IN THE MATTER OF THE APPLICATION OF ALLEN ASHWELL - LEGAL OWNER/ PETITIONER FOR VARIANCE ON PROPERTY LOCATED ON THE NE/S DENTON AVENUE, 1,050' e OF C/L NORTH POINT ROAD (7840 DENTON AVENUE) 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	* * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 04-255-A

* * * * * * * * *

OPINION

This matter comes before the Board on appeal by the Protestants to the granting of a variance request by the Petitioner to permit a proposed accessory garage building with a height of 19 feet in lieu of the maximum allowed height of 15 feet. The case was heard by the Board of Appeals on November 10, 2004. The Petitioner appeared *pro se* and Protestants were represented by J. Neil Lanzi, Esquire.

The Petitioner testified on his own behalf and related that the subject property had been in his family for generations. His testimony supported by several items of documentation, including numerous photographs, established that the property is approximately 50 feet wide and 187 feet deep, and is located on the northeast side of Denton Avenue, with frontage on Shallow Creek in the community of Fort Howard.

He testified that prior to Hurricane Isabel the site contained three structures; a single-family home, a smaller single-family dwelling, and a garage /storage building. As a result of the Hurricane, both the smaller dwelling and the garage were destroyed, along with a significant amount of personal property contained therein. The Petitioner requests the right to replace the structure with a new three-car garage based on approximately same footprint as the destroyed smaller structure. He wishes to include an attic for storage in which he can stand upright, resulting in the requested 19-foot height in lieu of the statutorily permitted 15 feet.

Under cross-examination, the Petitioner noted that no driveway will be added in the present plan and that he hopes to complete the construction himself. He acknowledged that he has already obtained a permit to expand his principal dwelling, which will consist of a one-story,

24-foot by 18-foot by 14-foot structure.

Finally, he did offer the observation that his property is in fact similar to others already in the area and pointed out, however, that in his opinion the site was not out of character with the surrounding area, and that his request was generated by his desire to avoid the damage and pitfalls made apparent by the damage caused during and as a result of the Hurricane.

Grover Hutchins, owner with his wife Loretta of the adjacent property to the Petitioner, testified in opposition to the Petitioner's request. His objections included the effect of the proposed 19-foot high structure on his view from his own residence as well as its attendant adverse effect on the value of his property.

Bruce Doak, a licensed land surveyor, was called to testify in support of the Protestants and was ultimately qualified as an expert witness in land use and surveying. He described the area, the proposed and existing structures and improvements therein, including observations that garages such as the one proposed by the Petitioner do not exist generally in the area, other than if attached to the primary residence on the property. He further stated that virtually all the lots in the area were similar in size, relatively flat, and were subject to the same Critical Area regulations.

When asked to address the issue of practical difficulty if the requested variance was denied, he opined as to what he believed were several viable alternative options for the Petitioner in that event, without the need for further variances. He confirmed that under § 400.3 of the *Baltimore County Zoning Regulations* (BCZR) an accessory building could be no more than 15 feet high and noted that the proposed garage was approximately double the square footage of the previously destroyed structure, and was only 50 feet from the water's edge as opposed to the

required 100 feet under the Critical Area regulations. He related his concern as to runoff as a result of the increased impervious surface of the proposed use. He concluded his testimony by stating his opinion that, for all of his stated reasons, the requested variance would be detrimental to the other property owners in the community.

The question of granting or denying variance requests is an oft-presented issue before this Board. The seminal case as to variances is *Cromwell v. Ward,* 102 Md.App. 691, 651 A.2d 424 (1995) wherein the Court writes:

> ...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...." Id. at 698.

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.... Id. at 710.

Based upon the testimony in this matter, the majority of this Board believes that no case has been made for the requisite "uniqueness" called for in *Cromwell.* The unchallenged testimony of the expert as well as the cross-examination of the Petitioner supports the conclusion that the Petitioner's property is substantially similar to other properties in the adjoining area in shape, size, topography, and access to waterfront. Unfortunately, it is also similar and not unique

in the perils faced by all residents in the area as to flooding and water damage, especially during storm conditions such as Hurricane Isabel. Damage to substantially all the homes in the area, which occurred as the result of that storm, is simply additional indicia of the commonality of topography and physical characteristics of the properties in the area. Its propensity to flooding, in and of itself, is not an exceptional factor recognized under *Cromwell* and is certainly not a "extenuating circumstance" that is recognized under the law to permit a variance in the absence of the factors recognized and called for in *Cromwell*.

Even assuming *arguendo* that by some machination it was determined that the Petitioner's subject property was unique, the majority of this Board believes that no case for "practical difficulty" has been made. There has been uncontradicted testimony that other options exist for the Petitioner in constructing his desired structure if the requested variance is denied, including simply lowering the height of the structure he proposes to build. Petitioner can, even if the variance is denied, replace the subject garage under § 104.2 of the BCZR. He simply cannot increase its height and therefore its size. Such a "limitation" does not rise to the standards set forth in *Cromwell* nor to the standards set forth in *North v. St. Mary's County* in which the Court of Special Appeals stated:

> The instant case focuses on unwarranted hardship; it is a denial of *reasonable* use that creates an unwarranted hardship. If reasonable use exists, generally an unwarranted hardship would not. In the present case, extensive reasonable use is already being made of the property. Under the appellees' theory, it would be unreasonable and an unwarranted hardship to deny Mr. Enoch anything he wants.
>
> In a case resolved on standing issues, the Court of Appeals nevertheless stated:
>
>> To grant a variance the Board must find from the evidence more than that the building...would be suitable or desirable or could do no harm or

> would be convenient for or profitable to its owner. The Board must find there was proof of "urgent necessity, hardship peculiar to the particular property, and a burden upon the owner not justified by the public health, safety and welfare."

Kennerly v. Mayor and City Council, 247 Md. 601, 606-07, 233 A.2d 800 (1967).

Likewise, the majority believes that the fact that some steps have already been taken in constructing the addition makes no difference. The law is well established that one cannot, by his own actions, create "practical difficulty," or "hardship" and thereafter base a request for a variance on those self-created conditions.

For all of the above reasons and comments, the majority of this Board has determined to deny the variance requested by Petitioner.

ORDER

THEREFORE, IT IS THIS 17th day of May, 2005 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioners' request for variance relief to permit a proposed accessory garage building with a height of 19 feet in lieu of the maximum allowed height of 15 feet be and the same is hereby **DENIED.**

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Lawrence S. Wescott

IN THE MATTER OF THE APPLICATION OF ALLEN ASHWELL - LEGAL OWNER/ PETITIONER FOR VARIANCE ON PROPERTY LOCATED ON THE NE/S DENTON AVENUE, 1,050' e OF C/L NORTH POINT ROAD (7840 DENTON AVENUE) 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	* * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 04-255-A

* * * * * * * * *

DISSENTING OPINION

This Board member respectfully dissents from the majority opinion in Case No. 04-255-A, *In the Matter of: Allen Ashwell.* The case involves a request for an administrative variance from height restrictions. The Petitioner, Allen Ashwell, requested a variance to allow his garage to be built with a height of 19 feet in lieu of the maximum allowed 15 feet.

The majority of the Board believes this case does not meet *Cromwell*'s two-prong test, because Mr. Ashwell's lot is not unique compared to the other lots in the area. Protestant's Exhibit 7, a plat of the surrounding area, shows the Petitioner's house and neighboring houses to be located on a small peninsula of land extending into Shallow Creek. This peninsula is comprised of one street, Denton Avenue, with houses on either side. This peninsula of land is attached to a slightly larger peninsula ending at North Point. All the lots along Denton Avenue are of similar size and shape. Nearly all the houses were flooded when Hurricane Isabel came through in 2003. Because of these similarities, the majority of this Board finds that Ashwell's property is not "unique."

In making his case for uniqueness, the Petitioner submitted the Zoning Commissioner's decision in a similar case, Case No, 04-383-A, Max A. Gasker, Petitioner, at 7846 Denton Avenue. The *Gasker* case is in reference to a neighbor's property several houses away. Mr. *Gasker* also requested a variance from height restrictions to build a taller garage for much the

same reason as Mr. Ashwell. In the *Gasker* opinion, the Zoning Commissioner writes:

> I find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. If there ever was a case in which the property passes the test given in *Cromwell v. Ward* 102 MD691 (1995) for uniqueness, in my view it is this case. *Cromwell* lists as criteria to pass the uniqueness test that the property must be unusual compared to other properties in the neighborhood. In addition, the regulation of a 15 ft. for garages must impact the site differently than the neighboring properties. The fact that makes this property unique is that it is waterfront property and is subject to damage by storm surges. In another setting this point could seem academic but after hurricane [sic] Isabel we can see what power to destroy is unleashed by these storms. There was a not too complimentary observation after *Cromwell*, that in order to have a variance approved a site must have a river running through it. In this case, the storm surge literally did run through the property.

In fact, a "river" ran through all the properties on this small peninsula during Hurricane Isabel. They were all affected the same way, and in a unique way compared to the rest of Baltimore County. Environmental factors and the geographic location of these properties—low elevation and situated on a small peninsula—make them unique for the purposes of specific variance requests, such as in this case.

The variance requested by Mr. Ashwell is directly linked to the argument for uniqueness. The entire peninsula on which Petitioner's property is located is affected by severe storms, particularly hurricanes, which cause flooding and damage to the properties. Petitioner testified that he decided to build a sturdy garage structure, with additional height for storage, specifically because he had lost his belongings three times as a result of three previous storms. He produced photos showing the damage to his original garage and another house on the property (which was completely destroyed) following Hurricane Isabel (Petitioner's Exhibits 3A-H). The request for an additional 4 feet to his garage is to safely store belongings and avoid the same fate when future storms hit.

By authorizing the Zoning Commissioner and County Board of Appeals the power to grant variances from the zoning regulations, the County Council recognized that, while zoning

standards creating some uniformity were necessary, there would exist properties in the County that did not easily conform to those standards. BCZR § 307.1 states:

> The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations ... only in cases where special circumstances or conditions exist that are peculiar to the *land or structure which is the subject of the variance request* and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship (emphasis added).

The Court of Special Appeals in *Cromwell* made clear that this zoning ordinance created a two-step process for granting a variance: First, the property must be found to be in some way unique, and then the uniqueness of the property must be found to cause the zoning ordinance to "impact disproportionately on that property." This two-pronged test helps define and clarify when a property should be allowed to vary from the Countywide zoning standard.

In defining the standard for uniqueness, *Cromwell* cites *North v. St. Mary's County*, 99 Md. App. at 512, 638 A.2d 1175. In this case, the court gave the term "unique" a "customized meaning":

> "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface conditions, environmental factors, historical significance, access or non-access to navigable waters . . .

It is not clear to me how "environmental factors" can be shared by a single property and not by its neighbors. If a property is affected by environmental factors—a hurricane, for example—then its neighboring properties will be as well. And, if those environmental factors are unique to a specific geographic area of the County, they may require a variance from a Countywide zoning regulation that does not make a distinction among areas of the County.

The Baltimore County Council has required that accessory structures everywhere in the County be limited to 15 feet in height. This requirement applies no matter where in the County

one lives and no matter what environmental factors affect a given area. Where neighboring properties share the same environmental factors experienced by no other area of the County, which necessitates the granting of a variance specifically to remedy the effects of those environmental factors, I think there is a case to be made for uniqueness. The lots on this spit of land are uniquely affected by hurricanes in a way no other area of the County is, yet the County Council has not revised a zoning regulation that is imposed over the entire County. There is no recourse then but a variance.

If residents on a small peninsula of land need to build up, in order to protect their belongings from flooding as a result of an environmental factor such as a hurricane, then the fact that the zoning regulations do not recognize this unique problem means that they impact these properties negatively. As Baltimore County is hit nearly every fall by hurricanes, and a river will run through these properties each time one does, the owners need to build up to safeguard their belongings. Additional height on a garage then becomes a necessity, not a luxury. The zoning regulations, therefore, "impact disproportionately" those properties and until the County Council addresses this matter, a variance would have to be given.

In my opinion, a variance should have been granted in this case. For the reasons set forth, I respectfully dissent from the Majority Opinion denying a variance from the height restrictions.

Margaret Brassil

Margaret Brassil, Ph.D.

DATE: 5/17/05

County Board of Appeals of Baltimore County

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

May 17, 2005

J. Neil Lanzi, Esquire
Mercantile Building, Suite 617
409 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: Allen Ashwell* – Legal Owner / Petitioner / Case No. 04-255-A

Dear Mr. Lanzi:

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. Also enclosed is a copy of the Dissenting Opinion written by Dr. Brassil.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all subsequent Petitions for Judicial Review filed from this decision should be noted under the same civil action number as the first Petition.** 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

Kathleen C. Bianco
Administrator

Enclosure

c: Grover M. and Loretta H. Hutchins
Bruce E. Doak /Gerhold, Cross & Etzel
Allen Ashwell
Cynthia Pollock
Max and Melissa Gasker
Chesapeake Bay Critical Areas Commission
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

IN RE: PETITION FOR ADMIN. VARIANCE NE/S Denton Avenue, 1,050' E of the c/l North Point Road **(7840 Denton Avenue)** 15th Election District 7th Council District Allen A. Ashwell Petitioner	* * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 04-255-A

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Administrative Variance filed by the owner of the subject property, Allen A. Ashwell. The Petitioner seeks relief from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed accessory building (garage) with a height of 19 feet in lieu of the maximum allowed height of 15 feet. 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.

The Petition was filed through the administrative variance process, pursuant to Section 26-127 of the Baltimore County Code, which allows an individual to seek variance relief for an owner-occupied residential property without the need for a public hearing. Under the Code, any property owner residing within 1,000 feet of the property in question who objects to the relief requested has 15 days from the date of the sign posting to demand a public hearing for a determination as to the merits of the request. Additionally, the Zoning Commissioner/Deputy Zoning Commissioner can schedule the matter for a public hearing if deemed appropriate. In this instance, a formal demand for public hearing was received from the adjacent property owners, Groves M. and Loretta M. Hutchins. Thus, the matter was scheduled for a public hearing before the undersigned on February 12, 2004.

ORDER RECEIVED FOR FILING
Date 3/11/04
By

Appearing at the hearing in support of the request were Allen Ashwell, property owner. Grover and Loretta Hutchins, adjacent property owners, appeared in opposition to the request. There were no other interested persons present.

Testimony and evidence offered revealed that the subject property is a rectangular shaped, waterfront lot, approximately 50 feet wide and 187 feet deep, located on the northeast side of Denton Avenue in the community of Fort Howard in eastern Baltimore County. The property is located with frontage on Shallow Creek and contains a gross area of 9,350 sq.ft., more or less, zoned D.R.5.5. Mr. Ashwell testified that the property has been in his family for generations and that he acquired the property a number of years ago. Previously, the lot was improved with three structures; the single-family dwelling, known as 7840 Denton Avenue; a smaller single family dwelling located immediately to the rear of the main dwelling; and, a garage/storage building which was located closer to the water. However, the smaller dwelling and garage were destroyed as a result of Hurricane Isabel. The Petitioner is desirous of constructing a new garage in essentially the same footprint of the smaller house. The new garage will be 26' x 34' in dimension and feature an attic for additional storage space. As a result of the proposed attic, the height of the structure will be at 19 feet. Thus, the requested variance relief is necessary. In support of his request, the Petitioner testified that the garage will not be used as a second dwelling unit and there will be no bathroom provided therein. Moreover, upon complete of the proposed improvements, only the house, a small shed and the new garage will remain on the property. Testimony indicated that the height of the garage is necessary to provide attic storage space. Additionally, in view of the flood, the Petitioner wants a storage area that is above ground level. It was indicated that there are other garages in the neighborhood with greater heights than that proposed here.

As noted above, Mr. & Mrs. Hutchins, the adjacent property owners, appeared in opposition to the request. They expressed concern about whether the garage would be constructed according to Code. Apparently, they believe that the prior structure collapsed partly as a result of poor workmanship. Although the Petitioner may do much of the construction work himself he was advised that he must obtain a building permit and that the structure must be built to Code. The

ORDER RE FILING
Date 3/1/04
By

neighbors also raised a concern about compliance with Chesapeake Bay Critical Areas requirements and the clean-up efforts by the Petitioner following Hurricane Isabel. In this regard, the Petitioner has already met with Keith Kelley, a representative of the Department of Environmental Protection and Resource Management (DEPRM), the local agency charged with enforcing Critical Areas regulations in Baltimore County. The Petitioner has been advised that the proposed construction must be in compliance with those regulations, including all applicable floodplain and environmental regulations. Finally, the Petitioner submitted a series of letters from other neighbors in the community who support his request, including the two immediately adjacent neighbors.

Based on the testimony and evidence offered, I am persuaded to grant the requested relief. It was indicated that the height of the proposed garage was necessary to provide needed storage space and will not be used as a second dwelling unit. I find that the height of the structure is not inappropriate and will not be detrimental to adjacent properties. Testimony and evidence presented indicated that the proposed structure will not be inconsistent with other similar structures in the neighborhood. Additionally, there were no adverse Zoning Advisory Committee (ZAC) comments submitted by any County reviewing agency. Thus, I am persuaded to grant the requested relief; however, will impose certain conditions to insure compliance with the use regulations.

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 18 day of March 2004 that the Petition for Administrative Variance seeking relief from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed accessory building (garage) with a height of 19 feet in lieu of the maximum allowed height of 15 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

ORDER RECEIVED FOR FILING
Date 3/17/04
By

1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at his 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) The proposed improvements shall be in compliance with the Chesapeake Bay Critical Areas Regulations, pursuant to the recommendations made by the Department of Environmental Protection and Resource Management (DEPRM) in their ZAC comment dated December 5, 2003, a copy of which is attached hereto and made a part hereof.

3) The garage shall be limited to uses accessory to the residential use of the property. It shall not be used for commercial or business purposes. Moreover, the Petitioner shall not allow or cause the garage to be converted to a second dwelling unit and/or apartments. There shall be no living quarters contained therein, and no kitchen or bathroom facilities.

4) There shall be no other structures on the property, but for the existing house, small shed and proposed garage.

5) When applying for any permits, the site plan filed must reference this case 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 3/1/04
By

Zoning Commissioner

Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
Tel: 410-887-3868 • Fax: 410-887-3468

Baltimore County

James T. Smith, Jr., County Executive
Lawrence E. Schmidt, Zoning Commissioner

March 1, 2004

Mr. Allen Ashwell
7840 Denton Avenue
Baltimore, Maryland 21219

RE: PETITION FOR VARIANCE
NE/S Denton Avenue, 1,050' E of the c/l North Point Road
(7840 Denton Avenue)
15th Election District – 7th Council District
Allen Ashwell - Petitioners
Case No. 04-255-A

Dear Mr. Ashwell:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance 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: Mr. & Mrs.Grover Hutchins
7844 Denton Avenue, Baltimore, Md. 21219
Chesapeake Bay Critical Areas Commission
1804 West Street, Suite 100, Annapolis, Md. 21401
DEPRM; People's Counsel; Case File

Printed on Recycled Paper

CBCA Flood

Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 7840 DENTON AVENUE

which is presently zoned D.R. 5.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 400.3, BCZR, to permit a proposed accessory building (garage) with a height of 19 feet in lieu of the maximum allowed height of 15 feet.

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

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address — Telephone No.

City — State — Zip Code

Legal Owner(s):

ALLEN A. ASHWELL
Name - Type or Print

Signature

Name - Type or Print

Signature

7840 DENTON AVE 410-4770798
Address — Telephone No.

BALTIMORE MD 21219
City — State — Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address — Telephone No.

City — State — Zip Code

Representative to be Contacted:

ALLEN ASHWELL
Name

7840 DENTON AVE 410-477-6364
Address — Telephone No.

BALTIMORE MD 21219
City — State — Zip Code

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

Zoning Commissioner of Baltimore County

ORDER RECEIVED FOR FILING
Date 11/18/03
By

CASE NO. 04-255-A

Reviewed By JNP **Date** 11/18/03

Estimated Posting Date 11/30/03

REV 10/25/01

Affidavit in Support of Administrative Variance

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

That the Affiant(s) does/do presently reside at 7840 DENTON AVE
Address
BALTIMORE MD. 21219
City State Zip Code

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

1. September 19th, 2003 we lost a garage that was 12' x 42' and a house with an attic that was 24' x 44' due to hurricane Isabel.
2. The total square feet of the house and garage was 1560 square feet.
3. The largest garage Baltimore county will allow in our area can be 900 square feet @ 15 feet high.
4. We are asking for a variance on the height to allow 18'-8" so that we may place an attic over the garage that you can walk in. This space is needed to make up for the space that was lost to the storm.

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

Signature

ALLEN ASHWELL
Name - Type or Print

Signature

Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 17TH day of November, 2003, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared

ALLEN LEIGH ASHWELL

the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

Herbert Zeilenkicher
Notary Public

My Commission Expires 10-1-2004

REV 10/25/01

Affidavit in Support of Administrative Variance

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

That the Affiant(s) does/do presently reside at 7340 DENTON AVE
Address
BALTIMORE MD. 21219
City State Zip Code

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

1. September 19th, 2003 we lost a garage that was 12' x 42' and a house with an attic that was 24' x 44' due to hurricane Isabel.
2. The total square feet of the house and garage was 1560 square feet.
3. The largest garage Baltimore county will allow in our area can be 900 square feet @ 15 feet high.
4. We are asking for a variance on the height to allow 18'-8" so that we may place an attic over the garage that you can walk in. This space is needed to make up for the space that was lost to the storm.

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

Signature

ALLEN ASHWELL
Name - Type or Print

Signature

Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 17TH day of November, 2003, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared

ALLEN LEIGH ASHWELL

the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

Herbert Zeilenkirchen
Notary Public

My Commission Expires 10-1-2004

REV 10/25/01

Zoning Description

ZONING DESCRIPTION FOR 7840 Denton Avenue.

Beginning at a point on the North East side of Denton Avenue which is 18'-0" wide at the distance of 1050' +/- South East of the centerline of the nearest improved intersecting street, North Point Road which is 20'-0" wide. Being Lot # 26, in the subdivision of Oleary Plat, as recorded in the Baltimore County Plat Book W.P.C. #7, folio # 140, containing 9350 Square Ft. Also known as 7840 Denton Avenue and located in the 15th election district, 07 Councilmanic District.

04-255-A

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 23053

DATE 12/11/03

ACCOUNT 01-000-6150

AMOUNT $50.00

RECEIVED FROM: Stuart and Dorothy Shell

FOR: Zoning Appeal Hearing

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS DATE	ACTUAL DATE	TIME	DRLN
12/11/2003	12/11/2003	16:15:51	2

REG 002 MOIL JEMA OET
RECEIPT # 310899 12/11/2003 OFER
BRC 5 528 ZONING VERIFICATION
CR 01 023053
Rec'd for 50.00
$50.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #04-255-A
7640 Denton Avenue
N/east side of Denton Avenue, 1,050 feet south east at centerline of North Point Road
15th Election District – 7th Councilmanic District
Legal Owner(s): Allen Ashwell

Administrative Variance: to permit a proposed accessory building (garage) with a height of 19 feet in lieu of the maximum allowed height of 15 feet.

Hearing: Thursday, February 12, 2004 at 11:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 1/787 Jan. 27 C646687

CERTIFICATE OF PUBLICATION

1/30/, 2004

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 1/27/, 2004.

- [X] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Willinger

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 04-255-A

Petitioner/Developer: ALAN ASHWELL

Date of Hearing/Closing: 12/15/03

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

ATTN: Becky Hart {(410) 887-3394}

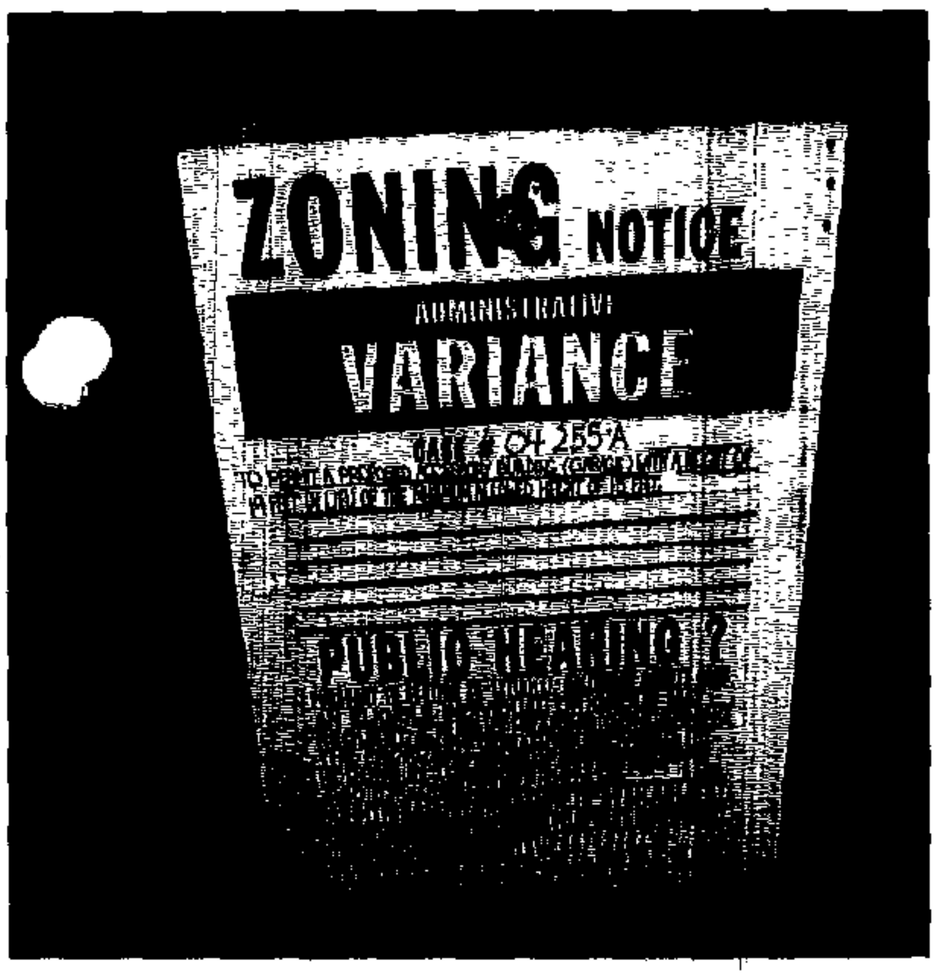
Ladies and Gentlemen:

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:*

7840 DENTON AVE

The sign(s) were posted on 11/30/03
(Month, Day, Year)

Sincerely,



11/30/03
(Signature of Sign Poster) (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)

CERTIFICATE OF POSTING

RE: Case No.: 04-255-A

Petitioner/Developer: ALLEN ASHWEGL

Date of Hearing/Closing: 2/12/04

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

ATTN: Becky Hart {(410) 887-3394}

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: 7840 DENTON AVE

The sign(s) were posted on 1/24/04
(Month, Day, Year)

Sincerely,

(Signature of Sign Poster) 1/24/04 (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)

FORMAL DEMAND FOR HEARING

CASE NUMBER: 04 255-A

Address: 7840 Denton Ave

Petitioner(s): Allen Ashburn

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I/We Grover M. & Loretta H. Hutchins
Name - Type or Print

(✓) Legal Owner OR (-) Resident of

7844 Denton Ave.
Address

Baltimore MD 21219
City State Zip Code

410-382-7881
Telephone Number

which is located approximately 50 *feet from the property, which is the subject of the above petition,* ***do hereby formally demand that a public hearing be set in this matter.***

ATTACHED IS THE REQUIRED PROCESSING FEE FOR THIS DEMAND.

Loretta H. Hutchins 12-11-03
Signature Date

Signature Date

Revised 9/18/98 - wcr/scj

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-255-A

ALLEN ASHWELL – LEGAL OWNER

7840 DENTON AVENUE

15TH ELECTION DISTRICT APPEALED: 3/29/2004

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

CASE NO.: 04-255-A

Petitioner/Developer:

ALLEN ASHWELL– LEGAL OWNER

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

7840 DENTON AVENUE/ 21219

The sign was posted on 4/28, 2004

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-255-A

ALLEN ASHWELL – LEGAL OWNER

7840 DENTON AVENUE

15TH ELECTION DISTRICT

APPEALED: 3/29/2004

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

BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number 04-255 -A Address 7840 Denton Avenue

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

Filing Date: 11/18/03 **Posting Date:** 11/30/03 **Closing Date:** 12/15/03

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

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

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

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

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

(Detach Along Dotted Line)

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

USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT

Case Number 04-255 -A Address 7840 Denton Avenue

Petitioner's Name Allen Ashwell Telephone 410-477-0798

Posting Date: 11/30/03 **Closing Date:** 12/15/03

Wording for Sign: To Permit a proposed accessory building (garage) with a height of 19 feet in lieu of the maximum allowed height of 15 feet.

WCR - Revised 6/28/00

Department of Permits and Development Management

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

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

December 29, 2003

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: 04-255-A
7840 Denton Avenue
N/east side of Denton Avenue, 1,050 feet south east at centerline of North Point Road
15th Election District – 7th Councilmanic District
Legal Owners: Allen Ashwell

Administrative Variance to permit a proposed accessory building (garage) with a height of 19 feet in lieu of the maximum allowed height of 15 feet.

Hearing: Thursday, February 12, 2004 at 11:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue

Timothy Kotroco
Director

TK:klm

C: Allen Ashwell, 7840 Denton Avenue, Baltimore 21219

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FEBRUARY 27, 2004.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed on Recycled Paper

TO: PATUXENT PUBLISHING COMPANY
Tuesday, January 27, 2004 Issue - Jeffersonian

Please forward billing to:
Allen Ashwell
7840 Denton Avenue
Baltimore, MD 21219

410-477-6364

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: 04-255-A
7840 Denton Avenue
N/east side of Denton Avenue, 1,050 feet south east at centerline of North Point Road
15th Election District – 7th Councilmanic District
Legal Owners: Allen Ashwell

Administrative Variance to permit a proposed accessory building (garage) with a height of 19 feet in lieu of the maximum allowed height of 15 feet.

Hearing: Thursday, February 12, 2004 at 11:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

215
(5)

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

August 10, 2004

NOTICE OF ASSIGNMENT

CASE #: 04-255-A **IN THE MATTER OF: ALLEN ASHWELL -**
Legal Owner /Petitioner 7840 Denton Avenue
15th Election District; 7th Councilmanic District

3/01/2004 – Z.C.'s Order in which requested variance relief was GRANTED.

ASSIGNED FOR: **WEDNESDAY, NOVEMBER 10, 2004 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 B, 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: Appellants /Protestants : Grover M. and Loretta H. Hutchins

Petitioner : Allen Ashwell

Chesapeake Bay Critical Areas Commission

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

Added 9/15/04: J. Neil Lanzi Esquire
Council for M/M Hutchins

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

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

November 12, 2004

PP'd to 1/05/05 (admin. PP)

NOTICE OF DELIBERATION

IN THE MATTER OF:

ALLEN ASHWELL - Petitioner
Case No. 04-255-A

Having heard this matter on 11/10/04, public deliberation has been scheduled for the following date /time:

DATE AND TIME : TUESDAY, NOVEMBER 30, 2004 at 9:30 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 : J. Neil Lanzi, Esquire
Appellants /Protestants : Grover M. and Loretta H. Hutchins

Bruce E. Doak /Gerhold, Cross & Etzel

Petitioner : Allen Ashwell
Cynthia Pollock
Max and Melissa Gasker

Chesapeake Bay Critical Areas Commission

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

FYI: 2-1-5

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on Recycled Paper

County Board of Appeals of Baltimore County

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

November 26, 2004

NOTICE OF REASSIGNMENT FOR DELIBERATION

IN THE MATTER OF:

ALLEN ASHWELL - Petitioner
Case No. 04-255-A

which was assigned to be deliberated on 11/30/04 has been **administratively POSTPONED**; and has been reassigned to the following date and time:

DATE AND TIME : WEDNESDAY, JANUARY 5, 2005 at 9:30 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 : J. Neil Lanzi, Esquire
Appellants /Protestants : Grover M. and Loretta H. Hutchins

Bruce E. Doak /Gerhold, Cross & Etzel

Petitioner : Allen Ashwell
Cynthia Pollock
Max and Melissa Gasker

Chesapeake Bay Critical Areas Commission

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

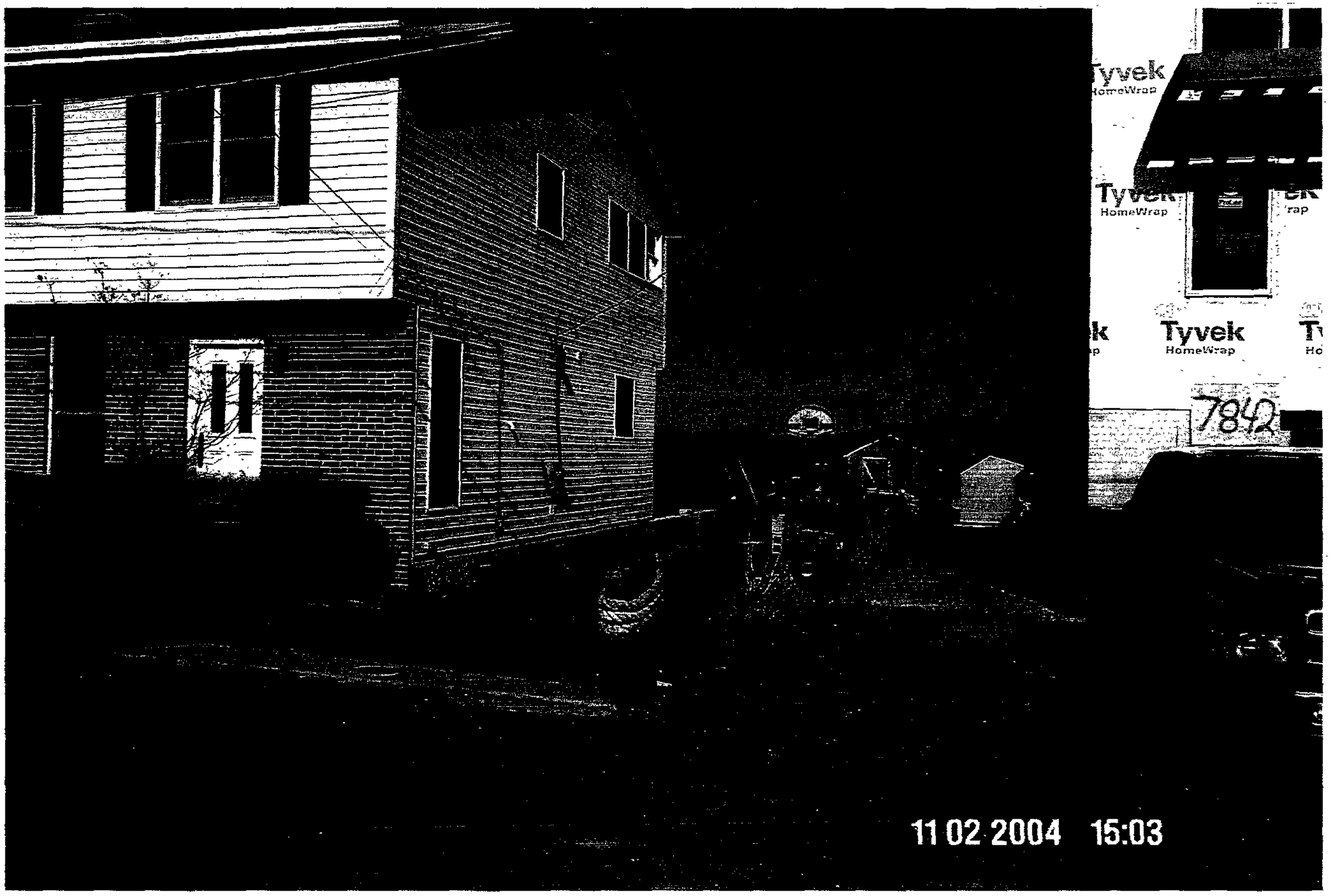
FYI: 2-3-5

Printed with Soybean Ink
on Recycled Paper

04-255-A Prot. - Ashwell
11/18/04

Denied 11-12-04

1. Pix of house & driveway
2. Assessment form
3. pix of addition (3 more photos)
4. Bldg. permit
5. Plan of residence & other bldgs. (plot)
6 A-6C. photos of area (3 small photos) NO "X"
7. plat of neighborhood
8. photo - aerial
9A-9B. black & white photos of flood
10 A-F additional public records from assessment office
11. Kotroco letter - Dec 8, 2003
12. Kotroco letter - March 29, 2004
13. Plat - w/ red markings


Tyvek
HomeWrap
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HomeWrap
Tyvek
HomeWrap
7842
11 02 2004 15:03

PROT X 1

Click here for a plain text ADA compliant screen.

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

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 15 **Account Number** - 1513200950

Owner Information

Owner Name:	ASHWELL ALLEN LEIGH	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	7840 DENTON AVE BALTIMORE MD 21219-2418	**Deed Reference:**	1) /19501/ 383 2)

Location & Structure Information

Premises Address
7840 DENTON AVE

Legal Description
7840 DENTON AVE
OLEARY PLAT

WATERFRONT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
115	5	14					26	82	Plat Ref: 7/ 140

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1937	1,700 SF	7,803.00 SF	34

Stories	Basement	Type	Exterior
2	NO	STANDARD UNIT	ASBESTOS SHINGLE

Value Information

	Base Value	Value As Of 01/01/2003	Phase-In Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	56,800	56,800		
Improvements:	56,750	64,720		
Total:	113,550	121,520	118,862	121,520
Preferential Land:	0	0	0	0

Transfer Information

Seller:	MARSHALL EARL A MARSHALL DORIS L	**Date:**	01/27/2004	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/19501/ 383	**Deed2:**	
Seller:	MARSHALL EARL A	**Date:**	03/12/1986	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/ 7111/ 29	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2004	07/01/2005
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

PROT X 4

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

DATE: 10-27-03

OEA:

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

PERMIT #: B537458
RECEIPT #: IN WEB
CONTROL #: MAR
XREF #:

FEE: 60.00
PAID: WAIVED
PAID BY:
INSPECTOR:

PROPERTY ADDRESS 7840 DENTON AVE
SUITE/SPACE/FLOOR
SUBDIV: CLEARY PLAT
TAX ACCOUNT #: 15-13-200950
DISTRICT/PRECINCT 15 01

OWNER'S INFORMATION (LAST,FIRST)
NAME: TALLEY MAXWELL, E. MARSHALL DOSIS FITAL
ADDR: 7840 DENTON AVE 21219-5412
BALTIMORE, MD.

DOES THIS BLDG. HAVE SPRINKLERS YES — NO —

APPLICANT INFORMATION
NAME: ALLEN MAXWELL
COMPANY: N/A
STREET 7840 DENTON AVE
CITY,ST,ZIP BALTIMORE MD 21219
PHONE #: 410-574-3864 MHIC # MHBR #
APPLICANT SIGNATURE: DRC#
PLANS: CONST B PLOT 4 PLAT O DATA D EL 1 PL 2
TENANT
CONTR: OWNER
ENGNR:
SELLR:

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

DESCRIBE PROPOSED WORK: DEMOLIT. 1-STY ADDITION ON REAR OF EX. SFD; TO BE USED AS: FAMILY RM w/FP (DOMESTIC PROJ NOT TO EXCEED 1,000) 24'x18'x14' - 432SF & OPEN WOOD DECK. 22'x10' - 220SF SEE BC-4163 FOR RAZING OF 2ND SFD & DETACHED GARAGE.

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

TYPE OF USE

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

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

TOTAL 24'x28'x14' = 672SF

SEE B FOR NEW GARAGE IN CBCA FLOOD ZONE A-9. BFE.

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

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

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

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

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

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

CENTRAL AIR: 1. 2.
ESTIMATED COST OF MATERIALS AND LABOR: $36,000.00

PROPOSED USE: SFD & SEE B FOR NEW GARAGE.
EXISTING USE: 2 SFD. & DETACHED GARAGE

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

RESIDENTIAL CATEGORY: 1. ✓ DETACHED 2. ___ SEMI-DET. 3. ___ GROUP 4. ___ TOWNHSE 5. ___ MIDRISE 6. ___ HIRISE
#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS/CONDOS:
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1. Y... 2. N... BATHROOMS CLASS 34
POWDER ROOMS KITCHENS LIBER 7 FOLIO 140

BUILDING SIZE
FLOOR 672
WIDTH 24'
DEPTH 28'
HEIGHT 14'
STORIES 1 FCRWL
LOT #'S 26
CORNER LOT
1. ___ YES 2. ✓ NO

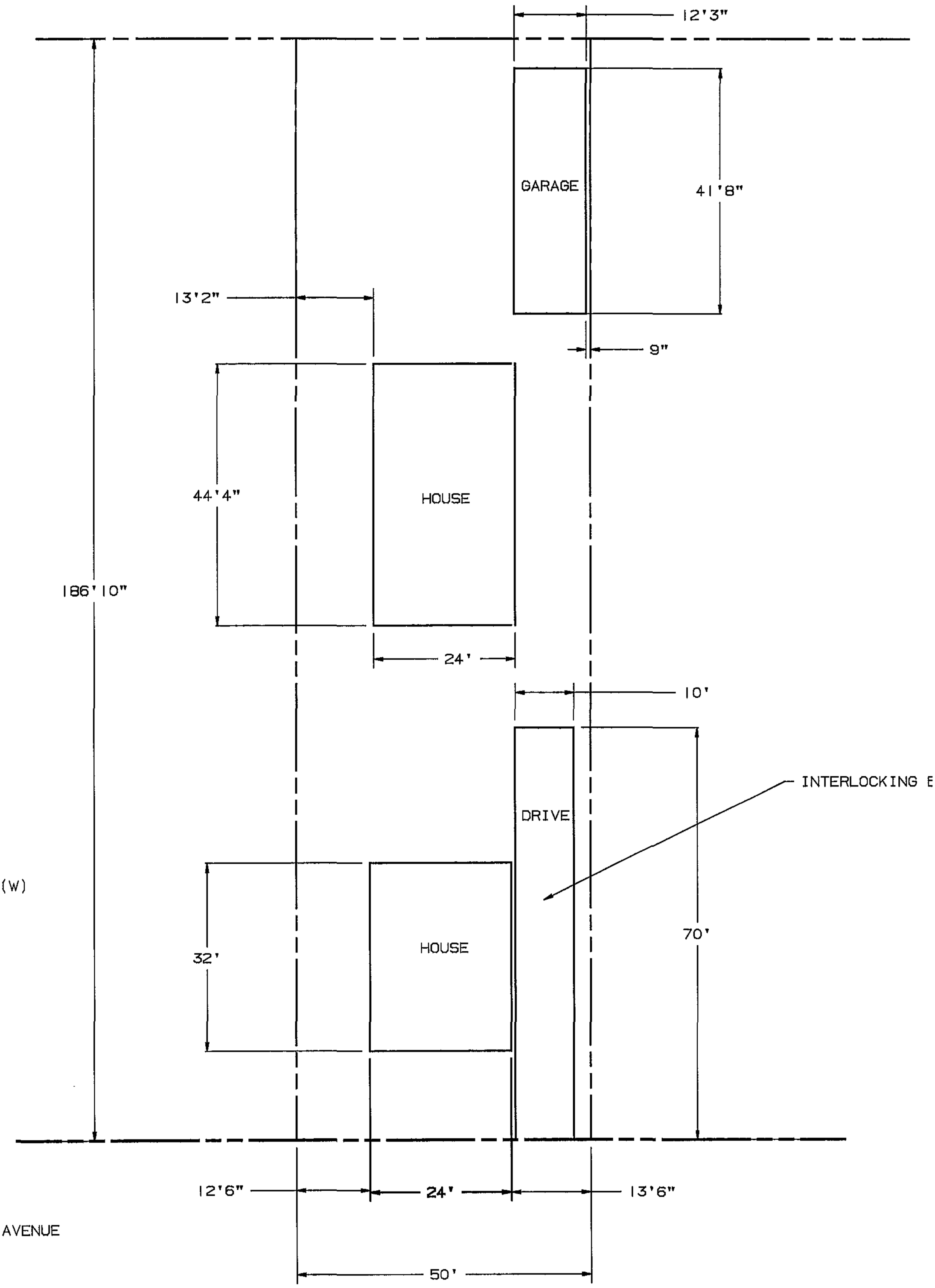
LOT SIZE AND SETBACKS
SIZE 7800 SF
FRONT STREET
SIDE STREET
FRONT SETBK 121.
SIDE SETBK
SIDE STR SETBK
REAR SETBK
ZONING DR 5.5 Sec. 9-E

APPROVAL SIGNATURES		DATE
BLD INSP		
BLD PLAN	120' [illegible] FINAL MS	11-05-03
FIRE		
SEDI CTL		
ZONING	[illegible]	11-05-03
PUB SERV	[illegible]	
ENVRMNT	4-16 NC [illegible]	10-27-03
PERMITS		

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

NEED FRONT SETBACK FOR ZONING REQUIREMENT. DECK 111 FT. REAR SETBACK

PROT X 5

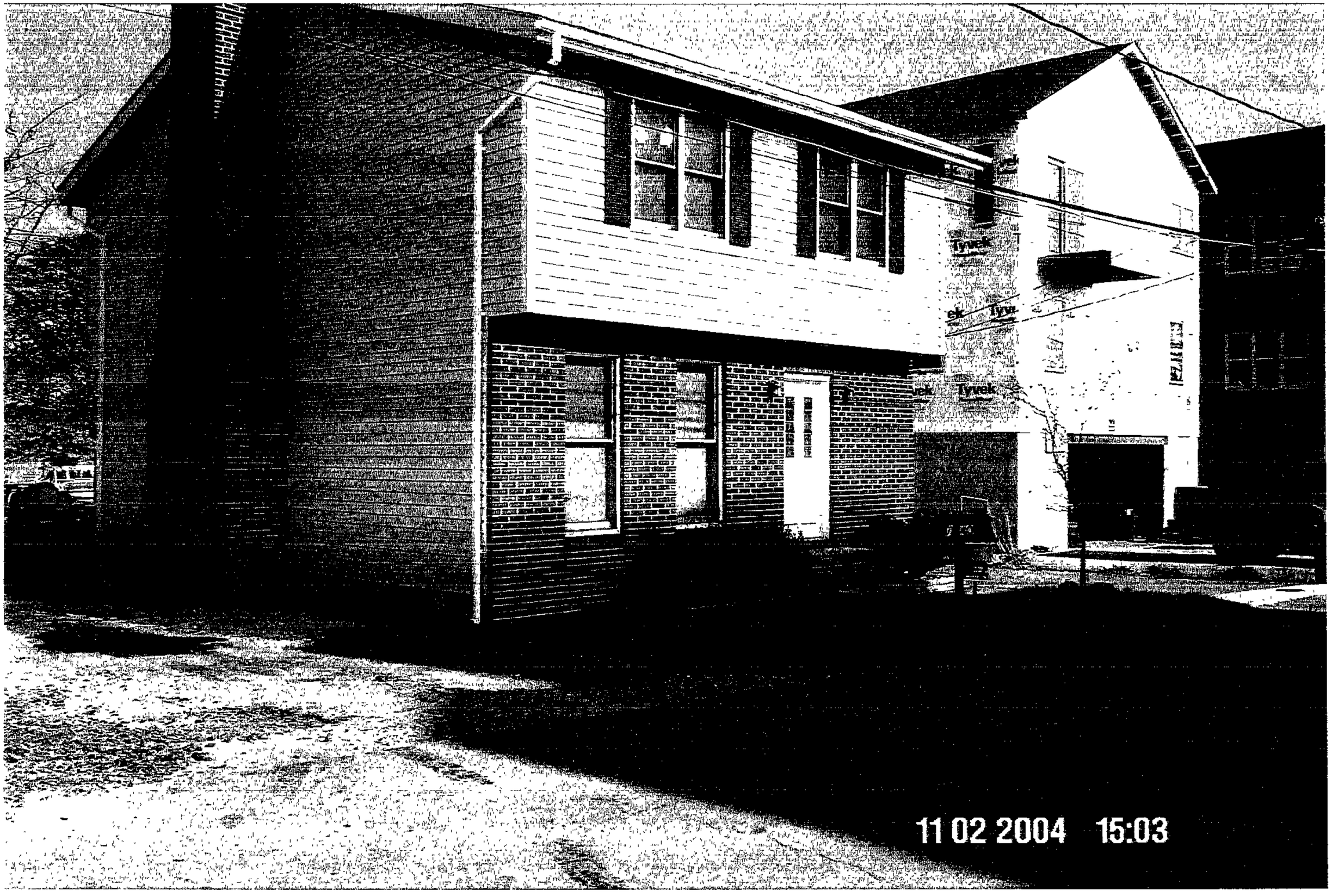


EXISTING 2341

6a → 6cc
(No "x")

15:03

11 02 2004 14:55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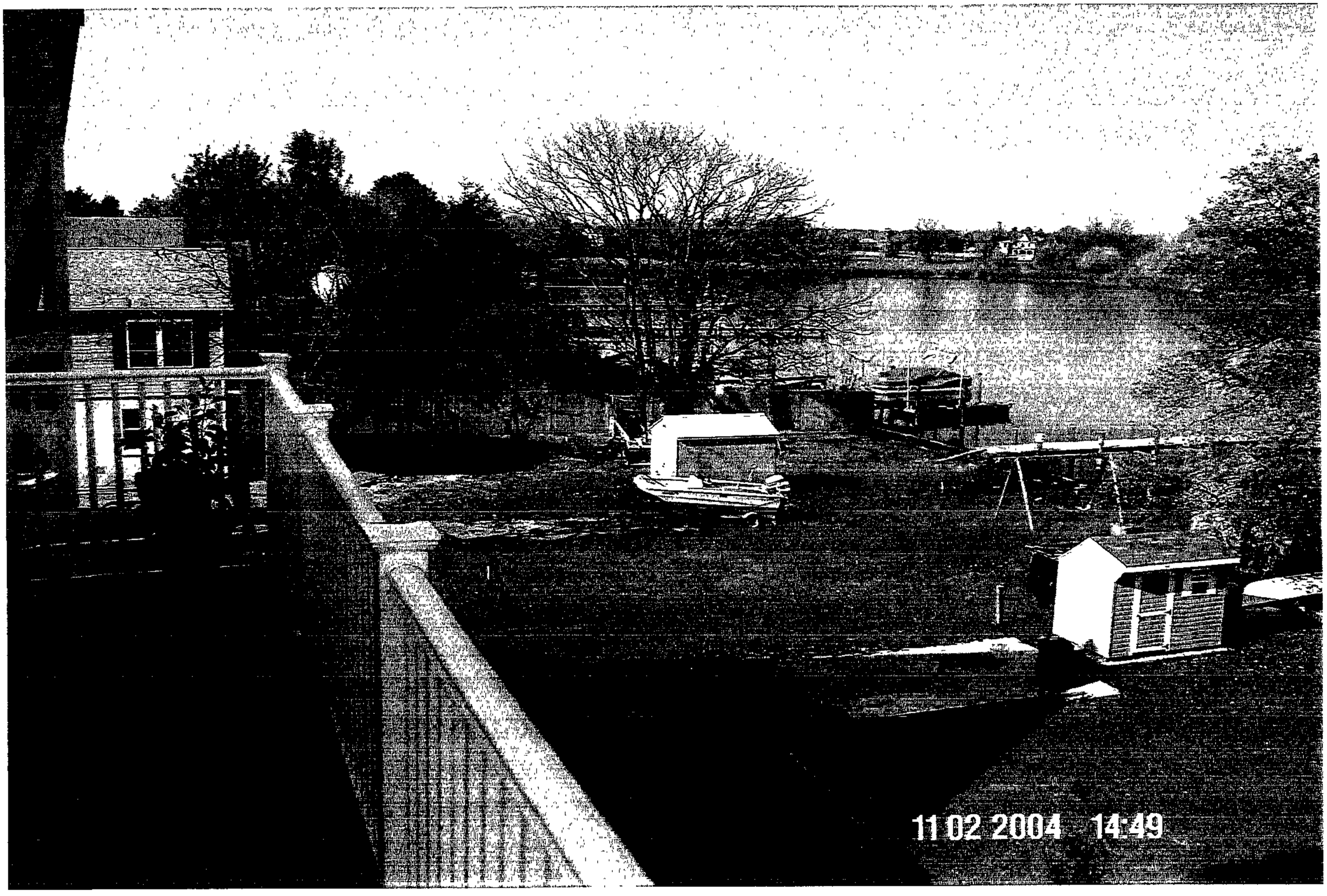
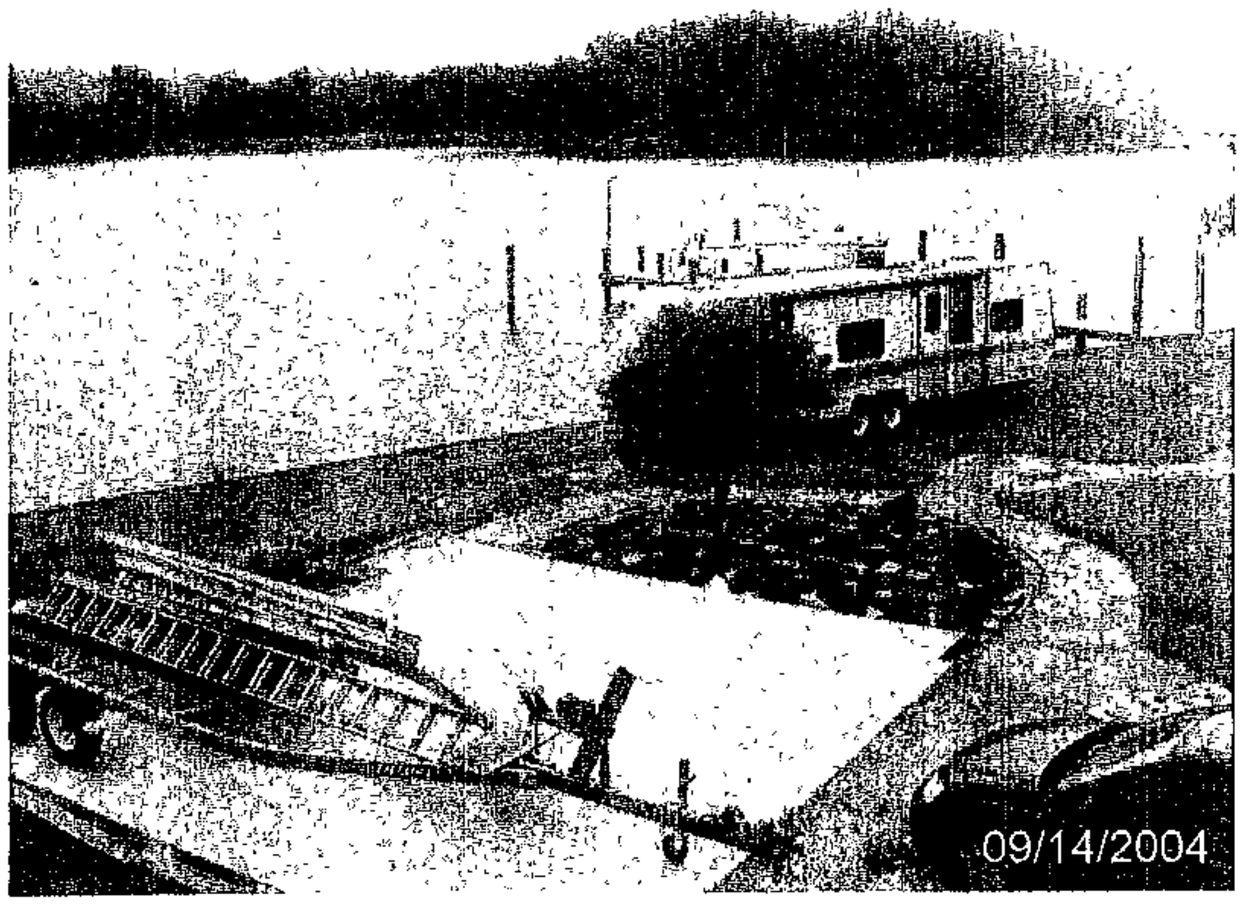
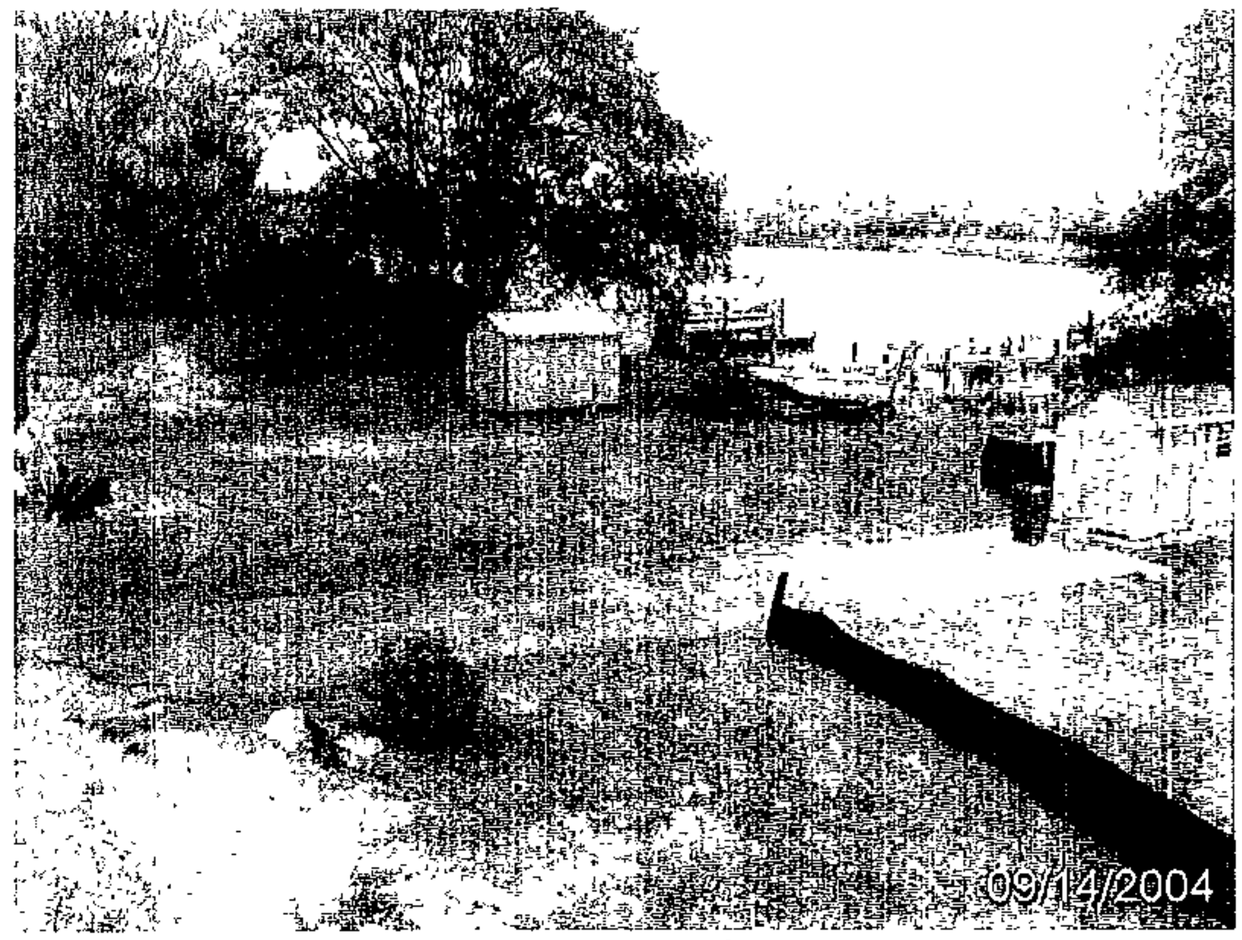
11 02 2004 15:03


11 02 2004 14:49

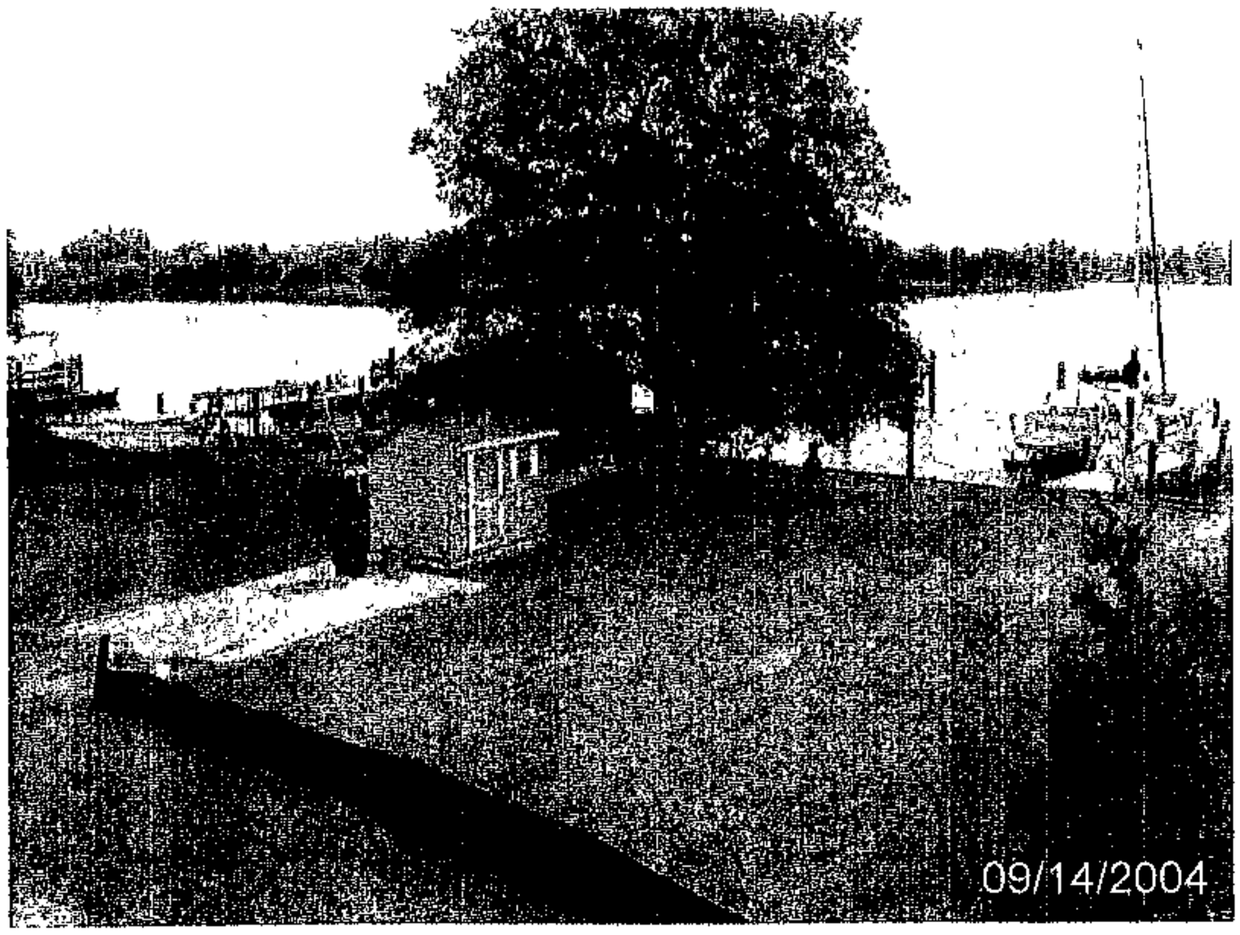
6H Prot



6I



ASHWELL



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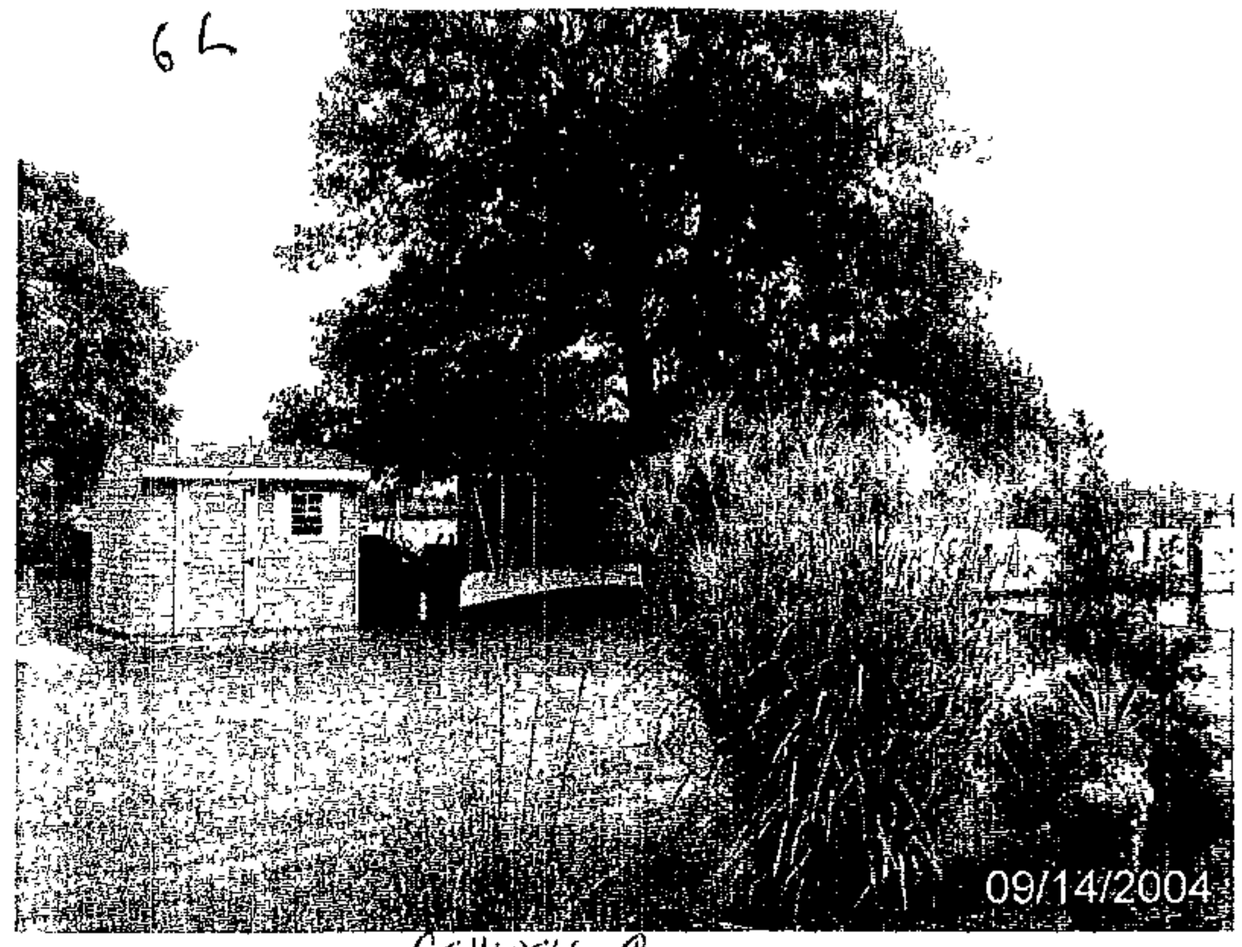

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ASHWELL ↕

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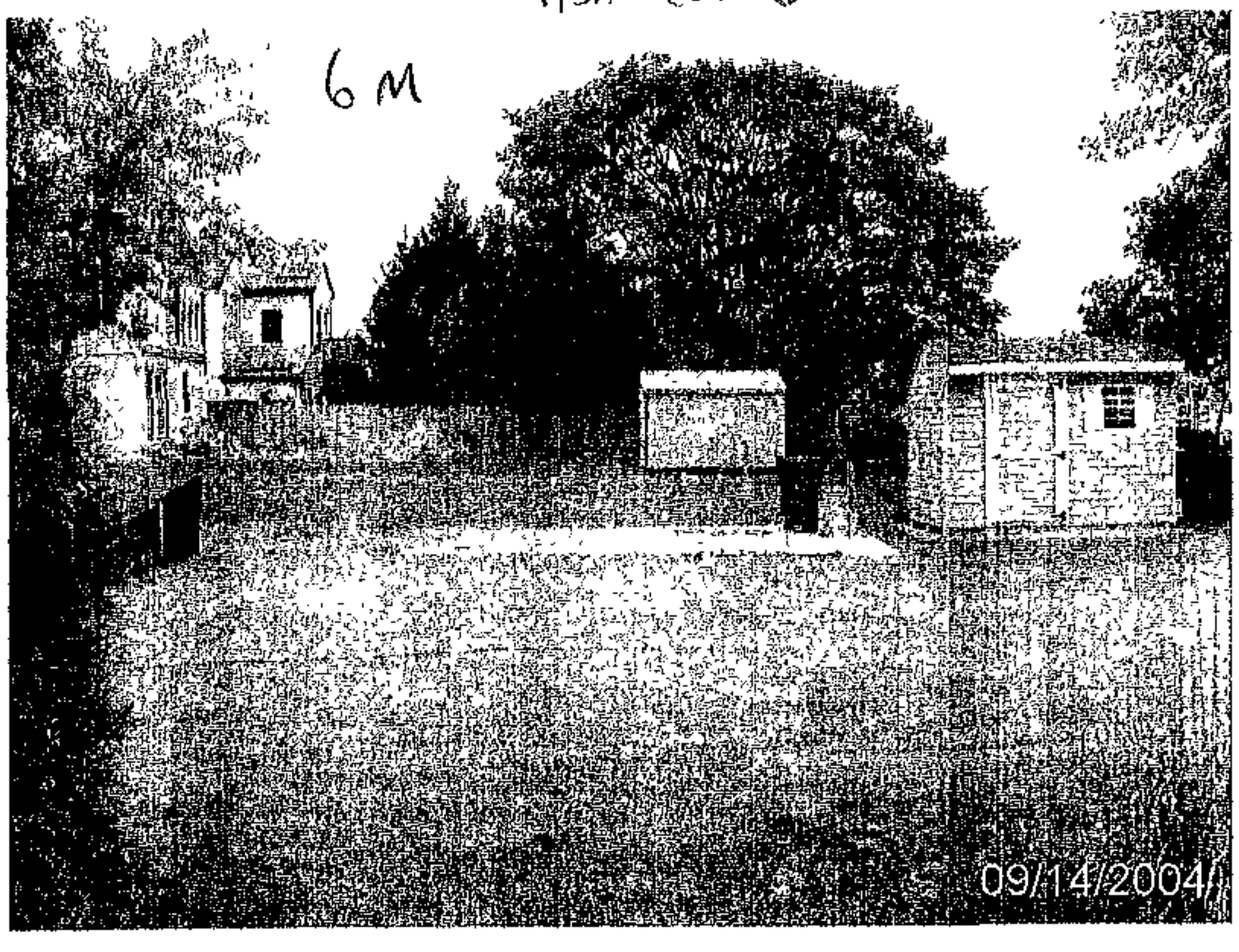

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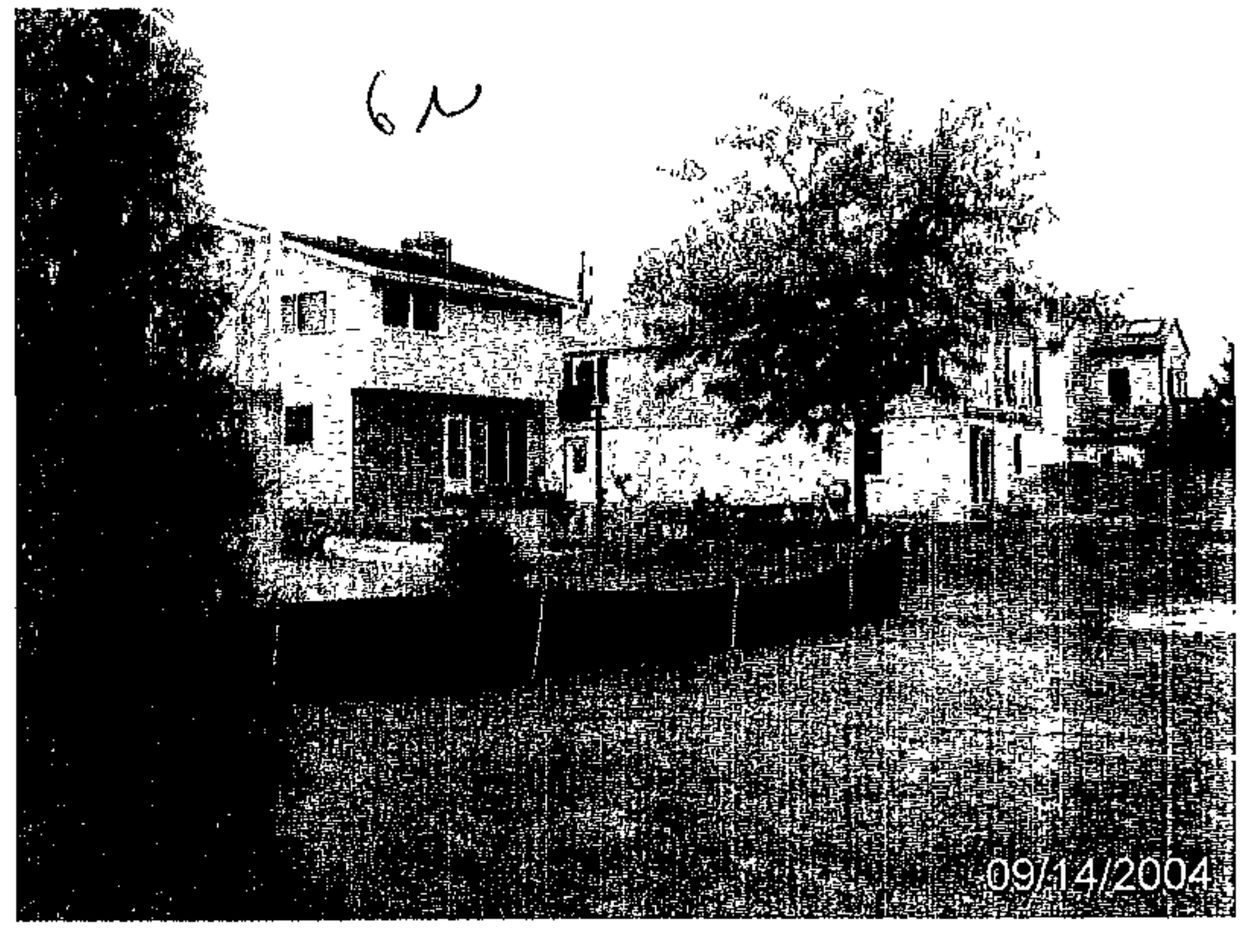

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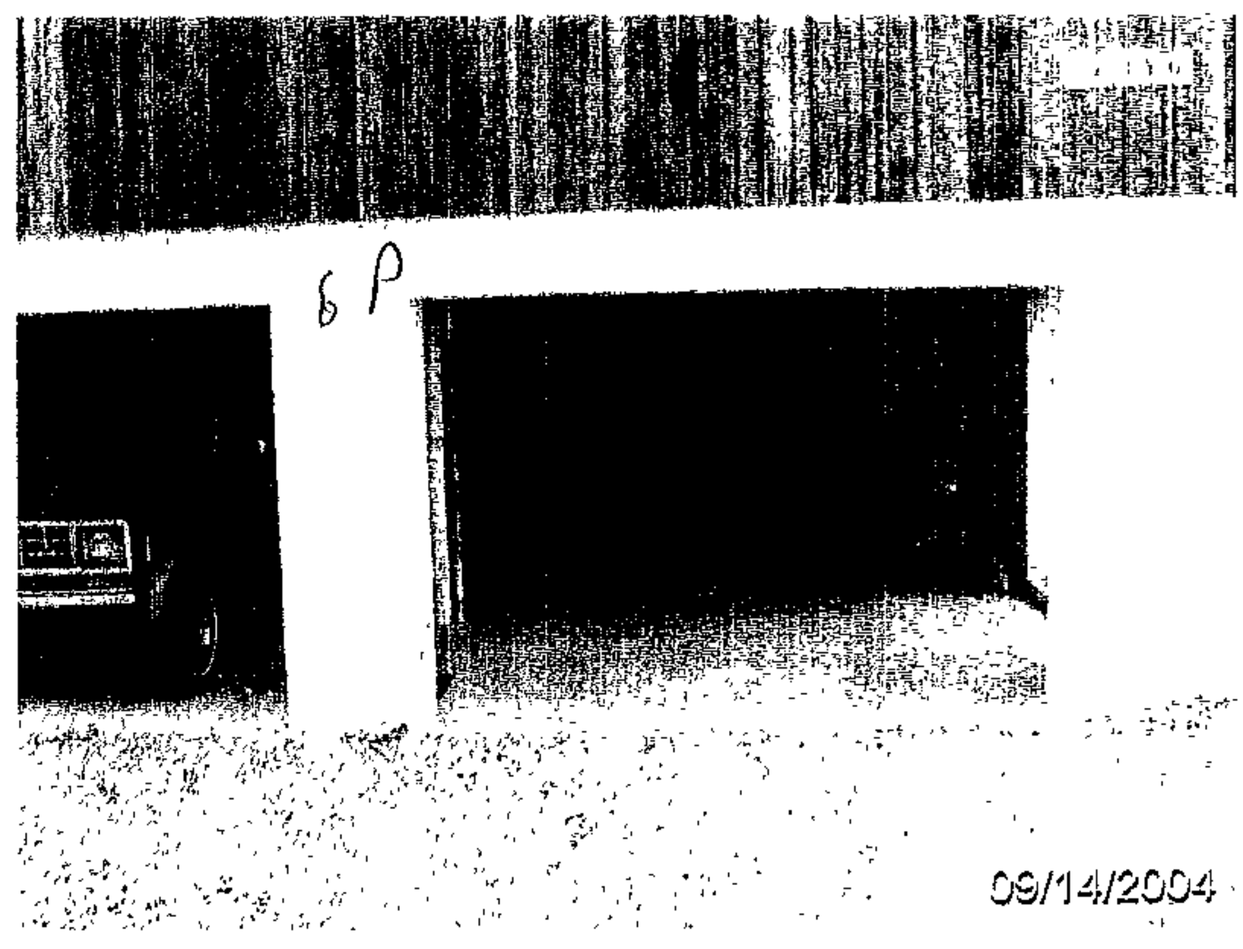

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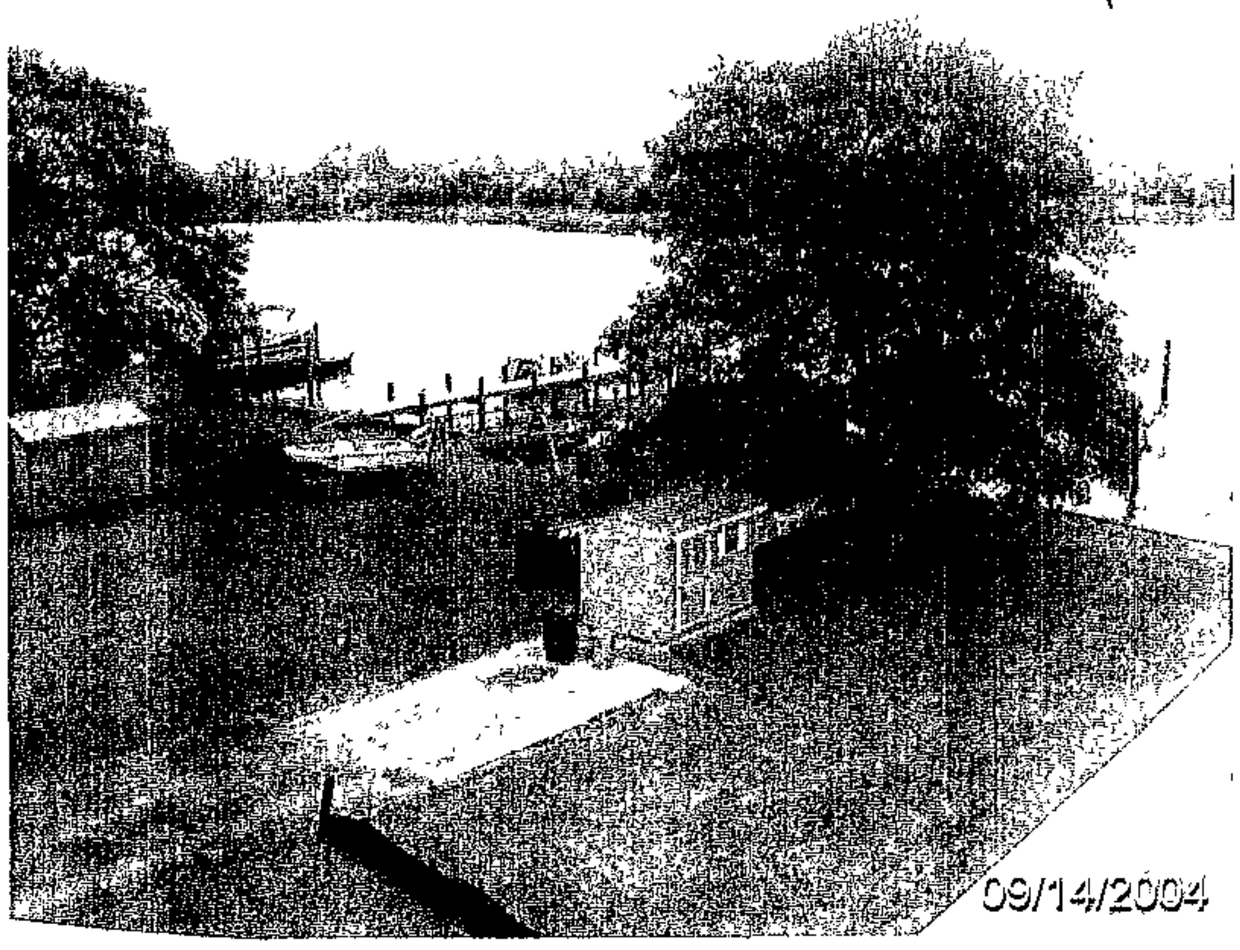
ASHWELL 69



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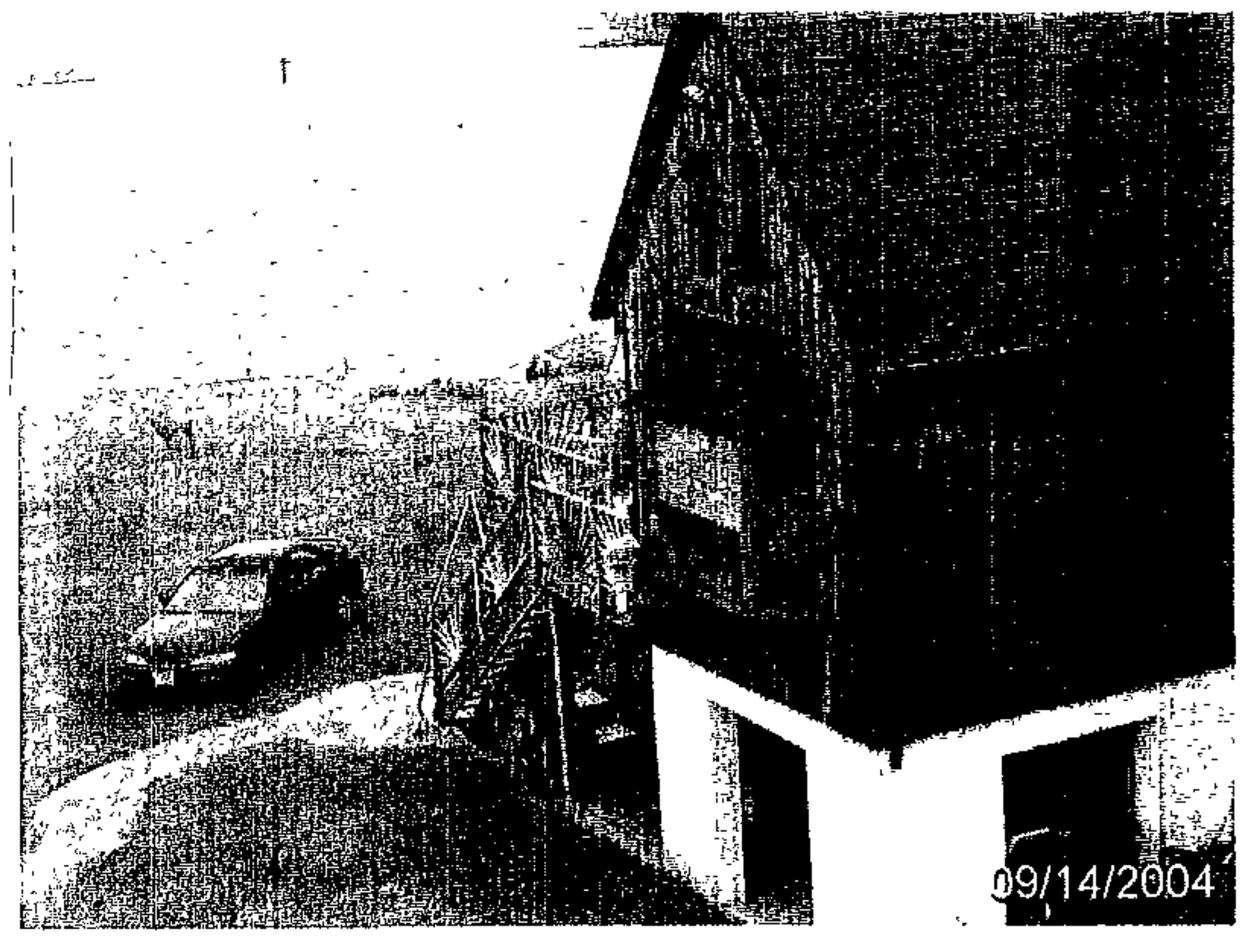

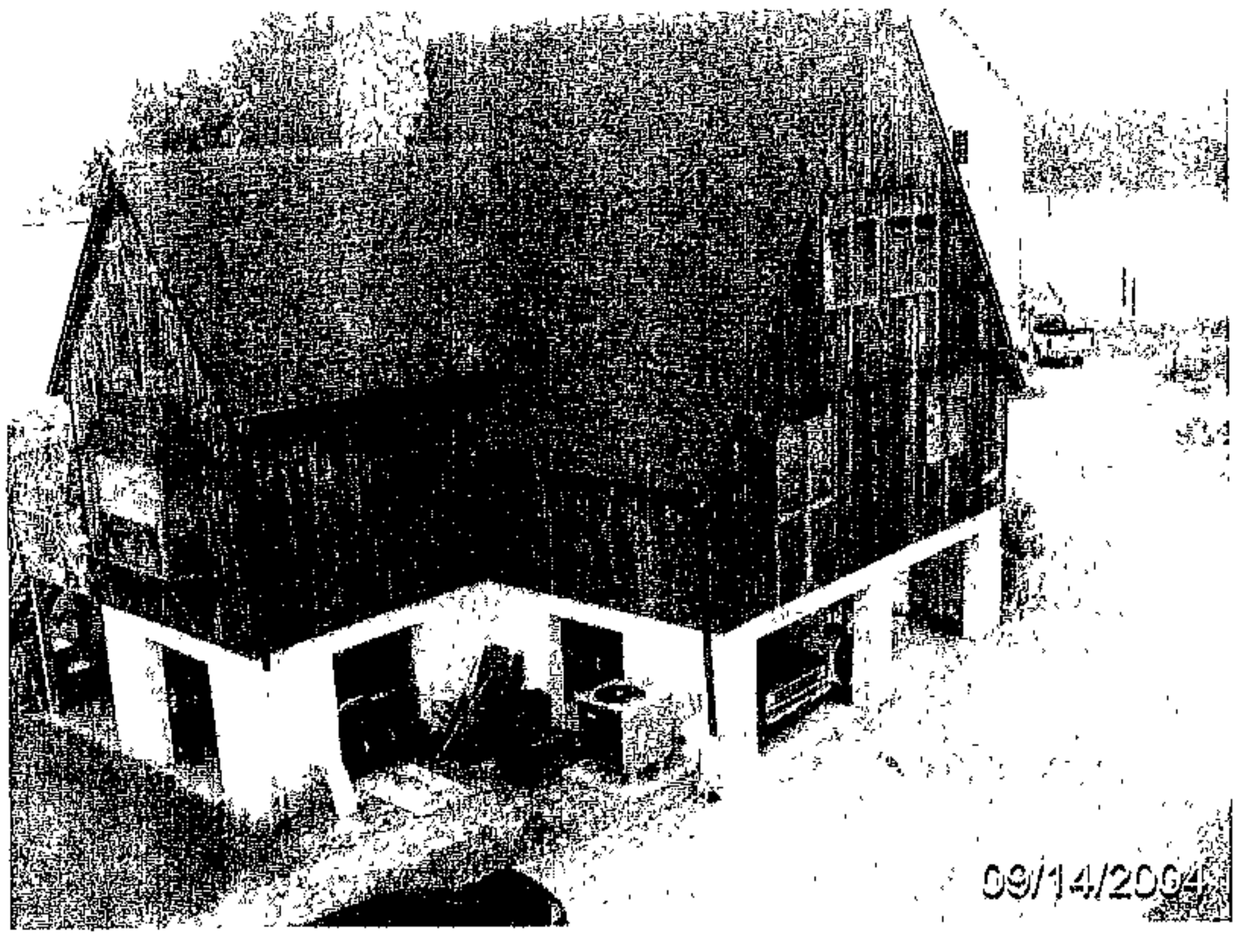

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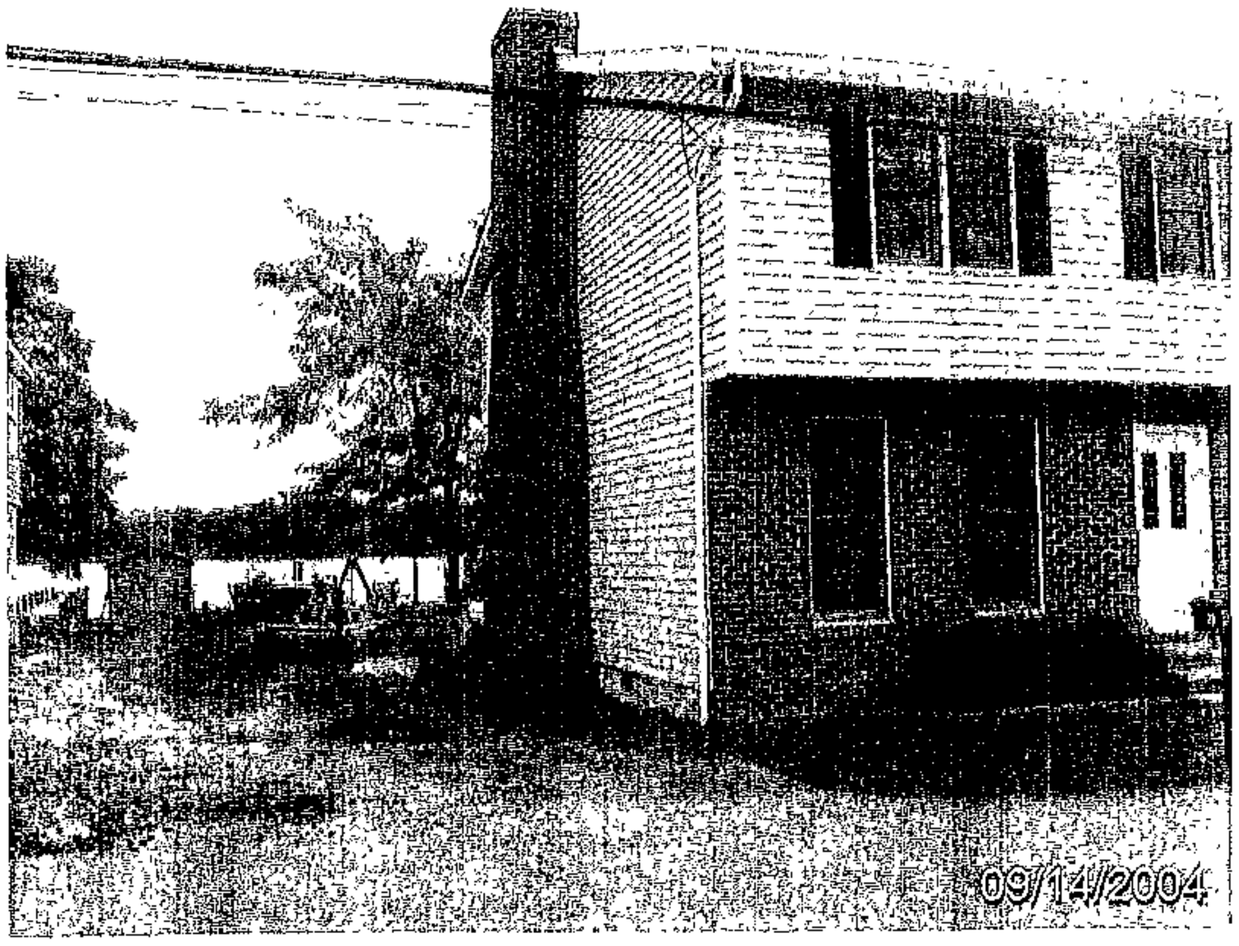

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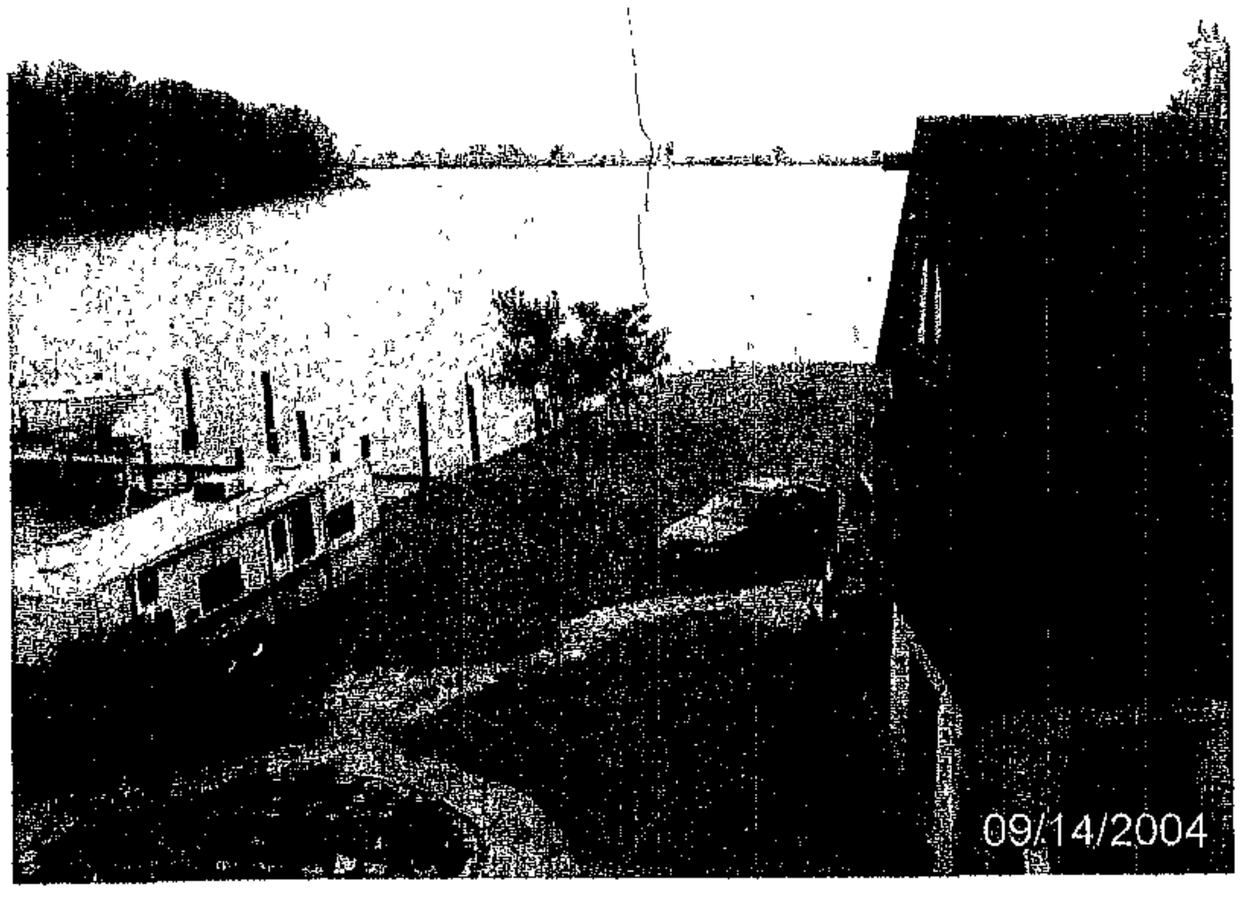

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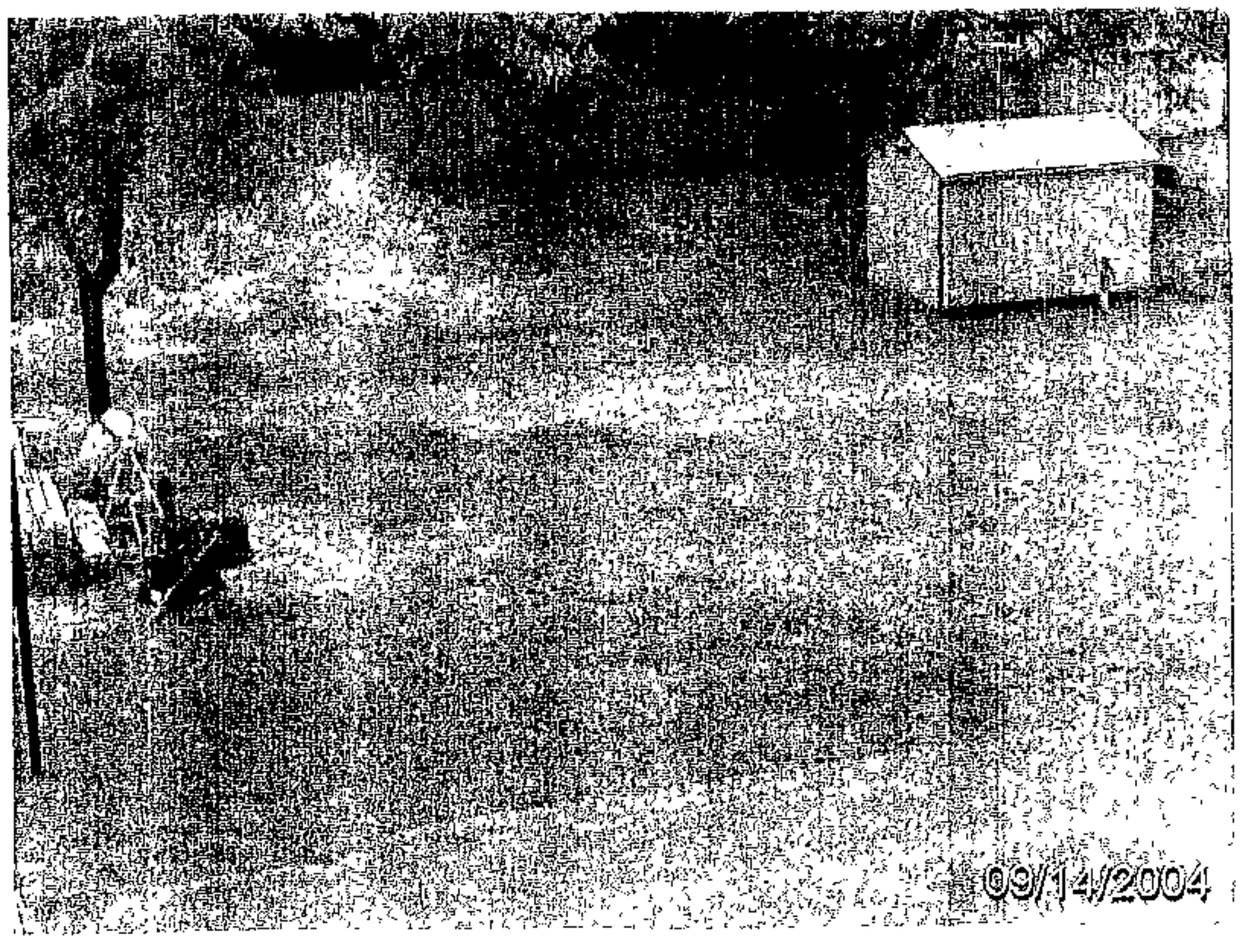
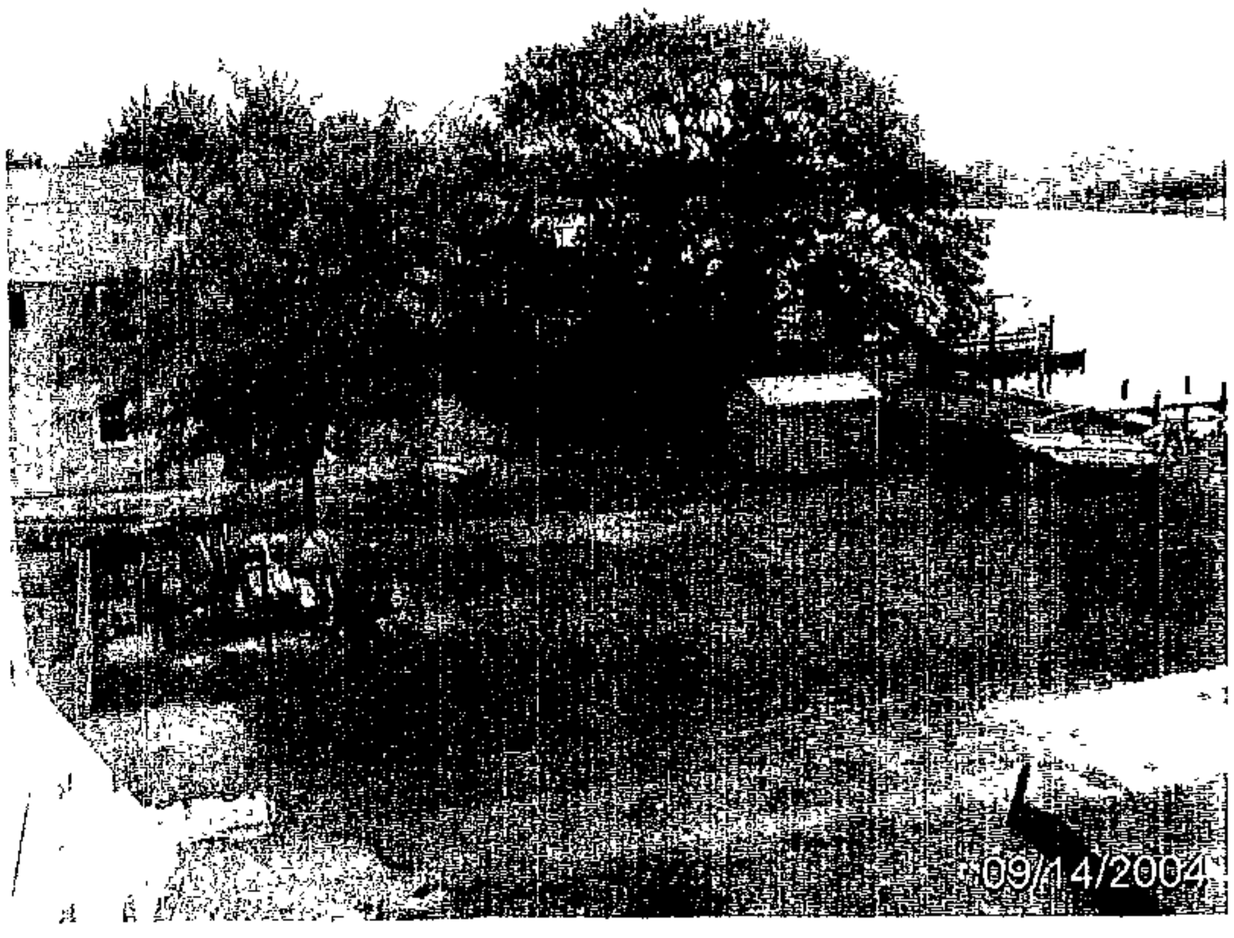
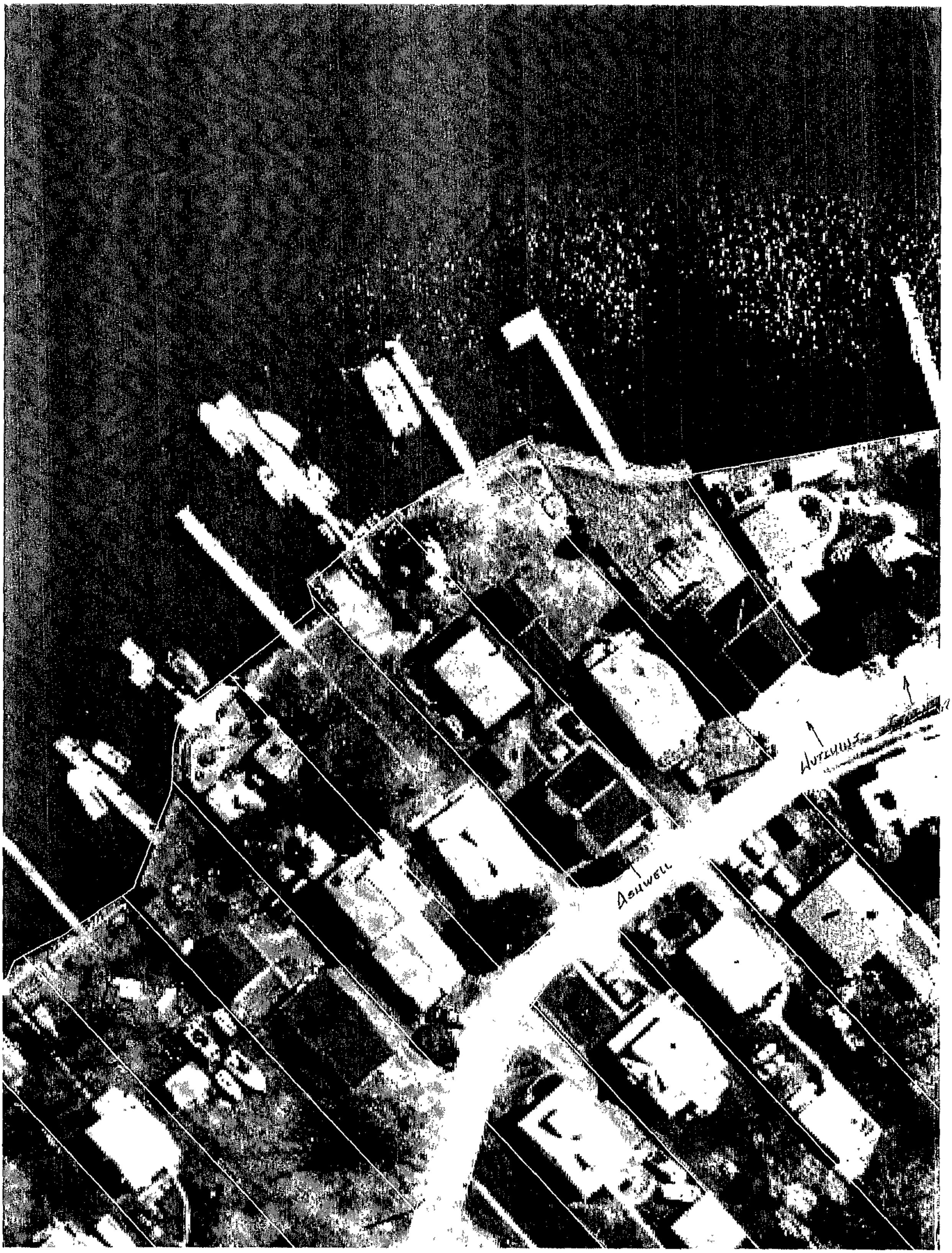


6BB ASHWELL



6CC ASHWELL REAR


Autumn
Ashwell

Prot

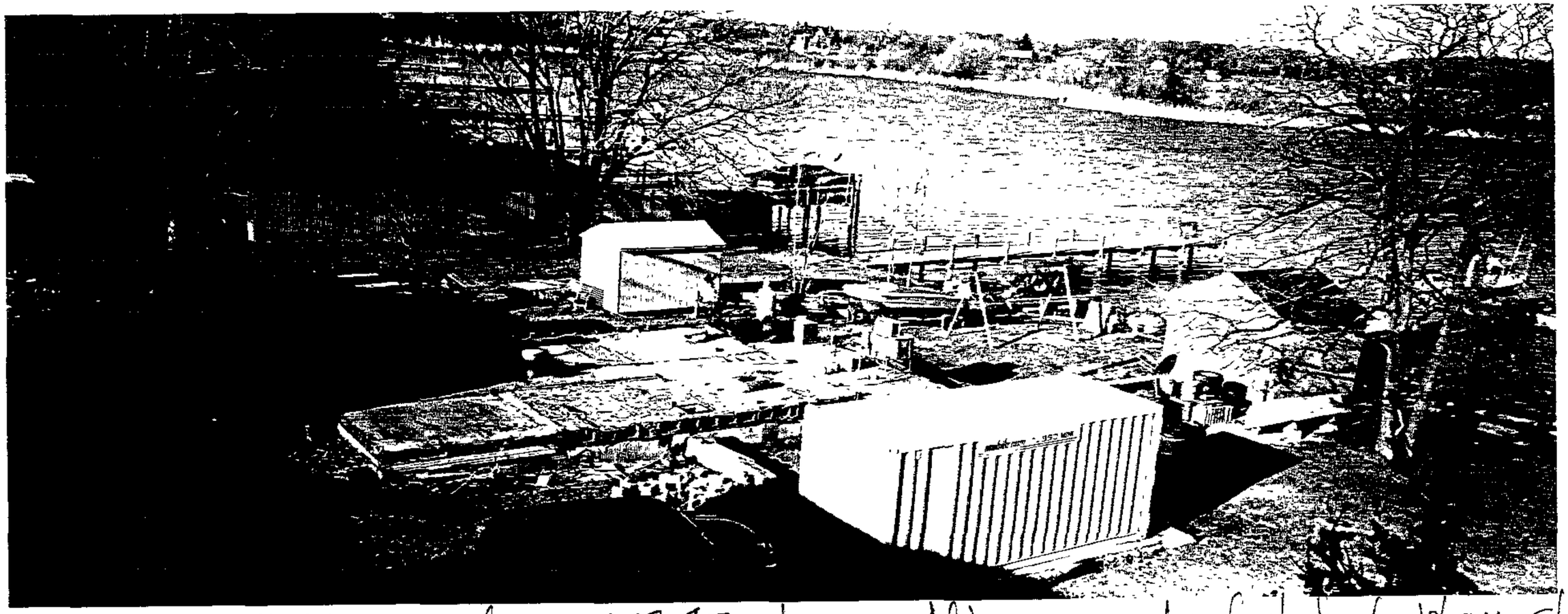
9A

7840 Denton Avenue →

7842 Denton Avenue →

Storm surge destroyed garage at 7842 and damaged old house at 7840 and destroyed shed at 7840

← 7844 Denton Avenue



9B 7840 viewed across 7842 showing old house removed and shed rebuilt on slab

(J)

Pros 10 A

Click here for a plain text ADA compliant screen.

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

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 15 **Account Number** - 1519070200

Owner Information

Owner Name:	RAYNOR CHARLES HENRY RAYNOR MARY KATHRYN	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	7838 DENTON AVE BALTIMORE MD 21219-2418	**Deed Reference:**	1) / 9662/ 582 2)

Location & Structure Information

Premises Address
7838 DENTON AVE

Legal Description
7838 DENTON AV ES
OLEARY PLAT

WATERFRONT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
115	5	14					27	82	Plat Ref: 7/ 140

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1929	1,261 SF	7,300.00 SF	34

Stories	Basement	Type	Exterior
1	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	56,300	56,300		
Improvements:	10	10		
Total:	56,310	56,310	56,310	56,310
Preferential Land:	0	0	0	0

Transfer Information

Seller:	RAYNOR ANNA S	**Date:**	03/19/1993	**Price:**	$46,250
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 9662/ 582	**Deed2:**	
Seller:	SCHUBERT CHARLES W	**Date:**	08/13/1971	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/ 8044/ 707	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2004	07/01/2005
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Real Property Search - Individual Report

Plot 10B

Click here for a plain text ADA compliant screen.

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

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District - 15 Account Number -** 1507151140

Owner Information

Owner Name:	HAFFER SAMUEL C STANSBURY KEVIN SAMUEL	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	7839 DENTON AVE BALTIMORE MD 21219-2419	**Deed Reference:**	1) /16475/ 267 2)

Location & Structure Information

Premises Address
7839 DENTON AVE

Legal Description

7839 DENTON AVE
OLEARY PLAT

WATERFRONT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
115	5	14					21	82	Plat Ref: 7/ 140

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1939	648 SF	6,273.00 SF	34

Stories	Basement	Type	Exterior
1	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	69,500	69,500		
Improvements:	49,180	59,850		
Total:	118,680	129,350	122,236	125,792
Preferential Land:	0	0	0	0

Transfer Information

Seller:	HAFFER SAMUEL C,TRUSTEE	**Date:**	02/02/2004	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/16475/ 267	**Deed2:**	
Seller:	HAFFER SAMUEL C	**Date:**	06/05/2002	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/16475/ 267	**Deed2:**	
Seller:	HAFFER SAMUEL C	**Date:**	05/15/1996	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/11583/ 640	**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Real Property Search - Individual Report

Prot 10 C

Click here for a plain text ADA compliant screen.

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

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 15 **Account Number** - 1526800000

Owner Information

Owner Name:	TOLAND RICHARD J TOLAND LEONA A	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	7841 DENTON AVE BALTIMORE MD 21219-2419	**Deed Reference:**	1) /11914/ 548 2)

Location & Structure Information

Premises Address
7841 DENTON AVE

Legal Description

7841 DENTON RD
OLEARY PLAT

WATERFRONT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
115	5	14					22	82	Plat Ref: 7/ 140

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1964	1,254 SF	6,350.00 SF	34

Stories	Basement	Type	Exterior
1 1/2	NO	STANDARD UNIT	STUCCO

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	69,500	69,500		
Improvements:	17,860	23,090		
Total:	87,360	92,590	89,103	90,846
Preferential Land:	0	0	0	0

Transfer Information

Seller:	HEINLE IRWIN J	**Date:**	11/26/1996	**Price:**	$65,500
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/11914/ 548	**Deed2:**	
Seller:	ZWIRLEIN ALFONS	**Date:**	09/17/1987	**Price:**	$74,500
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 7673/ 41	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Not 10)

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

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District - 15 Account Number -** 1508000590

Owner Information

Owner Name:	POLLOCK RICHARD C POLLOCK CYNTHIA H	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	7842 DENTON AVE BALTIMORE MD 21219-2418	**Deed Reference:**	1) / 7824/ 522 2)

Location & Structure Information

Premises Address
7842 DENTON AVE

Legal Description
WATERFRONT
OLEARY PLAT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
115	5	14					25	82	Plat Ref: 7/ 140

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1913	864 SF	8,060.00 SF	34

Stories	Basement	Type	Exterior
1	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	71,060	71,060		
Improvements:	10	10		
Total:	71,070	71,070	71,070	71,070
Preferential Land:	0	0	0	0

Transfer Information

Seller:	SPIELMAN ROBERT L	**Date:**	03/30/1988	**Price:**	$131,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 7824/ 522	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2004	07/01/2005
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Pnt 10 E

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

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 15 **Account Number** - 1600000220

Owner Information

Owner Name:	SCHULTZ LAWRENCE A SCHULTZ RUTH E	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	7843 DENTON AVE BALTIMORE MD 21219-2419	**Deed Reference:**	1) / 5076/ 663 2)

Location & Structure Information

Premises Address
7843 DENTON AVE

Legal Description
.187 AC PT LT 23
SWS DENTON AVE
OLEARY PLAT

WATERFRONT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
115	5	14					23	82	Plat Ref: 7/ 140

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2004	1,596 SF	8,316.00 SF	34

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

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	71,310	71,310		
Improvements:	114,820	128,140		
Total:	186,130	199,450	71,320	195,010
Preferential Land:	0	0	0	0

Transfer Information

Seller:	DARBY CHARLES A	**Date:**	03/12/1970	**Price:**	$10,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 5076/ 663	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Prot 1 of

Click here for a plain text ADA compliant screen.

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

Go Back
View Map
New Search
Ground Rent

Account Identifier: District - 15 Account Number - 2100007551

Owner Information

Owner Name: HUTCHINS GROVER M
HUTCHINS LORETTA H

Use: RESIDENTIAL

Principal Residence: NO

Mailing Address: 1 STRATFORD RD
BALTIMORE MD 21218-1145

Deed Reference: 1) /14438/ 41
2)

Location & Structure Information

Premises Address
7844 DENTON AVE

Legal Description
.1567 AC PT LT 24
7844 DENTON AVE
OLEARY PLAT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
115	5	14					24	82	Plat Ref: 7/ 140

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2002	2,392 SF	6,827.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-In Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	68,270	55,600		
Improvements:	207,390	220,000		
Total:	275,660	275,600	275,600	275,600
Preferential Land:	0	0	0	0

Transfer Information

Seller:	BOWLING KARLUS E	Date:	04/28/2000	Price:	$70,000
Type:	NOT ARMS-LENGTH	Deed1:	/14438/ 41	Deed2:	
Seller:	BOWLING KARLUS E	Date:	11/30/1992	Price:	$0
Type:	NOT ARMS-LENGTH	Deed1:	/ 9481/ 291	Deed2:	
Seller:	GASKER MAX ANTHONY	Date:	09/14/1988	Price:	$89,000
Type:	IMPROVED ARMS-LENGTH	Deed1:	/ 7971/ 137	Deed2:	

Exemption Information

Partial Exempt Assessments	Class	07/01/2004	07/01/2005
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Petx 11

(1)

December 8, 2003

Timothy M. Kotroco
Department of Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case #04255A, Variance request for 7840 Denton Avenue

Dear Mr. Kotroco:

We are writing to express strong opposition to the granting of the above variance which requests that a garage may be built at the property, 7840 Denton Avenue, Sparrows Point, Maryland 21219, which would be raised to 19 feet rather than the 15 feet allowed.

The property at 7840 Denton Avenue is described as being 7,803 square feet. It contains a two-story house close to Denton Avenue which is not mentioned on the Maryland Department of Assessments and Taxation Real Property Data Search. There is a smaller, older one-story house that was damaged by Isabel and is in the process of being torn down. It appears to be the 1,700 sq. ft. "Primary Structure" listed on the Data Search. A concrete slab adjacent to the water had a shed that was destroyed by Isabel. The destroyed shed, which occupied the slab, has now been replaced by a much smaller shed that occupies part of the slab. In addition, a driveway, walkways, a boat ramp, and numerous piles of lumber, wood, and other materials are on the lot. The majority of the lot has been rendered impervious. Based on our experiences with the, entirely appropriate, restrictions placed on us by Baltimore County when building at 7844 Denton Avenue there appears to have been very little, if any, oversight of the newer constructions at 7840 Denton Avenue.

The owner of 7840 Denton Avenue has displayed contempt for the processes of Baltimore County, the rights of the neighbors, and the health and well-being of the Chesapeake Bay. Following Isabel we observed discarding of materials into the water, including a large oil tank. The approach to the dismantling of the storm-damaged house was to remove wood and burn it in an open fire, a process stopped only by the intervention of the fire department. The house being removed is covered with asbestos shingle and this is being taken off in a manner that causes release of asbestos fibers from broken and sawn shingles.

During Isabel the major damage to our property at 7844 Denton Avenue was the result of the disintegration of a large garage at 7846 Denton Avenue that had been constructed without a permit. The debris from the garage and its contents were carried by the storm surge and damaged structural elements of our house, parts of the yard, and destroying plantings that Baltimore County had required us to install as a condition of building our house.

Re: Case #04255A, Variance request for 7840 Denton Avenue

Given the circumstances described above we do not believe that any new structure should be erected at 7840 Denton Avenue. In particular, there is certainly no obvious justification for a 19-foot garage. Allowing such a construction to proceed will simply invite a repetition of the problems that arose from Isabel. What is required at 7840 Denton Avenue is a clean-up of the lot and removal of the impervious concrete slabs.

Please inform us when the hearing on this matter will be held.

Sincerely yours,

Grover M. Hutchins

Loretta H. Hutchins

7844 Denton Avenue
Sparrows Point, MD 21219

410-477-8229

Pet X 12

March 29, 2004

Timothy M. Kotroco
Department of Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case #04-255-A, Variance Request for 7840 Denton Avenue

Dear Mr. Kotroco:

On February 12, 2004 we attended a hearing on the above variance request to oppose the construction of a three car garage that would be 19-feet high rather than the usual height of 15-feet. The issues were discussed before Lawrence E. Schmidt, Zoning Commissioner for Baltimore County. Mr. Ashwell the owner of 7840 Denton Avenue, represented: 1. that the garage construction would use a poured concrete foundation, 2. that the second story of the garage would be used for storage and not as a residence, 3. that he needed the storage space to accomodate the needs of his children, 4. that his request for the height variance was consistent with other garages in the neighborhood, 5. that the small shed and concrete slab adjacent to the water would be demolished and the slab removed. It also became known that Mr. Ashwell had been given a permit to increase the size of the existing house by approximately 50% to replace a second older house on the property that had been damaged by Isabel and subsequently demolished. As a result of these considerations we withdrew our objections to Mr. Ashwell's variance request.

After the hearing we examined the garages in our neighborhood and discovered that Mr. Ashwell's assertion that the proposed 19-foot height of his garage and its size are not consistent with other garages in the area. Garages in this neighborhood are either incorporated into the lower level of the house or are small one- or two-car garages, not three-car garages. We have also noted that Mr. Ashwell's children do not live with him.

We have received a copy of Mr. Schmidt's decision on the Petition for Variance. Inexplicably, it is inconsistent in two major areas that we had believed had been agreed upon at the hearing. First, there is no statement that the garage is to be constructed with a poured concrete foundation with appropriate wash-throughs. The foundation of the addition to the house, mentioned above, is being constructed by Mr. Ashwell himself using cinder block, and does not incorporate wash-throughs. It is our concern that Mr. Ashwell plans to utilize these same practices in the proposed garage. Secondly, the decision states that the small shed, and thus by implication the concrete slab on which it sits, is to remain. We understand that the Department of Environmental Protection and Resource Management had already instructed Mr. Ashwell to remove the shed and concrete slab since it is located immediately adjacent to the waters of Shallow Creek.

Re: Case #04-255-A, Variance Request for 7840 Denton Avenue

In view of the problems enumerated above we wish to renew our objection to the Variance Request and are hereby filing an appeal to the Baltimore County Board of Appeals. Please note that we now object to both the height and the size of the garage. There is no precedent in this neighborhood, which mostly consists of very small lots, for a 19-foot high, three-car garage as requested by Mr. Ashwell. He had been given permission to put an addition on his present house to compensate for the house damaged by Isabel. A three-car garage would be as large as, or larger than, the house that was removed and would, with its proposed driveway, existing driveway, house with addition, boats and other materials stored in the yard, cover the great majority of the 7,803 sq. ft. lot with impervious surface.

We have enclosed checks for $225.00 and for $75.00 to institute the appeal process. Please inform us as to when and where the appeal will be heard.

Thank you for your trouble.

Sincerely yours,

Grover M. Hutchins

Loretta H. Hutchins

7844 Denton Avenue
Sparrows Point, MD 21219

410-477-8229

Decision 2005-A 11-17-2004

11/10/04 Pet. Ashwe

1. contents of file below

2A
2B
2C
pix. of flood damage

3 A-H pix → large Board in Closet

4 A-H pix → large Board in Closet

5 letter - John Sullivan

6. zoning decision

7 A-B pix. of Hutchins home -

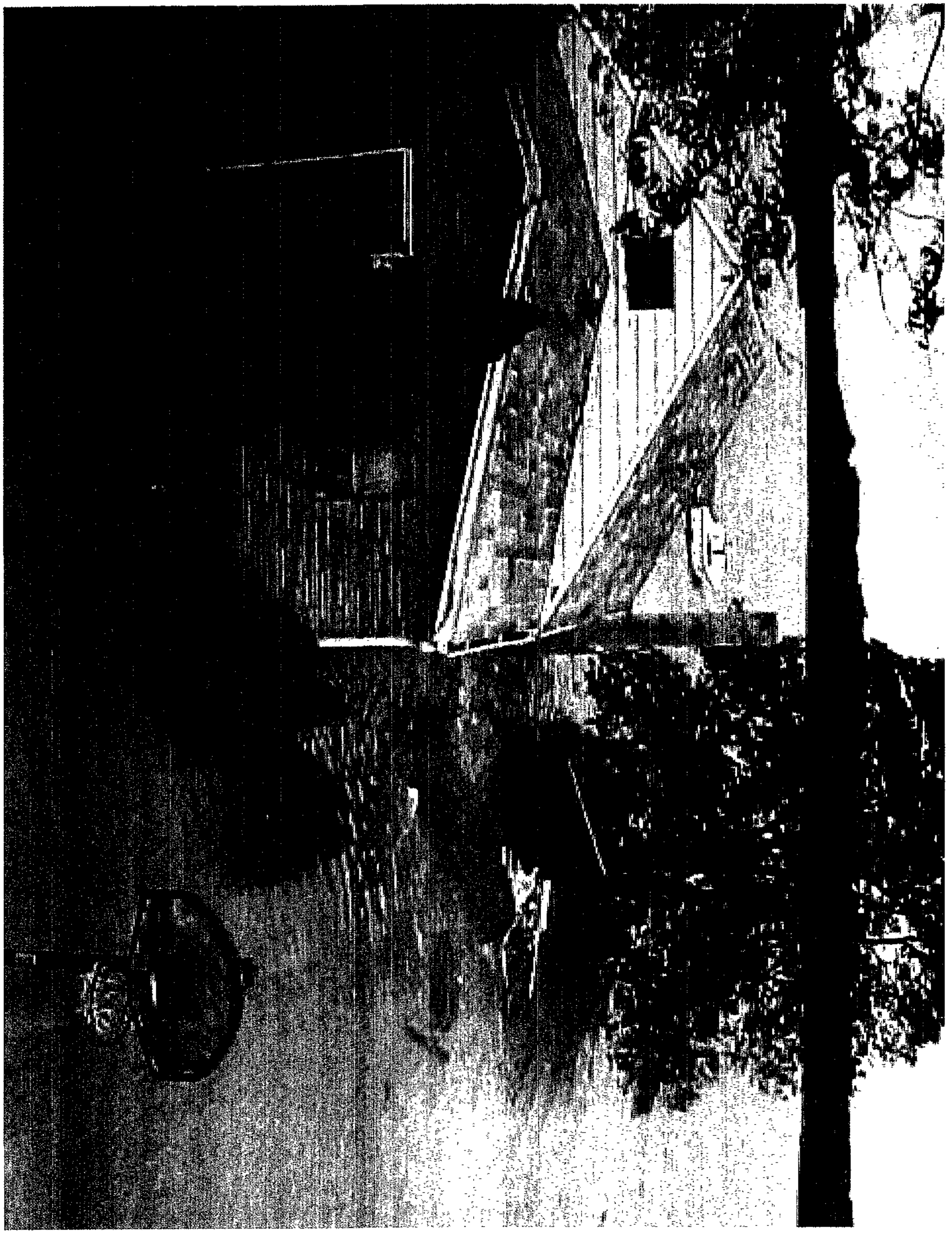
8

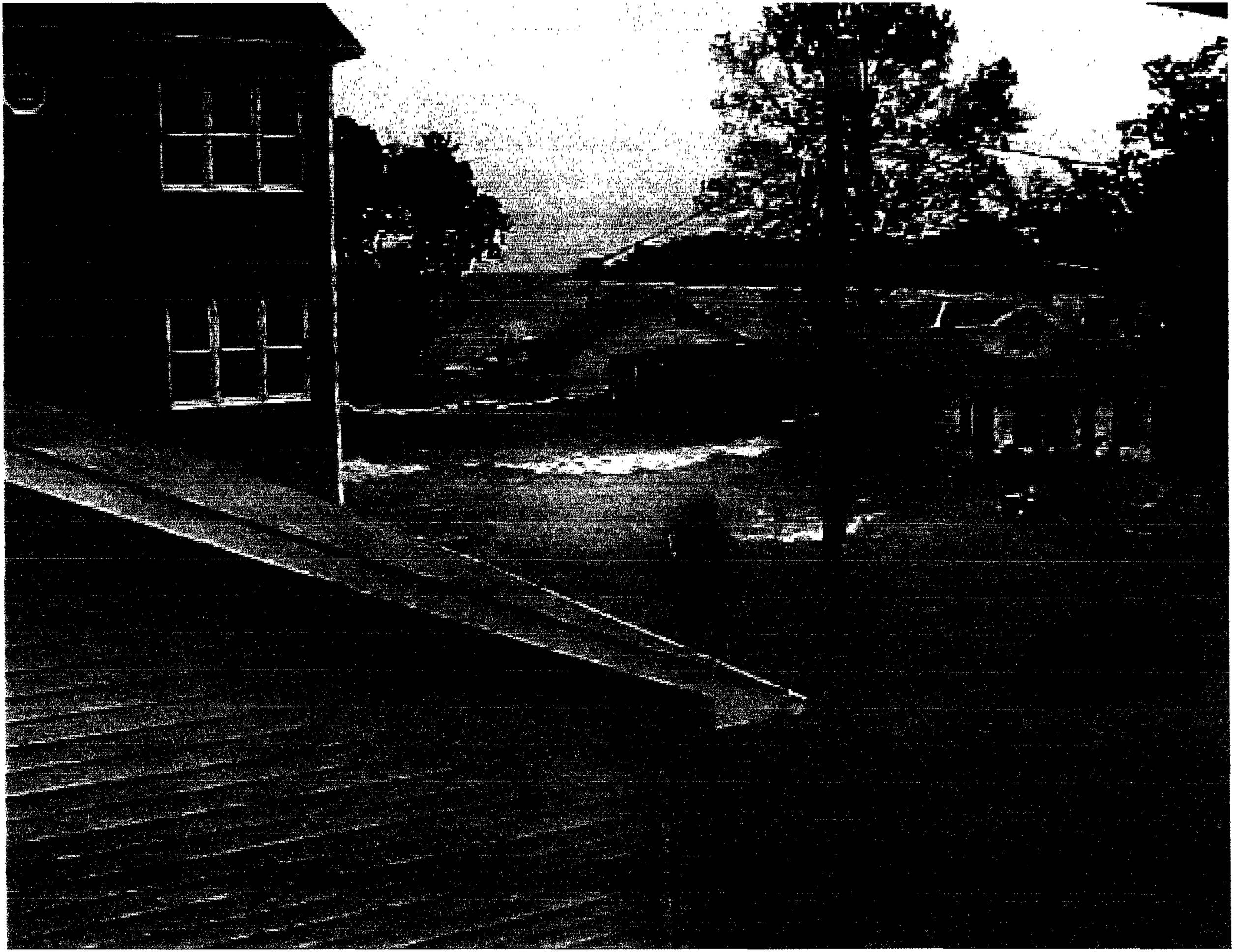
Petitioner's 7a & 7b

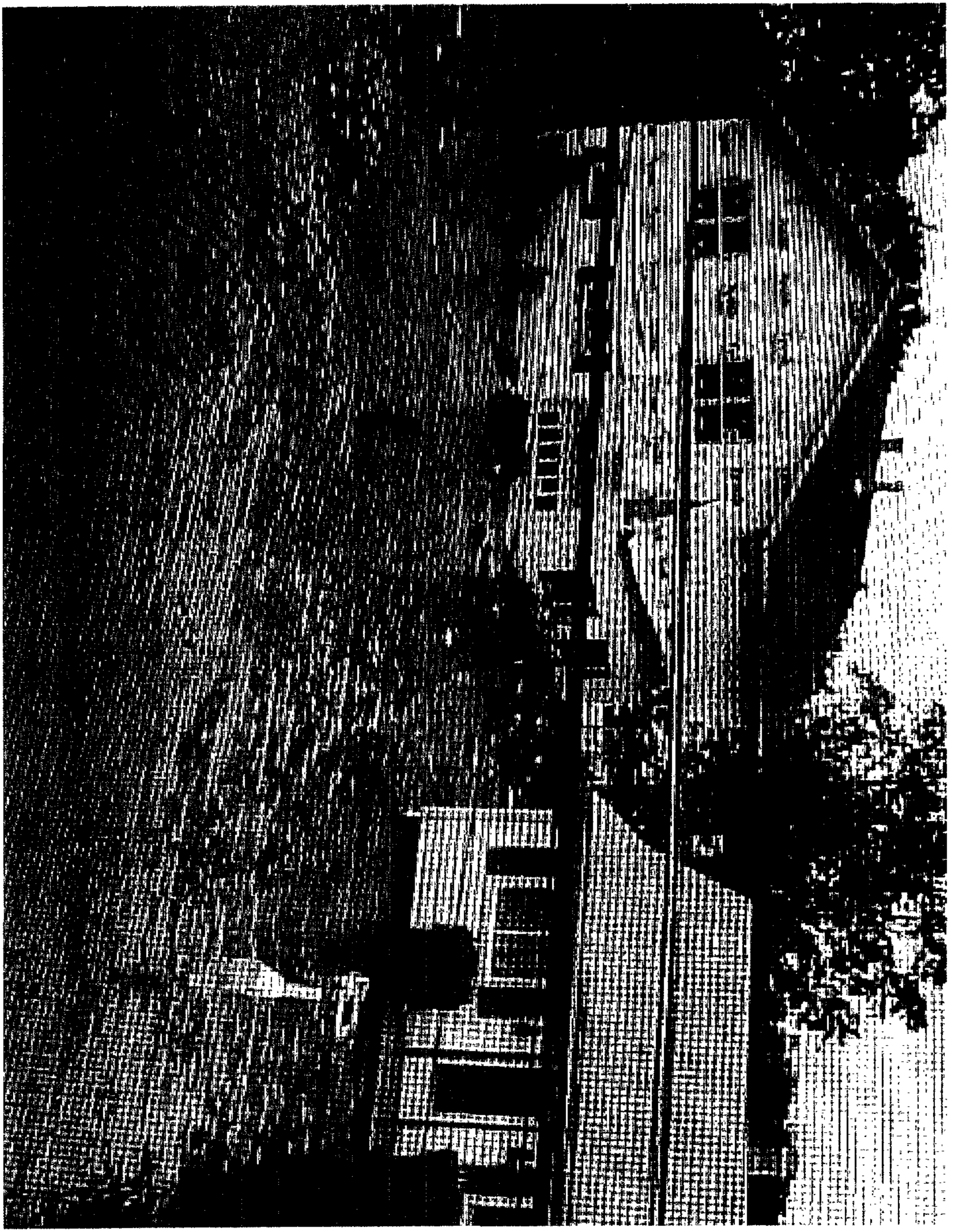
Ashwell

04-255-A

Photos (2)







per xs

Department of Permits and Development Management

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

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

November 5, 2003

Mr. Allen Ashwell
7840 Denton Avenue
Baltimore, Maryland 21219-2418

Re: Building Permit
7840 Denton Avenue
15th Election District

Dear Mr. Ashwell:

Mr. Len Wasilewski, a Baltimore County Code Inspector, visited your property on November 3. Per Mr. Wasilewski your house fronts the street not the water. As such the wording on your permit application must be rewarded in the Permit's Office, Room #100 to reflect same. Additionally, the maximum height permitted for a detached garage is 15 feet unless a Variance is filed and granted by the Zoning Commissioner. Lastly, in Room #111 see Mr. Bruno Rudaitis for any forms necessary as the structure appears to be in Flood Zone A.

If you have any questions you may contact Mr.Wasilewski at 410-887-8099 and Mr. Rudaitis or myself at 410-887-3391.

Very truly yours,

John J. Sullivan
Planner II
Zoning Review

c: Len Wasilewski
Bruno Rudaitis

JJS/rjc

Printed on Recycled Paper

Department of Permits and Development Management

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

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

February 5, 2004

Allen Ashwell
7840 Denton Avenue
Baltimore, MD 21219

Dear Mr. Ashwell:

RE: Case Number: 04-255-A, 7840 Denton Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on November 30, 2003.

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:klm

Enclosures

c: People's Counsel

Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: December 15, 2003

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

SUBJECT: Zoning Advisory Committee Meeting
For December 1, 2003
Item Nos. 234, 236, 237, 239, 240, 241,
242, 243, 244, 245, 251, 252, 253, 254,
and 255

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

RWB:CEN:jrb

cc: File

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

SHA
State Highway Administration
Driven to Excel

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 11·26.03

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

RE: Baltimore County
Item No. 255 JAT

Dear. Ms. Hart:

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,

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

2/12

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: November 28, 2003

RECEIVED

DEC 2 2003

ZONING COMMISSIONER

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

SUBJECT: Zoning Advisory Petitions - **Case 04-255**

The Office of Planning does not oppose the petitioner's request provided the following conditions are met:

1. The petitioner or subsequent owners shall not convert the subject accessory structure into dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities; and,
2. The accessory structure shall not be used for commercial purposes.

Should there be any further questions, or if this office can provide any 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: Lynn Lanham

AFK/LL: MAC

Baltimore County
Fire Department

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

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

November 25, 2003

ATTENTION: Rebecca Hart

Distribution Meeting of: November 24, 2003

Item No.: 233-252, 254, (255)

Dear Ms. Hart:

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.

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

cc: File

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: R. Bruce Seeley

DATE: December 5, 2003

SUBJECT: Zoning Item # 04-255
Address 7840 Denton Avenue
Ashwell Property

Zoning Advisory Committee Meeting of November 24, 2003

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

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

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

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

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

Additional Comments:

Date 3/11/04
By

Reviewer: Keith Kelley Date: December 1, 2003

S:\Devcoord\ZAC SHELL 11-20-03.doc

RE:	PETITION FOR VARIANCE 7840 Denton Avenue 15th Election District 7th Councilmanic District Allen Ashwell	* * *	BEFORE THE COUNTY BOARD OF APPEALS OF
	Petitioner	*	BALTIMORE COUNTY
		*	04-255-A

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

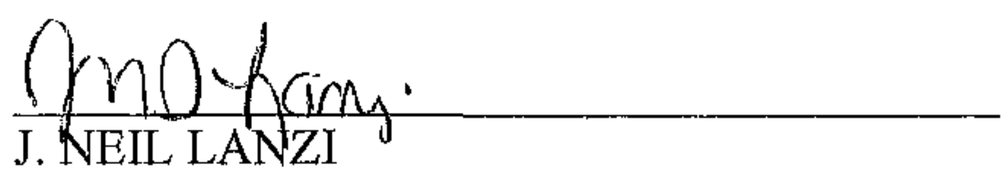
ENTRY OF APPEARANCE

Please enter the appearance of J. Neil Lanzi for Grover M. Hutchins and Loretta H. Hutchins, Protestants/Appellants in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter.

J. NEIL LANZI
Counsel for the Petitioner
409 Washington Avenue, Suite 617
Towson, Maryland 21204
(410) 296-0686

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of September, 2004, a copy of the foregoing Entry of Appearance was mailed to Allan Ashwell, Petitioner/Appellee, 7840 Denton Avenue, Baltimore, Maryland 21219, Office of Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.



J. NEIL LANZI

Department of Permits and Development Management

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

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

April 13, 2004

RECEIVED
APR 13 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Mr. Allen Ashwell
7840 Denton Avenue
Baltimore, MD 21219

Dear Mr. Ashwell:

RE: Case :04-255-A, 7840 Denton Avenue

Please be advised that an appeal of the above-referenced case was filed in this office on March 29, 2004 by Mr. and Mrs. Hutchins. 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,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Mr. & Mrs. Grover Hutchins, 7844 Denton Ave., Baltimore 21219
Chesapeake Bay Critical Areas Commission, 1804 West St., Ste. 100, Annapolis 21401

Printed on Recycled Paper

APPEAL

Petition for Administrative Variance
7840 Denton Avenue
NE/S Denton Ave., 1,050' E/of c/l North Point Rd.
15th Election District – 7th Councilmanic District
Allen Ashwell - Petitioner

Case No.: 04-255-A

RECEIVED
APR 13 2004
BALTIMORE COUNTY
BOARD OF APPEALS

✓ Petition for Administrative Variance (November 18, 2003)
✓ Zoning Description of Property
✓ Formally Demanded for Hearing (December 11, 2003)
✓ Notice of Zoning Hearing (December 29, 2003)
✓ Certification of Publication (The Jeffersonian Issue January 27, 2004)
✓ Certificate of Posting (January 24, 2004) by SSG Robert Black
✓ Entry of Appearance by People's Counsel (None)
✓ Petitioner(s) Sign-In Sheet
One Sheet
✓ Protestant(s) Sign-In Sheet
One Sheet
✓ Citizen(s) Sign-In Sheet
None
✓ Zoning Advisory Committee Comments (2-5-04)
✓ Petitioners' Exhibit
✓1. Plat to accompany petition for Administrative Variance
✓2. Zoning Variance Request (11 sheets attached)
✓3. Photo

Protestants' Exhibits:
✓1. Letter dated December 8, 2003
✓2. Continuation of letter referenced above
✓3. Photos
✓4. Photos
✓5. Photos
✓6. Photos
✓7. Real Property Individual Tax Report

✓ Miscellaneous (Not Marked as Exhibit)
✓1. Site Plan

✓ Zoning Commissioner's Order (GRANTED – March 1, 2004)

✓ Notice of Appeal received on March 29, 2004 from Mr. & Mrs. Grover Hutchins

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Allen Ashwell, 7840 Denton Avenue, Baltimore 21219
Mr. & Mrs. Hutchins, 7844 Denton Avenue, Baltimore 21219
CBCA Commission, 1804 West St., Ste. 100, Annapolis 21401

Counsel for Appellants /Protestants
[entered 9/15/04]

J. Neil Lanzi, Esquire
Mercantile Building, Suite 617
409 Washington Avenue
Towson, MD 21204

date sent April 13, 2004, klm

ALLEN ASHWELL
7840 DENTON AVENUE
BALTIMORE, MD 21219
PETITIONER

GROVER M HUTCHINS
LORETTA H HUTCHINS
7844 DENTON AVENUE
BALTIMORE, MD 21219
APPELLANTS

CHESAPEAKE BAY
CRITICAL AREAS COMMISSION
1804 WEST STREET
SUITE 100
ANNAPOLIS, MD 21401

Case No. 04-255-A

In the Matter of: Allen Ashwell - Petitioner

VAR – To permit a proposed accessory building (garage) with a height of 19' ilo maximum allowed height of 15'.

3/01/2004 -- Z.C.'s Order in which requested variance relief was GRANTED.

8/10/04 -Notice of Assignment sent to following; assigned for hearing on Wednesday, November 10, 2004 at 10 a.m.:

Grover M. and Loretta H. Hutchins
Allen Ashwell
Chesapeake Bay Critical Areas Commission
Office of People's Counsel
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

9/15/04 – Entry of Appearance filed by J. Neil Lanzi, Esquire, on behalf of Grover M. Hutchins and Loretta H. Hutchins, Appellants /Protestants. File noted. Copy of Notice of Assignment sent to Mr. Lanzi.

11/10/04 – Hearing held before Board (Stahl, Mohler, Brassil); concluded this date; deliberation to be assigned.

11/12/04 – Exhibits verified and complete ("6X" not assigned to photos); notice of deliberation sent to all parties; assigned for Tuesday, November 30, 2004 at 9:30 a.m. FYI copy to 2-1-5; also e-mail to 1 and 5; T/C to 2. NO MEMOS TO BE FILED.

11/12/04 – Letter from Neil J. Lanzi, Esquire – attachments: copies of three Maryland cases; *Cromwell v. Ward*; *North v. St. Mary's County*; and *McLean v. Soley*.

11/26/04 – T/C to N. Lanzi; l.m. on voicemail; attempted call to Mr. Ashwell re postponement of deliberation from 11/30/04 date (change in panel composition; Wescott to review transcript and replace Mohler on this case); Notice of Reassignment of Deliberation sent this date to parties; reassigned for Wednesday, January 5, 2005 at 9:30 a.m.

1/05/05 – Board convened for deliberation (Stahl, Wescott, Brassil – with Mr. Wescott, having read the trar script and reviewed the file in this matter, substituting for Mr. Mohler, who resigned from the Board 12/03/04); majority denied the variance request (Stahl and Wescott); dissent in part by Ms. Brassil who will write a dissenting opinion. Appellate period to run from date of written Order. (L)

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:	Allen Ashwell Case No.: 04-255-A	
DATE:	January 5, 2005	
BOARD/PANEL:	Lawrence C. Wescott Margaret Brassil Lawrence M. Stahl	LCW MB LMS
RECORDED BY:	Theresa R. Shelton / Legal Secretary	

PURPOSE: To deliberate Petition for Administrative Variance filed by Allen Ashwell requesting to permit a proposed accessory building (garage) with a height of 19 ft ilo req'd 15 ft.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

At the beginning of the deliberate, Mr. Wescott explained that he was sitting in for Don Mohler, who had resigned from the Board. Mr. Wescott revealed that he had read the entire transcript of the proceedings.

- Argument for uniqueness – waterfront – Hurricane Isabel wipes out garage and personal items
- The area is susceptible to hurricanes – possession need to be stored high to avoid damage
- Neighbors are faced with the same difficulty
- Uniqueness is that flooding from hurricanes would wipe out possessions
- The finger of land makes it lower
- If all the lots have the same problem then it is not unique
- The stripe of land (finger) makes the entire area unique to hurricanes
- Widening the area of what makes a property unique
- This area is totally different than other areas
- Definition of uniqueness under Cromwell discussed
- Cromwell does not include geographical factors – Cromwell is physical
- This property is like every other property except the ones at the end of the finger tip
- Uniqueness aspect is that the area is prone to floods and damage because of its unique geological position

DECISIONS BY BOARD MEMBERS:

LCW: The property does not meet the definition as stated in Cromwell for uniqueness - DENY

LMS: The property does not meet the definition as stated in Cromwell for uniqueness - DENY

MB: That the property does meet the definition of being unique due to the unique geographical location; however, this does not impose a unreasonable hardship or practical difficulty because a garage can be built for storage. (GRANT in part / DENY in part)

FINAL DECISION: Majority decision by the Board Members that the Petition for Administrative Variance filed by Allen Ashwell requesting to permit a proposed accessory building (garage) with a height of 19 ft ilo req'd 15 ft. is DENIED.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted,

Theresa R. Shelton

Theresa R. Shelton
County Board of Appeals

J. NEIL LANZI, P.A.
ATTORNEY AT LAW
MERCANTILE BUILDING, SUITE 617
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(410) 296-0686

FAX: (410) 296-0689

E-Mail: lanzilaw@cs.com

J. Neil Lanzi

OF COUNSEL
Fred L. Coover*

*Also Admitted in District of Columbia

COLUMBIA
Suite 420, Parkside Bldg
10500 Little Patuxent Parkway
Columbia, Maryland 21044-3563

Reply to Towson

November 12, 2004

Hand-Delivered

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

RECEIVED
NOV 12 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Re: In the Matter of: Allen Ashwell, Inc.
Case No.: 04-255-A

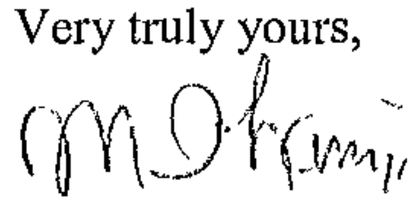
Dear Ms. Bianco:

The appeal hearing on the above referenced case was held on Wednesday, November 10, 2004. During closing argument, I quoted language from three Maryland cases on behalf of the protestants, Dr. Grover Hutchins and Loretta Hutchins. The sitting members of the Board invited me to send copies of the following three Maryland cases which I now enclose for the Board's file:

1. Cromwell v. Ward, 102 Md. App. 691 (1995)
2. North v. St. Mary's County, 99 Md. App. 502 (1994)
3. McLean v. Soley, 270 Md. 208 (1973)

Thank you for your assistance in this matter.

Very truly yours,



J. Neil Lanzi

JNL\mal
cc: Allen Ashwell, Petitioner
Dr. and Loretta Hutchins

J. NEIL LANZI, P.A.
ATTORNEY AT LAW
MERCANTILE BUILDING, SUITE 617
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(410) 296-0686

FAX: (410) 296-0689

E-Mail: lanzilaw@cs.com

J. Neil Lanzi

OF COUNSEL
Fred L. Coover*

*Also Admitted in District of Columbia

COLUMBIA
Suite 420, Parkside Bldg
10500 Little Patuxent Parkway
Columbia, Maryland 21044-3563

Reply to Towson

September 9, 2004

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

RECEIVED

BALTIMORE COUNTY
BOARD OF APPEALS

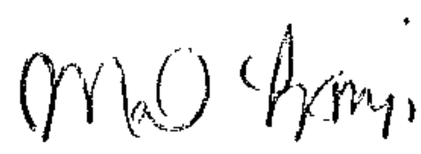
Re: In the Matter of: Allan Ashwell, Inc.
Case No.: 04-255-A

Dear Ms. Bianco:

Enclosed please find my Entry of Appearance on behalf of Grover M. Hutchins and Loretta H. Hutchins, Protestants/Appellants in the above captioned case. It is my understanding the hearing in this case has been set for November 10, 2004 at 10:00 a.m.

Thank you for your attention to this matter.

Very truly yours,



J. Neil Lanzi

JNL\mal
cc: Allan Ashwell
People's Counsel
Dr. and Loretta Hutchins

March 29, 2004

RECEIVED
MAR 29 2004
Per

Timothy M. Kotroco
Department of Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case #04-255-A, Variance Request for 7840 Denton Avenue

Dear Mr. Kotroco:

On February 12, 2004 we attended a hearing on the above variance request to oppose the construction of a three car garage that would be 19-feet high rather than the usual height of 15-feet. The issues were discussed before Lawrence F. Schmidt, Zoning Commissioner for Baltimore County. Mr. Ashwell the owner of 7840 Denton Avenue, represented: 1. that the garage construction would use a poured concrete foundation, 2. that the second story of the garage would be used for storage and not as a residence, 3. that he needed the storage space to accomodate the needs of his children, 4. that his request for the height variance was consistent with other garages in the neighborhood, 5. that the small shed and concrete slab adjacent to the water would be demolished and the slab removed. It also became known that Mr. Ashwell had been given a permit to increase the size of the existing house by approximately 50% to replace a second older house on the property that had been damaged by Isabel and subsequently demolished. As a result of these considerations we withdrew our objections to Mr. Ashwell's variance request.

After the hearing we examined the garages in our neighborhood and discovered that Mr. Ashwell's assertion that the proposed 19-foot height of his garage and its size are <u>not</u> consistent with other garages in the area. Garages in this neighborhood <u>are</u> either incorporated into the lower level of the house or are small one- or two-car garages, not three-car garages. We have also noted that Mr. Ashwell's children do not live with him.

We have received a copy of Mr. Schmidt's decision on the Petition for Variance. Inexplicably, it is inconsistent in two major areas that we had believed had been agreed upon at the hearing. First, there is no statement that the garage is to be constructed with a poured concrete foundation with appropriate wash-throughs. The foundation of the addition to the house, mentioned above, is being constructed by Mr. Ashwell himself using cinder block, and does not incorporate wash-throughs. It is our concern that Mr. Ashwell plans to utilize these same practices in the proposed garage. Secondly, the decision states that the small shed, and thus by implication the concrete slab on which it sits, is to remain. We understand that the Department of Environmental Protection and Resource Management had already instructed Mr. Ashwell to remove the shed and concrete slab since it is located immediately adjacent to the waters of Shallow Creek.

Re: Case #04-255-A, Variance Request for 7840 Denton Avenue

In view of the problems enumerated above we wish to renew our objection to the Variance Request and are hereby filing an appeal to the Baltimore County Board of Appeals. Please note that we now object to both the height and the size of the garage. There is no precedent in this neighborhood, which mostly consists of very small lots, for a 19-foot high, three-car garage as requested by Mr. Ashwell. He had been given permission to put an addition on his present house to compensate for the house damaged by Isabel. A three-car garage would be as large as, or larger than, the house that was removed and would, with its proposed driveway, existing driveway, house with addition, boats and other materials stored in the yard, cover the great majority of the 7,803 sq. ft. lot with impervious surface.

We have enclosed checks for $225.00 and for $75.00 to institute the appeal process. Please inform us as to when and where the appeal will be heard.

Thank you for your trouble.

Sincerely yours,

Grover M. Hutchins

Loretta H. Hutchins

7844 Denton Avenue
Sparrows Point, MD 21219

410-477-8229

December 8, 2003

Timothy M. Kotroco
Department of Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case #04255A, Variance request for 7840 Denton Avenue

Dear Mr. Kotroco:

We are writing to express strong opposition to the granting of the above variance which requests that a garage may be built at the property, 7840 Denton Avenue, Sparrows Point, Maryland 21219, which would be raised to 19 feet rather than the 15 feet allowed.

The property at 7840 Denton Avenue is described as being 7,803 square feet. It contains a two-story house close to Denton Avenue which is not mentioned on the Maryland Department of Assessments and Taxation Real Property Data Search. There is a smaller, older one-story house that was damaged by Isabel and is in the process of being torn down. It appears to be the 1,700 sq. ft. "Primary Structure" listed on the Data Search. A concrete slab adjacent to the water had a shed that was destroyed by Isabel. The destroyed shed, which occupied the slab, has now been replaced by a much smaller shed that occupies part of the slab. In addition, a driveway, walkways, a boat ramp, and numerous piles of lumber, wood, and other materials are on the lot. The majority of the lot has been rendered impervious. Based on our experiences with the, entirely appropriate, restrictions placed on us by Baltimore County when building at 7844 Denton Avenue there appears to have been very little, if any, oversight of the newer constructions at 7840 Denton Avenue.

The owner of 7840 Denton Avenue has displayed contempt for the processes of Baltimore County, the rights of the neighbors, and the health and well-being of the Chesapeake Bay. Following Isabel we observed discarding of materials into the water, including a large oil tank. The approach to the dismantling of the storm-damaged house was to remove wood and burn it in an open fire, a process stopped only by the intervention of the fire department. The house being removed is covered with asbestos shingle and this is being taken off in a manner that causes release of asbestos fibers from broken and sawn shingles.

During Isabel the major damage to our property at 7844 Denton Avenue was the result of the disintegration of a large garage at 7846 Denton Avenue that had been constructed without a permit. The debris from the garage and its contents were carried by the storm surge and damaged structural elements of our house, parts of the yard, and destroying plantings that Baltimore County had required us to install as a condition of building our house.

Re: Case #04255A, Variance request for 7840 Denton Avenue

Given the circumstances described above we do not believe that any new structure should be erected at 7840 Denton Avenue. In particular, there is certainly no obvious justification for a 19-foot garage. Allowing such a construction to proceed will simply invite a repetition of the problems that arose from Isabel. What is required at 7840 Denton Avenue is a clean-up of the lot and removal of the impervious concrete slabs.

Please inform us when the hearing on this matter will be held.

Sincerely yours,

Grover M. Hutchins

Loretta H. Hutchins

7844 Denton Avenue
Sparrows Point, MD 21219

410-477-8229

RECEIVED
DEC 17 2009
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

PLEASE PRINT CLEARLY

CASE NAME 04-255-A
CASE NUMBER
DATE 2/12/04

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
ALLEN ASHWELL	7840 DENTON AVE	BALT. MD 21219	

Case Number _____

PLEASE *PRINT* LEGIBLY

PROTESTANT'S SIGN-IN SHEET

Name	Address	City, State	Zip Code
GROVER W HUTCHINS	7844 Dawson Ave	Sparrows Point MD	21219
LORETTA H HUTCHINS	"	"	"

Bidwell 11/10/04

04-255-A Appl: Rose
Ref: Rose
To Real LAN21

Opening
Area variance 15 ft to 19 ft
12 ft x 41 ft garage to
remain
replace
19 120 15

there last in Nov. 21 ft high
expert of

LAN21 - Opening Hutchins
26-167 - carport w/ reasonable
no adverse impact - allowed
size, scope, height and of sync
blocking view of water

(2)

Ashwell 11/10/04

nothing is legal aid

NWBCZR 104.2 is being circumvented

not unique - Cromwell v Ward

Petit 2A - 6 Mos been damage

2B Wants coming down attic

2C

Petit 3A - what was left of lys paxxxdeau

garage 12X40 roll up door

wants storage, above floor

yone - family than since 1937

dont want damage gam

wool to use g'mas attic - lotted

3B - 2k + of tools

4-A-B 4B - neighbor 7806 Denton - 2 stor

garage above 15 ft

4C 9111 N point Rd w/in 500 ft

of his house

4E 7825 Denton Ave - Accessory Bldg

20-22 ft high

4F 7824 Denton similar to what he

(3)

Ashwell
11/10/04

wants to do
4 G 7836 Denton Ave 2 story accessory building
4 H - another 2 story garage one 15 ft high enough to work in.
Not out of character with neighborhood

Petit Ex #5 house front is street side
County says no

Petit #7

Ashwell Cross X LANZI
1986 Ties around - photos of father before
photos there when he bought
(circa 1949)
"live w/ his son - sold the
himself
house based in Jaya displeased
want to replace that with new
garage.

(4)

Ashwell
11/10/04

26x34x19 high
new scan ~~driveway~~ garage - no new
driveway at this time
- big gold home
lists 11 & 13 - 1/2 x 1/2 duplex split,
this #4 pictures
no measurements exactly
damage pictures - just stuff from
garage.
this 2B - Schultz (neighbor's home)
2A - 6 ~~Mat~~ was destroyed
demo.
9,350 sq. ft of Lot 26 by Simm
7203 - Dept. of Assessments current
garage destroyed 12x42x12 ft high
wants to replace w/ 12x36x19
enlarging principal home by 18x24
has permit - on side w/ water
- has down wall - add a 1 story
home addition, deck all on water side

5

Ashwell
11/10/04

Inspection
24x18x14 B permit
1 story

Pat 5 - Owner Shmelin 44x24
- Upgraded garage had rolling door
but no driveway to it
- Has water view now

- his prop is similar except he has
houses in it all 50 ft
- will continue to live there

Hutchins - DIR LA021
7844 Dunton Ave
bought it in 4-2000 from daughter
+ son in law (for 10 yrs.)
- listed new - did improvements
+ 7A pool + flat roofs
6A lane fen pen
B. pool
C. pool + clubhouse
D. Ashwell house prop. Ashwell prop
F. on reg. lot - rule of photo is Ashwell
driveway
E from the prop. towards Ashwell prop
people in Ashwells prop [STATUS OF PROP]

6

Ashwell
11/19/01

6G - similar - looking across Pellant prop
to Ashwell prop - yes ~~[illegible]~~ & cap
Rel state

6H - from the prop
6J - towards Ashwell prop
K - same
L - Gaston house - front of yard
M - To Ashwell Yard across Gaston yard
from his
N - 6 -
P - 5 ~~[illegible]~~ spaces in Gaston yard
QQ - across to Ashwell
S, T, same - T shows garage inc / house
U
V - looking back from water
X - down Ashwell drive where
you left
AA -
BB - from his porch across property
CC

Pltd Exh 9 A + B
10 A - F T & A's pointed to show size
- most garages are attached &
generally under the house
- others are small structures added
- will adversely affect prop value of his
house

11 - letter from Lynn to Tobacco objections
12 - 3-22-04 letter to Tobacco after decision

7

Ashwell
11/10/04

Re: Hutchins Cons X Ashwell

He had gotten zoning posted
no objection of neighbors
I think your new thing will be
higher and will block view

Mrs. Loretta Hutchins DIR LANDI
24 yr. real estate Cert of lines
United Heights —

Hutchins Cons X
4 Stars - her home

Bruce Dorf - DIR LANDI
Beatloff, Cons + Dorf - Land
Surveyors since 1978

REPORT - Land Surveyor
+ use

did not observe any garages
like proposed other than those
attached to existing houses
— all 50 ft / 120-100 lane — parked to front
All the same — flat.

11/10/04

all subject to critical area regs.
As to practical difficulty - None
alternatives exist - more clearly
attach to house (& build higher) where
he's putting extension now) no
variance needed where he's building
Now
400.3 bldg - accessory building
15 ft height
- case by case - but usually water
is front -
400.1 accessory building
2300 sq. ft - Sent bigger more than was there before.
cold. dwelling would be 4000 sq. ft.
1700 More than was there before!
his property 43% or 52%
you can bigger back.
existing driveway is not previous
shed - does not conforming structure
can be replaced
if proposed garage is replacing structure
an - is buildable the size
proposed garage is 50 ft 100 ft
from water required now.

9

A Shwell
11/10/04

because it would be detrimental to area
proposed ~~[illegible]~~ runoff from impervious area
fail to grade & DEFRW
doesn't want you to within 100 ft.
denial wouldn't remove his lessened
ability to use property

Book Calculated A Shwell
most houses face the street
Book Redwood Lanzi

closing
Cromwell 694
(1) Nat v St. Mary Co
(2) McClean v Soley
(3) var & will be injury or detriment to
neighbors

(1)(2) - No unique testimony - like other
houses in area. Testimony - all flat
& reasonable value front properties
(2) Not extent of improvements - Structures before &
after storm - Structures
104.2 BZR waterside is front - so cluttered are
non conforming structures to be replaced

10

Ashwell 11/8/94

may not be enlarged - just replaced

gauge altered was replaced

a different structure, a different location and enlarged.

Doak 43% impounding disturbance now greater than before

all new accessory structures are on street side and attached

all waterfront - the same size shape + topography

option to make addition to get more storage

Doak & Mrs. Hutchins - value impaired - not keeping

gauge replaced - when addition is attached clear gutter - no practical difficulty.

Ashwell Closing argument

"extraordinary circumstances [NOT] law - no exceptions]

- addition already under way - Self inflicted difficulty - I can't see

A Shwell
11/10/04

trying to do the right thing
shed now is temporary structure
[Some of his options —
rebuilding Grass House — are
open to him]
need 4 feet to walk — to a
smaller structure however —
stand under 15 ft + structure
not out of character with
neighborhood
"already in process" addition
not an excuse of pract. difficulty"

Claim

Fact -

(1) No uniformed

Police officers have

been in regular share of

especially unfavorable - all suffer the

same deficiency

(2) Not extent of impairment

(3) Overall is not grounds

to preclude

8

Petitioner

ALLEN ASHWELL
7840 DENTON AVE

Cynthia Pallock
7842 Denton Ave

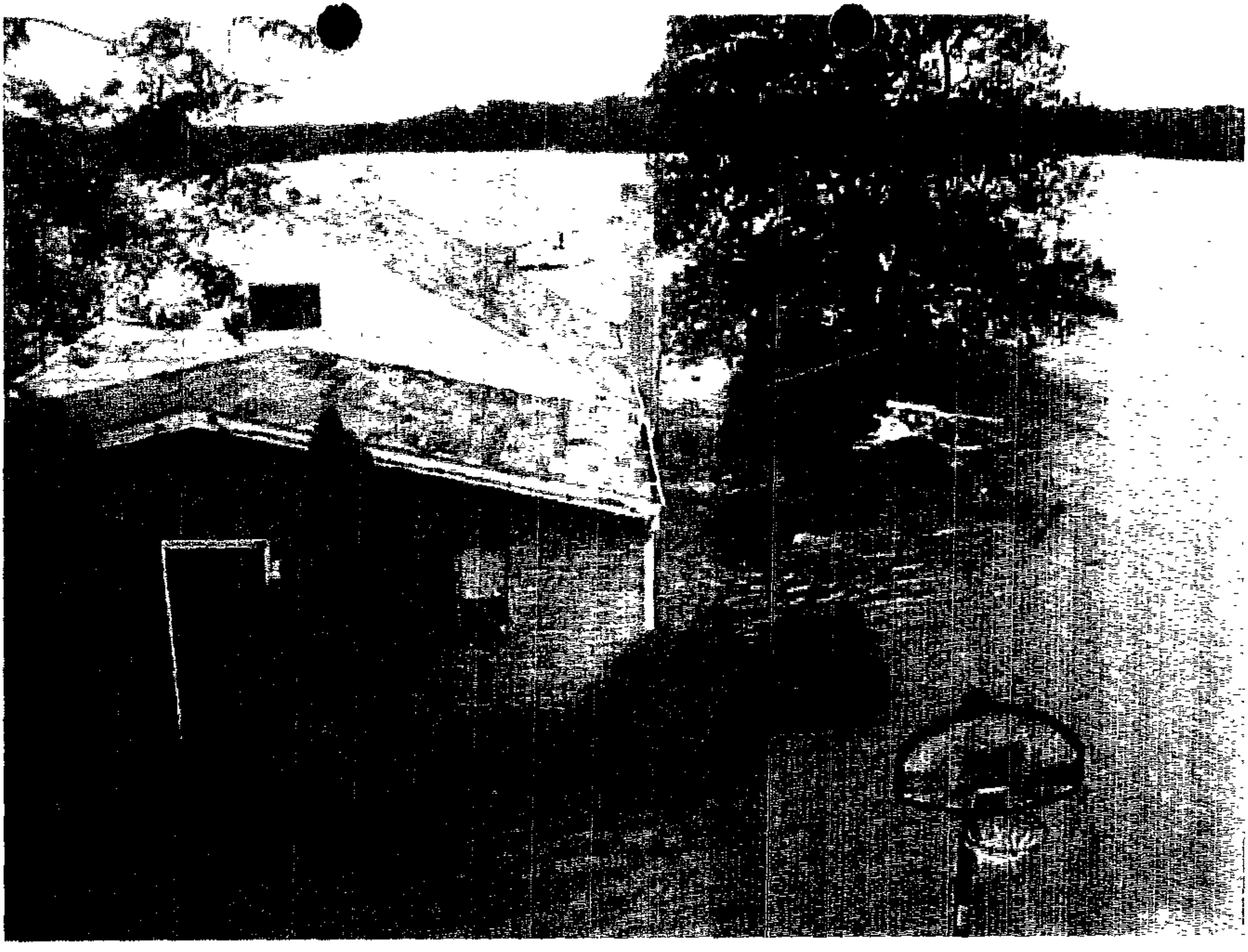
Mary Melissa Gasker
7846 Denton Ave
BALTO. MD 21219

PROTESTANT'S

J NEIL GONZI ESQ
409 Washington Ave #617
TOWSON MD 21204

BRUCE E. DOAK
GORNICK CROSS & ETZEL
320 E. TOWSONTOWN BLVD
TOWSON MD 21286

Loretta Hutchins
~~GROVER M QUTCHINS~~
7844 Denton Ave
Sparrows Point MD 21219



Pet X 6

IN RE: PETITION FOR ADMIN. VARIANCE E/S of Denton Avenue (end of Avenue), 1,050 ft. S of North Point Road 15th Election District 7th Councilmanic District **(7846 Denton Avenue)** Max A. Gasker *Petitioner*	* * * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 04-383-A

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was originally before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owner of the subject property, Max A. Gasker. Thereafter, a formal demand for hearing was made by the adjacent property owners, Mr. & Mrs. Hutchins, and the matter was set in for a hearing. The variance request is for property located at 7846 Denton Avenue in the eastern area of Baltimore County. The variance request is from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a replacement accessory building (garage) to be 20 ft. high in lieu of the required 15 ft. and if necessary, to amend Case No. CBA-93-114. (Hurricane Isabel replacement on existing foundation). The subject property and requested relief are more particularly described on Petitioner's Exhibit No. 1, the plat to accompany the Petition for Variance.

The property was posted with Notice of Hearing on March 20, 2004, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in the "Jeffersonian" newspaper on March 23, 2004 to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 307 of the B.C.Z.R. – ***Variances***.

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

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: ZAC comments were received from the Bureau of Development Plans Review dated March 25, 2004, a copy of which is attached hereto and made a part hereof. In addition, ZAC comments were received from the Department of Environmental Protection & Resource Management (DEPRM) dated March 25, 2004, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the variance request were Max and Melissa Gasker, Petitioners and Cindie Pallock and Allen Ashwell, neighbors to the Gaskers. Grover and Loretta Hutchins appeared in opposition to the requested variance. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Testimony and evidence indicated that the property, which is the subject of this variance request, contains 17,863 sq. ft. and is zoned DR 3.5. It is located on Shallow Creek, an inlet of

the Chesapeake Bay near Fort Howard. The Petitioners wish to build a garage, which is 20 ft. in height in lieu of the 15 ft. allowed by the regulations. They also ask to amend Case No. CBA 93-114 if necessary. The proposed garage would replace a similar if not shorter garage which was destroyed in Hurricane Isabel where the storm surge physically moved the existing garage off its concrete slab and over into the neighbor's yard.

The Protestants live next door and having the Gasker's garage swept away apparently was welcome news in spite of the general devastation caused by Hurricane Isabel. The properties at issue are located on a point of land that juts out into the Chesapeake Bay. The Petitioner's garage, which was within a few feet of the boundary between the properties and located between the Hutchins' home and the open expanse of the bay, interfered with the Protestant's view and enjoyment of the bay in that direction. It is apparent that the dispute over the garage has been going on for at least the last eleven years and has involved extensive litigation.

The bottom line of the Petitioners argument was that they erected the garage in 1993 pursuant to a valid building permit, the garage was damaged by the storm surge, they had need of space above the flood level to store personal property and thus are requesting approval of a higher garage to replace the garage destroyed by the hurricane. The Hutchins bottom line is that the Gasker's building permit was appealed to the Board of Appeals in Case No. CBA 93-114, that the Board reversed the issuance of the building permit and remanded the matter to the zoning and environmental agencies of the County for further findings, and that no such findings were ever issued. Consequently, the Hutchins contend that the 1993 permit is not valid, that I should not approve a higher garage, and that I should order the garage not be rebuilt at all and the supporting concrete slab be removed.

Pet #6

In rebuttal, the Petitioner submitted an extensive correspondence file, Petitioner's Exhibit No. 7, which in salient part shows that on remand from the Board of Appeals, the environmental and zoning agencies found that the garage was not in violation of the B.C.Z.R. and that the building permit was valid.

Because this case is likely to be appealed, as is my custom, I will make findings of fact and conclusions of law in greater detail than would ordinarily be required.

Findings of Fact and Conclusions of Law

Height of the Garage Variance

The Protestants presented an excellent chronology of events and photographs as did the Petitioners. The Petitioner's evidence indicates that the garage which existed before the hurricane contained much personal property and was destroyed by the storm surge along with the garage itself. I find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. If there ever was a case in which the property passes the test given in Cromwell v Ward, 102 Md 691 (1995) for uniqueness, in my view, it is this case. Cromwell lists as criteria to pass the uniqueness test that the property must be unusual compared to other properties in the neighborhood. In addition, the regulation of a 15 ft. height for garages must impact the site differently than the neighboring properties. The fact that makes this property unique is that it is waterfront property and is subject to damage by storm surges. In another setting this point could seem academic but after hurricane Isabel we can see what power to destroy is unleashed by these storms. There was a not too complimentary observation after Cromwell, that in order to have a variance approved a site must have a river running through it. In this case, the storm surge literally did run through the property. See Petitioner's photographs, Exhibit Nos. 5E through 5H. In addition, it is only the properties

immediately on the water's edge that face this threat. Consequently, the height regulations impact these properties much more severely than the others in the neighborhood only one street off the water.

I also find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. The Protestants argue that the Petitioners have no need for this storage. They present attachment M of Protestant's Exhibit No. 1 to show that the Petitioner's home has extensive storage space in the garage area beneath the Petitioner's home. However the problem is not gross storage space for these waterfront properties but dry storage space. Protestants' attachment K to their Exhibit No. 1 is most telling. The storm surge is flowing freely in and out of the Petitioner's basement, which hardly presents storage space for personal property. I find that the Petitioners would suffer a severe hardship if not allowed to have room on the second floor of the garage to store their personal property out of harm's way.

Furthermore, I find that this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. Both sides presented comprehensive photographic surveys of the area showing in some cases accessory building with two-stories and in others cases single-story buildings. In light of the evidence presented, I find that there will be no detriment to the community in general by the Petitioners having a two-story garage at that location. However, the impact on the Hutchins as adjacent waterfront property owners could tip the balance against the request under different circumstances. The two-story garage could seriously block the water view of the Protestants. However Petitioner's Exhibit No. 6A shows why this should not be a problem. The A-frame building on the left is the Petitioners' home. The gray building on the

right is the Protestants' home and surely has four stories and two high balconies. It seems to me that the adverse impact on the Protestants will be minimal.

Amended Case No. CBA 93-114

Having found the above, if the initial building permit issued in 1993 is not valid the Protestants argue that the garage that existed before the hurricane is in violation of the Baltimore County regulations and no replacement garage can be erected. The Protestants would like me to recognize that the Board of Appeals reversed the issuance of the building permit and remanded the matter for determination of whether or not certain zoning regulations were met. Among these was whether or not the garage was in the side or rear yards.

From Petitioner's Exhibit No. 7, I note that the remand from the Board was considered by the various agencies and that Zoning Administration & Development Management, speaking for all such agencies, held that the location of the garage was not in violation of the zoning regulations and the building permit was valid. The Protestants presented no evidence to contradict this finding. The heart of the Protestants' argument is that the Board required certain zoning decisions to be made, that these decisions could only be made at a public hearing before the Zoning Commissioner, and that no hearing or decision by the Zoning Commissioner was ever held. It appears from this exhibit that the Protestants are quite correct that no public hearing was ever held before the Zoning Commissioner or otherwise. The parties were represented by counsel throughout the 1993-1994 case.

The last letter in Exhibit No. 7 from Arnold Jablon dated January 31, 1994 indicates that this is the final action by an agency and is appealable to the Board of Appeals. Mr. Jablon notes that if the Protestants disagree with his decision regarding having a public hearing to decide these issues, the Protestants can petition the Board of Appeals to require such a hearing. Finally,

Mr. Jablon agrees with counsel for the Protestants that the matter could be resolved by a special hearing before the Zoning Commissioner. However, I find no evidence presented by the Protestants or otherwise that the Protestants filed an appeal, or motion to the Board or requested a Special Hearing. It may be that I simply do not have the whole file and so missed this important point. However, it appears from the evidence I have that the Protestants made a conscious choice not to continue to pursue this matter.

I find that under that the circumstances and based on the record given to me, there is no need to modify Case No. 93-114. I note especially that I have no request for Special Hearing filed by the Protestants which would give me jurisdiction to revisit the Board ruling and agency response. I have only the Petitioners' request to revisit the case if necessary. The Protestants seem to be consistent in not wishing to take this avenue for relief. I can not fault them for this approach but I can not grant relief for which I have no jurisdiction.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the Petitioner, I find that the Petitioner's variance request should be GRANTED.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 15th day of April, 2004, that a variance from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a replacement accessory building (garage) to be 20 ft. high in lieu of the required 15 ft. be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition;

2. Compliance with the ZAC comments submitted by DEPRM dated March 25, 2004, a copy of which is attached hereto and made a part hereof;

3. Compliance with the ZAC comments submitted by the Bureau of Development Plans Review dated March 25, 2004, a copy of which is attached hereto and made a part hereof;

4. The garage shall be limited to uses accessory to the residential use of the property. It shall not be used for commercial or business purposes. Moreover, the Petitioners shall not allow or cause the garage to be converted to a second dwelling unit and/or apartments. There shall be no living quarters contained therein, and no kitchen or bathroom facilities;

5. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

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

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: March 25, 2004

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

SUBJECT: Zoning Advisory Committee Meeting
For March 8, 2004
Item 383

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

Flood protection elevation for this site is 10.4 feet.

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

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

The building engineering shall require a permit for this project.

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

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

RWB:CEN:jrb

cc: File

ZAC-03-08-2004-ITEM NO 383-03232004

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: R. Bruce Seeley RBS

DATE: March 25, 2004

SUBJECT: Zoning Item # 04-383
Address 7846 Denton Avenue
Gasker Property

Zoning Advisory Committee Meeting of March 1, 2004

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

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

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

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

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

Additional Comments:

Reviewer: Keith Kelley Date: March 18, 2004

S:\Devcoord\ZAC SHELL 11-20-03.doc

Zoning Variance Request

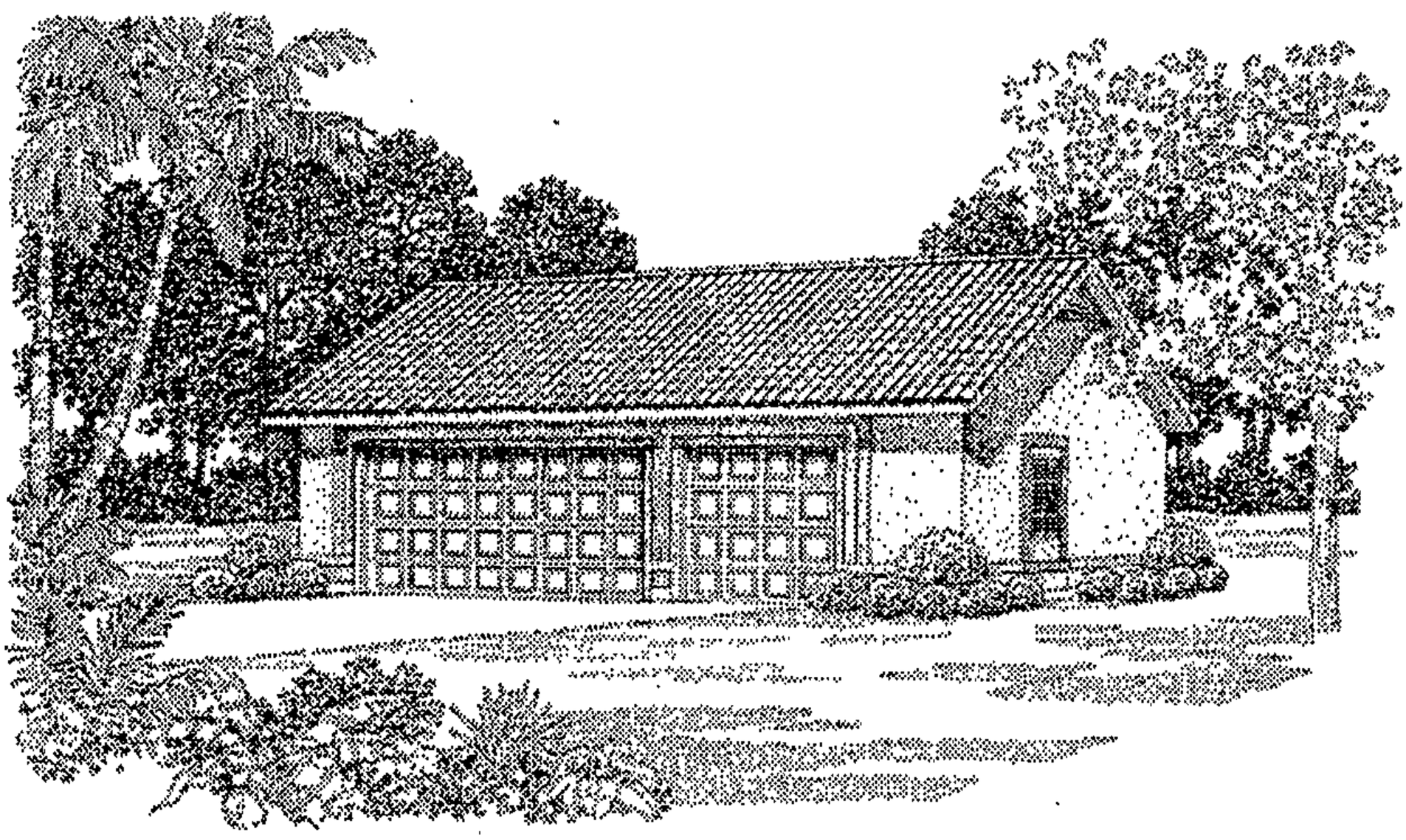
Mr. Allen Ashwell at 7840 Denton Avenue, Baltimore Md. 21219 is requesting a zoning variance for height exceeding 15 ft on an accessory building. Proposed height to be 19'.

I/We Charles Darsey Date: 2/7/04

living at 7845 Denton Avenue, Baltimore Md. 21219

have no objections to Mr. Allen Ashwell's request.

There will be a hearing in Towson February 12th, 2004 at 11:00 a.m. for the public to express their opinions.



Pet No 2

26 x 34 x 19

Zoning Variance Request

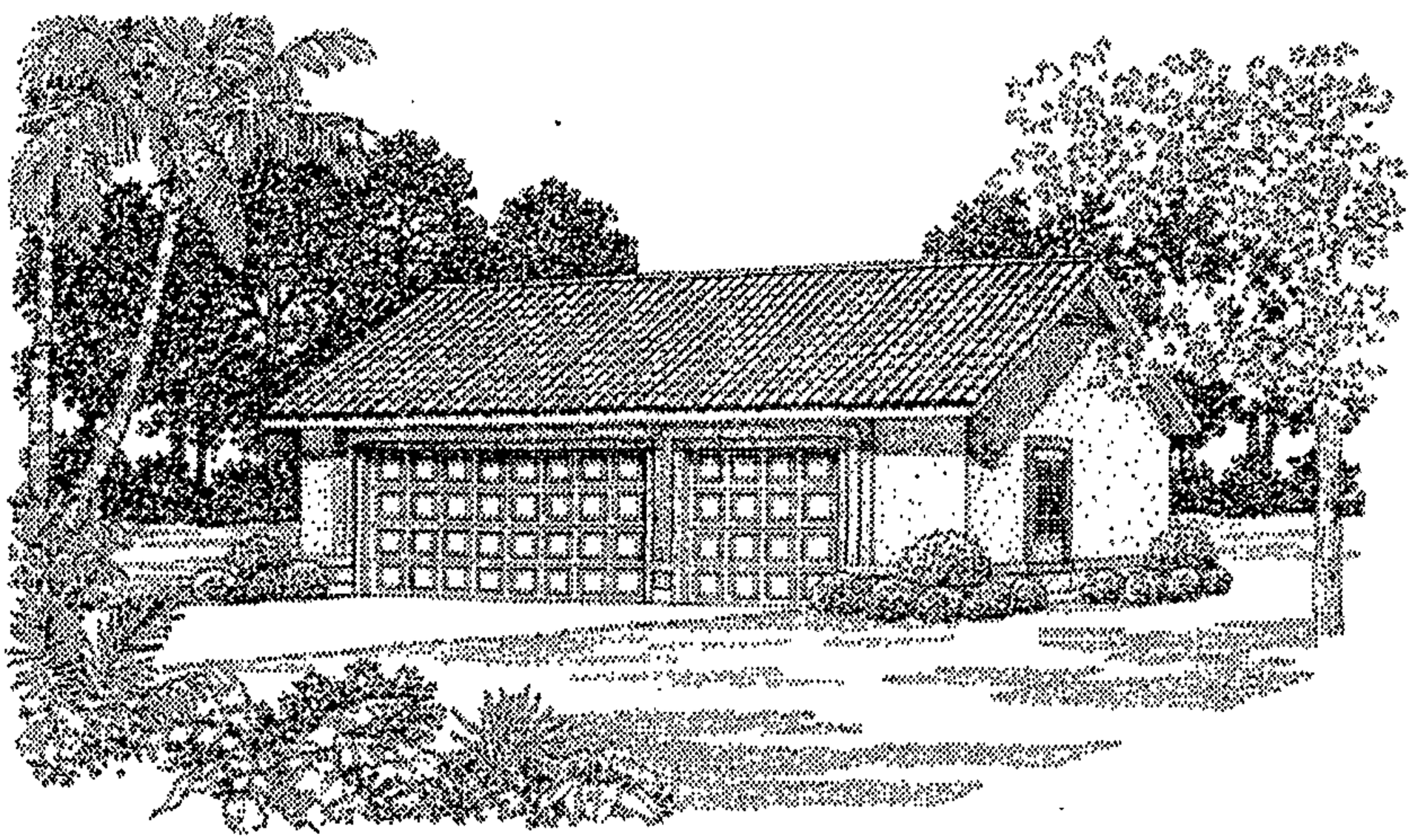
Mr. Allen Ashwell at 7840 Denton Avenue, Baltimore Md. 21219 is requesting a zoning variance for height exceeding 15 ft on an accessory building. Proposed height to be 19'.

I/We Walter Smith Date: 1-04-04

living at 7831 Denton Avenue, Baltimore Md. 21219

have no objections to Mr. Allen Ashwell's request.

There will be a hearing in Towson February 12th, 2004 at 11:00 a.m. for the public to express their opinions.



26 x 34 x 19

Zoning Variance Request

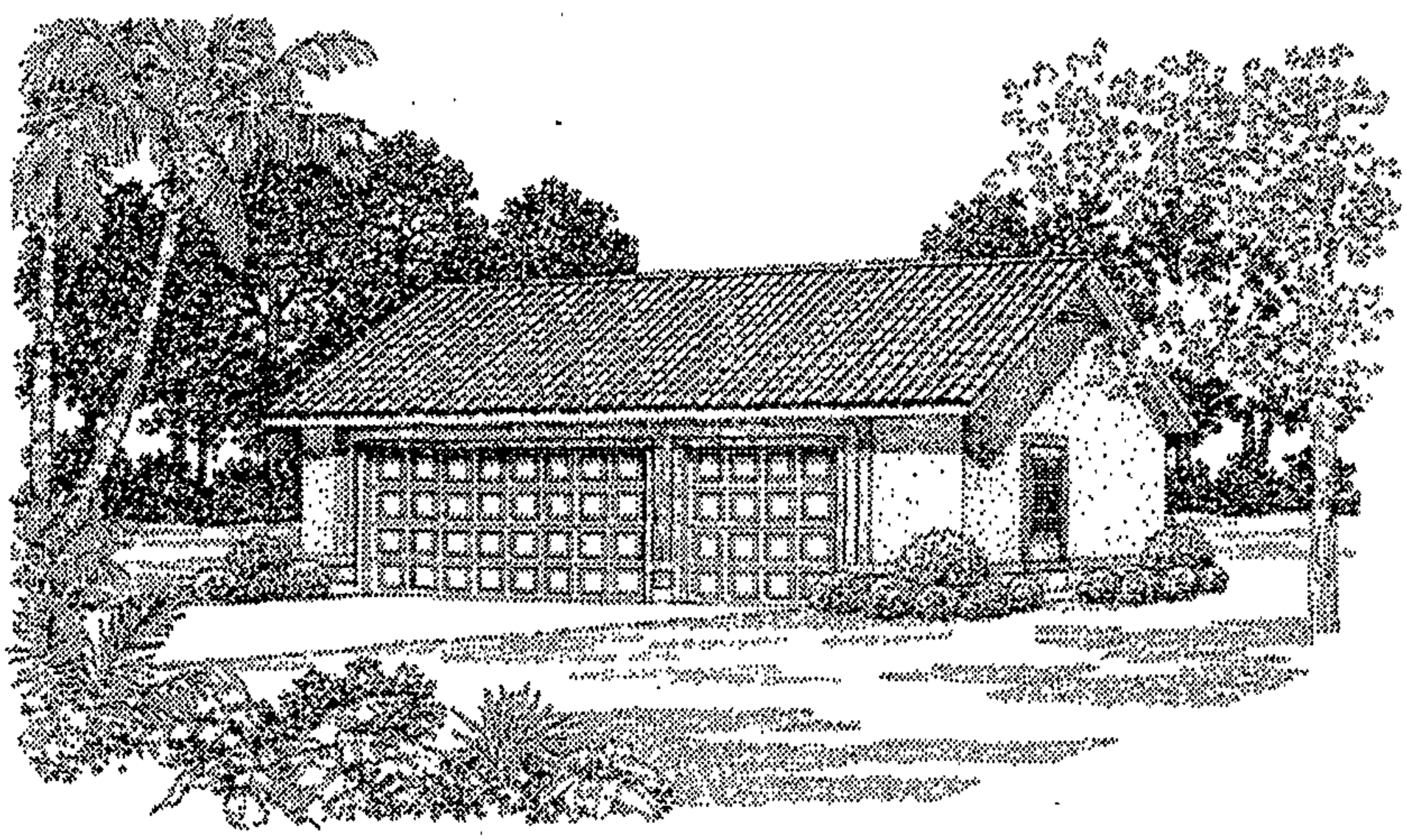
Mr. Allen Ashwell at 7840 Denton Avenue, Baltimore Md. 21219 is requesting a zoning variance for height exceeding 15 ft on an accessory building. Proposed height to be 19'.

I/We Michael + Rhea Karmazyn Date: 1-4-04
Rhea Karmazyn

living at 7836 Denton Avenue, Baltimore Md. 21219

have no objections to Mr. Allen Ashwell's request.

There will be a hearing in Towson February 12th, 2004 at 11:00 a.m. for the public to express their opinions.



26 x 34 x 19

Zoning Variance Request

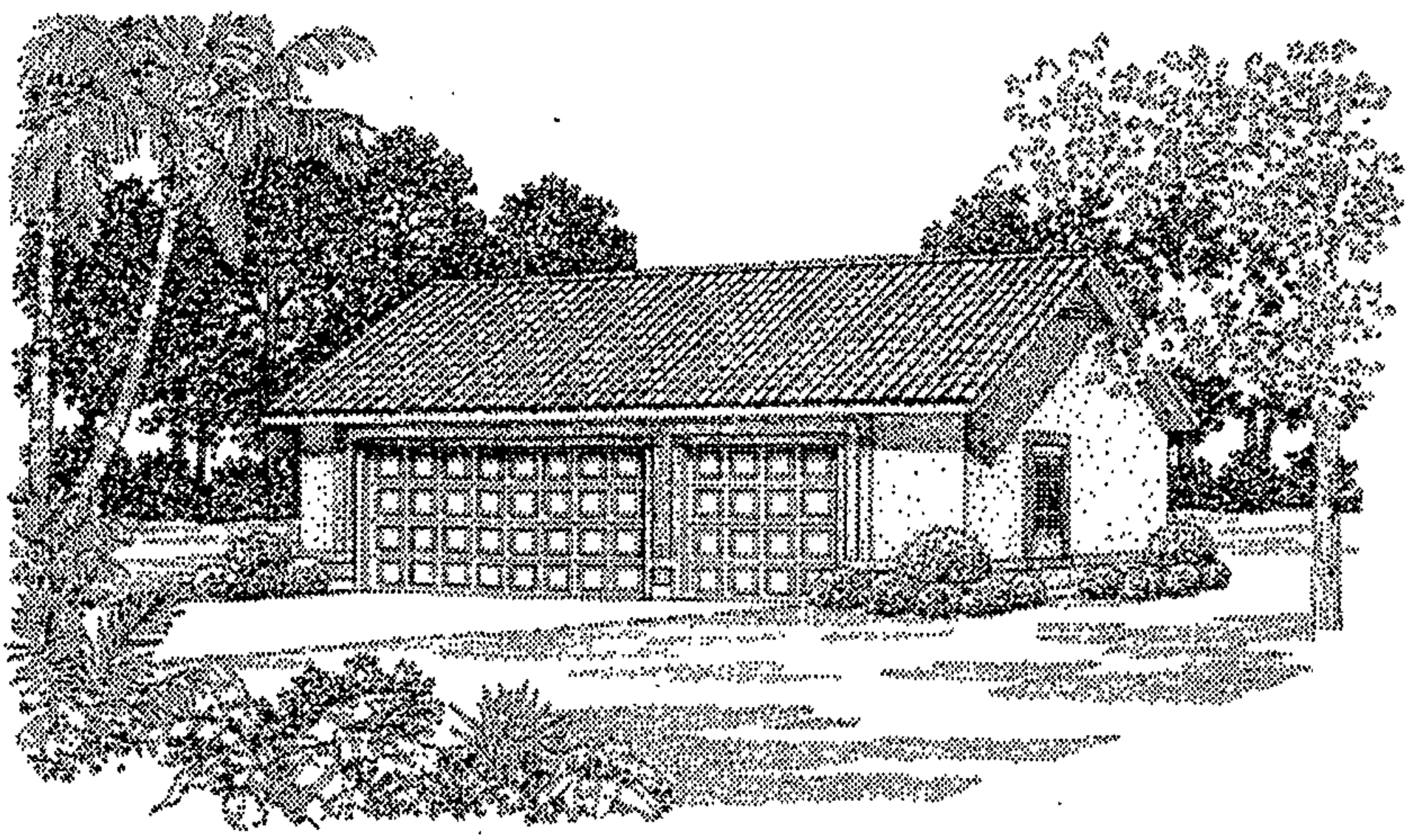
Mr. Allen Ashwell at 7840 Denton Avenue, Baltimore Md. 21219 is requesting a zoning variance for height exceeding 15 ft on an accessory building. Proposed height to be 19'.

I/We Samuel C. Haffer Date: 1/11/2004

living at 7839 Denton Avenue, Baltimore Md. 21219

have no objections to Mr. Allen Ashwell's request.

There will be a hearing in Towson February 12th, 2004 at 11:00 a.m. for the public to express their opinions.



26 x 34 x 19

Zoning Variance Request

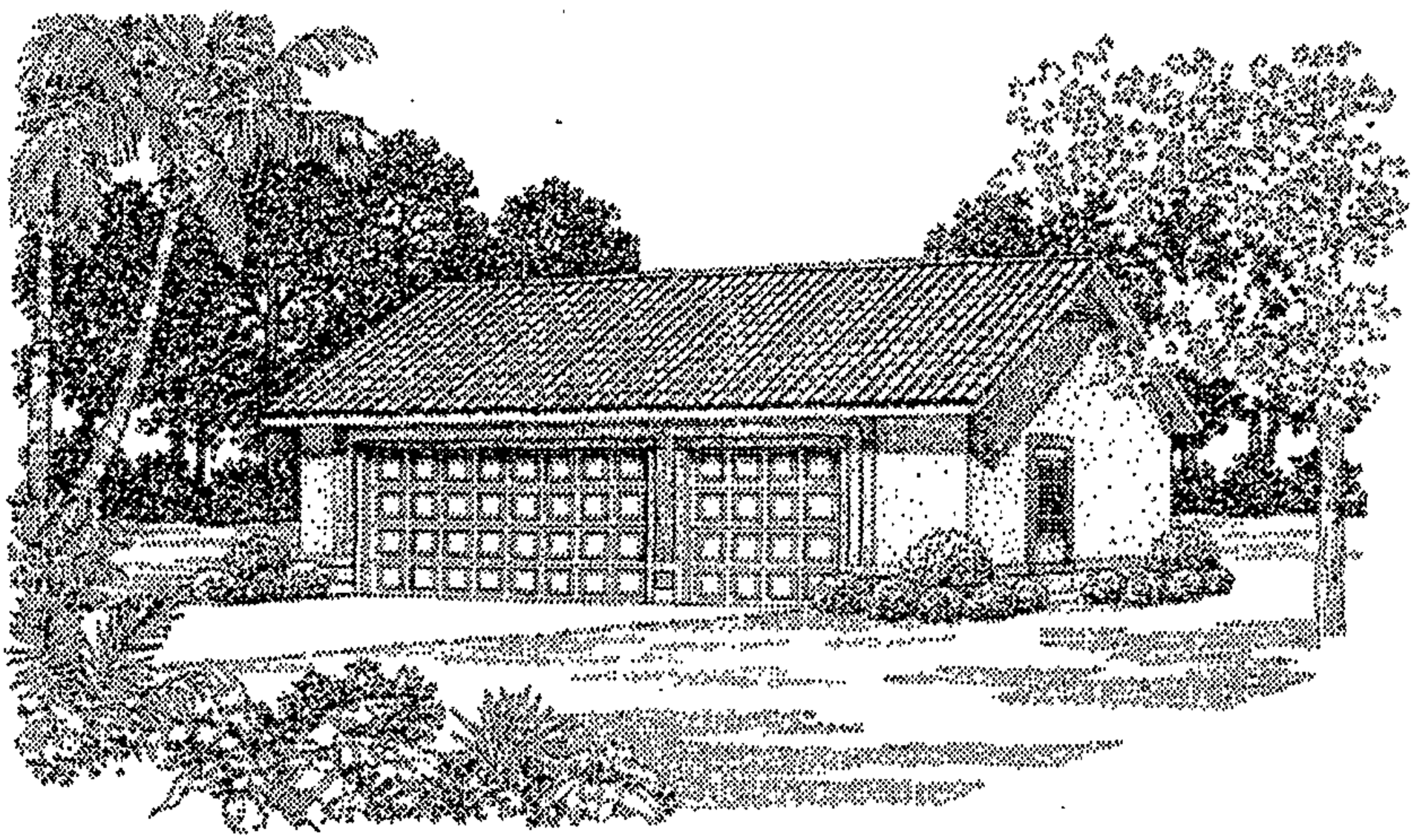
Mr. Allen Ashwell at 7840 Denton Avenue, Baltimore Md. 21219 is requesting a zoning variance for height exceeding 15 ft on an accessory building. Proposed height to be 19'.

I/We Harry Dawson Date: 1/4/04

living at 7837 Denton Avenue, Baltimore Md. 21219

have no objections to Mr. Allen Ashwell's request.

There will be a hearing in Towson February 12th, 2004 at 11:00 a.m. for the public to express their opinions.



26 x 34 x 19

Zoning Variance Request

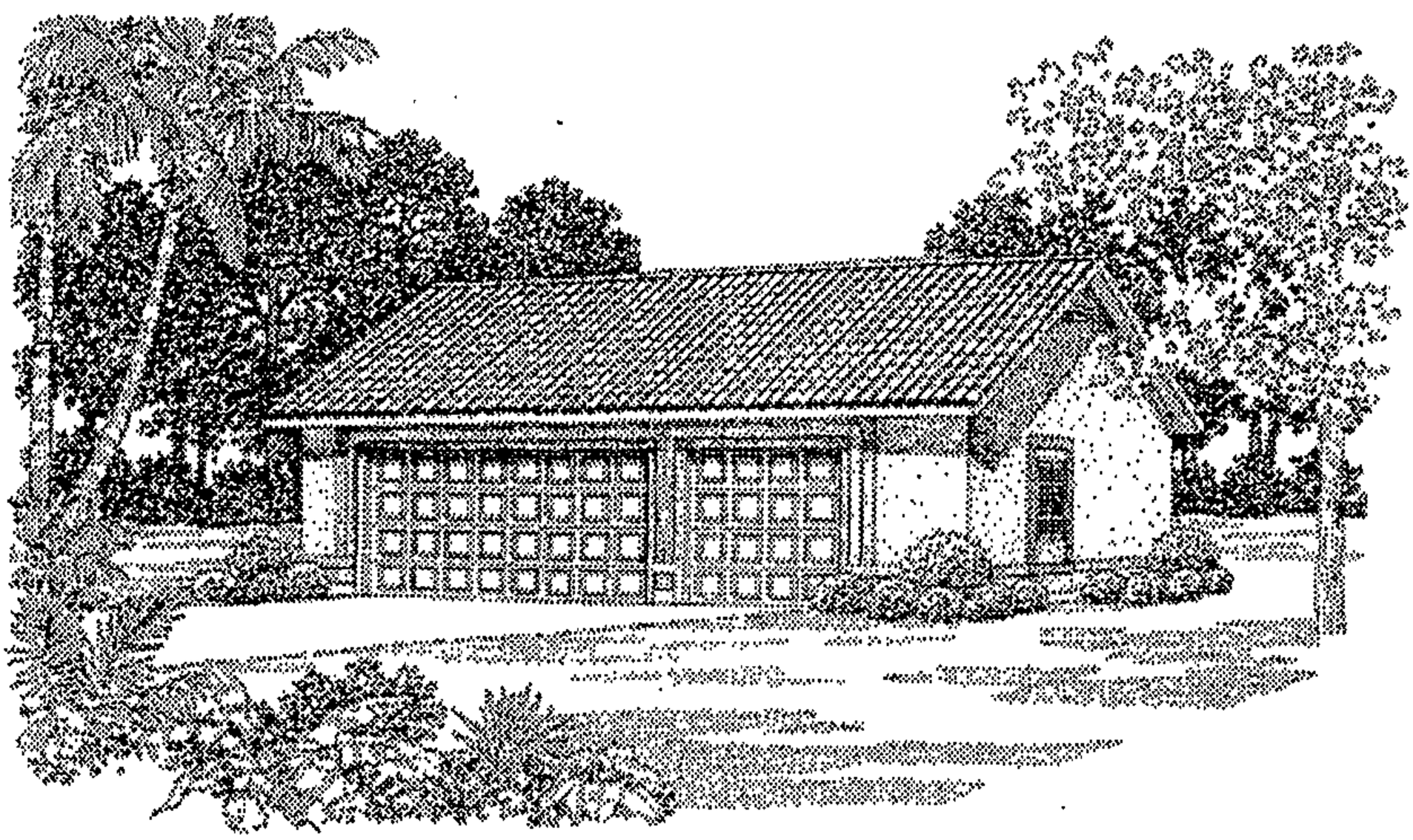
Mr. Allen Ashwell at 7840 Denton Avenue, Baltimore Md. 21219 is requesting a zoning variance for height exceeding 15 ft on an accessory building. Proposed height to be 19'.

I/We Max Gasker Date: 1/4/04

living at 7846 Denton Avenue, Baltimore Md. 21219

have no objections to Mr. Allen Ashwell's request.

There will be a hearing in Towson February 12th, 2004 at 11:00 a.m. for the public to express their opinions.



26 x 34 x 19

Zoning Variance Request

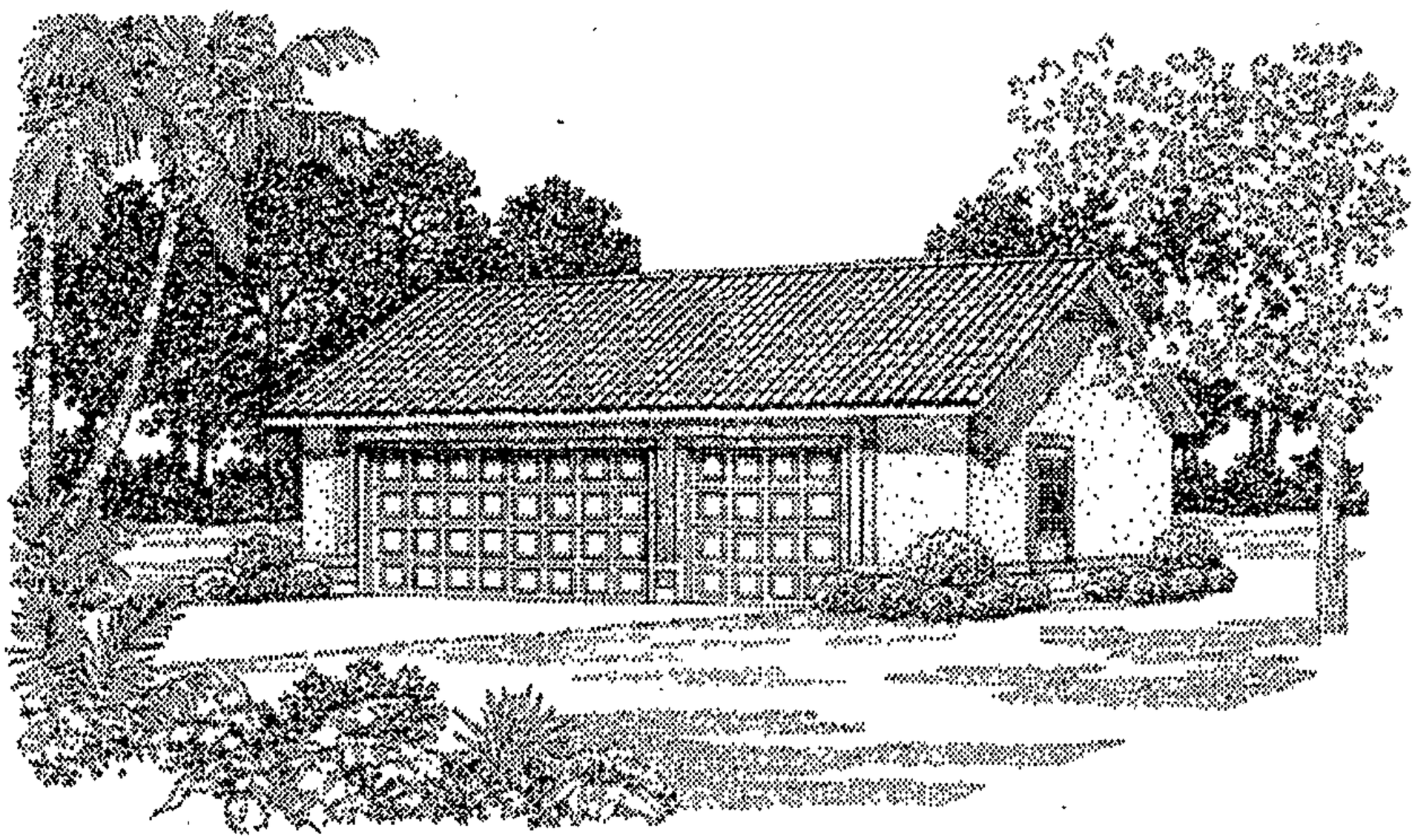
Mr. Allen Ashwell at 7840 Denton Avenue, Baltimore Md. 21219 is requesting a zoning variance for height exceeding 15 ft on an accessory building. Proposed height to be 19'.

I/We Ruth Schultz Date: 1/4/04

living at 7843 Denton Avenue, Baltimore Md. 21219

have no objections to Mr. Allen Ashwell's request.

There will be a hearing in Towson February 12th, 2004 at 11:00 a.m. for the public to express their opinions.



26 x 34 x 19

Zoning Variance Request

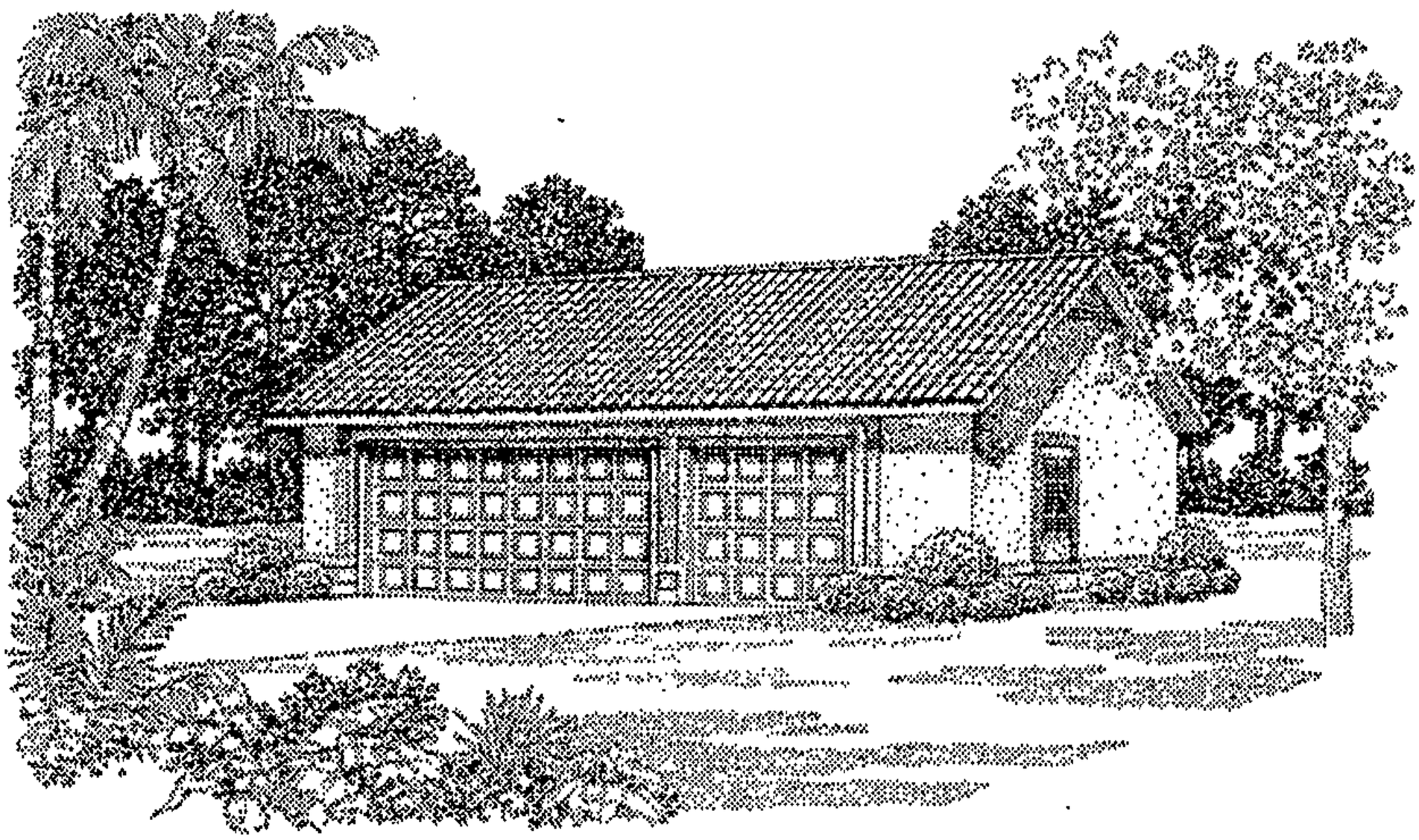
Mr. Allen Ashwell at 7840 Denton Avenue, Baltimore Md. 21219 is requesting a zoning variance for height exceeding 15 ft on an accessory building. Proposed height to be 19'.

I/We Richard Pollock Date: 01-04-04

living at 7842 Denton Avenue, Baltimore Md. 21219

have no objections to Mr. Allen Ashwell's request.

There will be a hearing in Towson February 12th, 2004 at 11:00 a.m. for the public to express their opinions.



26 x 34 x 19

Zoning Variance Request

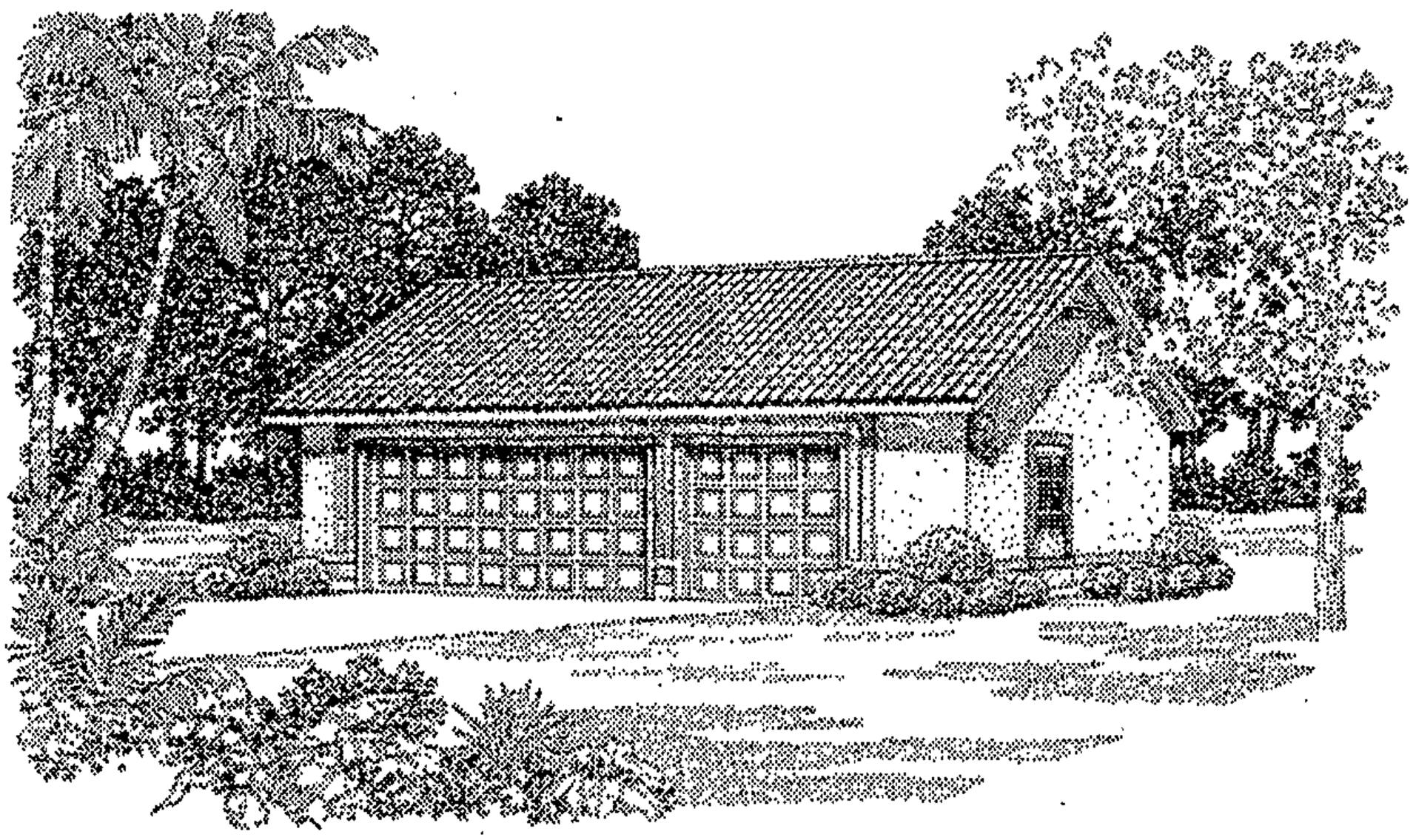
Mr. Allen Ashwell at 7840 Denton Avenue, Baltimore Md. 21219 is requesting a zoning variance for height exceeding 15 ft on an accessory building. Proposed height to be 19'.

I/We Richard J Roland Date: 1-04-04

living at 7841 Denton Avenue, Baltimore Md. 21219

have no objections to Mr. Allen Ashwell's request.

There will be a hearing in Towson February 12th, 2004 at 11:00 a.m. for the public to express their opinions.



26 x 34 x 19

Zoning Variance Request

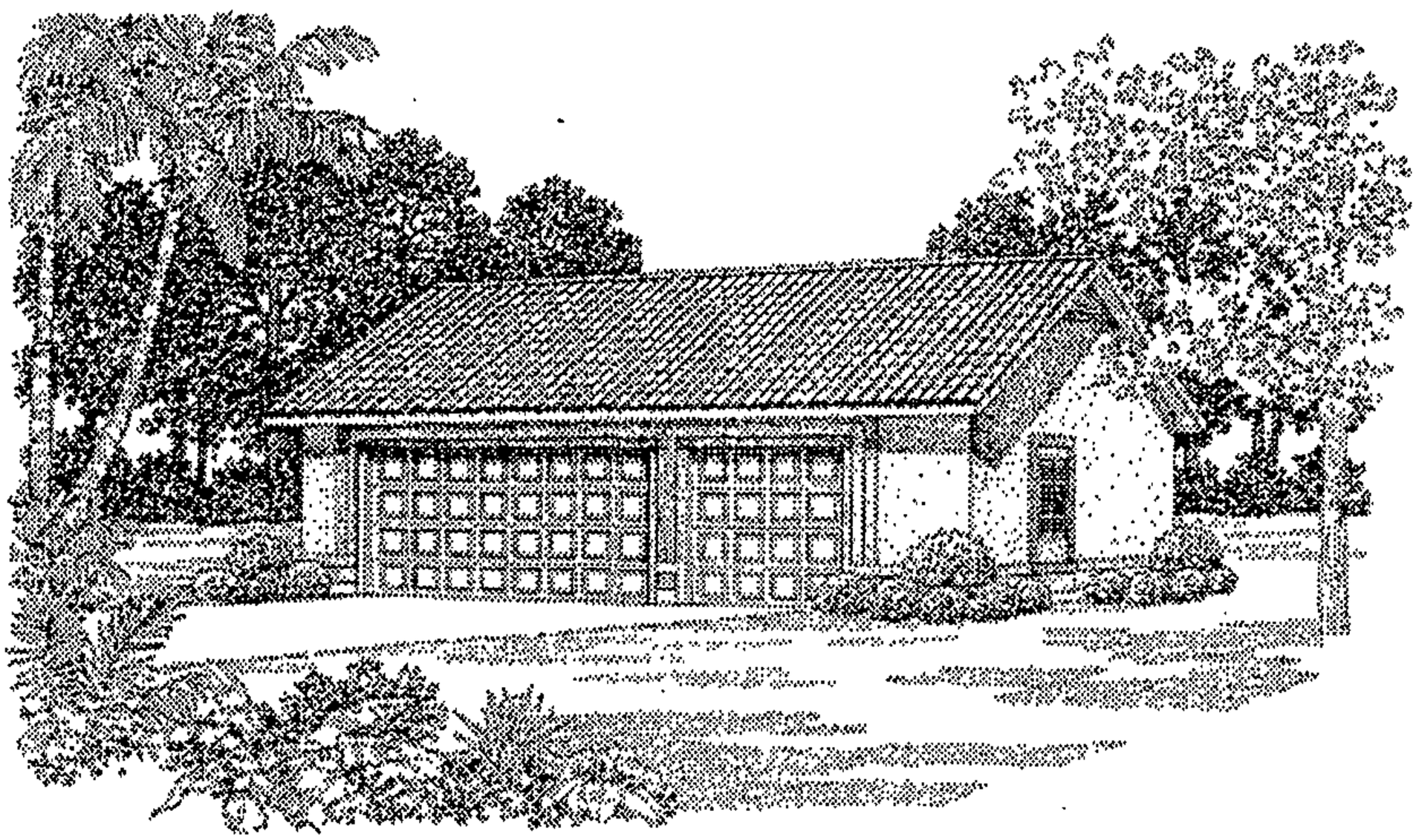
Mr. Allen Ashwell at 7840 Denton Avenue, Baltimore Md. 21219 is requesting a zoning variance for height exceeding 15 ft on an accessory building. Proposed height to be 19'.

I/We Charles H. Raymer Date: 1-10-04

living at 7838 Denton Avenue, Baltimore Md. 21219

have no objections to Mr. Allen Ashwell's request.

There will be a hearing in Towson February 12th, 2004 at 11:00 a.m. for the public to express their opinions.



26 x 34 x 19

Zoning Variance Request

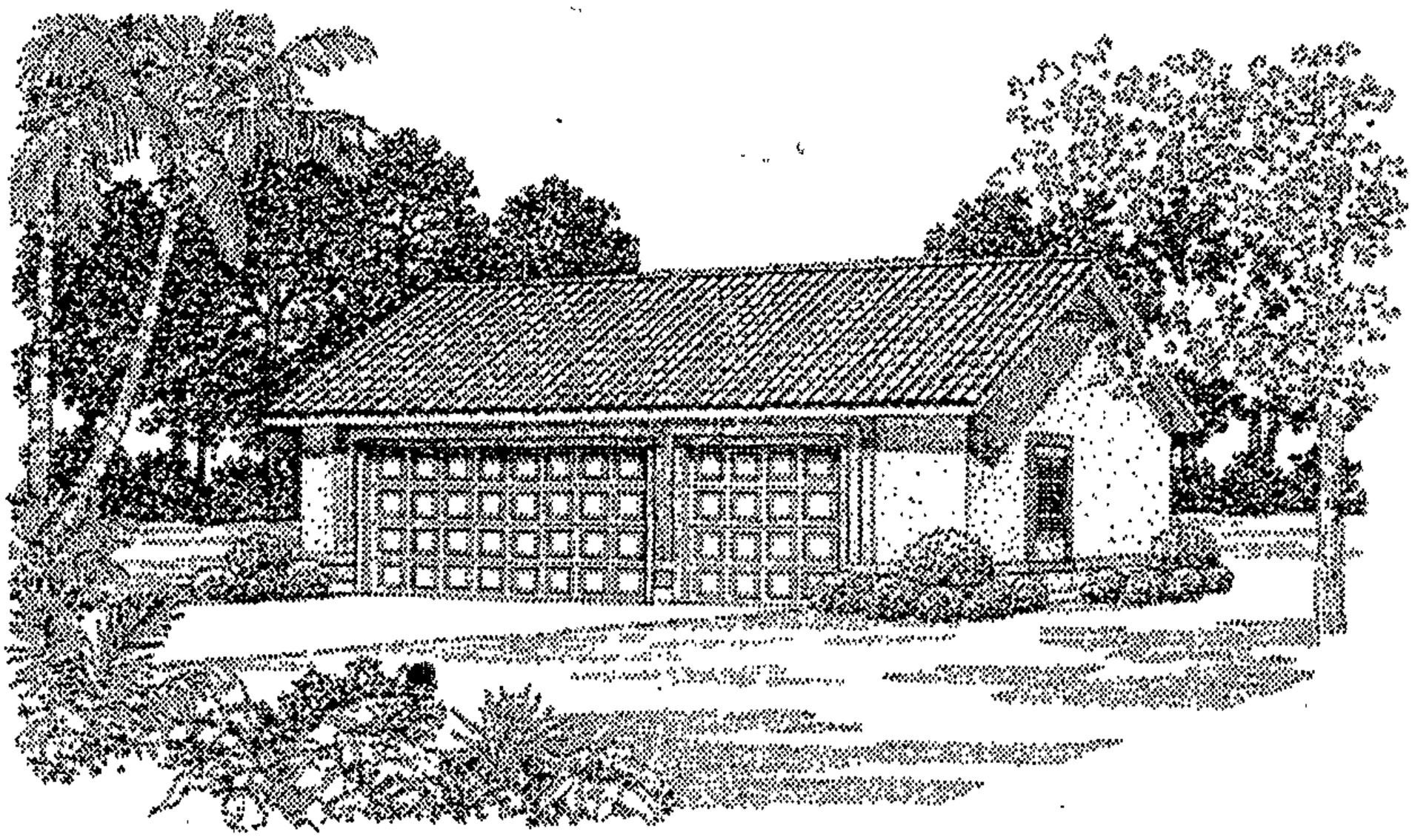
Mr. Allen Ashwell at [redacted]40 Denton Avenue, Baltimore Md. 21219 is requesting a zoning variance for height exceeding 15 ft on an accessory building. Proposed height to be 19'.

I/We Jim & Carole Lenhart Date: 1-7-04

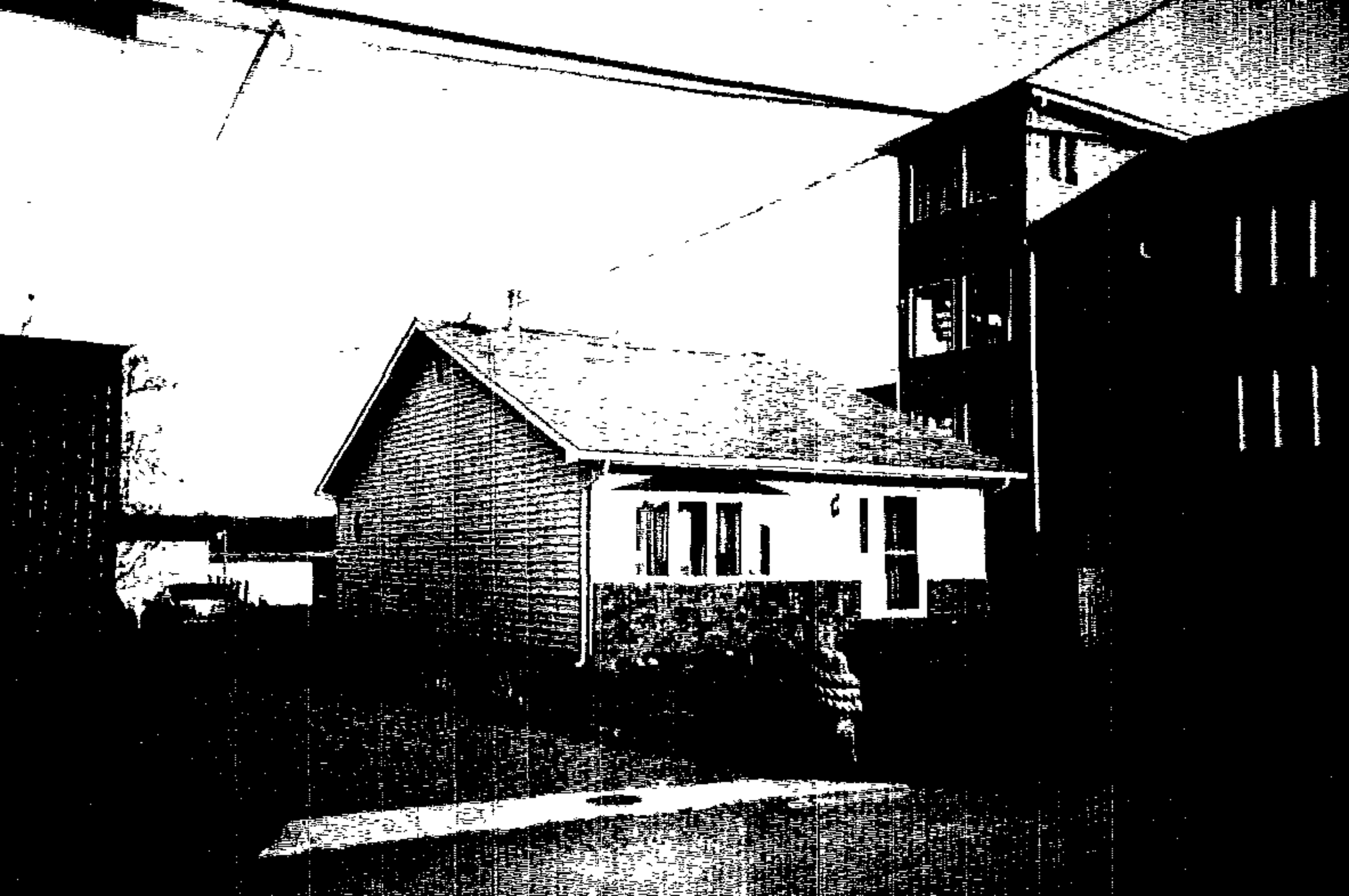
living at 7834 Denton Avenue, Baltimore Md. 21219

have no objections to Mr. Allen Ashwell's request.

There will be a hearing in Towson February 12th, 2004 at 11:00 a.m. for the public to express their opinions.



26 x 34 x 19



FRONT OF 7842

04-255-A

HOUSE TO BE DEMOLISED,

PROPOSED GARAGE SITE

04-255-A

GARAGE AT 7834 DENTON

04-255-A

FRONT OF SUBJECT PROPERTY/
AND 7838 FRONT

04-255-A

FRONT OF SUBJECT PROPERTY
AND 7838 FRONT

04-255-A

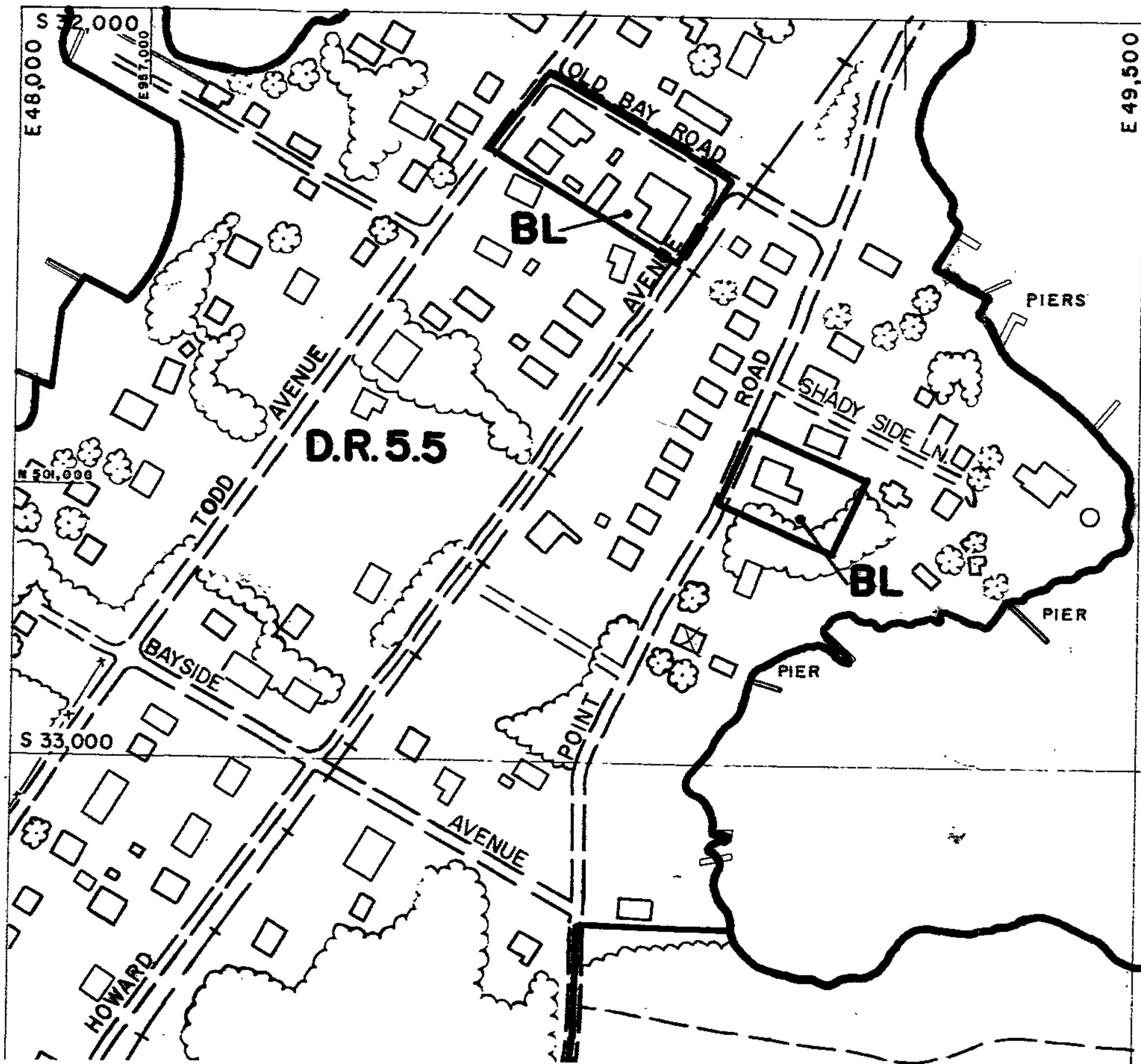
SUBJECT PROPERTY AND 7842
FRONTS

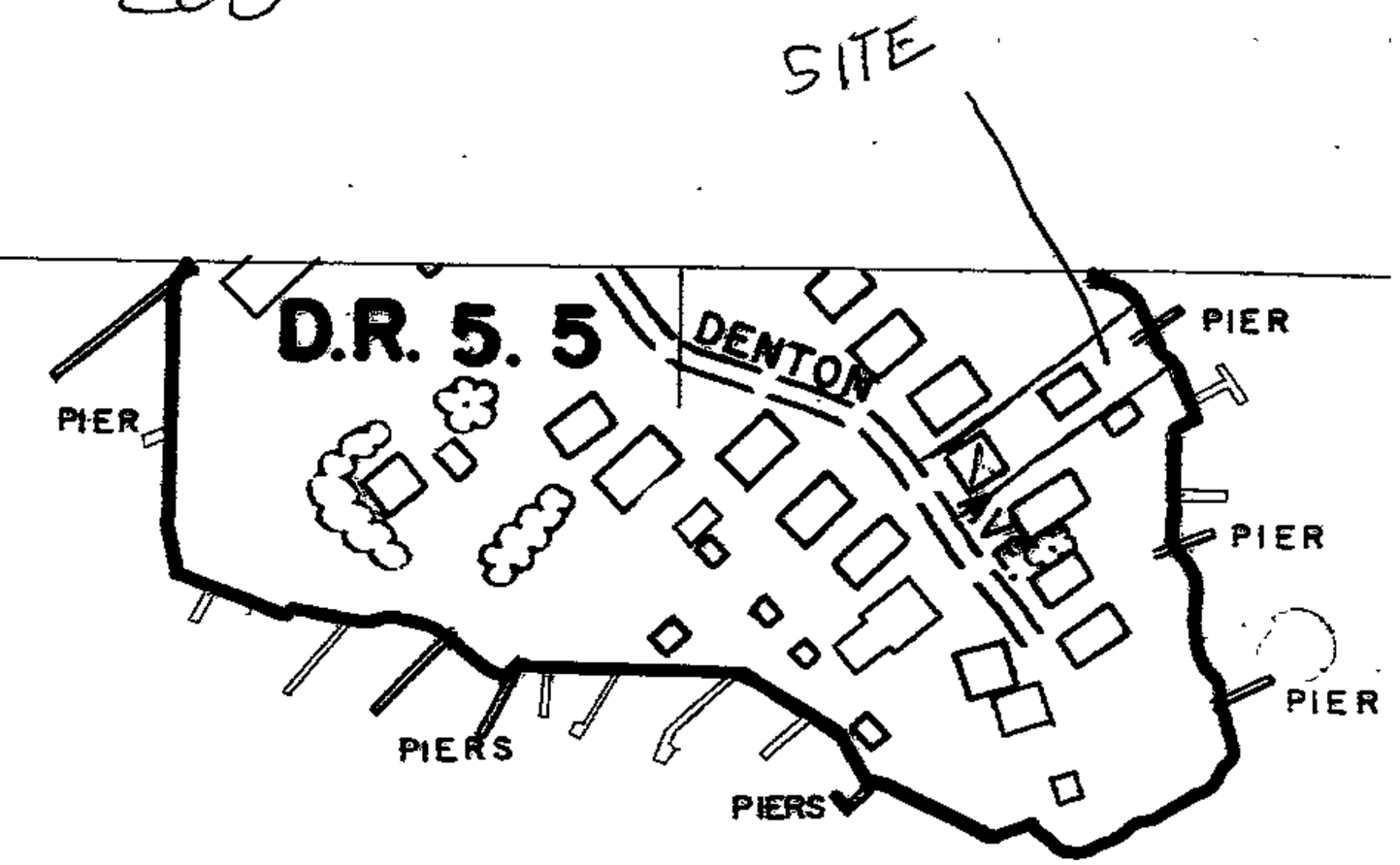
04-255-A

FRONT OF 7940
SUBJECT PROPERTY

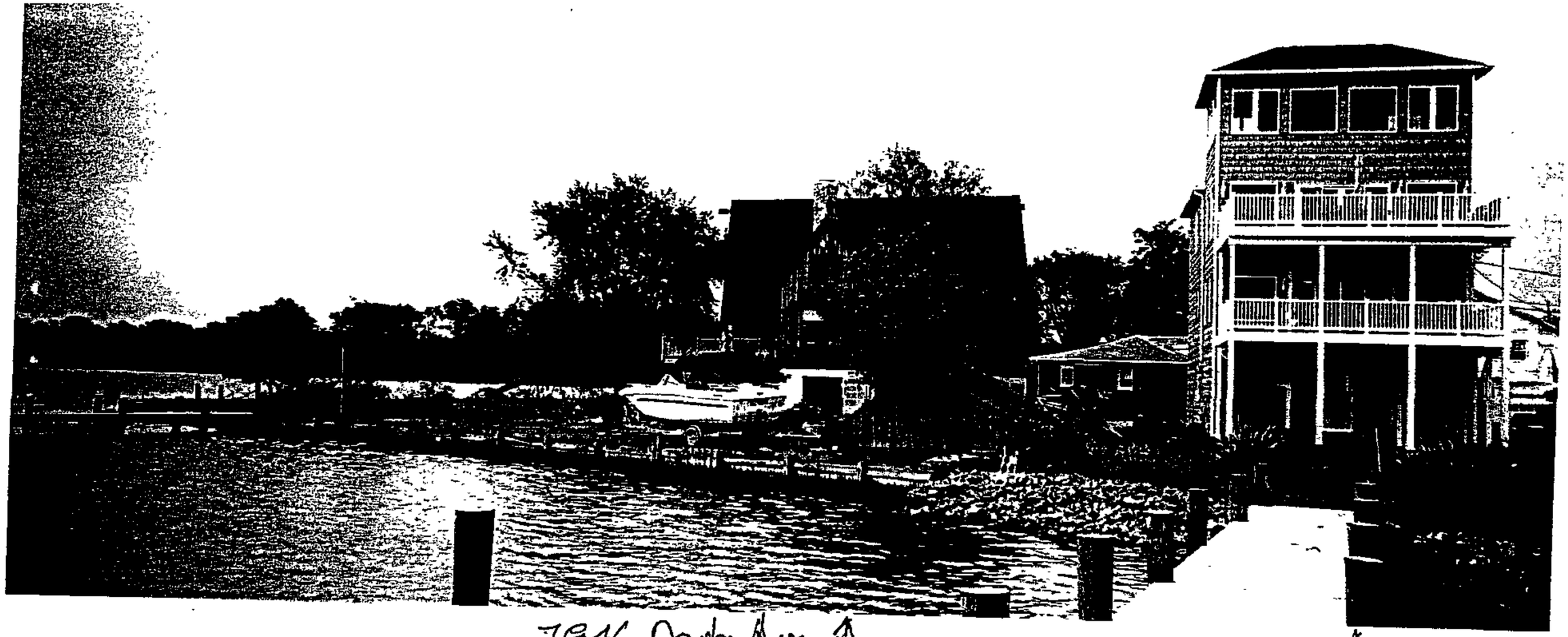
04-255-A

NE9I 1" = 200'





04-255-A



7846 Denton Ave

7844 Denton Ave

← Corner of destroyed garage at 7846

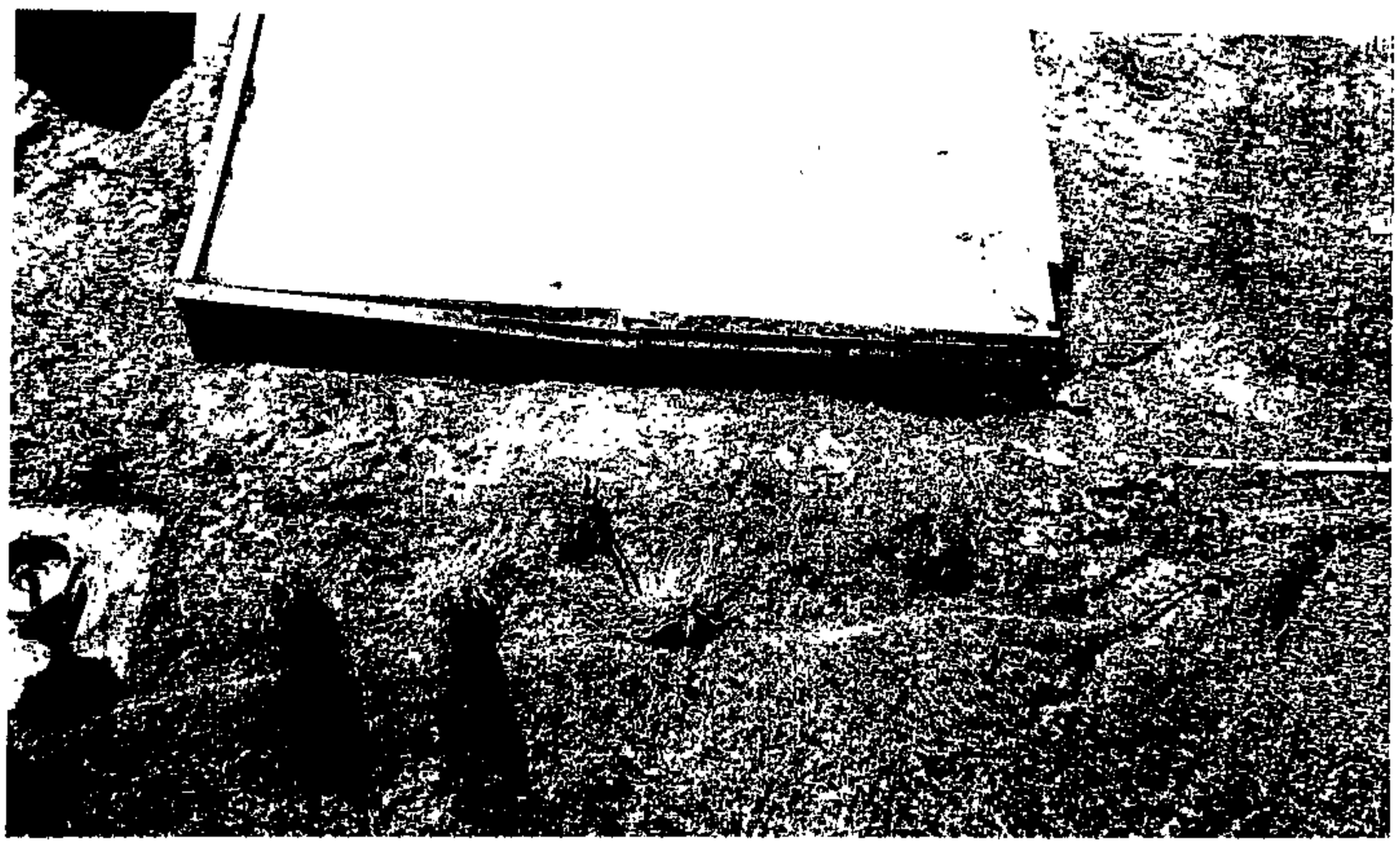
destroyed plantings at 7844 →

(W)

(4)

Storm surge on 7846 as seen from 7844

Garage at 7846 destroyed and on 7844



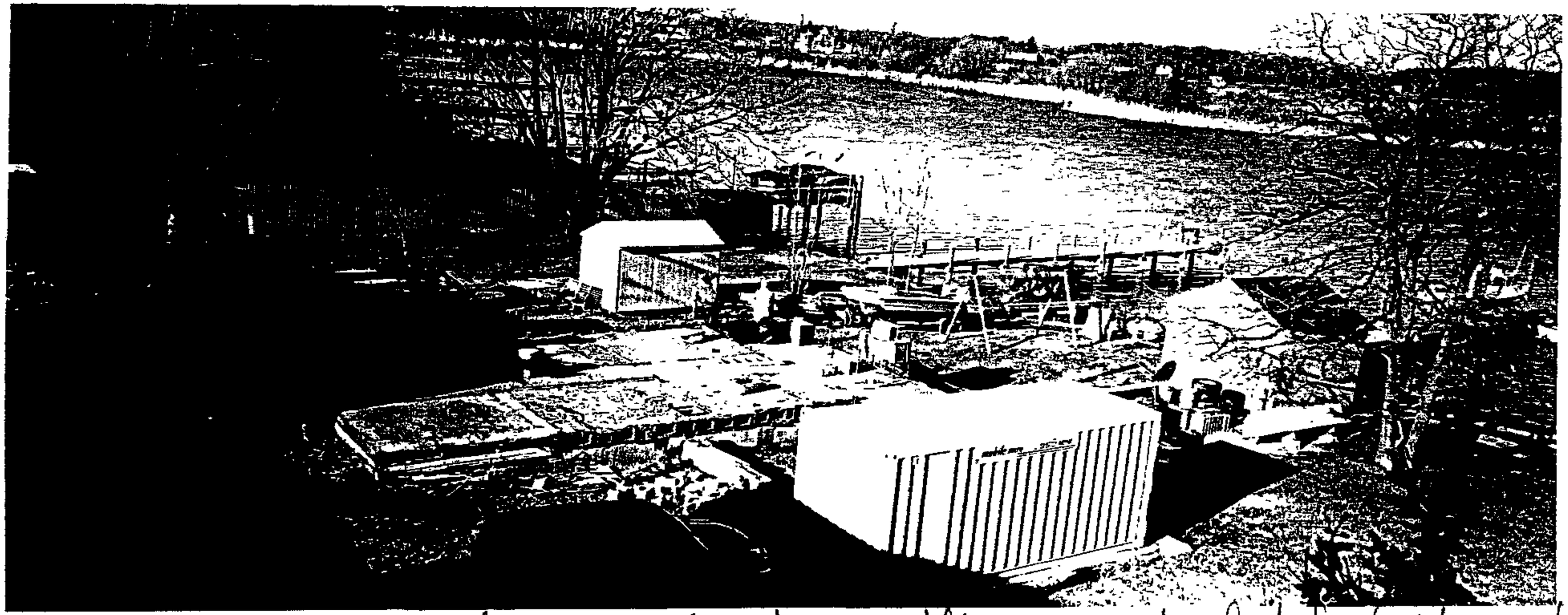
Reason for garage collapse was faulty construction

7840 Dayton Avenue →

7842 Dayton Avenue →

Storm surge destroyed garage at 7842 and damaged old house at 7840 and destroyed shed at 7840

← 7844 Dayton Avenue



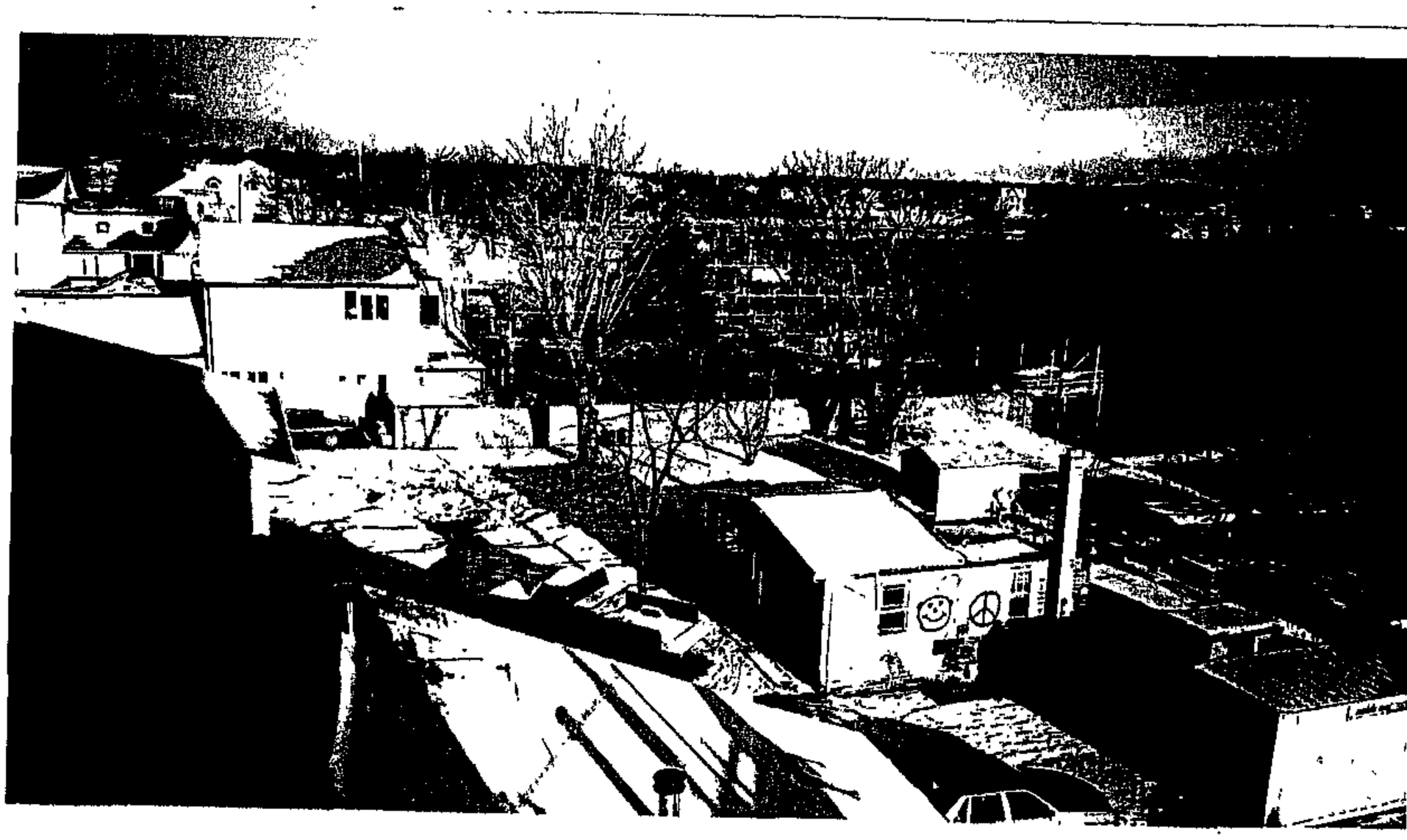
7840 viewed across 7842 showing old house removed and shed rebuilt on slab

View of 7840 taken across 7847 Denton

6

View of lower house at 7840 Denton Road

lower house →



partly removed older house at 7840

lower house →

← rebuilt shack, concrete slab at 7840

lick here for a plain text ADA compliant screen.

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

Go Back
View Map
New Search
Ground Rent

ccount Identifier: **District - 15 Account Number -** 1513200950

Owner Information

wner Name: ASHWELL ALLEN LEIGH

ailing Address: 7840 DENTON AVE
BALTIMORE MD 21219-2418

Use: RESIDENTIAL
Principal Residence: YES
Deed Reference: 1) / 7111/ 29
2)

Location & Structure Information

'emises Address
I40 DENTON AVE

Zoning
WATERFRONT

Legal Description
7840 DENTON AVE
OLEARY PLAT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
115	5	14					26	82	Plat Ref: 7/ 140

ıecial Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1937	1,700 SF	7,803.00 SF	34

Stories	Basement	Type	Exterior
2	NO	STANDARD UNIT	ASBESTOS SHINGLE

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	56,800	56,800		
Improvements:	56,750	64,720		
Total:	113,550	121,520	116,206	118,862
Preferential Land:	0	0	0	0

Transfer Information

ller:	MARSHALL EARL A MARSHALL DORIS L	Date:	01/27/2004	Price:	$0
pe:	NOT ARMS-LENGTH	Deed1:	/ 7111/ 29	Deed2:	
ller:	MARSHALL EARL A	Date:	03/12/1986	Price:	$0
pe:	NOT ARMS-LENGTH	Deed1:	/ 7111/ 29	Deed2:	
ller:		Date:		Price:	
pe:		Deed1:		Deed2:	

Exemption Information

·tial Exempt Assessments	Class	07/01/2003	07/01/2004
ınty	000	0	0
ıte	000	0	0
nicipal	000	0	0

: Exempt: NO
ımpt Class:

Special Tax Recapture:

* NONE *

West Reporter Image (PDF)

270 Md. 208, 310 A.2d 783

Court of Appeals of Maryland.
William H. McLEAN, Jr.
v.
Joseph L. SOLEY.
No. 23.
Nov. 7, 1973.

Landowner was granted variance from side yard window setback requirement, and protestant, an adjoining landowner, appealed to the Circuit Court, Baltimore County, H. Kemp MacDaniel, J., which affirmed the decision, of the board of appeals and protestant appealed. The Court of Appeals, Levine, J., held that where evidence indicated that strict compliance with zoning requirements would result in destruction of trees and that preservation of trees had contributed to full occupancy of previously completed apartment complex and would accrue benefits to the general public, there was a fairly debatable case as to whether compliance with zoning requirements would result in practical difficulty, and decision of board of appeals would not be disturbed.
Affirmed.

West Headnotes

[1] KeyCite Notes

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k492 Hardship, Loss, or Injury
414k493 k. In General. Most Cited Cases

Standard for granting of variance is whether strict compliance with zoning regulations would result in practical difficulty or unreasonable hardship.

[2] KeyCite Notes

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k492 Hardship, Loss, or Injury
414k495 k. What Constitutes in General. Most Cited Cases

Landowner seeking variance from zoning regulations has established "practical difficulty" when he shows that (1) compliance with strict letter of the restrictions would unreasonably prevent landowner from using property for permitted purpose or would render conformity with such constructions unnecessarily burdensome, (2) grant of the variance applied for would do substantial justice to applicant as well as other property owners and lesser relaxation than that applied for would not give substantial relief to owner and be more consistent with justice to other property owners, (3) relief can be granted in such fashion that the spirit of the ordinance will be observed in public safety and welfare secured.

[3] KeyCite Notes

414 Zoning and Planning

414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)4 Questions of Fact
414k709 k. Variances or Exceptions. Most Cited Cases

Evidence, given in suit brought to prevent granting of zoning variance, that construction of apartment buildings in strict compliance with side yard requirements would result in destruction of trees, that preservation of trees in the construction of the first section of the apartment complex had contributed to full occupancy, and benefits of retaining trees would accrue to general public, and that greater density would result from strict compliance, together with meager evidence to support contention that detriment would befall neighboring property owner, created a fairly debatable case on the issue whether strict compliance would result in practical difficulty, and decision of board of appeals granting variance would not be disturbed.

KeyCite Notes
[4]

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k492 Hardship, Loss, or Injury
414k497 k. Self-Created Hardship; Prior Knowledge. Most Cited Cases

Fact that landowner is charged with knowledge of zoning regulations when he purchases property is of less significance in cases where landowner seeks area variance than in cases where landowner seeks use variance.
***209 ****784** Richard F. Cadigan, Towson, for appellant.
W. Lee Harrison, Towson (Cooper C. Graham, Towson, on the brief), for appellee.

Argued before MURPHY, C. J., and BARNES, McWILLIAMS, SINGLEY, SMITH, DIGGES and LEVINE, JJ.

LEVINE, Judge.
This appeal is from an order of the Circuit Court for Baltimore County which affirmed a decision of the County Board of Appeals of Baltimore County (the Board) granting a variance from the side yard window setback requirement contained in the county zoning regulations. Appellee, Joseph L. Soley (Soley), had applied for the variance in connection with his proposed apartment house-office building project, and appellant, William H. McLean, Jr. (McLean), who lives in a house adjacent to the Soley property, was the only protestant.
The property in question is located on the north side of Algburth Road approximately 324 feet east of York Road. Immediately to its west is a development previously built by Soley known as Cardiff Hall East Apartments, which also combines apartment units and office space. The McLean property, including his residence, is situated immediately to the east and fronts on Algburth Road. The subject property, consisting of 2.43 acres, is rectangularly-shaped with the south end also fronting on Algburth Road. The rear end of the parcel backs up on an alley which separates it from a development of detached homes called 'Burkleigh Square.'
Soley proposes to erect two rectangularly-shaped buildings, each to contain 20 dwelling units, positioned upon the parcel in a north-south direction. In other words, the south end of one building would front on Algburth Road and the north end of the second would back up on the alley.
The adjacent parcel to the west, previously developed by Soley, consists of 4.44 acres and is improved by 60 units. Since the property is in the D.R. 16 classification, as is the ***210** McLean property, it permits 16 dwelling units to the acre; and by treating the two parcels as one unit for density purposes, as Soley was permitted to do, it could properly accommodate 110 units.
****785** Although Soley was required to seek relief from the strict requirements of the Baltimore County Zoning Regulations in several respects, only one is of concern in this appeal. Section 1B01.2C2a of the zoning regulations provides:
'a. Where any dwelling unit window within a subdivision faces a property line which is not a street line prior to the time of development but, otherwise, which forms any part of the tract boundary, the

window shall not be closer than 35 feet to the boundary.'
When Soley initially filed his petition for a variance, he asked for a reduction in the above-described requirement from 35 to 10 feet for the southernmost (front) building in relation to McLean's property line. His principal reason for this request was-and remains-the retention of 'the present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty.' In a word, therefore, this dispute is over trees. McLean in his testimony describes the issue poetically: 'It is a question of a tree or me; I think I am more important than the tree.'
After this petition was presented to the Zoning Commissioner of Baltimore County, he ordered that it be granted, but modified Soley's application by reducing the setback requirement from 35 feet to 20 feet instead of the requested 10 feet. That decision was affirmed by the Board which rejected McLean's contention that the variance 'would interfere with his light, air and privacy,' and determined that Soley 'would suffer a practical difficulty and unreasonable hardship if the requested variances were not granted.'
In addition to his own testimony, at the Board hearing Soley also presented two expert witnesses, an engineer and ***211** an arborist. Soley's testimony established that he is dedicated to preserving as many existing trees as he can in his building projects, including the one proposed here. This objective influenced the development of the first apartment complex, and it has been fully occupied during its entire six-year existence. He explained-and this was supported by the two experts-that if he chose to destroy the existing trees, he could build 110 units without requiring the contested variance.
Soley also described the meticulous care which he, the engineer and the arborist have taken on the first project in 'pinpointing' the existing trees and in designing the projects 'around' them. For example, the parking areas were built with 'notches' and 'cutouts' wherever trees were located, all at substantial expense to Soley. It was also established that the loss of a number of attractive trees running along the western boundary of the subject property would result if the buildings were constructed without the variance.
In short, Soley's case is that the preservation of these and other trees situated about the parcel depends upon the variance from the 35-foot requirement; and there was considerable evidence to show the natural beauty of these trees and their importance to the ecology. On the other hand, the loss of existing trees, if the variance is granted, would be relatively minor. Thus, it is claimed, denial of the variance would result in a 'practical difficulty or unreasonable hardship,' and would have a detrimental effect on the welfare of the community.
It was also established that even with the variance, since the McLean house is set back 28 feet from its property line, it would be 48 feet from the proposed apartment building. The engineer testified that this exceeds the county requirement for a 40-foot 'window-to-window' relationship.
The evidence summarized above has not been seriously challenged by McLean. His complaint is that the reduction of 15 feet 'will contribute to a greater invasion of my (yard) privacy, and I think that despite anything to the contrary, the summer breezes are going to be snuffed off, and, ****786** in a way, impair the enjoyment of the rear property.'
***212** As we have indicated, the Board decision was upheld by the circuit court which based its decision upon the test enunciated in Loyola Loan Ass'n v. Buschman, 227 Md. 243, 176 A.2d 355 (1961); and held that the evidence of whether strict compliance with the regulations would result in practical difficulty or unreasonable hardship was fairly debatable. Hence, the Board had not been arbitrary, unreasonable or capricious in reaching its decision. We agree and shall affirm that judgment.
Succinctly stated, McLean's argument in this Court is that whatever the degree of practical difficulty or hardship required for a variance, neither is shown here; and that the request is 'merely for the convenience of the applicant,' Carney v. City of Baltimore, 201 Md. 130, 137, 93 A.2d 74, 76 (1952). In our view, McLean reads the requirements for a variance too severely.
We think the facts in Carney, supra, upon which McLean places his principal reliance, are distinguishable from those at bar. There, a homeowner sought a variance from a sideyard requirement for the purpose of building a bedroom and bath on the ground floor of his house due to his wife's physical condition. The adjacent property owner objected because the variance would have deprived him of light in his dining room. This Court held the Board of Appeals decision denying the requested variance. There, we said:
'. . . The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually destroy the usefulness

of the ordinance. (citation omitted)
'The expression 'practical difficulties or unnecessary hardships' means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not necessary to ***213** carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant. Exceptions on the ground of 'practical difficulties or unnecessary hardships' should not be made except where the burden of the general rule upon the individual property would not, because of its unique situation and the singular circumstances, serve the essential legislative policy, and so would constitute an entirely unnecessary and unwarranted invasion of the basic right of private property. (citations omitted)' 201 Md. at 137, 93 A.2d at 76.
We think the cases are distinguishable in that there the Board of Appeals determined that the variance was based on convenience rather than practical difficulty; and, furthermore, no benefit to any other persons was established.

[1] In our view, this case is controlled by Loyola Loan Ass'n v. Buschman, supra. There, the applicant sought a variance from the height limitations for a proposed office building. Two additional floors were required because the side setback and parking space requirements made it necessary to build the structure in that manner. The standard for granting a variance then, as it is now, was whether strict compliance with the regulations would result in 'practical difficulty or unreasonable hardship'; and that it should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare.
There we noted that the requirements 'practical difficulty or unreasonable hardship' are in the disjunctive. Thus we said:
'The terms of s 307 are applicable only to variances as to height and area. ****787** We see no occasion to construe that section otherwise than as it reads-in the disjunctive-'practical difficulty or ***214** unreasonable hardship,' and we see no reason to construe 'practical difficulty' here as the equivalent of a taking in the constitutional sense. In our estimation, the Board had at least sufficient evidence before it to make the question of practical difficulty a debatable one; and under the authorities above referred to, its order should, therefore, have been affirmed. . . . This, we think, presents at least a case of 'practical difficulty' within the meaning of s 307 of the Regulations. To ignore it and to restrict Loyola to a building of uneconomic size where, as here, the Board's findings that there is no injury to the public health, safety and general welfare and that the proposed variance is in strict harmony with the spirit and intent of the Regulations should be upheld, would, we think, place too narrow a construction upon s 307, and would itself impose an unreasonable hardship on the applicant. . . .' 227 Md. at 250-251, 176 A.2d at 359.

[2] [3] We think it clear that the evidence in this case was fairly debatable on the issue of 'practical difficulty.' In 2 Rathkopf, The Law of Zoning and Planning, (3d ed. 1972) 45-28, 29, the following criteria for determining whether 'practical difficulty' has been established are set forth:
'1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
'2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
'3) Whether relief can be granted in such fashion ***215** that the spirit of the ordinance will be observed and public safety and welfare secured.'
Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy for its entire six years; that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance; and that there was only meager evidence to support the contention that a detriment would befall the neighboring property owner.

[4] It is also contended by McLean that Soley is precluded from asserting 'practical difficulty'

because he was charged with knowledge of the sideyard requirements when he purchased this property. We see no merit in this argument. We noted in Zengerle v. Bd. of Co. Comm'rs, 262 Md. 1, 21, 276 A.2d 646 (1971), citing Loyola, supra, that this 'rule' is more strictly applied in 'use variance' cases than in cases of 'area variances,' such as the one at bar. In other words, it has less significance where we are concerned with 'practical difficulty' than it does in the event of 'hardship' which usually characterizes the 'use variance' cases.

Concededly, this is a close case, but it is nevertheless sufficient to support the findings of the Board. Under similar circumstances, we said in Sembly v. County Bd. of Appeals, 269 Md. 177, 304 A.2d 814 (1973), quoting with approval from Eger v. Stone, 253 Md. 533, 542, 253 A.2d 372 (1969): "This rule (if the issue is 'fairly debatable,' we will not substitute our judgment ****788** for that of the administrative body) will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence. In the instant case, but for the rule, we might well have reached the conclusion (that the Board of Appeals erred), but in enforcing ***216** the rule we are obliged to say that reasonable persons could have reached a different conclusion on the evidence so that the issues were fairly debatable, and hence, the decision of the Board must be sustained." 269 Md. at 184, 304 A.2d at 818.

This statement is applicable here.

In sum, we think the circuit court applied the correct test and therefore reached the only permissible result in this case.

Judgment affirmed; appellant to pay costs.

Md. 1973.

McLean v. Soley,

270 Md. 208, 310 A.2d 783

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West Reporter Image (PDF)

Copr. (C) 2004 West. No Claim to Orig. U.S. Govt. Works.

Court of Special Appeals of Maryland.
John C. NORTH, II, et al.
v.
ST. MARY'S COUNTY et al.
No. 982, Sept. Term, 1993.
March 2, 1994.
Reconsideration Denied April 26, 1994.

Property owner sought variance to allow him to construct gazebo that was prohibited under county critical area program for wetlands and tidal areas. The county board of appeals granted variance, and chairman of critical area commission appealed. The Circuit Court for St. Mary's County, C. Clark Raley, J., affirmed, and chairman appealed. The Court of Special Appeals, Cathell, J., held that: (1) chairman had standing to appeal, and right to appeal was unrestricted, and (2) evidence did not satisfy either "unique" aspect of variance provision or that unwarranted hardship would result if variance was denied.
Reversed.

West Headnotes

[1] KeyCite Notes

414 Zoning and Planning
414X Judicial Review or Relief
414X(A) In General
414k571 k. Right of Review. Most Cited Cases

Chairman of critical area commission had standing to appeal issuance of variance by county board of appeals, provided that authority to do so was not withdrawn by commissioners, and such right to appeal was unrestricted and encompassed nonenvironmental features of county's critical area program for wetlands and tidal areas. Code, Natural Resources, § 8-1812(a).

[2] KeyCite Notes

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k481 k. Nature and Necessity in General. Most Cited Cases

"Variance," if granted, permits use that is prohibited and presumed to be in conflict with ordinance.

[3] KeyCite Notes

414 Zoning and Planning
414IX Variances or Exceptions
414IX(B) Proceedings and Determination
414k536 k. Presumptions and Burden of Proof. Most Cited Cases

Applicant for variance bears burden of overcoming presumption that proposed use is unsuitable; to do so applicant must fully satisfy dictates of statute authorizing variance.

[4] KeyCite Notes

414 Zoning and Planning

Pure "area variance," as opposed to use variance, is permitted if strict compliance with regulations would result in practical difficulties or unreasonable hardship.

[5] KeyCite Notes

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k489 k. Grounds for Grant or Denial in General. Most Cited Cases

Under provision of zoning code dealing with variances for uses otherwise not authorized under county's critical area program for tidal and wetland areas, applicant for variance had to show unwarranted hardship, special features of site, special conditions and circumstances, and deprivation of rights enjoyed by others in neighborhood if application was not granted; additionally, applicant had to show that, if variance was granted, he would not receive special privilege, that variance request did not result from action of landowner, that request did not result from any condition relating to permitted or nonconforming buildings or uses on property, and that variance, if granted, would not have adverse environmental impact.

[6] KeyCite Notes

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k492 Hardship, Loss, or Injury
414k496 k. Unique or Peculiar Hardship. Most Cited Cases

In zoning context, "unique" aspect of variance requirement does not refer to extent of improvements upon property, or upon neighboring property; rather, subject property must have inherent characteristic not shared by other properties in area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or nonaccess to navigable waters, practical restrictions imposed by abutting properties, or other similar restrictions or, in respect to structures, such characteristics as unusual architectural aspects and bearing or party walls.

[7] KeyCite Notes

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k502 Particular Structures or Uses
414k503 k. Architectural or Structural Designs in General. Most Cited Cases

Evidence did not satisfy "unique" aspect of variance provision so as to justify variance to allow construction of gazebo that was otherwise prohibited under county's critical area program for tidal areas and wetlands; fact that neighboring properties had structures according view sought by applicant did not establish uniqueness as to applicant's property.

[8] KeyCite Notes

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k502 Particular Structures or Uses

Evidence did not establish that unwarranted hardship would result if property owner was not granted variance to construct gazebo that was otherwise prohibited under county's critical area program for wetlands and tidal areas; extensive reasonable use of property was already being made inasmuch as owner had already developed ranch home with extensive decking, improved walkway and pier, from which owner was afforded view he purportedly sought by constructing gazebo.

[9] KeyCite Notes

268 Municipal Corporations
268IV *Proceedings of Council or Other Governing Body*
268IV(B) Ordinances and By-Laws in General
268k120 k. Construction and Operation. Most Cited Cases

Administrative agencies are bound to apply ordinances they administer.
***1176 *504** George E.H. Gay, Asst. Atty. Gen., argued (J. Joseph Curran, Jr., Atty. Gen. and Thomas A. Deming, Asst. Atty. Gen., on the brief), Annapolis, for appellants.
Joseph R. Densford, Leonardtown, argued for appellee, St. Mary's County.
John T. Enoch, argued (John Amato, IV and Goodman, Meagher & Enoch, on the brief), Baltimore, for appellee, John T. Enoch.

Argued before BLOOM, CATHELL and HARRELL, JJ.

CATHELL, Judge.
Appellant, John C. North, II, Chairman of the Chesapeake Bay Critical Area Commission (Chairman), *appeals from a decision of the Circuit Court for St. Mary's County affirming a decision of the St.* Mary's County Board of Appeals, granting a variance from the provisions of the St. Mary's County Critical Area Program which prohibits the use requested, except as a variance, in the critical area buffer zone. Mr. ***505** John T. Enoch and the Board of County Commissioners of St. Mary's County are the appellees.
Appellant poses two questions:
1. Was there substantial evidence before the Board to support its decision to grant the variance?
2. Is the Board's decision supported by lawfully sufficient findings of fact and conclusions of law?
In addressing this case, it is important to recognize what it is and what it is not. Though appellant extensively refers to the public policy behind Maryland's Chesapeake Bay Critical Area legislation, this *is not* a case involving any interpretation or review of that legislation. The time for review and challenges to that legislation were: (1) when it was adopted, (2) subsequently when St. Mary's County adopted its program pursuant to the requirements of the state legislation, or (3) by a direct constitutional challenge to the state and county legislation when the case was heard below. No such challenge was made below in the case at bar. This case *is,* thus, a simple zoning variance case.

Facts

Mr. Enoch, appellee, owns a 4.3 acre parcel of land adjacent to Cuckold Creek in St. Mary's County. The parcel is within the County's critical area, *i.e.,* within 1,000 feet beyond the landward boundaries of wetlands and the heads of tides. It is partially within the County's critical area buffer.
Part of the parcel is already developed with a ranch home and outbuildings. The structure at issue here is a proposed gazebo ***1177** to be built within twenty-five feet [FN1] from the mean high water mark of the creek. Mr. Enoch's purpose in building the gazebo, it is alleged, is to have a place to contemplate, read and enjoy the view.

FN1. The record at one point refers to its location as being thirty-five feet from the creek. The original application called for the gazebo to be built within fifteen feet of the creek.

***506** The existing ranch house backs up to the waters of the creek. Attached to the rear of the house is a network of exterior decking extending twenty to thirty feet out over the steep shore,

which extends twenty feet or more to the waters of the creek. The water view from the deck is unobstructed. A walkway leads from the decks down the creek bank to a pier that extends out into the creek.

The gazebo is not a permitted use under the County's program. Mr. Enoch, therefore, applied for a variance from the provisions of the code to enable him to construct the gazebo. The County's Department of Planning and Zoning informed the Board of Appeals that Mr. Enoch did not meet the requirements entitling him to a variance because there were no special circumstances existing which established that Mr. Enoch had an unwarranted hardship.

Mr. Enoch admitted at the hearing before the Board of Appeals that:

I think that if we're not permitted to use this point for a scenic view, that it would be a deprivation of the rights of the property owner, *maybe not a great deprivation*....

....

... The whole purpose ... is ... to be able to walk out ... and observe that view.... I have a little bench ..., a couple chairs and a table where I sit out there [the point] and read.... [T]his gazebo ... would permit a better access to this. [Emphasis added.]

Standing

[1] Before addressing the questions raised by appellant, it is necessary to resolve an issue raised by appellee Enoch. He asserts that:

The Commission has no standing to assert non-environmental features of the St. Mary's County program, such as "unwarranted hardship."

He argues:

Enoch respectfully asserts that the standing conferred upon the Chairman under § 8-1812 of the Natural Resources ***507** Article must be interpreted as limited to the State's interest in overseeing the resource protection program for the Bay and its tributaries; i.e. the State only has standing on variance approval issues to the extent they are based on adverse impact to water quality, wildlife or natural habitat of the adjacent shoreline. The Commission has no more standing to argue "unwarranted hardship," in the face of an undisputed finding that this gazebo will have no adverse environmental impact, than it would to argue that the variance must be denied because Enoch did not pay the County's application fee.

....

In this case the Commission concedes that if the Planting Agreement is implemented at the time of the gazebo construction, the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat.... Wholly apart from environmental concerns, the State now sees itself as the dictator of what is a luxury and what is a hardship with respect to the use of Enoch's property. Gazebos, says the Commission, are luxuries that the State can deny property owners even in the absence of adverse environmental consequences. Enoch disagrees. The Court should dismiss the appeal as it contains no justifiable issue that the Commission, or its Chairman, can lawfully assert.

We found it unnecessary to address a similar issue in *The Wharf at Handy's Point, Inc. v. Department of Natural Resources*, 92 Md.App. 659, 610 A.2d 314 (1992), where we based our decision on a failure to exhaust administrative remedies. It is now necessary for this issue of standing to be resolved.

As we perceive the pertinent statutory provisions, the only limit on the Chairman's ****1178** right, or standing, to appeal the issuance of variances is that provision found in Md.Nat.Res.Code Ann. § 8-1812(a) (1990 Repl.Vol.) where it provides that the Chairman must withdraw [the appeal] "if, within 35 days ... at least 13 members [of the Commission] indicate disapproval...." ***508** There is no evidence that the Chairman's authority was so withdrawn.

The statutes addressing his right to appeal state:

After the Commission has approved ... a program, the chairman ... has standing and the right and authority to ... appeal ... concerning a project approval in the Chesapeake Bay Critical Area.

Id.

The chairman may appeal an action or decision even if the chairman was not a party to or *is not specifically aggrieved by the action or decision.*

Id. at section 8-1812(c) (emphasis added).

Additionally, COMAR 27.01.11C, the State regulations authorizing local programs to contain variance provisions, states:

Appeals ... shall be taken in accordance with all applicable laws and procedures of each local

jurisdiction for variances.... [T]he Chairman may appeal an action or decision even if the Chairman was not a party to *or is not specifically aggrieved by the action or decision.* [Emphasis added].
It is clear to us that the Chairman's (thus, the Commission's) right to appeal a decision of the Board is unrestricted. We, therefore, reject Enoch's claim that the Commission has no standing to assert non-environmental features of the St. Mary's County's ordinance enacted pursuant to the dictates of the Natural Resources Article.
We are concerned that the Commission initially offered no evidence, nor did anyone, of any environmental damage that might occur if this gazebo were to be built. [FN2] As we perceive the general thrust of the state and local legislation, the Commission was included as an unlimited litigant in order to permit it to fully guard the environmental interests it was ***509** created to protect. The local ordinance, and the state legislation, authorize the Chairman to be a full litigant. We are thus constrained to permit the Chairman to litigate all issues. As we noted in *Green v. Bair*, 77 Md.App. 144, 152, 549 A.2d 762 (1988), *cert. denied,* 315 Md. 307, 554 A.2d 393 (1989), quoting the trial court:

FN2. Had the applicant not asked for a continuance of the first hearing before the Board, there would have been nothing in the record from the Commission. The letter from the Commission was received between the first and second hearing. It did contain environmental objections.

It is not for the court to decide the wisdom, *vel non,* of the zoning code, as adopted by the Mayor and common council [of St. Mary's County], but rather to enforce it as it is written.

1.

Was there substantial evidence before the Board to support its decision to grant a variance?

The Law

We said in *Enviro-Gro Technologies v. Bockelmann*, 88 Md.App. 323, 335, 594 A.2d 1190, *cert. denied,* 325 Md. 94, 599 A.2d 447 (1991):
We, in discussing the law relative to rezoning, have stated that the courts may not substitute their judgment for that of the legislative agency, *if the issue is rendered fairly debatable.* The basic reason for the "fairly debatable" rule is that zoning matters are, first of all, legislative functions and, absent arbitrary and capricious actions, are presumptively correct if based upon substantial evidence; even if substantial evidence to the contrary exists. [Emphasis added, citations omitted.]
See also *Luxmanor Citizen's Assoc., Inc. v. Burkart*, 266 Md. 631, 647, 296 A.2d 403 (1972); *Chesapeake Ranch Club, Inc. v. Fulcher*, 48 Md.App. 223, 227-28, 426 A.2d 428 (1981). We also stated in *Neuman v. Mayor & City Council*, 23 Md.App. 13, 14, 325 A.2d 146 (1974), that "where the action of the Board is not supported by substantial evidence the board's decision cannot be said to be 'fairly debatable.' Under those circumstances the board's finding falls into the category of being arbitrary, capricious and a denial of due process of law." *See also* ****1179** ***510** *Red Roof Inns, Inc. v. People's Counsel*, 96 Md.App. 219, 224, 624 A.2d 1281 (1993); *County Comm'rs v. Zent*, 86 Md.App. 745, 752-53, 587 A.2d 1205 (1991).

Discussion

[2] [3] We first point out that in zoning law a variance, if granted (unlike a special exception), [FN3] permits a use which is prohibited and presumed to be in conflict with the ordinance. An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable. That is done, if at all, by satisfying fully the dictates of the statute authorizing the variance.

FN3. Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats what it calls special exceptions as if they were variances. We know of no other zoning code that fails to make the distinction between special exceptions and variances. The large number of cases arising out of Baltimore City have led to numerous cases where the distinction between the two entities has become somewhat muddled in the case law. This, we would suggest, results not from appellate

rejection of the distinction but from the unique provisions of the Baltimore City statute. For this reason, it is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

As the Court of Appeals noted in *Dampman v. Mayor and City Council*, 231 Md. 280, 285, 189 A.2d 631 (1963):

Ordinarily there is a distinction between a variance and an exception.... An exception is *usually granted where a specific use is permitted by the legislative body in a given area* if the zoning plan is conformed to and there is no adverse effect on the neighborhood. There is usually no necessity for showing undue hardship. On the other hand, variances are usually given only on the showing of undue hardship. In Baltimore City there appears to be no distinction between the two terms.... [Citations omitted.]

See also *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 288-89, 96 A.2d 261 (1953).

Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md.App. 28, 322 A.2d 220 (1974), also involved a set back restriction, *i.e.*, the distance between buildings. In *Anderson*, there was testimony that the property in question was unique because it was L-shaped, with the southern portion being considerably narrower than the north portion. It was contended that "there is no other way for us to locate that building." *Id.* at 33, 322 A.2d 220. The applicant noted that ***511** unless the variance was granted "our people wouldn't even have any view of the water." *Id.* We noted that the location of the building for which the variance was sought "was chosen to maximize the residents' view of the water...." *Id.*
Experts testifying for the applicant noted that the property had " 'intriguing natural beauty' with distinct contours and vegetation which should not be disturbed.... [T]he buildings are located ... to enhance the view from the bay toward the project." *Id.* at 34, 322 A.2d 220. The circuit court, in affirming the grant of the variances, noted that the Board had taken the position that special topographic features existed, that existing buildings on the property and the property's relation to the Chesapeake Bay entitled the applicants to consideration.

[4] We discussed Chesapeake Beach's variance provisions noting that, unlike pure *area* (as opposed to use) variances, which are permitted if strict compliance with the regulations would result in practical difficulties *or* unreasonable hardship, [FN4] Chesapeake Beach's ordinance provided that area variances could only be granted if strict application of the regulations "would result in practical difficulty *and* unnecessary hardship depriving the owner of the reasonable use of land...." *Id.* at 40, 322 A.2d 220. We then opined:

FN4. A similar provision exists in the Baltimore County Ordinance that we construed in *Red Roof Inns, Inc. v. People's Council for Baltimore County*, 96 Md.App. 219, 224, 624 A.2d 1281 (1993), where we noted that when the language states practical difficulties *or* unreasonable

hardship "satisfaction of either of the conditions may warrant a variance."

Not only does it [the variance provision] express the criteria of practical difficulty and unnecessary

hardship in the conjunctive, but it also independently requires that no area variance be granted unless it is shown that strict application of the regulations will deprive the applicant of the reasonable use of his land and that the grant of the variance is necessary for the reasonable use of the land. It defines the hardship which must be shown as the equivalent ***1180** of a ***512** constitutional taking, and utilizes the same criteria employed by the Court of Appeals for establishing undue hardship.... [A]n area variance can be granted only if there is proof that the strict application ... would result in an unnecessary hardship which deprives the owner of the reasonable use of his land. *Id.* at 41, 322 A.2d 220. *See also* *Green*, 77 Md.App. at 152, 549 A.2d 762.

[5] The St. Mary's County variance provision at issue here, likewise, provides:
[W]hen, owing to special features of the site or circumstances, the literal enforcement ... result[s] in *unwarranted hardship*....
In granting variances the county must:
1. Find that special conditions or circumstances exist that are peculiar to the land ... *and* that a literal enforcement ... would result in *unwarranted hardship;*
2. That a literal interpretation ... will deprive the land owner of rights commonly enjoyed by other properties in similar areas ...
3. That the granting of a variance will not confer upon a land owner any special privilege ...
4. That the variance request is not ... the result of actions by the land owner, nor that the request arises from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property;
5. That the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat.... [Emphasis added.]
The ordinance requires an applicant to meet all of the requirements. Thus, though it may be argued that this is an area variance and that under most zoning codes the applicant's burden would be limited to showing practical difficulty, the statute at issue here is mandatory and requires not an either/or showing but the satisfying of *all* of the requirements, ***513** *i.e.,* the showing of an "unwarranted hardship," *and* special features of the site *and* special conditions and circumstances, *and* deprivation of rights enjoyed by others in the neighborhood if the application is not granted. Additionally, if *all* of the above is established by substantial evidence, an applicant must additionally show, also by substantial evidence, that if the variance is granted the applicant will not receive a special privilege *and* that the variance request does not result from the action of the landowner *and* that the request does not result from any condition relating to permitted or non-conforming buildings or uses on neighboring property *and* that the variance, if granted, will not have adverse environmental impact. The St. Mary's County ordinance, especially in light of the Commission's approval function, is as strict as can be imagined. We have seen none tougher.
In essence, the developmental/environmental battle must, of necessity, be fought by the developmental or County interests during the County program's adoption. If the battle *was* fought in St. Mary's County, it was lost or won then. Once an ordinance such as that in the case *sub judice* becomes effective, an applicant's burden cannot generally be met by references to Thoreau's hut on Walden Pond. [FN5] Once these types of variance provisions are enacted, the result is generally that any project that does not cause damage to the environment will also be of such an inconsequential nature that it will not constitute an unwarranted hardship for it to be denied. Appellee Enoch, in his letter of application for a variance dated July 10, 1991, gave part of his reason for the request: "[T]his point would be an ideal location to construct a gazebo for the purpose of utilizing the beautiful view that is found on that point." He then made a general claim that "[a] strict construction of the regulation would not merely result in an inconvenience but actually create a serious and unnecessary hardship" because he had "hoped to develop[ ] the point."

FN5. The trial judge noted that under the program imposed upon St. Mary's County by the Critical Area Commission, Thoreau's hut could not have been built. He was correct.

***514** He asserts that the land conditions are unique because "only a small portion of [the ***1181** land] has buildings on it." He then claims that this situation is generally different in respect to other properties within the same zoning classification. The remainder of his application generally parrots the language of the statute in addressing the remaining requirements.

[6] In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.*, its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

An example of uniqueness is found in the use variance case of *Frankel v. Mayor and City Council*, 223 Md. 97, 104, 162 A.2d 447 (1960), where the Court noted: "[H]e met the burden: the irregularity of the ... lot ... that it was located on a corner of an arterial highway and another street, that it is bounded on two sides ... by parking lots and public ... institutions, that immediately to its south are the row houses...."

In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, in *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific ... property ..., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of ... property ... the literal enforcement ... would make it exceptionally ***515** difficult ... to comply ... and would cause unwarranted hardship and injustice....

The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.*

[7] The evidence in this case relied upon by appellees is just the opposite. Mr. Enoch proffered that the neighboring properties were similarly situated, including having points of land with views. His argument was basically that his land was unique because he had not already built on the point of land and the other property owners had. In other words, his uniqueness claim was based on the existence of permitted (or probably non-conforming, the record is not clear as to which) structures and uses on adjoining properties. Mr. Enoch did not offer any evidence establishing any zoning uniqueness as to his property, and the basis upon which he attempted to argue uniqueness is expressly forbidden by section 4 of the ordinance. ("That the variance request [does] not ... arise[ ] from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property.")

The evidence presented at the original hearing before the Board included, in part, the following testimony by appellee Enoch:

[I]f we're not permitted to use this point for a scenic view, that it would be a deprivation of the rights of the property owner, maybe not a great deprivation, but it's uniquely there for the purpose of putting up something to observe this beautiful view....

....

... The only place to go for any kind of a view of the water is either straight ahead ... where I have my dock, or over here where we're talking about. I have my dock, I already have a view of the water there and I have a view from the house so-to-speak ... the view from the house is a view of the very end of the cove. The view from up here [the subject site] leads out to the Patuxent River ... *you* ***516** can see four or five hundred yards.... I wouldn't put a gazebo any other place that would be ... satisfactory.

[COMMISSIONER]: Okay, and you want the gazebo ... as a place for retreat, a place to give you the opportunity to contemplate, to read....

****1182** MR. ENOCH: Sure....

....

MR. ENOCH: ... I think every property in that area has their homes built on those little points that stick out.

At this point the evidentiary stage of the initial hearing was concluded. The members of the Board then discussed the case.

MR. FITZGERALD: ... This is one of those solemnly [King Solomon?] decisions ... that speaks ... to the *ludicrousness of the ... critical areas thing.... At the same time ...* there are conditions ... within the ordinance that we're required to uphold.... I don't feel comfortable denying the applicant outright ... I don't feel comfortable in voting against the ordinance.... *But in spite* of the fact that the

applicant hasn't proven, you know, the variance, or the requirement for variance, he still has a strong case.... [Emphasis added.]
That testimony we have recounted comprises all the evidence offered by Mr. Enoch before the Board to meet his burden of satisfying the variance provision's requirements.
Also in evidence before the board was the staff report of the Department of Planning and Zoning of St. Mary's County. The staff report explicitly recommended that the requirement of a showing of special circumstances and unwarranted hardship had not been made and that if the variance was granted it might constitute a special privilege granted to this property in violation of the ordinance.
During the circuit court hearing, the judge initially noted that:
So, it is a case of a gazebo and a fellow who wants to look at the view, is that it?
***517** The court then asked the attorney for St. Mary's County to respond to appellant's assertions:
THE COURT: ... [T]his record has to show, in order to get one of these variances, that not to grant it to him would cause him an unwarranted, undue hardship, and the administrative record just doesn't show that.
That is what he is saying.
....
[THE COUNTY ATTORNEY]: Whether it is an unwarranted hardship or not is not for me to decide. The Board of Appeals ruled that it was. They found facts to--sufficient to conclude that Mr. Enoch would face an unwarranted hardship if he could not build his gazebo.
The *only* reason for building the gazebo, I believe, is to have that view of the water. Without that, there is no reason for a gazebo.
....
So, I think the whole key is unwarranted hardship.
Mr. Enoch then proffered, in part:
So, there is a desire to use that point for aesthetic purposes to view the water....
And the hardship we are talking about is a reasonable use of the property by an individual.
The applicant, Mr. Enoch, the county, and the trial judge for that matter, when discussing the reasonable use of the property seem to restrict their considerations to just the part of the property where Enoch desires to construct the gazebo. That is incorrect. The property at issue here is the 4+ acre site already developed with a ranchhouse of approximately 1,100 square feet with extensive decking, an improved walkway, and a pier, from which expansive views are present. Thus, the property already is subject to a reasonable use.

[8] The instant case focuses on unwarranted hardship; it is a denial of *reasonable* use that creates an unwarranted hardship. If reasonable use exists, generally an unwarranted hardship would not. *In the present case, extensive reasonable **518 use is already being made of the property.* Under the appellees' theory, it would be unreasonable and an unwarranted hardship to deny Mr. Enoch anything he wants.
In a case resolved on standing issues, the Court of Appeals nevertheless stated:
To grant a variance the Board must find from the evidence more than that the building ... would be suitable or desirable or could do no harm or would be convenient ****1183** for or profitable to its owner. The Board must find there was proof of "urgent necessity, hardship peculiar to the particular property, and a burden upon the owner not justified by the public health, safety and welfare." *Kennerly v. Mayor and City Council*, 247 Md. 601, 606-07, 233 A.2d 800 (1967). *See also Marino v. Mayor and City Council*, 215 Md. 206, 137 A.2d 198 (1957) ("As a general rule, ... [variances] are granted sparingly, and under exceptional circumstances. To do otherwise would decimate zonal restrictions and eventually destroy all zoning regulations...."); *Carney v. City of Baltimore*, 201 Md. 130, 137, 93 A.2d 74 (1952).
The Court of Appeals in *Park Shopping Center, Inc. v. Lexington Park Theatre Co.*, 216 Md. 271, 276-77, 139 A.2d 843 (1958), in respect to the ordinance there being applied, opined:
[T]he Zoning Ordinance for St. Mary's County ... states that the Board shall have power "[t]o authorize ... such variance ... where, owing to special conditions, the enforcement ... will result in *unwarranted hardship and injustice*...." It is in language typical of a variance as distinguished from an exception....
... "The criterion for determining unnecessary hardship is whether the ... restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership." [Citations omitted.]
Variances have been rejected under more compelling circumstances than that presented by the

evidence in this case. *See, e.g.,* ***519** Ad + Soil, Inc., v. County Comm'rs, 307 Md. 307, 340, 513 A.2d 893 (1986) (ignorance of set back requirements for sewage sludge facility when property purchased was not a hardship); Burns v. Mayor and City Council, 251 Md. 554, 558-59, 248 A.2d 103 (1968) (financial crisis generally not hardship, especially when same crisis applies to other property in neighborhood); Salisbury Bd. of Zoning Appeals v. Bounds, 240 Md. 547, 554, 214 A.2d 810 (1965) (self-inflicted hardship); Pem Constr. Co. v. Mayor and City Council, 233 Md. 372, 378, 196 A.2d 879 (1964) (non-feasibility of building residential houses on subject property because of its location near a shopping center and parking lots-- "facts ... fall substantially short of ... a taking in a constitutional sense."); Mayor & City Council v. Polakoff, 233 Md. 1, 9, 194 A.2d 819 (1963) (earlier variances granted to other properties not grounds for variances); Carney v. City of Baltimore, 201 Md. 130, 136-37, 93 A.2d 74 (1952) (side yard set back for convenience, *i.e.,* to accommodate disability of wife of applicant not hardship); Cleland v. Mayor and City Council, 198 Md. 440, 445, 84 A.2d 49 (1951) (parking inconvenience for doctors not a hardship); Gleason v. Keswick Improvement Ass'n, Inc., 197 Md. 46, 78 A.2d 164 (1951); Easter v. Mayor and City Council, 195 Md. 395, 400, 73 A.2d 491 (1950).

The only evidence presented is that appellee, Enoch, wished to read and contemplate on the point (we presume the purpose of the gazebo was to furnish shade and protection from the rain as a gazebo is not inherently necessary in the process of reading and contemplation). A desire to have a gazebo of approximately 234 square feet in which to contemplate at a particular spot when that gazebo is not permitted at that location is not evidence of an unwarranted hardship. This is especially true when appellant has an additional 178,361 square feet of property in which to contemplate, much of which is outside the buffer or already in place in the creek or near the creek.

Resolution

As we see it, there was no evidence supporting any special features peculiar to the subject site. There was no *evidence--****520** as opposed to a statement--of unwarranted hardship. Because the evidence is non-existent on these points, it is immaterial that there may have been some minimal evidence of little or no environmental damage or that the variance, if granted, would not confer a special privilege on the applicant. *All of the requirements* must be met and proved by substantial evidence. They were not. As we said in Neuman:

It is crystal clear that the Board acted not only without "substantial evidence", ****1184** but without any evidence, to support its findings, and its decision should have been reversed by the hearing judge.

Neuman, 23 Md.App. at 17, 325 A.2d 146. We hold, therefore, as we did in Anderson:

Based on the record before us, we find that the question of whether the strict application of the ... requirement would result in an unnecessary hardship to the applicant by depriving him of the reasonable use of his land was not fairly debatable. The action of the Board of Appeals in granting the variances was arbitrary and capricious and cannot be sustained.... Accordingly, the order of the lower court affirming the grant of the variance [ ] ... shall be reversed.

Anderson, 22 Md.App. at 42, 322 A.2d 220 (*citations and footnote omitted*).

In light of our decision, the other issue raised by appellant need not be addressed except that we note appellant's second issue appears to have merit.

[9] We note in concluding that administrative agencies are bound to apply the ordinances they administer. Lip service to, and defiance of, the County's ordinances because of dislike of the critical area legislation is inappropriate. Dislike for a statute is never sufficient justification to ignore it. Additionally, while we have occasionally commented on the planning staff's functional limitations, the Board here would have been well advised to pay more attention to the recommendations of its professional staff.

***521** JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEES.

Md.App.,1994.

North v. St. Mary's County

99 Md.App. 502, 638 A.2d 1175

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Court of Special Appeals of Maryland.
David CROMWELL, et al.
v.
Arthur Thomas WARD, III.
No. 617, Sept. Term, 1994.
Decided Jan. 4, 1995.

The Circuit Court, Baltimore County, Lawrence Daniels, J., affirmed order of board of appeals granting height variance for accessory building already built by owner. Appeal was taken. The Court of Special Appeals, Cathell, J., held that: (1) no variance was appropriate where property was not shown to be unusual or unique from surrounding properties before variance based on practical difficulty or unreasonable hardship was sought; (2) landowner's self-created hardship arising from construction of accessory building before variance was sought was not grounds for grant; and (3) approval of building permit for accessory building did not support grant of variance sought. Reversed.

West Headnotes

[1] KeyCite Notes

414 Zoning and Planning
414VIII Permits, Certificates and Approvals
414VIII(D) Effect of Determination; Revocation
414k461 k. Effect of Determination in General. Most Cited Cases

City was not estopped from refusing to grant variance from height restriction on auxiliary building merely because owner submitted and obtained construction permit, at least where owner's plan's elevation schematics contained neither elevation dimensions nor scale and elevation was not stated; while zoning inspectors might have been able to extrapolate dimensions from other schematics, they were not required to do so in light of owner's affirmative statement in application of compliance with zoning requirements. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

[2] KeyCite Notes

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k492 Hardship, Loss, or Injury
414k496 k. Unique or Peculiar Hardship. Most Cited Cases

Under law on variances in Maryland and under Baltimore County's charter and ordinance, property's peculiar characteristics or unusual circumstances relating only and uniquely to that property must exist in conjunction with ordinance's more severe impact on specific property because of property's uniqueness before any consideration will be given to whether requisite practical difficulty or unnecessary hardship exists. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

[3] KeyCite Notes

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k492 Hardship, Loss, or Injury
414k497 k. Self-Created Hardship; Prior Knowledge. Most Cited Cases

Practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

[4] KeyCite Notes

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k492 Hardship, Loss, or Injury
414k496 k. Unique or Peculiar Hardship. Most Cited Cases

Mistake of county official cannot be the "practical difficulty" unique to subject property required to authorize grant of variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

[5] KeyCite Notes

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k502 Particular Structures or Uses
414k503 k. Architectural or Structural Designs in General. Most Cited Cases

Granting of variance from height restrictions on auxiliary building was arbitrary and illegal where subject site was not in any way peculiar, unusual or unique when compared to other properties in neighborhood and thus was not disproportionately affected by height restriction; self-created hardship arising from owner's failure to disclose height dimensions in applying for permit and construction of building in nonconformity were self-imposed or created hardships that could not support variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.
***425 *693** Michael Paul Smith (Thomas G. Bodie and Bodie, Nagle, Dolina, Smith & Hobbs, P.A., on the brief) Towson, for appellants.
Newton A. Williams (Nolan, Plumhoff & Williams, Chtd., on the brief) Towson, for appellee.

Argued before WENNER, CATHELL and MURPHY, JJ.

CATHELL, Judge.
Appellant, David Cromwell, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas Ward, III. Appellant poses the following questions:
I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances ***694** requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.
II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?
III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of § 307 of the Baltimore County Zoning Regulations?
***426** While those questions are limited, appellant expands in his arguments supporting the questions and argues that
[t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property,* must be the proximate cause of the hardship [Emphasis added.]
and
Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request.... [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.,* it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is--in and of itself--unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and ***695** the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.,* a determination of whether practical difficulty and/or [FN1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

FN1. Some ordinances use the conjunctive, "and," creating a requirement that both practical difficulty "and" unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, "or," to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when "use" variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser "practical difficulty" standard when "area" variances are sought.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice,* appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process--an inherent uniqueness of the subject property not shared by surrounding properties.

***696 The Facts**

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;" "[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and ****427** was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14' " and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height elevations

might have been discernable, though we are at a loss to understand why the ***697** elevations were not given in feet and why the plans contained no scale. [FN2]

FN2. Appellee, several times in his brief, states that the plans "clearly" show the height of the building. *We are tempted to respond with a short rejoinder. We resist.* The heights shown on the plans are not clearly shown--they are not shown at all--but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height. [FN3] Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

FN3. As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

The Law

The State Zoning Enabling Act was first passed in 1927 by Chapter 705 of the Acts of 1927. It has since been codified as Article 66B of the Annotated Code of Maryland (1957, 1988 Repl.Vol., 1994 Cum.Supp.). While it was generally believed that local subdivisions did not have to enact zoning regulations (and some did not), if enacted, they normally had to conform to the provisions of Article 66B.

Baltimore County, however, is a charter county and is exempt from many of the provisions in Md.Code Art. 66B. See Md.Code Art. 66B § 7.03 which provides "Except as provided in [sections not pertinent here] ... this article does not apply to the chartered counties of Maryland." Nevertheless, the language of Art. 66B relating to variances is virtually identical to the provisions of the Baltimore County ordinance.

***698** The Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

[M]odification only of density, bulk, or area requirements in the zoning ordinance ... where *owing to conditions peculiar to the property, and not the result of any action taken by the applicant,* a literal enforcement ... would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, *i.e.,* height, may be granted

only in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request *and* where strict compliance ... would result in practical difficulty ***428** or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions ... peculiar to the land ... and ... practical difficulty...." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances, [FN4] if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and ***699** uniqueness of *that* piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance

cases).

FN4. It is not clear that section 307, "Variances," would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of "area" variance requests.

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses [FN5] (where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub judice.*

FN5. Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to "use" issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense, however, "conditional uses" refer to uses while exceptions normally apply to area, *i.e.*, yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

Special Exceptions (and Conditional Uses) and Variance--Distinguished

The treatise writers define the concept as:

A variance is an authorization for [that] ... which is prohibited by a zoning ordinance....
... [T]he difference between the two [variances and special exceptions] ... is of practical significance....
"... [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception ***700** contemplates a permitted use ... [once] the prescribed conditions therefor are met."
... [A] variance is "authority ... to use his property in a manner forbidden ...," while an exception "allows him to put his property to a use which the enactment expressly permits."
... [T]he standards for ... exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.
"A special exception ... is one which is controlled and ... permissible in a given zone. It is granted ... upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized ... where the literal enforcement of its terms would result in unnecessary hardships."
3 Robert M. Anderson, *American Law of Zoning* § 18.02-03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County*, 239 Md. 189, 193, 210 A.2d 540 (1965)). *See also* ****429** *Schultz v. Pritts*, 291 Md. 1, 11, 432 A.2d 1319 (1981); *People's Counsel v. Mangione*, 85 Md.App. 738, 748, 584 A.2d 1318 (1991).
A distinction commonly is made between [special] exceptions ... and variances.... An "exception" ... is a dispensation permissible where a board ... finds existing those facts ... specified in the ordinance as sufficient.... "... But zoning ordinances usually provide for another kind of dispensation, ... by which a variance ... may be authorized ... where a literal enforcement ... would result in unnecessary hardship."
8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).
The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances.... A variance should be strictly construed....
Id. § 25.162 (footnotes omitted). *See also* 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning****701** § 38.01 (4th

ed. 1981); 3 E.C. Yokley, *Zoning Law and Practice* § 21-6 (4th ed. 1979); 3 Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).
Maryland courts, and courts elsewhere, have generally made the same distinction.
There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception ... is expressly permissible.... [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property ... or by reason of exceptional topographical conditions or other extraordinary situations ... of specific parcels of property, the strict application ... would result in ... unusual practical difficulties to, or exceptional or undue hardship....
Stacy, 239 Md. at 193, 210 A.2d 540.
Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 288-91, 96 A.2d 261 (1953):
It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area ... the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance....
....
... There is a distinction between ... the ordinance provisions ... in those cases [Baltimore City cases] and the facts and the ordinance provision in this case....
See also our case of *Martin Marietta Aggregates v. Citizens*, 41 Md.App. 26, 34-35, 395 A.2d 179 (1978).
***702** A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional [[FN6]] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met.... While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use ... so long as ... conditions are met. Therefore, conditional use grants cannot be encompassed within the ... statutory authority to grant variances.

FN6. Exceptional is used here in its generic sense.

Eberhart v. Indiana Waste Systems, Inc., 452 N.E.2d 455, 459 (Ind.App. 3 Dist.1983) (citations omitted).
In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals*, 464 N.E.2d 347, 350 (Ind.App. 1 Dist.1984), opined:
A great deal of confusion has been generated ... because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions.... A variance involves a deviation ... from the ****430** legislated zoning classification.... A special exception involves a use which is permitted ... once certain statutory criteria have been satisfied. [Citations omitted.]
See also *Lindquist v. Board of Adjustment*, 490 So.2d 16, 18 (Ala.Civ.App.1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the ... burden of proving ... hardship"); *Wolfner v. Board of Adjustment*, 672 S.W.2d 147, 150 (Mo.App.1984) ("an exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes*, 179 N.J.Super. 203, 431 A.2d 163, 167 (A.D.), *cert. denied*, 87 N.J. 428, 434 A.2d 1099 (1981) (special exception and variance defined--case decided on zoning estoppel basis); ***703** *A.J. Grosek & Associates v. Zoning Hearing Bd.*, 69 Pa.Cmwlth. 38, 450 A.2d 263, 265 (1982); *Bell v. City Council*, 224 Va. 490, 297 S.E.2d 810, 813-14 (1982).

VARIANCE--

The First Step--Uniqueness or Peculiarity of the Subject Property

The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.*, A. Rathkopf, 3 The Law of Zoning and Planning § 38 (1979).
Doorack v. Board of Adjustment, 709 S.W.2d 140, 143 (Mo.App.1986). *See also* *McMorrow v. Board of Adjustment*, 765 S.W.2d 700, 701-02 (Mo.App.1989); *Taylor v. Board of Zoning Adjustment*, 738

S.W.2d 141, 144 (Mo.App.1987).
The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md.Code Article 66B, and it is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws-- and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.
Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because
the board of zoning appeals is in effect given the power to set aside or annul the ordinance ... with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships".... [U]nder our system of written constitutions it is essential that they accomplish those ... objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them.... For such ***704** phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred....
Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, 164 A. 220, *appeal dismissed*, 290 U.S. 585, 54 S.Ct. 56, 78 L.Ed. 517 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church*, 164 Md. 487, 165 A. 703 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.
In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 300, 49 A.2d 799 (1946). By the time of its decision in *Heath*, the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances ****431** in his own discretion." 187 Md. at 301, 49 A.2d 799. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar*, the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible where the Board ... finds ... those facts ... specified in the ordinance...." *Id.* 187 Md. at 303, 49 A.2d 799.
It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some ***705** confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.
Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore*, 231 Md. 280, 285, 189 A.2d 631 (1963) ("In Baltimore City there appears to be no distinction between the two terms...."). [FN7] We also attempted to indicate the problem in *North v. St. Mary's County*, 99 Md.App. 502, 510, 638 A.2d 1175 (1994), in footnote 3:

FN7. Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore*, 195 Md. 395, 400, 73 A.2d 491 (1950), where the Court noted

"facts to justify an exception ... [show] that the hardship affects the particular premises and is not common to other property in the neighborhood." This is a variance standard.

Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances.... [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.
In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:
***706** [I]t was incumbent upon the Marinos to have shown ... (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants' own actions.
Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218, 137 A.2d 198 (1957) (emphasis added). Salisbury Bd. of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:
The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees....
240 Md. at 554, 214 A.2d 810. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning*, § 48-1, and then noted:
"Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions ... hardship ****432** arises.... The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship.... [T]he hardship, arising as a result of the act of the owner ... will be regarded as having been self-created, barring relief...."
The instant case fits squarely within the above general rule.... [I]f the appellees had used proper diligence ... and then made accurate measurements ... [the resultant hardship could have been avoided]. The hardship ... was entirely self-created....
Id. at 554-55, 214 A.2d 810 (emphasis added). Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. *See also* ***707** Burns v. Mayor and City Council of Baltimore, 251 Md. 554, 559, 248 A.2d 103 (1968); Pem Constr. Co. v. Mayor and City Council of Baltimore, 233 Md. 372, 378, 196 A.2d 879 (1964) ("[There was] no evidence of any limitation ... by ... size of yards, irregularity of shape of land or buildings, topography, grade or accessibility"....); Mayor and City Council v. Sapero, 230 Md. 291, 186 A.2d 884 (1962); Frankel v. Mayor and City Council of Baltimore, 223 Md. 97, 104, 162 A.2d 447 (1960) ("It was incumbent ... to show that the hardship ... affected his particular premises and was not ... common to other property in the neighborhood.... [H]e met the burden...."); Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc., 216 Md. 271, 277-78, 139 A.2d 843 (1958).
Secs. 14(b), 14(d) and 16 ... have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property....
Mayor and City Council v. Polakoff, 233 Md. 1, 9, 194 A.2d 819 (1963).
The Court in Kennerly v. Mayor and City Council of Baltimore, 247 Md. 601, 606-07, 233 A.2d 800 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:
Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "*urgent necessity, hardship peculiar to the particular property*...." ... Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]
In McLean v. Soley, 270 Md. 208, 210, 310 A.2d 783 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection ***708** with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and

beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211, 310 A.2d 783. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy ... that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance....

....

Concededly, this is a close case, but it is nevertheless sufficient....

***433** *Id.* at 215, 310 A.2d 783. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman*, 227 Md. 243, 176 A.2d 355 (1961), and *Frankel v. Mayor & City Council of Baltimore*, 223 Md. 97, 162 A.2d 447 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

***709** The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 513 A.2d 893 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317, 513 A.2d 893. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question ... that do not apply generally to other properties ... in the ... district." *Id.* at 340, 513 A.2d 893. The Court concluded:

The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary *characteristics* of the *land itself* and therefore not the kind of hardship cognizable under the Zoning Ordinance....

We think the Board's decisions ... reflect no error of law.

Id. at 340-41, 513 A.2d 893 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel*, 96 Md.App. 219, 224, 624 A.2d 1281 (1993), after noting the standard of review, we said:

In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.

***710** The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist *that are peculiar to the land* ... and where strict compliance ... would result in practical difficulty...." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances *of a particular location* and must be analyzed individually." *Id.* at 227-28, 624 A.2d 1281 (emphasis added).

In *North v. St. Mary's County*, 99 Md.App. at 512, 638 A.2d 1175, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land...." We there stated that, in the zoning context, the term "unique" has a customized meaning:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "****434** Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.*, its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

....

In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, ***711** in *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific ... property ..., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of ... property ... the literal enforcement ... would make it exceptionally difficult ... to comply ... and would cause unwarranted hardship and injustice....

The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.* *Id.* at 514-15, 638 A.2d 1175.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean, supra; Stacy, supra; Sapero, supra; Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra.* All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel, Loyola,* and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly ... close case...." *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky*, 239 Md. 611, 212 A.2d 508 (1965), involved one of the same issues that was presented in *Frankel, i.e.*, whether a zoning restriction so compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance--a variance Frankel was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged ***712** that Borinsky had the "same expert witness," "he was asked the same general questions ... and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* 239 Md. at 624, 212 A.2d 508. The Court, nevertheless, made a factual distinction and declined to apply *Frankel.* Judge Barnes opined in dissent that, based on what the Court had done in *Frankel,* the facts for variances were stronger in *Borinsky, Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel, Loyola,* and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York*, 240 Neb. 201, 482 N.W.2d 537 (1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell*, 160 Neb. 354, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank,* the court said 482 N.W.2d at 545: "[A] variance [may be granted] ... only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of ****435** the zoning ordinance] 'would result in peculiar and exceptional practical difficulties ... or exceptional ... hardships....' "

In *Shafer v. Zoning Bd. of Appeals*, 24 Mass.App. 966, 511 N.E.2d 635 (1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

There was no evidence ... regarding "soil conditions, shape or topography of [the property] ... especially affecting [the property] but not affecting generally the zoning district in which it is located".... The ... argument that ***713** the insufficient width ... constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

511 N.E.2d at 636-37 (citation omitted). *See also* *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn.1983) ("the plight of respondent was not due to circumstances 'unique to his property.' ... [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware....")

In *St. Clair v. Skagit County*, 43 Wash.App. 122, 715 P.2d 165 (1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board, approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings...." 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist ... peculiar to the land...." *Id.* The court then noted that the applicant had done there what Ward attempts to do in the case *sub judice:*

[The appellant] relied primarily upon the fact that the County issued a building permit ... and that she acted in good faith....

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself.... Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75-foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity...." *Id.* at 169. In the case *sub judice,* the ***714** Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment*, 706 P.2d 899 (Okla.1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner ... constitutes no valid basis for a variance.... [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44-107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property.* *Id.* at 904-05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of ****436** *Lucas v. South Carolina Coastal Council*, --- U.S. ----, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), but had facts similar to *Lucas,* the Supreme Court of Delaware in *Baker v. Connell*, 488 A.2d 1303 (Del.Supr.1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0-1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the ***715** property could not conform to open space land. The appellate court affirmed, stating:

[F]inancial return ... alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0-1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R-2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment*, 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice.* The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "In order to justify a variance ... the applicant [must] show ... that there are special conditions with regard to the property...." 685 P.2d at 1035-36. The court continued:

What must be shown ... is that the property itself contains some special circumstance that relates to the hardship complained of....
... The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.
....
Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos[es] brought ***716** their losses upon themselves. The application affirmatively alleged ... that no dwelling existed....[[FN8]]

FN8. The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

Id. at 1036-37 (footnotes omitted).

[1] The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice,* that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice ... in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication ... and ... shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id.* at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimensions from other schematics, they certainly were not required ****437** to do so in light of appellants' affirmative statement of compliance.
See also *Chambers v. Smithfield City,* 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond,* 225 Va. 177, 300 S.E.2d 781 (1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, ***717** in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A-1 district." *Id.*
The court in *Richardson v. Town of Salisbury,* 123 N.H. 93, 455 A.2d 1059, 1061 (1983), noted:
We have defined unnecessary hardship as follows:
"A hardship exists only if due to special conditions *unique* to a *particular parcel of land,* the ordinance unduly restricts the use.... The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner." [Emphasis added.]
See also *Margate Motel, Inc. v. Gilford,* 130 N.H. 91, 534 A.2d 717 (1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment,* 123 N.H. 170, 459 A.2d 244 (1983).
In *Sibley v. Inhabitants of the Town of Wells,* 462 A.2d 27, 30-31 (1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:
[T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
....
... [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
....
... However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size....

... However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.
See also Williams v. Salem Township, 92 Pa.Cmwlth. 634, 500 A.2d 933 (1985) *alloc. denied,* 516 Pa. 615, 531 A.2d 781 (1987); ***718** Hersh v. Zoning Hearing Bd. of Marlborough Township, 90 Pa.Cmwlth. 15, 493 A.2d 807 (1985); Serban v. Zoning Hearing Bd. of the City of Bethlehem, 84 Pa.Cmwlth. 558, 480 A.2d 362 (1984) (burden sustained); Davis v. Zoning Bd. of Adjustment, 78 Pa.Cmwlth. 645, 468 A.2d 1183 (1983) (burden sustained); Malakoff v. Zoning Bd. of Adjustment, 72 Pa.Cmwlth. 109, 456 A.2d 1110 (1983); Immordino v. Zoning Hearing Bd., 65 Pa.Cmwlth. 79, 441 A.2d 818, 821 (1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property....*") (Emphasis added.)
A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area.... Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.
Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla.App. 5th Dist.1981), *aff'd,* 419 So.2d 1041 (1982) (citation omitted). *See also* Fort Lauderdale Bd. of Adjustment v. Nash, 425 So.2d 578, 579 (Fla.App. 4th Dist.1983); City of Naples v. Clam Court Marina Trust, 413 So.2d 475, 477 (Fla.App. 2d Dist.1982); ****438** Lakeshore Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments, 481 So.2d 162, 168 (La.App. 4th Cir.1985), *cert. denied,* 484 So.2d 674 (1986).
We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others. A minimum lot area variance was affirmed in Russell v. District of Columbia Bd. of Zoning Adjustment, 402 A.2d 1231 (D.C.App.1979), where, due to the size of the lot, no viable economical use of the property could be had without the ***719** variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in U-Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord, 122 N.H. 910, 451 A.2d 1315, 1317 (1982), saying: "The location and characteristics of the property involved create greater security requirements ... than ... other property in the area because the parcel ... is less central ... less populated and ... less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In Atwood v. City of Portland, 55 Or.App. 215, 637 P.2d 1302 (1981), *cert. denied,* 292 Or. 722, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. *See also* Higgins v. Township of Radnor, 13 Pa.Cmwlth. 195, 318 A.2d 761, 763 (1974).
The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).
It is *fundamental* that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *to particular property* and not general in character.... [I]t is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides].... [T]he hardship [in order to justify a variance, however,] ... must relate to the particular property of the applicant....
McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).
***720** [I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.
Anderson, *supra* § 14.55 (1968).
It follows that the unnecessary hardship ... must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance....
In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question....
....

Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship. Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot ... arises from circumstances peculiar to that lot ...; and in that case the appropriate remedy is ... a variance.... In the other types of cases, the hardship ... may arise because of conditions which are general in the neighborhood; ... it is often ***439** held that the appropriate remedy is a change in the zoning.... [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

The great strengthening of the criteria for granting variances, ... has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question.... Moreover, the courts have again emphasized that a variance granted to take care of some hardship ***721** personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. *See also* Rathkopf, *supra* § 38.04; Yokley, *supra* § 21-6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.").

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals*, 301 N.Y. 215, 93 N.E.2d 645, 647 (1950):

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

Yokley, *supra* § 21-6.

[2] We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been--a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists. Before applying the facts of the instant case to the law and, thus, resolving the case *sub judice,* we must touch upon two other aspects of the process, *i.e.,* the self-inflicted injury and the zoning authorities' acquiescence in issuing a building permit based on plans that left unclear the elevation of the structure and the subsequent inspection.

Self-Inflicted Hardship

[3] We have before referred to *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206, 137 A.2d 198. There, the Court said, "It was incumbent [on the applicant] to [show] ... that the hardship was not the result of the applicants' own actions." *Id.* at 218, 137 A.2d 198. The Court of Appeals ***722** noted in *AD + Soil, Inc. v. County Comm'rs*, 307 Md. at 340, 513 A.2d 893:

The essence of AD + Soil's argument ... is that the setback requirements ... would cause ... unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements.... The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted ... and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals*, 186 Conn. 32, 438 A.2d 1186, 1190 (1982) (" '[S]elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' ... '[W]here the applicant ... creates a nonconformity, the board lacks power to grant a variance.' ") (citations omitted); *Volkman v. City of Kirkwood*, 624 S.W.2d 58 (Mo.App.1981); *Matter of Schrader*, 660 P.2d 135 (Okl.1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals*, 279 S.C. 598, 310 S.E.2d 438 (App.1983); *McClurkan v. Board of Zoning Appeals*, 565 S.W.2d 495 (Tenn.1977); *Steele v. Fluvanna County Bd. of Zoning Appeals*, 246 Va. 502, 436 S.E.2d 453, 456 (1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements ... was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively ***440** not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless.

We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self- inflicted.

The Granting of the Permit

In *Francis v. MacGill*, 196 Md. 77, 75 A.2d 91 (1950), a property owner sought equitable injunctive relief. The facts ***723** were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

"Adoption of zoning ordinance *ipso facto* revokes permit for construction ... where no construction has begun."

... They completely ignored the Zoning Regulations, and they were engaged in an unlawful act. 196 Md. at 85, 75 A.2d 91 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro*, 187 Md. 623, 634, 51 A.2d 273 (1947), *overruled on other grounds in Nutter v. Non-Profit Housing Co.*, 230 Md. 6, 185 A.2d 360 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit ... does not create a vested right, or estop [FN9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Snyder*, 186 Md. 342, 347, 46 A.2d 689 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

FN9. The applicability of the "doctrine of zoning estoppel" has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council*, 96 Md.App. 526, 625 A.2d 424 (1993), *rev'd in part*, 334 Md. 499, 639 A.2d 1070 (1994).

In the mandamus case of *County Comm'rs v. Ward*, 186 Md. 330, 340, 46 A.2d 684 (1946), the Court held:

The Board ..., as an administrative body, was bound to follow the regulations it adopted, in the exercise of ... ***724** delegated legislative power. The fact that it might have rezoned ... does not alter its obligation to adhere to existing regulations....

In the case of *Lipsitz v. Parr*, 164 Md. 222, 164 A. 743 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law.... [T]he ordinance forbade the officials ... to grant the permit which the plaintiff asked and obtained.... ... [I]t was therefore unlawful for the officers ... to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued ... does not ... prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality.... *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.

So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act ... it is not estopped by the unauthorized or wrongful act of its officer ... in issuing a permit that is forbidden by the explicit terms of an ordinance.... ****441** *Valentine v. Rds. Directors*, 146 Md. 199, 206 [126 A. 147] [(1924)].... [Citations omitted, emphasis added.] 164 Md. at 227-28, 164 A. 743.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413, 545 A.2d 1296 (1988), a case seeking specific performance and injunctive relief, and also cited ***725** *City of Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481, 287 A.2d 242 (1972), a

case of a timely appeal of the denial of a building permit. In *Inlet Associates,* the Court opined that "[c]onsequently, '[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.' " 313 Md. at 437, 545 A.2d 1296. The Court added: "[T]he doctrine of equitable estoppel 'cannot be ... invoked to defeat the ... enforcement of ... ordinances, because of an error or mistake committed by one of its officers ... which has been relied on by the third party to his detriment.' " *Id.*

[4] Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward.

The authorities elsewhere are in accord.

The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land,* not to the circumstances of the *owner.*

Richardson, 455 A.2d at 1062.

[R]elator argues the Board should be estopped from denying the height variance because a city building inspector visited the premises several times and observed the construction taking place but made no complaint....

In any case there is no authority on the part of a building inspector to grant a variance....

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La.App. 4th Cir.1970). *See also Klanke v. Zoning Bd. of Adjustment,* 83 Pa.Cmwlth. 441, 477 A.2d 907, 909 (1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra.*

***726 Resolution**

We resolve here only the issue of the granting of the variance sought and applied for by Ward.

[5] There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's impact upon the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

Md.App.,1995.
Cromwell v. Ward
102 Md.App. 691, 651 A.2d 424
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closing

Petitt "extraordinary circumstances"

① of flooding [NOT IN LAW

no exception]

② Could already involve way

law [IS A self made default]

not clear

Cant use

③ Reach. defaulted

[other options]

④ [04.2 can replace

equal but not

SCALE 1"=50' NOV. 5, 1928
EDWARD Y. CURTIN & CO.
SURVEYORS & CIVIL ENGS.
BALTIMORE, MD.
POINT NEZIO ROAD
RAILWAYS
OSTEND
ROAD
SHALLOW CREEK
Harbours
Gasker
Lot X

Job	Truss	Truss Type	Qty	Ply	32# snow 120 mph wind
WSI,STK	A826 A268	ATTIC	100	1	I4838406

Job Reference (optional)

Wood Structures, Biddeford, ME 04005 — 5.100 s Mar 25 2003 MiTek Industries, Inc. Tue Jun 10 10:10:53 2003 Page 1

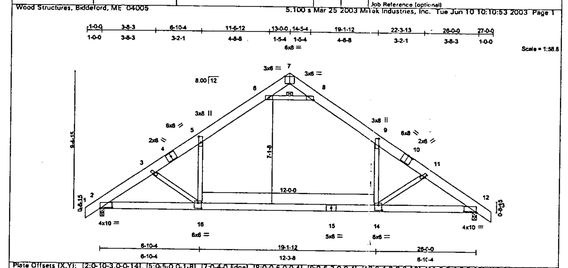


Plate Offsets (X,Y): [2:0-10-3,0-0-14], [6:0-5-0,0-1-8], [7:0-4-0,Edge], [8:0-6-8,0-0-4], [9:0-6-3,0-0-4], [10:0-4-0,0-0-10], [11:0-2-4,0-0-12], [12:0-10-3,0-0-14], [14:0-3-0,0-4-4], [16:0-3-0,0-4-4]

LOADING (psf)		SPACING 2-0-0	CSI		DEFL in (loc) l/defl L/d	PLATES MII20	GRIP 169/123
TCLL 42.0		Plates Increase 1.15	TC 0.85		Vert(LL) -0.73 14-16 >422 240		
TCDL 7.0		Lumber Increase 1.15	BC 0.93		Vert(TL) -0.86 14-16 >322 180		
BCLL 0.0	*	Rep Stress Incr YES	WB 0.93		Horz(TL) 0.06 12 n/a n/a		
BCDL 10.0		Code BOCA/ANSI/95	(Matrix)			Weight: 147 lb	

LUMBER
TOP CHORD 2 X 8 SPF 1950F 1.7E
BOT CHORD 2 X 6 SPF 1650F 1.5E
WEBS 2 X 4 SPF-S Stud

BRACING
TOP CHORD Sheathed or 4-4-9 oc purlins.
BOT CHORD Rigid ceiling directly applied or 8-10-1 oc bracing.
WEBS 1 Row at midpt 6-8

NOTE: DUE TO THE OVERALL LENGTH TO DEPTH RATIO OF THIS TRUSS, THE FLOOR MAY EXHIBIT OBJECTIONABLE VIBRATION AND/OR DEFLECTION. BUILDING DESIGNER TO CONSIDER PROVIDING MEANS TO DAMPEN POSSIBLE FLOOR VIBRATION.

REACTIONS (lb/size) 2=2060/0-3-8, 12=2060/0-3-8
Max Horz 2=-533(load case 4)
Max Uplift2=-758(load case 6), 12=-758(load case 7)

FORCES (lb) - First Load Case Only
TOP CHORD 1-2=46, 2-3=-3194, 3-4=-2760, 4-5=-2592, 5-6=-1977, 6-7=1156, 7-8=1156, 8-9=-1977, 9-10=-2592, 10-11=-2760, 11-12=-3194, 12-13=46
BOT CHORD 2-16=2482, 15-16=1932, 14-15=1932, 12-14=2482
WEBS 6-8=-3333, 5-16=1084, 9-14=1084, 3-16=-680, 11-14=-680

NOTES
1) Wind: ASCE 7-98; 120mph; h=35ft; TCDL=4.2psf; BCDL=3.0psf; Category II; Exp C; enclosed;MWFRS gable end zone; cantilever left and right exposed ;Lumber DOL=1.33 plate grip DOL=1.33.
2) Design load is based on 42.0 psf specified roof snow load.
3) Unbalanced snow loads have been considered for this design.
4) * This truss has been designed for a live load of 20.0psf on the bottom chord in all areas with a clearance greater than 3-6-0 between the bottom chord and any other members.
5) Ceiling dead load (5.0 psf) on member(s). 5-6, 8-9, 6-8
6) Bottom chord live load (30.0 psf) and additional bottom chord dead load (0.0 psf) applied only to room. 14-16
7) Provide mechanical connection (by others) of truss to bearing plate capable of withstanding 758 lb uplift at joint 2 and 758 lb uplift at joint 12.

LOAD CASE(S) Standard
THIS TRUSS IS DESIGNED FOR RESIDENTIAL USE ONLY!
30 - LOAD IS ADEQUATE FOR ATTIC LIGHT STORAGE AREA AND/OR SLEEPING ROOMS ONLY!
(30 PSF IS NOT ADEQUATE FOR A WATERBED LOAD, CORRIDORS, OR BASIC FLOOR AREA)

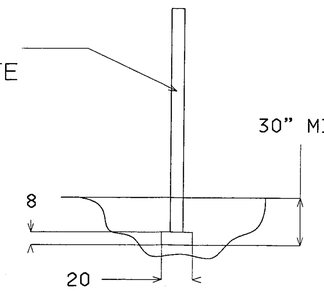
DESIGN LOADING:
TCLL/TOTAL (PSF)
42/59 @ 24" oc.
53/74 @ 19.2" oc.
63/79 @ 16" oc.

STATE OF MAINE — STEPHEN W. CABLER — No. 4850 — REGISTERED PROFESSIONAL ENGINEER

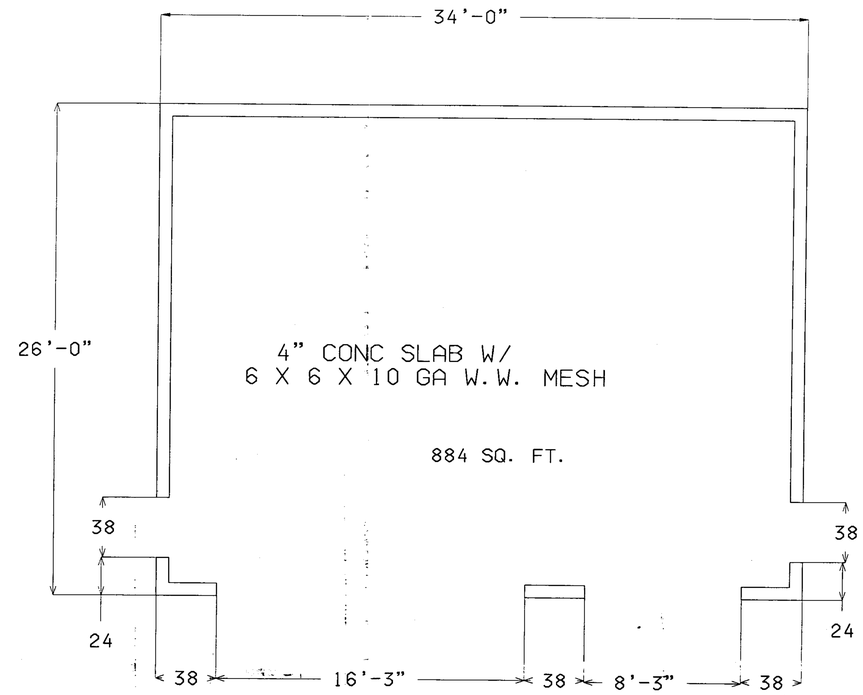
June 13, 2003

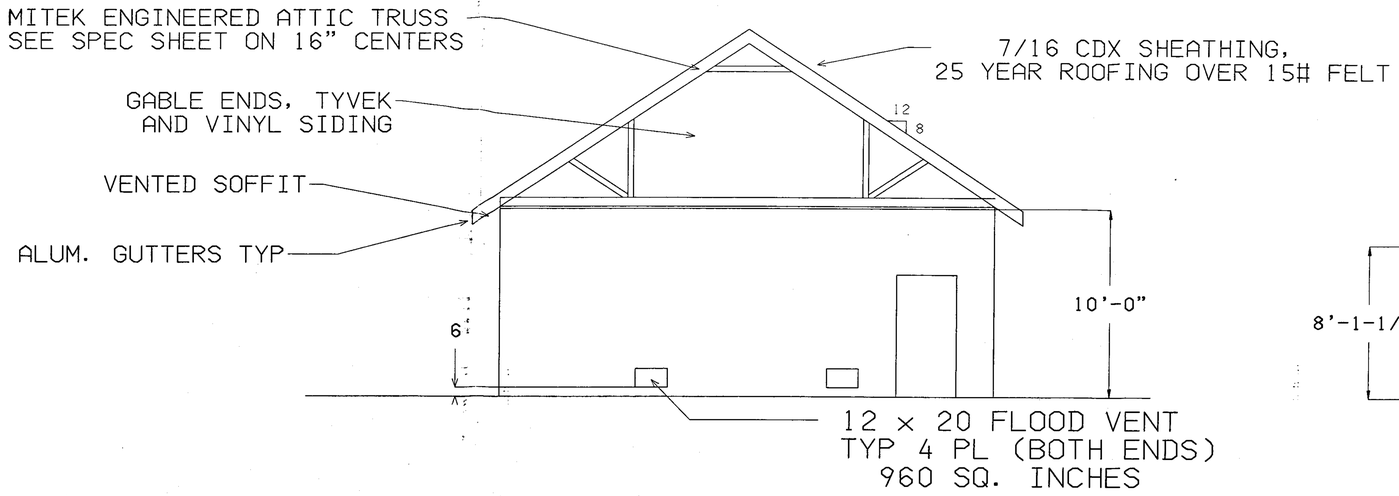
⚠ Warning - Verify design parameters and READ NOTES ON THIS AND INCLUDED MITEK REFERENCE PAGE MII-7473 BEFORE USE
Design valid for use only with MiTek connectors. This design is based only upon parameters shown, and is for an individual building component to be installed and loaded vertically. Applicability of design parameters and proper incorporation of component is responsibility of building designer - not the truss designer. See this page and MII-7473 for more information. Bracing shown is for lateral support of individual members only. Additional temporary bracing to insure stability during construction is the responsibility of the erector. Additional permanent bracing of the overall structure is the responsibility of the building designer. For general guidance regarding fabrication, quality control, storage, delivery, erection and bracing, consult TPI 1-89 Quality Standard TPI 2-89 Bracing Specification, and HIB-91 Handling Installing and Bracing Recommendation available from Truss Plate Institute, 583 D'Onofrio Drive, Madison, WI 53719

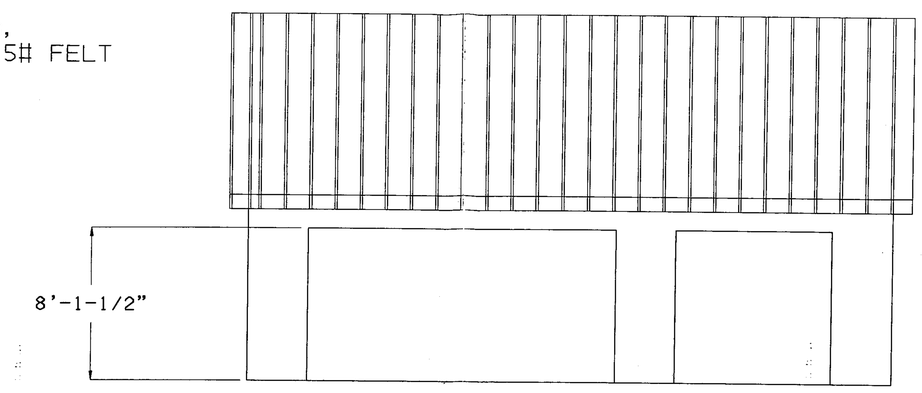
MiTek®



TYP WALL SECTIONS







NOTE: 29- CENTER TRUSSES, 2- END GABLE TRUSSES

26 X 34 GARAGE
ALLEN ASHWELL
7840 DENTON AVENUE
BALTIMORE, MD. 21219

DATE: 10-16-03	DRN. BY: A. ASHWELL	REV.
SCALE: 1/4"=1'		—

04-255-A

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

PROPERTY ADDRESS: 7840 DENTON AVENUE

SEE PAGES 5 & 6 FOR THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

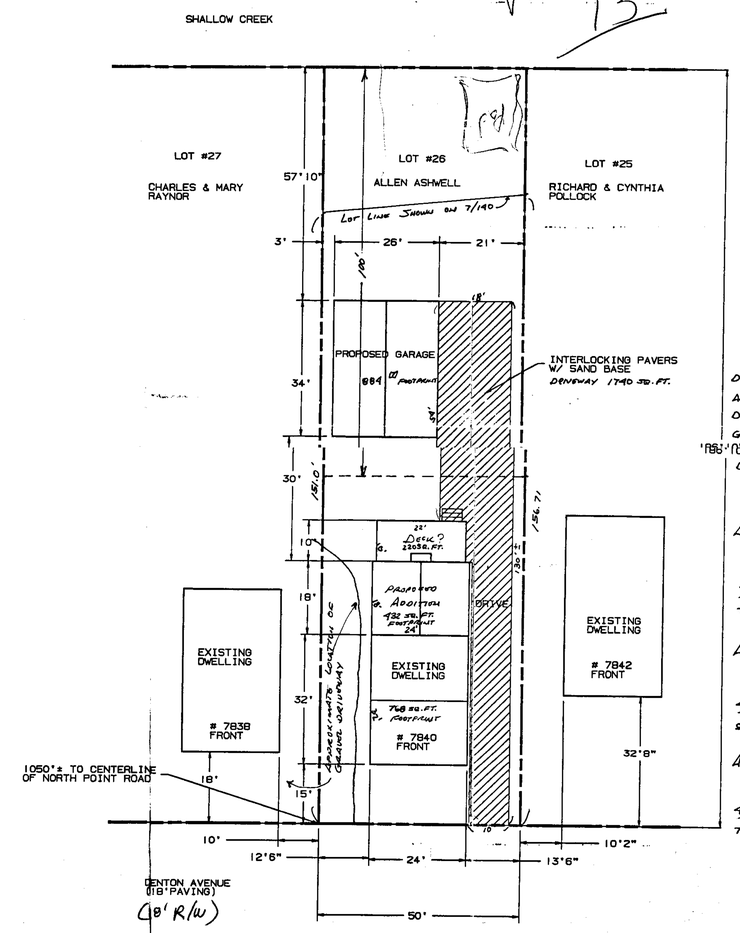
Prot X 13

SUBDIVISION NAME: OLEARY PLAT

PLAT BOOK # 7 FOLIO # 140 LOT # 26 SECTION # ____

OWNER: ALLEN ASHWELL

Prot X 13



Impervious Area as of Plat Date:

Front House 32'x24': 768 sq. ft.
Garage 12'x42': 504 sq. ft.
Rear House 24'x44': 1056 sq. ft.
Shed
2328 sq. ft.

Existing & Proposed Impervious Area:

Dwelling:	768 sq. ft.
Addition:	432 sq. ft.
Deck:	220 sq. ft.
Garage:	884 sq. ft.
Driveway:	1740 sq. ft.
	4044 sq. ft.

Area of lot per 7/140
7693 sq. ft.

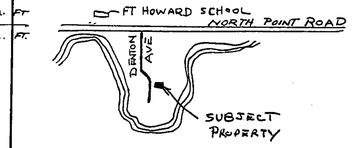
$\frac{4044}{7693}$ = 0.52 % impervious area

Area of lot per this zoning plat
9350 sq. ft.

$\frac{4044}{9350}$ = 0.43 % impervious area

Area of lot per tax assessment
7803 sq. ft.

$\frac{4044}{7803}$ = 0.51 % impervious area



Existing & Proposed Impervious Area (without garage): 2304 sq. ft.

NORTH

VICINITY MAP
SCALE: 1 = 1000'

LOCATION INFORMATION

ELECTION DISTRICT 15

COUNCILMANIC DISTRICT 07

1" = 200' SCALE MAP # NE9I

ZONING D.R.5.5

LOT SIZE .2146 ACREAGE — 9350 SQUARE FEET

Area from 7/140: 0.177 ac. — 7693 sq. ft.

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☒	☐
100 YEAR FLOOD PLAIN	☒	☐
HISTORIC PROPERTY/ BUILDING	☐	☒

PRIOR ZONING HEARING NONE

PREPARED BY: ALLEN ASHWELL

SCALE OF DRAWING: 1" = 20'-0"

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #
JNP	255	04-255-A

$\frac{9,341.67 \text{ sq ft by this}}{7,803.10 \text{ sq ft by assessment}}$ = 1.197

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

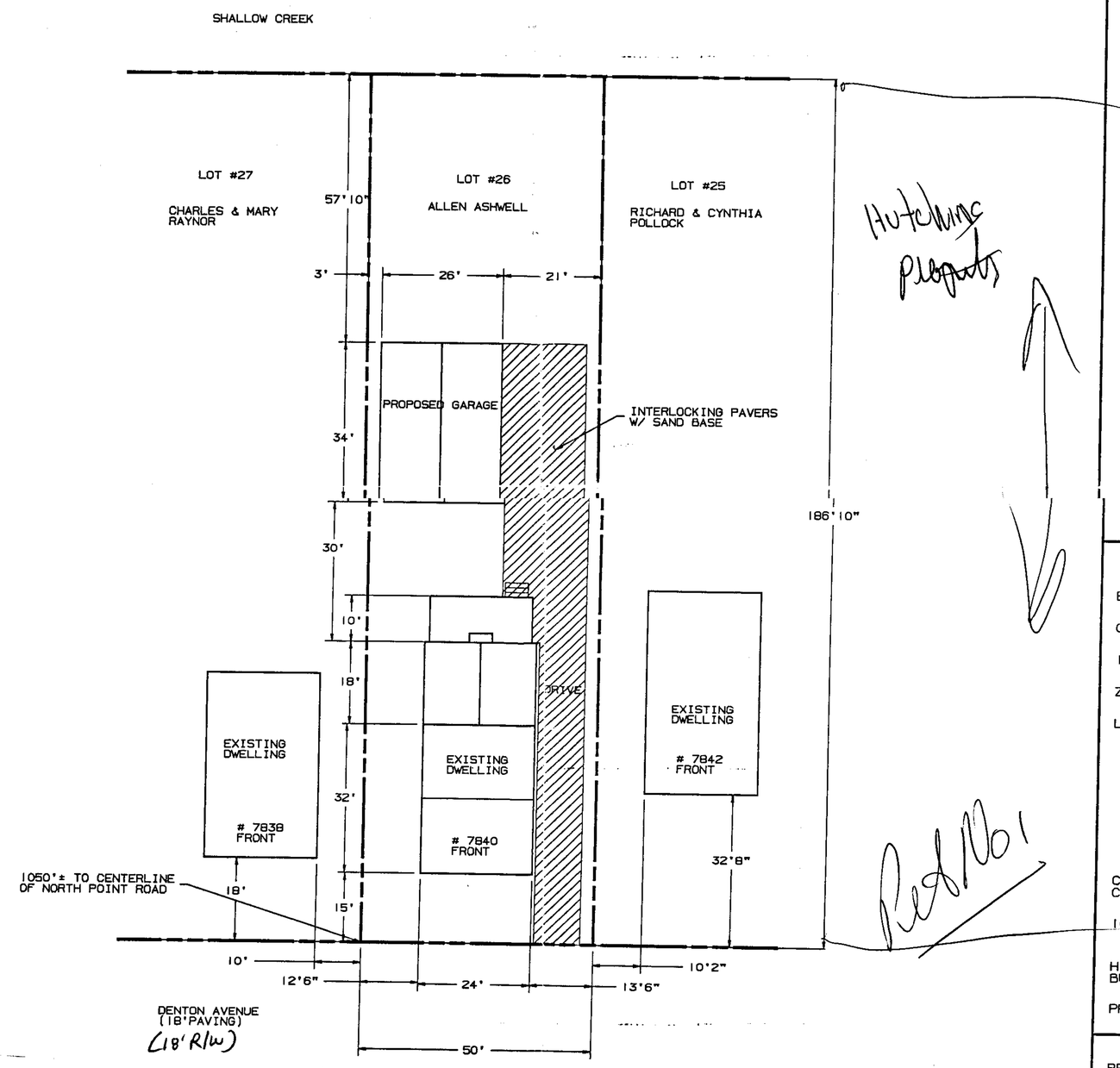
PROPERTY ADDRESS: 7840 DENTON AVENUE

SEE PAGES 5 & 6 FOR THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME: OLEARY PLAT

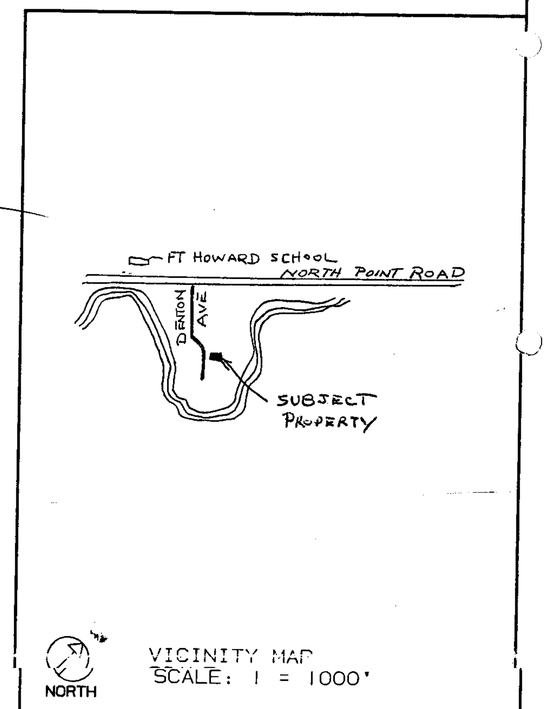
PLAT BOOK # 7 FOLIO # 140 LOT # 26 SECTION # ____

OWNER: ALLEN ASHWELL



Hutchins property

Red No 1



VICINITY MAP
SCALE: 1 = 1000'

LOCATION INFORMATION

ELECTION DISTRICT 15

COUNCILMANIC DISTRICT 07

1" = 200' SCALE MAP # NE9I

ZONING D.R.5.5

LOT SIZE .2146 ACREAGE 9350 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☒	☐
100 YEAR FLOOD PLAIN	☒	☐
HISTORIC PROPERTY/ BUILDING	☐	☒

PRIOR ZONING HEARING NONE

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #
JNP	255	04-255-A

PREPARED BY: ALLEN ASHWELL

SCALE OF DRAWING: 1" = 20'-0"