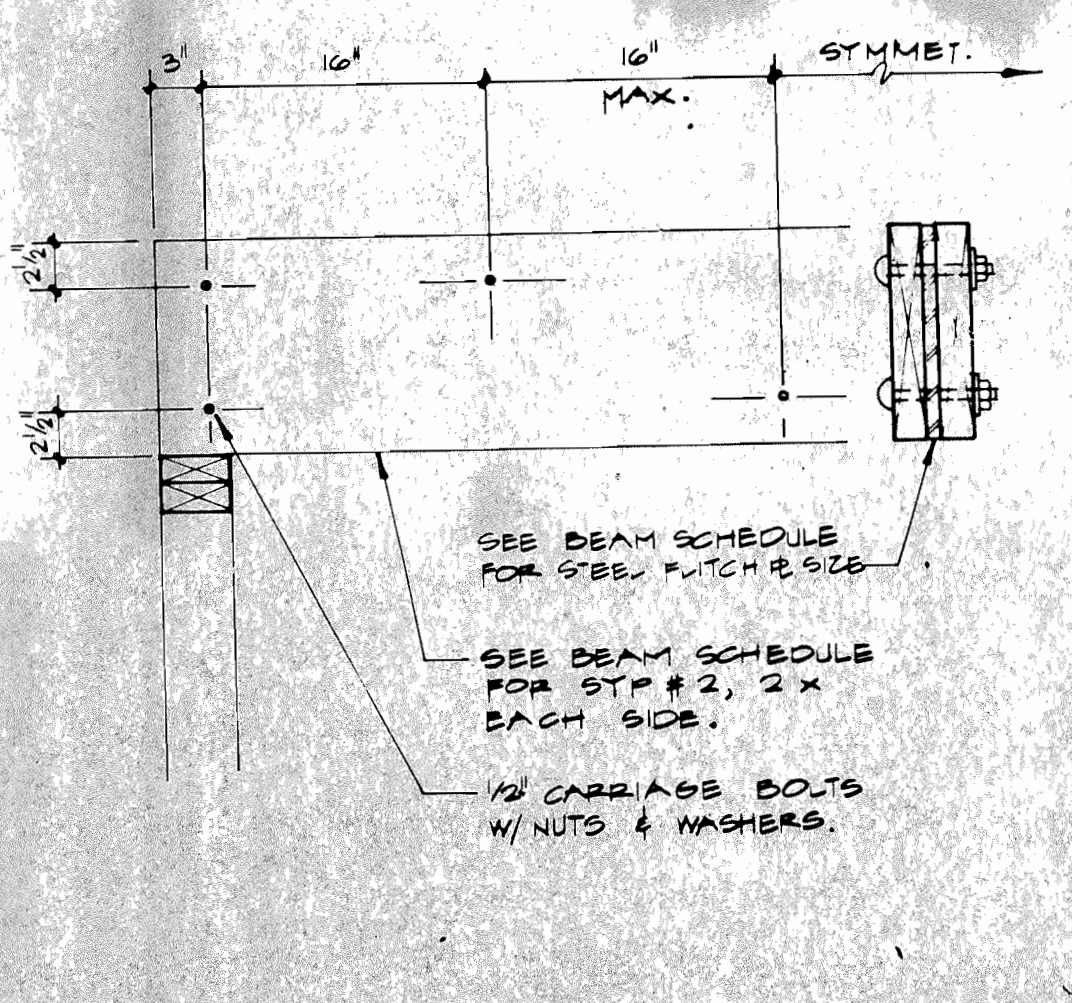
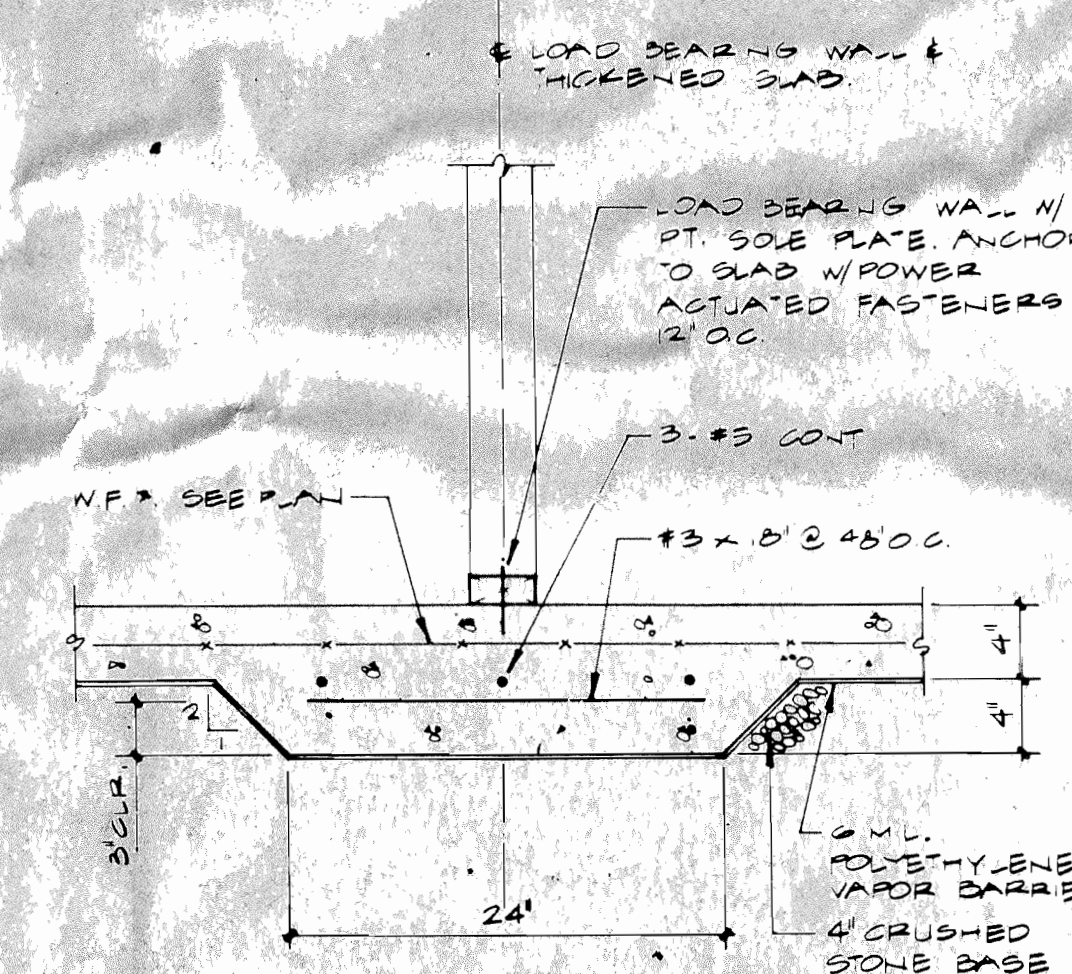
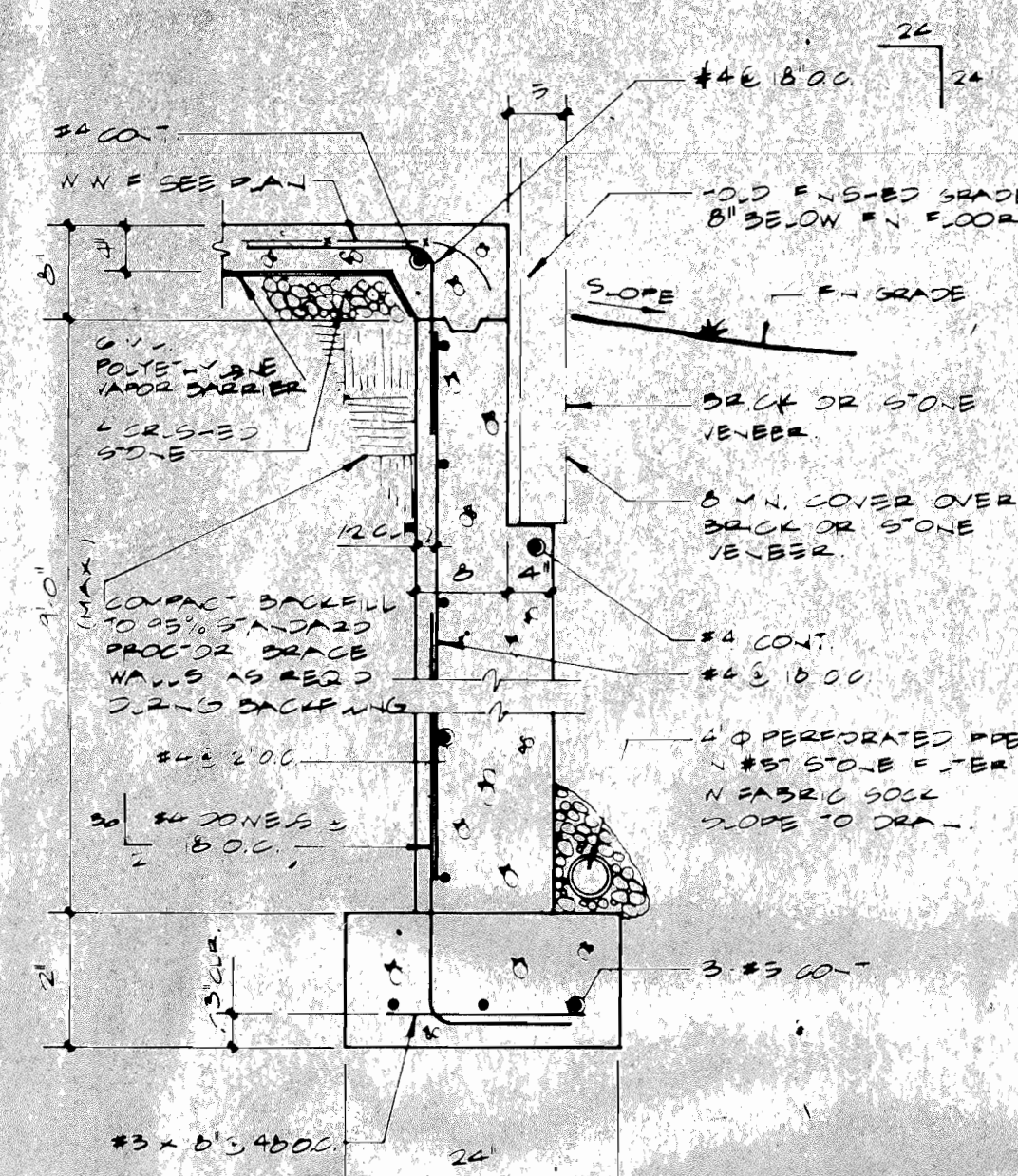
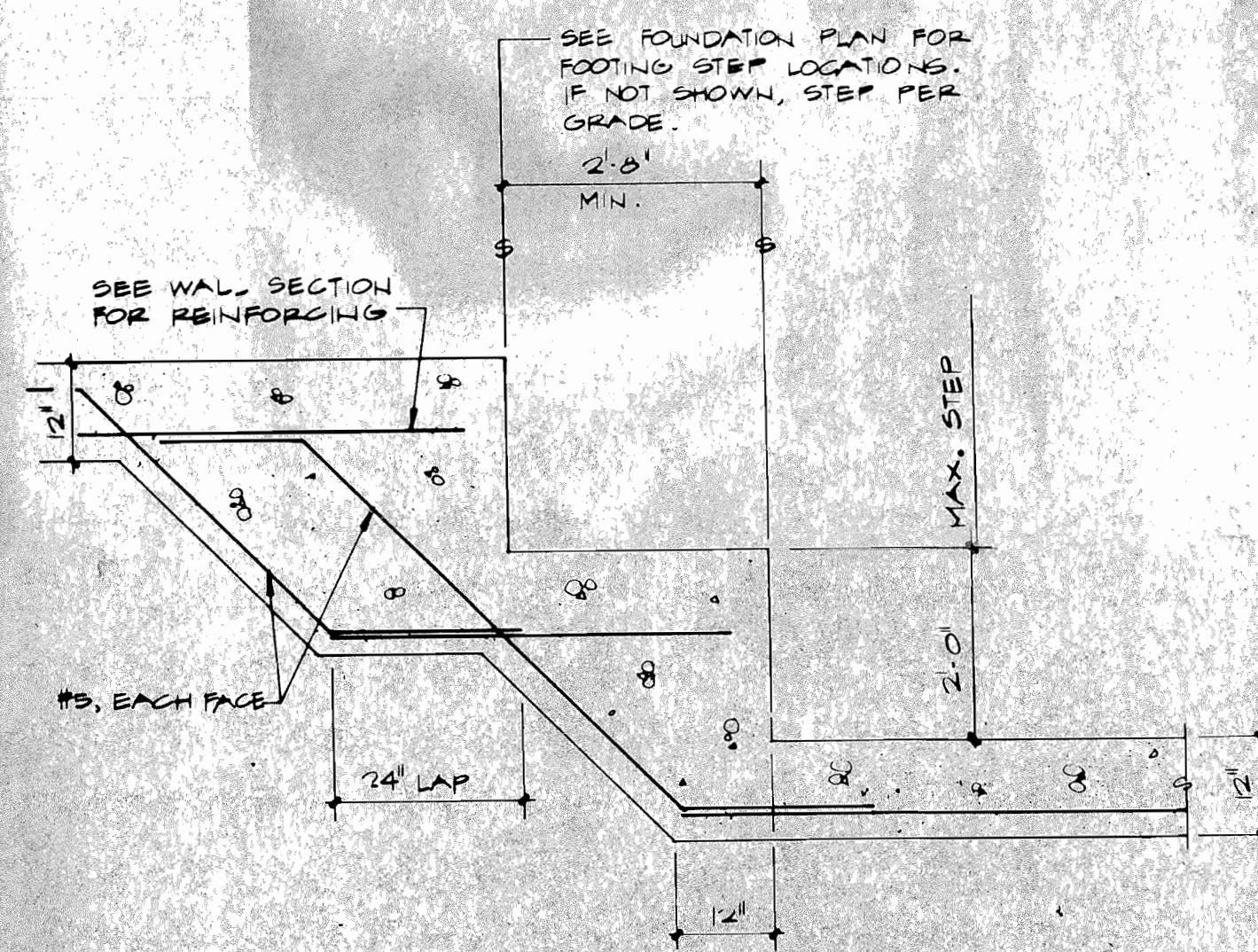
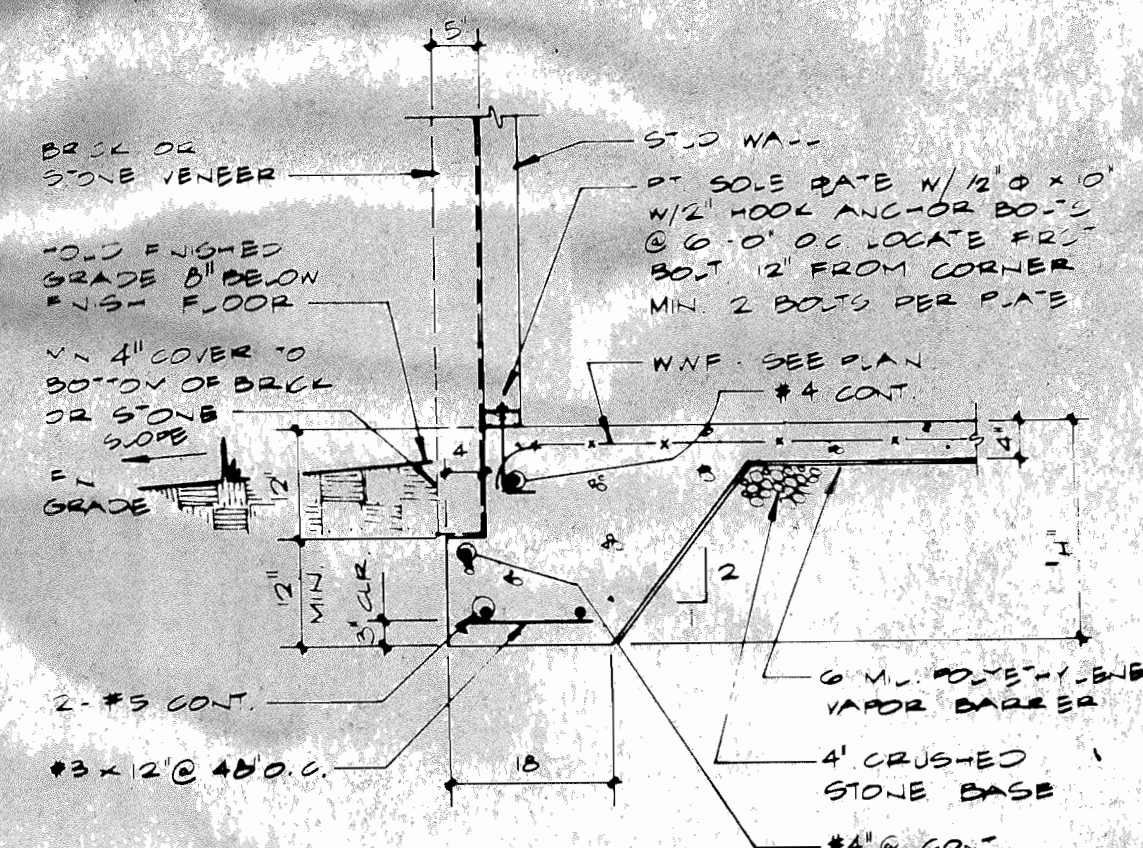
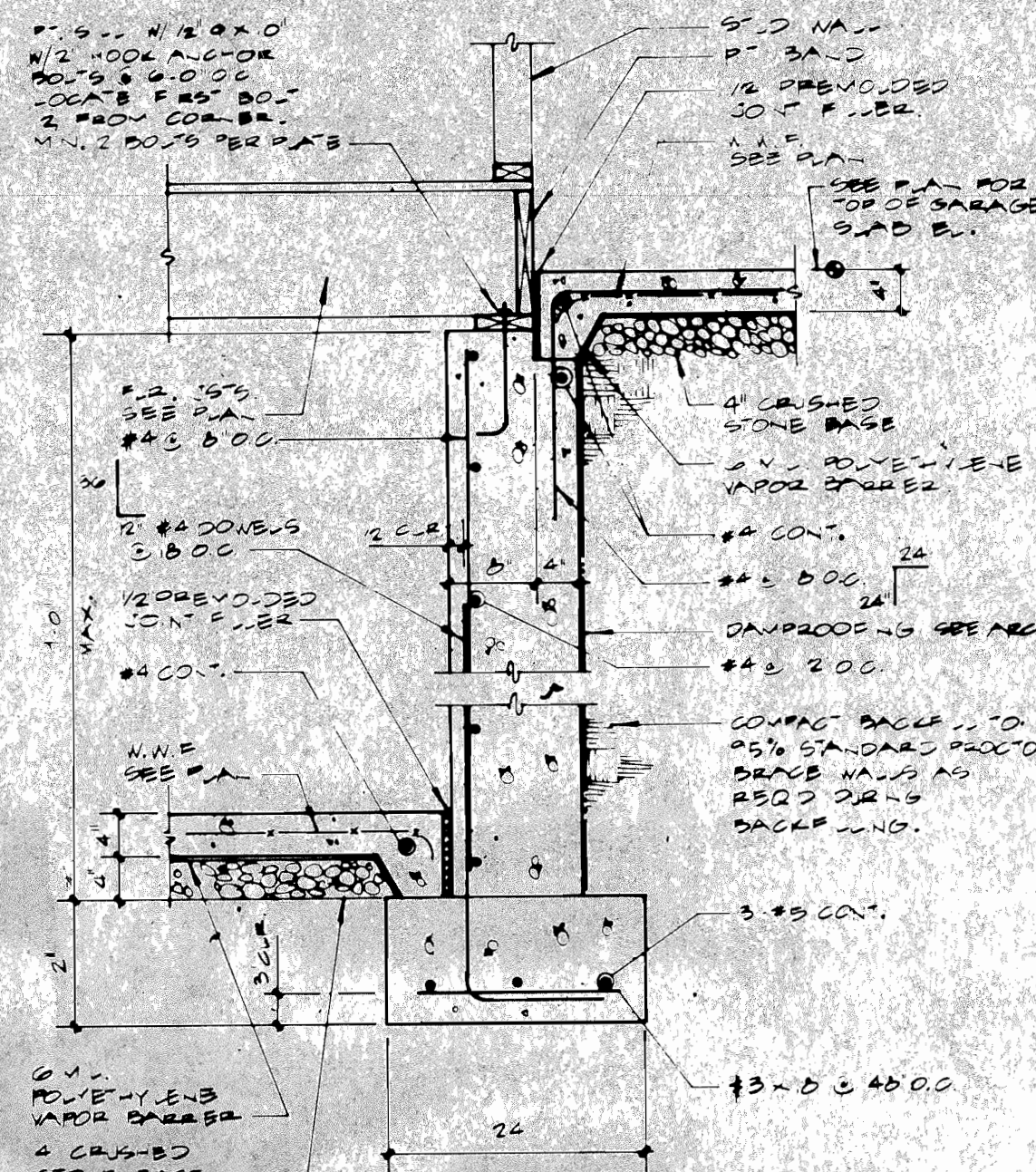
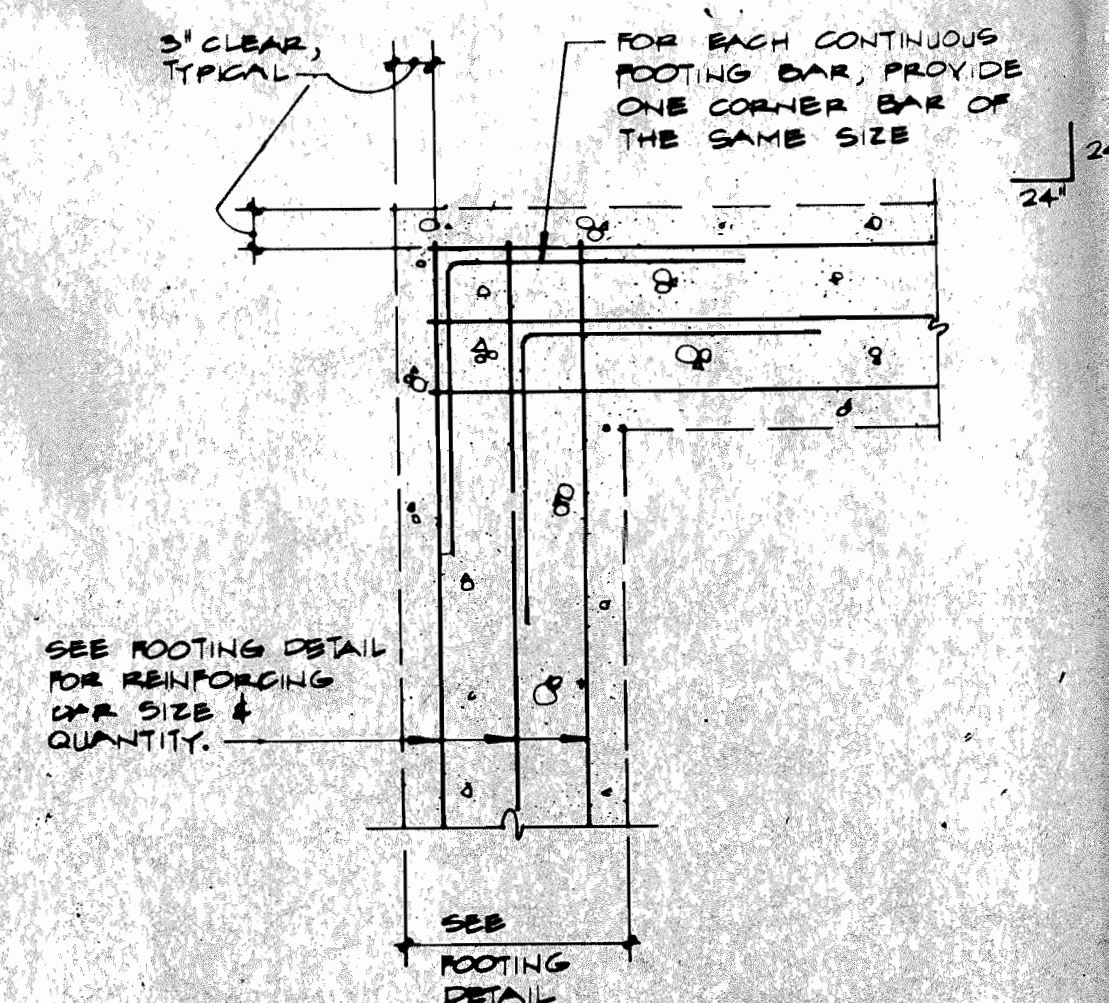
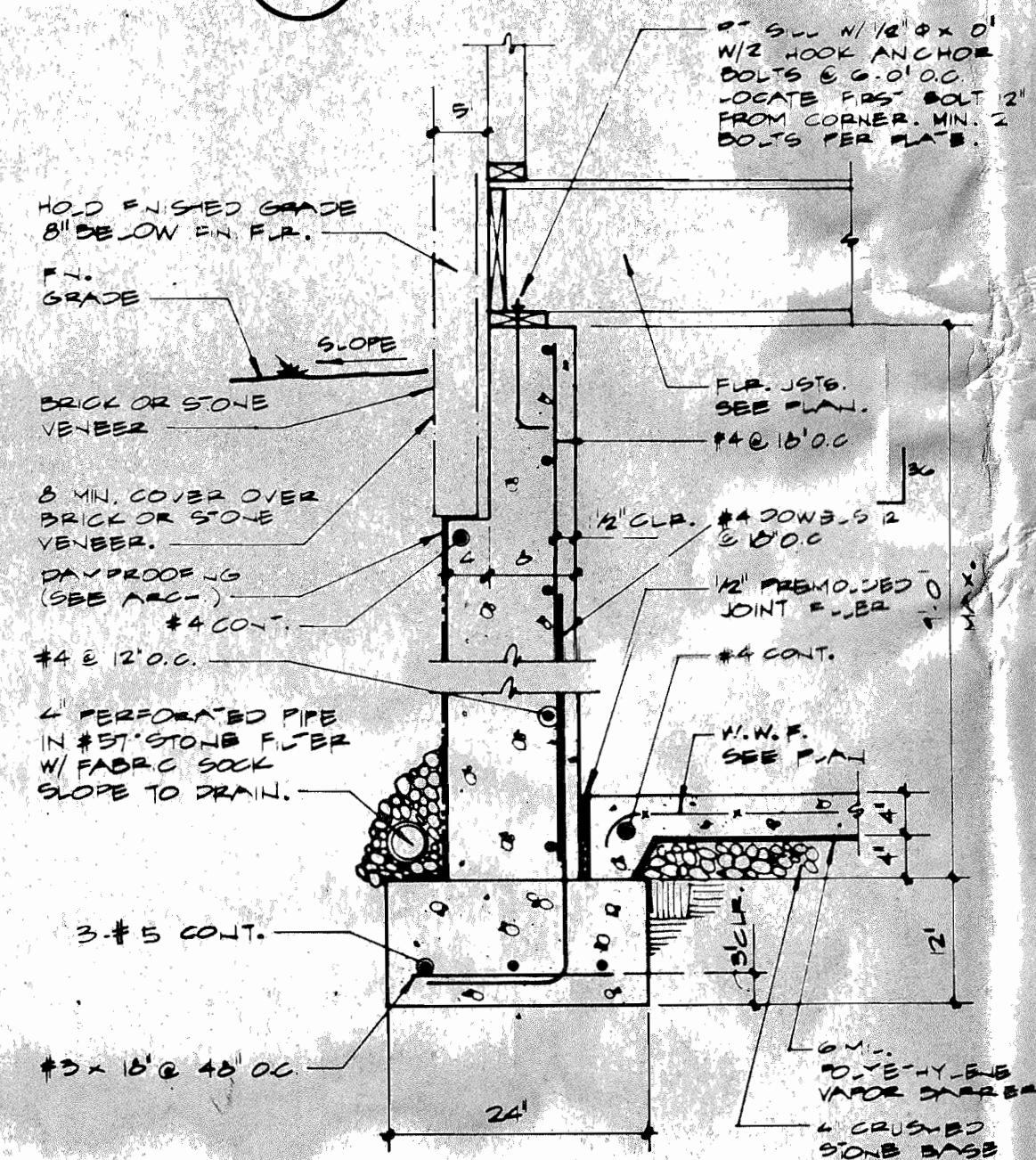
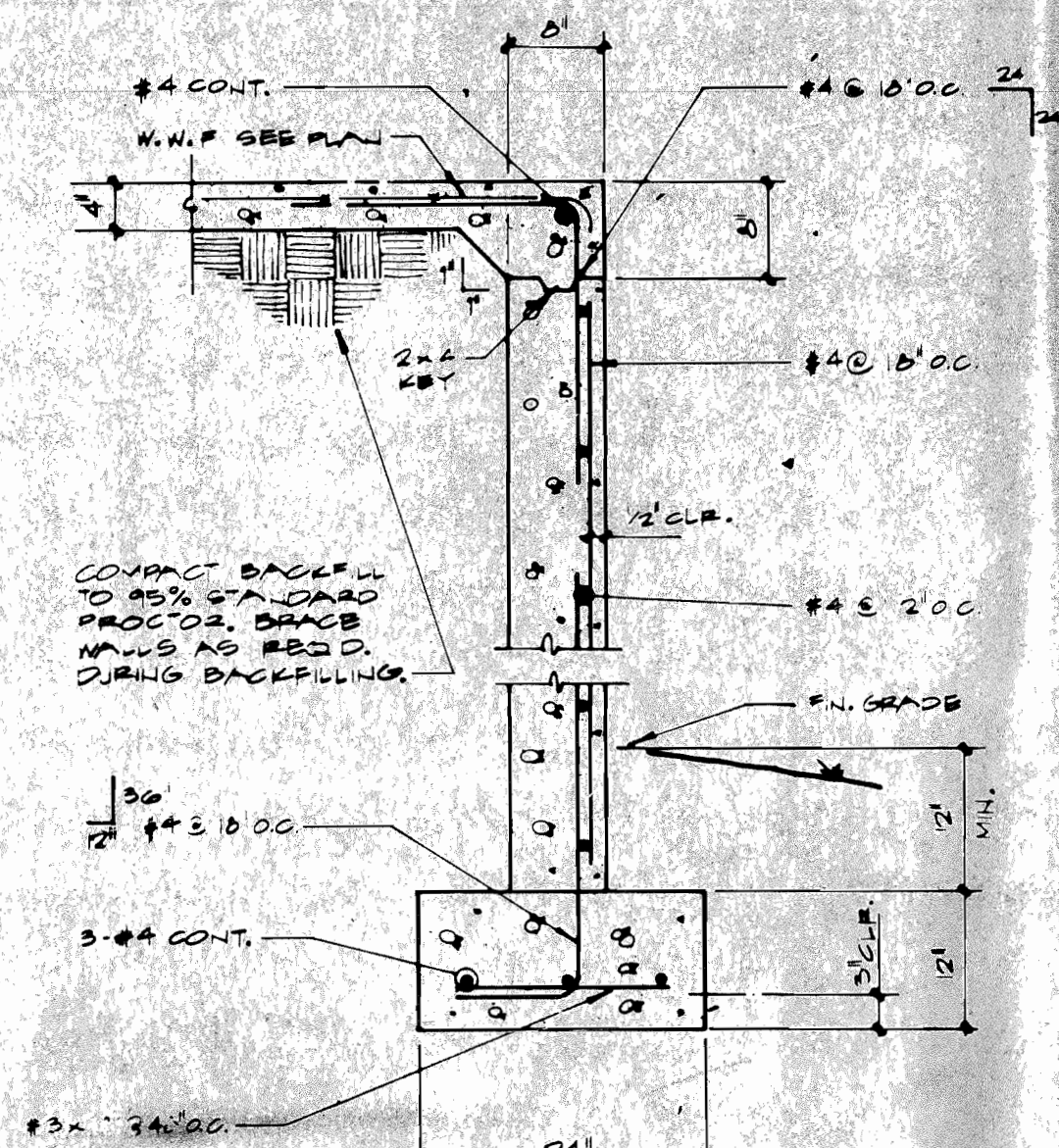
DESIGNED FOR:  
**Southern Living**  
**PLANS**

THESE PLANS SHOULD BE REVIEWED BY A LOCAL ARCHITECT OR ENGINEER TO VERIFY THAT THEY MEET ALL LOCAL CODES.

**Fairmont Heights**  
**810**

**SHEET**  
**OF 14**

COPYRIGHT SOUTHERN LIVING INC. 1981



NOTE: ALL DETAILS NOT TO SCALE



IN THE MATTER OF  
THE APPLICATION OF  
NANCY WEHR NIERMANN-LEGAL OWNER;  
JAMES R. AND KRISTEN F. CULP - C.P. /  
PETITIONERS FOR APPROVAL OF AN  
UNDERSIZED LOT LOCATED ON THE N/W  
CORNER BERWICK & WEHR ROADS  
(1210 BERWICK ROAD)

9<sup>TH</sup> ELECTION DISTRICT  
4<sup>TH</sup> COUNCILMANIC DISTRICT

BEFORE THE  
COUNTY BOARD OF APPEALS  
OF  
BALTIMORE COUNTY

Case No. 02-223 (A)

*Prod No 1*

\* \* \* \* \*

**ORDER OF DISMISSAL OF PETITION**

This case comes to the Board on appeal filed by David F. Albright, Esquire, on behalf of Jody Albright, David Albright, Felicia Albright and Douglas Scrivener, Appellants /Protestants, from the February 7, 2002 Order of the Deputy Zoning Commissioner in which the subject Petition was approved with restrictions.

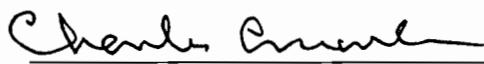
**WHEREAS**, the Board is receipt of a letter of withdrawal of the subject Petition filed April 10, 2002 by David H. Karceski, Esquire, VENABLE, BAETJER AND HOWARD, LLP, Counsel for Petitioner, (a copy of which is attached hereto and made a part hereof); and

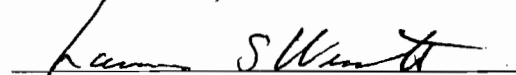
**WHEREAS**, said Counsel for Petitioner requests that the subject Petition filed in the above-referenced matter be withdrawn as of April 10, 2002,

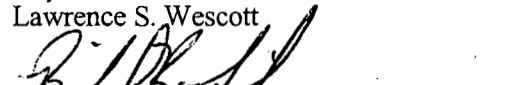
**IT IS THEREFORE** this 18<sup>th</sup> day of April, 2002, by the County Board of Appeals of Baltimore County

**ORDERED** that said Petition filed in Case No. 02-223(A) is **WITHDRAWN AND DISMISSED**, **without prejudice**, and that the Deputy Zoning Commissioner's Order of February 7, 2002, including any and all relief granted therein, is rendered **null and void**.

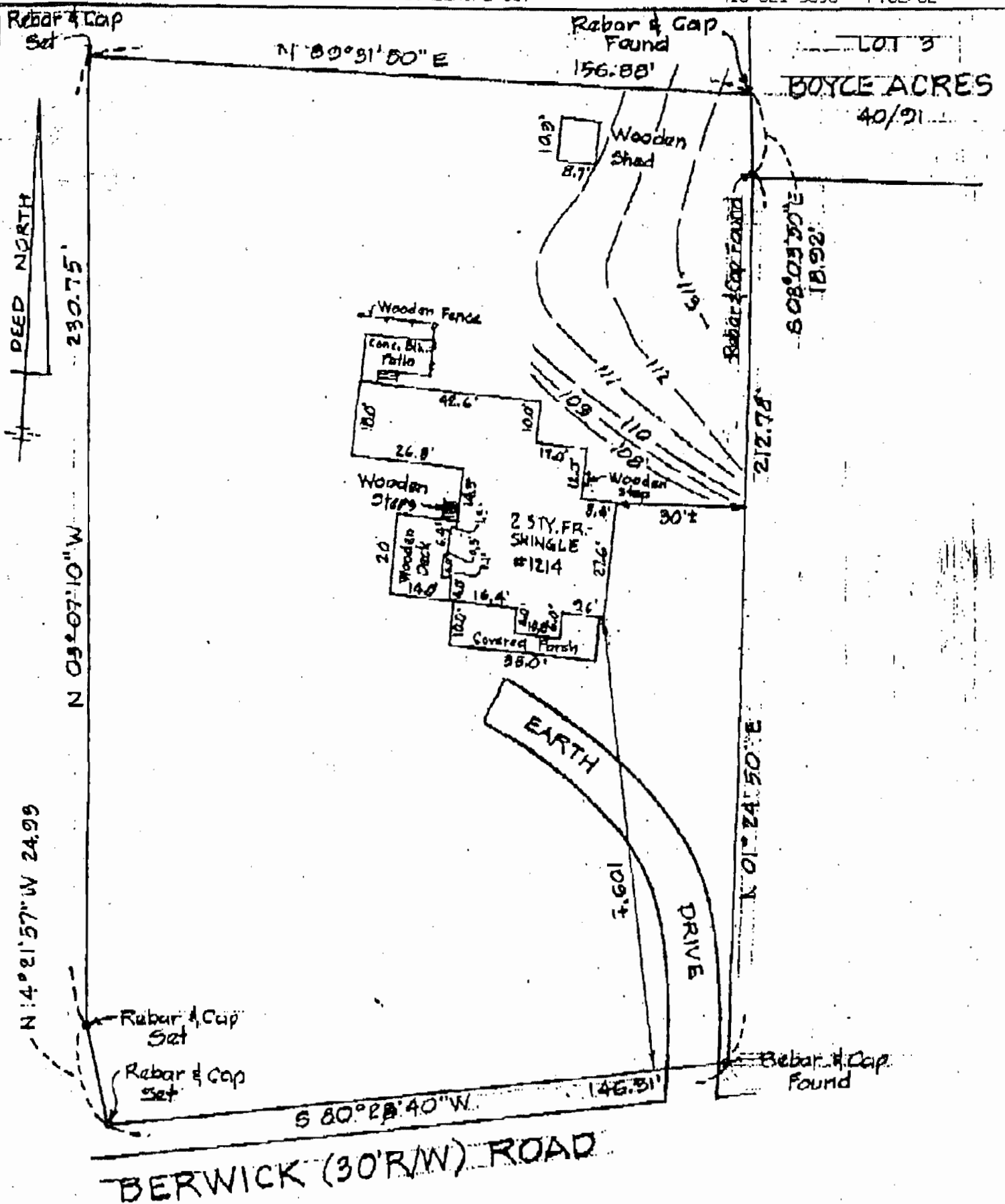
**COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
Charles L. Marks, Chairman

  
Lawrence S. Wescott

  
Richard K. Irish





THE LOT SHOWN HEREON IS IN FLOOD  
ZONE C PER F.E.M.A. FLOOD INSURANCE  
RATE MAP PANEL # 240010 02456

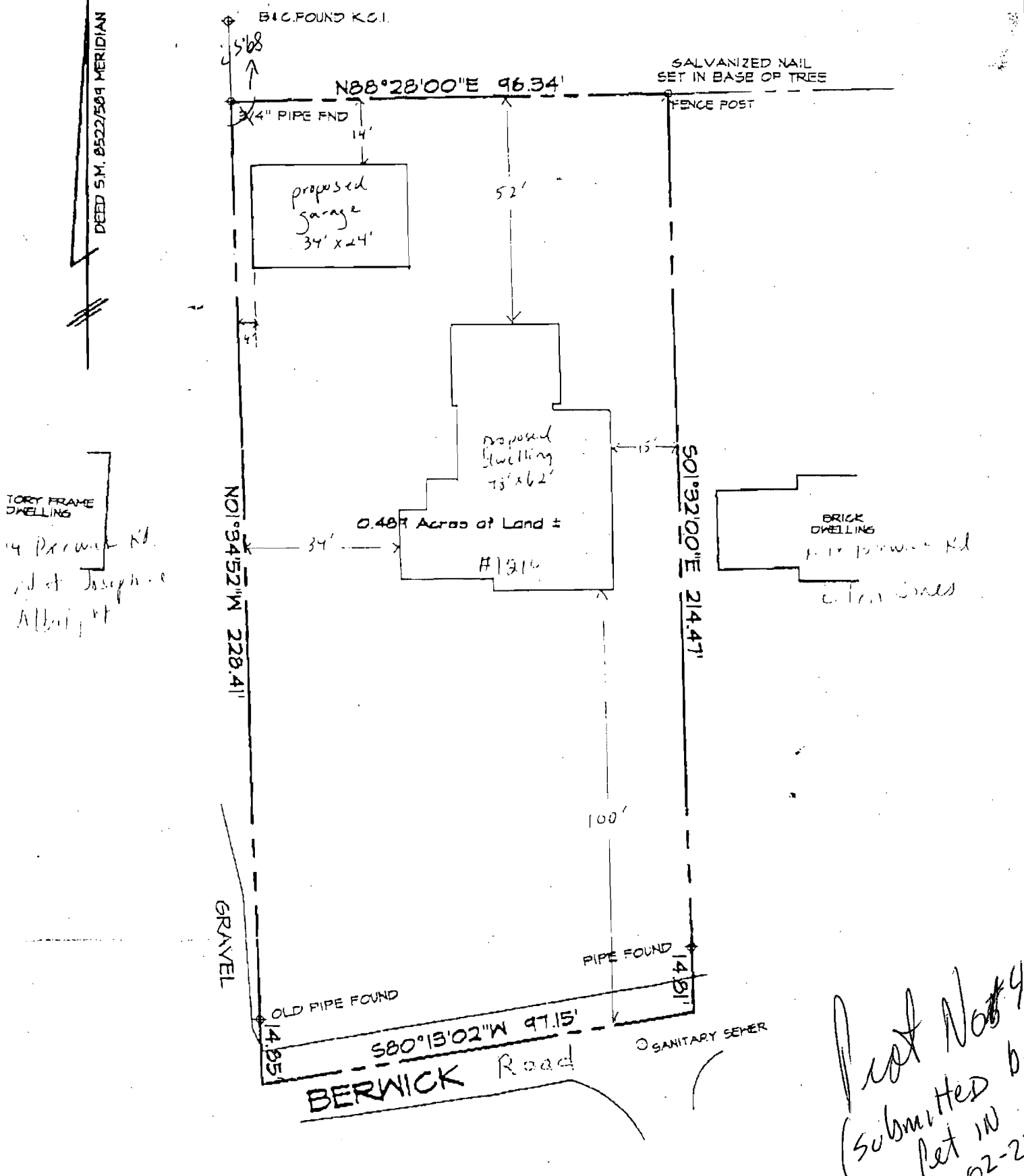
The plat is of benefit to a consumer only insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing, or refinancing. The plat is not to be relied upon for the establishment or location of fences, garages, buildings, or other existing or future improvements. The plat does not provide for the accurate identification of property boundary lines, but such identification may not be required for the transfer of title or securing financing or refinancing. The plat contains a tolerance of accuracy of two feet, more or less.



**H** **HICKS ENGINEERING CO., INC.**  
ENGINEERS, SURVEYORS & PLANNERS  
200 EAST JOPPA ROAD - SUITE 402  
TOWSON, MARYLAND 21286  
TELEPHONE: (410) 494-0001

**BOUNDARY SURVEY**  
#1214 BERWICK ROAD DEED REF. 14271/721  
BALTIMORE COUNTY, MARYLAND  
DATE: MAY 21, 2001 SCALE: 1" = 30' FILE: 7/1117  
TOTAL P. 02

*Plot No 3*



*Plot No. 4  
(Submitted by  
Pet in  
02-223-A)*

AY B, 2001 SCALE: 1"=30'

|                                                                                                                                          |                                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>LOT SURVEY<br/>FOR<br/>NANCY WIER NIERMANN<br/>LOCATED ON BERWICK AVENUE<br/>4th ELECTION DISTRICT<br/>BALTIMORE COUNTY, MARYLAND</p> | <p><b>GERHOLD, CROSS &amp; ETZEL, LTD</b><br/>REGISTERED PROFESSIONAL LAND SURVEYORS<br/>Suite 100<br/>320 East Towneview Boulevard<br/>Towson, Maryland 21286<br/>(410) 825-4470</p> |
|------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

10450161