6/25/04

IN RE: PETITION FOR VARIANCE N/S of Velvet Ridge Drive, 1,475 ft. W centerline of Park Heights Avenue 3rd Election District 2nd Councilmanic District **(2316 Velvet Ridge Drive)** Leslie & Melvyn Leeb *Petitioners*	* * * * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 04-433-A

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owners of the subject property Leslie and Melvyn Leeb. The variance is requested for property located at 2316 Velvet Ridge Drive in Baltimore County. The variance request is from Section 1A04.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing open projection to be converted to an enclosed addition, setback 18 ft. from the property line in lieu of the required 50 ft.

The property was posted with Notice of Hearing on June 8, 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 May 25, 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-

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By R. Jagnesh

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: None.

Interested Persons

Appearing at the hearing on behalf of the variance request were William Keeney, Licensed Architect, David Hauser and Mel Leeb, the Petitioner who was represented by Jeffrey Scherr, Esquire. Appearing in opposition to the variance request was Mary Allinson who was represented by J. Carroll Holzer, Esquire. 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 1.94 acres and is zoned RC 5. The property is improved by a home which is located far to the rear of the property and by all accounts is virtually on the northern property lot line and within the RC 5 setback requirement of 50 ft. from any lot line. This property was the subject of a prior hearing by this Commission, Case No. 01-390-A, in which the Zoning Commissioner granted a variance documenting the existing home, one corner of which is 13.5 ft. from the northern lot line.

The Petitioners now seek to enclose an existing screened porch with glass that was previously constructed by the Petitioners to be used as a breakfast room. See Petitioners' Exhibit No. 1.

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While enclosing the screened porch, the Petitioner proposes to extend the balcony above the enclosed porch and add a triangular roof to this deck. See Petitioners' Exhibit No. 2. In addition, the Petitioner proposes to screen the existing open deck next to the above porch, and add a roof with a triangular feature to protect it. The proposed sunroom (enclosed porch) and screened deck are generally located on the footprint of the existing porch and open deck as shown in better detail on Petitioners' Exhibit No. 3. The Petitioners' architect, William Keeney, indicated that the home was generally in need of repair because some areas of the roof and siding were deteriorating with the weather. The Petitioners propose to make the above improvements while renovations are going on to "recover the entire house".

Mr. Scherr indicated that because of the previous decision in Petitioners' Case No. 01-390-A, no variance was needed as the prior variance case allowed building within the existing footprint of the building which is within 13.5 ft of the northern lot line. Mr. Keeney emphasized that the exterior changes were all within the existing footprint of the building. In fact, his design actually was slightly smaller because he reduced the footprint of the open deck that he proposed to screen in. He indicated that the proposed changes would not significantly change the view of the home that the neighbors see.

On cross-examination, he admitted that there would be a change to the second floor above the proposed enclosed porch. Today there is a half balcony and roof over the screened porch. The proposed design would extend the balcony fully over the entire porch roof and add a triangular shaped roof over the entire balcony as shown in Petitioners' Exhibit No. 3. To compare the present design with the proposed design see Petitioners' Exhibit No. 4G (photograph). Similarly, he would add a triangular roof over the proposed screened porch. He also will be adding a third triangular roof over the new entrance on the right side of Petitioners' Exhibit No. 2 to provide a balanced look.

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He admitted that the proposed screened porch and enclosed sunroom would both be located within the 50 ft. setback line required by RC 5 zoning and that there never was a specific variance addressing the open deck or the screened porch.

Mr. Leeb testified that when he purchased the property 18 years ago he was unaware that the location of the home violated the RC 5 set back requirements. He submitted extensive photographs which showed the woods to the north, which he indicated would shield neighbors in that direction from seeing the home. He admitted that he was the one who added the screened porch and open deck after purchasing the home.

Ms. Allinson presented her concerns about the proposal. She recently subdivided her property and Lots 2 & 3 of this subdivision would be adjacent to or very near the Leeb property, even though her home is quite a distance from the Leeb property. She had been opposed to the prior attempts of the Leeb's to expand their home because it was close to the property line. She indicated that she would be able to see the Leeb home from the area where a new house could be built on lot 3 because the Leeb home is higher than her property. She objected to the variance requests and indicated that granting them would damage the value of her property. In addition, she stated that the Leeb's had a flat area on the other side of their home that could be used to build the proposed additions without further intruding toward her property.

Findings of fact and conclusions of law

The first issue raised by the Petitioner was whether any variance was needed because of the Commissioner's decision in Case No. 01-390-A. After reviewing this decision, I am convinced that the Commissioner granted a variance documenting the existing home, much of which was located within the 50 ft. setback from the lot lines. It happened that the corner of the existing home was 13.5 feet from the northern lot line and so that number was included in the order. I do not think

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that the Commissioner granted a variance for all additions on the northern end of the house that could be constructed at least 13.5 ft. from the northern lot line. In fact, he specifically stated in Restriction No. 2 that "future construction on the rear/north side of the subject property must comply with the setback requirements or variance relief may be necessary". I find that once the screened porch is enclosed, it becomes part of the building and according to the scale of Petitioners' Exhibit No. 3 would be approximately 20 ft. from the northern lot line. As such it is within the 50 ft. setback and requires a variance.

The Commissioner also granted a 0 ft. setback for the existing gazebo and open deck. The gazebo was in fact on the property line or was over it. Again, he was, in my view, simply documenting the existing situation. I find that enclosing the open deck as a screened porch also triggers a need for a variance because it would no longer be a flat wooden surface on the ground, but would have height and architectural features that are significantly different from the situation documented by the prior case. After reviewing Petitioners' Exhibit No. 3, I find the corner of the proposed screen porch to be approximately 5 ft. from the northern lot line and within the setback area. In summary, I find that both proposed changes require variances to allow them to be built.

The next issue was whether Ms. Allinson could raise objection to the proposed additions as the owner of Lots 2 and 3 of her subdivision. At present, there are no houses yet built on these lots and the lots would more than likely be sold to someone not a party to these proceedings. I hold that as an adjacent/nearby property owner she may so object and express her concerns regarding the proposed additions under these circumstances.

More significant is Ms. Allinson's observation that flat area is available on the other side (garage side) of the home to build the proposed additions. Implicit in this observation is the fact that if true there would be no hardship or practical difficulty because there would be an alternative

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location for the additions that would not require a variance. In this case, the petition must be denied.

The question now is could such additions be built on the garage side of the building without requiring a variance. In arriving at my finding in this matter, I note that the Petitioners' exhibit shows the setback lines for this end of the home as well. I realize that this exhibit is not to the 1 inch = 200 ft. scale. At some point during the reduction or enlargement of the drawing, the scale drawing for the plat to accompany the scale was lost. However, in my view, that does not mean that this plat is not accurate in portraying the western setback line as it relates to the home. Therefore, after examining this plat, it appears that a corner of the garage is within the western setback area. I realize that there is no mention of this intrusion in the prior case. Nevertheless, it is clear to me that the proposed sunroom and screened porch could not fit onto the garage or the side of the home without requiring a variance. Under these circumstances I find that there is no variance-free area to locate the additions on the western side of the home. Consequently, I will continue with the case.

Finally, I find that the proposal to enclose the present screened porch is reasonable and will not significantly impact or change the appearance of the protestant's property. In my opinion, to replace the screening with glass is an insignificant change, but will allow the Leeb's to use their porch year round. I think this change is within the spirit and intent of the Commissioner's order in the prior zoning case and the zoning regulations.

What troubles me is the significant impact the whole project will have on the adjacent property. If one compares the view of this side of the Petitioners' home (shown in Petitioners' Exhibit No. 4G photograph) to the architectural rendering of the proposed changes (shown in Petitioners' Exhibit No. 2), there will be a massive change. By making this observation, I am in

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no way criticizing Mr. Keeney's work as an architect. Undoubtedly, the rendering is architecturally superior to the present design.

For example, the balcony over the now enclosed porch has gone from a minor feature on the rear of the home to a tiered projection with a striking roof supported by columns. This feature has not only moved up but is now projecting outward from the home significantly. Similarly, the open deck, which was virtually invisible to neighboring properties, would now have a façade and again a striking roof. This is a significant change and in my view would have a startling impact on the view the neighboring properties would experience. Again, I am not at all criticizing the architectural value of the proposed design but simply observing there is more to this proposal than keeping the same footprint as the proposed additions undoubtedly do. Said another way, the impact of the proposed changes will be significant from the ground while they may be insignificant from 1,000 ft. in the air (the footprint).

Considering all the evidence presented, I will grant the requested variances in part and deny them in part. I find that special circumstances or conditions exist that are peculiar to the land or structure. Specifically, I find the odd shape of the lot causes the impact of the RC 5 zoning regulations to fall more heavily on this property as compared to other properties in the neighborhood. Therefore I find the property unique. I also find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. There is no reason in my view that the present screened porch cannot be enclosed and made useful year round. I further find that the requested variance for enclosing the screened porch can be granted in strict harmony with the spirit and intent of the regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. Therefore, I will grant the variance as it relates to enclosing the screened porch.

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On the other hand, I find that the remaining requests for variance will have a detrimental effect on the general welfare of the community and are not within the spirit and intent of the RC 5 zoning regulations. Therefore, I will deny the remaining requests.

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 Petitioners' variance request should be granted in part and denied in part.

THEREFORE, IT IS ORDERED, this 25 day of June, 2004, by this Deputy Zoning Commissioner, that the Petitioners' request for variance from Section 1A04.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing screen porch to be converted to an enclosed addition, setback 18 ft. from the property line in lieu of the required 50 ft., be and it is hereby GRANTED, subject, however, to the following restriction:

1. That the roof and balcony over the present screen porch shall not be changed or enhanced architecturally but may be replaced or repaired as circumstances require; and

IT IS FURTHER ORDERED, that the Petitioners' request for variance from Section 1A04.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an open deck to be converted to a screen porch, setback 5 ft. from the property line in lieu of the required 50 ft., be and it is hereby DENIED

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

ORDER RECEIVED FOR FILING
Date 6/25/04
By J. Jamison

IN THE MATTER OF THE APPLICATION OF MELVYN & LESLIE LEEB– LEGAL OWNERS PETITIONERS FOR VARIANCE ON PROPERTY LOCATED ON THE N/S OF VELVET RIDGE DRIVE, 1,475' W OF PARK HEIGHTS AVENUE (2316 VELVET RIDGE DRIVE) 3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT	* * * * * *	BEFORE THE COUNTY BOARD OF BALTIMORE COUNTY CASE NO. 04-433-A

* * * * * * * * *

OPINION

This case comes before the Baltimore County Board of Appeals as an appeal of the Deputy Zoning Commissioner's Order dated June 24, 2004, which denied in part and granted in part Petitioners' request for a variance. The Petition for Variance requested is from §1A04.3.B.2 of the *Baltimore County Zoning Regulations* (BCZR) to permit an existing open projection to be converted to an enclosed addition, set back 18 feet from the property line in lieu of the required 50 feet.

A public hearing before the Board of Appeals was held on April 7, 2005. Michael McCann, Esquire, represented Mr. and Mrs. Leeb, Petitioners. J. Carroll Holzer, Esquire, represented the Protestant, Mary Allison. A public deliberation was held on May 18, 2005, but prior to a written opinion, this Board requested further deliberation, which was held on July 13, 2005.

Testimony and Evidence

Mr. and Mrs. Leeb bought the subject property in 1981 and built a house on it in 1984. The property contains 1.94 acres and is currently zoned RC 5. The property is part of the subdivision known as Velvet Ridge. The subject property was among the last to be developed. Petitioners' Exhibits 1 through 3 are subdivision plats showing the three sections of the

subdivision's development. The subject property appears on Exhibit 3, the third section of the subdivision to be built. Petitioners' Exhibit 4 shows an aerial view of the subdivision, with yellow lines around all the properties, except Petitioners', which is outlined in red.

In 2001, when the Petitioners sought to place an addition on the back of their house, they discovered that most of their house was sited 36.5 feet within the 50-foot rear/side setback and their deck and gazebo were located at or on the property line shared with Barbara Holdridge (see Petitioners' Exhibit 14). Mr. Leeb then requested a Petition for Administrative Variance for planned improvements including a screened porch and one-story addition to the rear (north side) of the house. These changes were opposed by Ms. Allinson, whose property is adjacent to the Leebs' on the north side. According to the Zoning Commissioner's Opinion, dated June 19, 2001, faced with Ms. Allinson's opposition, the Leebs gave up the request for the additions, and sought instead to legitimize the existing structure, which Ms. Allinson did not oppose (see Petitioners' Exhibit 9). The Zoning Commissioner, finding a case for uniqueness and hardship, approved the 13.5-foot rear/side yard setback for the house and a 0-foot setback for the deck.

In the current case, Mr. and Mrs. Leeb do not intend to increase the footprint of the house beyond the already approved variances, but rather they seek to enclose them. Their request is to enclose with glass the screened porch, extend the second floor deck over the existing screened porch, and enclose the open deck to make it a screened porch. In his testimony, Mr. Leeb stated that a screened deck was the only way they could enjoy their property in the summer, and that by permanently enclosing the current screened porch, they could use the room year-round. They also plan to take down the gazebo, which currently crosses the property line. (Petitioners' Exhibit 12 shows the proposed changes.)

In his testimony, Mr. Leeb described the limitations of the subject property, noting that the house is on a hill, surrounded by steep slopes. There is a 300-foot required setback from the road. The part of the property closest to the road is a natural conservation area upon which Petitioners cannot build. It also has a stream running through it. This stream crosses only two properties in the subdivision, the Petitioners' and Mr. Pula, a neighbor to the left of the Leebs.

Mr. Leeb stated that the changes were needed to increase living space. The way the house is currently designed, they cannot increase space any other way. The driveway, on the opposite side of the house, also has setback issues, being near the property line. The garage cannot be made into living space, because it connects to a mudroom and would be inconvenient, nor can a room be added above the garage, because of the way it was built.

Mr. William Keeney, sole principal with Keeney Architects, testified on behalf of the Petitioners as an expert in architecture, site design and site development. He designed the proposed changes. He offered Petitioners' Exhibit 12, a revised plan of the house made a week before the current hearing. He testified that he made changes to the plan to address concerns raised by the Deputy Zoning Commissioner in his Opinion. He argued that the changes were aesthetic only and did not change the request for variance. He stated that the changes would make the house aesthetically more pleasing and less intrusive.

Mr. Keeney testified during both direct- and cross-examination to the limitations on the property that made placing an addition to the house impossible in any other location. He stated that moving the garage would cause other variance issues. The front of the house drops off on a 20 to30-degree incline, so nothing could be built there. The steep inclines around the house would make it much more costly to place the addition anywhere else. He also stated that Baltimore County prohibits building on slopes greater than 25 degrees. In addition, there was

the problem of the 300-foot set-back required for the conservation easement in front of the house (see Petitioners' Exhibit 3). The lot, he stated was "weird" because of the triangular shape, the 300-foot setback in front, and the slopes all around the house, causing the proximity to the property line.

Mr. Keeney argued that without the variance, the Leebs would suffer a hardship because the house would be more difficult to sell as it was starting to be in need of repair, with possible structural problems. The Leebs, he said, had run out of options for placing an addition, and the house would suffer if renovations were not soon made.

Ms. Mary Allinson testified in opposition to the proposed changes requested by the Leebs. She owns 9 acres of property northwest and adjacent to the Leebs' property. Her property is not in the Velvet Ridge subdivision. Petitioners' Exhibit 15 is the plat for her property. Her property is divided into four lots, and she lives on one of the lots. Her intention, she said, was to eventually develop and sell the other lots. She testified that when the Leebs planned their addition in 2001, she was concerned because the additions were then encroaching 20 feet into Petitioners' 50-foot setback. She produced Protestant's Exhibit 1 A-D, a series of photos showing how close her property line is to the Leebs' house; so close, she said, that the grass the Leebs cut was on her property. Protestant's Exhibit #1D shows her property line in blue ink on the photograph.

Ms. Allinson testified that her concern was that from the time they built their house, the Leebs disregarded property lines, first building their house within the setback, then adding on the deck and gazebo over the Holdridge property line. She argued that in 2001 the Leebs had agreed to drop the additions if she didn't oppose legitimizing the existing setbacks, but now he was proposing the additions again.

Decision

Variances are rare and difficult to grant. They must meet a very stringent test placed upon them by the zoning regulations, as interpreted by the Maryland Court of Special Appeals. The Court notes in *Cromwell v. Ward* 102 Md.App. 691 (1994) that a review of cases in Maryland since the state zoning enabling act in 1927 found only five reported Maryland cases in which the grant of a variance had been affirmed or the denial of one reversed.

Section 307 of the *Baltimore County Zoning Regulations* permits granting a variance 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 would "result in practical difficulty or unreasonable hardship." Furthermore, pursuant to § 307, any such variance shall be granted only if in strict harmony with the spirit and intent of said regulations.

These conditions for granting a variance have been interpreted by the Court of Special Appeals in a number of cases; the controlling case being *Cromwell v. Ward*. According to *Cromwell*, Petitioners must first prove that their property is unique. This standard must be met before other parts of the variance requirements can be properly considered.

Uniqueness

In *Cromwell*, the Court referred to the definition of "uniqueness" provided in *North v. St. Mary's County*, 99 Md.App at 512,638 A.2d 1175:

> 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 restriction.

The Court goes on to cite a number of cases in *Cromwell* supporting the conclusion that uniqueness must pertain to the property in question and cannot be a general condition shared by other properties in the area.

In reviewing the evidence and testimony in this case, this Board unanimously agreed that there is a case for uniqueness here. The property is severely constrained by the steep slopes on almost all sides. Even without the slopes, the 300-foot setback required for the conservation easement limits where a house could be placed on the property. This setback requirement forces the house to be placed in a small portion of what is otherwise a good-sized, almost 2-acre lot. Although the triangular shape of the property and the stream are mirrored on Mr. Pula's property to the west of the Leebs', the portion of the Leebs' property that is buildable is considerably narrower than Mr. Pula's (see Petitioners' Exhibit 14). In addition, we found Mr. Keeney's testimony regarding the steep slopes and lack of other options compelling and convincing.

Practical Difficulty or Unreasonable Hardship

Having satisfied the test of "uniqueness," Petitioners are next required to show that strict compliance with the zoning regulations would cause a practical difficulty or unreasonable hardship.

In discussing the issue of hardship, the Court in *Cromwell* cites a number of cases in Maryland and in other states. It quotes from a case from Utah, for example, *Xanthos v. Board of Adjustments,* 685 P.2d 1032 (1984): "Hardship is not demonstrated by economic loss alone. . . . To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program."

The Court goes on to quote from a case in Maine, *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27, 30-31 (1983): "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."

In Petitioners' Post-Hearing memo, they argue that the setbacks and steep slope prohibit any improvement to the house other than those proposed, creating a practical difficulty, because they are unable to put an addition anywhere else on the property. They further argue they have the "right to full enjoyment of their property consistent with the zoning regulations." Those regulations allow them "the opportunity to seek a variance when practical difficulty prevents them from obtaining the benefit and full enjoyment of their land."

Protestant's Post-Hearing memo refers to a number of cases on the question of hardship. It notes that Maryland courts have rejected variance claims "based on financial or revenue considerations," citing *Burns v. Mayor & City Council*, 251 Md.554 (1968); *Daihl v. County Board of Appeals*, 258 Md.157 (1970). *Easter v. Mayor and City Council of Baltimore* 105 Md. 395 (1950) found that the "mere fact that the variance would make the property more profitable is not a sufficient ground to justify the relaxation of the setback requirements." Finally, Protestant's memo refers to *Park Shopping Center, Inc. v. Lexington Park Theater Company*, 216 Md. 271, 276-277 (1958) in which the Court of Appeals wrote "the criteria for determining unnecessary hardship is whether the … restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership."

The arguments for hardship presented by Petitioners expressed convenience and financial loss—the two criteria the Maryland Courts of Appeal reject. It is clear from the cases *Cromwell*

cites, as well as those noted by Counsel for the Protestant, that the hardship standard must interfere with the use of the property in some way, making it impossible to build on or use the property without a variance. In this case, Petitioners are not prohibited from using their property. Petitioners have already built a good-sized house. Although their property consists of 1.94 acres, it has the limitations of a much smaller plot, but they knew this when they bought the property. They knew the limitations imposed by the 300-foot setback, the conservation easement, and the steep slopes. An owner of a small lot must abide by setback requirements that would limit building an addition onto an existing house; so must an owner of a large lot with such limitations. The lack of an additional room does not interfere "with the basic right of private ownership."

As to the issue of hardship or practical difficulty, this Board finds that, based upon the evidence and the above-cited cases, there is no hardship here, specifically when applied to attaching an addition by creating a screened porch from the currently open deck, which sits upon the property line. Since the current screened porch is already a structural part of the house, and the current 13.5-foot setback for it was approved by the Zoning Commissioner in 2001, we find no conflict with the zoning regulations in converting it into a year-round use room, as Petitioners propose. Likewise, we find no conflict with the regulations in the proposal to extend the balcony above the existing porch, which is also part of the current structure of the house with a setback approved by the Zoning Commissioner in 2001. However, any changes made cannot protrude any further into the setback area. In Petitioners' Exhibit 12, the proposed roof of the balcony protrudes 2.5 feet into the setback area; therefore that must be changed to remain within the current setback in order to abide by this ruling.

We deny a variance to create an addition by building a screened porch in place of the existing deck, as proposed in Petitioners' Exhibit 12. While a 0-foot setback for the deck was approved by the Zoning Commissioner in 2001, a deck is not a structure integral to a house. A screened porch is a permanent structure and therefore constitutes an addition to the house. In this case, the addition would abut the property line. This is completely contrary to the spirit and intent of setback regulations and therefore cannot be allowed.

ORDER

THEREFORE, IT IS THIS 16th day of September, 2005 by the County Board of Appeals in Baltimore County

ORDERED that Petitioners' request for variance from § 1A04.3.B.2 of the *Baltimore County Zoning Regulations* (BCZR) to permit an existing screened porch to be converted to an enclosed addition, setback 13.5 feet from the property line in lieu of the required 50 feet be and is hereby **GRANTED**; and it is further

ORDERED that the request for variance from § 1A04.3.B.2 of the BCZR to permit an extension of the balcony over the current screened porch, setback 13.5 feet from the property line in lieu of the required 50 feet, be and is hereby **GRANTED**, subject to the following restriction:

1. The proposed roof of the balcony, as proposed in Petitioner's Exhibit 12, be changed so that it does not protrude into the 13.5 ft. setback; and

and it is further

ORDERED that the variances granted herein be and are subject to the following restriction:

That any future construction on the rear/north side of the subject property must comply with setback requirements or variance relief may be necessary.

and it is further

ORDERED that the Petitioners' request for variance from § 1A04.3.B.2 of the BCZR, to permit an open deck to be converted to a screened porch, setback 0 feet from the property line, in lieu of the required 50 feet, be and is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Michael O. Ramsey, Panel Chairman

Margaret Brassil, Ph.D.

John P. Quinn

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
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September 16, 2005

Michael R. McCann Esquire
FUNK & BOLTON, P.A.
36 S Charles Street
Baltimore, MD 21201-3111

RE: *In the Matter of: Melvyn and Leslie Leeb* – Legal Owners/
Petitioners / Case No. 04-433-A

Dear Mr. McCann:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **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: Mr. & Mrs. Melvyn Leeb
William Keeney, Architect
J. Carroll Holzer, Esquire
Mary Allinson
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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IN THE MATTER OF: Melvyn & Leslie Leeb, Legal Owners/Petitioners 2316 Velvet Ridge Drive Owings Mills, Maryland 21117	* * *	BEFORE THE COUNTY BOARD OF APPEALS
3rd Election District 2nd Councilmanic District	* *	OF BALTIMORE COUNTY
Petition for Variance	*	Case No.: 04-433-A

* * * * * * * * * * *

PROTESTANTS MEMORANDUM
IN LIEU OF FINAL ARGUMENT

Mary Allinson, 2703 Caves Road, Protestant, by ***J. Carroll Holzer, Esquire***, Holzer & Lee, hereby submits this Memorandum in Lieu of Final Oral Argument as requested by the County Board of Appeals and says:

I.

STATEMENT OF THE CASE

This matter arose before the County Board of Appeals as a result of a Petition for Variance filed by the Legal Owners, Melvyn and Leslie Leeb of 2316 Velvet Ridge Drive for a two (2) acre lot zoned RC 5. The variance request is from B.C.Z.R. §1A04.3.B.2 to permit an open projection to be converted to an enclosed addition, "setback 18 feet from the property line in lieu of the required 50 feet." The Petition for Variance attached Exhibit A, which included the statement "Petitioners proposed to make improvements to the existing dwelling which was constructed at the rear/north side of the property 13.5 feet from the adjacent

RECEIVED

BALTIMORE COUNTY
BOARD OF APPEALS

property line in violation of the 50 foot setback requirement." Case No.: 01-390-A on June 19, 2001, was attached. "The variance sought was to improve the dwelling by enclosing with glass the existing screened porch and screening in and placing a roof over the existing wood deck."

Before the Deputy Zoning Commissioner, Petitioners Exhibit #2, a drawing showing the proposed modifications and additions to the existing home were submitted as part of Petitioners case. Petitioner's Exhibit #13 before the Board is the same as Petitioner's Exhibit #2 before the Deputy Zoning Commissioner. Petitioner's Exhibit #12 which was admitted before the Board ***differs*** from the Plan previously submitted as Exhibit #2 before the Deputy Zoning Commissioner and Petitioner's #13 as submitted to this Board.

Petitioner's Exhibit #12 before the Board was not considered by the Deputy Zoning Commissioner in his Opinion and Order dated June 28, 2004, but rather Petitioner's Exhibit #2 before the Zoning Commissioner and Petitioner's Exhibit #13 before the Board was the Plan reviewed by the Deputy Zoning Commissioner and was the subject of his Order.

As stated above, the Petition for Variance was heard before the Deputy Zoning Commissioner and a Decision rendered on the 25th day of June, 2004. The Deputy Zoning Commissioner pointed out in his Opinion, Page 3 that the modifications to the home would include three (3) triangular roof projections which would face the Allinson property. The Deputy Zoning Commissioner noted the testimony of Mr. Keeney who acknowledged that there was never a specific variance granted addressing the open deck or the screened porch (Page 4). The Deputy Zoning Commissioner found that "he did not think that the

Commissioner (in the previous case) granted a variance on all additions on the northern end of the house that could be constructed at least 13.5 feet from the northern lot line. He found that the prior case in 2001 simply documented the ***existing*** situation. The Deputy Zoning Commissioner found that "enclosing the open deck as a screened porch also triggers a need for a variance because it would no longer be a flat wooden surface on the ground but would have height and architectural features that are significantly different from the situation documented by the prior case." He further found that the proposed screened porch to be approximately five (5) feet from the northern lot line and within the setback area which also required variances. The Deputy Zoning Commissioner then compared the photos of the current home with the proposed home and found "the significant impact the whole project will have on the adjacent property." He further found that "there will be a massive change." He found that the "open deck which was virtually invisible to the neighboring properties would now have a façade and a striking roof. This is a significant change and in my view would have a startling impact on the view the neighboring properties would experience." (Opinion, Page 7). He then granted the variance as it related to the screened porch but denied the remaining request for variances in that it would have a "detrimental effect on the general welfare of the community and not within the spirit and intent of the RC 5 Zoning Regulations."

From this Decision, the Petitioner appealed.

The County Board of Appeals conducted a hearing *de novo* on April 7, 2005.

Since Protestants will refer to direct testimony from the Transcript, a copy of the Transcript has been provided for the Board's benefit as an attachment hereto. References to the Transcript will be inserted at the appropriate locations herein.

II.

STATEMENT OF FACTS

Over objection of the Protestants (T. 85), Petitioner's Exhibit #12 was received in evidence which altered and changed the requested relief from that presented before the Deputy Zoning Commissioner which was reflected by Zoning Commissioner's Exhibit #2, now marked as County Board of Appeals Petitioner's Exhibit #13. The Petitioner altered its Plan which formed the basis of the variance request before the Deputy Zoning Commissioner to present a modification thereof to the County Board of Appeals. This matter will be discussed later in this Memorandum.

A. Petitioner's Case.

The Petitioner presented his case by calling Melvyn Leeb, the owner of the property who testified that he acquired a vacant lot in the subdivision in 1981 and subsequently built his house in 1984 on approximately a two (2) acre lot. (T. 9). While Mr. Leeb testified that his lot contains certain setback lines, that it was built on a sloping hillside and that he had a 300 foot buffer, his testimony as well as Mr. Keeney's lacks any evidence that the subject lot is different from other lots in the same neighborhood. Specifically, there was no testimony that the stream flowing through his property did not flow through adjacent properties. There was no testimony that other lots in the subdivision were not subject to the same 300 foot buffer, and that the other lots in the subdivision were not sloping in topography. In fact, there was no evidence presented that this lot contained features different from other lots. As a matter of fact, the subdivision may be reviewed by the Board by an analysis of Petitioner's

Exhibits #1, #2 and #3, the Subdivision Plats and also Petitioner's Exhibit #4, the aerial photo which shows the stream meandering through adjacent property owners, which also shows the adjacent property owner Thaddeus Pula, property being also irregular in shape and size and dimensions. Further, the aerial photo shows generally hilly terrain, heavily wooded areas and stream with its 300 foot buffer meandering throughout the entire neighborhood. Leeb testified that his home as it exists is approximately 3,800 square feet and that the proposed enclosures were from 600 to 800 additional square feet. (T. 37). Leeb acknowledged that 15 years ago he added the porch and the deck without a County permit and within the allowed setback of 50 or 20 feet. (T. 39).

Petitioners filed a Petition for Variance acknowledging that the setback attached to their property was 50 feet. This matter was never contested before the Deputy Zoning Commissioner; however, before the Board was the first time the issue was raised that in fact the setback was actually 20 feet in 1968. (T. 42). Whatever the setback is, it is clear that 13.5 feet is within both the 50 foot and 20 foot setback requirement and that the variance request is not altered or changed even if the 20 foot setback is the appropriate setback.

Leeb acknowledged that he had previously submitted a Petition for Variance in Case No.: 01-390-A. That case speaks for itself. However, Leeb acknowledged that in return for his dropping of the proposed additions to his home at that time, Ms. Allinson withdrew her objection to the legitimizing of the 13.5 variance required for the existing dwelling. (T. 43). Leeb further acknowledged modification of his plans that were submitted to the Deputy Zoning Commissioner to that being submitted to the Board today in Petitioner's Exhibit #12. (T. 46-47).

Leeb characterized the hardship requirement as being the internal convenience of the Leeb family. (T. 51). Leeb further described the square footage of the proposed additions as 256 square feet for the screened in porch to be converted to a den and 336 square feet for the deck which was to become a screened in porch. (T. 57). He acknowledged that the roofline would be changing. (T. 64).

Thereafter, the Petitioners called Thaddeus Pula, the adjacent property owner on the opposite side of the Leeb property from Allinson. Pula had no objection to the proposed addition. It is clear that the addition, since it was on the Allinson side of the lot, would be less of an impact on Pula than had it been located between the Leeb home and the Pula home. (T. 68).

Thereafter the Petitioners called William Keeney, who was qualified as a Site Designer and architect (NOTE: He was not qualified as an engineer). (T. 81). Keeney testified that he prepared Petitioners Exhibit #12, the modified plan proposal showing the proposed additions which was prepared one week before the County Board of Appeals hearing and marked as Petitioner's Exhibit #12. (T. 82). Over objection from Protestants, Exhibit #12 was admitted in evidence by the Board which shows for the first time a new amended proposal for the Leeb project. (T. 85-87).

The differences between Petitioner's Exhibit #12 and #13 were testified to by Keeney as a lowering of the roof pediment, meaning the triangular areas that were referred to in the Deputy Zoning Commissioner's decision as being a significant impact to the neighborhood and adjacent property owners. (T. 87). Keeney acknowledged that the Plan was changed

because of the Zoning Commissioner's hearing. (T. 88). He testified that the columns were moved that were objectionable to the Deputy Zoning Commissioner. (T. 89). That the double garage door was reduced to a single garage door. (T. 92). He further testified that the roof pitches were changed. (T. 96). What he did not testify to until cross-examination was that in fact the modifications that were made on Petitioner's Exhibit #12, in fact raised the roof line three (3) feet higher than the existing house. (T. 153). This information was brought out on cross-examination.

Thereafter, when testifying in regard to the location of these improvements, on direct examination, when asked the question "Could you design something for the other side of the house?" (away from Allinson), he answered, "Definitely. I am an architect. We could have done something over there." (T. 109). He further elaborated that "the easiest thing for me to do as an architect is to follow some of the directions that the owner wanted and say OK..." (T. 110). He further added "and it is cheaper." (T. 111). It is clear that it was physically possible to make modifications to the Leeb home in other areas that would not require a variance.

In testifying as to undue hardship or practical difficulty, Keeney qualified his opinion as "from an architect's standpoint." (NOTE: not a zoning experts). (T. 121). He then articulated the reasons why there was undue hardship or practical difficulty as being "aesthetic," "the age of the house," "the market value of the house," "the house will suffer." (T. 121). He then indicated perhaps the real reason the modifications were not made elsewhere was that "to locate on the garage side would cost twenty-five (25%) to thirty

percent (30%) more." (T. 123). On cross-examination by Counsel, who attempted to illicit all of the reasons which resulted in the practical difficulty or hardship, Keeney again reiterated that those factors which formed the basis of his opinion was the cost, the aesthetics, the fact that the house was old, and Leeb's desire to locate the modifications where he wanted them. (T. 125). Keeney testified that the property could be lived in the way it is and could be sold the way it is. (T. 126). He acknowledged that with a 20 foot setback, an addition could be placed on the garage side or the garage could be moved closer to Thaddeus Pula's property. (T. 143). Keeney then acknowledged that the Leeb's home would be seen from the Allinson's two (2) lots. (T. 146-149). After acknowledging that the new house additions would cause the roof to be three (3) feet higher than the existing house (T. 153), Keeney also acknowledged that the proposed modifications would create more roofs and more of a roof line to be seen by the Allinson's on the garage side and the porch side. (T. 154). He further testified that the patio has grown from a flat area to a two-story addition. (T. 155).

B. <u>Protestant's Case.</u>

Mary Allinson, testified that she owns nine (9) acres purchased in July, 1993, which is adjacent to the Leeb property. (T. 176). She testified as to various photographs which depict the backyard of the Leeb property and how the Leeb's have utilized the Allinson's property for a portion of their backyard in addition to encroaching within the 13.5 feet property line of the adjacent property owner. She testified that while her nine (9) acres which she purchased

in 1993 had originally been subdivided into six (6) lots, she reduced the number of lots to three (3). (T. 177). Allinson testified that she attended the last zoning hearing in Case No.: 01-390-A in 2001 in which she opposed substantially the same proposed modifications and additions to the Leeb household as are being presented in this case. At the time of her opposition before the Zoning Commissioner in 2001, the Leeb's indicated that they would drop their request for the proposed additions if Allinson would let them have the variance for the existing structure to a point of 13.5 feet. Allinson did agree not to oppose the variance in 2001 and expected that would end the effort by the Leeb's to further encroach within the variance area. (T. 179-180).

Allinson identified Protestants 2A through D for the Board showing the small Leeb backyard and the close proximity to the Allinson property. (T. 180-181). Allinson testified that she objects to the deck going to a screened in porch with an accompanying roof line and that she further objected to the porch being enclosed and being two (2) stories which created an entirely new roof line for the Leeb house which was objectionable being so close to the existing property line. (T. 184-189).

Allinson testified that she was concerned about the view from the proposed building envelopes of Lot #3 and #4. She testified that the Leeb house would be perched right on top of her building sites. (T. 189). She complained that Leeb initially allowed construction of his home within 13.5 feet of the property line and Allinson questioned how any builder or the County could have permitted a violation of the setback under such circumstances. She then further testified that Leeb, without obtaining a Building Permit, and again violating the

setback line constructed the deck and the gazebo. The deck being within the 13.5 feet and the gazebo being on someone else's property. She summarized her objections to the matter in which Leeb has continually violated the Zoning Regulations of the County. (T. 191-194). She testified that the proposed addition to the Leeb's house will "loom over" her two (2) building sites for Lots #3 and #4. (T. 194). She indicated that "they (Leeb's) just keep moving up and up and closer and closer and that the new proposal was located in the same place as the one he dropped two (2) years ago." (T. 195-196). Allinson complained that Leeb is using property that is not his and he keeps building wherever he wants to build without regard for the law. (T. 197).

Allinson described the neighborhood as one in which people buy property because "they don't want to be on top of their neighbors" and therefore the fifty (50) foot or twenty (20) foot setback requirement is a significant factor in keeping the neighborhood stable in terms of dollar value. (T. 197).

III.

QUESTIONS PRESENTED

1. **The Board should not consider Petitioner's Exhibit #12 as to the new amended proposal, which Exhibit supports the Petition for Variance in that it was not presented and reviewed by the Zoning Commissioner.**

2. **The Board should not consider approving the requested variance in that in Case No.: 01-390-A. Protestant Allinson withdrew he objection to the Variance Request on the basis that the same proposed plan was withdrawn by Petitioner.**

3. **The evidence as a whole before the Board fails to support the necessary elements to grant a variance.**

4. **There is no evidence in the Record to support that this site is unusual as required by §307 and *Cromwell v. Ward*.**

5. **There is no evidence in the Record to support that a comparison was made to distinguish this site from others in the neighborhood.**

6. **There is evidence in the Record to support that the difficulty, if any, as alleged, was self-inflicted.**

7. **The evidence presented establishes that it is not impossible to utilize the site without a variance request.**

8. **Practical difficulty or unreasonable hardship is not satisfied by a *showing that the variance is requested for aesthetics, profit, or the* owner's desire.**

9. **There is no evidence presented that the variance request is consistent with the spirit and intent of the law.**

10. **There is no evidence that the grant of a variance will not negatively impact the health, safety and welfare of the adjoining neighbors and other residents.**

IV.

LEGAL ARGUMENT

The Law of Variances

GENERALLY

BCZR 307.1 states that the CBA may grant variances:

> "...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 of Baltimore County would result in practical difficulty or unreasonable hardship."

The standard requires proof of the following:

1. That the land or structure is "unique," a zoning term of art;

2. That the uniqueness "results" in a "practical difficulty" pertinent to zoning compliance; and

3. That there is true "practical difficulty," another zoning term of art; and

The purpose of variance law is to allow relief so that a property owner ***has some reasonable use of his property***. See 3 Young, Anderson's American Law of Zoning 4th, Sec. 20.02 (1996):

> The underlying purposes of administrative relief have been discussed in an earlier chapter, but specifically, with respect to variances, it is said that a variance is 'designed as an escape hatch from the literal terms of the ordinance which, if strictly applied, would deny a property owner all beneficial use of his land and thus amount to confiscation.' (Emphasis supplied).

The first *McLean v. Soley*, 270 Md. 208 (1973) criterion connotes some degree of oppression in the unreasonable prevention of a use for a permitted purpose.

The first inquiry here is whether the property is peculiar or "unique." If evidence of uniqueness is insufficient or unpersuasive, the inquiry ends there. *Cromwell v. Ward*, 102 Md. App. 691 (1995); *Umerley v. People's Counsel*, 108 Md. App. 497 (1996); *Riffin v. People's Counsel*, 137 Md. App. 90 (2001). If this threshold is passed, the further question is whether the unique condition results in "practical difficulty." *McLean v. Soley*, 270 Md. 208, 213-15 (1973).

Uniqueness Defined and Analyzed

The word "unique" is defined strictly. Otherwise, anyone could make some sort of claim. In *Cromwell*, 102 Md. App. At 710 (1995), the Court 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 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. ..."

The Court of Appeals has rejected requests for expansion because their essence is relative ***advantage*** or ***convenience*** to the property owner. *Marino, supra*; *Cleland v. City of Baltimore*, 198 Md. 440 (1951); *Pem Constr. Co. v. City of Baltimore*, 233 Md. 372 (1964).

Appellate courts have also rejected variance claims based on financial or revenue considerations. *Burns v. Mayor & City Council*, 251 Md. 554 (1968); *Daihl v. County Board of Appeals*, 258 Md. 157 (1970); *Cromwell, supra.* Quoting *Xanthos v. Board of Adjustment*, 685 P.2d 1032, 1037 (1985):

> "Hardship is not demonstrated by economic loss alone... Every person requesting a variance can indicate some economic loss. To allow a variance any time any economic loss is alleged would make a mockery of the zoning program."

CASE LAW

There is a long history of appellate court opinions discussing the general application of variance requirements. See, *McLean v. Soley*, 270 Md. 208 (1973): the need sufficient to justify a variance must be substantial and urgent and ***not merely for the convenience of the Applicant***; *Wilson v. Mayor and Commissioners of the Town of Elkton*, 35 Md. App. 417(1977): any Petitioner who seeks a zoning variance ***must exercise proper diligence in ascertaining zoning ordinance requirements*** to avoid a result of hardship before he acquires

the property; Carney v. City of Baltimore, 201 Md. 130 (1952); and finally, Easter v. Mayor and City Council of Baltimore, 195 Md. 395 (1950): the mere fact that the variance ***would make the property more profitable is not*** a sufficient ground to justify the relaxation of setback requirements.

In zoning and development law, a variance, if granted, permits a use which is ***prohibited and presumed*** to be in conflict with the ordinance. An Applicant for a variance, therefore, bears the burden of overcoming the ***presumption*** that the proposed use is unsuitable. That is done, if at all, by completely satisfying the dictates of the statute authorizing the variance. North v. St. Mary's County, 99 Md. App. 502 (1994).

In North, the Court considered the St. Mary's County Zoning Ordinance. As was pointed out there, the burden is upon the Applicant to show by substantial evidence that ***all*** of the requirements set forth in those sections have been met.

In North, the Court said:

> "Once an ordinance such as that in the case *sub judice* becomes effective, an Applicant's burden cannot generally be met by reference to Thoreau's hut on Walden Pond. Once these types of variance provisions are enacted, the result is generally that any project that does not cause damage to the environment will also be of such an inconsequential nature that it will not constitute an unwarranted hardship for it to be denied. North v. St.Mary's County, *supra*."
>
> The Court of Appeals has required extremely strict adherence to the statute in regard to the granting of variances by administrative agencies:
>
> "As a general rule, variances are granted sparingly and under exceptional circumstances. To do otherwise would decimate zonal restrictions and eventually destroy all zoning regulations." Carney v. City of Baltimore, 201 Md. 130, 137 (1952).

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

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

In *North*, the Court then recited a partial list of cases in which variances have been rejected. *Ad+ Soil, Inc., v. County Commissioners*, 307 Md. 307 (1986) (ignorance of setback requirements for sewer sludge facility was not a hardship); *Burns v. Mayor and City Council*, 251 Md. 554 (1968) (financial crisis generally not hardship, especially when same crisis applies to other property in same neighborhood); *Salisbury Board of Zoning Appeals v. Bounds*, 240 Md. 547 (1965) (self-inflicted hardship), and others.

Comparison Requirement

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

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

In North, the Court found, of course, that there was nothing unique about the subject property. Section 307 of the Baltimore County Zoning Regulations invites the same ***comparison of the subject site*** with other property which makes it peculiar.

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

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

The Court then stated:

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

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218 (1957).

The Court then continued:

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

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

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

Judge Cathell continued his analysis in *Cromwell*:

> "...The seventy-five foot width and aggregation requirements do not put a burden on [appellants'] property which does not apply to other properties in the vicinity...*Id.* at 169. In the case *sub judice*, the Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood." [Emphasis supplied.]

And again:

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

And:

> "In Sibley v. Inhabitants of the Town of Wells, 462 A.2d 27, 30-31 (Me. 1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:
>
> The need for a variance must be due to the unique circumstances of the property and not to the general conditions in the neighborhood... (Emphasis supplied.)
>
> ...The hardship must not be the result of action taken by the appellant or a prior owner.
>
> ...However, the mere fact that the lot is substandard is not a unique circumstance, all the undeveloped lots in that neighborhood are of substandard size... (Emphasis supplied).
>
> ...However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance of undue hardship."

Also:

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

Judge Cathell in analyzing various zoning treatises found:

> "The treatise writers are also in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of the property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances). (emphasis supplied).
>
> 'It is *fundamental* that the difficulties and hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *particular property* and not in general in character...It is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole

> neighborhood, it may be ground for an exception or special use permit [if the statute so provides]... The hardship [in order to justify a variance, however,] ...must relate to the particular property of the Applicant.'

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

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

Finally:

> "Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals*, 93 N.E.2d. 645, 647 (N.Y. 1950):
>
> > 'The record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.'" (Emphasis supplied).

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

> "We do not perceive that it was the legislative intention in passing the State or local critical area legislation that zoning variance procedures would be prostituted in order to alleviate the harshness of environmental regulation. If that is the intention of the legislative entities, they have the power to express clearly that intention. It may well be that the legislature should direct

> its attention to amending the variance provisions of Article 66B to include the effect of subjection to environmental regulations as a unique quality of property so as to enable local jurisdictions to provide by ordinance for such consideration."

It is implicit from the discussion in *North, Cromwell* and *Chester Haven* that in order for the CBA to determine the "uniqueness" of the subject property, some analysis and comparison of the neighboring parties must be made and distinction drawn between the subject site and the surrounding neighborhood. In short, there must be some comparison made between the subject site and the other properties within the appropriate neighborhood district, to illustrate the uniqueness of the site which is the subject of the request.

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

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

Hardship

Cromwell, supra, likewise speaks to the issue of hardship wherein the Court stated, "A hardship created by the owner...constitutes no valid basis for a variance...deprivation of an advantage does not constitute an unnecessary hardship."

See also, *Wilson v. Mayor and Commissioners of Town of Elkton*, 35 Md. App 417 (1977) in which the hardship is not solely due to the manner of the operation of the ordinance upon the subject property. Any Applicant who seeks a zoning variance must exercise proper diligence in ascertaining zoning ordinance requirements before acquiring the subject property to avoid a possible resultant hardship.

Spirit and Intent

Daihl v. County Board of Appeals of Baltimore County, 258 Md. 157 (1970), where the grant of a variance would affect the "aesthetic ambience" of the residentially zoned properties in the immediate area, such action would be in disharmony with the spirit and intent of the regulations.

Each element of §307 of the Baltimore County Zoning Regulations requirements ***must be in evidence***. It has been stated by the Court of Special Appeals on many occasions that the Board's conclusions with regard to each of the requirements of §307 must be supported by detailed factual findings. *Ocean Hide-a-way Condo v. Boardwalk Plaza*, 68 Md. App. 650, 659-60 (1986). The party seeking a variance bears the burden of showing that each requirement for a variance is satisfied. *North v. St. Mary's County*, 99 Md. App. 502, 510 (1994); *Easter v. Mayor of Baltimore*, 270 Md. 395, 400 (1950). As the Court of Appeals explained in *Turner v. Hammond*, 270 Md. 41, 456 (1973) the evidence presented to the Board must contain something more than conclusory statements. *Accord*, *Ocean Hide-a-way*, 68 Md. App. At 658-659; *Pistorio v. Zoning Board*, 268 Md. 558, 570 (1983). If the evidence is not before the Board as to each element of §307, the Board may not grant the variance.

ISSUES PRESENTED

1. **The Board should not consider Petitioner's Exhibit #12 as to the new amended proposal, which Exhibit supports the Petition for Variance in that it was not presented and reviewed by the Zoning Commissioner.**

The Record is clear in this case that before the Deputy Zoning Commissioner, the Petitioners presented the Deputy Zoning Commissioner's Petition #2 which formed the basis of the reasoning for the requested variances for enclosing the screened in porch, extending the balcony above the enclosed porch for a second story and adding the triangular roof to the deck in addition to a triangular roof on the garage side. The whole rationale and explanation of the variance was defined by Exhibit #2.

Both Mr. Leeb and his expert architect, Mr. Keeney, testified that Petitioner's Exhibit #12 in this case (which was objected to by Protestants), was modified to reflect changes based upon the Zoning Commissioner's comments in his Opinion date June 25, 2004 as recited in the Statement of Facts. The changes are substantial in that the roof line ends up being three (3) feet higher than the existing home, the roof line was adjusted and lowered in some respect but was modified in such a way that it substantially appears to enlarge the home. The Statement of Facts recites the testimony by Keeney in regard to the modifications between Petitioner's Board Exhibit #12 and Petitioner's Board Exhibit #13. Protestants objected to this modification reflected in the Transcript. A similar case was presented to the Board in the case of *John Mangione, et al.* decided by the Circuit Court of Baltimore County, Case No.: 03-C-03-009661 on May 18, 2004 by Judge John O. Hennegan. In that case, the

Circuit Court remanded the case back to the Board for a new hearing. The question presented in that case was whether the Board of Appeals had jurisdiction to review a Special Exception on an appeal where the height and length of the proposed building have been increased. In that case, without any prior notice to the Protestants, the Petitioner increased the size of the facility from the Site Plans submitted to the Zoning Commissioner and for the first time was presented to the County Board of Appeals. The Court found that Notice is an element of procedural due process of law and that is incorporated in the Express Powers Act, Article 25A, §5U, in the County Charter Section 603, and in County Code §26-127. In that case the Protestants argued that the Board should have remanded the case back to the Zoning Commissioner for a new public notice and hearing on the Amended Site Plan. The Court cited the case of *UPS v. People's Counsel*, 336 Md. 569 (1994) in finding that while the Board has *de novo* review, it still exercises appellate jurisdiction. That case further cites the Baltimore County Zoning Regulations, Appendix H, Rule 9(d)(2) which requires "Petitions may be amended prior to the hearing only if said amendment takes place ***prior*** to the first public advertisement of the Petition." The Circuit Court found that in *Mangione*, the amendment was not introduced to the Board until the first hearing on November 13, 2002.

That case is on all fours with the situation here. The Board should remand the matter back to the Zoning Commissioner for review of the substituted Site Plan (Petitioner's Exhibit #12).

2. **The Board should not consider approving the requested variance in that in Case No.: 01-390-A. Protestant Allinson withdrew he objection to the Variance Request on the basis that the same proposed plan was withdrawn by Petitioner.**

The evidence is undisputed that in 2001 this Petitioner submitted a variance request in Case No.: 01-390-A to legitimize his existing home which is 13.5 feet from the northern lot line and secondly to authorize and approve additions located on the rear of his home which included the screened in porch and deck. The Zoning Commissioner's decision and the Record in that case support Ms. Allinson's testimony that she withdrew her objection to the variances being granted based upon the fact that the Petitioner agreed not to proceed with the proposed additions. Based upon his withdrawal of that request, Ms. Allinson withdrew her objection of the grant of the variance and filed no appeal to this Board. Less than two (2) years later, the Petitioner refiled his request for a variance in the form of the instant Petition and requested virtually the same additions to his home which again required variance approval. Such action is not only a breach of Petitioner's agreement in Case No.: 01-390-A but also violates the general rule articulated in *Whittle v. Board of Zoning Appeals*, 211 Md. 36 (1956). In that case, the Court of Appeals stated "the general rule, where the question has arisen, seems that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider an act upon a new application for a Special Permit previously denied, that it may properly grant such a permit ***only if there has been a substantial change in conditions***." Here, there has been no change in conditions between the 2001 zoning case

and the current request. This case is analogous to the *Whittle* case in the respect that in the prior zoning case, the Zoning Commissioner only approved the legitimization of the existing house being 13.5 feet from the property line based upon the Petitioner's agreement with the Protestant to withdraw his request for the proposed additions.

The Petitioner now should not be able to repeat his request for these additional expansions based upon his agreement below in the prior case. The Board should not afford him a second bite at the apple after he initially obtained what he wanted by way of legitimizing the location of his home in the first case. In this case, Petitioner seeks to further intrude into the setback area. The Board should deny that request.

3. The evidence as a whole before the Board fails to support the necessary elements to grant a variance.

A review of §307 of the Baltimore County Zoning Regulations pertaining to variances establishes the following elements that the Board must find in order to grant a variance:

a. Special circumstances or conditions exist that are peculiar to the land or structure.

b. Strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship.

c. The variance shall be granted only in strict harmony with the spirit and intent of said height area regulations.

d. Only in such manner as to grant relief without injury to the public, health, safety and general welfare.

A review of the entire Transcript will reflect that the Petitioner has failed to establish all four (4) of these elements.

In summary, he has not established that the property is unique or peculiar to the land in that there is no evidence or discussion about the surrounding properties and how the subject site differs from its neighbors. In fact, when a review of the Transcript is made, it is evident that there is no evidence that the other properties in the neighborhood are not subject to the same topography, the same 300 foot limitation, the same stream buffers and the same peculiar shaped lots. In fact, when one reviews the aerial photo and the subdivision plans for the neighborhood submitted by the Petitioner, the Board can see other lots are impacted by the steep slopes, forested areas, are of peculiar shapes and the stream does not exist only on the Leeb property, but in fact meanders through the community creating the same conditions as that it imposed on the subject site.

Secondly, there is no evidence at all which compares the subject site with any other site to show its uniqueness. Thirdly, the issues that allegedly create the practical difficulty or unreasonable hardship are not valid basis to support that element at all. For instance, the cost of the project, aesthetics, the desires of the owner are not sufficient grounds to create a practical difficulty or unreasonable hardship as described in the cases previously set forth in this Memo.

Insofar as this project being in harmony with the spirit and intent of said Regulations, there is no evidence from Leeb or Keeney as to this element and the further testimony that this is the minimum amount of variance needed. The Record is utterly void of any evidence in regard to the spirit and intent of the Regulations.

Finally, the only evidence in regard to the public health, safety and general welfare was the testimony of the Protestant, Mary Allinson that it negatively impacted not only her property, her two (2) potential developable lots, but also that her testimony that the general neighborhood was open, spacious and relied upon ample distances between homes to promote the general value of the neighborhood.

In reviewing the previous section in this Memorandum discussing variances in general, it is clear that variances are not favored in zoning law. Judge Cathill in *Cromwell v. Ward*, the *North* case and the long line of cases prior thereto, opined that variances are granted sparingly and granted under exceptional circumstances because to do otherwise would disseminate zonal restrictions and eventually destroy all Zoning Regulations. See *Carney* and *McLean*. The need to justify a variance must be substantial and urgent and not merely for the convenience of the applicant. Based upon the previously cited cases in regard to the law of variances in general, it is clear that this Petitioner has not met the required standard imposed by §307 B.C.Z.R.

4. There is no evidence in the Record to support that this site is unusual as required by §307 and *Cromwell v. Ward*.

There is no evidence in the case that conditions exist that are peculiar to the land or structure here in this case. In *Cromwell v. Ward*, 102 Md. App. at 710 (1995), the Court said: "uniqueness" of a property for zoning purposes requires the subject property have an inherent characteristic not shown by other properties in the area, i.e., it's shape, topography, subsurface condition, environmental factors ... It is made clear in *Cromwell v. Ward* and in *North v. St. Mary's County*, previously referred to in this case that the property itself must

have characteristics not shared by its neighbors. In this particular case, it is clear that there is no evidence that the topography, the 300 foot setback, the forest, the hilly nature of the site and the irregular shape of the lot is not different from its neighbors. In fact, the evidence establishes that Mr. Kupa's property next door is a similar shape to the Leeb's. Further, the aerial photo clearly establishes the stream winds its way through the neighborhood and other lots which creates a 300 foot setback to other lots as well as the Leeb's lot. Additionally, the other lots are heavily forested and hilly with steep slopes. The net result is that under the *Cromwell* standard, the subject site is no different than its neighbors.

The testimony of Keeney, while describing the features on the site, made no effort to distinguish this lot from any of the others and therefore the Petitioner has failed to meet the initial standard of establishing that the site is peculiar. See The Law of Variance cited herein.

5. There is no evidence in the Record to support that a comparison was made to distinguish this site from others in the neighborhood.

As previously discussed in the Law of Variance section herein, there is a requirement to establish the uniqueness of the site in *Cromwell v. Ward* as specified in §307. Part of the ability to testify that a site is unique is the requirement that it be compared with other properties in the area. (See Comparison Requirement Section of the Law of Variance cited herein). Repeatedly in appellate decisions, the requirement that the subject site be compared with other properties in the area is set forth in *North*, in *Cromwell*, in *Marino v. Mayor & City Council of Baltimore*, in *Park Shopping Center, Inc. v. Lexington Park Theater Co.*. The Court of Special Appeals itself cited the case of *Sibley v. Inhabitants of the Town of*

Wells which required the variance must be due to the unique circumstances of the property and "not to the general conditions in the neighborhood." Later, Judge Cathill in *Chester Haven Beach Partnership* required the "comparison" to other properties in the neighborhood.

Finally, in *Umerley v. People's Counsel for Baltimore County* in 1996, the Court of Special Appeals found that there was a requirement to analyze the characteristics of surrounding properties to the extent that the uniqueness or particularity of the property imposed a disproportion impact on the subject parcel.

Thus, it can be seen that the comparison of the Leeb property with the neighborhood property is totally lacking in the Record of this case and therefore the Board must deny the Request for Variance.

6. There is evidence in the Record to support that the difficulty, if any, as alleged, was self-inflicted.

The practical difficulty or hardship must not be self-inflicted by the Petitioner. *Salisbury Board of Zoning Appeals v. Bounds*. In this case, the property was purchased by Leeb in 1981. He had an architect and a builder build the house in 1984. It is not contested that the house was built by Leeb 13.5 feet from the property line which violated either the 50 foot setback or either the 20 foot setback. It is no excuse that Leeb did not know what the setback requirement was and he was well within that requirement. *Salisbury Board of Zoning Appeals v. Bounds* indicates that self-inflicted hardship is not a basis for granting a variance. In the case of *Ad+ Soil, Inc., v. County Commissioners*, ignorance of setback

requirements for a sewer/sludge facility was not a hardship. In the instant case, by his own acknowledgement, the difficulties faced by Leeb in this situation were self-imposed, created by him and/or his agents and architects who designed and built his home 13.5 feet from the property line. As a result, Variance relief is not afforded the Petitioner in this case.

7. The evidence presented establishes that it is not impossible to utilize the site without a variance request.

The Board has evidence before it from Petitioner's own architect, Mr. Keeney, that it is possible to improve the Petitioner's home without requesting a variance. Keeney testified at T. 109 when asked the question, could you design something for the other side of the house away from the Allinson's? His answer was "definitely. I am an architect. We could have done something over there." ... the easiest thing for me to do as an architect is to follow some of the directions that the owner wanted and say OK ... (T. 109-110). Keeney also testified that "it is cheaper locating the additions where the Petitioner proposed." (T. 111). He further acknowledged that it could be sold the way it is. (T. 126).

The clearer evidence and testimony then from Petitioner's own architect was that additions or modifications to the home could be made consistent with and without requirement of a variance or setback interference. The simple fact of the matter is from the very beginning, going back to 2001, Leeb wanted the additions where he wanted them and it made no difference whether his proposals were within the 50 or 20 foot setback or whether he in fact utilized someone else's property for the gazebo. It is clear from the case law that Petitioner's desires cannot supercede years of case law which require this variance be denied.

8. Practical difficulty or unreasonable hardship is not satisfied by a showing that the variance is requested for aesthetics, profit, or the owner's desire.

Section 307 of the B.C.Z.R. imposes the requirement of "practical difficulty or unreasonable hardship." The law is clear in regard to those terms. First, the Court of Appeals has rejected requests for expansion because their essence is relative advantage or convenience to the property owner. See *Marino*. The Courts have also rejected variance claims based on financial or revenue considerations. See *Burns v. Mayor and City Council*. In *Xanthos v. Board of Adjustment*, the Court said hardship is not demonstrated by economic loss alone. *McLean v. Soley* indicated that the variance "must not merely be for the convenience of the applicant." *William v. Mayor and Commissioners* opined that Petitioner who seeks a variance must exercise proper diligence in ascertaining zoning ordinance requirement to avoid a result of hardship before he acquires the property. *Easter v. Mayor and City Council of Baltimore* opined that a request for variance which would make the property more profitable is not a sufficient ground to justify the relaxation of setback requirements. Additionally, in *Park Shopping Center, Inc. v. Lexington Park Theater Co.*, the Court stated the "criteria for determining unnecessary hardship is whether the restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership." In this case, the Statement of Facts contained herein establish both the testimony of the Petitioner and Mr. Keeney that the alleged practical difficulty or hardship consisted of the

desires to locate the additions at the convenience of the property owner, aesthetic reasons to make the house look better, the age of the house, the market value of the house, that the house will suffer if it is not improved. (T. 121 and T. 125). Keeney further acknowledged that the house could be sold the way it is. (T. 126).

Based upon the Petitioner's own evidence, it is clear that the reasons given fail to establish practical difficulty or unreasonable hardship under §307 and the case law of the State of Maryland.

9. There is no evidence presented that the variance request is consistent with the spirit and intent of the law.

Clearly, one of the requirements of §307 is the requirement that there be evidence that the variance if it be granted is in harmony with the spirit and intent of the Regulations. This Record is devoid of any evidence to support that element of the requirements under §307. A review of the Transcript provides no inkling that either Leeb or Keeney testified that as to the facts related to this variance being in strict harmony with the Regulations. In fact, the Board can clearly conclude that it is totally not within the spirit and intent of the Regulations since the construction would take place well within the setback area.

10. There is no evidence that the grant of a variance will not negatively impact the health, safety and welfare of the adjoining neighbors and other residents.

The Petitioner's likewise failed to establish through testimony that there would be no impact upon the public health, safety and general welfare. In fact, through the testimony of Ms. Allinson, it is clear that not only would there be an impact upon her two (2) lots (Lot 3 and Lot 4) and the building areas as shown thereon, but in fact from a general neighborhood

perspective, the further encroachment into the setback area would constitute a negative impact on the community as testified by Ms. Allinson. Her conclusion was that the property values in the neighborhood were in part derived from the spaciousness between the home sites. Her testimony is born out by reviewing the aerial photos submitted by the Petitioners which shows the spacing and the general design of the neighborhood while there was no testimony by the Petitioners to support this element of the requirements imposed on them. The Protestant clearly established that the imposition that the granting of this variance would have a significant impact upon the rest of the community.

CONCLUSION

For all of the reasons set forth above, it is clear that the Record does not support the granting of a variance and the Petitioner's request should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of May, 2005 a copy of the foregoing Protestant's Memorandum in Lieu of Final Argument was mailed first class, postage pre-paid, to: Michael McCann, Esquire, Funk & Bolton, P.A., 12th Floor, 36 South Charles Street, Baltimore, Maryland 21201-3111.

J. Carroll Holzer /S.L.
J. CARROLL HOLZER, Esquire

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BALTIMORE COUNTY
BOARD OF APPEALS

PETITION FOR VARIANCE	*	BEFORE THE
In re: N/S of Velvet Ridge Drive, 1475 ft W Centerline of Park Heights Avenue	*	COUNTY BOARD OF
3rd Election District	*	APPEALS OF
2nd Councilmanic District (2316 Velvet Ridge Drive)	*	BALTIMORE COUNTY
Leslie & Melvyn Leeb Petitioners/Appellants	*	Case No. 04-433-A

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

PETITIONERS' POST-HEARING MEMORANDUM

Petitioners, Leslie & Melvyn Leeb ("Mr. and Mrs. Leeb" or the "Leebs"), submit this post-hearing memorandum in support of their petition for a variance from the setback requirements of the Baltimore County Zoning Regulations.

I. PRELIMINARY STATEMENT

In 2001, Mr. and Mrs. Leeb discovered that their home was sited 36.5 feet within the 50-foot rear/side yard setback and that their deck was located at or on their property line. In a proceeding initiated by the Leebs that year, the Baltimore County Zoning Commissioner legitimized the existing location of the home and the deck, and approved a 13.5 foot rear/side yard setback for the home and a 0 foot setback for the deck. The Zoning Commissioner found that the Leebs' property was unique because of its irregular shape and environmental and topographic constraints. At that hearing, Mary Allinson, the only protestant, consented to these new setbacks.

The improvements presently proposed by the Leebs do not expand the footprint that was approved by the Zoning Commissioner in 2001 or encroach into the now-legitimized setbacks. The Leebs simply wish to enclose the existing deck and the adjacent screened porch. The variance

request fully meets the requirements of section 307.1 of the Zoning Regulations and, therefore, should be granted.

II. SUMMARY OF EVIDENCE AT HEARING

A. The Subject Property

Mr. and Mrs. Leeb's property (the "Property") is one of approximately 45 lots in the Velvet Ridge subdivision near Park Heights Avenue in northwest Baltimore County. (*See* Petitioners' exs. 1-4). The Property comprises 1.94 acres. Its boundaries form the shape of an oblong triangle or quadrangle. (*See* ex. 4).

The Leebs' home is located at the rear of the Property, approximately 320 feet from the driveway's entrance at Velvet Ridge Drive. A stream runs across the front of the Property. At that point, the Property is relatively flat. The slope increases significantly, however, between the stream and the Leeb's home. The driveway crosses the stream and winds up the slope, around the left side of the home and to the rear of the house where the garage is located. (Petitioners' exs. 6A-D).

Because of the upward slope of the Property, the front of the house is elevated. A large, raised wooden deck permits access to the front door. (*See* Petitioners' exs. 6D, E). The Leebs seldom use the front door because of its location.

Behind the Leebs' home, the Property is relatively flat, but then drops over a small ridge onto the property of Protestant, Mary Allinson ("Ms. Allinson"), to the northwest and towards the property of Barbara Holdridge to the north. (*See* Petitioners' exs. 8A-D (sequential photographs moving away from home); *see also* exs. 4 (showing location of Allinson and Holdridge properties)). The area behind the Leebs' home, at the rear of the Property, is wooded. (*See* Petitioners' ex. 7 (panoramic view of rear of home facing the Allinson property)).

As shown in the subdivision plat for the Velvet Ridge subdivision, a 300-foot "minimum building setback line" transects the Property in front of the Leebs' home. (Petitioners' exs. 3; *see also* Petitioners' ex. 14). The area beyond the 300-foot setback line, on which the Leebs' home is located, is pie-shaped. (*Id.*) The subdivision plat also shows a storm drainage easement approximately 100 feet wide in front of the Leebs' home. (*Id.*)

B. The 2001 Hearing Before The Zoning Commissioner

When the Leebs' home was built in the 1980's, a substantial portion of the structure was built within the setback. (*See* Petitioners' ex. 14). The Leebs were unaware of this until 2001, when they had a survey performed in connection with their proposal to construct a large addition to the rear of their home.[1] The survey disclosed for the first time that the right rear (north) corner of the home was sited 13.5 feet from the property line. The survey also disclosed that the deck and gazebo on that side of the home extended to or over the boundary between their property and the property of Barbara Holdridge.

In 2001, the Leebs filed a request for administrative variance to permit a side/rear yard setback of 13.5 feet in lieu of the required 50 feet in order to accommodate the existing dwelling and the proposed new addition. (*See* Petitioners' ex. 9 at p. 1). At the hearing before the Zoning Commissioner, however, the Leebs withdrew their request for a variance to construct the addition. (*Id.*, p. 3). The hearing proceeded on the limited issue of legitimizing the existing setback violations

[1] Unlike the improvements presently proposed by the Leebs, the large addition proposed in 2001 extended beyond the existing building envelope and into the rear yard.

at the Property. (*Id.*) Significantly, Ms. Allinson indicated at the hearing that she was not opposed to the grant of a variance to legitimize the existing setback violations.[2]

The Zoning Commissioner found that the Leebs' property "is certainly unique due to the environmental and topographic constraints associated therewith." (*Id.*, p. 3). The Zoning Commissioner held that the Leebs "would suffer a practical difficulty if relief were denied" and that "the relief can be granted without adverse impact to adjacent properties." (*Id.*) The Zoning Commissioner granted the Leebs' request to permit a side/rear yard setback of 13.5 feet in lieu of the required 50 feet for the existing dwelling, and to permit a side setback of 0 feet for the existing deck and gazebo. (*Id.*, p. 4.)

C. <u>The Leebs' Proposed Improvements</u>

The Leebs presently propose to enclose the deck on the rear right side of their home and make it a screened porch. The Leebs also propose to enclose, permanently, the existing screened porch adjacent to the deck. In addition, the Leebs wish to extend the existing second floor deck outward over the existing screened porch.[3] (*See* Petitioners' ex. 12). Mr. Leeb explained that he and his wife wish to make these improvements in order to increase the living space in their home and to enjoy, in a confined area free of bugs and insects, the woods and viewscape from the back of their home.

Significantly, none of these improvements will increase or expand in any way the footprint of the existing structure. Moreover, the improvements will not encroach horizontally into the now-legitimized 13.5 foot setback.

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[2] At the hearing in the instant appeal, Ms. Allinson confirmed that she was not opposed to the relief sought in 2001 and conceded that the Leebs' property was unique.

[3] The Leebs intend to remove the existing gazebo which, as presently sited, is on the property line they share with Ms. Holdridge.

The Leebs' architect, William Keeney, testified regarding cosmetic design changes to the rear of the home that will make it less obtrusive and more pleasing to the eye. For example, portions of the roof would be reconfigured so that the roofline is less prominent and will blend in with the entire structure. (*See* Petitioners' ex. 12). The pitch of the main roof would be changed slightly. Although this would result in a three-foot increase in the height of the roof, that increase, as Mr. Keeney explained, would not be noticable by someone looking at the home from the rear and, moreover, would better hide the existing chimney stack that presently protrudes over the roof. Mr. Keeney also explained that he added pediments above the proposed screened porch and above the proposed second floor deck, again to make the home more aesthetically pleasing from a rear view. The existing roof behind the deck and behind the garage would not be changed significantly.

Mr. Keeney identified several reasons why these improvements could not be undertaken in a different area of the Leebs' home. First, Mr. Keeney explained that if the applicable setback were 50 feet (*see* discussion *infra* part III.A), any construction on the garage side of the house would not be permitted because that rear corner of the house presently is on or near the setback line. (*See* Petitioners' ex. 14.) Second, Mr. Keeney explained that constructing an addition on the left side of the garage would be problematic because of the slope on that side of the house, whereas the area in which the Leebs propose their improvements is flat. Mr. Keeney noted that Baltimore County generally does not permit construction on slopes greater than 25%. Third, Mr. Keeney stated that a significant number of trees on the garage side of the home would likely have to be removed to accommodate any addition, which would affect the viewshed of the Leebs' neighbors. Finally, Mr. Keeney explained that constructing additions on the other side of the garage would require reconfiguring the Leebs' living space in their home since the Leebs' master bedroom, dining room,

and kitchen are on the other side of the garage, closer to the rear right side of the home. In other words, the Leebs would have to go around or through the garage to get from the kitchen, for example, to the addition.

D. Ms. Allinson's Proposed Development of Her Property

Ms. Allinson resides at 2703 Caves Road. A small portion of the rear of Ms. Allinson's property abuts the Leebs' property, but the vast majority of the Leeb's property line (perhaps as much as 90%) adjoins the properties of Barbara Holdridge to the north, Thad Pula to the west, and Aaron Finklestein to the east. (*See* Petitioners' ex. 4).[4] Ms. Allinson's house is approximately 700 feet from the Leebs' home. (*See* Petitioners' ex. 15).

Ms. Allinson submitted a development plan to Baltimore County proposing to subdivide her property into four lots. (*See* Petitioners' ex. 15). She proposes selling three of the lots, but has not entered into any contracts of sale. Although the development plan shows homes on the three lots, Ms. Allinson did not indicate whether she would sell the lots with the homes already constructed or simply sell the lots unimproved. If homes are built on the lots, Ms. Allinson does not know who will purchase the lots or whether such persons would be opposed or in favor of the improvements proposed by the Leebs. The closest house shown on the development plan would be approximately 438 feet from the Leebs' house. (*Id.*)

In connection with the proposed subdivision of her property, Ms. Allinson filed a petition seeking variances to allow (i) a setback of 0 feet for her barn, (ii) the barn to be 30 feet high in lieu of the maximum 15 feet; and (iii) the barn to be on a footprint greater than her dwelling on the same

[4] Ms. Holdridge and Mr. Finkelstein submitted letters to the Board in support of the Leeb's request for a variance. Mr. Pula, who is the Leebs' closest neighbor, testified at the hearing in support of the Leebs' variance request.

lot. (Petitioners' ex. 17). Ms. Allison signed the variance petition, stating that "[t]he uniqueness and peculiarity of [her] property causes the zoning provisions to impact disproportionately upon the property" and that "practical difficulty and unreasonable hardship result from the disproportionate impact of the zoning regulations...." (*Id.*) Ms. Allinson's variance requests were granted.

III. ARGUMENT

A. The Applicable Side Yard Setback Is 20 Feet

Section 103.3 of the Baltimore County Zoning Regulations, entitled "Application of Zoning Regulations," provides as follows:

> In an R.C. 2, R.C.3, R.C. 4 or R.C. 5 Zone, contrary provisions of Subsection 103.1 and any other contrary provisions of or pursuant to these regulations notwithstanding, in the case of property covered by a recorded subdivision plat which was approved by the Baltimore County Planning Commission or Board before the effective date of this subsection [1975], and which remains in effect, buildings may be constructed, residential densities and lot lines may be established, and yards and other open areas may be laid out in accordance with that plan, subject to any conditions of the approval.
>
> When such a plan has been so approved but does not indicate densities or the situations of buildings or yards or other open spaces, *these may be established or situated only in accordance with the standards as prescribed and in force at the time of lot recordation.* [Bill No. 98-1975]

B.C.Z.R. 103.3 (emphasis added).

This provision is applicable here because the Property is "covered by a recorded subdivision plat which was approved by the Baltimore County ... Planning Board [before 1975]." The plat of the Velvet Ridge subdivision was approved by the Planning Board on October 8, 1968[5] and recorded in the land records of Baltimore County on October 15, 1969. (*See* Petitioners' ex. 3.) Because the plat "does not indicate densities or the situations of buildings or yards or other open

[5] The plat is signed "Approved" by the Director of the Planning Board. (Petitioners' ex. 3).

spaces," Section 103.3 requires that these be established "only in accordance with the standards as prescribed and in force at the time of lot recordation [*i.e.,* 1968]."

In 1968, the zoning of the Property was R40. (*See* Petitioners' ex. 10).[6] The side yard setback in the R40 zone at that time was "20 feet wide for one side yard and not less than 50 for the sum of both." (*See* copy of Zoning Regulations attached hereto, tab 1 at section 202.3). Thus, 20 feet is the applicable setback – not 50 feet as mistakenly applied heretofore.

B. Whether The Applicable Setback Is 20 Feet Or 50 Feet, The Standard For Granting A Variance Has Been Met

Section 307.1 of the Zoning Regulations authorizes the Board to grant variances from setback requirements where (1) "special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request," (2) "strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or hardship," and (3) such variance is "in strict harmony with the spirit and intent of said [] regulations, and ...without injury to public health, safety, and general welfare."

1. Special Circumstances And Conditions Exist That Are Unique To The Property

The Leeb's property is unique in several respects. First, their lot is unique in terms of its shape. As the aerial photograph (Petitioners' ex. 4) shows, the Leebs' property is quadrangular and oblong. With only a few exceptions, nearly all the other lots in the Velvet Ridge subdivision are postage stamp lots, roughly square in shape.

[6] On Petitioners' ex. 10, the Property is located in the second quadrant from the left on the bottom of the map. The intersection of Caves Road and the "Private Road" in the first quadrant from the left is depicted in the ADC Map 25 (Petitioners' ex. 11) in Section D1 and E1. Those same sections in the ADC Map 25 show the location of Velvet Ridge Drive.

Second, the Leebs' home is situated in the corner, or tip, of the triangular portion of the lot. The vast majority of the other houses in the subdivision are sited in the approximate middle of the lot, or such that they do not back up against the property line. Indeed, unlike the Leeb's property, many of the lots would appear to be able to accommodate an addition on more than one side of the existing house. Similarly, properties that are not part of the Velvet Ridge subdivision (e.g., Ms. Allinson's lots as well as the lots to the south of her lots) comprise large lots with sufficient area to accommodate improvements.

Third, as Mr. Leeb confirmed, other than Mr. Pula's property to the south, none of the other 45 lots in the subdivision have a stream running through them. Fourth, although many lots in the subdivision have a 50-foot minimum building setback line from the street, none of the lots (other than Mr. Pula's lot) has a 300-foot minimum building setback line. (*See* Petitioners' exs. 1, 2, and 3). Fifth, none of the lots (other than Mr. Pula's) has a storm drainage easement of the size and scope of the easement located on the Leebs' property. (*Id.*) Finally, the topography of the Leeb's property is unique. Beyond the stream at the front of the Leeb's property, the lot slopes upward at a considerable degree and begins to flatten only in the Leebs' back yard.

As the Zoning Commissioner held in his 2001 decision, the property is "an irregularly shaped parcel" with a house "which, due to existing site and environmental constraints, is located towards the rear of the site." (Petitioners' ex. 9 at p. 2). The Property is "certainly unique due to the environmental and topographic constraints associated therewith." (*Id.* at p. 3). *See North v. St. Mary's County*, 99 Md. App. 502, 514 (1994) ("uniqueness" requirement of variance standard may be met by showing that the property has an inherent characteristic such as its shape, topography, subsurface condition, environmental factors, practical restrictions imposed by

abutting properties, or other similar restrictions.); *Frankel v. Mayor & City Council*, 223 Md. 97, 104 (1960) (variance granted where the applicant showed "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 . . . .").

2. Practical Difficulty And Unreasonable Hardship Would Result If A Variance Was Not Granted

Because of the uniqueness of the Property, strict compliance with the setback regulations would clearly impose practical difficulties and unreasonable hardships on the Leebs. The Leebs' home is effectively landlocked. At the rear and on the right side of the house, the 13.5 foot setback would prohibit any improvement. On the left side, the 30 foot setback[7] significantly limits any further improvement for the reasons articulated by Mr. Keeney, namely the steepness of the slope, the amount of trees that would have to be destroyed, and the reconfiguring of the Leeb's living space that would be required.[8]

The only area of the house that is free of setback limitations is the front of the house. However, requiring the Leebs to build an addition to the front of their home, as the only way to expand their living space, would be both impractical and unreasonable. The steepness of the lot in front of the house certainly creates practical difficulties and, indeed, would not be feasible in those areas where the slope is greater than 25%. Moreover, locating a screened porch and enclosed patio in the front of the home simply makes no sense. The Leebs would likely have to relocate the front

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[7] The setback is 30 feet because, under the applicable zoning regulations, the side yard setback in an R40 zone cannot be "less than 50 for the sum of both" side yards.

[8] If the applicable setback were 50 feet, then no addition at all would be permitted because that setback line meets the left corner of the house. (*See* Petitioners' ex. 14).

entrance of the home and reconfigure the living space of the entire house. This would not only increase costs significantly, but would defeat the purpose of the screened porch and enclosed patio – to enjoy the wooded area and viewscapes in the *rear* of the home. The sheer impracticability of locating these improvements on the front of the house is obvious.

Protestant may attempt to minimalize the Leebs' variance request as one based merely on convenience or the luxury of having a place to enjoy nature. This is simply not true and is not the law. Although the Leebs do not have the "right" to a variance, they do have a right to the full enjoyment of their property consistent with the zoning regulations. Those regulations allow them the opportunity to seek a variance when practical difficulty prevents them from obtaining the benefit and full enjoyment of their land. The regulations, and the common law of Maryland, do not require the Leebs to prove absolute necessity or preclude the granting of a variance simply because it would make the applicant's property more enjoyable, more beneficial, and more valuable.

Similarly, the law does not require that the Leebs demonstrate to the Board that it would be literally impossible to improve their home in any other way or in any other location than how and where they propose. The applicable standard is one of practical difficulty and unreasonable hardship, not impossibility.

Finally, it should be noted that the Zoning Commissioner found, and Ms. Allinson agreed, that special circumstances and conditions exist on the Leebs' property and that strict compliance with the setback regulations would create practical difficulty or an unreasonable hardship. Since 2001, the special circumstances and conditions affecting the Property have not changed, nor have the practical difficulties and hardships they impose.

3. The Requested Variance Would Not Injure The Public Health, Safety Or General Welfare, And Is Consistent With The Spirit And Intent Of The Zoning Regulations

In 2001, the Zoning Commissioner found that a 13.5 foot setback for the Leeb's house (*i.e.*, a reduction of 36.5 feet in the setback) and a 0 foot setback for the deck and gazebo (*i.e.*, a reduction of 50 feet in the setback) are not injurious to the public health, safety and general welfare of the community. The Zoning Commissioner held that these new setbacks would have no "adverse impact to adjacent properties."

Importantly, the improvements now proposed by the Leebs do not increase or expand the footprint that was approved by the Zoning Commissioner in 2001 – the improvements do not encroach any further horizontally into either the 13.5 foot or 0 foot setback.[9] The Leebs merely propose enclosing the existing open deck and the screened patio. Ms. Allinson, the only protestant in this case, has not articulated how these incremental improvements injure the public health, safety and welfare. Indeed, Ms. Allinson would be hard pressed to articulate any injury to her or her neighbors because she consented to the Zoning Commissioner's substantial reduction in the setbacks in 2001.

Ms. Allinson, instead, takes a different approach. She opposes the granting of a variance because she believes the proposed improvements will affect the view of the persons who will purchase the homes on the property she has subdivided. Ms. Allinson, however, offered no evidence that her property, or the property as subdivided, would be diminished in value or any less marketable as a direct result of the incremental changes proposed by the Leebs.

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[9] Indeed, the Leebs intend to remove the gazebo altogether.

Ms. Allinson, moreover, has not sold any of the lots and has no idea who the purchasers of the lots might be or whether these persons would be opposed to the specific improvements intended by the Leebs. For all we know, these persons might appreciate the improvements as bettering the community. The hypothetical concerns of hypothetical homeowners cannot suffice as injury to the public health, safety and welfare under Section 307.1.

Even if a hypothetical homeowner professed opposition to the variance request, any such concern would be suspect. The closest house shown on Ms. Allinson's development plan is approximately 438 feet from the Leebs' house. Given this distance, as well as the dense forest that buffers the Leebs' property (*see* Petitioners' ex. 7) and the ridge that sits beyond the property line (*see* Petitioners' exs. 8A-D), it is unlikely the Leebs' house will be seen at all, except in the winter months. Indeed, Ms. Allinson acknowledged as much when she admitted that she was not concerned about seeing the improvements from her own home, which is 700 feet away. More importantly, no one, including Ms. Allinson, has articulated how the improvements – when viewed one dimensionally from several hundred feet away – would impact them differently than the view of the Leebs' home as it now exists.

Ms. Allinson's concerns should be considered in light of her own variance requests. Ms. Allinson requested a setback variance and a height variance on a barn that is situated substantially closer to her home, and to the homes of her hypothetical contract purchasers, than to the Leebs' home. If the variances she requested do not injure the public health, safety, and welfare – as she represented in the petition for variance she signed – then certainly the minimal variance requested by the Leebs would not.

Notwithstanding Ms. Allinson's complaints, the health, safety, and general welfare of the community would be advanced, not injured, by the thoughtful design of the improvements proposed by the Leebs. Indeed, the improvements will certainly increase the property values of the Leebs' home and others in the community. In this regard, the positions of the Leebs' neighbors, those closest to the proposed improvements, should be considered. Mr. Pula, whose home is approximately 105 feet from the Leebs, fully supports the variance request and testified to that effect at the hearing. Likewise, the Leebs' neighbors to the east, Mr. and Mrs. Finkelstein, support the variance. (*See* Petitioners' ex. 16). And Ms. Holdridge, whose property abuts the Leebs' property and is the closest to the Leebs' house, supports the variance request. (*Id.*)

Finally, the variance request is consistent with the spirit and intent of the zoning regulations. The purpose of setback regulations, whatever the zone, is to ensure appropriate density and spacing between the buildings on adjoining lots. Here, the proposed improvements encroach only negligibly into the setback and would be several hundred feet away from the closest home.

IV. CONCLUSION

For the reasons stated, the Board should grant the variance relief requested and allow Mr. and Mrs. Leeb to (i) enclose the existing open deck with a screened patio, and (ii) enclose the existing screened patio.

Michael R. McCann

Funk & Bolton, P.A.
Twelfth Floor
36 South Charles Street
Baltimore, Maryland 21201-3111
(410) 659-7700

Attorneys for Petitioners/Appellants

Dated: May 5, 2005

85006.001:82830

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 5th day of May 2005, a copy of the foregoing Post-Hearing Memorandum was mailed, first class, postage prepaid to:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286-5448

Michael R. McCann

85006.001:82830

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

June 28, 2004

Jeffrey H. Scherr, Esquire
Kramon & Graham, P. A.
One South Street, Ste. 2600
Baltimore, Maryland 21202

Re: Petition for Variance
Case No. 04-433-A
Property: 2316 Velvet Ridge Drive

Dear Mr. Scherr:

Enclosed please find the decision rendered in the above-captioned case.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

John V. Murphy
Deputy Zoning Commissioner

JVM:raj
Enclosure

c: Mr. & Mrs. Melvyn Leeb, 2316 Velvet Ridge Drive, Owings Mills, MD 21117
David M. Hausner, Esq., Kramon & Graham, One South St., Ste. 2600, Balto., MD 21202
William Keeney, 1908 Emory Road, Reisterstown, MD 21136
J. Carroll Holzer, Esq., 506 Fairmount Avenue, Towson, MD 21286
Mary Allinson, 2707 Caves Road, Owings Mills, MD 21117

Printed on Recycled Paper

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 2316 Velvet Ridge Drive

which is presently zoned RC-5

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

1A04.3.B.2 TO PERMIT AN EXISTING OPEN PROJECTION TO BE CONVERTED TO AN ENCLOSED ADDITION; SETBACK 18 FT FROM THE PROPERTY LINE IN LIEU OF 50 FT.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

See Attached Exhibit A

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):

Melvyn Leeb
Name - Type or Print

Signature

Leslie Leeb
Name - Type or Print

Leslie Leeb
Signature

2316 Velvet Ridge Drive — 410363-0906
Address — Telephone No.

Owings Mills, Maryland 21117
City — State — Zip Code

Attorney For Petitioner:

Jeffrey H. Scherr
Name - Type or Print

Signature

Kramon & Graham, P.A.
Company

One South St., St 2600 — 410-752-6030
Address — Telephone No.

Baltimore, Maryland 21202
City — State — Zip Code

Representative to be Contacted:

Jeffrey H. Scherr
Name

One South St., St 2600 — 410-752-6030
Address — Telephone No.

Baltimore, Maryland 21202
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 04-433-A

Reviewed By _____ Date 03-16-04

REV 9/15/98

ORDER RECEIVED FOR FILING
Date 6/25/04
By

Submitted @ time of filing

EXHIBIT A

PETITION FOR VARIANCE

for the property located at 2316 Velvet Ridge Drive

Petitioners propose to make improvements to the existing dwelling which was constructed at the rear/north side of the property 13.5' from the adjacent property line in violation of the 50' feet setback requirement. On June 19, 2001, in Case No. 01-390-A, Petitioners were granted a variance to allow the location of the existing structure due to environmental and topographic constraints associated with the property. A copy of the Findings of Fact and Conclusions of Law and the Order from that case are attached hereto and made a part hereof as Exhibit A. The Order granting the variance restricted the variance by setting forth that "any future construction on the rear/north side of the subject property must comply with setback requirements or variance relief may be necessary." Petitioners now seek additional variance relief to permit a property line setback of 13.5' in lieu of the required 50' for the existing dwelling to improve the dwelling by enclosing with glass the existing screened porch and screening in and placing a roof over the existing wood deck. These proposed improvements will in no way encroach upon the adjacent property, reduce the current 13.5' distance from the dwelling to the adjacent property line, nor expand the existing foot print of the dwelling. The exact same environmental and topographic constraints associated with the property, which were determined to be the practical difficulty and/or undue hardship when the initial variance was granted, are the basis for this petition.

Zoning Description

Zoning Description for: 2316 Velvet Ridge Dr. Owings Mills MD 21117

Being at a point on the **North** side of **2316 Velvet Ridge Dr.** which is **50 feet** wide at a distance of 1475' of the centerline of the nearest improved intersecting street **Park Heights Ave.** which is **65'** wide.

Being **Lot #9, Block 2300, Section #3,** in the subdivision of **Velvet Valley** recorded in Baltimore County Plat **Book # 48, Folio #145,** containing **1.94 acres**. Also known as **2316 Velvet Ridge Dr**. and located in the **3rd** Election District, **3** Councilmanic District.

04423-A

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: #04-433-A
2816 Velvet Ridge Drive
N side of Velvet Ridge Drive, 1,475 feet w/of Park Heights Avenue
3rd Election District
2nd Councilmanic District
Legal Owner(s): Melvyn & Leslie Leeb
Variance: to permit an existing open projection to be converted to an enclosed addition, setback 18 feet from the property line in lieu of the 50 feet required.
Hearing: Wednesday, June 9, 2004 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

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

JE5/750 May 25 6280

CERTIFICATE OF PUBLICATION

5/27/, 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 5/25/, 2004.

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

S. Wilkinson

LEGAL ADVERTISING

[redacted]
thority 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: 04-433-A
2316 Velvet Ridge Drive
N/side of Velvet Ridge Drive 1,475 feet w/of Park Heights Avenue
3rd Election District 2nd Councilmanic District
Legal Owner(s): Melvyn and Leslie Leeb

Variance: to permit an existing open projection to be converted to an enclosed addition, setback 18 feet from the property line in lieu of 50 feet required.

Hearing: Wednesday, May 12, 2004 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

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

JT/4/799 Apr. 27 C661816

CERTIFICATE OF PUBLICATION

4/28/, 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 4/27/, 2004.

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

S. Wilkinson

LEGAL ADVERTISING

04-433-A

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 34547

DATE 03-16-04 ACCOUNT 1001006150

AMOUNT $ 65.00

RECEIVED FROM: KR Dwyer & Associates

FOR: Zoning Var
7316 Velvet Fudge Dr.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

04-433-A

PAID RECEIPT
BUSINESS ACTUAL TIME DRW
3/17/2004 3/16/2004 15:28:41 1
REG USU1 WILKIN JRIC JMR
>>RECEIPT # 190497 3/16/2004 DFLN
Dept 5 520 ZONING VERIFICATION
GR NO. 034547
Recpt Tot. $65.00
$65.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 37932

DATE 7/21/04 ACCOUNT 001-006-6150

AMOUNT $ 300.00

RECEIVED FROM: Hamon + Graham

FOR: 236 Velvet Ridge

Appeal A-433-A

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
7/22/2004	7/21/2004	15:55:13	4

REG WS06 WALKIN KMCM KCM
>>RECEIPT # 275125 7/21/2004 OFLH
Dept 5 526 ZONING VERIFICATION
CR NO. 037932
Recpt Tot $300.00
$300.00 CH
Baltimore County, Maryland

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS

Date May 27, 2004

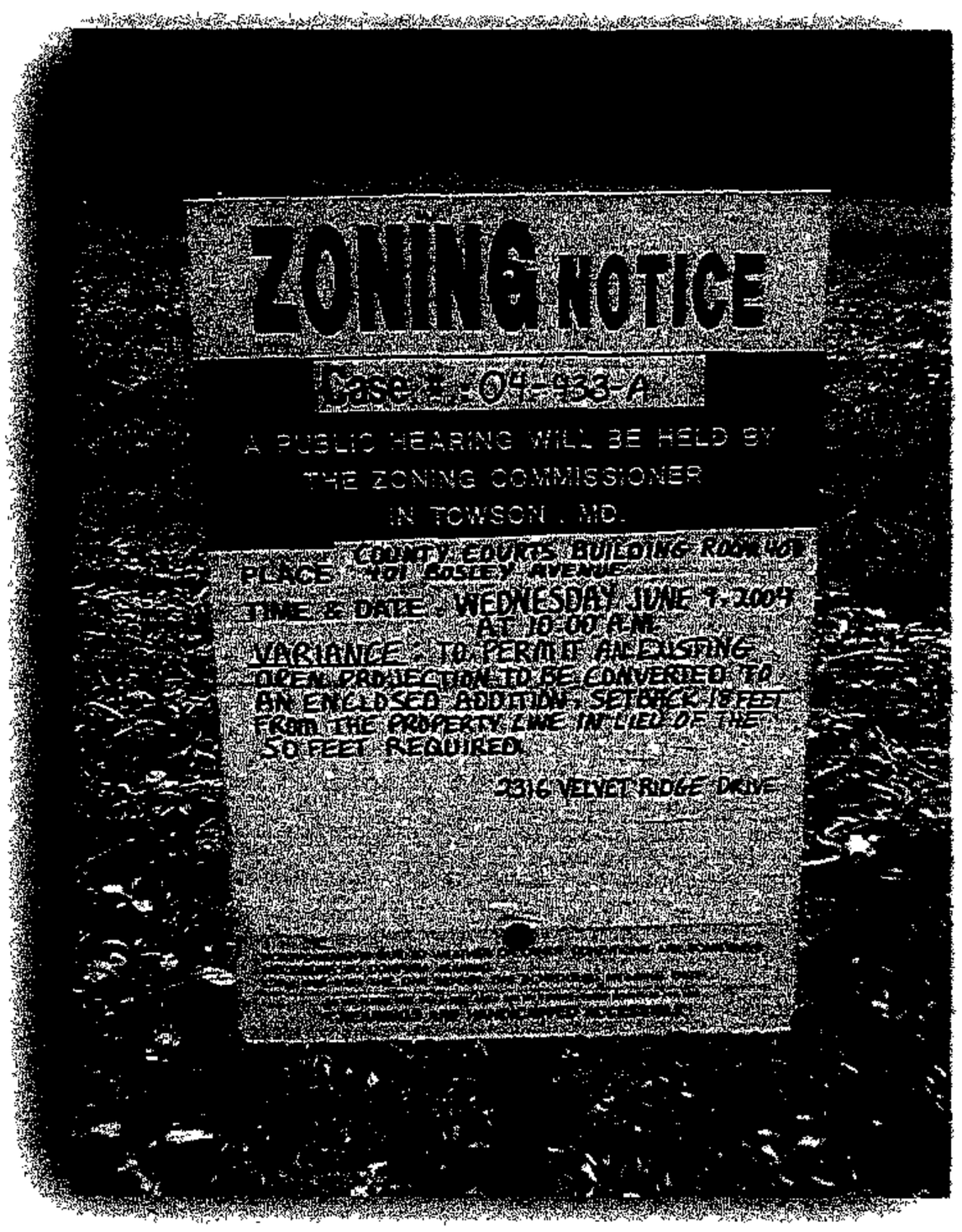
RE: Case Number 04-433-A

Petitioner/Developer JEFFREY SCHERR, KRAMON + GRAHAM/ETAL.

Date of Hearing/Closing JUNE 9, 2004

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 2316 VELVET RIDGE DRIVE

The sign(s) were posted on May 24, 2004



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley Maryland 21030
(City, State, Zip Code of Sign Poster)

410-666-5366
(Telephone Number of Sign Poster)

CERTIFICATE OF POSTING

Date. JUNE 9, 2004

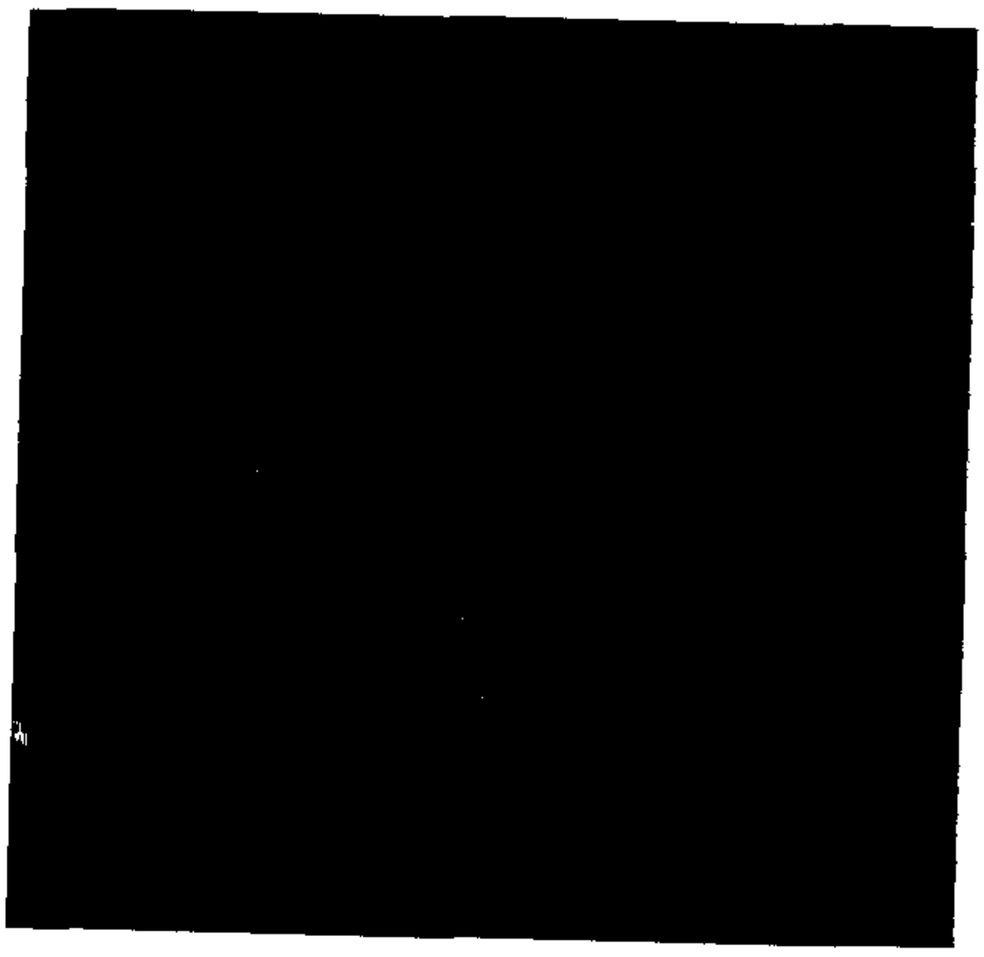
ATTENTION: KRISTEN MATTHEWS
RESCHEDULED

RE: Case Number 04-433-A
Petitioner/Developer: JEFFREY SCHERR, KRAMON + GRAHAM/ETAL.
Date of Hearing/Closing. JUNE 22, 2004

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 2316 VELVET RIDGE DRIVE

The sign(s) were posted on June 8, 2004
(Month, Day, Year)

Linda O'Keefe
(Signature of Sign Poster)



LINDA O'KEEFE
(Printed Name of Sign Poster)

523 PENNY LANE
(Street Address of Sign Poster)

HUNT VALLEY MD 21030
(City, State, Zip Code of Sign Poster)

410-666-5366
(Telephone Number of Sign Poster)

Revised 3/1/01 - SCJ

2316 VELVET RIDGE DRIVE

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-433-A

MELVYN AND LESLIE LEEB.– LEGAL OWNER

2316 VELVET RIDGE DRIVE

3RD ELECTION DISTRICT APPEALED: JULY 21, 2004

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

2501

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-433-A

MELVYN AND LESLIE LEEB.– LEGAL OWNER

2316 VELVET RIDGE DRIVE

3RD ELECTION DISTRICT APPEALED: JULY 21, 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.: 04-433-A

Petitioner/Developer:

MELVYN AND LESLIE LEEB. – LEGAL OWNER

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

2316 VELVET RIDGE DRIVE

The sign was posted on 9/30, 2004

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

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

April 23, 2004

CORRECTED 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: 04-433-A
2316 Velvet Ridge Drive
N/side of Velvet Ridge Drive, 1,475 feet w/of Park Heights Avenue
3rd Election District – 2nd Councilmanic District
Legal Owners: Melvyn & Leslie Leeb

Variance to permit an existing open projection to be converted to an enclosed addition, setback 18 feet from the property line in lieu of 50 feet required.

Hearing: Wednesday, June 9,2004 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco
Director

TK:klm

C: Jeffrey Scherr, Kramon & Graham, One South St., Ste. 2600, Baltimore 21202
Melvyn & Leslie Leeb, 2316 Velvet Ridge Drive, Owings Mills 21117

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, MAY 25, 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, May 25, 2004 Issue - Jeffersonian

Please forward billing to:
David Hausner
One South Street, Ste. 2600
Baltimore, MD 21202

410-752-6030

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: 04-433-A
2316 Velvet Ridge Drive
N/side of Velvet Ridge Drive, 1,475 feet w/of Park Heights Avenue
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Legal Owners: Melvyn & Leslie Leeb

Variance to permit an existing open projection to be converted to an enclosed addition, setback 18 feet from the property line in lieu of 50 feet required.

Hearing: Wednesday, June 9, 2004, at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley 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.

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

March 26, 2004

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: 04-433-A
2316 Velvet Ridge Drive
N/side of Velvet Ridge Drive, 1,475 feet w/of Park Heights Avenue
3rd Election District – 2nd Councilmanic District
Legal Owners: Melvyn & Leslie Leeb

Variance to permit an existing open projection to be converted to an enclosed addition, setback 18 feet from the property line in lieu of 50 feet required.

Hearing: Wednesday, May 12, 2004, at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco
Director

TK:klm

C: Jeffrey Scherr, Kramon & Graham, One South St., Ste. 2600, Baltimore 21202
Melvyn & Leslie Leeb, 2316 Velvet Ridge Drive, Owings Mills 21117

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, APRIL 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, April 27, 2004 Issue - Jeffersonian

Please forward billing to:
David Hausner
One South Street, Ste. 2600
Baltimore, MD 21202

410-752-6030

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: 04-433-A
2316 Velvet Ridge Drive
N/side of Velvet Ridge Drive, 1,475 feet w/of Park Heights Avenue
3rd Election District – 2nd Councilmanic District
Legal Owners: Melvyn & Leslie Leeb

Variance to permit an existing open projection to be converted to an enclosed addition, setback 18 feet from the property line in lieu of 50 feet required.

Hearing: Wednesday, May 12, 2004, at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley 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.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 04-433-A

Petitioner: MELVYN & LESLIE LEES

Address or Location: 2316 VELVET RIDGE DR.

PLEASE FORWARD ADVERTISING BILL TO:

Name: DAVID M. HAUSNER, ESQ.

Address: ONE SOUTH ST. SUITE 2600
BALTIMORE MD 21202

Telephone Number: 410 752 6030 FAX 410 361-8213

Revised 2/20/98 - SCJ

04-433-A

County Board of Appeals of Baltimore County

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

June 13, 2005

NOTICE OF DELIBERATION -
Further Deliberation Assigned
By Request Of The Board

IN THE MATTER OF:

Melvyn and Leslie Leeb – Legal Owners /Petitioners
Case No. 04-433-A

Having deliberated this matter on May 18, 2005, the Board has requested that further deliberation be scheduled, with appropriate notice sent; and this requested deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, JULY 13, 2005 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellant /Petitioner : Michael McCann, Esquire
Appellant /Petitioners : Mr. & Mrs. Melvyn Leeb
William Keeney, Architect

Counsel for Protestant : J. Carroll Holzer, Esquire
Protestant : Mary Allinson

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

FYI: 4-5-6

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on Recycled Paper

County Board of Appeals of Baltimore County

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400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

April 20, 2005

AMENDED NOTICE OF DELIBERATION -
Extension of Time for Filing of Briefs

IN THE MATTER OF:
Melvyn and Leslie Leeb – Legal Owners /Petitioners
Case No. 04-433-A

Having heard this matter on 4/07/05, public deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, MAY 18, 2005 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on **THURSDAY, MAY 5, 2005.**
(Original and three [3] copies)

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 Appellant /Petitioner : Michael McCann, Esquire
Appellant /Petitioners : Mr. & Mrs. Melvyn Leeb
William Keeney, Architect

Counsel for Protestant : J. Carroll Holzer, Esquire
Protestant : Mary Allinson

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

FYI: 4-5-6

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County Board of Appeals of Baltimore County

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

April 8, 2005

Amended notice sent

NOTICE OF DELIBERATION

IN THE MATTER OF:

Melvyn and Leslie Leeb – Legal Owners /Petitioners
Case No. 04-433-A

Having heard this matter on 4/07/05, public deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, MAY 18, 2005 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

changed - extended to 5-05-05

NOTE: Closing briefs are due on Thursday, April 28, 2005
(Original and three [3] copies)

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 Appellant /Petitioner : Michael McCann, Esquire
Appellant /Petitioners : Mr. & Mrs. Melvyn Leeb
William Keeney, Architect

Counsel for Protestant : J. Carroll Holzer, Esquire
Protestant : Mary Allinson

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

FYI: 4-5-6

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
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TOWSON, MARYLAND 21204
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FAX: 410-887-3182

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

January 13, 2005

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 04-433-A

IN THE MATTER OF: MELVYN & LESLIE LEEB
- Legal Owners /Petitioners 2316 Velvet Ridge Drive
3rd Election District; 2nd Councilmanic District

6/25/04 – D.Z.C.'s Order in which requested variance relief was granted in part and denied in part.

which was assigned to be heard on ~~4/07/05~~ 2/01/05 has been **POSTPONED** at the request of Counsel for Protestant due to schedule conflict; and has been

REASSIGNED FOR: **THURSDAY, APRIL 7, 2005 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: Appellant /Petitioner : Mr. & Mrs. Melvyn Leeb
William Keeney, Architect
Michael McCann, Esquire

Counsel for Protestant : J. Carroll Holzer, Esquire
Protestant : Mary Allinson

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

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County Board of Appeals of Baltimore County

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pp'd by reg. of Counsel for Protestant to 4/07/05

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

October 25, 2004

NOTICE OF ASSIGNMENT

CASE #: 04-433-A

IN THE MATTER OF: MELVYN & LESLIE LEEB
- Legal Owners /Petitioners 2316 Velvet Ridge Drive
3rd Election District; 2nd Councilmanic District

6/25/04 – D.Z.C.'s Order in which requested variance relief was granted in part and denied in part.

ASSIGNED FOR: **TUESDAY, FEBRUARY 1, 2005 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: ~~Counsel for Appellant /Petitioner~~ : ~~David Hausner, Esquire~~ w/d appearance on 11-17-05
~~Jeffrey Scherr, Esquire~~
Appellant /Petitioner : Mr. & Mrs. Melvyn Leeb
William Keeney, Architect

Counsel for Protestant : J. Carroll Holzer, Esquire
Protestant : Mary Allinson

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM **[1/12/05 – Michael McCann will enter appearance for Petitioner]**

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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

June 1, 2004

Jeffrey H. Scherr
Kramon & Graham
One South Street, St.2600
Baltimore, Maryland 21202

Dear Mr. Scherr:

RE: Case Number: 04-433-A, 2316 Velvet Ridge Drive

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 16, 2004.

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: clb

Enclosures

c: People's Counsel
Melvyn and Leslie Leeb 2316 Velvet Ridge Drive Owings Mills 21117

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: April 19, 2004

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

SUBJECT: Zoning Advisory Petition(s): **Case 4-433**

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

Prepared By: Mark A Cunningham

Division Chief: Lyn Lanham

RECEIVED
APR 20 2004
ZONING COMMISSIONER

AFK/LL

Fire Department

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

Baltimore County

James T. Smith, Jr., County Executive
John J. Hohman, Chief

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

March 29, 2004

ATTENTION: Rebecca Hart

Distribution Meeting of: March 29, 2004

Item No.: 424-435 (435)

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.

6. 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

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: 3.29.04

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

RE: Baltimore County
Item No. 433 JRA

Dear. Ms.Matthews:

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

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: R. Bruce Seeley RBS/JDO

DATE: April 6, 2004

SUBJECT: Zoning Items # See List Below

Zoning Advisory Committee Meeting of March 29, 2004

__X__ The Department of Environmental Protection and Resource Management has no comments on the following zoning items:

04-424
04-425
04-428
04-429
04-432
04-433
04-434
04-435

Reviewers: Sue Farinetti, Dave Lykens

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

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: April 21, 2004

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

SUBJECT: Zoning Advisory Committee Meeting
For April 5, 2004
Item No. 433

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

No permanent structure is permitted in the 10-foot drainage and utility easement, and this office recommends against granting this variance.

RWB:CEN:jrb

cc: File

LAW OFFICES
KRAMON & GRAHAM, P.A.
ONE SOUTH STREET
SUITE 2600
BALTIMORE, MARYLAND 21202-3201
TELEPHONE: (410) 752-6030
FACSIMILE (410) 539-1269
www.kramonandgraham.com

JEFFREY H. SCHERR
DIRECT DIAL
(410) 347-7424
DIRECT FACSIMILE
(410) 361-8221

E-MAIL
jscherr@kg-law.com

RECEIVED
NOV 17 2004
ZONING COMMISSIONER

November 16, 2004

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

Re: In the Matter of Melvyn & Leslie Leeb
Appeal to Baltimore County Board of Appeals
Case No. 04-433-A

Dear Ms. Bianco:

Enclosed for filing in the above referenced case is a Notice of Withdrawal of Appearance. Please call with any questions.

Sincerely,

Jeffrey H. Scherr

JHS:mlc
Enclosure
cc: Mr. and Mrs. Melvyn J. Leeb (w/encl.)
Mr. William Keeney (w/encl.)
Office of People's Counsel (w/encl.)
Mr. William J. Wiseman III (w/encl.)
Mr. Pat Keller (w/encl.)
Mr. Timothy M. Kotroco (w/encl.)
J. Carroll Holzer, Esquire (w/encl.)

04121/0/00119173.WPDv1

County Board of Appeals of Baltimore County

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410-887-3180
FAX: 410-887-3182

November 18, 2004

Jeffrey H. Scherr, Esquire
KRAMON & GRAHAM, P.A.
One South Street, Suite 2600
Baltimore, MD 21202-3201

RE: *In the Matter of: Melvyn & Leslie Leeb*
Case No. 04-433-A

Dear Mr. Scherr:

This will acknowledge receipt of your Notice of Withdrawal of Appearance in the subject matter as counsel for the Petitioners, Melvyn and Leslie Leeb, which was filed on November 17, 2004.

The file has been noted, and no further notices or communications will be sent to you in this matter.

Please call me if I can be of any further assistance.

Very truly yours,

Kathleen C. Bianco
Administrator

c: David Haussner, Esquire
J. Carroll Holzer, Esquire
Office of People's Counsel

FILE

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County Board of Appeals of Baltimore County

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400 WASHINGTON AVENUE
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April 20, 2005

VIA FAX AND U.S. MAIL

Michael R. McCann Esquire
FUNK & BOLTON, P.A.
36 S Charles Street
Baltimore, MD 21201-3111

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

Dear Counsel:

RE: *In the Matter of: Melvyn and Leslie Leeb* - Petitioners
Case No. 04-433-A /Extension of Time

This letter will confirm our conversations this date regarding an extension of time for filing the **briefs due** in the above case to **Thursday, May 5, 2005**, in lieu of the previously designated April date. This extension has been granted at the request of our court reporter due to a hand injury.

The **public deliberation will take place on May 18, 2005 at 9:00 a.m.** as originally assigned. Enclosed is an amended Notice of Deliberation reflecting the revised due date for briefs in this matter.

Should you have any questions, please call me.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Mr. & Mrs. Melvyn Leeb
William Keeney, Architect
Mary Allinson
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
TWELFTH FLOOR
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND
21201-3111
PHONE: 410.659 7700
FAX. 410 659 7773
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BRYSON F. POPHAM
REN L TUNDERMANN
CHARLES D MACLEOD
STEPHEN Z. MEEHAN
DEREK B YARMIS*
JEFFERSON L. BLOMQUIST
LINDSEY A. RADER
JOHN A ANDRYSZAK
JAMES F TAYLOR
MICHAEL R MCCANN

ASSOCIATES
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PETER C ISMAY♦
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ALAN NOCHUMSON❖
CHERYL A C BROWN
HISHAM M AMIN
TAMAL A. BANTON
MARYAM ZAFAR

OF COUNSEL
ERNEST A CROFOOT
TIFFANY C HANNA
GARY C HARRIGER
DONNA B IMHOFF
DEBORAH R. RIVKIN
JOHN R STIERHOFF
JOSEPH B TETRAULT
PAULINE K WHITE

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♦ ALSO ADMITTED IN VIRGINIA
❖ ADMITTED IN PENNSYLVANIA AND NEW JERSEY ONLY

Writer's Direct Dial (410) 659-7764
mmccann@fblaw.com

April 12, 2005

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

Re: Petition for Variance – In re: N/S. of Velvet Ridge Drive 2475 ft W
Centerline of Park Heights Avenue, 3rd Election District, 2nd Councilmanic District
2316 Velvet Ridge Drive
Case No. 04-433-A

Dear Ms. Bianco:

Per your request, enclosed please find the original permit site plan which was marked as exhibit 5 for identification purposes at the hearing in the above-referenced matter.

Please contact me if you have any questions.

Best regards,

Michael R. McCann

MRM:kjg
Enclosure

cc: Carroll Holzer, Esquire

85006.001· 82136

RECEIVED
BALTIMORE COUNTY
BOARD OF APPEALS

ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
TWELFTH FLOOR
36 SOUTH CHARLES STREET
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PHONE: 410.659 7700
FAX: 410.659 7773
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W. DAVID WISEMAN, JR

OF COUNSEL
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♦ ALSO ADMITTED IN VIRGINIA
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Writer's Direct Dial: (410) 659-7764
mmccann@fblaw.com

January 13, 2005

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

Re: Petition for Variance – In re: N/S. of Velvet Ridge Drive 2475 ft W
Centerline of Park Heights Avenue, 3rd Election District, 2nd Councilmanic District
2316 Velvet Ridge Drive
Case No. 04-433-A

Dear Clerk:

Enclosed please find an Entry of Appearance to be filed in the above-referenced matter. Please date stamp the extra copy and return it to me in the enclosed, self-addressed, stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

Michael R. McCann

Michael R. McCann

Enclosures
MRM:kjg

85006:001·79540

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JAN 14 2005
BALTIMORE COUNTY
BOARD OF APPEALS

ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION
TWELFTH FLOOR
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MARYAM ZAFAR

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TIFFANY C HANNA
GARY C HARRIGER
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JOHN R STIERHOFF
JOSEPH B TETRAULT
PAULINE K. WHITE

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♦ ALSO ADMITTED IN VIRGINIA
❖ ADMITTED IN PENNSYLVANIA AND NEW JERSEY ONLY

Writer's Direct Dial: (410) 659-7764
mmccann@fblaw.com

May 5, 2005

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

Via Hand Delivery

Re: Petition for Variance – In re: N/S. of Velvet Ridge Drive 2475 ft W
Centerline of Park Heights Avenue, 3rd Election District, 2nd Councilmanic District
2316 Velvet Ridge Drive
Case No. 04-433-A

Dear Ms. Bianco:

Enclosed please find an original and three courtesy copies of the Petitioners' Post-Hearing Memorandum in the above-referenced matter. Thank you for your attention to this matter.

Best regards,

Michael R. McCann

Enclosures
MRM:kjg
cc: J. Carroll Holzer, Esq. (w/ enclosure)
85006·001 82850

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BALTIMORE COUNTY
BOARD OF APPEALS

LAW OFFICES
KRAMON & GRAHAM, P. A.
ONE SOUTH STREET
SUITE 2600
BALTIMORE, MARYLAND 21202-3201
TELEPHONE: (410) 752-6030
FACSIMILE: (410) 539-1269
www.kramonandgraham.com

DAVID M. HAUSNER, CPA
DIRECT DIAL
(410) 347-7409

E-MAIL
dhausner@kg-law.com

July 21, 2004

Mr. Timothy Kotroco
Director, Permits & Development Management
Development Processing
County Office Building
111 West Chesapeake Avenue, Room 111
Towson, Maryland 21204

RECEIVED
JUL 21 2004
Per.

Re: Appeal to Baltimore County Board of Appeals
Case No. 04-433-A

Dear Mr. Kotroco:

Pursuant to Section 26-132 of the Baltimore County Code, Petitioners, Melvyn and Leslie Leeb, in the above captioned case do hereby exercise their right to appeal the Findings of Fact and Conclusions of Law (the "Opinion"), dated June 25, 2004, to the Baltimore County Board of Appeals. Petitioners feel aggrieved by the decisions made in the Opinion. Please find enclosed a check in the amount of $300.00 for the filing fee and posting fee.

At the June 8, 2004 variance hearing, Petitioners requested zoning relief from the set back requirements to allow for repairs and renovations to their residence located at 2316 Velvet Ridge Drive, Owings Mills, Maryland 21117. On June 25, 2004, the Deputy Zoning Commissioner (the "Commissioner") issued the Opinion and ordered that Petitioners' variance requests be granted in part and denied in part. In addition, the Commissioner placed a restriction upon the variance that was granted.

Petitioners seek to appeal the Commissioner's Opinion with respect to the restriction placed upon the variance that was granted and with respect to the variance that was denied.

An additional copy of this letter is also enclosed. Please date stamp the copy and return it to my office. If you have any questions or concerns, please give me a call.

Sincerely,

David M. Hausner

DMH:hmd
Enclosures

cc: Melvyn and Leslie Leeb (via facsimile w/o enclosures)

HOLZER

& LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

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

January 10, 2005
#7278

RECEIVED
JAN 11 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Ms. Kathleen Bianco
Administrator
Board of Appeals
400 Washington Avenue
Room 49
Towson, Maryland 21204

RE: Mary Alllinson Case

Dear Ms. Bianco:

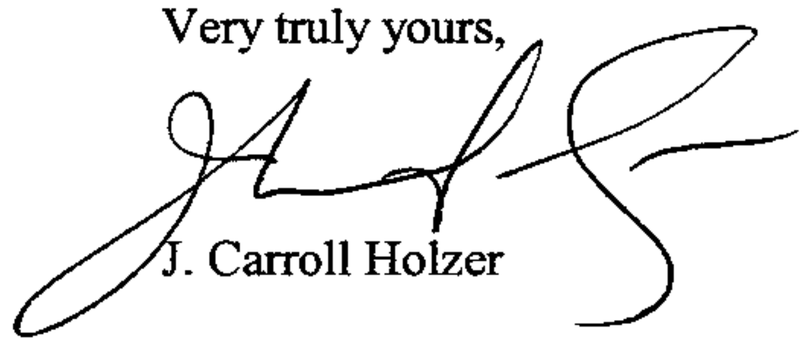
Please be advised that the above-captioned case is currently scheduled for Tuesday, February 1, 2005.

It is my understanding that Counsel for the Appellants, Geoffrey Scherr has stricken his appearance upon the advice of his clients and he is no longer involved in the case.

I will be out of the state from Saturday, January 29, 2005 through Wednesday, February 2, 2005. I would therefore request that this case be postponed and rescheduled at the Board's convenience.

This is the first postponement request in this case.

Very truly yours,



J. Carroll Holzer

JCH:mlg

cc: Ms. Mary Allinson
Mr. & Mr. Melvyn J. Leeb

RECEIVED

JUN - 4 2004

ZONING COMMISSIONER

LAW OFFICES
J. CARROLL HOLZER, PA
EDWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

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

6/9
PPD

June 4, 2004
#7278

VIA FAX 410-887-3468
Lawrence E. Schmidt, Esq.,
Zoning Commissioner for Baltimore County
401 Bosley Ave., Suite 405
Towson, MD 21204

Re: 2316 Velvet Ridge Drive; Leeb Property
Case No. 04-433-A

Dear Commissioner Schmidt:

By way of this letter, I hereby enter my appearance on behalf of my client, Mary Allinson, who resides at 2707 Caves Road and intends to fully participate in the above referenced hearing. Additionally, I must respectfully request a postponement of the hearing due to the onset of attacks of kidney stones necessitating my being treated on June 9, 2004 at GBMC, the same day as the hearing. I have called Jeffrey Scherr, attorney for Petitioner, informing him of this request.

Upon my return to the office, I will be glad to work with your office and Mr. Scherr to reschedule this case to a mutually convenient date. I apologize for the inconvenience. Obviously, I would much prefer attending the hearing with Your Honor and respected counsel for the Petitioner instead of the visit to the hospital, but my doctor advises against it. I appreciate your understanding.

Very truly yours,

J. Carroll Holzer

J. Carroll Holzer

cc: Mary Allinson
Jeff Scherr, Esq.

F:\Letters 2004\Lawrence Schmidt - Allinson Postponement 6-4-04.doc

case postponed due to
Carroll Holzer
medical treatment

- reschedule with his office
and J. Schern

* (Do this on Justice calendar)

LAW OFFICES
KRAMON & GRAHAM, P. A.
ONE SOUTH STREET
SUITE 2600
BALTIMORE, MARYLAND 21202-3201
TELEPHONE: (410) 752-6030
FACSIMILE (410) 539-1269

www.kramonandgraham.com

JEFFREY H. SCHERR
DIRECT DIAL
(410) 347-7424
DIRECT FACSIMILE
(410) 361-8221

E-MAIL
jscherr@kg-law.com

November 16, 2004

RECEIVED
NOV 17 2004
BALTIMORE COUNTY
BOARD OF APPEALS

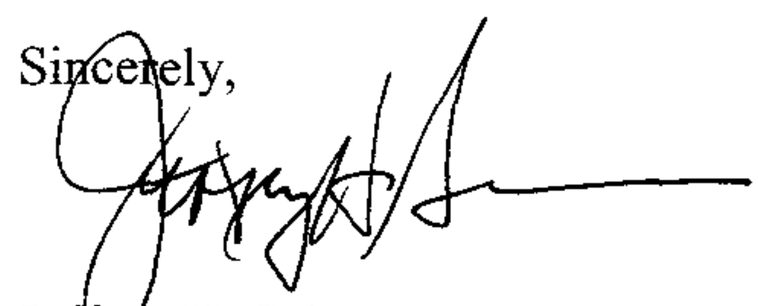
Ms. Kathleen C. Bianco
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: In the Matter of Melvyn & Leslie Leeb
Appeal to Baltimore County Board of Appeals
Case No. 04-433-A

Dear Ms. Bianco:

Enclosed for filing in the above referenced case is a Notice of Withdrawal of Appearance. Please call with any questions.

Sincerely,



Jeffrey H. Scherr

JHS:mlc
Enclosure
cc: Mr. and Mrs. Melvyn J. Leeb (w/encl.)
Mr. William Keeney (w/encl.)
Office of People's Counsel (w/encl.)
Mr. William J. Wiseman III (w/encl.)
Mr. Pat Keller (w/encl.)
Mr. Timothy M. Kotroco (w/encl.)
J. Carroll Holzer, Esquire (w/encl.)

2707 Caves Road
Owings Mills, MD 21117
410-356-3815
April 9, 2004

RE: 04-433-A
Leeb property
2316 Velvet Ridge Drive
Owings Mills, MD 21117

Dear Mr. Kotroco:

I called your office this week to inquire whether the Leebs had applied for another variance as they had indicated months ago that they were planning on doing. I was told that they had and that the sign was not posted yet but that the hearing had been set for May 12, 2004. I am the neighboring property that they want the variance to build close to and in fact had gone to a hearing on this same matter in 2001 when they withdrew the request to build within the 50 foot setback.

My daughter's graduation ceremonies at the University of Arizonia begin on May 13, 2004 and we are scheduled to fly to Arizona the morning of May 12th and return on May 16., 2004. I want to be able to attend the hearing as their request has negative impact on my property since they want to build closer than the required setback which is next to 2 approved building lots on my property.

I am requesting that the hearing date be rescheduled so that I can attend.

Thank you for your help with this matter.

Sincerely,
Mary Allinson
Mary Allinson

4/15/04
Kristen:
Please postpone + reset this case. Call all parties to advise.
T.K.

To Kristen:
Please postpone + reset

RECEIVED
APR 13 2004
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

Case No. 04-433-A

In the Matter of: Melvyn & Leslie Leeb -- Owners /Petitioners
2316 Velvet Ridge Drive 3rd E; 2nd C

VAR – To permit an existing open projection to be converted to an enclosed addition, set back 18' from property line in lieu of the required 50'.

6/25/04 – D.Z.C.'s Order in which requested variance relief was granted in part and denied in parat.

10/25/04 -Notice of Assignment sent to following; assigned for hearing on Tuesday, February 1, 2005 at 10 am.:

David Hausner, Esquire
Jeffrey Scherr, Esquire
Mr. & Mrs. Melvyn Leeb
William Keeney, Architect
J. Carroll Holzer, Esquire
Mary Allinson
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

11/17/04 – Notice of Withdrawal of Appearance filed by Jeffrey H. Scherr, Esquire, and David M. Hausner, Esquire. File noted. Letter to Mr. Scherr acknowledging same.

1/11/05 – Letter from J. Carroll Holzer, Esquire – will be out State from 1/29/05 through 2/02/05; requesting postponement of 2/01/05 hearing.

1/12/05 – T/C from Michael McCann, Esquire - will be entering his appearance on behalf of Appellant /Petitioner. Has received copy of postponement request from his client; confirming this is first PP request filed; will offer no objection to the request being granted.

1/13/05 – Notice of PP and Reassignment sent to parties; case reassigned to Thursday, April 7, 2005 at 10:00 a.m. Copy also sent to Mr. McCann. Awaiting entry of appearance.

1/14/05 – Entry of Appearance filed by Michael R. McCann, Esquire, FUNK & BOLTON PA, as counsel for Leslie and Melvyn Leeb.

4/07/05 – Board convened for hearing (Ramsey, Brassil, Quinn); completed case this date; memos due 4/28/05; deliberation to be assigned for 5/18/05; notice of deliberation to be sent.

4/08/05 - Verified exhibits submitted at hearing; Petitioner's #5 (ID only) was missing; contacted Dr. Brassil (who received and numbered the exhibits at hearing) and then Mr. McCann, counsel for Petitioners – he will return the exhibit to be included in the file.
- Notice of Deliberation sent this date; assigned for public deliberation on Wednesday, May 18, 2005 at 9:00 a.m. FYI copy to 4-5-6.

4/13/05 – Received Petitioner's #5 ID only from Mr. McCann. Placed with exhibits in case file.

4/20/05 – Letter to counsel – memos extended to 5/05/05 due to court reporter injury to hand. Amended Notice of Deliberation sent to all parties – to indicate extended due date for memos.

5/05/05 – Petitioners' Post-Hearing Memo filed by Michael R. McCann, Esquire, on behalf of Petitioners.
-- Protestants' Memorandum in Lieu of Final Argument filed by J. Carroll Holzer, Esquire, on behalf of Protestants.
-- Copies to be provided to 4-5-6 for receipt prior to 5/18/05 deliberation.

5/18/05 – Board convened for public deliberation; Majority decision – to remand to Zoning Commissioner; J. Quinn – to issue dissent; believed deliberation should have included merits of the case as to variance request. (5) and (6) dissent.

6/13/05 – Notice of Deliberation /by request of Board sent to parties this date. Board (4-5-6) has requested further deliberation be assigned for this mater; to discuss procedural issue and decision of Board reached at public deliberation on 5/18/05. Further deliberation in this matter is assigned for Wednesday, July 13, 2005 at 9:00 a.m. FYI copy to 4-5-6.

7/13/05 – Board convened for 2nd deliberation (4-5-6); determination that the Board will reach a final decision; remand not option on zoning case but rather for development plan appeals. Variance request denied by majority opinion (Quinn and Brassil); Ramsey to write Dissent. All found uniqueness; however 5 and 6 found no unreasonable hardship or practical difficulty; 4 did and will therefore write dissent. (5)

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

July 29, 2004

Melvyn Leeb
Leslie Leeb
2316 Velvet Ridge Drive
Owings Mills, MD 21117

Dear Mr. and Mrs. Leeb:

RE: Case: 04-433-A, 2316 Velvet Ridge

Please be advised that an appeal of the above-referenced case was filed in this office on July 21, 2004 from David Hausner of Kramon & Graham on your behalf. 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
Director

TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Jeffrey Scherr, One South St., Ste. 2600, Baltimore 21202
David Hausner, One South St., Ste. 2600, Baltimore 21202
William Keeney, 1908 Emory Road, Reisterstown 21136
J. Carroll Holzer, 508 Fairmount Ave., Towson 21286
Mary Allinson, 2707 Caves Road, Owings Mills 21117

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AUG 09 2004
BALTIMORE COUNTY
BOARD OF APPEALS

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APPEAL

Petition for Variance
2316 Velvet Ridge Drive
N/side of Velvet Ridge Dr., 1,475 ft. w/of Park Heights Ave.
3rd Election District – 2nd Councilmanic District
Legal Owners: Melvyn & Leslie Leeb

Case No.: 04-433-A

Petition for Variance (March 16, 2004)

Zoning Description of Property

Notice of Zoning Hearing (April 23, 2004)

Certification of Publication (May 25, 2004)

Certificate of Posting (June 8, 2004) by Linda O'Keefe

Entry of Appearance by People's Counsel (April 1, 2004)

Petitioner(s) Sign-In Sheet
One Sheet

Protestant(s) Sign-In Sheet
None

Citizen(s) Sign-In Sheet
One Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibit
1. Plat to accompany Petition for Variance
2. New Proposed Elevations Drawing
3. Site Plan
4. A-H Photos

Protestants' Exhibits:
1. Soils Data
2. A-D Photos

Miscellaneous (Not Marked as Exhibit)
1. Exhibit A
2. Exhibit A – Findings of Fact and Conclusions of Law 6-19-01

Deputy Zoning Commissioner's Order (June 25, 2004 - GRANTED)

Notice of Appeal received on July 21, 2004 from David Hausner of Kramon & Graham for Petitioners

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Jeffrey Scherr, Kramon & Graham, One South St., Ste. 2600, Baltimore 21202
David Hausner, Kramon & Graham, One South St., Ste. 2600, Baltimore 21202
Mr. & Mrs. Melvyn Leeb, 2316 Velvet Ridge Drive, Owings Mills 21117
William Keeney, 1908 Emory Road, Reisterstown 21136
J. Carroll Holzer, 506 Fairmount Avenue, Towson 21286
Mary Allinson, 2707 Caves Road, Owings Mills 21117

date sent 8/4/04 klm

APPEAL

Petition for Variance
2316 Velvet Ridge Drive
N/side of Velvet Ridge Dr., 1,475 ft. w/of Park Heights Ave.
3rd Election District – 2nd Councilmanic District
Legal Owners: Melvyn & Leslie Leeb

Case No.: 04-433-A

✓ Petition for Variance (March 16, 2004)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (April 23, 2004)

✓ Certification of Publication (May 25, 2004)

✓ Certificate of Posting (June 8, 2004) by Linda O'Keefe

✓ Entry of Appearance by People's Counsel (April 1, 2004)

✓ Petitioner(s) Sign-In Sheet
One Sheet

✓ Protestant(s) Sign-In Sheet
None

✓ Citizen(s) Sign-In Sheet
One Sheet

✓ Zoning Advisory Committee Comments (June 1, 2004)

✓ Petitioners' Exhibit
✓1. Plat to accompany Petition for Variance
✓2. New Proposed Elevations Drawing
✓3. Site Plan
✓4. A-H Photos

✓ Protestants' Exhibits:
✓1. Soils Data
✓2. A-D Photos

✓ Miscellaneous (Not Marked as Exhibit)
✓1. Exhibit A
✓2. Exhibit A – Findings of Fact and Conclusions of Law 6-19-01

✓ Deputy Zoning Commissioner's Order (June 25, 2004 - GRANTED) (IN part and DENIED in part.)

✓ Notice of Appeal received on July 21, 2004 from David Hausner of Kramon & Graham for Petitioners

JEFFREY SCHERR
KRAMON & GRAHAM
ONE SOUTH STREET
SUITE 2600
BALTIMORE, MD 21202

DAVID HAUSER ESQUIRE
KRAMON & GRAHAM
ONE SOUTH STREET
SUITE 2600
BALTIMORE, MD 21202

MELVYN LEEB
LESLIE LEEB
2316 VELVET RIDGE DRIVE
OWINGS MILLS MD 21117

WILLIAM KEENEY
1908 EMORY ROAD
REISTERSTOWN MD 21136

J CARROLL HOLZER ESQUIRE
506 FAIRMOUNT AVENUE
TOWSON MD 21286

MARY ALLINSON
2707 CAVES ROAD
OWINGS MILLS MD 21117

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Jeffrey Scherr, Kramon & Graham, One South St., Ste. 2600, Baltimore 21202
David Hausner, Kramon & Graham, One South St., Ste. 2600, Baltimore 21202
Mr. & Mrs. Melvyn Leeb, 2316 Velvet Ridge Drive, Owings Mills 21117
William Keeney, 1908 Emory Road, Reisterstown 21136
J. Carroll Holzer, 506 Fairmount Avenue, Towson 21286
Mary Allinson, 2707 Caves Road, Owings Mills 21117

date sent 8/4/04 klm

RECEIVED
AUG 03 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Michael R. McCann Esquire
FUNK & BOLTON, P.A.
36 S Charles Street
Baltimore, MD 21201-3111

1/12 1/14/05 awaiting entry of appearance

PLEASE PRINT CLEARLY

CASE NAME 2316 Velvet Ridge Dr.
CASE NUMBER 04-433-A
DATE 6/22/04

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
JEFFREY H SCHERR	Kramon & Graham, PA One South Street	Balto. MD 21202	JSCHERR@KG-LAW.COM
Mel Leeb	2316 Velvet Ridge Dr.	Owings Mills, MD 21117	mel@jarrettindustries.com
DAVID M. HAUSNER	KRAMON & GRAHAM ONE SOUTH ST. SUITE 2600	BALT MD 21202	dhausner@KG-LAW.com
William Keeney	1908 Emory Road	Reisterstown 21136	SUBIEK@AOL.COM

PLEASE PRINT CLEARLY

CASE NAME 2316 Velvet Ridge Dr.
CASE NUMBER 04-433-A
DATE 6/22/04

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Mary Allenson	2707 Caves Road	Owings Mills, MD	
J. Carroll Holzer	508 Fairmont Ave	Towson Md 21286	

PETITION FOR VARIANCE	*	BEFORE THE
In re: N/S of Velvet Ridge Drive, 1475 ft W Centerline of Park Heights Avenue	*	COUNTY BOARD OF
3rd Election District	*	APPEALS OF
2nd Councilmanic District (2316 Velvet Ridge Drive)	*	BALTIMORE COUNTY
Leslie & Melvyn Leeb Petitioners/Appellants	*	Case No. 04-433-A

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

ENTRY OF APPEARANCE

Dear Clerk:

Please enter the appearance of Michael R. McCann and Funk & Bolton, P.A. as counsel for Leslie & Melvyn Leeb, Petitioners/Appellants in the above-captioned case.

Michael R. McCann

Funk & Bolton, P.A.
Twelfth Floor
36 South Charles Street
Baltimore, Maryland 21201-3111
(410) 659-7700

Attorneys for Petitioners/Appellants

Dated: January 13, 2005

85006.001:79482

RECEIVED
JAN 14 2005
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 13th day of January 2005, a copy of the foregoing Entry of Appearance was mailed, first class, postage prepaid to:

J. Carroll Holzer
508 Fairmount Avenue
Towson, Maryland 21286-5448

Michael R. McCann

85006.001:79482

IN THE MATTER OF: MELVYN & LESLIE LEEB Legal Owners/Petitioners 2316 Velvet Ridge Drive 3rd Election District 2nd Councilmanic District	* * * *	BEFORE THE BALTIMORE COUNTY BOARD OF APPEALS Case No. 04-433-A

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

NOTICE OF WITHDRAWAL OF APPEARANCE

Please withdraw the appearance of Jeffrey H. Scherr, Esquire, David M. Hausner, Esquire, and Kramon & Graham, P.A., as counsel for the petitioners, Melvyn and Leslie Leeb.

Respectfully submitted,

Jeffrey H. Scherr
David M. Hausner
KRAMON & GRAHAM, P.A.
One South Street
Suite 2600
Baltimore, Maryland 21202-3201
(410) 752-6030 Telephone
(410) 539-1269 Fax

Date: November 16, 2004.

CERTIFICATE OF SERVICE

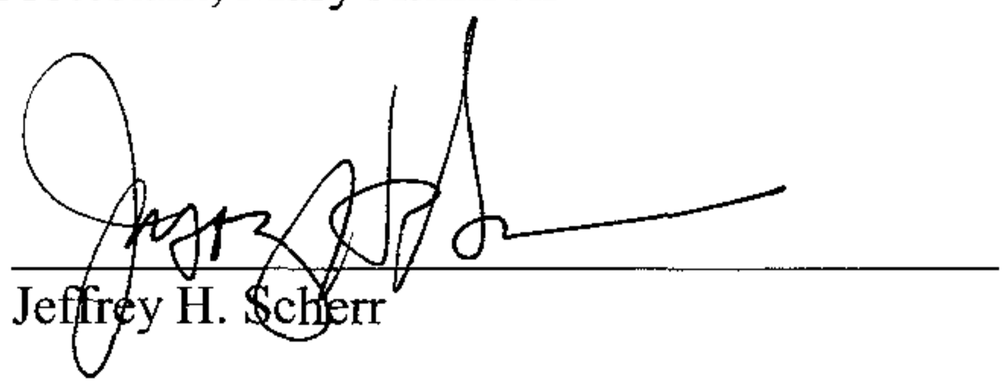
I HEREBY CERTIFY that, on the 16th day of November 2004, a copy of the foregoing Notice of Withdrawal of Appearance was sent by first-class mail, postage prepaid, to:

Mr. and Mrs. Melvyn J. Leeb
11511 Cronridge Drive
Owings Mills, Maryland 21117

and to

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

Attorney for Protestant, Mary Allinson



Jeffrey H. Scherr

04121/0/00119171.WPDv1

RE:	PETITION FOR VARIANCE 2316 Velvet Ridge Drive; N/side Velvet Ridge Drive, 1,475' W Park Heights Avenue 3rd Election & 2nd Councilmanic Districts Legal Owner(s):Melvyn & Leslie Leeb Petitioner(s)	* * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 04-433-A

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

RECEIVED
APR 01 2004
Per.....

CERTIFICATE OF SERVICE

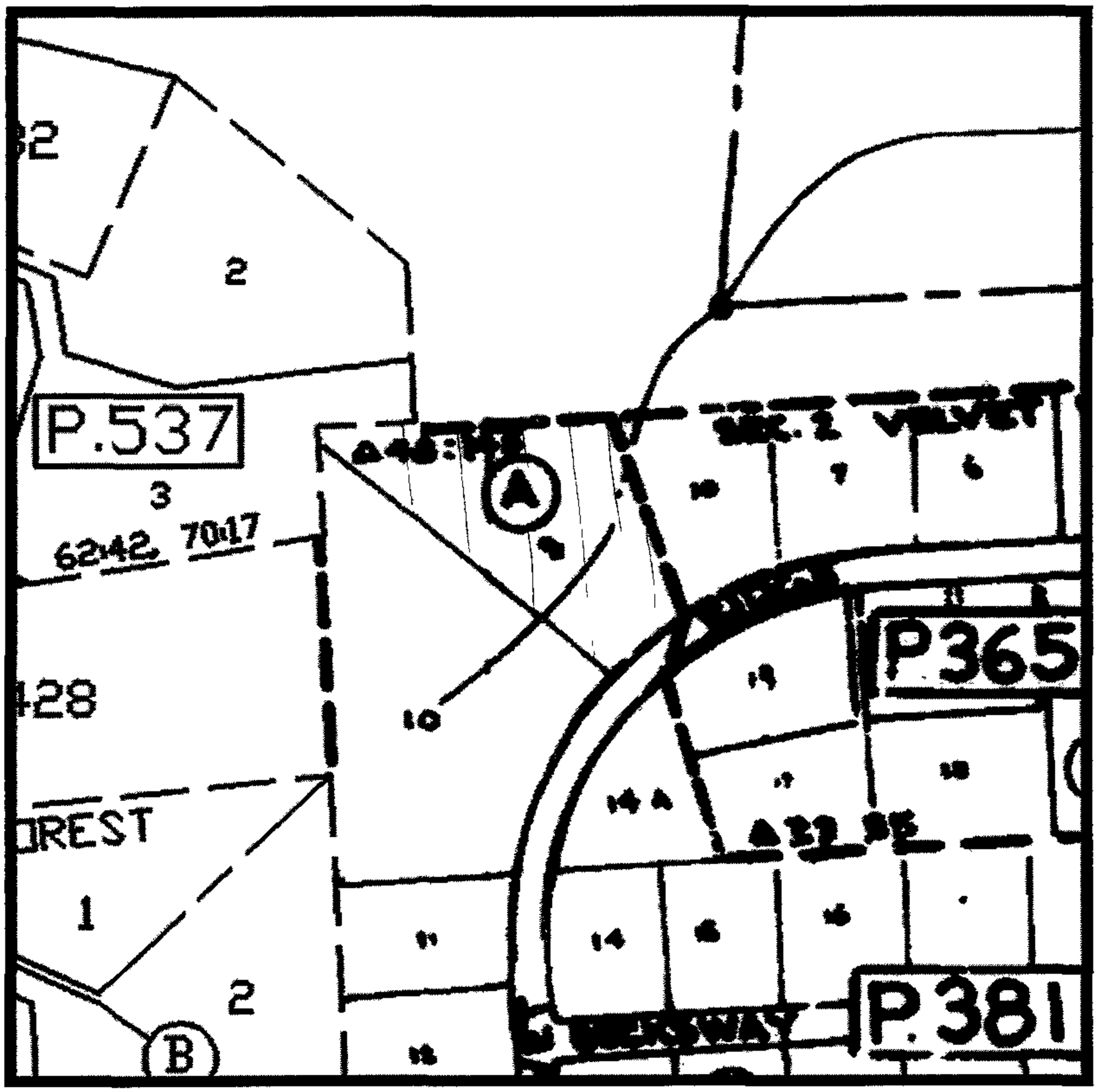
I HEREBY CERTIFY that on this 1st day of April, 2004, a copy of the foregoing Entry of Appearance was mailed to, Jeffrey Scherr, Esquire, Kramon & Graham, P.A., One South Street, Suite 2600, Baltimore, MD 21202, Attorney for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

Go Back
View Map
New Search

District - 03 **Account Number** - 1900005169



Property maps provided courtesy of the Maryland Department of Planning ©2001 - 2002.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/webcom/index.html

04-433-A

IN THE MATTER OF:	*	BEFORE THE
MELVYN & LESLIE LEEB	*	COUNTY BOARD OF APPEALS
Legal Owners/Petitioners	*	OF
2316 Velvet Ridge Drive	*	BALTIMORE COUNTY
3rd Election District	*	Case No. 04-433-A
2nd Councilmanic District	*	April 7, 2005

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 a.m., April 7, 2005.

* * * * *

Reported by:

C.E. Peatt

1 BOARD MEMBERS:
MICHAEL O RAMSEY, Panel Chairman
2 MARGARET BRASSIL
3 JOHN P. QUINN
4 APPEARANCES:
5
MICHAEL R. McCANN, Esquire
6 On behalf of Petitioners/Appellants
7 J. CARROLL HOLZER, Esquire
8 On behalf of Protestants
9
10
11
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21

1 PROCEEDINGS
2 * * * * *
3 THE CHAIRMAN: Good morning. You're attending a
4 session of the County Board of Appeals of Baltimore
5 County. Today, we are here in the matter of Melvyn and
6 Leslie Leeb, Case No. 04-433-A, and this is an appeal of
7 the Deputy Zoning Commissioner's Order of 6/25/04.
8 Today's hearing is a de novo hearing and we
9 request that the parties identify themselves, counsel
10 identify themselves, and the parties they represent.
11 MR. McCANN: Good morning. My name is Michael
12 McCann, on behalf of Melvyn and Leslie Leeb, petitioners.
13 MR. HOLZER: Good morning. J. Carroll Holzer,
14 508 Fairmount Avenue, Towson, Maryland, on behalf of the
15 adjacent property owners Mr. and Mrs. Allinson. Mrs.
16 Allinson is here.
17 THE CHAIRMAN Thank you. Mr. McCann, it's your
18 case.
19 MR. McCANN Actually, I'll waive any opening
20 remarks and go straight to the evidence.
21 THE CHAIRMAN. Fine.

1 MR. HOLZER: I would make an opening statement, a
2 short opening statement.
3 Members of the Board, this case involves a
4 request for a variance on a piece of property which is
5 immediately adjacent to my clients Mr. and Mrs. Allinson.
6 In Case No. 01-390-A, which I believe is part of the file
7 because it was part of the consideration of the Zoning
8 Commissioner below, there was a request by the Leebs to do
9 two things, to extend -- and you will see on the site plan
10 that will be presented later to you -- to extend their
11 home, or an addition to their home, into a fifty foot area
12 setback area that's required on this particular piece of
13 property.
14 The existing house is also in violation of the
15 setback area of fifty feet in that it is 13.5, I believe,
16 feet, from the actual property line.
17 The Allinsons own property that's immediately
18 adjacent, and while they their home is not directly next
19 to the Leebs' property, their property is subdividable and
20 there is a potential, an actual potential, of a home being
21 constructed on the Allinsons' property which is near the

1 subject site.
2 The Zoning Commissioner in the first case -- and
3 this will be just a brief overview -- after the Allnisons
4 objected to the extension of the new addition into the
5 fifty foot buffer, the Leebs dropped that request -- and
6 we acknowledge that -- to legitimize the existing
7 interference into the setback area of fifty feet. We
8 would not oppose that.
9 And so the Zoning Commissioner passed an order in
10 01-390-A, which basically did that.
11 A few years later, this case comes back on
12 another petition for a variance, and in this case below,
13 the request was to do a number of things within the fifty
14 foot buffer.
15 Those requests included glassing in an existing
16 screen porch that was constructed by the Leebs, proposing
17 to extend a balcony above the enclosed porch, and add a
18 triangular roof to that area, proposed to screen an
19 existing open deck, and add a roof to it.
20 And, finally, to add an addition on the opposite
21 side next to their garage, and place a roof over that

Page 6

1 addition. So there would be three triangular roof areas.
2 After a hearing below -- and I understand this is
3 a hearing de novo -- but, nevertheless, after the hearing
4 below, part of it in regard to the enclosure was granted,
5 all the rest of the addition, proposed additions, were
6 denied.
7 Insofar as Mr. Murphy, the Deputy Zoning
8 Commissioner's decision, insofar as he found the property
9 unique and unusual, which would permit the granting of the
10 variance, we don't believe that was an appropriate
11 finding.
12 However, we do agree that his finding that the
13 proposed addition was a negative impact on the surrounding
14 property and the community, and would have not been
15 appropriate under Section 307.1 of the granting of the
16 variance, which, therefore, he denied.
17 So we're here today on a situation that the Leebs
18 have continually attempted to construct in the back of the
19 yard of their home where there already is an interference
20 with an involvement of the fifty foot setback requirement,
21 so that's where we're here to oppose it.

Page 7

1 THE CHAIRMAN: Mr. McCann?
2 MR. McCANN: Just a point of clarification. I
3 know I waived my opening remarks, but I want the Board to
4 beware that the 2001 decision that Mr. Holzer referred to
5 speaks for itself, but just to clarify exactly what the
6 Zoning Commissioner did back in 2001, he established the
7 13.5 setback, which is the corner of the house right now,
8 he established that as a legitimate setback.
9 And in addition, he also established a zero foot
10 setback for the gazebo that at the time and still
11 presently extends off of that same area back of the house
12 to the lot line.
13 So those are two things that the Zoning
14 Commissioner did. And, again, the evidence will speak for
15 itself, but the only thing we're doing here, we are taking
16 an existing building envelope, existing deck, existing
17 screened in porch, which are right next to each other, and
18 not increasing the footing of the building, not increasing
19 the building envelope, just enclosing those areas, and, as
20 our architect will explain to you, putting some pitch
21 roofs above them, so we are not increasing the building

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1 envelope or building footing in any way.
2 THE CHAIRMAN: You may proceed.
3 MR. McCANN: Mr. Leeb.
4 M E L V Y N L E E B,
5 having been called as a witness, was duly sworn and
6 testified as follows:
7 DIRECT EXAMINATION
8 BY MR. McCANN:
9 Q. Would you please state your full name and home
10 address, for the record?
11 A. Melvyn Leeb, 2316 Velvet Ridge Drive, Owings
12 Mills, Maryland.
13 Q. Mr. Leeb, what do you do for a living?
14 A. I run a packaging company.
15 Q. What's the name of your company.
16 A. Jarrett Industries.
17 Q. Where is it located?
18 A. Owings Mills.
19 Q. Do you own the property known as 2316 Velvet
20 Ridge Drive?
21 A. Yes, I do.

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1 Q. Do you own that alone, or do you own that with
2 your spouse?
3 A. With my spouse, my wife.
4 Q. When did you buy the property?
5 A. Approximately 1981.
6 Q. At the time you bought the property, was the
7 house there now, was that on the lot?
8 A. No.
9 Q. Was it an empty lot?
10 A. An empty lot.
11 Q. At what point in time was the house constructed
12 on the lot?
13 A. During 1984.
14 Q. Is your home part of a larger subdivision?
15 A. Yes, it is.
16 Q. What's the name of the subdivision?
17 A. Velvet -- I don't know. Velvet Valley? I don't
18 know.
19 Q. What's the name of your road? Is it Velvet --
20 A. It's velvet Ridge Drive.
21 Q. Is that the name of the subdivision as well, do

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1 you know, Velvet Ridge, that is
2 A. I don't know.
3 Q. At the time that you constructed your home on
4 your lot -- I believe you said approximately 1984 -- were
5 the other homes in the subdivision already constructed?
6 A. Yes, they were.
7 MR. McCANN: I'd like to have these marked as
8 Petitioners 1, 2 and 3, please.
9 MS. BRASSIL: In order, from the top?
10 MR. McCANN: Yes. Thank you. Okay. Just for
11 the record, these three plats are the final subdivision
12 plats and three sheets from the Land Records. They are
13 the final recorded subdivision plats.
14 Q. Mr. Leeb, if you could step up for a minute?
15 Show me on which of these --
16 THE CHAIRMAN: Excuse me, counsel. Tell us
17 which ones are which.
18 MR. McCANN: This is Park Heights Road right
19 here.
20 THE CHAIRMAN: Exhibit 1?
21 MR. McCANN: Correct. Exhibit 1 shows Park

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1 Heights Road and the entrance of the subdivision, being
2 Velvet Ridge Drive. Mr. Leeb's property, as you will see,
3 is up here.
4 THE CHAIRMAN: I just want you to identify them
5 so we know which one of the three boards you're referring
6 to.
7 MR. McCANN: Okay. I'm sorry.
8 THE CHAIRMAN: So this is Exhibit 1?
9 MR. McCANN: Exhibit 1.
10 THE CHAIRMAN: Exhibit 2 is in the middle?
11 MR. McCANN: Exhibit 2 is In the middle.
12 THE CHAIRMAN: The title of that is --
13 MR. McCANN: Plat of Section Two, Velvet Ridge.
14 Petitioner's 1 is Plat of Section One, Velvet Ridge, and
15 this is Plat of Section Three, Velvet Ridge.
16 THE CHAIRMAN: Okay. Now you can proceed.
17 MR. McCANN: Thank you.
18 Q. Mr. Leeb, I want you to describe for the Board
19 collectively what the shape of the subdivision is and
20 where your house is in the subdivision, starting with Park
21 Heights.

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1 A. This is Park Heights Avenue. This is Velvet
2 Ridge Drive. There is prior to me moving into the
3 neighborhood, this particular drawing here.
4 Everything had been developed by the time I moved
5 into the neighborhood in 1984. So the street was stopped
6 here originally and then it was extended out, I can't tell
7 you when that was, but a number of years later.
8 Q. For the record, each of these plats is dated
9 May -- I'm sorry -- Exhibit 1 is dated May 3, 1968.
10 Exhibit two, Petitioner's 2, is dated November 29, 1968,
11 and Exhibit 3 is dated October 15, 1969. If you could go
12 to 2?
13 A. Two looks like it's extending Velvet Ridge Drive
14 out a little bit more, again, prior to me moving into the
15 house.
16 Q. Show, generally speaking, where your property is.
17 A. My property would be right up into this area
18 right up in here. This section here had not been
19 developed yet.
20 This is dated -- this is '69. They developed
21 Velvet Ridge Drive extending down. Now, my property is

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1 now sitting right here. Okay? And my neighbors is right
2 next door.
3 Originally, I bought my property, my two acres
4 from the gentleman that owned the property when I moved
5 in, had bought a couple acres from him.
6 Q. Would be accurate to state the subdivision of
7 roads sort of looks like a big fish hook?
8 A. Yes.
9 MR. McCANN: Do you have any objection to them
10 being moved into evidence?
11 MR. HOLZER: No.
12 MR. McCANN: Exhibit 1, 2 and 3 are admitted.
13 Exhibit 4, please, for the record, I will identify
14 Petitioner's 4 as a GIS map produced on March 30, 2005,
15 taken from an aerial photograph of this area which was
16 taken April 2002, and as denoted on the map, it says the
17 property subdivision information taken on this map was
18 compiled from certain record plats which are identified on
19 the map. In other words, these yellow lines and the red
20 lines are the lot lines of the subdivision.
21 Q. Mr. Leeb, could you tell the Board where your

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1 house is?
2 A. My house is located right here in this pie-shaped
3 area.
4 Q. Is this your house right there?
5 A. Correct. My house is sitting right here in the
6 back of the property.
7 MS. BRASSIL: You have red lines running around
8 your house?
9 THE CHAIRMAN: Could we mark that area?
10 MR. McCANN: It is marked. Oh, mark the area?
11 THE CHAIRMAN: Yes.
12 MR. McCANN: It's marked in red.
13 THE CHAIRMAN: Okay. Thank you.
14 Q. Mr. Leeb, could you just describe the layout of
15 your land in terms of what's on it and how it lays?
16 A. My driveway starts here at Velvet Ridge Drive.
17 This higher area is a natural preserve that cannot be
18 touched.
19 Okay. Because it's kind of like a stream runs
20 from all the way over here, there's a small lake here, my
21 neighbor's house, and the stream continues all the way

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1 down.
2 This driveway, my house sits on a hill, so this
3 is about 300 feet up to my house at about a thirty degree
4 angle in some parts of the driveway until you reach down
5 towards about fifty feet from the street, which is where
6 it narrows out with a stream.
7 Q. Could you describe, again, the best you can for
8 the record, the direction in which the stream crosses your
9 property?
10 A. The stream is running -- well, the stream starts,
11 I would assume, somewhere over this direction.
12 Q. The left-hand corner of the map?
13 A. It runs into the lake.
14 Q. Is that man-made?
15 A. It's a man-made lake which was created by the
16 original owner of the property who I bought the land from,
17 and the stream falls right through here and comes right
18 through my property and continues out and runs all the way
19 over to Park Heights Avenue.
20 Q. Would it be fair to say that the stream crosses
21 your property?

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1 MR. HOLZER: Objection. He's already shown it
2 twice, where the stream crosses. I don't think we need to
3 have him say where it is again.
4 MR. McCANN: I don't think the record reflects --
5 he had his finger pointing. The record isn't going to
6 reflect anything, because he's pointing with his finger.
7 I would just like to have him approximate that.
8 THE CHAIRMAN: I will allow him to answer.
9 Q. You pointed with your finger. Could you
10 describe, given the shape of your lot, where approximately
11 the stream runs through?
12 A. The stream starts about fifty feet from the
13 street and runs -- it runs underneath off our road. It's
14 like a bridge. They have a large water pipe so the water
15 can flow through it, so the road was built over the water
16 pipe.
17 Q. Does it travel from a southwest to northeast
18 direction?
19 A. It pretty much would go almost -- well, if this
20 is south -- I guess this would be north -- yes, it goes
21 from probably west to east.

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1 Q. Does that stream, to your knowledge, cross any of
2 the other lots, other than the lot to your left, this lot
3 right here?
4 A. No. I imagine it crosses back over here
5 somewhere, but I'm not sure where it goes. But I wold
6 think it was not even involved in those houses. It's
7 beyond that.
8 Q. Who is the owner of this house right here?
9 A. Thad Pula.
10 Q. So the stream crosses his property?
11 A. Correct.
12 Q. To your knowledge, is there a stream crossing any
13 of the other lots in your subdivision?
14 A. Not that I know.
15 Q. What about, talk about, the sloping in front of
16 the house. This is the front of your house?
17 A. Correct.
18 Q. Does the property slope in any manner in the
19 rear?
20 A. It also slopes in the rear of the house.
21 Q. Could you describe to the Board the best you can,

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1 other than pointing?
2 A. Approximately sixty, fifty feet beyond my house,
3 it begins to slope down in the direction of both --
4 several of my neighbors -- including the Allinsons, and
5 also the Holdridge property, the Holdridge property over
6 to the right-hand side, the Allinson property is to the
7 right, so it slopes down so we're almost on a ridge where
8 the houses are built.
9 Q. Do you know who owns these lots?
10 A. That would be the Allinson.
11 Q. Ms. Allinson?
12 A. Yes. The Holdridge property is up there.
13 Q. Could you at least now point approximately where
14 the ridge is?
15 A. The ridge is right about here.
16 Q. I meant to ask, what is the size of your lot, Mr.
17 Leeb?
18 A. Just slightly over two acres.
19 MR. HOLZER: Could we look at Petitioner's No. 1
20 from the Zoning Commissioner's file? Some of these
21 documents came in below. I want to make sure they're the

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1 same as mine.
2 THE CHAIRMAN: Off the record.
3 (Discussion held off the record.
4 THE CHAIRMAN: Are you moving to admit Exhibit 5?
5 MR. McCANN: Move to admit Exhibit 5, please.
6 MR. HOLZER: No objection.
7 MR. McCANN: Thank you.
8 Q. Mr. Leeb, could you identify what we have marked
9 as Petitioner's No. 5? And you can certainly step up to
10 it here, if you need to.
11 A. This is a survey of my house, the land, whatever.
12 I don't know the technology for it. Okay? The original
13 permit, site plan. Okay?
14 MR. HOLZER: Objection. Could you establish who
15 put the red writing on there? Obviously, he's not
16 familiar with it.
17 Q. Have you seen this plan before?
18 A. Many, many years ago.
19 Q. The date on it appears to be April 1985?
20 A. That is correct.
21 Q. That's what it may be?

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1 A. Right.
2 Q. What is it?
3 A. That's the site plan for the building of our
4 house.
5 Q. Was this plan done, to your knowledge, before or
6 after your house was constructed?
7 A. It was probably done -- well, what's the date on
8 it?
9 MR. HOLZER: Objection. If he knows, fine. But
10 if he doesn't know, he shouldn't speculate.
11 THE WITNESS: I simply need to know the date.
12 I --
13 THE CHAIRMAN: Wait a minute. There shouldn't be
14 a discussion between the witness and the lawyers.
15 Q. Let me just direct you, Mr. Leeb, to that portion
16 of Exhibit 5 which says, proposed house. Do you see that?
17 A. Correct.
18 Q Do you see the twenty foot setback from the
19 corner of the house to what appears to the property lines?
20 A. Correct.
21 Q. Does that --

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1 A. That was done prior to the building of the house.
2 Q. This plan was?
3 A. Yes.
4 Q. Do you agree, Mr. Leeb, that your house as
5 presently situated is, in fact, not twenty feet from this
6 corner to the edge of the property line?
7 A. That is correct.
8 Q. How do you know that?
9 A. From 1981 when we went to build our last
10 addition, when we planned to build the addition, when the
11 land was surveyed, we found out it was only 13.7 feet.
12 Q. You said 1981?
13 A. I'm sorry. 1991. I'm sorry. 2001. I am really
14 confused. 2001 when we went to build the addition.
15 Q. You had a survey done at the time?
16 A. Yes.
17 Q. Now, Mr. Leeb, do you know who wrote the red
18 markings on this document?
19 A. No.
20 Q. To the best of your knowledge, were these red
21 markings placed on this document when it was created?

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1 A. I don't know.
2 MR. McCANN: I would move Petitioner's Exhibit 5
3 into evidence.
4 MR. HOLZER: I have some objection to that one,
5 obviously. Right now, I have an objection because they
6 haven't laid a foundation for who's modified the plan, and
7 he said he didn't know who did it.
8 THE CHAIRMAN: I'll sustain the objection.
9 MR. McCANN: That's fine. Can I have these
10 marked as 6A, B, C, D and E? Thank you.
11 Q. Mr. Leeb, could you identify Petitioner's Exhibit
12 6A, B, C, D and E for the record, please?
13 A. Okay.
14 Q. Tell us what they are, please.
15 A. These are pictures of my house as it stands
16 today.
17 Q. Did you take these pictures?
18 A. Yes, I did.
19 Q. Do you know approximately when you took the
20 pictures?
21 A. Probably sometime last year.

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1 Q. Do you know the time of year?
2 A. I think it was probably in the springtime.
3 MR. McCANN: Can the Board see the photographs?
4 There's a lot of glare.
5 THE CHAIRMAN: It's okay.
6 Q. Start with 6A. Tell the Board what that picture
7 depicts.
8 A. This is the back side of my house showing the
9 screened-in porch and the short deck coming off of my
10 bedroom.
11 Q. Hold on for moment. Can you point specifically
12 to the deck, if you would?
13 A. This is the screened-in porch. This is the deck
14 sitting next to it. It's already existing.
15 Q. The deck is open?
16 A. It's an open deck, correct.
17 Q. This is your driveway here?
18 A. This is my parking pad. The driveway, as you can
19 see -- this is another shot -- a little bit further over
20 to the right, the driveway is over further to the right.
21 You pull off, and there's a parking pad right

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1 here.
2 Q. The driveway is sort of like a "J"?
3 A. Yes.
4 Q. Comes around the house?
5 A. Right.
6 Q. How about --
7 A. This is the side of my house coming up the
8 driveway. So when you're driving up the driveway, you're
9 looking to the right, and this is the side of house, and
10 this is the side entrance to the basement area of the
11 house.
12 This over here is the garage that you're seeing
13 over in this picture.
14 Q. What about 6D, can you tell us what that depicts?
15 A. 6D is, again, on the -- coming from the driveway
16 looking a little bit further down the driveway, looking at
17 a walkway and the deck leading to the front door.
18 It's a little hard to see because of all the
19 leaves and shadows here, but there's a walkway -- this is
20 the garage again over here -- walking through and up to
21 the front door.

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1 Q. So, essentially, the same view as 6C, just
2 further back?
3 A. Yes.
4 Q. What about 6E?
5 A. This is the front of the house. The driveway
6 would be all the way over to the left. This is looking at
7 the house from -- facing the house.
8 The front door is right above this trellis work
9 here. So you're looking from the right-hand side, looking
10 upwards to the house. You can see this is a fairly steep
11 hill going down here, so it's about a thirty degree drop
12 going down to the stream here.
13 MS. BRASSIL: Is it built into the hill on your
14 left? If your front door is high up --
15 THE WITNESS: The front door is about twenty feet
16 off the front. The front door is all the way up here.
17 Okay?
18 Architecturally, when we built the house back in
19 the eighties, we couldn't do too much because of the
20 slope.
21 Q. You said -- is there a deck here?

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1 A. That's the deck.
2 Q. What's underneath the deck?
3 A. It's nothing really underneath it all.
4 Q. There's a front door on this deck?
5 A. The front door is -- this half moon widow, right
6 below that is the front door.
7 Q. Do you use that door often to get into the house
8 of turn?
9 A. No.
10 Q. What door do you use?
11 A. We use our garage door. There's a garage door
12 entrance into the mud room, and this bay window here is
13 where our kitchen is, so that's the entranceway.
14 MR. McCANN: I'd like to move Exhibits 6A through
15 E into evidence.
16 THE CHAIRMAN: Counsel?
17 MR. HOLZER: No objection.
18 THE CHAIRMAN: Admitted.
19 MR. McCANN: Can I have that marked as No. 7 and
20 8A through D.
21 Q. Mr. Leeb, could you step up, please? I have a

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1 copy that's obviously better to see, a duplicate of
2 Exhibit 7. Could you identify Exhibit 7, for the record?
3 A. Yes. These are photographs taken from my house
4 looking out towards the Allinson and Holdridge property.
5 Q. You took these photographs?
6 A. Yes, I did.
7 Q. Are they two separate photographs?
8 A. Yes.
9 Q. Let's start with the one on top set. It says
10 bedroom/deck photo.
11 A. This is standing outside my bedroom where I have
12 that little deck. The camera is in one stationary
13 position, and I several photos, and did a photo merge into
14 a panoramic view of what it is when you look outside.
15 You're standing on the deck.
16 Q. What about the bottom?
17 A. The bottom one is ground level, standing
18 approximately outside my bay window of my kitchen. Same
19 thing. The camera is still. We did a panoramic view of
20 the area.
21 Q. On the bottom photo, there is a -- is that the

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1 gazebo?
2 A. That is the gazebo that's on the property.
3 Q. Is that a shed of some sort on the bottom?
4 A. That's my tool shed that's on my property.
5 Q. Do you know when, approximately, you took these
6 pictures?
7 A. October '04.
8 Q. In the fall?
9 A. Fall.
10 Q. Let's go back if we could to Petitioner's No. 4.
11 Just show the Board -- could you show the Board in what
12 general direction you took Petitioner's 7?
13 A. This is the back rear of my house. From this
14 point, almost about the center of the house -- okay -- is
15 where the pictures were taken, looking out in this
16 direction, and panning from this view all the way over to
17 here.
18 Q. Could you describe that maybe a little bit better
19 for the record, what lots you were just pointing to?
20 A. I was pointing towards the Allinson property as
21 well as the Holdridge property.

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1 Q. When you say, Allinson property, are you
2 referring to both these lots?
3 A. Those two lots.
4 Q. This is the Holdridge property?
5 A. Right. Yes.
6 THE CHAIRMAN: Petitioner's 7?
7 MR. McCANN: Yes. I want to introduce Exhibit 7,
8 correct.
9 THE CHAIRMAN: Any objection, counsel?
10 MR. HOLZER: No objection.
11 THE CHAIRMAN: Admitted.
12 Q. These are in the order in which they are marked,
13 8A, B, C and D. Can you identify Exhibit A, B, C and D?
14 A. These are pictures of my house from fifty feet
15 from the back of my house, looking at my house, and moving
16 from behind the gazebo in the first picture, and I move
17 across the ridge fifty feet beyond my house.
18 And as you can see, it slopes down. These
19 pictures were taken at my height level, which is --
20 MS. BRASSIL: You didn't stand on a ladder,
21 taking them?

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1 THE WITNESS: No, I wasn't standing on a ladder
2 to take them.
3 A. So, at any rate, these are the pictures
4 showing -- you can actually see the slope just fifty feet
5 beyond my house where you start moving into a gully.
6 If I did another twenty feet, you'd probably
7 would have just seen the top of the hill.
8 Q. In Exhibit 8D, is that the chimney?
9 A. Yes, that is the chimney.
10 Q. Top portion?
11 A. Right. These were also taken in October of '04.
12 MR. McCANN: I'd like to move Exhibit 8A, B, C
13 and D into evidence.
14 MR. HOLZER: No objection.
15 THE CHAIRMAN: So admitted.
16 Q. Mr. Leeb, this is probably the best photograph.
17 Could you stand up and show the Board specifically what
18 you propose to do in terms of improvements?
19 A. Well, what you will see is some drawings a little
20 bit later. What we plan to do is enclose the screened-in
21 porch and make it into a small den off of my kitchen.

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1 And this is really the only place you can do it
2 because the house, the way it's laid, it's the only place
3 we can do it. On top of that, we want to build out our
4 current very small deck, which is only probably about
5 three or four feet deep, we want to build the deck out
6 onto the screened-in porch, which will now be an enclosed
7 den. And then next to the screened-in porch, we have an
8 existing deck, we'd like to make that into a screened-in
9 porch because we spend an awful lot of time during spring
10 and summer and fall sitting in the enclosed area. That
11 would just minimum bugs and other things.
12 Q. So you intend to enclose the deck area, the
13 screened-in type porch?
14 A. Yes. And beyond that, also, because the house is
15 now twenty years old, the siding needs to be replaced and
16 the roof needs to be replaced, which is one of the reasons
17 why we're kind of re-skinning the house, and also doing
18 some new roof lines along it.
19 Q. Is the building envelope, that is the footing of
20 the building, are you going to propose increasing the
21 building envelope that is where the deck is now and where

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1 the screened-in porch is now?
2 A. No. As a matter of fact, where the deck is right
3 now, it should be a little bit shorter. So we're actually
4 going to decrease the size of that deck so it won't even
5 protrude as much at it is currently now.
6 Q. But you are building up, is that correct?
7 A. Correct.
8 Q. In terms of the existing living space, could you
9 tell the Board, for instance, what rooms are behind the
10 deck and behind the patio?
11 A. Behind the deck over here, there's a bedroom
12 currently. Behind the screened-in porch is a dining room.
13 And next to that is a kitchen.
14 The entranceway to the deck area currently is
15 only through the kitchen area.
16 Q. Back in 2001 when you went before the Zoning
17 Commissioner, can you tell the Board what you were asking
18 approval for at that point in time?
19 A. At that time, where this bay window is -- okay --
20 we were asking to have -- we were going to redo our entire
21 kitchen and bring it all the way out -- so we were asking

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1 for an addition to come out probably about twenty feet
2 beyond where this bay window is currently.
3 Q. Do you know the square footage of that addition
4 that you proposed?
5 A. It was probably another -- maybe a thousand
6 square feet.
7 Q. And what happened to that proposal? Do you
8 proceed with that before the Commissioner?
9 A. Yes, we did proceed with it, but because of some
10 personal problems, we decided not to move ahead with the
11 project.
12 Q. Could you -- you don't have to tell me the
13 personal reasons are -- but could you tell me what you
14 mean by not going ahead with the project?
15 Were you at the hearing when you decided not to
16 go forward?
17 A. We were at the hearing, and decided at that point
18 not to move ahead with the project.
19 Q. But you did go forward with the hearing?
20 A. Yes.
21 Q. If you weren't asking for the addition, what was

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1 your understanding of what you were asking the Zoning
2 Commissioner to do at that point?
3 A. If we could find --
4 MR. HOLZER: Objection. I think the Zoning
5 Commissioner's decision, as we said earlier, stands for
6 itself.
7 THE CHAIRMAN: Sustained.
8 MR. McCANN: I'll withdraw the question.
9 THE CHAIRMAN: Thank you.
10 Q. Was Mrs. Allinson present at the hearing in 2001
11 before the Zoning Commissioner?
12 A. Yes, she was.
13 Q. She was opposed -- was she opposed to the
14 addition that you just spoke about?
15 A. Yes, she was.
16 Q. But did she object to the Commissioner
17 establishing a 13.5 foot setback?
18 A. No.
19 Q. Did she object to the Commissioner establishing a
20 zero foot setback from the gazebo?
21 A. No.

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1 Q. Speaking of the gazebo, what is your intention
2 with regard to the gazebo?
3 A. The gazebo will be torn down.
4 Q. Mr. Leeb, do you believe that if the Board
5 decides not to grant your variance, that is, to build up
6 the existing deck and the existing patio, that would cause
7 an undue burden or hardship upon you?
8 A. I believe it will.
9 Q. Can you tell the Board why you believe that?
10 A. Because we are trying to increase our living
11 space. We do not have a den area off our house.
12 And also, by not having a screened-in porch, it
13 limits your ability to be able to enjoy the property.
14 I just feel it's part -- you know, not fair, I
15 guess, in a lot of ways, to limit somebody's life in this
16 particular case.
17 The way our house is designed, there's no other
18 way to put what we want to do on this house. We can't do
19 it in the front, we can't do it on the side, so we are
20 kind of limited, so it's a liability in terms of what we
21 can do with it.

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1 Q. Why couldn't you increase your living space by
2 building something on the other side of the garage?
3 A. There is -- the driveway is there. We don't have
4 enough room to be able to do that because of the setback
5 lines.
6 Q. In terms of the living space area, this portion
7 of the house, what, other than the garage, is on that side
8 of the house?
9 A. The laundry room.
10 Q. If you were to put something over there, assuming
11 you didn't have any setback issues over there, how would
12 get from the dining room or kitchen over to any such --
13 A. You'd have to walk through the kitchen.
14 Q. What about after the kitchen?
15 A. And then through the laundry room.
16 Q. To that side door?
17 A. There's a side door entrance to the garage.
18 MR. McCANN: That may be all I have. I just want
19 to make sure, in fact, the 2001 decision of the Zoning
20 Commissioner is part of the record.
21 THE CHAIRMAN: It is part of the file here. You

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1 have not moved it in. If you want the file to be moved,
2 you can move the whole file.
3 MR. McCANN: I would like to mark the Findings of
4 Facts and Conclusions of Law from the 2001 case in.
5 MR. HOLZER: I have no objection. It should be
6 part of the record anyway.
7 THE CHAIRMAN: So admitted.
8 MR. McCANN: Thank you. Petitioner's 9?
9 MS. BRASSIL: Yes.
10 MR. McCANN: I have nothing further of Mr. Leeb.
11 Thank you.
12 THE CHAIRMAN: Your witness.
13 CROSS EXAMINATION
14 BY MR. HOLZER:
15 Q. Mr. Leeb, what is the current square footage of
16 your home? Not the footprint, but the total living space
17 of your home?
18 A. About 3800 square feet.
19 Q. Is that about the approximate size of most of
20 your neighbors' homes?
21 A. I couldn't tell you.

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1 Q. What is the square footage of the proposed
2 additions that you've indicated you'd like to make in
3 terms of living space?
4 A. I believe I'd say the screened-in porch is
5 probably about 800 square feet. Maybe 600. Not very big
6 at all.
7 Q. That's the screened-in porch now that will become
8 part of the house?
9 A. Correct.
10 Q. Enclosed part of the house?
11 A. Right.
12 Q. So six to 800 feet would be the additional living
13 space on top of approximately 3800 square feet, is what
14 you would have?
15 A. That's correct.
16 Q. The existing deck, which is not screened, but
17 would be screened, is that correct?
18 A That's correct.
19 Q. Now, you currently have a screened-in porch,
20 right?
21 A. That's correct.

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1 Q. So the net amount of living space inside the
2 house internally would be six to 800 square feet?
3 A. That is correct.
4 Q. Let me ask you this. When you sought out, I
5 understand, since we have been together so many times over
6 the past few years, you sought out an architect to come up
7 with the proposed new additions that you're talking about
8 today?
9 A. Correct.
10 Q. Did you direct that architect where you wanted
11 the additions to go, or did he propose them?
12 A. We were dictated by the understanding from 1981
13 that I could not build anything beyond the footprint of
14 the house which included the screened-in porch and the
15 current deck next to it. That's what we went off of.
16 Q. Well, if I'm not mistaken, before the Zoning
17 Commissioner, you testified there that you added the porch
18 and the wood deck about fifteen years ago?
19 A. That is correct.
20 Q. After that original house was built?
21 A. Correct.

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1 Q. And I don't know where the photograph went, but
2 could you look at these photographs, and I guess I'll take
3 the last one, which is probably Petitioner's 6A -- is that
4 the best one? Could you point out what you added after
5 the original house was built?
6 A. This screened-in porch. It was an existing deck,
7 we just enclosed it, and made it into a screened-in porch.
8 Q. What about this deck?
9 A. That deck was added at the same time we enclosed
10 the screened-in porch.
11 Q. Is it fair to say that you understood, or you
12 understand, that the setback area is fifty feet?
13 A. Yes, for the whole house, correct.
14 Q. So in terms of when the house was constructed --
15 let me ask you this. You bought an empty lot, so you, I
16 assume, you had someone design the house on its location?
17 A. Yes.
18 Q. Did you know at the time you put the house in its
19 current posture that, in fact, it was within the fifty
20 foot setback?
21 MR. McCANN: Objection.

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1 THE CHAIRMAN: Basis?
2 MR. McCANN: May I be heard briefly? It assumes
3 incorrect facts. This is as good a time at any to raise
4 this.
5 We introduced into evidence, Petitioner's Exhibit
6 1, 2 and 3, which are the subdivision plats that were
7 approved back in 1968 and 1969.
8 Under Section 103.1 of the zoning regulations --
9 I'm paraphrasing while I'm looking for it -- but
10 essentially that section says that the zoning regulations
11 in effect at the time of the subdivision approval and
12 filing are the zoning regulations that apply.
13 And I think, until yesterday, to be frank with
14 the Board, no one realized that we are not dealing with a
15 fifty foot setback.
16 The zoning, in fact, at the time back in 1968 and
17 1969 was R-40, and I have a copy of the zoning regulations
18 at that time, and I'd like to give the Board a copy.
19 THE CHAIRMAN: Does counsel have a copy?
20 MR. McCANN: It's on the second to last page of
21 this. You can read it for yourself.

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1 But, essentially, a side yard setback is twenty
2 feet. A rear yard setback is fifty feet. The total side
3 yard setback permitted is a total of 50.
4 In other words, twenty and thirty, which
5 explains -- well, I won't speak to evidence that's not
6 admitted, but under the R-40 back at that time, the time
7 this subdivision was approved, was twenty foot side, fifty
8 foot back, and then fifty total on both sides.
9 In other words, we recognize that there's a 13.5
10 setback. We violate the twenty foot setback that applies.
11 We understand that.
12 We are six and a half feet off of that. But it's
13 not a fifty foot setback issue.
14 MR. HOLZER: I'm not going to respond to that. I
15 was just asking a question.
16 THE CHAIRMAN: Okay. Ask another question.
17 MR. McCANN: My objection was to the question.
18 MR. HOLZER: I will rephrase the question then.
19 THE CHAIRMAN: Thank you.
20 Q. Mr. Leeb, at the time your house was constructed,
21 if there was a twenty foot setback required, your house

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1 was constructed within that twenty foot setback, is that
2 correct?
3 A. That was my understanding.
4 Q. Because it was constructed 13.7 feet from the
5 property line?
6 A. That is what happened.
7 Q. So whether or not the setback is one applies what
8 existed in the 1968 regulations, or today's setback, which
9 is fifty feet, as I understand it, either way, the house
10 was originally constructed within the setback area,
11 correct?
12 A. Correct.
13 Q. And no variance was received on that, as a result
14 of that intrusion into the setback, until the 2001 case,
15 which was the first time you and I had occasion to meet at
16 the Zoning Commissioner?
17 A. That is correct.
18 Q. Where that was the issue that you continued on --
19 you dropped the proposed addition, and the Zoning
20 Commissioner, in lay terms, legitimized your intrusion
21 into the twenty foot setback, or the fifty foot setback,

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1 is that correct?
2 A. That's correct.
3 Q. Now, even after the house was located as it was
4 within the setback, approximately fifteen years ago, you
5 further intruded in the setback area by adding the wooden
6 deck and what is now a screened-in porch, is that correct?
7 A. We built the screened-in porch.
8 Q. And you built the deck?
9 A. That is correct.
10 Q. That you have identified on 6A?
11 A. Correct.
12 Q. Now, you have, from all the exhibits that have
13 been presented and the photographs, you have approximately
14 two plus acres of property, some of which is limited by a
15 stream and some of which is limited by a steep slope, is
16 that correct?
17 A. It's all limited.
18 Q. Did you ever ask the architect to consider
19 modifying your existing garage to permit additional living
20 space, and then locate the garage in another area?
21 A. We can't locate the garage in another area.

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1 Q. Why not?
2 A. It's not enough room. You wouldn't be able to
3 turn the car around.
4 Q. In looking at the photographs --
5 A. I'd still be in violation. I couldn't do it.
6 Q. Well, as a matter of fact, although you haven't
7 introduced the exhibit yet as to what you propose to do,
8 as I understood what you're proposing to do, is add an
9 addition to the garage area, which would also --
10 A. No, we're not.
11 Q. You're not?
12 A. No, we're not.
13 Q. You're going to drop that?
14 A. We are not. We are changing the roof line. We
15 not adding an addition.
16 There's -- we are simply changing the roof line,
17 from an architectural standpoint.
18 Q. If I could look at the file, again, sir? I
19 believe there's a photograph, since it's not in evidence
20 yet.
21 Marked in the case as Petitioner's Exhibit 2

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1 below, is a colored diagram of new proposed elevations,
2 and it was introduced before the Zoning Commissioner?
3 A. That's correct.
4 Q. You're familiar with that?
5 A. Yes.
6 MR. McCANN: May I see that?
7 Q. Is that what you're still proposing to do?
8 A. Pretty close to it. Some variation, but pretty
9 close.
10 Q. You mean you're changing what you propose to do
11 between the case below and here this morning?
12 A. There are some minor changes. I believe the
13 architect can answer some of those questions, but the
14 minor changes, for example, instead of having two garage
15 doors, there's going to be one garage door.
16 There's no living space above here. This is
17 simply changing the roof lines. This is the walkway going
18 from the back of my house to the walk straight across to
19 the front door of the house.
20 Q. That roof line is going to be different from what
21 it is today?

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1 A. There is no roof line today.
2 Q. There is none today, but there will be if this is
3 approved?
4 A. Correct.
5 Q. My question, though, is why didn't you consider
6 modifying and utilizing the double car garage? I assume
7 it's a two car garage?
8 A. That's correct.
9 Q. To accommodate any expansion, and then utilize
10 the balance of your driveway or property for purposes of
11 an addition?
12 A. Because my garage is directly connected to my mud
13 room, and it would be a real inconvenience to anybody if
14 you had to have your garage somewhere else on the property
15 and have to walk into your house.
16 The purpose of the garage -- okay -- is to keep
17 your cars dry in wet weather, and be table to walk into
18 your house without having to walk across an open area.
19 Q. So it's a mater of convenience?
20 A. No. It's a mater of absolutely that you wouldn't
21 have enough room to turn the cars around. You would lose

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1 space in the parking pad. You couldn't do it.
2 Q. In looking at Petitioner's Exhibit No. 6D, which
3 is the front of the house and the side which contains the
4 garage and the driveway, there certainly appears to be, to
5 me, suitable area around the driveway area?
6 A. Obviously, you haven't --
7 MR. McCANN: Objection.
8 THE CHAIRMAN: Hold on, counsel.
9 MR. McCANN: I think we're really getting into an
10 area that certainly Mr. Leeb is not qualified.
11 We are talking architecture and engineering
12 issues. We are certainly going to have a witness. The
13 architect is here.
14 Mr. Holzer can ask all these questions. I think
15 we are crossing that line of what he's proposing to do
16 generally, as he's testified about, as proposed to what is
17 architecturally or engineering sound, and I think we have
18 gone beyond that. I think he certainly can address those
19 questions to Mr. Keeney, who is here.
20 THE CHAIRMAN: He may be a better witness, but
21 counsel is entitled to ask questions of this witness in

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1 terms of what he's proposed.
2 Mr. Leeb, let him finish the question before you
3 start to answer. I want to make sure we get both those on
4 the record, and I can try and follow in my notes, too.
5 Q. My question to you is, did you ever even ask an
6 architect to examine the use of the garage as a living
7 portion of the property and then attempt to relocate
8 either a garage or parking or circular area elsewhere on
9 the property?
10 A. It's physically impossible to do it. Beginning
11 and end of story.
12 Q. Did you conclude that, or did someone tell you
13 that?
14 A. If you would go to the property, you can see it
15 for yourself. You don't have to be a brain surgeon to
16 figure that out. It's physically impossible.
17 Q. Unfortunately, we're not able to go onto your
18 property.
19 A. That's why we have pictures. I have a
20 thirty-three drop on the driveway. It's impossible to put
21 a parking pad on the side of the house, which is why the

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1 walkway to our house is in the back of the house, because
2 there's no way to get from the driveway because it slopes
3 down, unless you want to walk up fifty steps, which is
4 twenty feet -- okay -- to the front door. So it's
5 impossible to put anything to the side of the house.
6 Q. What about above the garage?
7 A. Above the garage for what, a den?
8 Q. Above the garage for an additional 600 square
9 foot living space?
10 A. The purpose is to have a den off of our kitchen.
11 That's the purpose of what we're trying to accomplish
12 here.
13 Q. So, again, the purpose or the reason for this
14 request is for the convenience of you living in your
15 house?
16 MR. McCANN: Objection. Asked and answered.
17 MR. HOLZER: He never answered the question.
18 That's when he objected.
19 MR. McCANN: That was awhile ago.
20 THE CHAIRMAN: Overruled. He can answer.
21 THE WITNESS: Excuse me?

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1 THE CHAIRMAN: You can answer the question.
2 Q. (MR. McCANN) Do you recall the question?
3 A. Repeat the question.
4 Q. (MR. HOLZER) The purpose of your wanting this
5 variance is for your convenience in terms of the internal
6 use and operation of the house, is that correct?
7 A. That's only part of the answer.
8 Q. What's the rest?
9 A. The rest of the answer is that because of the way
10 the house is laid out, I have no other choice, but I want
11 more living space. I want a den area off of my kitchen.
12 Q. Do you believe it would be physically possible to
13 create additional living space within the house above the
14 garage?
15 A. No.
16 Q. Why not?
17 A. Because the way the house is constructed.
18 Q. The way it's constructed, or the way it's laid
19 out?
20 A. In both cases. The way it's laid out and
21 constructed.

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1 MR. HOLZER: Mr. Chairman, for the record, I used
2 Petitioner's Exhibit No. 2 to show the witness. That was
3 in the case below, and in front of the Zoning
4 Commissioner.
5 THE CHAIRMAN: Marked as Zoning Commissioner
6 Exhibit 2?
7 MR. HOLZER: Yes, that's correct.
8 THE CHAIRMAN: Are you introducing it?
9 MR. HOLZER: No, because I have reason to believe
10 they are probably going to introduce something else at
11 this point.
12 THE CHAIRMAN: Thank you.
13 Q. To the best of your knowledge, Mr. Leeb, up until
14 2001, there was never a variance granted for the setback
15 of 13.7 feet instead of either fifteen or twenty feet?
16 A. That is correct.
17 Q. The views that were shown on Petitioner's No.
18 7 -- Petitioner's Exhibit No. 7 -- do any of these, either
19 the bedroom/deck photo, or the ground level photo, do they
20 show anything on the Allinson property such as the barn or
21 any other features, or do they stop before they get there?

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1 A. You can vaguely see the barn, this barn here.
2 This photograph is all the way to the far left.
3 Q. So looking at the ground level photo of
4 Petitioner's 7, it appears that -- and I believe you
5 identified this little shed as your shed?
6 A. Right.
7 Q. And off to the left of that would be the barn
8 that is identified on Petitioner's No. 4 immediately to
9 the left of your property, is that correct?
10 A. Yes.
11 Q. The large whitish area?
12 A. Yes.
13 Q. What is this area up here on the other Allinson
14 lot?
15 A. I believe that is her barn, her other barn.
16 Q. So, to your knowledge, there are two barns?
17 A. One is being used, one is not.
18 Q. You do know that, according to your subdivision
19 plat, that both of these lots are potential separate lots
20 for homes?
21 A. I have been told that.

1 Q. Now, could you explain to me, or let me ask you,
2 and you can say yes or no, on your new plan that I just
3 showed you that was submitted to the Zoning Commissioner,
4 are there three areas where there will be a new roof line
5 in the rear of your house?
6 A. Yes.
7 Q. Do you know whether -- first of all, what is the
8 grade between your house and the two different barns on
9 the Allinson property? Does it slope up or down from your
10 property?
11 A. Well, the barn to the far left, which is an old
12 steel barn, it's not being used, that is actually above my
13 property, slightly above it. It's raised up.
14 Q. So you can, from the back of your house, you can
15 look over and see at least the roof of that?
16 A. Right.
17 Q. What about the other barn?
18 A. The other barn, you can hardly even see it. It's
19 all the way down to --
20 Q. Downhill from your property?
21 A. Right.

1 Q. Do you have any idea of how far in terms of
2 distance-wise the two barns are? If you don't know, you
3 don't know?
4 A. I don't know.
5 MR. HOLZER: I have no further questions.
6 MR. McCANN: Just a couple follow-up.
7 REDIRECT EXAMINATION
8 BY MR. McCANN:
9 Q. Mr. Leeb, when your house was constructed, I
10 think you said 1984?
11 A. Right.
12 Q. Did you know that your house was constructed in
13 violation of the setbacks?
14 A. No.
15 Q. As far as you knew, you met all setbacks?
16 A. Correct.
17 Q. But you understood that your house was in the
18 rear of the lot?
19 A. Correct.
20 Q. Did there come a point in time when you figured
21 out or found out that you did have a setback issue?

1 A That was in 2001.
2 Q. How did you learn that?
3 A. From going through the first addition that we
4 wanted to build onto the house, it came to light that we
5 were out of variance.
6 Q. Can you be more specific? Was there a survey?
7 A. A survey was done, and we found out.
8 Q. That same year, I assume you went and sought to
9 obtain approval?
10 A. Right.
11 Q. You mentioned -- Mr. Holzer asked you to
12 approximate the square footage of the deck, the open deck
13 and the screened-in porch. I was trying to write down
14 your answers.
15 A. It could be six to 800 square feet. It's very
16 easily verified. Our architect is here and he can
17 probably give you the exact.
18 Q. The totals between the two?
19 A. And the screened-in porch?
20 Q. Yes.
21 A. You know, it's very easy to measure out, figure

1 out. I don't know how much, off the top of my head.
2 Q. Let me show you a letter you drafted to Mr.
3 Kotroco, Director of Permits and Development Management,
4 and see it that refreshes your recollection or your
5 understanding of what the square footage of your deck and
6 your screened-in porch is?
7 A. I may have measured it out at a point. When Mr.
8 Holzer asked me the question, I'm not really good with
9 those kinds of numbers.
10 Q. My question was, does this letter that I just
11 showed you, does that refresh your recollection or give
12 you a better understanding of what you would believe --
13 A. Yes.
14 Q. -- you believe the open deck and screened-in
15 porch is in terms of square footage?
16 A. Yes.
17 Q. Could you tell the Board what that is, present
18 understanding?
19 A. 200-some odd square feet -- 256 square feet for
20 the current screened-in porch, making it into a den, and
21 336 square feet for the current deck that we want to make

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1 into a screened-in porch.
2 Q. Do you know where you obtained those numbers
3 from?
4 A. I probably measured it at one point.
5 Q. I did write this down. I think you approximated
6 the square footage of your house to be 3800 square feet,
7 is that correct?
8 A. Yes.
9 Q. Did you include the second floor in that?
10 A. Yes, first and second floor.
11 Q. Do you know the square footage of just the first
12 floor of your home?
13 A. Probably 2800 square feet.
14 MR. McCANN: That's all I have. Thank you.
15 MR. HOLZER: I am confused, but that's easy for
16 me to say.
17 RECROSS EXAMINATION
18 BY MR. HOLZER:
19 Q. This letter says we would screen 256 square feet
20 of the existing open deck which is 336 square feet.
21 That's present?

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1 A. Right.
2 Q. Okay. So my question is, looking at the photo
3 again -- just so we are all talking about the same
4 thing -- looking at Petitioner's 6 A, the screened-in
5 porch that's here, what's the square footage?
6 A. Well, it's very easy to look at the drawing. I
7 would prefer, instead of me answering that question
8 without being accurate, simply to look on the drawing and
9 figure it out.
10 Q. But this is your letter to Mr. Kotroco?
11 A. But it was written several years ago.
12 Q. Okay. So in your refreshing your recollection
13 with that letter, you're still not comfortable that you
14 really know what the square footage is?
15 A. Well, it's somewhere in this area. I mean,
16 you're asking me something that happened several years
17 ago.
18 Q. I understand. I don't want to trick you.
19 A. That's exactly what you're trying to do, so let's
20 get to the point. All we need to do is take a look at
21 this thing on the drawing, figure out what the square

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1 footage is.
2 It's not a big deal. Okay? We can pull the
3 drawing out and simply measure it. That's the simple
4 answer. Instead of your asking me questions and trying to
5 trick me into not knowing one dimension.
6 THE CHAIRMAN: Mr. Leeb, just answer the
7 question.
8 Q. I'm not trying to trick you, but your attorney
9 handed you this letter and said it should refresh your
10 recollection, and you said it did.
11 So my question to you is, now that your
12 recollection is refreshed, and you gave him an answer of
13 256 plus 336, are you sure you want to stick with that
14 answer?
15 MR. McCANN: Objection. Asked and answered.
16 THE CHAIRMAN: He has indicated what his response
17 was. It was whatever it was, and it's what it is now, and
18 he's not certain of either, and he would prefer we
19 measured it. That point has been beaten to death.
20 MR. HOLZER: Okay. I have no further questions.
21 THE CHAIRMAN: I think we have a couple questions

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1 from the Board.
2 MS. BRASSIL: I know you showed us earlier on how
3 much of the property is unbuildable, but could you show us
4 once again, because I don't think I got it down.
5 THE WITNESS: All right.
6 MS. BRASSIL: I wanted him to show how much of
7 the property was unbuildable.
8 MR. McCANN: This is Mr. Keeney. Is it okay if
9 he moves closer?
10 THE CHAIRMAN: His relationship to the case?
11 MR. McCANN: He's the architect. He'll be
12 testifying.
13 THE CHAIRMAN: Any objection, counsel?
14 MR. HOLZER: To him moving closer, no.
15 THE WITNESS: Because of the setback lines for
16 the house when it was built, there's a 300 feet setback
17 from the street all the way to my house, so my house
18 existing where it is is 300 feet from that point. Okay?
19 As Mr. McCann had described, there's a thirty
20 foot setback on this side and a twenty foot setback on
21 this side, so it's really against Ms. Holdridge's property

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1 which is the twenty foot issue, not on Mrs. Allinson's
2 property, which is only 13.7.
3 Obviously when the foundation was built, it was
4 built out of spec. I wasn't the builder. We had an
5 architect and builder.
6 So nobody measured it. The house was built. And
7 twenty years later, we find out we're out of spec. So we
8 are really locked into this footprint.
9 There's no other place to go. You cannot build
10 in front because of the setback. On the side, you have a
11 driveway.
12 You can't do anything on the side because the
13 driveway, right passed the garage, just slopes down.
14 We are talking about a thirty degree angle here.
15 So we're not talking about something you can even put a
16 parking pad on the side of the house to park cars on it,
17 because there's no way to do it.
18 This is one of those lots, it was a very
19 difficult lot to build on.
20 That's why our front door is now twenty feet off
21 the ground.

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1 MS. BRASSIL: So it wasn't that the front part
2 was totally unbuildable, there was at that time a 300 foot
3 setback?
4 THE WITNESS: And still is.
5 MS. BRASSIL: Thank you.
6 MR. QUINN: On those white lines -- I can't
7 really see the red line -- was that indicative of? Is
8 that your property line extended back, or is there a red
9 line behind your house there? Could you point to it?
10 THE WITNESS: This is the street. This is to the
11 left-hand side of the house. Follow along here. And it
12 comes back down again. So the house, the only place to
13 put the house is in this little corner.
14 MR. QUINN: So your topography come up from the
15 road, your access road?
16 THE WTINESS: Right. You come in about fifty
17 feet or so. There's a stream. Then as we come around
18 this curve here, we got about a thirty degree angle of the
19 driveway going up.
20 MR. QUINN: And then it slopes towards the back?
21 THE WTINESS: And then the back, it slopes back

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1 down fifty feet beyond my house. This slopes down this
2 way into a gully, this whole area.
3 MR. QUINN: On the measurements that you gave,
4 the 256 and 336, is that the currently existing footprint
5 of what exists?
6 THE WITNESS: It already exists.
7 MR. QUINN: That's what you want to cover over?
8 THE WITNESS: We want to change the screened-in
9 porch to a glass enclosed porch. That already exists.
10 Next to that where there is an open deck, we want to make
11 that into a screened-in porch.
12 MR. QUINN: So, basically, you're changing a roof
13 line?
14 THE WITNESS: Correct.
15 MR. QUINN: With an enclosure?
16 THE WITNESS: Correct.
17 MR. QUINN: How far -- I know you said it's
18 thirteen and a half feet is -- for lack of a better way --
19 encroaching into the twenty foot setback, or is it six and
20 a half encroaching into the setback, in that back corner
21 of your house?

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1 THE WITNESS: I want to understand your question.
2 MR. QUINN: You're going in about six feet into
3 where, within the twenty foot setback?
4 THE WITNESS: Correct. Which is this corner of
5 the house all the way over here, and it is six feet off.
6 MR. QUINN: What's on that corner again?
7 THE WTINESS: Nothing. Just the edge of the
8 house.
9 MR. QUINN: That is the corner of your house?
10 THE WITNESS: Correct.
11 MR. QUINN: Show me the garage again, which side
12 of the house it's on?
13 THE WITNESS: The garage is right here.
14 MR. QUINN: Where your pen is now behind the
15 garage, if you built out from the garage, would you be
16 within the setback of fifty feet?
17 THE WITNESS: Probably not.
18 MR. QUINN: Okay.
19 THE WTINESS: You can't build out. You'd violate
20 the setback line.
21 MR. QUINN: From the back?

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1 THE WITNESS: From the back, you'd violate that,
2 too. You can't really do it, because there's no way to be
3 able to get your car up there.
4 MR. QUINN: Okay. Thank you.
5 THE CHAIRMAN: Not through with you yet. In
6 terms of the Allinson lots behind your house, how do you
7 access those lots, do you know?
8 THE WITNESS: I can't access them, other than you
9 can walk to it.
10 THE CHAIRMAN: How does the driveway come into
11 those lots?
12 THE WITNESS: Into these lots here?
13 THE CHAIRMAN: Yes.
14 THE WITNESS: There are no driveways.
15 THE CHAIRMAN: How would you, at some point, if
16 they are subdivided --
17 THE WITNESS: If you subdivide it, the driveway,
18 I would assume, would have to come off of Caves Road,
19 which is up here.
20 THE CHAIRMAN: So you could not access it?
21 THE WITNESS: No. From my lot, no.

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1 THE CHAIRMAN: If there's an access --
2 THE WITNESS: It has to came from all the way up
3 here, which is Caves Road.
4 THE CHAIRMAN: I think this was Exhibit 7. The
5 trees that are here, whose property is that?
6 THE WITNESS: That's Mrs. Allinson.
7 THE CHAIRMAN: The trees are on her property?
8 THE WITNESS: Yes. And some of this is
9 Holdridge, too, by the way.
10 MR. QUINN: You had described that as a
11 conservation area?
12 THE WITNESS: Down here.
13 MR. QUINN: Down there, meaning next to the road,
14 following your driveway back?
15 THE WITNESS: Right.
16 MR. QUINN: What is that immediately to the right
17 of your driveway beyond the lot?
18 THE WITNESS: Here?
19 MR. QUINN: Yes.
20 THE WITNESS: That's my neighbor's house.
21 MR. QUINN: Thank you.

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1 THE CHAIRMAN: Any further questions, based on
2 our questions?
3 MR. McCANN: No, Mr. Chairman.
4 MR. HOLZER: No, sir.
5 THE CHAIRMAN: Thank you. You may step down,
6 MR. McCANN: Mr. Pula.
7 THADDEUS P. PULA,
8 having been called as a witness, was duly sworn, and
9 testified as follows:
10 DIRECT EXAMINATION
11 BY MR. McCANN:
12 Q. Sir, would you please state your full name, and
13 spell it, for the record.
14 A. My name is Thaddeus Peter Pula. T-h-a-d-d-e-u-s,
15 Peter, P-u-l-a.
16 Q. What is your address, sir?
17 A. 2318 Velvet Ridge Drive.
18 Q. Could you show the Board where on Petitioner's
19 Exhibit 4 your house is located?
20 A. Right. This is my house right here.
21 Q. How long have you lived there, Mr. Pula?

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1 A. Nineteen years.
2 Q. Have you had the opportunity to learn about what
3 Mr. and Mrs. Leeb propose to do to their house in terms of
4 improvements?
5 A. Mel brought the blueprints over to my kitchen a
6 year ago or so and spread them out, and we talked.
7 Q. And he kept you up to date on what's going on in
8 the case as well?
9 A. He just asked me to appear for the committee.
10 Q. As an immediate neighbor of Mr. Leeb, could you
11 tell the Board how you feel about the proposed
12 improvements?
13 A. Certainly. What I'd like to say, over nineteen
14 years, my relationship with the neighbors has been, you
15 know, very important for the quality of my life.
16 I don't know if there's been a single word said
17 in anger or cross kind of thing, or anything by anybody in
18 that period of time.
19 The Allinsons have been very helpful when we have
20 had our dogs run away and helpful in terms of helping us
21 recover them.

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1 Mel has ben a very good neighbor. He's friendly,
2 helpful. The neighbors are quiet, respectful. It's a
3 very good situation.
4 We don't have much interactions with the
5 Allinsons because of the way the property is. Mel and I
6 essentially live in each other's back yards, right, and
7 you don't appreciate from this, but there is quite a
8 drop-off in the front here, and although the front door of
9 Mel's house, he never accesses it, you sort of can't,
10 unless you want to hike up a couple flights of stairs, so
11 he always comes around this way and goes into the garage
12 and then into the back of his house.
13 This is essentially my front door here. We don't
14 have a garage. We park here. So we are always -- we just
15 see each other coming and going, say, Hi, that sort of
16 thing.
17 So what he proposes to do is to screen in the
18 porch, or glass in the screen porch, and put a screen over
19 the existing deck back in this area here, which is -- and
20 change the roof line above it -- which what I will
21 essentially see coming and going every day.

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1 The other properties from here, you see the barn
2 and stables back over the meadows here. When Mel
3 approached me, it just struck me as a reasonable addition
4 that he wanted to make to his house.
5 I would be the one who would see it coming and
6 going every day. It looks like it would make the house
7 more valuable and pretty.
8 MR. McCANN: Thank you, Mr. Pula.
9 CROSS EXAMINATION
10 BY MR. HOLZER:
11 Q. Mr. Pula, the reality is the violation of the
12 house within the setback area is really on the Allinson
13 and Holdridge side of the property, of this triangular
14 piece of property, is that correct?
15 A. I will -- that's a -- I don't know the details.
16 Q. You don't know anything about the property line
17 setbacks and all that stuff?
18 A. I know some. We obtained a variance here. We
19 built our addition, because it's a fifty foot property, we
20 built the kitchen addition and got a setback to
21 twenty-five from fifty, but that's in terms of a variance.

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1 Q. So you went through the county process --
2 A. Yes.
3 Q. -- to get a variance?
4 A. Yes.
5 Q. Before you constructed that?
6 A. Right.
7 Q. But all of the activity that's being proposed
8 here is on the opposite side of the lot? It's on the
9 Holdridge/Allinson side, as opposed to encroaching in the
10 setback area of your mutual property line, isn't that
11 correct?
12 A. That is correct, sure.
13 MR. HOLZER: I have no further questions.
14 MR. McCANN: Follow-up, and I will let you go.
15 REDIRECT EXAMINATION
16 BY MR. McCANN:
17 Q. Mr. Holzer made reference to encroachment on the
18 Allinson and Holdridge setbacks?
19 A. Right.
20 Q. Do you know whether that's true or not?
21 A. Well, I mean, that -- the proposed change is

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1 right along -- this is the garage. This is the back of
2 the house. There's a small -- there's a kitchen here.
3 This is the area that is the screened-in porch
4 which they want to make a glass enclosure, make it a den.
5 Here in the shadow area here is the deck that
6 they want to screen in. So it's right in this part of the
7 structure here.
8 And, of course, this is what we look at every
9 time we come, because this is how we access our house.
10 Q. My question is, simply, you don't know where the
11 setback lines or what the potential infringement may be of
12 any potential setbacks?
13 A. No.
14 Q. Do you have any doubt in your mind that you're
15 going to see, if the Board approves the variance and
16 allows Mr. Leeb to make the improvements, do you have any
17 doubt in your mind that you will see those improvements
18 from where you live?
19 A. No. As soon as I walk out of my front door, I
20 turn and get in my car, and there it is.
21 MR. McCANN: Thank you.

1 THE CHAIRMAN: The Board has a question.
2 MR. QUINN: How do you access from the main
3 street where your driveway is?
4 THE WITNESS: This here, running through this gap
5 in the trees, is the driveway entrance. It's largely in
6 a shadow in the picture, but it's essentially a straight
7 shot up the hill from the street to the pad where you turn
8 around, the parking place.
9 MR. QUINN: So that follows the property line
10 pretty close?
11 THE WITNESS: Yes.
12 MR. QUINN: Is the lake yours?
13 THE WITNESS: Yes.
14 MR. QUINN: No further questions.
15 FURTHER REDIRECT EXAMINATION
16 BY MR. McCANN:
17 Q. Did Mrs. Allinson complain or show up at the
18 hearing when you sought a variance for your property?
19 A. Gee, I don't remember.
20 MR. McCANN: Thank you.
21 THE CHAIRMAN: You may step down. Thank you.

1 MR. HOLZER: I'm sorry. Can I ask one question
2 in light of the last one? It will be just very brief.
3 THE CHAIRMAN: Yes.
4 MR. McCANN: No objection.
5 FURTHER CROSS EXAMINATION
6 BY MR. HOLZER.
7 Q. Step back for one moment. You don't have to go
8 to the trouble of the sitting down. When did you ask for
9 the variance?
10 A. Let's see. My son is eighteen. We moved in the
11 year before he was born, and we built the addition when he
12 was four, so fourteen years ago.
13 MR. HOLZER: Fourteen years ago. Thank you. I
14 have no further questions.
15 THE CHAIRMAN: You may step down, and I think we
16 are going to take a five minute break right now.
17 THE CHAIRMAN. We'll take a lunch break now and
18 reconvene at 1 o'clock.
19 (A luncheon recess was taken.)
20 * * * * *
21 AFTERNOON SESSION.

1 THE CHAIRMAN: We are back on the record. Mr.
2 McCann?
3 MR. McCANN: Preliminarily, before I call Mr.
4 Keeney, I did get a copy of the zoning map to show this
5 property was zoned R-40.
6 I went over to the zoning office and got two
7 copies, and I would like to introduce that into evidence.
8 I don't think I need an expert to do that. It is an
9 official copy, an official zoning map. That will be
10 marked as No. 9.
11 MS. BRASSIL: I believe No. 10.
12 MR. McCANN: Thank you. I'll also mark this as
13 well, No. 11, which is a map book which led me to this
14 map. If the Board doesn't mind, could I just circle or
15 highlight where the street is, just so you know on this
16 map?
17 MR. HOLZER: Normally, it's done by a witness.
18 MR. McCANN: It didn't make sense to get Mr.
19 Keeney up here to go through this drill.
20 MR. HOLZER: He's coming up anyway.
21 THE CHAIRMAN: He's objecting.

1 MR. McCANN: I can have him do it. Mr. Keeney.
2 WILLIAM KEENEY,
3 having been called as a witness, was duly sworn, and
4 testified as follows:
5 DIRECT EXAMINATION
6 BY MR. McCANN:
7 Q. Would you please state your full name and
8 business address, for the record.
9 A. William W. Keeney -- K-e-e-n-e-y -- architect,
10 AIA. My address is 1908 Emory Road, Reisterstown 21136.
11 Q. What's the name of your firm?
12 A. The firm is Keeney Architects.
13 Q. Are you a licensed architect, sir?
14 A. Yes. I am licensed in Maryland and four other
15 states.
16 Q. What states are those?
17 A. Virginia, West Virginia, Delaware and
18 Pennsylvania and Maryland.
19 Q. When were you first licensed in Maryland?
20 A. I was first licensed in Maryland in 1982.
21 Q. Has your license ever been suspended or revoked

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1 in any manner since 1982?
2 A. No, sir.
3 Q. Are you the sole principal of the firm that you
4 just identified?
5 A. Yes, sir.
6 Q. Could you tell us what types of work your firm
7 does and what you do?
8 MR. HOLZER: I will stipulate that Mr. Keeney is
9 an architect, a licensed architect.
10 MR. McCANN: do I want to ask him a few more
11 questions in some other areas and perhaps qualify him in
12 those areas, so I will move onto those.
13 Q. Mr. Keeney, could you tell us what experience, if
14 any, you have in the development of property? By that, I
15 mean site design and site development.
16 A. As the president, I do most of my site
17 development myself. The properties and the owners that
18 come with me bring properties somewhere between two and
19 six acres.
20 What I do then, I footprint or make the floor
21 plan of the existing proposed building, site it, grade it,

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1 say where I want the septic system, where I want the well,
2 or I want the driveway to come in, and then I turn that
3 over to the civil engineer and he prepares the rest of the
4 site plan.
5 But initially, I do all the site work myself,
6 including the grading and so forth.
7 Now, I've done that for a number of years. Back
8 in 1978 to 1981, I was vice president of a construction
9 company and a development company, and that is all I did
10 for that company for a number of years.
11 We would buy fifteen to 150 acres of property and
12 I would develop it in sections and I would put the roads
13 and the streets in, and then design the lots, how I want
14 to fit them on either the ridge or hillside, or how we
15 want the houses to fit, and then turn that over to the
16 site engineer and he would take it from there, and then I
17 would go back and we would crunch those up and bring them
18 up to a cleaner scale. So I've had a lot of experience in
19 doing that, so it's fun.
20 Q. What about what types of development did you work
21 on between 1978 and 1981 that you were talking about?

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1 A. I was vice president of the corporation then. We
2 did Ryland Houses. We did 270 houses per year for five
3 years in a row.
4 We were the largest contractors in this
5 area for Ryland Houses at that particular time. Then the
6 interest rates went to twenty-three percent.
7 Q. What about after that period of time with that
8 company to the present, any other experience other than
9 the experience that you described with your own firm?
10 A. I left that company in '81.
11 Q. And you started your own company?
12 A. I started my own company in '82.
13 Q. So you have been doing site design and site
14 development work since that point in time?
15 A. There's year in between there that I worked for a
16 real estate company which is Frank Peach, in Randallstown,
17 and I did seven of his developments and site design work
18 of his developments, too.
19 Q. The work that your firm does, is it residential
20 or commercial, or both?
21 A. It's a mixture of both, about fifty-fifty. I do

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1 about $10 million worth of work a year by myself.
2 MR. McCANN: I would move Mr. Keeney as an expert
3 in architecture as well as site design and development.
4 MR. HOLZER: I have no objection to the
5 architecture. I don't believe -- well, let me ask this.
6 VOIR DIRE
7 BY MR. HOLZER:
8 Q. Mr. Keeney, are you registered civil engineer?
9 A. No, sir.
10 MR. HOLZER: I would object to his being
11 qualified as an expert in that area.
12 MR. McCANN: I think very clearly he has
13 sufficient experience. You don't have to be a registered
14 or licensed engineer.
15 I'm not going to ask him engineering type
16 questions. My intent is to ask him site design type
17 issues, and those are clearly at issue in this case.
18 THE CHAIRMAN: I will allow him as an expert as
19 an architect and site design.
20 MR. McCANN: And site development.
21 THE CHAIRMAN: And site development.

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1 MR. McCANN: Thank you. Would you mark that for
2 me, please?
3 MR. HOLZER: That is number --
4 MR. McCANN: Twelve.
5 CONTINUED DIRECT EXAMINATION
6 BY MR. McCANN:
7 Q. Mr. Keeney, could you identify what we have had
8 marked as Exhibit No. 12? Identity Petitioner's Exhibit
9 12, please?
10 A. Yes. It's a plan that I created of the Leebs'
11 residence.
12 Q. When did you prepare this plan?
13 A. About a week ago.
14 Q. Could you tell the Board what it shows us?
15 A. There's a line in the middle. Above the line is
16 existing, below the line is proposed.
17 The elevation to the right side top shows the
18 rear elevation of the existing structure. This is the
19 existing screened porch. The figure is standing on the
20 deck.
21 Above the existing screened porch, there's a

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1 figure standing behind the rail of the second floor
2 balcony. You see this to the right of the second floor
3 balcony, there's a flush wall. That is just about the
4 same parallel as the rail, if you see the shadow line.
5 This is on an angle, and that sits back about
6 four feet, more or less, so that creates the balcony on
7 the second floor out of the master bedroom.
8 This is a window in the master bedroom bath.
9 This is a window in the first floor lower level between
10 the screen and the garage that is the window for the
11 kitchen.
12 To the right of the kitchen and to the right of
13 the drawing on the first floor is a single car garage with
14 a roof of dissimilar pitches.
15 Above that and towards the front is the second
16 floor, the closet and the entranceway to the existing
17 house.
18 Q. That is obviously a rear elevation?
19 A. That's a rear elevation, correct.
20 Q. What's to the left of that?
21 A. The elevation top left shows the existing side of

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1 the house, noting that the existing -- this is the
2 existing bedroom of a seven/twelve pitch, and this is an
3 existing second floor with a dissimilar pitch.
4 This is the existing screened porch which is
5 shown in the right hand elevation. And this is the
6 balcony on the second floor with the overhang.
7 Q. So this side elevation is from -- looking at the
8 deck side, rather than the garage side?
9 A. Correct. You're looking towards the garage from
10 the deck side. And if you look at it carefully, you will
11 see that this wall is not on a plane here, but that wall
12 is on a skew, so this is a straight line and then it skews
13 forty-five degree angle to a straight line here and it
14 skews again to a forty-five degree angle, so that wall
15 parallels the face of the garage and these two walls, on
16 each side, are on a forty-five degree angle.
17 Q. This brownish-gray area right here is what?
18 A. That area is the top of the garage as you see it
19 through -- you see the top of the garage as it projects
20 above the flat roof.
21 Q. Okay. That's the existing house, correct?

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1 A. Correct.
2 Q. Why don't you tell the Board, if you would,
3 before you go into this particular drawings, tell the
4 Board what Mr. Leeb proposes and what you've --
5 MR. HOLZER: I'm going to object. I want to note
6 an objection here.
7 The proposed plan that is being presented now as
8 Petitioner's Exhibit No. 12 is not the proposed plan that
9 was presented below before the Zoning Commissioner marked
10 in your file, I believe, as Petitioner's Exhibit No. 4
11 that I had. I think this is it.
12 I'm sorry. Petitioner's Exhibit No. 2. There
13 are changes between what was presented to the Zoning
14 Commissioner in Petitioner's Exhibit No. 2 and what is on
15 Petitioner's Exhibit No. 12.
16 I believe, while this is a hearing de novo, it is
17 de novo on what was submitted before as a request before
18 the Zoning Commissioner.
19 And, as such, the request apparently has changed
20 to some extent. I would object to any change that was
21 made between the Zoning Commissioner's hearing and this

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1 hearing in regard to what they are requesting.
2 MR. McCANN: May I be heard?
3 THE CHAIRMAN: Yes, sir.
4 MR. McCANN: What we are requesting is not a
5 particular style of house. We are requesting a variance
6 from a setback requirement.
7 As Mr. Keeney will explain, he'll compare what
8 was introduced before the Zoning Commissioner and what is
9 now proposed, and the changes are aesthetic only.
10 Again, he's not increasing -- he can describe it
11 better than I can -- but, my understanding, he's not
12 increasing the size of the building, and we are not asking
13 for a different variance than we were before.
14 We may end up doing something slightly different,
15 if we are granted the variance, within that variance, but
16 we are not asking for a different variance.
17 Maybe Mr. Keeney could describe better than I
18 what the difference is, which are not all that great, to
19 be honest with you.
20 THE CHAIRMAN: First of all, I want his testimony
21 to establish if there is any difference between the two

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1 items.
2 MR. McCANN: Let me go ahead and mark this as a
3 new exhibit. This will be No. 13.
4 MR. HOLZER: Petitioner's 13 is the same as the
5 Zoning Commissioner's No. 2. No objection.
6 Q. Mr. Keeney, why don't you just tell us, if you
7 would, the differences, if any, between Petitioner's
8 Exhibit 13 and the proposed elevations that are shown on
9 Petitioners's No. 12?
10 A. For my reference, would you mind posting it?
11 Q. Not at all.
12 THE CHAIRMAN: The question is the difference,
13 correct?
14 MR. McCANN: Correct.
15 A. If you look at this elevation there, it has the
16 A-frame or the pediment -- if that's the correct word for
17 that -- the pediment is raised above the gutter line. If
18 you look at that, since our last court case, I lowered the
19 pediment to just above the screened porch, screening area.
20 Q. Okay.
21 A. I have lowered the roof. This drawing shows a

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1 roof pitch of approximately eight/twelve pitch, and I've
2 taken the roof pitch down to a seven/twelve pitch, which
3 is about as low as I can get it with the new structure.
4 Now, let's see what else.
5 Q. Let's talk about those two things first.
6 A. Okay.
7 Q. What did you call this, again?
8 A. A pediment.
9 Q. Is the pediment in the proposed elevation larger
10 in any respect than the pediment in the Petitioner's
11 Exhibit 13?
12 A. The breadth of the pediment, which is the lower
13 portion of the pediment, is larger than the existing
14 pediment on the lower picture, which is the rendering way
15 back.
16 Q. Why did you make that change?
17 A. I made that change because in the testimony in
18 the last hearing, there was some discussion of the height
19 of it. Okay?
20 And I thought when I came back to this meeting
21 that I would lower that to solve some of those problems,

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1 you know, some of the problems that they didn't care for
2 at that particular time, so I lowered that in this sketch
3 right here.
4 Q. It terms of the projection of the pediment in
5 air, I guess, if you will, does that pediment protrude any
6 further towards the variance, the setback area, than the
7 pediment in Petitioner's No. 13?
8 A. What are you calling this?
9 Q. I was comparing this. This is thirteen and this
10 is twelve. Okay?
11 A. On thirteen, the pediment protrudes away from the
12 face of the building about two and a half feet.
13 On twelve, it is only six inches away from the
14 outside wall. So it's set back.
15 Q. Now, I see on Petitioner's Exhibit 13, there
16 appear to be two columns -- I don't know if that's the
17 right word --
18 A. Correct.
19 Q. -- below the pediment, which don't appear on
20 Petitioner's 12. Why did you remove those?
21 A. I removed those to scale the building down and

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1 not create some of the problems that they thought this was
2 too lofty there, so I removed that so it wouldn't be so
3 lofty, in trying to help the situation so we could get the
4 screened porch in, and a better viewing of the
5 neighborhood, or neighbor.
6 Q. You said you changed the pitch in the roof?
7 A. I changed the pitch of the roof.
8 Q. Did you change the height of the roof between
9 Petitioner's 13 and Petitioner's 12 proposed?
10 A. That roof is existing, was not changed. This
11 roof was not changed. This gutter line is the same as
12 that gutter line. This gutter line is the same as that
13 gutter line.
14 I changed the height of that roof to the height
15 of this roof, about a foot, foot, four inches.
16 Q. In which direction?
17 A. Lower. I lowered it. That roof in twelve is
18 lower than it is in thirteen.
19 Q. When you say lower, do you mean literally
20 vertically lower?
21 A. The dimension from the ground to the top of the

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1 roof is lower in twelve.
2 Q. Any other changes?
3 A. Yes. We caught a mistake. Okay? The existing
4 house is there. If you look down here, the distance
5 between this window and that wall lines up, this is
6 smaller than it is up there.
7 What happened, we didn't know until we were going
8 back to the drawings, the existing drawings, to find out
9 that wall is over top of a portion of the garage. Okay?
10 And we caught it in the process of -- what
11 happens to that piece of roof there, we didn't know how it
12 worked, so we went back and found out there was an error
13 on the drawings.
14 So from there to there increased about that
15 distance, which is about five and a half feet, which makes
16 this on twelve, that roof, a little bit longer as it
17 exists.
18 Q. That change that you just spoke about, is that
19 within the 13.5 setback? This change?
20 A. Yes. That's the way it exists now. Let me go
21 through it again so everyone understands.

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1 That wall, we thought was underneath, outside the
2 garage. When we reviewed the existing drawings and field
3 measured in the field again, we found out that that wall,
4 which is the right-hand side of the second floor above the
5 garage, okay, instead of being on the wall of the garage,
6 it's now over top of the garage.
7 Q. You made a correction to the plan?
8 A. I made a correction to the plans.
9 Q. Not a change?
10 A. Not a change. A correction to the plans. That's
11 why I called it a mistake, an error.
12 Q. Anything else that you changed since Petitioner's
13 13 and the proposed twelve?
14 A. I don't see -- the garage door is now a single
15 garage door versus -- which there is a single garage door
16 now -- and the proposed plan thirteen, I tried to make it
17 a double door garage, and I'm going back to the single car
18 garage.
19 Q. Why did you do that?
20 A. On twelve, there is a little wall there. It
21 looks like we were trying to push that wall towards the

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1 driveway side about two and a half feet to create a larger
2 garage, and we have taken that wall out.
3 Really, that wall is not there. That's the only
4 thing else we did.
5 Q. Back to my original question which, I believe
6 was, could you tell us, describe for the Board, what the
7 proposed improvements are?
8 MR. HOLZER: Before we get into that, I'd like to
9 make sure I renew my motion. Understanding that the
10 zoning hearings before the Zoning Commissioner, and then
11 when you get to the Board, are de novo, but to permit a
12 change in the plan that is the subject, literally the
13 subject matter, of why the variance was denied or on the
14 very issues before the Zoning Commissioner when he
15 addressed it, to now change those between the Zoning
16 Commissioner's decision and now in an effort to change the
17 plan as it's been presented and the request that's been
18 presented, I believe, creates a new target for us.
19 We obviously have had no benefit to review that,
20 nor has the Zoning Commissioner. I mean, that's like
21 taking any zoning matter before the Zoning Commissioner,

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1 asking for one thing, filing an appeal de novo to the
2 Board, changing a plan, and coming in here and asking the
3 Board to consider this plan, when that wasn't the plan
4 that was presented.
5 Now, the argument is that, Oh, well, these are
6 cosmetic.
7 Well, the fact of the matter is, if you read
8 Commissioner Murphy's decision, it wasn't cosmetic to his
9 determination of the granting or denial of the variance
10 because he listed those very same points that the witness
11 has just said the reasons that he amended it was to
12 address.
13 So I think it's extremely prejudicial and unfair
14 to us at this point to have the plan change so as to
15 present different material, a different plan, different
16 evidence to you that was not presented below and it was
17 not the proposed plan that was presented below.
18 I think, on that basis, this Board should not
19 accept or receive this particular plan.
20 THE CHAIRMAN: Counsel?
21 MR. McCANN: I think the Zoning Commissioner's

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1 decision speaks for itself. Everything Mr. Keeney just
2 talked about, you can read the decision. It isn't
3 material. It all still applies. This isn't a development
4 plan approval process.
5 We are not asking the Board to approve this plan.
6 We are asking for a setback, a variance.
7 I don't disagree that perhaps the aesthetics or
8 cosmetic changes may affect, for instance, whether or not
9 the public health, safety and general welfare of the
10 community is affected.
11 I mean, it may affect that. That's, you know,
12 but at most. But, again, it's a variance that we are
13 requesting, and not approval by any specific plan,
14 particularly when the changes have no effect, none of
15 these changes go into the setback anymore, they don't
16 protrude. Mr. Keeney made that clear.
17 MR. HOLZER: I'm sorry. If I could just respond
18 to that last comment.
19 I think that statement by counsel is certainly an
20 admission that if you read Mr. Murphy's decision, he
21 indicated that the reason he denied the variance based on

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1 the plan that was front of him was for the health, safety
2 and welfare reasons, because of the manner it intruded
3 upon the adjacent property, and that was the very basis
4 that he denied it.
5 That's why they took this appeal. And then to
6 turn around and acknowledge that it might affect that,
7 it's clearly improper for them to come in with a new plan
8 at this point.
9 I would move, again, that not only this plan be
10 denied and the entrance into it, but the proceedings, if
11 that's the plan they want to proceed on, it should be
12 remanded back to the Zoning Commissioner. You can't amend
13 plans before the Board at this late stage.
14 MR. McCANN: We didn't even file a plan with the
15 Commissioner. We didn't need to file the plan. We just
16 had to go and request a variance and tell the Commissioner
17 why we wanted a variance. The plan wasn't even necessary.
18 It's not a development plans process.
19 THE CHAIRMAN: I'm going to allow the exhibit in,
20 I believe, at this point. We'll take that into
21 consideration at the time of our evaluation of the case.

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1 I think I agree with counsel that they have filed
2 the request for a variance. This is a de novo case and
3 they are allowed to present their evidence.
4 We will consider that evidence and any evidence
5 presented by the protestants in reaching a conclusion
6 regarding the plan they do submit and any other variation
7 on that proposed plan. Proceed.
8 Q. Mr. Keeney, I'll ask you to describe for the
9 Board what the proposed improvements are, or would be?
10 A. Okay. The proposed improvements on the -- I'll
11 start on the rear elevation, which is No. 12.
12 Q. That's my question.
13 A. The upper -- let's start with the existing which
14 is the upper photograph. What I don't like about it and
15 the reasons why I started with what I don't like about it,
16 number one, the house has a number of different pitches.
17 There's a pitch there which doesn't match that
18 pitch. This pitch is a different twelve. This is like a
19 fourteen and twelve. It doesn't match anyplace else in
20 the project.
21 This pitch on this roof, which is the left-hand

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1 side of the existing bedroom, is a seven/twelve. The
2 existing roof on top there is a five/twelve. This is a
3 seven/twelve. I'm looking at the left-hand elevation
4 existing top left.
5 Then we have a flat roof situation. Then we have
6 a balcony. And then we have -- this is a straight wall
7 with a roof going in the opposite direction towards the
8 front.
9 So the entire house from the rear prospective and
10 all the other elevations is a hodgepodge of different roof
11 pitches.
12 And the reason why that would happen, from my
13 point of view, looking at it, is that there's a rule in
14 the county that the house cannot exceed thirty-five feet
15 off the ground from the highest elevation. Okay?
16 So it's, in looking at the elevation and scaling
17 it, the front elevation is approximately a third of the
18 existing scale elevation of the existing drawings. The
19 front elevation is approximately thirty-five feet from the
20 ground to the top of the roof.
21 So knowing what I know about the architectural

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1 field, that's probably why this roof and this roof are not
2 the same as the rest of the roofs. Okay?
3 Now, in order for me to solve that and to raise
4 the roof slightly, I've gone around to the front of the
5 building and put -- and installed some terrace work, which
6 gets me back up to allow me to have thirty-five feet. I
7 am only thirty-five feet off the rear of the house from
8 the roof to the grid line.
9 Q. It says thirty-one here.
10 A. Excuse me. Thirty-one feet. I apologize. Now,
11 the elevation of that, aesthetically, that piece of wall
12 right there and that piece of roof right there -- I'm
13 talking about the roof over the top of the garage and the
14 piece of wall to the left of the existing garage on the
15 top right-hand elevation -- that flat wall and that garage
16 is very disruptive to the eye, aesthetically.
17 And by doing that, by having it there, it makes
18 this building seem much higher aesthetically than it
19 really is.
20 If you came through, as on the bottom picture
21 which is thirteen, and the roof now continues, and it

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1 draws your eye in the lineal fashion instead of a vertical
2 fashion, and by doing so, I have eliminated that portion
3 of the wall and made that flat wall now is part of the
4 structure instead of sitting out there like a sore thumb,
5 let's say, for lack of a better word.
6 On the right-hand side, if this was a flat roof
7 and this was a flat roof, now it starts to look like a
8 barracks. So that portion is an eye stop to the rear left
9 side of the structure, and the right side is an eye stop
10 for the entrance.
11 Now, what happens, when you drive up the driveway
12 and you pull here to park a car, this projection, which is
13 now the projection that creates an L-shape away from the
14 rear of the house towards the screened porch, creates an
15 L-shape situation away from the house which stops your eye
16 and brings your eye back to this portion there, because
17 people's scales are where people want to be. So this
18 elevation brings you, as a people scale situation, so you
19 will more than likely realize that is the front entrance,
20 or that will take you to the front entrance. That's the
21 reason why that was done that way.

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1 This is a roof that goes all the way down to the
2 rear right-hand side of the structure towards the front
3 door and keeps the entire entrance on one level. Okay?
4 This pediment up there which is over top of the
5 existing balcony stops your eye from creating this
6 vertical or that angled elevation at that particular
7 point. If this was a flat roof, you would see into this
8 evaluation.
9 So what we're trying to do is aesthetically
10 create something that's very nice and very pleasing and it
11 all fits together as one unit, instead of this angle and
12 that angle, and three or four other angles that really
13 doesn't make a harmonious house, harmonious elevation.
14 Q. Is this a -- what would you call this, a porch?
15 A. That's an porch, or a promenade, or something to
16 take you to the front elevation, the front entrance of the
17 house.
18 Q. Are there any structural changes involved with
19 this, going around the side?
20 A. That is an existing wall of the garage and we are
21 putting a wooden deck on columns, some square columns to

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1 hold it up. I think the columns are ten feet apart to
2 hold up the edge of that.
3 Q. Now, on this proposed right side elevation, there
4 are some lines and breaks. What were you trying to depict
5 there?
6 A. I put those on to show that this flat elevation,
7 if you saw a flat elevation, you wouldn't know that -- you
8 could not tell that roof was there or there.
9 Q. When you say flat elevation, do you mean one
10 dimensional?
11 A. One dimensional flat elevation. So in the
12 elevation to the right of twelve, which is the side
13 elevation --
14 Q. To the left?
15 A. Excuse me -- to the left -- say that was eleven
16 foot -- so if we cover the porch with a roof so they have
17 a balcony there, we are projecting eleven feet.
18 If you're standing in front of twelve, fifty feet
19 away, or twenty feet away, you really don't know that that
20 is projected eleven feet. It's the same elevation. If
21 you look at the line at the edge of the house, it's only

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1 projecting about a foot to get that pediment elevation.
2 Okay?
3 Q. So you're writing here says proposed, correct?
4 A. Proposed.
5 Q. So this section is proposed?
6 A. That is the existing. That is the proposed new.
7 On this elevation, yes, that's existing.
8 Q. What about this down here?
9 A. This is an existing roof. In order to follow
10 through with my -- this is a piece of metal roof there.
11 That's a piece of metal roof.
12 So in order to follow through and to pull the
13 entire perimeter of the house together, I had a piece of
14 metal roof on that rear left side -- okay? -- I call it a
15 right side on the elevation -- excuse me -- that's
16 standing in the front. And I did the same thing on the
17 lower portion.
18 This is the existing roof over the bedroom. That
19 roof has, again, a small pediment, twelve inches off,
20 shown in this elevation.
21 We increase the screen porch, if we build the

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1 screen porch -- I can't read that -- twenty-one feet?
2 Q. Twenty-one feet, correct.
3 A. -- from the existing building out twenty-one feet
4 which is -- if I'm not mistaken -- the full length of the
5 existing deck. Okay?
6 Q. Now, the changes, the proposed improvements on
7 the bottom of Petitioner's Exhibit 12, do either of the
8 improvements to the existing screened patio or to the
9 existing deck area, the improvements that you just talked
10 about, do they go beyond the existing footprint?
11 A. No. I have taken it to the existing footprint.
12 The twenty-one foot is to the existing footprint. I
13 believe in one of the statements that we could cut this
14 back, we had made that statement. This drawing does not
15 reflect that.
16 Okay? We could cut the deck back a little bit.
17 That drawing doesn't reflect that. It reflects the entire
18 deck.
19 Q. Let me ask you this. If someone were standing --
20 you have been to the property?
21 A. Yes.

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1 Q. You have been back in this area?
2 A. In December, I was back in there. I had Lime's
3 disease twice last year and I wouldn't walk in any woods.
4 Q. Do you attribute that, your visit here, to the
5 Lime's disease?
6 A. No.
7 Q. If someone were standing on the tip of this
8 triangle which forms the western point of Mr. Leeb's
9 property and looking towards the house one
10 dimensionally -- I forget the words you used -- would a
11 person notice -- what, if any, changes would a person
12 notice between the existing rear elevation and the
13 proposed rear elevation?
14 MR. HOLZER: Objection. Speculative, and the
15 Board can look at it and see.
16 THE CHAIRMAN: Overruled. I will allow it.
17 A. To understand and to answer the question
18 correctly, if you're standing back there at a hundred
19 fifty feet away, you are fairly -- and I'm going to
20 guess -- you're probably eight to ten feet below the crest
21 of this little mound here, so you're going to be looking

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1 over that to see the house.
2 So by stating that, you're going to see the top
3 of the house, or probably the upper third of the house
4 from that elevation. Okay?
5 If you're standing with the naked eye looking up,
6 not from the grown, but standing from your naked eye --
7 like my eye is five-four off the ground -- so you would
8 probably see somewhere in the upper half to the upper
9 third of the existing residence.
10 Q. Let me ask it a different way. What if you were
11 standing on the ridge? Approximately how far is that
12 ridge you just spoke about from the back of his house?
13 A. It's fifty feet, more or less. Maybe sixty feet.
14 Somewhere in that neighborhood, yes.
15 Q. So if someone was standing there on the ridge as
16 opposed to beyond the ridge and looking towards Mr. Leeb's
17 house?
18 A. You would see, probably you would see eighty
19 trees in front of the house, seventy trees in front of the
20 house.
21 In the summertime, you would see the trees. Just

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1 the sticks of the base of the trees, that's what you would
2 see in the wintertime. In the summertime, you see leaves,
3 and the house disappears.
4 Q. You wouldn't see the house at all from the ridge?
5 A. You'd have to be very close to see a lot of the
6 house. You're talking about sixty feet. You walk up
7 thirty, forty feet from the house, you see more.
8 Q. Let's say there weren't any trees. You're
9 getting even closer?
10 A. If there weren't any trees, you'd see the entire
11 house.
12 Q. What I'm asking, what you would see different
13 from that one dimensional view looking straight at the
14 rear elevation between the existing and the proposed, what
15 differences would you see?
16 A. What differences would you see? If you were a
17 stranger and approached and these two houses were side by
18 side on the same lot, you would only see that this
19 pediment or a couple things would be different.
20 You'd see some shadow lines, which you don't see
21 in here, because the sun is coming from this direction.

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1 So you would definitely see a lot, aesthetically, more
2 shadow lines. You would see a house that's, at the lower
3 level, which is twelve, the house is anchored to the
4 ground aesthetically where the upper house is not anchored
5 to the property.
6 So, aesthetically, the lower level would be, or
7 No. 12 would be, very much more pleasing to the eye.
8 Q. And less intrusive?
9 A. Absolutely.
10 Q. What about the differences in the height, did you
11 notice that? You identified the proposed rear elevation
12 is thirty-one foot high as opposed to twenty-eight
13 existing. Do you think that would make a difference?
14 A. I don't believe that anyone, including myself,
15 could tell the difference at fifty feet away, if it's
16 thirty-one feet high or twenty-eight foot high.
17 Q. Mr. Keeney, why couldn't you accomplish what Mr.
18 Leeb wanted to accomplish by doing some of the work on the
19 other side of the garage, or could you?
20 My question is, did you consider that, and why
21 did you go with this design as opposed to one that had the

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1 improvements on the other side of the garage, or somewhere
2 else around the house?
3 A. Mr. Leeb and I talked about -- the question is
4 could I have done something on the other side of the
5 house? Definitely. I'm an architect. We could have done
6 something over there.
7 First off, it's fifty feet away from the property
8 line. There's a driveway that's very, very steep. Two,
9 the outside of the driveway going towards the neighbor's
10 residence, there's a number of large trees, some of them
11 are as large as a foot and a half or two feet in diameter,
12 and there's a ravine down through there which takes all
13 the runoff from the water -- I'm not saying all -- but a
14 good portion of the water between his driveway and his
15 parking lot, and this parking lot, goes down through that
16 little ravine.
17 And I didn't walk all this, but there's a ravine
18 approximately in that area right there which is almost
19 between the two houses.
20 Q. When you say ravine?
21 A. About four and a half foot deep. You walk down

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1 and back up to the neighbor's property. So that was some
2 of the impediments, the driveway, the trees, the ravine.
3 Okay?
4 Now, in discussing it, let's say, for instance,
5 we took the garage and we want to take the garage and make
6 it a family room. Okay?
7 Here we are. So there is the kitchen. We get
8 into the family room. We get into the screened porch.
9 Okay? Now we're going to put a garage up.
10 Where are we going to put the garage? Put it on
11 the back portion of the property, right there, somewhere
12 in that area?
13 Well, if we do fifty feet, the fifty foot line
14 goes here and there and there's no place to put a garage.
15 If we go for a variance in this situation, then we
16 probably have a neighbor problem again. So we are going
17 to the wrong direction.
18 So the easiest thing for me, as an architect, is
19 to follow some of the directions that the owner wanted and
20 say, Okay, can we take the existing screen porch and make
21 that into a den? Take the existing exterior deck and make

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1 a screened porch out of it? Okay? My answer was, Yes, we
2 can do that, and it's probably the simpler of all the
3 reasons of ways of doing it, and by doing that, we
4 anchored this down to the property better, and we did not
5 come in and tear all his driveway up, relocate the
6 driveway, create a sediment control situation problem here
7 for the person down behind us, and we, if we continue that
8 way, or continue this way, we keep the driveway as it is
9 now, instead of re-doing the entire driveway.
10 Q. Is it cheaper to do that?
11 A. Absolutely.
12 Q. What about, as an architect, you have taken into
13 consideration the owners' concerns about living space and
14 where there are more livable areas in the house as opposed
15 to places that you don't spend a lot of time, did you take
16 that into consideration?
17 A. Absolutely. That's part of my job, is how they
18 want to live. If you're going to spend this kind of money
19 that we're spending on this house, renovate the entire
20 structure, bring it up to date in today's market -- okay?
21 -- the house should flow. You should have a manner within

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1 itself to flow, one to the other. Okay?
2 If we put the addition here, they were right next
3 to the neighbor's driveway. The pleasant place for him to
4 sit on his deck, or the pleasant place is to be in this
5 area there, that portion of the area.
6 The front of the house is on an incline of about
7 like that, which is twenty-five to thirty percent or so
8 incline. We have a side yard setback problem already. So
9 the right side elevation in the front is not the direction
10 to go.
11 The left side elevation, standing in the front
12 has its problems. The rear elevation has its problem
13 right around the garage.
14 So the only logical place that's left is that
15 little portion there, which is around the screened porch.
16 And by doing that, then we connect the kitchen and the
17 family room and the den and the screened porch, and the
18 traffic pattern now becomes a viable product on the
19 market.
20 MR. McCANN: We will admit 12 and 13. Is there
21 an objection to thirteen?

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1 THE CHAIRMAN: There was an objection to both of
2 them, which I was overruled.
3 MR. HOLZER: I'm sorry. I had no objection to
4 thirteen.
5 THE CHAIRMAN: Thirteen will be admitted.
6 MR. McCANN: Can I have this marked as No. 14?
7 Petitioner's 14.
8 A. Yes. This is the site plan that the Leebs gave
9 me.
10 Q. When did you get this site plan from them?
11 A. I got that when they gave me the entire existing
12 package with some of the contract at day one. They had
13 the old site plan that was filed with the permits
14 including the old work construction documents and they
15 gave me this site plan and the ruling from that hearing.
16 Q. But what is this? You described it as a site
17 plan?
18 A. Yes, I call it a plat plan or site plan.
19 Q. You said this was a site plan that was at issue
20 in the last proceeding of 2001?
21 A. Correct. We didn't have the entire site plan.

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1 We only had a small picture of the site plan.
2 Q. This, in fact, this plan shows the proposed
3 addition, that is, the addition Mr. Leeb spoke about he
4 ended up withdrawing?
5 A. Correct.
6 Q. This plan shows the location of the existing wood
7 deck and screened porch?
8 A. Yes, it does.
9 Q. That's the existing gazebo?
10 A. Correct.
11 Q. Which extends over the property line?
12 A. Correct.
13 Q. Is this plan based on a survey that was done?
14 A. It appears as it's a survey for the zoning
15 hearing at that particular time, yes. I would say that is
16 a field run survey.
17 Q. Are you able to measure the distance from the
18 Leebs', the end of the Leebs' house to the point in the
19 triangle at the tip of their property?
20 A. If I may? This is a thirty scale. I'm looking
21 at a thirty scale on the rear of the garage, at the corner

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1 of the garage, and going to the rear of the property.
2 I'm showing -- I'm laying it on the corner of the
3 garage, from the rear of the right-hand corner of the
4 garage to the apex of the property line, and I get 155
5 feet. And from the left-hand corner of the rear existing,
6 I get 190 feet.
7 Q. Could you drew a line and put those measurements
8 in on the exhibit?
9 A. (Indicating.)
10 Q. You can stay right there.
11 MR. McCANN: No. 15, please. Are we going to
12 fifteen now?
13 THE CHAIRMAN: Yes. As to Fourteen, any
14 objection?
15 MR. HOLZER: I don't believe so.
16 THE CHAIRMAN: Fourteen is admitted.
17 MR. HOLZER: Fourteen, as I understand it, was
18 Petitioner's Exhibit No. 1 from the 2001 case?
19 THE CHAIRMAN: That is correct.
20 Q. Mr. Keeney, can you identify Petitioner's Exhibit
21 15, please?

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1 A. Yes. It's a site plan by Colbert, Matz and
2 Rosenfelt. It's for Jack and Frances Lachman parcel
3 property. It says here, per amended.
4 Q. What's the date of this?
5 A. It's stamped January 11, '05.
6 Q. Do you recognize this property as the Allinson
7 property?
8 A. This appears to be the same.
9 Q. Could you point to Exhibit 4 where the
10 subdivision shown on Exhibit 15 is?
11 A. Well, I know from there, that corner is this --
12 the corner of 2316 and the neighboring property is the
13 same as this corner right there.
14 The configuration of this appears as though it
15 runs in that angle. How far, I don't know, because this
16 and this are somewhat different. And it runs across this
17 line, but something changed in one of these.
18 Q. Let me ask you --
19 A. But the location, that's the Leebs' property.
20 Q. This is Mr. Leeb's next door neighbor, Mr. Pula's
21 house?

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1 A. Yes.
2 Q. Does this subdivision plan show either of the
3 barns that are depicted on Petitioner's Exhibit 4?
4 A. It shows one barn. I call it the red barn, which
5 is this barn. This is a tan barn, a larger structure, and
6 this is the metal structure. This is a wood structure, an
7 older structure, looks like a wood structure, as in a
8 traditional barn.
9 Q. Was this on this map?
10 A. That is shown -- it says existing barn to remain.
11 That is the apex.
12 Q. Does this Exhibit 15 show the location of Mrs.
13 Allinson's house?
14 A. It appears to show the existing residence which
15 is on lot -- appears to be on lot one, yes, sir.
16 Q. How many lots does this subdivision show?
17 A. It shows one, two, three, four.
18 Q. Are you able to tell us, Mr. Keeney, using this
19 Exhibit 15, the distance between Mr. Leeb's house and what
20 you just referred to as the red barn?
21 A. If I may see what scale this is? This is a scale

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1 one inch equals fifty.
2 Q. If you can draw the line?
3 A. (Indicating.)
4 Q. You drew a red line to fifteen. What is that
5 intended to show?
6 A. It shows the -- it shows the angle from the
7 corner of the house to the corner of the house. Let's see
8 if it's any different.
9 I show 190 feet down that property line, knowing
10 the house is somewhere around thirteen feet off the
11 northern property line, and I show the other corner of the
12 house more or less at 155 feet. I drew it to the property
13 line at 155 feet. Okay.
14 Q. Could you put an "A" and "B" on that line where
15 approximately the corners of the house are?
16 A. Yes, I can put an "A" and a "B."
17 Q. Going back to what I asked, you measured the
18 distance between the corner of the house, the location of
19 the corner of the house, and the existing barn, the red
20 barn?
21 A. Okay. That's a fifty scale. Let me double-check

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1 it. Yes. On one corner of the barn, it is 435 feet.
2 That's the northern corner of the barn as you face it from
3 the Leebs' house.
4 Q. Do the closest corner, if you could?
5 A. Excuse me. 138 feet, more or less.
6 Q. Could you draw that line and put that measurement
7 on there?
8 A. Did I say 138 feet? Back it up. 438 feet.
9 Q. Can you measure the distance between the closest
10 corner of the house of the Leeb house and approximately
11 the location of Mrs. Allinson's home?
12 A. Want me to draw a line first?
13 Q. If you would.
14 A. Again, a fifty scale. There's 600 feet. I made
15 a mark. There is another hundred feet. There is 700
16 feet. Write it on here, correct?
17 Q. Yes, please.
18 A. Seven hundred feet, plus or minus. Seven hundred
19 feet from the right corner of the Leebs' house rear to the
20 closest corner of the existing dwelling on lot one.
21 Q. Exhibit 15 doesn't show the location of any

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1 proposed house, does it?
2 A. No, sir. It shows an envelope, or the setbacks,
3 which is basically the envelope.
4 Q. In other words, this house is proposed to be
5 located anywhere in here?
6 A. A new residence could be located anywhere within
7 this area, barring the fact of the well and the septic
8 reserve area, which is 10,000 square feet for the reserve
9 area.
10 Q. Under the Exhibit 15, is the other barn, the
11 larger tan or gray barn, is that shown on this subdivision
12 plan?
13 A. No, sir.
14 MR. McCANN: If you will bear with me, that may
15 be all I have.
16 Q. In your opinion, Mr. Keeney, if the Board were to
17 deny the variance requested by Mr. Leeb and not allow him
18 to make the proposed improvements to his home --
19 A. Excuse me. My hearing is catching up with me.
20 Q. In your opinion, if the Board were to not grant
21 Mr. Leeb a variance and not allow him to make the proposed

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1 improvements to his home, would that, in your opinion
2 create an undue hardship or a practical difficulty for Mr.
3 Leeb?
4 A. I believe it would. Okay? That's not -- that's
5 from an architect's point of view. For a number of
6 reasons.
7 The reasons are the aesthetics of the neighbors.
8 Let's say if a neighbor is planning on putting up some
9 high-end housing in the neighborhood, I would hope they
10 would like to have a very pleasant, pleasing and pleasant
11 house for their neighbors to look at.
12 I would also think that the age of the house
13 itself is starting to need repair drastically. Now's the
14 time to catch it before we start getting some structural
15 problems.
16 I think if we don't do this and, for instance, he
17 would sell the house, the house would go on the market and
18 you'd be back into this hearing again two years down the
19 road with another owner for the same situation.
20 So I think that's putting a hardship on him
21 because, basically, he couldn't sell it. Basically, he's

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1 not going to be able to do what he wants to to.
2 Also I think, in my opinion, we have exhausted
3 all the areas, different areas, to put this addition, and
4 I think if we don't head in that direction for this
5 addition, the house is going to suffer, not just Mr. Leeb.
6 I'm not worried about the owner suffering. I'm
7 an architect. I'm worried about the house and what it
8 becomes down the road ten or twenty years from now, or
9 what I'm leaving for my kids twenty years from now as a
10 design project. And I think that, without doing that,
11 without heading this direction where we can renovate the
12 structure and bring it back into the 20th century and have
13 the addition sitting there, we are heading in the wrong
14 direction.
15 Q. What about in terms of some of the alternatives
16 of putting the improvements where they are proposed now as
17 opposed to, for instance, on the other side of the garage?
18 Can you give us a general sense, without an existing
19 proposal, alternative proposed plan, could you give us a
20 general sense of the costs associated with, for instance,
21 putting a living space area that Mr. and Mrs. Leeb want

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1 and would like to have on the other side of the garage, do
2 you see any difference in cost in doing that?
3 A. I think there is definitely going -- I feel
4 certain that other than where we are heading, the costs
5 are going to put, in generality, the cost is going to be
6 twenty-five to thirty percent more because of removal of
7 the trees, dealing with setbacks, dealing with the owner
8 next door who was here today, but he may not want his
9 trees cut down, or close to his trees, because if you cut
10 the trees down and start to do something with the ditch,
11 it means you're going to be crossing probably the center
12 line -- which I haven't measured -- and you're probably
13 going to be crossing the center line of the property in
14 order to fill the ditch in.
15 The driveway is about six feet away from the end
16 of the house. The further away we try to move it, we're
17 going to be into the ditch, so now we are going to have to
18 fill the ditch, put a retaining wall at the edge of the
19 ditch. If the owner says, No, that's where my water goes,
20 the neighboring owner, I think the retaining wall, were we
21 to try to remove it, it's going to cost a considerable

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1 amount of money. Okay?
2 I'm guess their house, the way we stand, we're
3 going to spend 300,000, $350,000. So we would be pushing
4 four hundred, maybe four-fifty, maybe another hundred
5 thousand, maybe more than that.
6 MR. McCANN: Thank you, Mr. Keeney.
7 CROSS EXAMINATION
8 BY MR. HOLZER:
9 Q. We'll start there.
10 A. Yes, sir.
11 Q. Good to see you again.
12 A. Thank you.
13 Q. First of all, you understand the law in regard to
14 variances pretty well establishes that cost isn't a basis
15 to create practical difficulty or unreasonable hardship?
16 MR. McCANN: Objection.
17 Q. You do understand that?
18 MR. McCANN: Objection.
19 THE CHAIRMAN: Basis?
20 MR. McCANN: He's not an attorney. He's not a
21 legal expert.

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1 THE CHAIRMAN: Sustained.
2 Q. So in your opinion that you just rendered in
3 regard to the hardship, cost was a factor that you relied
4 on, the cost of removing trees on Mr. Pula's side of the
5 property, that cost is a factor, in your opinion, correct?
6 A. That has a small bearing on it, but that's not --
7 that was not my entire opinion.
8 Q. The other part of your opinion is aesthetics,
9 make this a nicer looking building for someone to see, is
10 that correct?
11 A. Of course, because I market that, yes.
12 Q. So aesthetics is another factor?
13 A. Yes, sir.
14 Q. The fact that the house is old and needs repair,
15 that's another factor, in your in opinion?
16 A. Correct.
17 Q. The fact that Mr. Leeb can't do what he wants to
18 do with the house unless he get his variance is another
19 factor?
20 A. Correct.
21 Q. The fact you're saying he can't sell it might be

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1 a factor, is that correct?
2 A. That is correct.
3 Q. You're saying he can't sell it because it's only
4 3800 square feet. Why can't he sell it the way it is?
5 A Sure, he can sell it the way it is.
6 Q. So, basically, this request really boils down to
7 a couple of things.
8 The desire to create aesthetics, the desire not
9 to spend more money putting it someplace else, the desire
10 to have the internal operation the way Mr. Leeb wants it,
11 is that a fair statement?
12 MR. McCANN: Objection. He said a lot more than
13 that on other issues.
14 THE CHAIRMAN: It's cross. I will allow it.
15 Q. You're certainly welcome to add anything more to
16 my question than that.
17 A. I didn't catch --
18 THE WITNESS: Am I supposed to answer the
19 question?
20 THE CHAIRMAN: Yes.
21 A. Slightly repeat it. Just slightly repeat it.

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1 Just touch again -- I missed some of it. I am hearing
2 impaired. I am ninety-three percent old.
3 Q. I'm not smiling because you're hearing impaired.
4 I'm smiling because I can't remember my question.
5 MR. McCANN: He's ninety-three percent impaired.
6 MR. HOLZER: I am impaired in a lot of ways.
7 A. Just generally, I know where you're heading
8 Q. I just want to make sure that from the standpoint
9 of your testimony in regard to practical difficulty or
10 hardship, the significant factors, in your opinion, was
11 the added cost to put it on Mr. Pula's side?
12 A. That's enough. I can go --
13 Q. The age of the house, the aesthetics, you'd like
14 to have a prettier looking house and, finally, convenience
15 of the internal operation by Mr. Leeb, those were the
16 factors?
17 MR. McCANN: Same objection.
18 THE CHAIRMAN: Same ruling.
19 A. Yes.
20 Q. Now, is there anything else that you want to add
21 to that? I'm giving you a free shot at me. This is your

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1 opportunity.
2 A. Well, I would think, I would think from a
3 neighbor who is planning to put a development extremely
4 close to this residence, so the site plan, or within a
5 hundred -- I'm just going to guess -- a 163 feet from
6 here, more or less -- hasn't been established, but more or
7 less -- that she would like to, or that the developer,
8 whomever she sells it to, unless she's the developer,
9 would like to have the neighborhood as high quality, as
10 high end, as she could possibly have that neighborhood.
11 Okay? Now, if you're thinking about protecting the
12 health, safety and welfare of the people, okay, that's
13 heading in the right direction to protect the health,
14 safety and welfare of the people, because if you
15 aesthetically bring the house up, you're helping the
16 neighborhood, therefore, you're helping the people.
17 Q. Is aesthetics the word that you have used about
18 twenty-five times?
19 A. Absolutely.
20 Q. Is that in the eye of the beholder?
21 A. It's in the eye of the -- it's in the eye of the

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1 architect, but it's also the phrase that most architects
2 use to convey what they want to try to accomplish to the
3 owners.
4 Q. In your opinion, what you have designed is
5 certainly better than what was there before, is that
6 correct?
7 A. Yes. Another architect could do something else,
8 but, yes.
9 Q. You're supposing that someone else will like
10 this, just like you like it?
11 A. Correct.
12 Q. Like aesthetics is in the eye of the beholder,
13 perhaps what is there now and what you might be planning,
14 someone else may not like?
15 A. Now, the past zoning officer liked it, also, if I
16 may add to that.
17 Q. Well, that might be true, but he didn't like all
18 of your designs, did he?
19 A. That could be true.
20 Q. You read the decision, sir?
21 A. Yes.

1 Q. You read his decision, and his decision was, as I
2 recall, that you could glass in the screened porch because
3 that didn't really impact the adjacent property owners,
4 but he had strong concerns in regard to these triangular
5 peaks you have established and the new roof lines, didn't
6 he?
7 MR. McCANN: Objection. I don't understand the
8 relevance or what Mr. Keeney's opinion is about what the
9 Zoning Commissioner said. This is a de novo hearing.
10 THE CHAIRMAN: Overruled. I will allow it.
11 Q. Go ahead. You may answer.
12 A. I think he objected to -- I haven't -- it's not
13 real fresh in my mind, because I haven't read it in the
14 last couple of days, but, yes, he had some objection.
15 Q. The reason you walked in with Petitioner's
16 Exhibit No. 12, and not what is marked as Exhibit No. 13,
17 is that because, in fact, you read the decision, you read
18 his concerns, and you tried to amend the plan, the
19 proposed plan, to make it less invasive on the adjacent
20 property owners?
21 MR. McCANN: Same objection. Can I have a

1 standing objection without interrupting?
2 THE CHAIRMAN: We'll note it. You may answer.
3 A. Yes, that's correct.
4 Q. For the record then, Exhibit No. 12 was designed
5 to try to minimize the impacts that the Zoning
6 Commissioner believed were representative of Petitioner's
7 Exhibit No. 13?
8 A. With everything he said, and what we were trying
9 to do, to come back, to make a statement less offensive,
10 yes.
11 Q. I want to talk about some phrases you have used
12 throughout your testimony, and then I will get to some of
13 the other exhibits.
14 One of the things you testified to was that you
15 rejected the idea of placing some additions on Mr. Pula's
16 side because he might object, is that right?
17 A. I made that -- I made that statement, yes.
18 Q. Well, is it a question of who objects the most
19 important criteria on where you put this?
20 A. The question you're asking me basically is, if we
21 follow through with the fifty foot side yard setback on

1 that side, meaning the garage is now fifty feet from the
2 property line, we have to go through a variance, okay?
3 And that variance then can bring that neighbor
4 in, and, yes, he can object, and we are back to where we
5 started.
6 Q. So since he's on your side at this point, he
7 likes the location on the Allinson side of the property,
8 this is the better location for the proposed addition?
9 A. It's probably a better location for him, too.
10 Q. Clearly for him, because he doesn't have it on
11 his side of the house?
12 A. Yes.
13 Q. One of the other factors you said was that you
14 wanted the, quote, wanted the owners' wishes of the house
15 to flow. So, in other words, one of the paramount things
16 you did in examining where to put this addition was to
17 make sure the internal part of the house flowed?
18 A. Correct.
19 Q. Now, when you first met with Mr. Leeb, did you
20 have any discussion about the use of the garage at that
21 point? Did you suggest to him that could be a suitable

1 place to expand?
2 A. Absolutely.
3 Q. What did he say?
4 A. His answer was that if we incorporate the garage
5 into the design criteria, then what do I do with my
6 garage? Where do I put the garage?
7 That means the garage is going to go back on the
8 rear end of the property, or some portion of the rear
9 portion of the property, because there's no other place to
10 put it.
11 And, most recently, most zoning codes will not
12 allow the garage in the front of the property, so it has
13 to be in the rear of the property.
14 When you start working with the triangle of what
15 is allowed buildable space on the rear of the property,
16 there's no room for a garage.
17 So, therefore, special exceptions are needed.
18 Now, a special exception would mean not only for the
19 neighbor on the southern side of the property, but it
20 would be on the northern side.
21 Q. Could you explain what you meant by special

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1 exception would be required?
2 A. To place a garage outside of the property line,
3 or within the easement, or within the setback line.
4 Q. You mean a variance?
5 A. A variance.
6 Q. Because a special exception is a different
7 creature.
8 A. Right. A special exception is a different
9 creature.
10 Q. You testified, quote, It was the easiest thing
11 for me as an architect was to follow the owners' desire.
12 Is that correct?
13 A. That's correct, a correct statement.
14 Q. Now, let me ask you something. In regard to the
15 subject site which is shown outlined in red in
16 Petitioner's Exhibit No. 4, physically -- not
17 aesthetically, not anything else -- but, physically, is
18 there a place to put this addition that would not require
19 a variance and/or put the garage in a location that would
20 not require a variance?
21 A. The fifty foot setback line comes approximately

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1 right there on the northern line. Fifty feet on the
2 southern portion of the property comes across right
3 through there.
4 You have this little pie-shape right there.
5 Okay? You're fifty feet here and fifty feet there. You
6 have this pie-shape. If you look at the shape of the
7 garage, you can barely get a garage there and turn around.
8 Q. Can you get it in there, physically?
9 A. I don't believe you could.
10 Q. What about on the front of the house? How about
11 right here?
12 A. On the front of the house, the reason why this
13 house is sitting there is a 300 feet setback line across
14 the front of this house right there. Okay? This is --
15 Q. A setback from what?
16 A. Setback from the street. This is known as a
17 parcel. Okay? Which is lot nine, lot ten, Parcel A.
18 Parcel A means when you get Parcel A and you're
19 doing a plot plan, Parcel A is what's left over after all
20 development is done. That's the last lot you can work on.
21 So all developers set that back to the last situation, and

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1 they come back and tackle that.
2 So there's a 300 foot setback line on the
3 recorded plat right there. So to put the garage in the
4 front, more than likely, zoning is not going to allow us
5 to do that because it's the front of the house.
6 And then the second portion -- if I may finish --
7 is that the garage is now lower than the -- lower than the
8 basement floor would be, so the garage is now sitting on
9 the edge of a hillside -- okay? -- in a more than
10 twenty-five percent slope.
11 The code says you cannot build on a twenty-five
12 percent slope or greater, so I have to put a garage in
13 here on stilts? Now, if the county would allow it, I
14 would be very, very, very surprised.
15 Q. Let me ask you this. Are you telling me this
16 area that you said is a 300 foot setback is some sort of
17 forest buffer easement, a hundred year flood plain, or
18 some sort of conservation easement?
19 A. That's a conservation easement, I believe,
20 because it's a stream. There's a stream.
21 Q. I understand. Usually, it's a hundred feet off

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1 the stream.
2 A. A hundred feet off the buffer.
3 Q. Are you saying that there's a plat in Baltimore
4 County that shows this subject lot prohibits development
5 because there's some sort of a conservation line easement
6 or buffer?
7 A. Absolutely.
8 Q. Do you have that?
9 A. Yes, we do.
10 Q. Could I see it, please?
11 MR. McCANN: What are you looking for?
12 THE WITNESS: The plat that would show the
13 buffer. The recorded plat of Velvet Ridge, Plat One,
14 Section Three.
15 Q. Petitioner's Exhibit 3 in this case?
16 A. Okay. There is the 300 foot setback property.
17 This is considered storm drainage. Normally, you have
18 about a hundred foot on the old plat. There's about a
19 hundred feet between here and that line.
20 Q. What's the difference between the setback line
21 and the front of what you called the front of the Leeb

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1 property, the house?
2 A. The front of the Leeb house?
3 Q. You can use whatever you'd like to use to measure
4 that.
5 MR. HOLZER: This is already marked as
6 Petitioner's 14.
7 Q. Let's take a look at that. No. Already marked
8 as Petitioner's 14 is the plat you previously have been
9 utilizing, and there is the setback line.
10 What is the difference between the area between
11 the setback line and the front of the house, if you could
12 tell me?
13 A. Twenty feet.
14 Q. How much?
15 A. Twenty feet.
16 Q. Is twenty feet large enough to put a garage in?
17 A. No, sir.
18 Q. Why not?
19 A. A single car garage. He has a double car garage.
20 You need thirty feet for a double garage.
21 Q. What about in this area right here? Right

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1 adjacent to the house on the garage site?
2 A. From here to there is fifty feet.
3 Q. What is the setback requirement that your counsel
4 is urging on this Board? Is it fifty feet? Is it twenty
5 feet? Is it thirty feet? Do you know?
6 A. If we go back to the development plat, okay, the
7 ruling then, twenty feet on one side, or a combination of
8 fifty, so you can have twenty on one side and thirty feet
9 on the other side. So if we do thirty feet on the one
10 side --
11 Q. Right.
12 A. -- a thirty scale would give us something less
13 than twenty feet on that side.
14 Q. So you have, if you're using the old methodology,
15 the old setback, if that's the appropriate thing, you have
16 at least twenty feet that you would not have to come in
17 for a variance on, on the side of the house that the
18 witness testified in your favor he didn't object to this
19 plan, you would have twenty feet in front of the house
20 which you would not have to ask for a variance to do
21 whatever else you could do with that twenty feet, is that

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1 correct?
2 A. Correct, but it's still not large enough to put a
3 two car garage.
4 Q. That's another question. Can an architect, if
5 they are creative, design garages that are not
6 twenty-eight feet wide, but offset so you have a two car
7 garage, but they don't use the same amount of width?
8 A. If the car makers start making smaller cars,
9 maybe, but we are not there yet.
10 Q. I am sure they will. The question is, you can,
11 can't you?
12 A. No. You need at least twenty-four to twenty-six
13 feet for a two car garage, to open the door and get out.
14 If you want to pull the cars in and not get out of the
15 car, okay.
16 Q. But there are other ways to align a two car
17 garage, other than side by side. Can you juxtapose it so
18 one is ahead of the other?
19 A. And then you will have to back one out, unless
20 it's a drive-though garage.
21 Q. You can offset -- have you ever seen in new homes

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1 in Baltimore County where they have separate garage doors
2 an opposed to one double garage door, with the garage
3 offset? Isn't that architecturally possible?
4 A. That's architecturally possible.
5 Q. And physically possible?
6 A. That's architecturally correct, but in offsetting
7 the garages, meaning one would be behind the other, you
8 will need twelve feet for that garage, and twelve feet for
9 that garage consisting of twenty-four feet, if they are
10 side by side.
11 There are some developers out there that do them
12 twenty-two feet wide -- okay -- by nineteen or twenty feet
13 deep. Now, do you park the cars in them? No. It's
14 normally filled with bicycles. Okay? Because only one
15 car wants to fit in that type garage.
16 Q. You testimony also was -- and I quote -- we could
17 have done something over there -- meaning on this side of
18 the property, not the Allinson side, but the other side --
19 and then you explained there was a driveway, trees, and a
20 ravine that you felt impeded your ability to do something
21 over there, is that correct?

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1 A. Correct.
2 Q. If you want to spend the money to cut the trees
3 down and if you want to spend the money to fill in the
4 ravine, you could have placed the garage in that area?
5 A. May I answer?
6 Q. Yes or no. It really calls for a yes or no
7 answer. Counsel can certainly ask you again to explain.
8 A. Do that again.
9 Q. You said -- and I quote directly -- we could have
10 done something over there -- meaning here -- but the
11 driveway, the trees and the ravine, you know, were in an
12 area, the driveway would have to be moved, the trees would
13 have to be cut, and the ravine would have to be filled.
14 Is that right?
15 A. That, and go to the county for a --
16 Q. For a variance?
17 A. -- for a variance.
18 Q. Now, that could be done if the property line only
19 has a thirty foot as opposed to a fifty foot setback,
20 right?
21 A. To answer your question, yes, something could

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1 have been done. Okay? Yes. We could have a single car
2 garage over there versus a double car garage. Okay? Yes,
3 within that thirty foot area, taking the fact that there
4 are trees, there is a variance, and there's a driveway.
5 Okay?
6 Q. I understand.
7 A. But that really makes for a hardship on this
8 property by doing that.
9 Q. Because of the costs?
10 A. Not just the costs. Not just the costs.
11 Q. Because of the aesthetics?
12 A. Not just the aesthetics.
13 Q. Because of what?
14 A. Cutting down probably forty to fifty large trees
15 between the neighbor of this house and the neighbor of
16 that house.
17 Q. Trees on Mr. Leeb's property?
18 A. Trees that are on some of Mr. Leeb's property and
19 some on the neighbor's house to get a roadbed up through
20 there to make that one to work.
21 Q. You can't go on somebody else's property to build

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1 a road bed.
2 A. That's where I'm headed. Okay? The trees are --
3 some of the trees are going to be right on the property
4 line, so not only Mr. Leeb, but the other neighbor. So
5 what are we going to do with the ditch or the retaining
6 wall?
7 If we had to put a retaining wall there, there's
8 a certain point where it becomes ridiculous to try to do
9 it. Here, we have this tree diameter, we are going to
10 tear the roots up, going to try to put a retaining wall.
11 Now, the retaining wall is going to go down where the old
12 trees were. Nothing wants to stay in its correct place
13 unless we do engineering, like we're going to build like a
14 type Bay Bridge with, then that's when the costs start
15 kicking in.
16 Q. I understand.
17 A. Okay.
18 Q. Let's go back to Petitioner's Exhibit No. 15.
19 Now, Petitioner's 15 is the Allinson property subdivision,
20 and you have drawn the distance of 458 feet from the Leeb
21 property to the existing barn that remains?

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1 A. Correct.
2 Q. What significance does that have?
3 A. The significance we were showing was that the
4 vista, that not only does the Leebs have to see this barn,
5 but that she has to see his house. Standing --
6 Q. Well --
7 MR. McCANN: Let him finish the answer.
8 A. -- standing at the barn -- there's a stream --
9 the barn is higher than the stream.
10 Q. But is it lower than the Leeb house?
11 A. Now, we are walking downhill to the stream. We
12 are going to walk back up the hill towards the Leeb house,
13 fifty feet or so past the Leeb house
14 This bank wants to crest and goes back down to
15 the Leeb house. The Leeb house is approximately four to
16 six feet below, depending where you stand, below the crest
17 of this.
18 Q. The base of the Leeb house?
19 A. The base of the Leeb house, still talking about
20 grade lines, not your eye, walking down, crossing a
21 stream, going back up. Okay? Across this and back down.

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1 The vista for her to see this house even in the
2 wintertime through all the trees is almost like the house
3 isn't even there.
4 Q. Now, you haven't been there?
5 A. I haven't been there, but I reversed it and
6 looked from here to there, and I'm seeing the same vista
7 from the Leebs' point of view.
8 Q. So you've never stood there and looked up?
9 A. No, I have not stood there.
10 Q. Now, let me ask you this. Anywhere within this
11 footprint, a house can go. How far is it from the house
12 here to the back of the Leeb property if one were to place
13 their house there? We don't know?
14 A. We're looking at lot three?
15 Q. Yep.
16 A. Let me check the scale. One inch equals fifty.
17 Point to where you want me to go from.
18 Q. (Indicating.)
19 A. Okay. From that point to this, 300 feet.
20 Q. Okay.
21 A. Okay.

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1 Q. Again, the same topography exists?
2 A. The same, or more or less, because I have not
3 walked this property. But standing here looking at their
4 property, there is some contour lines that want to go
5 here, and you pointed approximately a hundred -- about
6 eighty -- you pointed about sixty feet from that property
7 line.
8 Q. I pointed away from the drainage and utility
9 easement that cuts across, but the reality is, it could be
10 closer? Take a thirty-five foot building, height of
11 twenty-eight foot. Take a thirty-one foot house and put
12 it there. Are you going to see it from Mr. Leebs'?
13 A. Yes.
14 Q. From the house that's built on this lot number
15 three, are they going to see Mr. Leebs'?
16 A. From what floor?
17 Q. First? Second?
18 A. Mr. Leeb stands -- Mr. Leeb and this house will
19 probably see the upper third of the house. Okay?
20 On the first floor at ground level looking up,
21 you will probably not see the Leebs' house.

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1 Q. This is all based on just your determination, not
2 from having walked --
3 A. I wish I had some topo, but I don't.
4 Q. How about lot number four, isn't this the
5 building area here, essentially?
6 A. Yes.
7 Q. So if someone built a house right here, are they
8 going to see Mr. Leeb's house?
9 A. Yes, they will.
10 Q. Is he going to see their house?
11 A. Right now, Mr. Leeb sees the existing barn on
12 this property, yes.
13 Q. Where's the existing barn on this property
14 compared to the building envelope for Number 4?
15 A. We don't really know.
16 Q. You can sort of estimate because --
17 THE CHAIRMAN: Excuse me?
18 MR. HOLZER: I asked the witness to look at
19 Petitioner's Exhibit No. 4, which is the aerial photo.
20 Q. Locate the corner of the barn, locate the corner
21 of the apex of the Leeb property, and sort of give us a

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1 ballpark?
2 A. The scale of the photo is one and sixty -- you're
3 saying from the property line or from the house?
4 Q. Take it from the house.
5 A. From the house, 300 feet from the house to the
6 barn?
7 Q. To the corner of the barn.
8 A. Corner of the barn.
9 Q. On Petitioner's Exhibit No. 15?
10 A. Okay. I will locate that. We are back to --
11 Q. The corner of the house again.
12 A. 300 feet puts us right there, which is just to
13 the right of lot four.
14 Q. To the left?
15 A. Excuse me. To the left.
16 Q. So to the left of where lot number four indicates
17 eighty-seven, whatever it is, square feet, 87.7 square
18 feet, it would be right to the left of that where the
19 existing barn is now?
20 A. Correct.
21 Q. And so the potential house for lot number four

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1 could even be closer than that? It could be even closer
2 than that?
3 A. Potentially, the house could be anyplace in here.
4 Q. Right.
5 A. Now, taking into consideration that you're going
6 to need 10,000 square feet of septic system and this is
7 going to be the downhill side, you'll probably eat most of
8 this portion of the property up in septic system, so the
9 house is probably going to be in this area, more than
10 likely, and that is probably closer to the panhandle lot
11 situation which is right there.
12 Q. And if it were here on the L-shaped portion,
13 you're going to see Mr. Leeb's house and –
14 A. The crest of this hill does something like so,
15 so, yes, you will see both, because we can see that barn.
16 Q. I thought that was his testimony, and one of your
17 exhibits, the photos, in fact, show a barn, don't they?
18 A. Yes, but remember, you're going through a vista
19 of trees so we can see it in the wintertime, but in the
20 summertime, I am fairly certain you won't see it.
21 Q. What happens when they tear those trees down? Do

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1 you know how far it is from the back of Mr. Leeb's house?
2 Not to the corner here, to the apex, but to his property
3 line right here, do you know how far that is? Can you
4 measure it for me, please?
5 A. From here?
6 Q From the corner of his house.
7 A. Sixty feet.
8 Q. So it would be sixty feet from the corner of his
9 house to this location right there?
10 A. Correct.
11 Q. Sixty. And that's his back yard?
12 A. Yes.
13 Q. You don't know, for instance, whether or not the
14 if the Allinson property is developed, whether or not
15 there would be any of these trees that you're using that
16 you're saying prevent a vista back and forth from still
17 being there, do you? You don't know that?
18 A. No, I don't know that.
19 Q. And some may be taken down for the building
20 envelope of the house, some might be taken down for the
21 septic reserve area?

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1 Mr. McCANN: Objection.
2 MR. HOLZER: I will withdraw it.
3 Q. Now, in light of the Zoning Commissioner's in his
4 opinion below in this case, did you reduce the height of
5 the proposed additions to the Leeb house, or did you raise
6 them, the height of the house itself?
7 A. The existing house? No. The new house?
8 Q. The new house. The addition to the new house?
9 A. I missed that one word. We – we, meaning my
10 office -- went out and checked the pitch of this roof and
11 found -- we were assuming that roof was eight/twelve
12 pitch, and we – I mean eight/twelve pitch – and we found
13 out it was closer to seven/twelve.
14 So, therefore, now we're in the working drawings,
15 construction documents, so taking that into the theme of
16 that portion as the key to my roof pitches, that reduced
17 that rest of the house, the roof pitch down, because we
18 went back to seven/twelve on everything, and that reduced
19 that roof.
20 Q. Well, you say -- that's what confused me -- you
21 said it reduces the pitch of the house from Petitioner's

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1 13, which it what you showed the Zoning Commissioner, but,
2 in fact, the house is still three feet higher than the
3 existing house today?
4 A. Correct. Now, the reason why --
5 Q. You already explained the reason why.
6 A. Okay.
7 Q. Now, on this drawing, just like when you look at
8 a footprint, if you look at a simple straightforward
9 drawing of what the new proposed building will look like,
10 it's one dimensional?
11 A. Correct.
12 Q. The only way we can see a sort of two dimensional
13 is by looking at the right side elevation?
14 A. The right side, or, actually, it's the left side
15 if you're in the rear.
16 Q. That purports to give you some concept of the
17 mass itself, is that correct?
18 A. It starts to give you the dimension of the
19 structures.
20 Q. The mass of this new building will appear to be
21 greater than what the existing building looks like from

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1 the rear today, will it not?
2 A. No, sir.
3 Q. You say that for all of the aesthetic reasons
4 that you have pointed out earlier?
5 A. Yes, sir.
6 Q. The fact of the matter is, though, the appearance
7 of the building will have more roofs, it will have a roof
8 on the garage side and actually a porch that does not
9 exist there now, is that correct?
10 A. Correct.
11 Q. This porch will literally run from the garage
12 door along the whole side of the house to where the
13 front -- all around the front of the house?
14 A. Correct, but that's not --
15 Q. It's taking a place that could have been utilized
16 for an addition to the garage, perhaps, is it not?
17 A. Perhaps.
18 Q. Now, when I look at this right now, this is just
19 a little screened-in porch. All this stuff started off
20 with a patio. This whole house was built initially with
21 just a patio there.

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1 Then we have a porch built. Then it's screened
2 in. Then it's glassed in. And now it's not only going to
3 be glassed in, but it's going to have on top of it another
4 porch with another roof?
5 MR. McCANN: Objection.
6 THE CHAIRMAN: The question?
7 Q. Is that a fair analysis of the progression so
8 far?
9 THE CHAIRMAN: Still an objection?
10 MR. McCANN: Yes.
11 THE CHAIRMAN: It seemed more a statement than a
12 question, counselor.
13 Q. Is it a fair progression to say that what started
14 off when this house was constructed as nothing more than a
15 patio has grown into a two story addition that's within
16 the legal setback?
17 A. That's what we do to houses. Houses grow.
18 Houses change. Houses evolve. Okay?
19 Q. But they normally don't evolve into the buffer
20 area or setback area that the county provides to ensure
21 separation of homes, isn't that correct?

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1 MR. McCANN: Objection.
2 MR. HOLZER: I will withdraw the question.
3 Q. Are you familiar at all with variance law
4 requirements?
5 A. I am familiar with a lot of it, yes, sir.
6 Q. Do you know that until the Baltimore County
7 zoning regulations and the case law addressed them, that
8 variances are not a favored event to occur?
9 MR. McCANN: Objection. I think, really, at this
10 point, Mr. Holzer is essentially making his closing
11 argument with no intention of Mr. Keeney actually
12 answering these questions. He's asking questions and
13 withdrawing. We are getting to the point of making
14 statements and withdrawing.
15 MR. HOLZER: I'm entitled to question the
16 witness.
17 THE CHAIRMAN: Excuse me, counsel. Let him
18 finish.
19 MR. McCANN: It clearly calls for a legal
20 conclusion. He's not a legal expert. He's not here to
21 testify as to what the variance standard does or does not

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1 mean or what the case law says it means. So I object on
2 both those grounds.
3 THE CHAIRMAN: I will overrule your objection. I
4 think he can answer the question. He's qualified as an
5 expert. He stated his qualifications.
6 But I would appreciate if the questions are
7 questions you believe he's capable of answering.
8 A. I'm not up on the case law. I do understand the
9 zoning laws.
10 MR. HOLZER: I don't know that that answers the
11 question, but I don't pursue it any further.
12 A. If you care to rephrase it again, I will answer
13 the question.
14 Q. Do you believe it is appropriate to grant a
15 variance for aesthetic reasons?
16 MR. McCANN: Same objection.
17 THE CHAIRMAN: I will sustain the objection.
18 Q. Mr. Keeney, tell us what we couldn't find out
19 before from Mr. Leeb, because he honestly didn't know how
20 many square feet exist in this home today?
21 A. If you can show me some paperwork. How many

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1 square feet in the existing house? About 2800 square
2 feet.
3 Q. He said thirty-eight.
4 A. Plus the second floor.
5 MR. McCANN: You asked the question. Let him
6 answer.
7 Q. What is the total?
8 A. Well, you have 2800 square feet on the first
9 floor, and that's the footprint of the house. That's what
10 we're talking about.
11 Q. I asked a simple question. What is the total
12 square footage of this house?
13 A. I would have to tell you the exact number. The
14 second floor is maybe a thousand square feet, so you have
15 2800 -- it might be --
16 Q. You didn't look at that when you were doing your
17 architectural rendering?
18 A. Absolutely. I can't tell you the exact square
19 footage.
20 Q. Approximately?
21 A. Within a couple hundred feet, I can approximate.

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1 THE CHAIRMAN: He's answered the question to best
2 of his knowledge.
3 Q. 3800 square feet?
4 THE CHAIRMAN: Whatever you heard.
5 Q. 2800 plus a thousand?
6 THE CHAIRMAN: That was his answer, yes.
7 Q. Okay. Now, what is the added area, the square
8 footage of the added area that will now be part of the new
9 home?
10 A. If I may refer to a note or not?
11 Q. You can refer to anything you want, to help you.
12 THE CHAIRMAN: While he's doing that -- off the
13 record.
14 (Discussion held off the record.)
15 A. Okay. To answer the question --
16 Q. Would you please tell me what you're giving us
17 figures for?
18 A. I'm going to, sir. The screened porch will
19 consist of 256 square feet. Let me read it to make sure I
20 did it right. Let me withdraw that. The screened
21 porch -- this is the screened porch, which is the right --

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1 -- the left rear of the elevation -- okay -- approximately
2 256 square feet of screened porch.
3 The deck is 336 square feet. And at the last
4 time, reduced it to -- this particular plans shows the
5 entire 136 square foot. I mean, 336 square foot.
6 Q. So this plan that we have on the board, which is
7 Petitioner's 12, is, in fact, 336 square feet?
8 A. Yes.
9 Q. And that's for the screened-in porch?
10 A. Yes.
11 Q. What about the glass enclosed porch?
12 A. The glass enclosed area is about 260 square feet
13 or something very close to that. It's under 300 square
14 feet.
15 Q. That's just for the first floor, or second and
16 first?
17 A. It's the first floor and second floor.
18 Q. 260 square feet for the glass enclosed first
19 floor, plus the porch over top of it?
20 A. The porch, the top goes back to there. That does
21 include the balcony.

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1 Q. So you're extending what existed out, I think you
2 said eleven --
3 A. Probably eleven feet long, correct.
4 Q. That's not going to be enclosed? That will be
5 open, an open porch, the second story porch?
6 A. It's an open porch with a roof over it, yes.
7 Q. I will try to finish up. Can you draw on any
8 plan that you choose to draw that's in evidence, where on
9 the subject property the twenty foot setback line exists,
10 the thirty foot setback line exists, and the fifty foot
11 setback line? Could you draw that in red, or if it's
12 already drawn, then that is great. I didn't happen to see
13 it. Now, you're looking at Petitioner's Exhibit No. 14.
14 A. This is a thirty scale. And we are talking about
15 a twenty foot side yard. I'm going to mark it twenty
16 feet.
17 Q. Yes. Talking about thirty feet on the other
18 side?
19 A. That is correct. I'm going to mark that thirty
20 feet. The northern portion is twenty feet and the
21 southern line is at thirty feet.

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1 Q. So the northern portion where the twenty foot
2 setback actually comes through the house, comes through
3 the wood deck, comes through the screened porch, and --
4 A. Touches the screened porch.
5 Q. Well, if you've drawn it --
6 A. Just barely touches the screened porch.
7 Q. Now, this building was the proposed addition that
8 is being abandoned, is that a correct statement?
9 A. Yes. May I "X" this off?
10 Q. Yes. For the record, he has X-d off the portion
11 that was the subject of the 2001 hearing.
12 A. This line is slightly off. It's slightly lower
13 than this. Twenty feet puts us right at the corner of
14 that screened-in porch, the northern line.
15 Q. Now, I would request that you also draw in the
16 fifty foot setback line.
17 A. Okay. I have so marked fifty feet, in blue.
18 MR. HOLZER: Thank you. I have no more
19 questions. Thank you.
20 MR. McCANN: I have some follow up. Do you want
21 to take a break? Five minutes.

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1 (A recess was taken.)
2 REDIRECT EXAMINATION
3 BY MR. McCANN:
4 Q. Mr. Keeney, I'm going to start by spending a
5 little bit of time where Mr. Holzer didn't finish, with
6 the things you took into consideration in your opinion
7 that a denial of this variance would be practical
8 difficulty and create an unreasonable hardship. Mr.
9 Holzer mentioned the additional costs of moving the
10 proposed improvements to other areas.
11 You mentioned, you testified, about the age of
12 the home. Do you recall that testimony?
13 A. Correct.
14 Q. You mentioned the aesthetics that Mr. Holzer
15 asked you about, is that correct?
16 A. Correct.
17 Q. You also talked about the convenience or the
18 living space aspect of the proposed improvements, that is,
19 having these improvements in an area where Mr. and Mrs.
20 Leeb can use them, as opposed to another area where it may
21 not be so convenient?

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1 A. Correct.
2 Q. But in your direct examination, you also
3 mentioned a couple other things, didn't you?
4 MR. HOLER: Objection. I asked him if there was
5 anything else he considered, and he said there was nothing
6 else. Plus, he's leading.
7 THE CHAIRMAN: It is leading. I think you should
8 rephrase the question.
9 MR. McCANN: I will. Thank you.
10 Q. Would you agree, Mr. Keeney, that in addition to
11 those things that we just talked about --
12 MR. HOLZER: Objection. That's leading.
13 THE CHAIRMAN: Sustained.
14 Q. Are there any -- and you testified, but correct
15 me if I'm wrong -- are there any constraints on this lot
16 that you took into consideration in the proposed
17 improvements in terms of the lot itself?
18 A. There are a number of constraints on the lot.
19 You know, it's a weird lot.
20 Q. I'm sorry. What was that word you used?
21 A. It's a weird lot. Okay? Here, you know, the

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1 street is there, but we're going to talk about the 300
2 foot setback onto the rear of the property.
3 You have the first constraint on the property is
4 that the basement walk-out, if you walk fifteen to twenty
5 feet away from the basement, you're at eight or nine feet
6 down from the basement area. That's how quickly it drops,
7 fairly quickly, real quickly.
8 The other constraint is that, and one of the
9 constraints I wanted to solve in my particular design was
10 how do you get to the front entrance? Right now, the
11 front entrance to the existing house --
12 Q. Talking about the lot itself?
13 MR. HOLZER: Objection. It's non-responsive. If
14 he knew what he asked, he's giving an answer to something
15 else.
16 THE CHAIRMAN. I'll allow his answer.
17 A. I'm headed in the part of the restraints are that
18 the side yard is so steep, that that is a restraint on
19 what you can put there on the side of the house as an
20 addition because it's so steep. Where do you put it?
21 If you put the garage on that side, the upper

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1 portion is two feet into the ground, and the rear portion
2 is twelve feet or fourteen feet into the ground, so that
3 is a structural restraint, not an aesthetic restraint, but
4 a structural restraint.
5 Q. Just identify for me -- I want to cut to the
6 chase -- just identify for the Board, if you will, what
7 constraints there are on this lot that you think affect
8 the ability to put these proposed improvements anywhere
9 else other than where they are now? Just identify them,
10 if you want, and if you need to get into more detail, we
11 will. You mentioned a slope?
12 A. The slope of the lot all the way around the
13 property, front and back.
14 The slope of the rear of the property which
15 slopes towards the front. That's one constraint. The
16 other constraint would be the proximity of the property
17 line to the existing structure.
18 That's where I'm heading. That's a constraint.
19 What can I do with it? The other restraint is the
20 driveway and how the driveway wants to fit into the
21 property. That's definitely a constraint on how you view

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1 the structure.
2 Q. How about the shape of the lot, is that a
3 constraint?
4 MR. HOLZER: Objection. I mean --
5 THE CHAIRMAN: Overruled. You can answer.
6 Counsel, I think we have heard most of this testimony on
7 direct, and I think he defended himself with most of the
8 answers in response to the protestants' questions.
9 MR. McCANN: I agree. I am repeating some of his
10 direct testimony. I don't have anything else. Thank you.
11 THE CHAIRMAN: There's a couple questions from
12 the Board.
13 MR. QUINN: Is it my understanding from what you
14 had on your new proposal, that you're changing the entire
15 roof line of the structure?
16 THE WITNESS: Correct.
17 MR. QUINN: With the addition?
18 THE WITNESS: We are keeping the existing roof
19 there, and we are, because the existing roof has a number
20 of pitches, slopes to the roof, we are going over top of
21 that with a new structure to change the roof height -- not

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1 height -- but the roof pitches.
2 So we have a roof that is a lower roof and we are
3 going up this, like, and going that way, just to get all
4 the roofs into the same pitch.
5 MR. QUINN: So you're not removing the roof?
6 THE WITNESS: No.
7 MR. QUINN: So it's really the facade --
8 THE WITNESS: Absolutely. It's a complete -- I
9 call it a Faux house. We are not touching the inside of
10 the house. We are going to go completely over and around
11 the existing house.
12 MR. QUINN: One last question. The bottom photo
13 that you had there, it's originally proposed, where that
14 looks like a little porch there, or whatever, I assume
15 that's comes out and encroaches more into the setback
16 area, does it not?
17 THE WITNESS: It is an angle. It comes out on an
18 angle -- it comes out on an angle and it encroaches -- the
19 porch, the porch right there, by cutting the porch off, I
20 took some distance off the porch.
21 Then I used this little appendix, let's call it,

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1 to go out and cover a portion of that porch. Not much.
2 So, yes, it is still been the setback line, to answer your
3 question. Is that your question? That was your question?
4 MR. QUINN: You're going to eliminate it under
5 the new plans?
6 THE WITNESS: Yes.
7 MR. QUINN: Which brings it back close to the
8 current footprint?
9 THE WITNESS: Yes. We are not increasing the
10 footprint.
11 MR. QUINN: You're not bringing it closer to the
12 rear property line?
13 THE WITNESS: No, sir.
14 THE CHAIRMAN: Okay. I do have a question for
15 you. In Exhibit 12, I was somewhat confused as to the
16 height of the roof.
17 Now, is it going to be higher now in your most
18 recent proposal, in Exhibit 12, or is it going to be
19 lower?
20 THE WITNESS: The existing roof on Exhibit 12,
21 top right, says 28 feet. That's existing roof. And we're

1 proposing to add approximately three feet.
2 THE CHAIRMAN: So it is being raised?
3 THE WITNESS: It's going to be raised, but it's
4 being raised as a roof. Aesthetically -- we are on
5 aesthetics again -- when you look at the roof, you only
6 see the absolute top high. When you go by a building
7 sixty miles an hour, what you normally see is the top of
8 the roof. Okay? So your vision is going to be the same.
9 THE CHAIRMAN: Any further questions based on
10 questions of the Board?
11 MR. HOLZER: No.
12 MR. McCANN: No.
13 THE CHAIRMAN: You may step down.
14 THE WITNESS: Thank you.
15 MR. McCANN: That would be our case, Mr.
16 Chairman, with the exception I did have a couple letters
17 from neighbors.
18 THE CHAIRMAN: Do you want to share them with
19 counsel?
20 MR. HOLZER: I guess I would object to these as
21 not having the ability to cross examine the individuals.

1 THE CHAIRMAN: I understand it's the general
2 position of the Board is that we take them in to consider
3 them for whatever value that we put to them.
4 MR. HOLZER: Other than seeing that they have
5 signed these, they all look exactly the same, actually, so
6 it looks like it was prepared by someone. I will object.
7 I understand the Board's ruling.
8 THE CHAIRMAN: All right. We'll admit them with
9 the objection as noted.
10 Also, I have a question in terms of the Baltimore
11 County regulations. Are you introducing those, or just
12 proceeding --
13 MR. McCANN: I don't think it's a matter of
14 evidence. I think it's a matter of public record. I do
15 believe that the zoning map is in, is that correct?
16 MS. BRASSIL: From 1950, yes. Petitioner's No.
17 10.
18 MR. HOLZER: That didn't come in, and I don't
19 have -- it was introduced, but it wasn't accepted, and I
20 wanted to make a statement about that document.
21 THE CHAIRMAN: What is that?

1 MR. HOLZER: The zoning map that came in,
2 whatever number that is, or the one that came in right
3 before that, or right after that.
4 MS. BRASSIL: I don't have it.
5 MR. HOLZER: You don't have it? Board of
6 Appeals, Petitioner's No. 10, this document, I have no
7 objection in that this document appears to be from the
8 county file and says whatever it says.
9 I have an objection that it be considered in any
10 fashion in regard to this particular case because, if you
11 look at the documentation, the photography was 1953.
12 There's no documentation as to whether or not the
13 zoning that existed at that time is consistent with
14 whatever time frame the petitioners are trying to make it
15 accurate.
16 In other words, what they're saying, Oh, it was
17 zoned R-40, and, therefore, the setback was twenty instead
18 of fifty.
19 My objection does not go to the fact that this
20 appears to come from the zoning office. My objection goes
21 to the relevancy of this document with their argument.

1 THE CHAIRMAN: Of course, it says R-40 on there.
2 MR. HOLZER: I know that. And the question is,
3 is that relevant to whatever time frame we need in this
4 case.
5 THE CHAIRMAN: It will stand for whatever it
6 stands for.
7 MR. HOLZER: I just wanted that clear, for the
8 record.
9 MR. McCANN: That's admitted then?
10 THE CHAIRMAN: Yes.
11 MR. McCANN: Are you calling Mrs. Allinson?
12 MR. HOLZER: I'm calling her when you're
13 finished.
14 MR. McCANN: If you weren't calling her, that
15 makes a difference in my case. Then I'm resting.
16 MR. HOLZER: If I don't call Mrs. Allinson, that
17 cuts you off from another witness?
18 MR. McCANN: I intend to ask Mrs. Allinson some
19 questions. If you weren't going to call her, I was going
20 to ask her myself.
21 THE CHAIRMAN: It's my understanding the Board

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1 generally sits to about four or so. Off the record.
2 (Discussion held off the record.)
3 THE CHAIRMAN: We would like to try to finish if
4 we can.
5 MR. HOLZER: For the record, I would note that
6 the case started at 10 o'clock, and the protestants are
7 just getting their case on at approximately 3:30 in the
8 afternoon, just for the record.
9 THE CHAIRMAN: Off the record.
10 (Discussion held off the record.
11 THE CHAIRMAN: Proceed.
12 MR. HOLZER: Ms. Allinson.
13 M A R Y A L L I N S O N,
14 having been called as a witness, was duly sworn, and
15 testified as follows:
16 DIRECT EXAMINATION
17 BY MR. HOLZER:
18 Q. Mrs. Allinson, Would you give us your full name
19 and present address, please?
20 A. It's Mary Allinson, 2707 Caves Road, Owings
21 Mills, Maryland.

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1 Q. What I think I will do before you get into any
2 discussion that you'd like to address the comments that
3 have been made today, were you in attendance at the 2001
4 zoning hearing?
5 A. Yes.
6 Q. Before the Zoning Commissioner?
7 A. Yes.
8 Q. Did you attend the zoning case in this particular
9 case before the Zoning Commissioner?
10 A. Yes.
11 Q. You offered testimony in both of those instances?
12 A. Yes. Right.
13 Q. First of all, let's describe where you live, and
14 if you would look at the aerial photo that's been placed
15 up on the board as Petitioner's No. 4, can you identify
16 where your property is, and actually -- where's the other
17 exhibits, No. 15?
18 Let's start with the aerial photo, if you could,
19 and just to some extent, tell us where you live, if you
20 could show it to us by standing up there?
21 A. This is the Leeb property here. And my property

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1 starts right here at this corner, and goes down like this
2 and over like this, and goes all the way over here. Our
3 house currently is over on this lot over here.
4 Q. Looking at Petitioner's No. 4 -- first of all,
5 how much acreage do you have?
6 A. Nine acres.
7 Q. When did you buy it?
8 A. In July of 1993.
9 Q. Just to get this matter out of the way, you heard
10 the gentlemen who resides next to Mr. Leeb testify that he
11 got a variance?
12 A. Correct.
13 Q. Were you in the neighborhood at that time when he
14 asked for it?
15 A. No.
16 Q. So there was no ability of you to appear at that
17 variance hearing?
18 A. That is correct.
19 Q. Now, in terms of Petitioner's Exhibit No. 15,
20 which purports to show a third amended plat of Jack and
21 Francis Lachman for the area that you sort of described as

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1 your property, is this somewhat accurate?
2 A. Yes.
3 Q. Could you just tell us when this was developed or
4 proposed to be developed? Give us some history.
5 A. The property was actually developed when we
6 bought it. It was six different lots, and we brought it
7 down to being less lots.
8 Q. So, in other words, when you bought your acreage,
9 it was actually more lots than are proposed or shown on
10 Exhibit No. 15?
11 A. That is correct.
12 Q. You reduced the number of lots?
13 A. Yes.
14 Q. To these that are shown on this exhibit?
15 A. Correct.
16 MR. McCANN: Can we ask Mr. Holzer try not to
17 lead. He had a good point when I was questioning. I
18 think he should follow the same rule.
19 MR. HOLZER: I wish I'd be more successful than
20 maybe as you'll be.
21 THE CHAIRMAN: Duly noted.

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1 Q. Could you tell us where you live on this exhibit?
2 A. Can I come down?
3 A. Sure can.
4 A. There is our house over here.
5 Q. Does it show in this exhibit -- it does show an
6 existing one story dwelling to remain?
7 A. That is correct. This is the lot with the barn
8 that will remain. And this lot over here is the lot with
9 the riding ring.
10 The gate crosses over to about here. That's the
11 metal building they keep calling the barn. The indoor
12 riding ring.
13 Q. Could you show us on the other aerial photo that
14 is Petitioner's 4?
15 A. This is the indoor riding ring right here, and
16 this is the barn where the horses are.
17 Q. Now, insofar as -- you can sit down -- insofar
18 as the history of Mr. Leeb's efforts, could you tell us
19 what occurred back in 2001 that got your attention to his
20 request?
21 A. Mr. and Mrs. Leeb said they wanted to put some

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1 additions on their house, and they asked me if I would
2 sign a letter saying it was okay with me.
3 And what they told me was basically it impacted
4 on Ms. Holdridge's property. But then when I took a look
5 at it, what they were doing was putting two additions on,
6 and one of the additions was proposed coming directly back
7 at my property like about -- this may not be exact -- but
8 it was about twenty feet into the setback.
9 So I told them I wouldn't sign the waiver for
10 them. And then they applied for a variance, and I came
11 for the hearing. And what it turned out during that
12 hearing was it came up that their house actually needed a
13 variance because it wasn't built within the twenty foot
14 setback.
15 So when that issue came up, they said that if I
16 agreed to let them have the variance for the structure
17 that was already there, that they would drop their request
18 for two additions.
19 Q. That was in Case No. 01-390-A, the first case?
20 A. That was the first case.
21 Q. Did you agree to drop your objection to the

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1 variance to permit them to legitimize the 13.7 feet from
2 the property line?
3 A. That's correct.
4 MR. HOLZER: Now, there were certain photographs
5 that were submitted to the Zoning Commissioner at the time
6 that I would like to show the Board, if I may, Mr.
7 Chairman. You have them. They're in an envelope.
8 Q. Ms. Allinson, I show you what was marked below as
9 Protestant's Exhibit 2A, B, C and D. Can you identify
10 these photos, please?
11 A. These are photos that I took from my property of
12 the Leebs' back yard. And on the first photo, I put --
13 well, I put them on a number. 2A, I put a little pink dot
14 showing where my property line ends, and it shows the
15 Leebs' back yard. It's actually my property on the far
16 side of the tree. And then it comes straight across and
17 it shows that the gazebo is also not on their property.
18 Q Could you point out where you were standing when
19 you took this photo and what corner or point does it
20 purport to show?
21 A. This one right here. The line between my

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1 property line and Holdridge's property line where it meets
2 the Leeb property.
3 Q. Okay. On 2A, Protestant's 2A, you put an ink dot
4 right sort of at the base of the tree. Is that your
5 representation of that point?
6 A. Yes.
7 Q. Of course, the Leeb house is in the background?
8 MS. BRASSIL: Before you go on --
9 MR. HOLZER: That should be CBA, Protestant's 1A,
10 B, C and D.
11 Q. Now, I show you what would be --
12 THE CHAIRMAN: Hold on one second. Have you seen
13 these?
14 MR. McCANN: I have not. No objection.
15 Q. This would be CBA Protestant's 2B. Again, what
16 does this purport to show?
17 A. This shows approximately where the property line
18 ends. I had it surveyed two times, and the stakes were
19 taken out, but it should be within a couple inches of
20 where that mark is on the photograph.
21 Q. So this picture was taken standing on your own

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1 property, looking towards the rear of the Leebs' house, is
2 that correct?
3 A. Yes.
4 Q. Now, who's cutting the grass that actually
5 appears to be on your property?
6 A. I believe the Leebs are having it cut.
7 Q. So up to where that blue dot is, the ink dot on
8 the photograph then, is actually your property, not part
9 of their back yard?
10 A. That is correct. And like I said, we had it
11 surveyed twice, and they took the stakes out.
12 MR. HOLER: I would offer this as Protestant's
13 1B.
14 Q. Protestant's 1C is basically the same?
15 A. Yes, just from further back.
16 Q. Protestant's 1D, now, there is the dot and a
17 line. Could you tell us what those lines that you drew on
18 there signify?
19 A. The line is approximately where our property
20 would come across, and the line on the left is where the
21 division is between our property and Holdridge's property.

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1 Q. So, in effect, could you orient that for us?
2 A. It would be right here.
3 Q. So you were referring -- this line, you were
4 referring to this line?
5 A. Right.
6 Q. And this line to the right --
7 A. Would be --
8 Q. -- is the red property line?
9 A. Right.
10 Q. Now, what happened next? After you agreed not to
11 oppose the variance, and the proposed addition was dropped
12 by the Leebs, then what happened?
13 A. In 2004, they came back. Leslie Leeb called me
14 up and said that they needed new siding and that their
15 porch was falling down, and they needed a variance to put
16 glass in the porch and to put the new siding on.
17 So she brought over the plan, which was the
18 original one that was submitted, wherever it is.
19 Q. You mean No. 13, the small one here?
20 A. Yes. And I said to her, Well, it looks like
21 you're putting on two additions like the first time you

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1 requested them in 2001.
2 And she said, Well, they are not additions,
3 they're just putting glass on.
4 And I said, It looked like a second story. And
5 she said, There was no second story.
6 So I looked at the drawings, and where the deck
7 was that they got approved during the variance that Mr.
8 Leeb had built himself without seeing where the property
9 lines were, that's where they want to put the screened
10 porch.
11 And then the porch that he also built that wasn't
12 included in the first variance, it's not mentioned in the
13 first variance as being included --
14 Q. Which porch is that that you're referring to, so
15 we can be clear? Maybe what we should to is look at the
16 pictures and you can tell us what the pictures show.
17 I'm looking at Petitioner's Exhibit No. 6, which
18 was one of the photographs of the rear. Could you point
19 out to me what you were referring to as not having had a
20 variance granted?
21 A. This part, the enclosed screened porch, isn't

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1 mentioned in the first variance. Just the deck and the
2 gazebo which over on Holdridge's property.
3 So he told me that they had to get a variance to
4 put the glass in and to put new siding on, which I know
5 that you didn't need a variance for that type of thing.
6 So I said, Well, what about the second story that
7 you're putting on? And she said, Well, it wasn't really a
8 second story.
9 But then it came out that the second story porch
10 was being brought out to the end of where the screened
11 porch was that Mr. Leeb had built himself. Now, that
12 screened porch --
13 Q. Wait a minute. Explain what you just said again.
14 I was trying to take this exhibit down, so we could see
15 what you're referring to.
16 A. This area was the deck.
17 Q. You're referring to the area --
18 A. The proposed screened porch.
19 Q. The glass porch now?
20 A. No. That's the proposed screen porch where they
21 were going to put the first story screen porch. This over

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1 here was the screen porch that Mr. Leeb put in that wasn't
2 granted a variance in the first one, that he wants to
3 enclose it with glass and bring the second story out all
4 the way over to where that porch is.
5 And my understanding is that that screen porch
6 that he built is three feet into the setback line, into
7 the fifty foot setback, which this side has a fifty foot
8 setback.
9 So the reason they were bringing it over was to
10 ask me to sign off on it, thinking I wouldn't know that it
11 was within the fifty foot setback.
12 So, again, I wouldn't sign what she brought over,
13 so we went to the hearing.
14 Q. You mean the hearing in this case below?
15 A. Yes.
16 Q. Let's talk, if you would, talk about what your
17 concerns are in regard to this proposal.
18 First of all, the implication is that on the
19 drawings that they made and measured from your house to
20 the Leebs' house, it appears that it's approximately 700
21 feet plus or minus from your house.

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1 Is that your concern, what you can see from your
2 house, or is there some other concern?
3 A. My concern isn't our house. You can see their
4 house in the winter, but that's not my concern.
5 We bought the property knowing it had been
6 subdivided, and we have been using it as a farm for the
7 past twelve years.
8 Our kids have grown up, and we bought it as an
9 investment for the future, knowing that it had subdivided
10 lots on it. We bought it because it was in an exclusive
11 area. We did walk the property before we bought it and we
12 walked along the neighbors' lines to see what was there
13 and what wasn't there.
14 And the way it is, from the two lots that are
15 close to the Leebs, the one that currently has a barn on
16 it, that barn will stay and the house will be down in the
17 field.
18 Now, from the field -- I go out in the field all
19 the time to pet the horses --
20 Q. You're referring to lot number three?
21 A. Yes.

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1 Q. Lot number three is the barn that we can see
2 which is on Petitioner's No. 4, which is this right here?
3 A. Correct.
4 Q. That going to stay?
5 A. That's going to stay.
6 Q. So where do you propose the house?
7 A. The house is going to be in here somewhere.
8 Q. Indicating on Petitioner's 4, the open field
9 area?
10 A. Yes. So that's directly down from the Leebs'
11 house.
12 Q. Could I interrupt and say, if you're standing in
13 this field right where this is, let's say in the
14 wintertime -- it looks like this picture was taken in the
15 wintertime -- can you see the Leebs' house now?
16 A. Yes, I can see the Leebs' house. And I go out
17 into the field all the time, and I always have, and you
18 can see the Leebs' house.
19 Q. How much of the Leebs' house can you see right
20 now?
21 A. I can see it all. I can see it from the barn.

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1 This is the end of the barn I go in. And I can see it
2 from out in the field.
3 Q. When you say -- you heard the testimony of the
4 architect that maybe the only part you would see would be
5 the upper part of it -- right now, can you see the lower
6 portion of it, or the garage doors?
7 A. Yes. I can see the entire house from the end of
8 the barn, and from out in the field where the proposed
9 house would be.
10 Q. So the proposed house on lot number four will be
11 closer to -- I'm sorry -- lot number three will be closer
12 to the Leebs than even the barn?
13 A. Oh, yes. Yes. And this lot, which this lot over
14 here --
15 Q. That's lot number four, I think?
16 A. Lot number four, the proposed house is like in
17 here, so they have a direct shot over to the Leebs' house
18 Q. So you're saying on Petitioner's 4, the proposed
19 house site will be, I guess, east of the riding -- what do
20 you call it?
21 A. Riding ring.

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1 Q. -- riding ring that's shown in silver or gray on
2 that exhibit?
3 A. Plus another thing is this is the septic area for
4 the lot. So the trees right behind the Leebs' house,
5 which are all on our property, will, I don't know if they
6 will take them all down, but I am sure they will have to
7 take a number of them down for the septic area, and that
8 is on the drawings, that is the approved septic area.
9 Q. Now, what is your concern about if this proposed
10 addition is approved and the variance granted, what is
11 your concern about your lots three and four. How will
12 they be harmed, if in any way?
13 A. My concern is, first of all, they bought the lot
14 initially and had the house built. And I know when you
15 have how houses built, the envelopes are clearly marked on
16 every end.
17 So to bring it over six feet, I don't know how
18 either the builder and/or the owner couldn't know.
19 Usually, the owners go and look at their house to see how
20 it's coming every couple of days.
21 So, okay, that was a mistake. But then after we

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1 moved in, I saw Mr. Leeb building his screened-in porch,
2 his deck and his gazebo. And I made the assumption that,
3 you know, what he was doing was okay, because we always
4 checked what the regulations are before we do anything.
5 And then I come to find out in May 2001 that he
6 had built the screened porch, and it was three feet into
7 the setback.
8 He had also built the deck which what was way
9 over to the property line, and a gazebo that he actually
10 put on the neighbor's property.
11 And he said to me, Well, he didn't know where the
12 property lines were. Well, every time we have had the
13 property line marked, it comes up to his yard over here,
14 and the stake disappears.
15 So if I were building something, first, I would
16 have a surveyor to come out to make sure I was within
17 where I was supposed to be.
18 And second of all, I'd get a permit before I
19 built things in my yard.
20 So my big concern is he put his house where it
21 shouldn't have been, which, okay, that was before I moved

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1 there.
2 Then he built an addition. Then he asked for a
3 variance in 2001, and he said that if we didn't make a
4 fuss about getting the variance for where the house was,
5 that he would drop the proposal for the two additions.
6 So I took his word at it. And then, three years
7 later, they come back, and basically, they have another
8 architect, but basically what it is, it is the same two
9 additions that they wanted to put on, and in the same
10 place.
11 So, you know, I'm not opposed to him making his
12 house look nicer, but I think he should have to stay
13 within the county regs like everybody else does.
14 When I go to sell those pieces of property,
15 people are going to be very, very picky about what's in
16 the neighborhood, how it is. He uses -- you can see from
17 those photographs -- he already uses a good twenty feet of
18 our property, even though he's been told not to, as his
19 own.
20 So if he puts these two, encloses these two
21 additions, he'll probably come back a year or two from now

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1 and then say, I want to built them twenty feet more into
2 the back yard.
3 And his house sits up on a hill. And like I
4 said, the woods actually is our property. So when I go up
5 there, I look down. He doesn't own the part that goes
6 down. His is the flat part.
7 So even if I went in the part that looks like his
8 yard, but actually is ours, you can see into the field.
9 Maybe you can't see in the summer, but you can see into
10 the field six months out of the year.
11 And I'm not opposed to him putting the siding on
12 his house or staying within his setbacks. But, you know,
13 I gave him an inch and he just keeps wanting things and
14 wanting things. And it might improve his property, but it
15 does the opposite to ours.
16 Q. Well, how does it do the opposite to your two
17 lots, lots three and four? I mean, what specifically
18 concerns you in regard to those two lots and seeing what
19 is being proposed here as their exhibit, Petitioner's
20 Exhibit 12, what the new facade would look like, how does
21 that impact you?

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1 A. Well, the way the house sits upon, you know,
2 right by the rim of the hill, when you look up, it will be
3 looming over. So the people who buy the other two
4 properties -- people who buy properties usually, that have
5 more than a couple acres, like their privacy, and this
6 house right now as it stands, you can see it kind of
7 blends into the woods because of the siding and, you know,
8 the color of it, and stuff like that.
9 But it will be looming over the property. So
10 when I go to show the property, the people will look up
11 and they'll go, Oh, I don't want to be sitting under
12 somebody's house that's looming over my property, looking
13 down on me. I assume people will be that picky because we
14 are that picky.
15 Q. How large would lot three and four be,
16 approximately?
17 A. They are two acres.
18 Q. Each one of them is two acres?
19 A. Oh, lot three is three acres and lot two is two
20 acres. And lot three is the one with the barn, the
21 existing barn on it that's done below.

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1 Q. Now, there have been a lot of exhibits that they
2 have presented here today.
3 You have already talked about the aerial photo.
4 You have talked about your subdivision plan.
5 Is there anything that you would like to address
6 in regard to Petitioner's Exhibit No. 12 which shows the
7 rendering, any comment you'd like to make?
8 You have heard the testimony of the architect and
9 Mr. Leeb in regard to what the intent of this plan was.
10 Do you have any comments in regard to this plan versus
11 what's existing now?
12 A. Well, the new plan, like I said, they came in
13 three years after, and they're proposing the two additions
14 exactly where they were proposing two additions in 2001.
15 In addition, they have raised the roof way up and
16 put all kinds of architectural features on it, which I
17 wouldn't have a problem if they were within the required
18 setbacks, but they just keep moving up and moving up.
19 And the other thing is after the first time when
20 they he said, you know, if I didn't oppose the variance
21 for the house, that they would drop the request for the

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1 two additions, during that period, I said to him, Why
2 don't you build on the side with the garage, since he told
3 me Mr. Pula, who came today, didn't mind that they had an
4 addition built.
5 Well, he didn't do that. He got an architect and
6 he has the proposed additions just where they are.
7 And his property, he has twenty feet, he could do
8 twenty feet for one garage and take one of the other two
9 garages and make it into a den.
10 I mean, there are other options to where he could
11 put the different things. And I know he got a variance
12 for the deck and the gazebo. But I mean, if I built on
13 somebody else's property, I sure would have moved it three
14 years ago when I found out that I had built on somebody
15 else's property. So he keeps taking and taking stuff.
16 Q. I'm sorry.
17 A. He just Keeps moving closer and closer. And if
18 you see the photos of where he's moving the lawn, he's
19 actually using our property as his. The entire woods on
20 his side here belongs to us. He has a few trees before
21 his lawn, and that's it.

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1 So, you know, there is the issue about he's using
2 property that isn't his, and he's keeps building wherever
3 he wants to build on the property, which I don't
4 personally think is good for the neighborhood, because
5 maybe I'd like to build closer, and I will just, you know,
6 put up a structure. I'm sure he wouldn't like that.
7 Plus there is the issue of we bought the property
8 with lots, and there's still lots there.
9 Q. The neighborhood, I think, is probably accurately
10 depicted on Petitioner's Exhibit No. 4, which is the
11 aerial photo. It does appear that a number of houses have
12 a lot of space around them. Is that your vision of the
13 neighborhood as well?
14 A. That's why people buy in the neighborhood,
15 because they want to be closer to downtown and want
16 privacy. They do not want to be on top of their
17 neighbors. We had somebody sold a lot next to our house,
18 and we have like 150 foot buffer before their land starts,
19 so people buy in the neighborhood because you are not on
20 top of your neighbor, and you do have privacy.
21 Q. So whether the ultimate legal determination

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1 applies that there's a fifty foot setback or whether
2 there's a twenty foot setback, whichever way it ends up
3 being from a legal standpoint, what do you feel in regard
4 to the setbacks, whether they be twenty, thirty, or fifty,
5 what is your feeling in regard to those setbacks?
6 A. You know, I would never build something over a
7 setback without having property marked and the
8 appropriate -- if the Leebs could spend all this money on
9 getting an architect to draw designs of what they want, I
10 would think they could get a surveyor to come out, put
11 stakes in, and leave the stakes there so people know where
12 the property ends.
13 I don't believe in building in setbacks that the
14 county has set unless I get a variance first.
15 Q. Have you ever asked for a variance?
16 A. We got a variance on the barn.
17 Q. Was that because that existed?
18 A. It was because it existed, and when we actually
19 combined lots when we got the property, and we -- the
20 original drawing, they were going to take down the barn,
21 and it's a really nice 17-stall bank barn.

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1 Q. Which barn is this?
2 A. It's this barn right here.
3 Q. The red barn?
4 A. It's a two story, bank barn, very nice. So that
5 lot is left as a three acre lot so whoever does buy the
6 lot can have a couple horses on the property.
7 So we didn't want to take the barn down, plus we
8 didn't want to have to take the barn down when we were
9 using the property, because we actually have horses, so we
10 asked for a variance.
11 Q. To the internal lot line?
12 A. It didn't affect any of the neighbors, but it was
13 a regular variance that was asked for.
14 Q. But it had it do with internal in your
15 subdivision?
16 A. Whoever buys will know that there's a variance on
17 that barn.
18 Q. To allow the barn to stay?
19 A. Right, so they can have that choice before they
20 buy the property, whether they want a barn closer than the
21 fifty foot setback.

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1 Q. Now, Mr. Leeb showed a number of photographs, and
2 I don't know whether you want to address any of those
3 photographs or not.
4 MR. McCANN: I think he's got to ask a question.
5 I can't imagine a more leading comment than, Do you want
6 to make any comments about those photographs.
7 Q. I'm showing you photographs, 6A, B, C, D and E,
8 which show the front, side and back rear of the Leeb
9 property.
10 Do you have any concerns, or would you like to
11 address anything that these photographs depict?
12 A. Well, they show the back of the house in the
13 first photograph, and it shows – it just shows the porch
14 that he put on that wasn't included in the first variance.
15 The second --
16 Q. Refer to them. That was 6A?
17 A. That was 6A. 6C and 6D show the side from Mr.
18 Pula's property. And especially in 6D, you can see that
19 he could put something on that side. Like the garage were
20 the drive comes up, and there would be room to back out.
21 And if they take some trees down, that's usually what

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1 happens when you put on an addition in our neighborhood,
2 because we even have trees coming up through our deck that
3 are, you know, the deck is built around the trees.
4 It's a very, very heavily tree'd property, so
5 whenever you do anything, you usually have to take a few
6 trees down.
7 So I don't know why, after the first time, the
8 2001 hearing, why, since Mr. Pula seems to be agreeable,
9 he didn't go to him and say, Do you mind if I put a garage
10 on your side so I can take part of my property, the
11 garage, to do an addition, but he went back to the two
12 additions that he said he would drop during the first
13 hearing.
14 Q. I show you Petitioner's No. 7 which was the
15 bedroom/deck photo and the ground level photo. Do you
16 desire to address that in regard to what you can see, what
17 that shows, what you can see, what you can actually see
18 from your property?
19 A. Yes. This was in the fall when, you know, there
20 were still leaves on the trees. But all the trees that
21 you see directly behind are on my property, and those are

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1 the ones that will be coming down for the septic.
2 Q. So the trees that are shown from the bedroom and
3 the ground level, is this all your property, or is it
4 somebody else's property?
5 A. Over on the left side, some of the trees might be
6 his. But over here -- the whole middle is our property --
7 and over to the right of that little, whatever it is.
8 Q. Looks like the top of a building or the gazebo?
9 A. It's the gazebo. That side is the Holdridge
10 property.
11 Q. So those trees would not go down?
12 A. Those trees on the right-hand side would not come
13 down.
14 Q. Now, I'm showing you an exhibit, Petitioner's 8A
15 through D. Would you express any comment in regard to
16 those pictures?
17 A. 8A shows the gazebo and this area here with the
18 tree, my property is actually the dot that I put on those
19 other photos. This is going across. Like this is
20 actually my property.
21 Q. Could you tell when the person, whoever it was

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1 that took these photographs, were they on your property or
2 on the Leeb property?
3 A. They were on my property, because he doesn't own
4 the woods right directly behind his house. So they were
5 actually -- well, this one was from Holdridge's property,
6 8D, but the rest of them are from my property.
7 Q. Approximately where would the photographer have
8 been standing to get those shots?
9 A. Standing right down in here.
10 Q. That's sort of what I will call like a panhandle
11 for lot number four, that little peak that sticks out
12 adjacent to the Leeb property?
13 A. Correct.
14 Q. Ms. Allinson, what is your request of the Board
15 here today, having heard the testimony of Mr. and his
16 architect?
17 A. What I am requesting is that the additions not be
18 approved, that the variance not be approved for any of the
19 additions, because that's why the first time I agreed to
20 not oppose his variance for anything, because he said he
21 would not put the two additions on.

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1 Q. I'm sorry. Did you finish?
2 A. I'm trying to -- I think I have done it.
3 Q. Are you finished?
4 A. Yes.
5 Q. I will ask one last question. What, if any,
6 other concerns that you may have that you haven't covered
7 up to this point? Make sure you think to yourself. And
8 if that's it, that's it.
9 A. Okay. I just have a concern that he wants to
10 improve his property at the cost of making my property
11 worth less, and that he doesn't follow any of the county
12 guidelines, and he just uses other people's property and
13 builds on it as he sees fit.
14 So I think that if you approve structures he
15 already built without ever getting a variance, or even a
16 permit to build the porch, then you're just encouraging
17 that kind of behavior, and I'm sure he'll continue with
18 it.
19 MR. HOLZER: I have no further questions.
20 THE CHAIRMAN. Your witness.
21 CROSS EXAMINATION

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1 BY MR. McCANN:
2 Q. Mrs. Allinson, you don't like Mr. Leeb very much,
3 do you?
4 MR. HOLZER: Objection.
5 A. I don't know Mr. Leeb.
6 THE CHAIRMAN: Overruled.
7 Q. Do you bear any personal animosity towards him?
8 A. No, I do not.
9 Q. Certainly sounds like it does.
10 MR. HOLZER: Objection. Move that to be
11 stricken.
12 THE CHAIRMAN: I would strike it.
13 Q. I am confused. I'm trying to figure out exactly
14 what it is that you oppose.
15 I think you said, first of al, that your concern
16 is not the view from your house, is that correct?
17 A. No. It's from the two lots that we are planning
18 on either building on or selling.
19 Q. And it's not also the view that you're concerned
20 about from the existing barn?
21 A. That existing barn -- well, the existing barn is

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1 on the three acre lot that either we might personally
2 build on, or we might sell to somebody.
3 Q. But it's not your personal view of Mr. Leeb's
4 home and the improvements to it that concern you? You
5 said that?
6 A. It's his encroachment on property that -- towards
7 property that doesn't belong to him, and bringing his
8 house close to the edge where it's my property, and then
9 his house would be looming over the two lots which I plan
10 to sell down the line.
11 Q. Now you're getting to another reason. You talked
12 about that. I think you're concerned about, if I gather
13 from your testimony, you're concerned about what people
14 who purchase the lots in your subdivision, just these
15 three, correct, lots three, four and two, you're concerned
16 about how they may feel about Mr. Leeb's addition?
17 A. Yes. People whether buy expensive lots are
18 usually very picky about what houses they can see around
19 them. They don't like -- when you buy a wooded lot, you
20 don't like to have your neighbor appear to be on top of
21 you.

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1 Q. Who are these people that you talk about?
2 A. Just people in general.
3 Q. I think your words were people who buy houses
4 like their privacy?
5 A. That's correct. We have had a couple of
6 developers look at the lots down the line, and they have
7 commented when I've gone to show them --
8 MR. McCANN: Objection. Hearsay.
9 MR. HOLZER: He opened the door.
10 MR. McCANN: No. I did not ask that question.
11 THE CHAIRMAN: It's hearsay, and I will not allow
12 it.
13 Q. So you don't know any of the hypothetical
14 purchasers of the lots, you don't know their names?
15 A. As I was going to say, we've had developers look
16 at the lots, so I do know who some of the potential
17 purchasers are.
18 Q. Have you talked to them about Mr. and Mrs. Leeb's
19 proposed improvements?
20 A. Yes. And they have seen where the -- where I can
21 never find the lot line to show them exactly where the

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1 property ends.
2 Q. Did you show them either the Leebs -- did you
3 show them either the Petitioner's Exhibit 13 or
4 Petitioner's 12?
5 A. No. But I pointed out where the screened porch
6 was and where the addition is.
7 Q. Who are these people? Can you identify their
8 names, for the record?
9 A. I prefer not to.
10 MR. McCANN: Mr. Chairman, I think we're entitled
11 to know who those people are.
12 MR. HOLZER: Objection. You're not entitled to
13 know what the names of prospective purchasers are. The
14 witness also said she might possibly take the lot number
15 three where the barn was and move there herself, so I
16 believe that's improper.
17 THE CHAIRMAN: I don't think it really matters to
18 us who the purchasers remain.
19 Q. You don't know precisely where the house will be
20 situated on the lot either, do you?
21 A. I know where the envelopes are.

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1 Q. And you don't know in which direction
2 specifically, because you're not an engineer, you don't
3 know which direction the house will be facing?
4 A. Yes, I do.
5 Q. Which direction will that be?
6 A. On lot three, the house will be faced this way
7 and the entire back yard will be that way.
8 Q. So north? The front of the house will be north?
9 A. Okay, north. And the entire back will be the
10 area that people, or us, will be using that faces the
11 Leebs' property. So the front will be angled that way.
12 And on this one, the front would be angled either way, so
13 it could be the back yard.
14 MR. HOLZER: For the record, there's no way of
15 knowing which direction she's pointing.
16 Q. (MR. HOLZER) For the record, can you
17 articulate --
18 MR. McCANN: I'm addressing the witness.
19 MR. HOLZER: That's fine, but the record needs to
20 show --
21 MR. McCANN: Maybe it does, maybe it doesn't.

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1 You can have the opportunity to ask her questions later
2 Mr. Holzer.
3 A. This one will face north and this one --
4 THE CHAIRMAN: Hold on while we straighten this
5 out. While he's cross examining, if there's confusion --
6 MR. McCANN: I'm just listening to what she's
7 telling us.
8 THE CHAIRMAN: – you will have an opportunity to
9 could back and ask questions later. Go ahead.
10 Q. (MR. McCANN) Go ahead. I'm sorry.
11 A. This house could face a variety of ways. And
12 this lot is the one that if we did build personally on, we
13 would take the lot that is the real lot at issue from
14 where you can see his house.
15 Q. You don't know for certain whether you you're
16 doing that or not, correct?
17 A. We never know for certain.
18 Q. Fair enough. And, Ms. Allinson, you probably
19 said it about ten times, and I apologize, but you said two
20 additions, probably at least ten times, that Mr. Leeb is
21 proposing. I really would like you to show me what two

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1 additions you're talking about.
2 A. On this --
3 Q. This is the wrong one. Wait. This would be
4 Petitioner's Exhibit 14. I think your testimony was --
5 let me rephrase the question.
6 Mr. Leeb originally came in back in 2001 with two
7 additions, and now he's back again with two additions. Is
8 that your testimony?
9 A. That is correct.
10 Q. Explain to the Board what two additions you're
11 referring to when you went to the Commissioner in 2001?
12 A. Well, he had this one that he has X-d out, but
13 here's the screened porch, which he never got a variance
14 for, which is the enclosed addition that they are going to
15 put a second story on. And then, this time, they want to
16 put a first story on the deck, which will be a second
17 addition.
18 Q. Talking about in 2001, is that what you're
19 talking about?
20 A. Oh, 2001? I thought you were talking about now.
21 2001, they wanted to bring this out further and the

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1 screened porch which he built, which he didn't have a
2 variance on, and they want to enclose it and make it part
3 of the house.
4 Q. You consider that an addition?
5 A. I consider that to be an addition.
6 Q. You understand that he didn't propose to and
7 doesn't propose today to increase the footprint of that
8 area at all?
9 A. I understand that.
10 Q. You also understand that he didn't intend in 2001
11 and doesn't intend today to increase the footprint of the
12 wood deck area?
13 A. I understand that, but he built those without --
14 I don't know. Did he have a permit?
15 Q. Let me ask you this. You -- I shouldn't
16 chastise, that's probably too strong a word -- but it
17 seems to me that you criticized Mr. Leeb for not getting a
18 variance when he should have, and doing things sort of in
19 a reckless manner, without getting a survey, or without
20 getting permission from anyone. Is that your testimony?
21 A. He told that he didn't know where the property

Page 213

1 lines were. That's what he told me.
2 Q. You, yourself, also in the same breath, also
3 characterized Mr. Leeb's placement of the gazebo and the
4 deck over the property line as a mistake. People do make
5 mistakes sometimes. Do you understand that?
6 A. I understand that.
7 Q. Did you understand that in 2001 Mr. Leeb got a
8 surveyor on his property? Are you aware of that?
9 A. He told me he didn't know where the property
10 lines were.
11 Q. When did Mr. Leeb tell you that?
12 A. He told me that at the first hearing, that he did
13 not know where his property lines were.
14 Q. Back in 2001?
15 A. Right. And I've had my property surveyed after
16 that, and the stakes have disappeared from his part of the
17 property.
18 Q. But you understand now, if you didn't then, that
19 Mr. Leeb had survey conducted in 2001 that established
20 once and for all where his boundaries of his property line
21 were?

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1 A. I understand that, but he should have had it done
2 before.
3 Q. Tell me why people should just, for no reason at
4 all, if they don't suspect -- assume Mr. Leeb didn't
5 know -- why should people go out and have surveys
6 conducted of their property?
7 MR. HOLZER: Objection. That's not even
8 relevant.
9 THE CHAIRMAN: I will sustain the objection at
10 this point. Move on.
11 Q. You complained that the gazebo was over the
12 property line. The gazebo, as presently stands, is not on
13 your property?
14 A. Correct.
15 Q. It's on Mrs. Holdridge's?
16 A. Yes.
17 Q. Did you know Mr. Leeb had Mrs. Holdridge's
18 permission to have the gazebo on her property?
19 A. Leslie Leeb told me after the May 2001, that they
20 had gotten an easement from Mrs. Holdridge.
21 Q. Is there anything wrong with that?

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1 A. No. The point I'm making is that the next thing
2 he puts might be over on my line, because he just builds
3 without knowing where the lines are.
4 Q. Be more specific. You said that a couple times.
5 Tell me precisely what Mr. Leeb, knowing it was improper.
6 Tell me precisely what he did.
7 MR. HOLZER: Objection. Asked and answered.
8 MR. McCANN: No, it is not.
9 THE CHAIRMAN: I will allow the witness to answer
10 one more time.
11 A. What he did was he built an addition without --
12 obviously, I'm making an assumption, that obviously he
13 didn't submit any plans, because you have to show how far
14 everything is from your property line. I know that for a
15 fact.
16 Q. When did he do that?
17 MR. HOLZER: Objection.
18 A. He did that after I moved it.
19 MR. HOLZER: Objection. She answered that.
20 THE CHAIRMAN: I'm going to -- let her finish her
21 answer before you ask another question.

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1 A. He did that in 1993 or 1994 after I moved in.
2 And then, in addition, he continues to take the property
3 markers out and to request additions. When he asked me to
4 not oppose a variance for him and he would drop the
5 addition, then he comes back three years later and says he
6 has to have these additions because his house won't be
7 worth anything if he doesn't have the additions.
8 Q. I think you just said three things. I want
9 specific information as to each, what you know. Do you
10 know, or did you ever see, or do you have any pictures,
11 any photographs, of Mr. Leeb, or anyone associated with
12 him, removing the markers?
13 A. I did talk to him on the phone, and he said it
14 was his lawn service the first time. And then we put them
15 in again, and they disappeared again.
16 So I had told him to please ask his lawn service
17 not to take the property markers out.
18 Q. Why didn't you mention that in your direct
19 examination, the lawn service removed the markers?
20 A. That was the first time. I don't know who moved
21 them the second time. I stopped talking to him after the

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1 first.
2 Q. Well, you just said Mr. Leeb moved the markers?
3 A. Somebody from Mr. Leeb's property moved the
4 markers.
5 Q. You also, looking at some of the pictures, you
6 said Mr. Leeb continues to mow the grass that's on your
7 property?
8 A. That is correct.
9 Q. Is that your testimony?
10 A. That is correct.
11 Q. Let's look at those photographs. Let me show you
12 CBA Protestant's 1B. There's a grassy area behind that
13 tree which is between the house and the grassy area.
14 Isn't it true, Mrs. Allinson, that there's no grass there
15 anymore and hasn't been there for a long time?
16 A. No.
17 Q. When is the last time you were there and saw
18 grass?
19 A. About a year ago.
20 Q. When is the last time you saw Mr. or Mrs. Leeb
21 mowing that grass, or anyone else mowing that grass? That

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1 grass. Not the grass on their property, but the grass on
2 your property.
3 A. Last year when people were -- fall.
4 Q. Let me ask this. When you bought this property,
5 your intent all along was to subdivide it?
6 A. It was subdivided when we bought it. What we did
7 was we put some of the lots back together.
8 Q. You said originally you intended to put six lots
9 in there, but then you reduced it to four?
10 MR. HOLZER: Objection. That's not what she
11 said.
12 MR. McCANN: I wrote six to four.
13 THE CHAIRMAN: She seems to be able to testify
14 for herself quite well.
15 A. When we bought it, it was six lots.
16 Q. At then at some point in time, the number of lots
17 was reduced?
18 A. Yes. We reduced the number of lots.
19 Q. To four?
20 A. Correct.
21 Q. Was that because of a change in the zoning? Why

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1 did that come about?
2 A. It wasn't a change in the zoning at all.
3 Q. Why did you reduce the number of lots?
4 A. One of the neighbors had complained about too
5 many houses on the property back when the Lachmans owned
6 it.
7 Q. Wasn't it also your proposal at one point in time
8 to have three lots?
9 A. That's correct.
10 Q. But now, this plan, this is the most recent plat,
11 Exhibit 15?
12 A. Correct.
13 Q. Now it's four lots?
14 A. Correct. But the extra lot is up by our house,
15 and not by the Leebs' property.
16 Q. I understand. Mr. Holzer, in his questions of
17 you regarding the 2001 hearing, asked whether you agreed
18 not to oppose the legitimization of the thirteen and a
19 half foot setback. Do you recall that testimony?
20 A. Correct.
21 Q. You consented to the 13.5 setback?

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1 A. That is correct.
2 Q. You also consented at that hearing to a zero foot
3 setback of the gazebo and the deck which extended over the
4 Leebs' property line onto Ms. Holdridge's property?
5 A. That's correct.
6 Q. Explain to me, Mrs. Allinson, if you will, given
7 the fact that the building envelope for the deck and the
8 building envelope for the screened-in porch is not going
9 to increase in size, tell me how, precisely as you can,
10 that difference, that is, just the proposed improvements
11 going up rather than out, how that's going to make a
12 difference to either the property values of the lots you
13 propose to subdivide, the view you may have, the view the
14 unidentified purchasers may have, tell me how that will
15 make a difference? Be that specific.
16 A. Okay. Right now, the deck, you can't see the
17 deck from my property because there isn't anything built
18 up on it.
19 When they build on it, you will be able to see it
20 from my property.
21 The screened-in porch is a one story screened-in

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1 porch which wasn't included in this first variance that he
2 wants to increase now and add a second story, so that will
3 also be more prominent as far as being able to see it from
4 my property. But he never did get a variance on that part
5 of the building.
6 Q. Let's deal with each of those. You're just
7 looking at this house. You can see this area of the
8 existing house, correct, when you look at it?
9 A. I don't know area --
10 Q. This is where the deck is. You can see that,
11 correct?
12 A. Oh, I was trying --
13 Q. Ms. Allinson, can you see this wall on the master
14 bedroom today?
15 A. Can I see that wall?
16 Q. Yes.
17 A. Probably vaguely.
18 Q. Do you think you're going to see this wall that
19 much more?
20 A. Yes, because that's in the deck area.
21 Q. You keep on referring to this portion of the

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1 proposed improvement as a second story. Do you understand
2 that there's not going to be any increase in the living
3 space, only an increase in the size of the balcony?
4 A. The balcony, as I understand it, will be coming
5 all the way out to the end of the screened-in porch that
6 Mr. Leeb put in. So there is an extension out closer --
7 it continues out towards our property.
8 Q. But you characterize that as a second story?
9 A. That is the second story.
10 Q. Now, you said you really can't see the deck from
11 your house. Is that what you said?
12 A. Right, because it's flat.
13 Q. But before, you said you could see the whole
14 house, that is, the Leeb's whole house from your house?
15 A. Not from our house.
16 Q. You can't --
17 A. From the barn and the barn lot and from the
18 riding ring lot. In the winter, I can see the lights at
19 night from my house. But my house isn't really what the
20 issue is.
21 Q. Mr. Holzer asked you about a variance you sought

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1 on your property. Do you recall that property?
2 A. Yes.
3 Q. In fact, specifically, the variance you sought,
4 not that long ago, were you sought to allow your barn,
5 that is the red barn we have been talking about, in your
6 front yard, rather than your rear yard, correct? You
7 sought a variance for that?
8 A. Yes. That was about eight years ago.
9 Q. You also sought a variance to allow your barn,
10 the red barn, to have a setback of zero feet from this
11 property line, is that correct?
12 A. Correct. That's within our property.
13 Q. But what property line did you seek a setback
14 from?
15 A. From here to this property line right there.
16 Q. So right now, that barn is right on that property
17 line?
18 A. No. It doesn't look like it is.
19 Q. When you sought a variance to have that barn --
20 A. We wanted to keep the barn up.
21 Q. You sought a variance to have that barn zero feet

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1 from that property line, correct?
2 A. That's correct, within our development. Not
3 touching any of our neighbor's properties.
4 Q. You also sought to have that barn, to allow it to
5 be thirty feet in height instead of fifteen, isn't that
6 true?
7 A. No. I don't think we sought that. I think that
8 was the prior owners.
9 MR. McCANN: Let me this marked as Petitioner's
10 16.
11 MS. BRASSIL: Seventeen.
12 MR. McCANN: For the record, this is entitled
13 Petition for variance, to the Zoning Commissioner of
14 Baltimore County, Case No. 97-281-A.
15 Q. Is that your signature, Mrs. Allinson, above
16 where it says Mary Allinson in print?
17 A. Yes.
18 Q. Could you read the relief requested that's typed
19 in there? Beginning with 400.1.
20 A. 400.1, 400.2, and 400.3, to allow a detached
21 existing accessory structure on proposed lot three in

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1 front yard instead of rear yard, zero degrees from
2 property line and thirty feet in height in lieu of the
3 required fifteen feet and a footprint larger than the
4 principal structure. I didn't know the fifteen feet meant
5 the height.
6 Q. And on the same petition, didn't you also --
7 what you signed -- didn't you also say, quote, The
8 uniqueness and peculiarity of the property causes the
9 zoning provisions to impact disproportionately upon the
10 property?
11 MR. HOLZER: Objection. It's different property
12 than this. I don't understand --
13 THE CHAIRMAN: I agree, but I will allow it.
14 Q. Isn't that true?
15 THE WTINESS: Am I supposed to answer?
16 THE CHAIRMAN You can answer.
17 A. What was the question again?
18 Q. My question is whether or not you signed this
19 document and stated on it that the uniqueness and
20 peculiarity of the property causes the zoning provisions
21 to impact disproportionately upon the property?

1 A. Yes. That's because we wanted to keep the barn
2 up, because it's a big barn, and it's a very nice barn.
3 Q. What was so unique and peculiar about your
4 property that caused the zoning provisions to impact
5 disproportionately?
6 MR. HOLZER: Objection. Are we trying that case
7 over again? Nobody showed up. Nobody appealed. It's
8 been approved.
9 THE CHAIRMAN: Sustained. It's not a basis of
10 this case, and you have gotten it in and gotten your point
11 made.
12 MR. McCANN: Just a couple more questions.
13 Q. Ms. Allinson, is there a structure attached to
14 the barn that is not depicted in this picture?
15 A. No.
16 Q. Is there any structure attached to the barn
17 today, other than the barn itself?
18 A. No.
19 Q. There's no stable next to it of a smaller size?
20 A. Absolutely not. It's a seventeen-stall barn.
21 MR. McCANN: That's all I have. Thank you.

1 MR. HOLZER: No questions.
2 THE CHAIRMAN: Just one moment.
3 MR. QUINN: You said you had the property
4 surveyed a couple different times, stakes put in?
5 THE WITNESS: Yes.
6 MR. QUINN: Is there a fence around the property?
7 THE WITNESS: Just in one section, but it's not
8 over in that section.
9 MR. QUINN: Not at all?
10 THE WITNESS: No. There's a fence -- there's
11 fenced in here and around here for the horses and there is
12 part of a fence over here, but there's no other fence on
13 the property. Just basically where the horses are to keep
14 them in by the barn.
15 MR. QUINN: I have no other questions.
16 THE CHAIRMAN: The access for the new lot will be
17 through your existing property?
18 THE WTINESS: Yes.
19 THE CHAIRMAN: Any further questions based on the
20 Board's questions?
21 MR. McCANN: No.

1 MR. HOLZER: No.
2 THE CHAIRMAN: You may step down.
3 MR. HOLER: That's our case. Thank you.
4 THE CHAIRMAN: Any rebuttal?
5 MR. McCANN: No, your Honor.
6 THE CHAIRMAN: The Board would probably request,
7 in lieu of closing, that you submit written briefs.
8 MR. HOLZER: That will be acceptable to us.
9 THE CHAIRMAN: Off the record.
10 (Discussion held off the record.)
11 THE CHAIRMAN: Thank you. This Board stands
12 adjourned.
13 (Hearing concluded.)
14 * * * * *
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BALTIMORE COUNTY

ZONING REGULATIONS

1963

BOOK № 601

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R-6 Zone

R-40 Residence Zone, One Family

ARTICLE 2—ZONES: USE, HEIGHT, AND AREA REGULATIONS

R-20 Zone—Residence, One-Family

Section 200—USE REGULATIONS

The following uses only are permitted:

200.1—One-family detached dwellings.

200.2—Conversion of a one-family dwelling as conditioned in Section 402.

200.3—Churches and other buildings for religious worship, including church schools and private schools.

200.4—Trailers, as limited by Section 415.

200.5—Research institutes, as defined in Section 101, if located on a site of 15 acres or more and if in compliance with Section 418.2.

200.7—Offices of a doctor or dentist but with no hospital facilities, and offices or studios of a lawyer, architect, engineer, or artist, when these or offices of similar professions are situated in the same dwelling used by any of the foregoing persons as his residence. Not more than 25% of the floor area of the dwelling shall be used for offices or studios; not more than one non-resident professional associate and two non-resident employees shall be permitted. Signs are prohibited except as noted in Section 413.

200.8—Home occupations, as heretofore defined in Section 101, provided that no sign shall be displayed except as noted in Section 413.

200.9—Accessory buildings and uses as limited by Section 400.

200.10—Hospitals, Class A, as defined in Section 101 and as limited by Section 407.

200.11—Public utility uses as follows:

a. Telephone and telegraph lines.

b. Electric light and power lines, including transformers and transformer banks, when located on poles, on or contiguous to public highways, alleys, rear lot lines, railroad rights-of-way or if carrying less than 35,000 volts.

R-20 Zone

R-10 Zone

R-6 Zone

c. Conduits, cables; gas, sewer, storm drain, and water mains—all located underground.
d. Railroad.

200.12—Farming, as defined in Section 101 and as conditioned in Section 404.

200.13—Signs in accordance with the provisions of Section 413.

200.14—Excavations, uncontrolled.

200.15—Special Exceptions; The following uses when permitted as Special Exceptions (see Sections 270 and 502):

Airport;
Boarding or rooming houses;
Boat yard;
Cemetery (see Section 401);
Commercial beach, with provision of adequate parking area, and permitting dressing facilities, snack bar, picnic area, and boat rental;
Community building, swimming pool, or other structural or land use devoted to civic, social, recreational, and educational activities; off-street parking areas shall be provided to such extent and be so located as the Zoning Commissioner or County Board of Appeals, on appeal, shall agree to be needed in relation to their surroundings;
Conservatory, music and the arts;
Convalescent home;
Conversion of a dwelling into a tea room or restaurant as conditioned in Section 402;
Excavations, controlled (see Section 403);
Funeral establishment;
Golf course, country club or other outdoor recreation clubs; also quasi-public camps including day camps, but no such uses shall be located on less than five

acres, and no building, parking lot, or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line;
Golf driving range, miniature golf, and baseball batting range;
Hospital, Class B (see Section 407);
Kennel, but not on a lot of less than 3 acres, and not closer than 50 feet to a property line;
Laboratory, if on a site of 15 acres or more (see Section 418.4);
Marina;
Poultry, commercial killing of, but only on a farm (see Section 404);
Private colleges, nursery or dancing schools, dormitories, and fraternity and sorority houses, but excluding business and trade schools;
Public utility uses other than those noted in Section 200.11 (see Section 411);
Race track, commercial;
Radio studio;
Research Institute, other than those permitted under Section 200.5 (see Section 418.3);
Riding stable, commercial;
Sanitary landfill (see Section 412);
Shooting range;
Television studio;
Theatre, drive-in;
Tourist home;
Trailer park;
Volunteer fire company;
Wireless transmitting and receiving structure.

200.16—Junk yards and open dumps as defined in Section 101. Any existing junk yards in this or any other residential zone, and any existing open dumps in any zone shall be completely eliminated not later than two years after the date of effectuation of this amendment (November 17, 1962).

R. 40 ZONE

Section 201—HEIGHT REGULATIONS

No building shall exceed a height of 35 feet or 3 stories, except as provided in ARTICLE 3.

Section 202—AREA REGULATIONS

Minimum requirements, except as provided in ARTICLE 3, shall be as follows:

202.1—Lot Area and Width—Each principal building hereafter erected shall be located on a lot having an area of not less than 40,000 square feet and a width at the front building line of not less than 150 feet, except that for two or more lots in the same ownership, and in the same tract, a minimum lot area of 30,000 square feet is permitted if the average of all the lot sizes in the same ownership and in the same tract equals 40,000 square feet or more. A wedge shaped lot at the end of a cul-de-sac street may have a width at the front building line of not less than 100 feet (see Section 304).

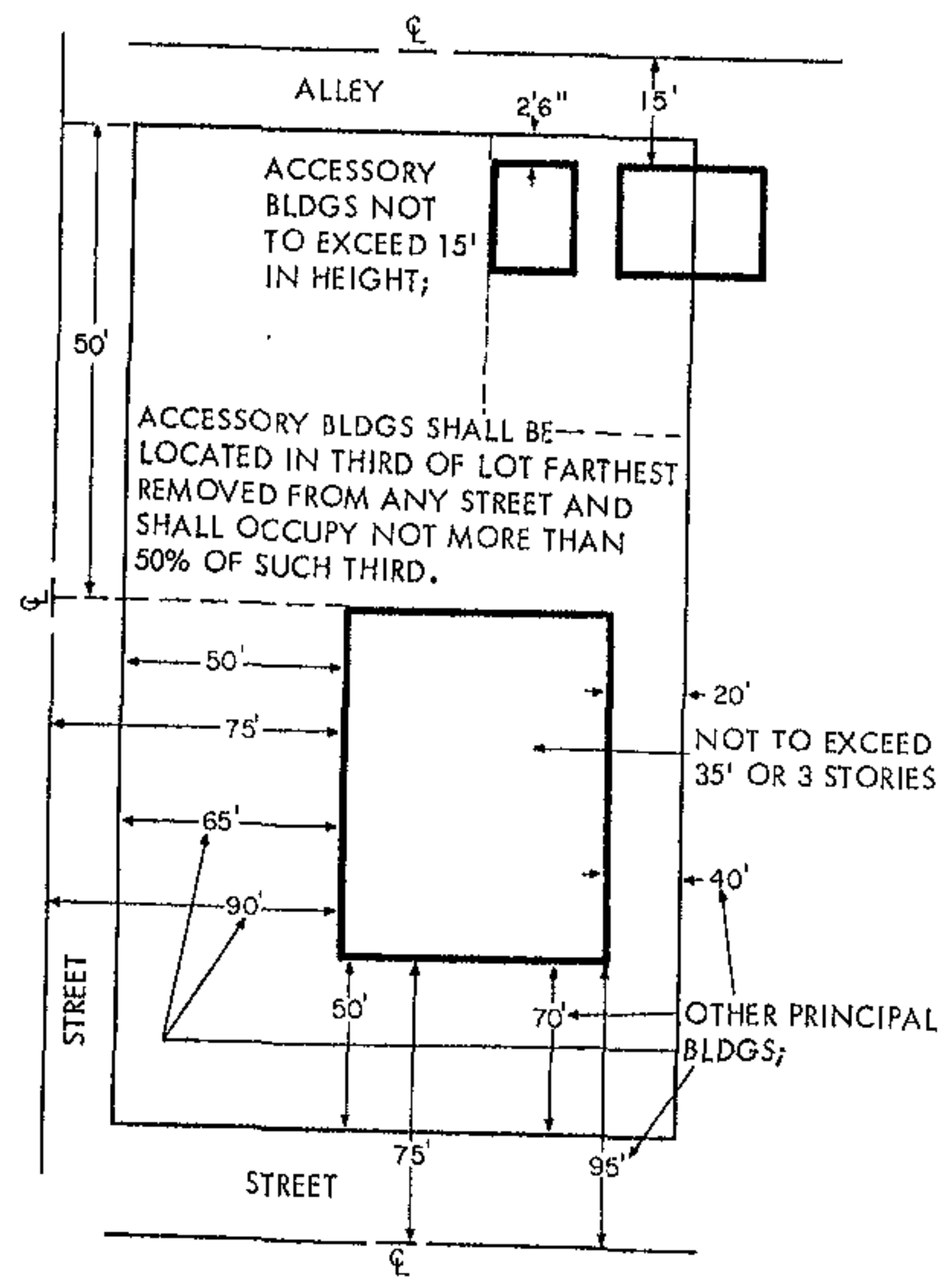
202.1.1—In a cluster subdivision a minimum lot area of 25,000 square feet is permitted, provided that the average area of all lots in the subdivision equals at least 30,000 square feet and that the total area in residential lots plus the area of the local open space tract(s) equals or exceeds the number of lots multiplied by 40,000 square feet. In such subdivision not more than 75 per cent of the lots may be less than 30,000 square feet in area and the minimum permitted width at the front building line is 100 feet.

202.2—Front Yard—For dwellings, the front building line shall be not less than 50 feet from the front lot line and not less than 75 feet from the center line of the street; for other principal buildings—70 feet from the front lot line and not less than 95 feet from the center line of the street.

202.3—Side Yards—For dwellings, 20 feet wide for one side yard and not less than 50 feet for the sum of both, except that for a corner lot the building line along the side street shall be not less than 50 feet from the side lot line and not less than 75 feet from the center line of the street; for other principal buildings—40 feet wide, except that for a corner lot the building line along the side street shall be not less than 65 feet from the side lot line and not less than 90 feet from the center line of the street.

202.4—Rear Yard—50 feet deep.

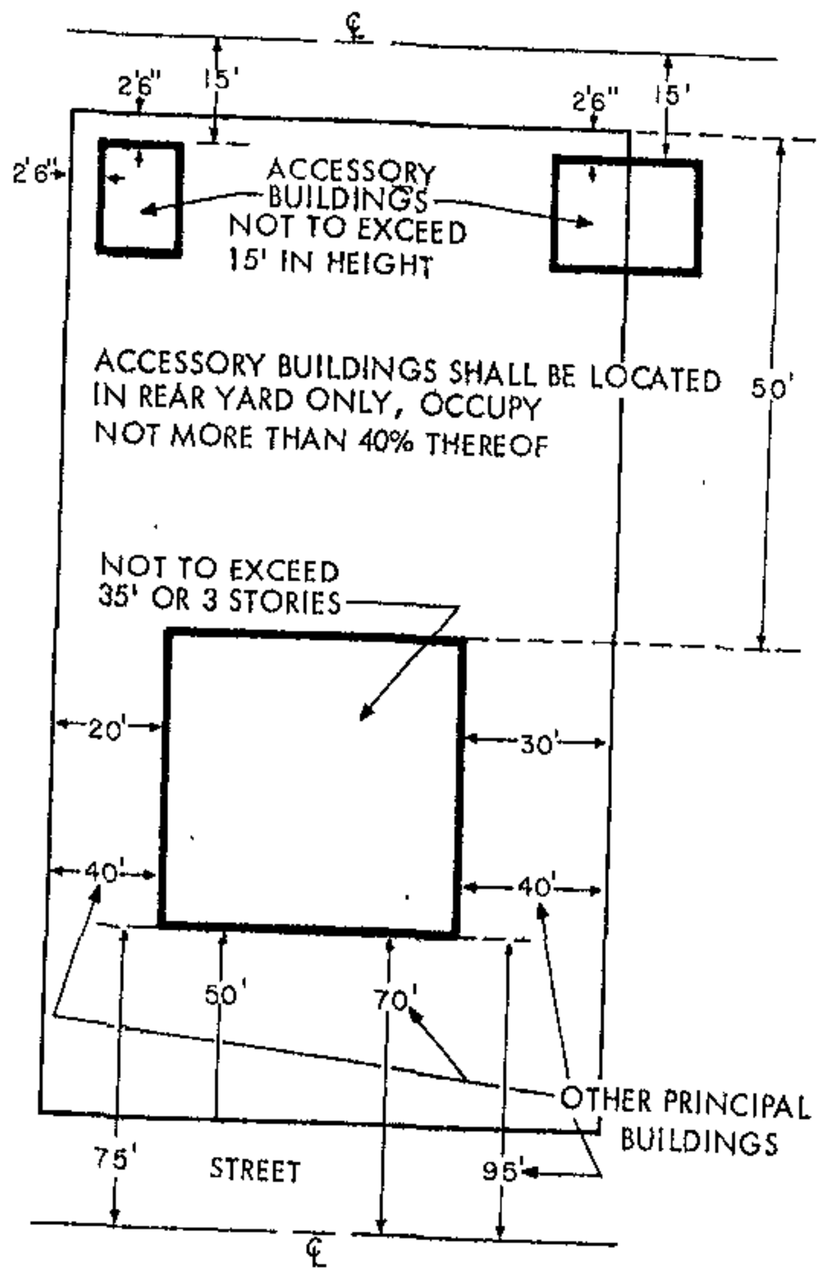
R. 40 ZONE CORNER LOT



Average Lot area 40,000 square feet. (See Section 202.1.1)
Minimum length 267 feet.
Minimum width 150 feet.
Farm buildings located on 3 acres or more

FOR INFORMATION ONLY

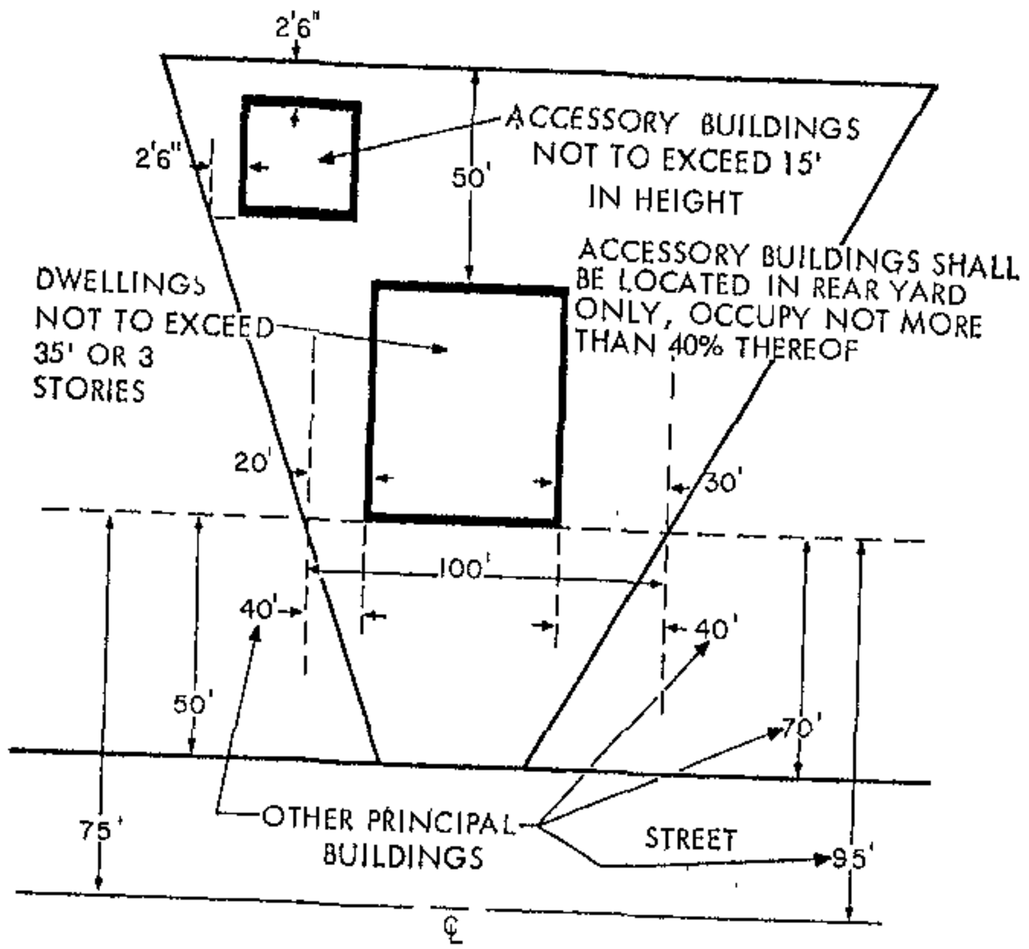
R. 40 ZONE INSIDE LOT



Average Lot area 40,000 square feet. (See Section 202.1.1)
Minimum length 267 feet.
Minimum width 150 feet.
Farm buildings located on 3 acres or more.

FOR INFORMATION ONLY

R. 40 ZONE CUL-DE-SAC LOT



Average Lot area 40,000 square feet. (See Section 202.1.1)
Minimum length 267 feet.
Minimum width 150 feet.
Farm buildings located on 3 acres or more.

FOR INFORMATION ONLY

301.1 Carports or open porches.

A. If attached to the main building, a carport or a one-story open porch, with or without a roof, may extend into any required yard not more than 25% of the minimum required depth of a front or rear yard or of the minimum required width of a side yard. Any carport or open porch so extended must be open on three sides. [Bill Nos. 150-1983; 2-1992]

B. Notwithstanding the provisions of Subsection A, open projections in the side yard are permitted in residential large tract subdivisions only in accordance with Section 504 and the standards as set forth in the Comprehensive Manual of Development Policies. [Bill No. 2-1992]

301.2 Projections such as bay windows, chimneys, entrances, vestibules, balconies, eaves and leaders may extend into any required yard not more than 4 feet, provided that such projections (excepting eaves) are not over 10 feet in length.

301.3 No side and/or rear yard is required for a business or manufacturing use in that portion of any property located in a B.R., M.R., M.L.R., M.L. or M.H. Zone if such side and/or rear line abuts on a railroad right-of-way or siding, to either of which it uses rail access. [Bill No. 56-1961]

EXHIBIT A

IN RE: PETITION FOR ADMIN. VARIANCE N/S Velvet Ridge Drive, 148' W of the c/l Park Heights Avenue (2316 Velvet Ridge Drive) 3rd Election District 3rd Council District	*	BEFORE THE
	*	ZONING COMMISSIONER
	*	OF BALTIMORE COUNTY
	*	Case No. 01-390-A
Melvyn J. Leeb, et ux Petitioners	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner for consideration of a Petition for Administrative Variance filed by the owners of the subject property, Melvyn J. and Leslie B. Leeb. As originally filed, the Petitioners sought relief from Section 1A04.3.b.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side/rear property line setback of 13.5 feet in lieu of the required 50 feet for the existing dwelling and proposed additions. The Petitioners filed their request through the administrative variance process, pursuant to Section 26-127 of the Baltimore County Code, which allows a residential property owner to obtain variance relief without a public hearing. Under that process, the Petition and related documents are filed with the Zoning Review Division of the Department of Permits and Development Management (DPDM). Thereafter, notice of the requested relief is conspicuously posted on the property for a period of 15 days, after which the file is forwarded to the Zoning Commissioner/Deputy Zoning Commissioner for consideration. If any adjacent property owner requests a hearing, or if the Zoning Commissioner determines that a hearing is necessary to determine the appropriateness of the relief requested, the matter is scheduled for a public hearing. If no hearing is requested or deemed necessary, relief can be granted without the necessity of a public hearing. In this case, however, the adjoining property owner, Mary Allinson, who resides to the rear of the subject property, requested that a hearing be held and the matter was subsequently scheduled. Although originally convened on May 17, 2001, the matter was continued in open hearing at that time to allow for continued negotiations between

Date 10/4/01

04-433-A

the property owners and the Protestant and reconvened on June 14, 2001. The subject property and originally requested relief are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 3.

Appearing at the public hearing in support of the request were Melvyn and Leslie Leeb, property owners, and Katherine Daly, Architect, who prepared the building elevation drawings and site plan for this property. Appearing as a Protestant in the matter was Mary Allinson, and her attorney, J. Carroll Holzer, Esquire.

By way of background, the subject property is an irregularly shaped parcel, located on the north side of Velvet Ridge Drive, just west of Park Heights Avenue in Owings Mills in the Velvet Ridge subdivision in the Caves Valley. The property consists of a gross area of 1.94 acres, more or less, zoned R.C.5 and is improved with a one- and two-story dwelling, which, due to existing site and environmental constraints, is located towards the rear of the site. Mr. & Mrs. Leeb are the original owners of the dwelling, which was constructed in approximately 1989. The original plat which was prepared to secure building permits at that time was submitted and marked into evidence as Petitioner's Exhibit 4. That plat shows the proposed location of the house, and indicates a 50-foot rear yard setback and a 20-foot side yard setback on the north side. Although no evidence could be produced regarding the building permit application process for this dwelling, Mr. & Mrs. Leeb believe that a variance was obtained at that time to allow a 20-foot side yard setback. However, when the house was actually constructed, it was not sited in accordance with the building permit plat. In fact, a recently completed boundary survey of the subject property was submitted into evidence and marked as Petitioner's Exhibit 1. This survey was prepared by Gerhold, Cross & Etzel, Registered Professional Land Surveyors, and shows the location of the existing improvements on the subject property. As shown on the survey plat, the rear/(north) side corner of the house is actually located 13.5 feet from the adjacent property line. Thus, variance relief is necessary in order to legitimize that distance.

Pursuant to the Petition for Administrative Variance, as originally filed, Mr. & Mrs. Leeb proposed certain improvements to their house. Under the original Petition, the property

04-438-A

owners sought approval of a proposed screen porch and one-story addition to the rear (north side) of the dwelling, as shown on the site plan marked as Petitioner's Exhibit 3. Those improvements would likewise be located 13.5 feet from the side property line. Thus, as filed, the Petitioners sought approval of a 13.5-foot setback for both the existing and proposed improvements.

However, in view of Ms. Allinson's opposition, the Petitioners have now abandoned their request for a variance for the proposed construction. At the reconvened hearing, the Petition was amended so that the relief sought is limited only to legitimize existing conditions. In this regard, testimony was offered that no permanent construction has occurred since the original house was built. That is, variance relief is required due to the improper location of the house when originally constructed, and not because of some additional improvements constructed thereafter.

On behalf of Ms. Allinson, Mr. Holzer indicated that she is not opposed to the grant of the variance to legitimize the location of the existing structure. She was opposed, however, to the improvements originally proposed by the Petitioners, which have now been withdrawn.

Based upon the testimony and evidence offered, I am persuaded to grant the Petition for Variance. The unusual circumstances associated with this case are outlined above, and the property is certainly unique due to the environmental and topographic constraints associated therewith. In my judgment, the Petitioners would suffer a practical difficulty if relief were denied. Moreover, I find that the relief can be granted without adverse impact to adjacent properties. Thus, the amended relief shall be granted.

It is also to be noted that since the house was built, the Petitioners constructed a deck with a gazebo extension off the rear of the dwelling. Apparently, as a result of the recent survey, it was determined that a portion of these improvements extends over the property line into the adjacent property, which is not owned by the Leebs or Ms. Allinson. In order to clarify that issue and resolve any concerns related thereto, the grant of relief herein shall also constitute approval of the location of those open projections (the existing deck and gazebo). Thus, to the extent necessary, variance relief to allow a 0-foot setback for these open projections is hereby granted.

ate _____

y _____

04-435-A

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 19th day of June, 2001 that the Petition for Administrative Variance seeking relief from Section 1A04.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side/rear property line setback of 13.5 feet in lieu of the required 50 feet for the existing dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance to permit a side setback of 0 feet for the existing open projections (deck and gazebo), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction;

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) Any future construction on the rear/north side of the subject property must comply with setback requirements or variance relief may be necessary.

3) 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 6/19/01
By

04-438-A

Verified 4/08/05

Petitioner's Exhibits

Leeb

CBA 04-433-A

Pet 1	Subdivision Plat Section 1 May 3 1968
Pet 2	Subdivis Plat Section 2 Nov 29 1968
Pet 3	Subdivision Plat - Section 3 Oct 15 1969
Pet 4	Arial View - GIS 3/3/05
Pet 5 4/12/05	Original Permit Site Plan - April 1985 / ID only
awaiting from McCann	
Pet 6 A-E	Photos
Pet 7	Photo
Pet 8 A-D	Photos
Pet 9	2001 ZC Opinion CBA 01-390-A
Pet 10	Zoning Map 1950s
Pet 11	ADC Map
CBA 12	Plan of Leeb Residence
CBA Pet 13	Drawing from below at house
Pet 14	Site Plan Leeb Property

Petitioners Exhibits

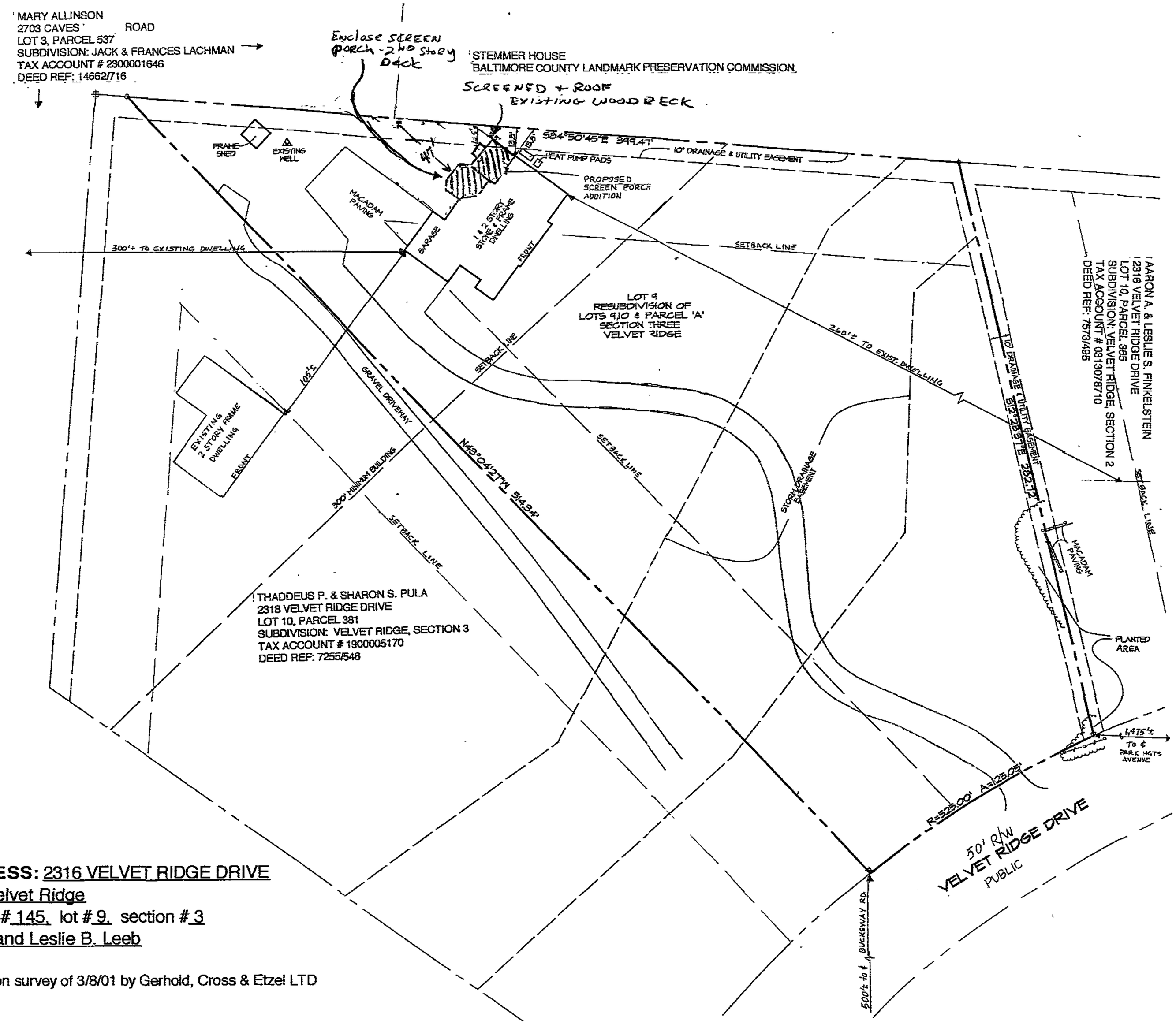
P. 2

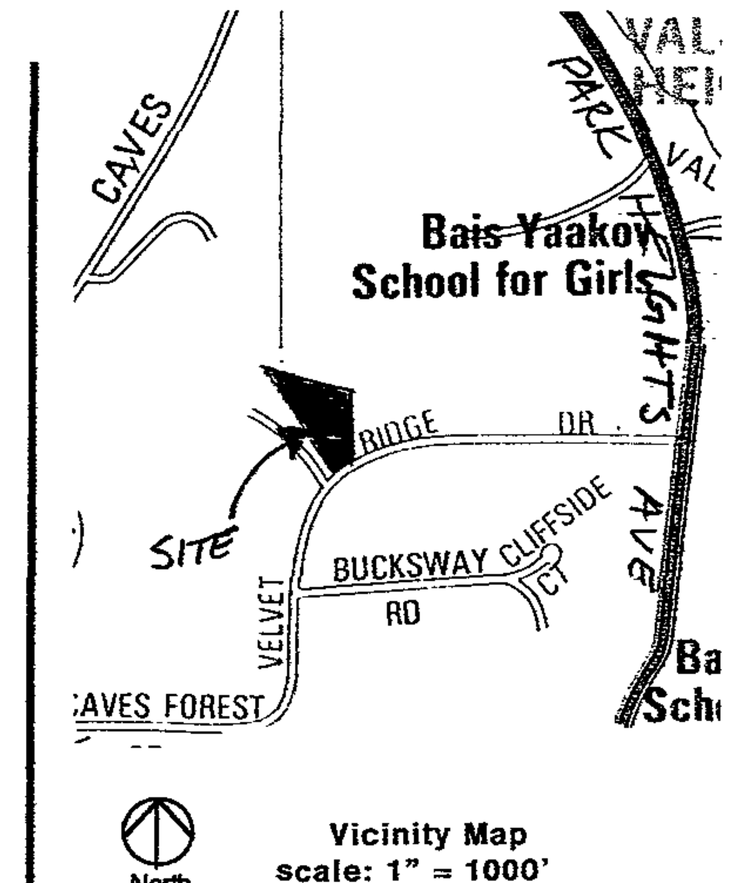
Pet 15 Site Plan of Lachman property

Pet 16 Letters from Neighbors

Pet 17 Petition for Variance
97-291-A

Plat to accompany Petition for Zoning [X] Variance [ ] Special Hearing





Vicinity Map
scale: 1" = 1000'

LOCATION INFORMATION

Councilmanic District: 3

Election District: 3rd

1"=200' scale map #: F-13 NW

Zoning: RC-5

Lot Size: 1.94 Acres 84,506 SF

Sewer: Private

Water: Private

Chesapeake Bay Critical Are: No

Prior Zoning Hearings: ~~None~~ 01-390-A

SCALE: 1" = 50'

PROPERTY ADDRESS: 2316 VELVET RIDGE DRIVE

Subdivision Name: Velvet Ridge

plat book # 48, folio # 145, lot # 9, section # 3

OWNER: Melvyn J. and Leslie B. Leeb

date: 3/21/01

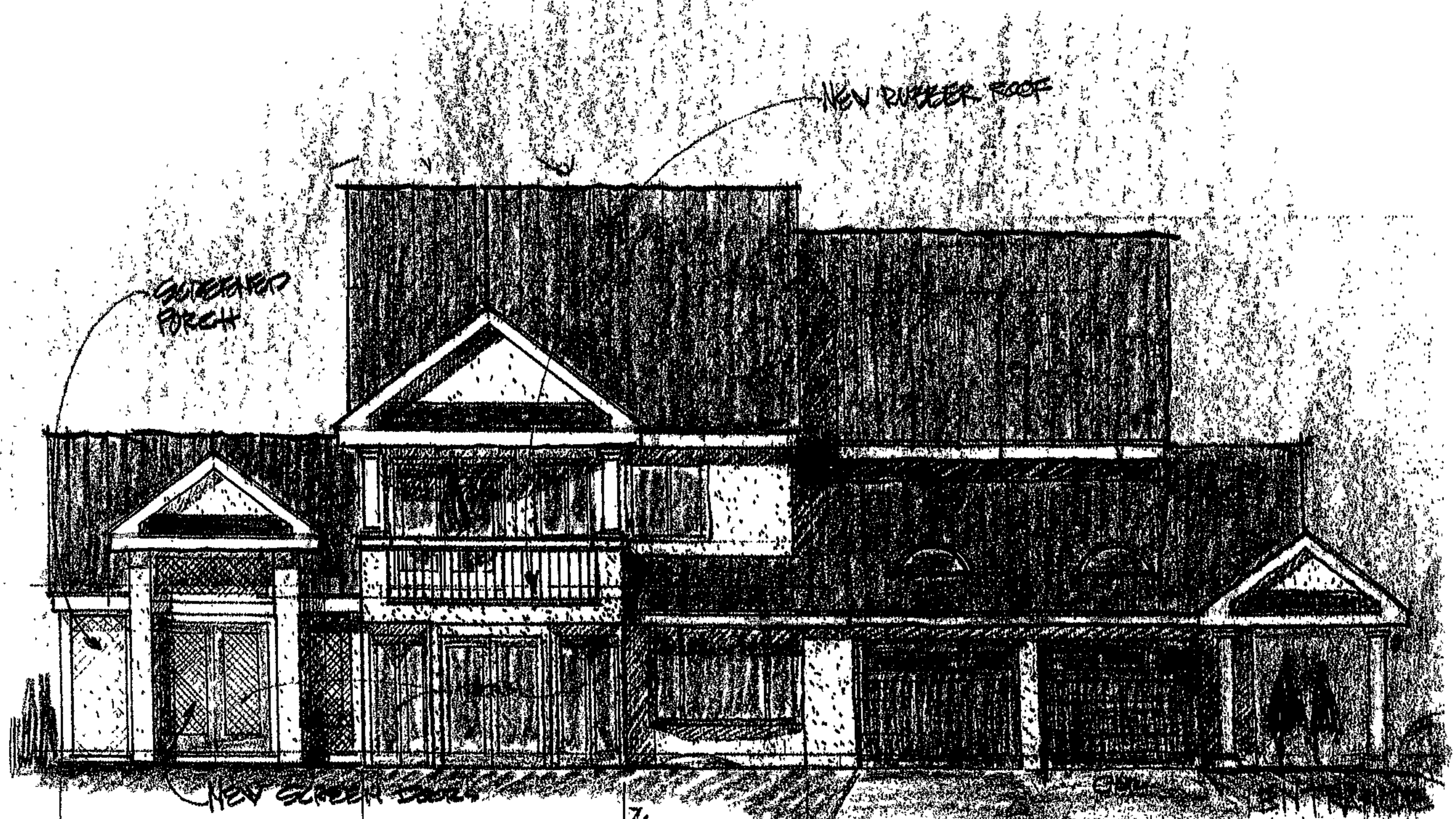
prepared by: KGD, based on survey of 3/8/01 by Gerhold, Cross & Etzel LTD

Zoning Office USE ONLY!

reviewed by:	ITEM #:	CASE #:
JOM		04-433-A

Pet #

NEW PROPOSED ELEVATIONS

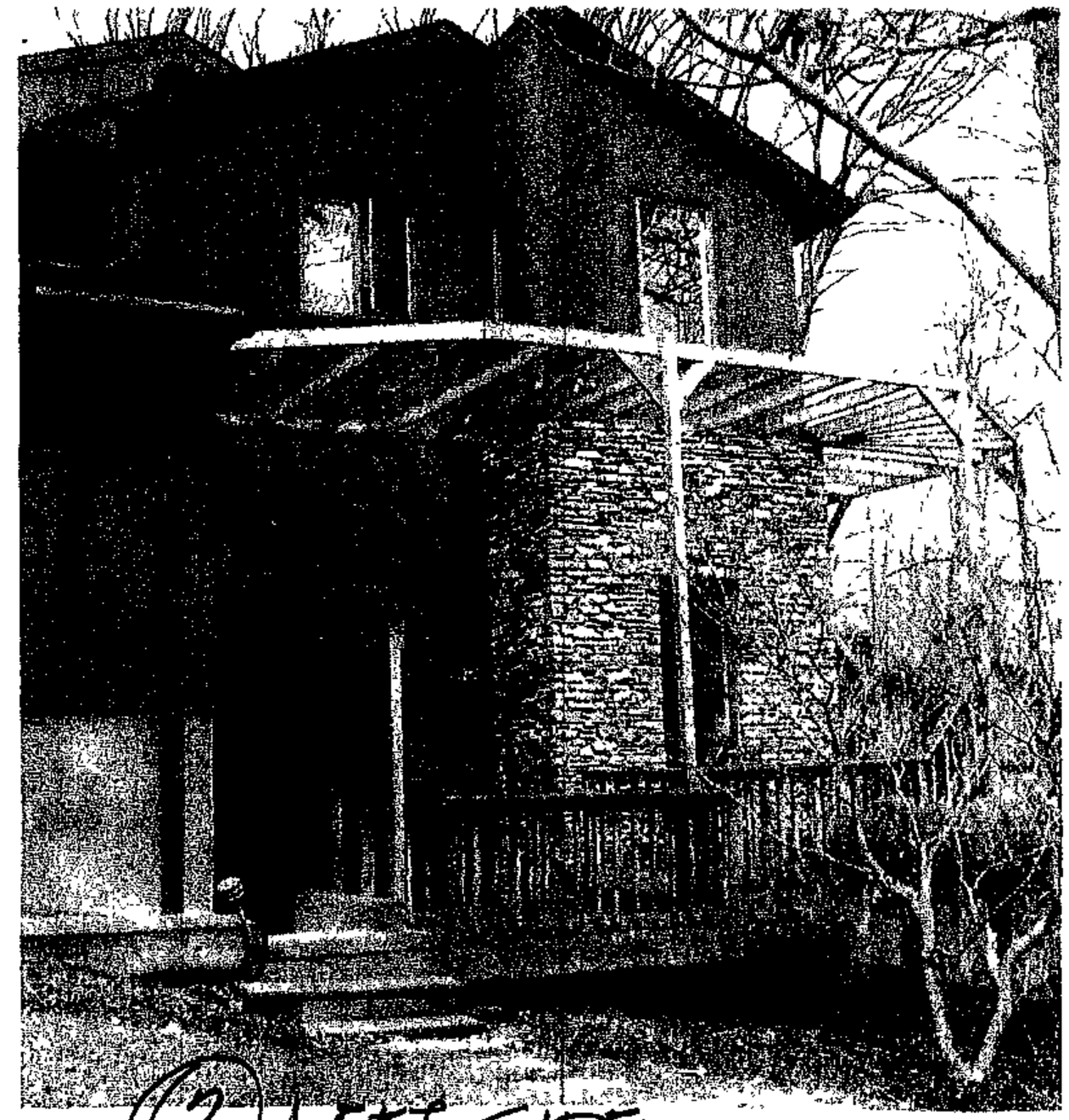


REAR ELEVATION

LEEB RESIDENCE
KEENEY ARCHITECTS.

Pet Exh. #2

(1) REAR

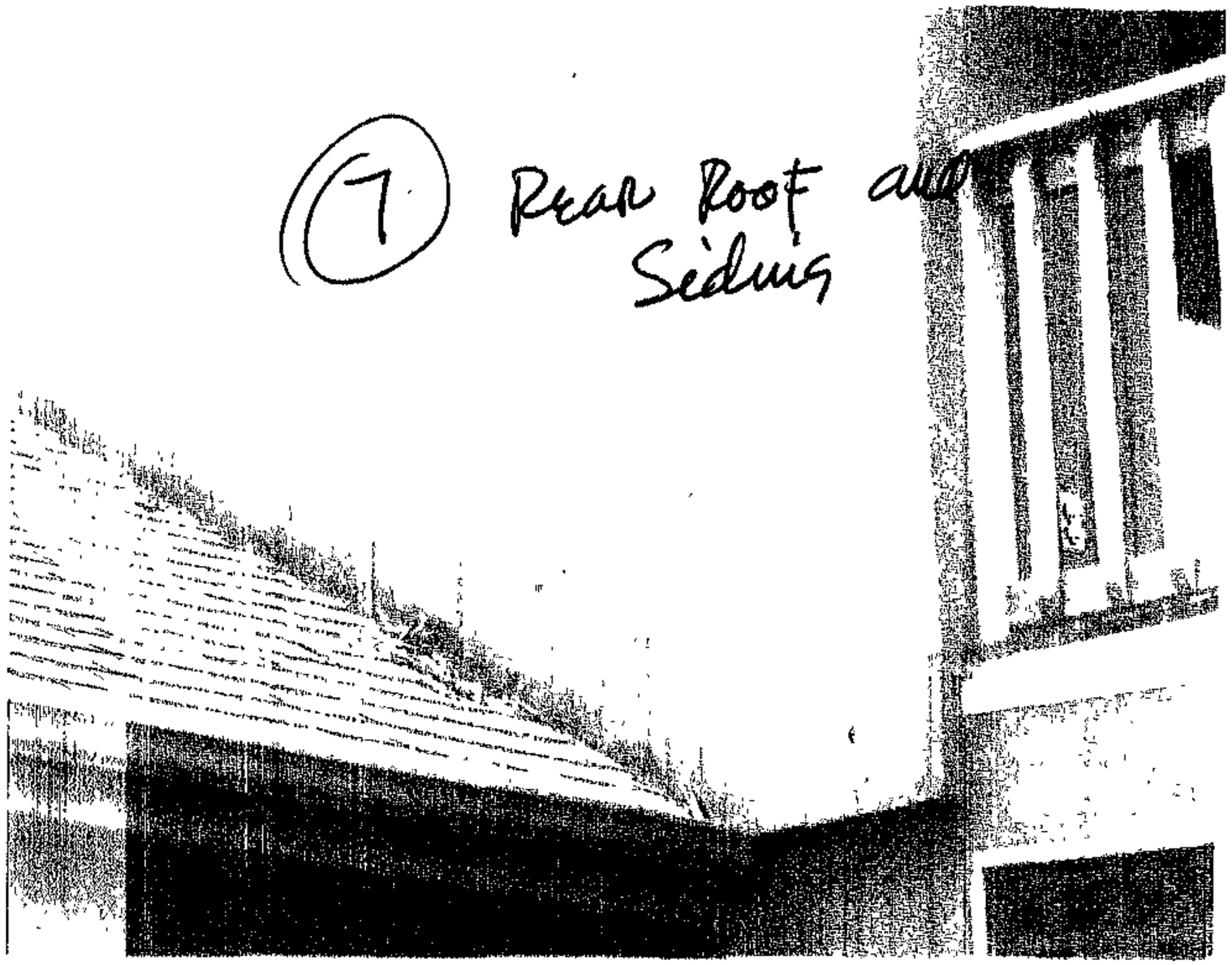


(2) LEFT SIDE

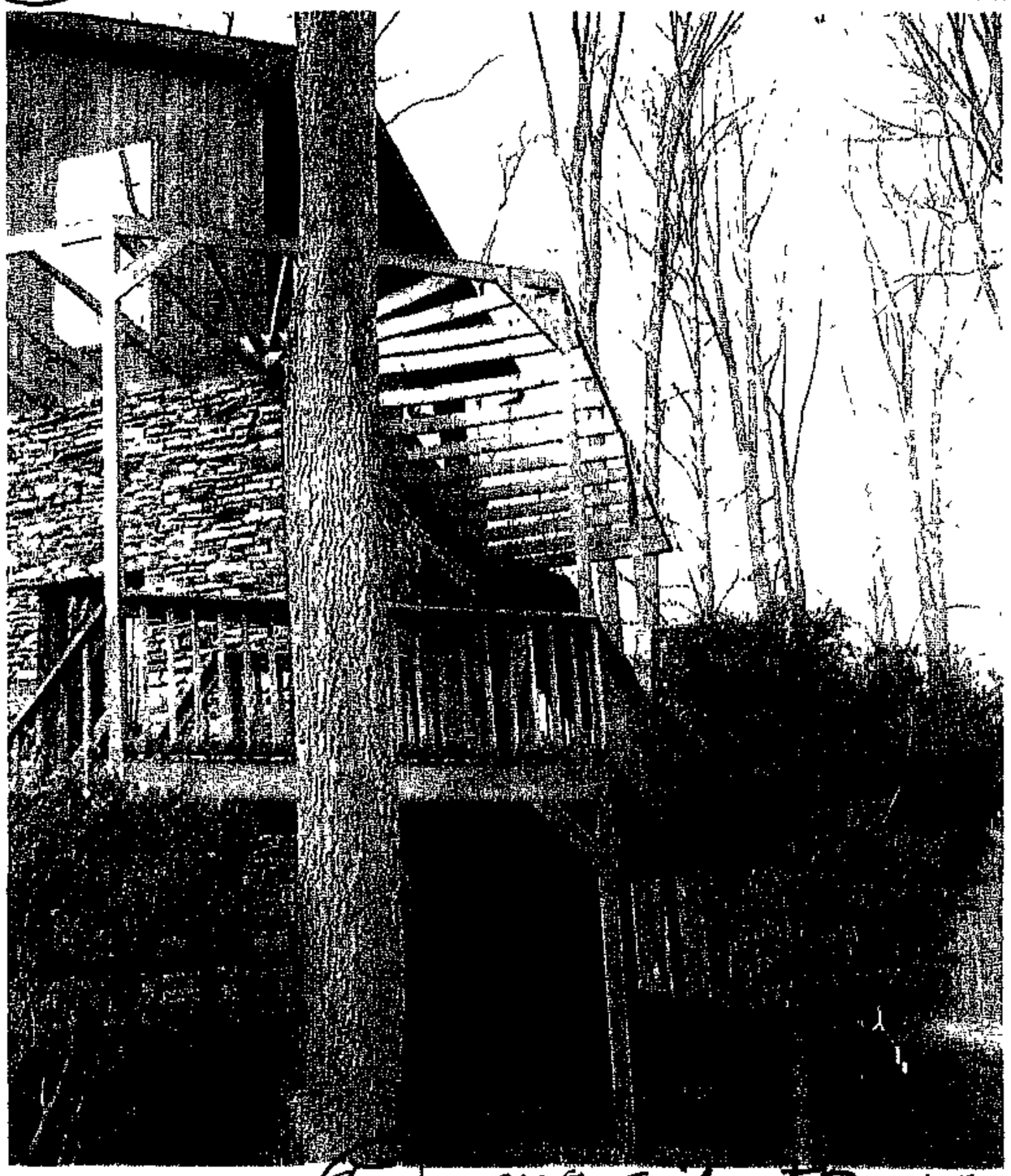
(4) REAR @ GARAGE

(6) Right side Front

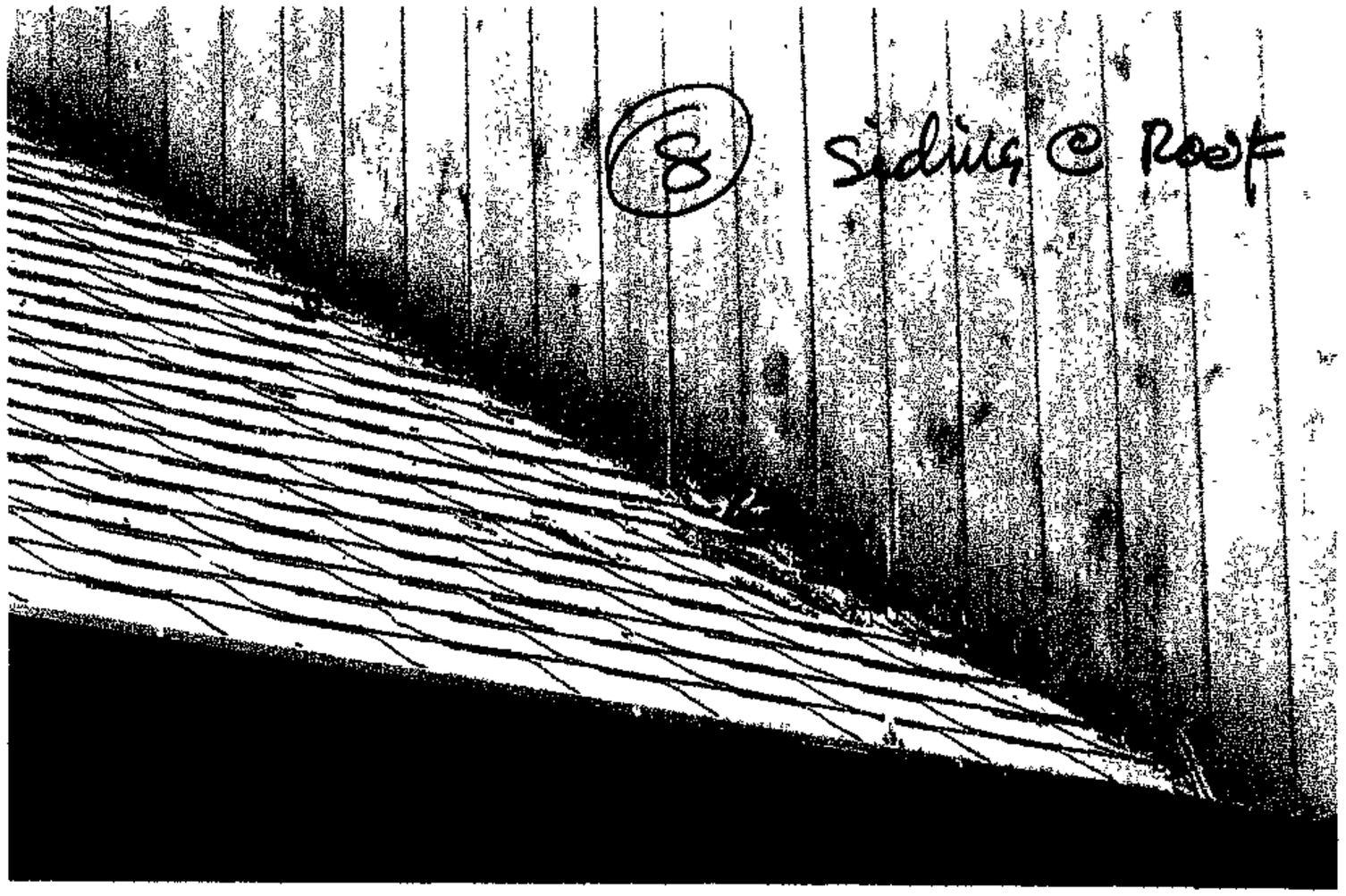
(4) screened Porch @ Rear.



(7) Rear Roof and Siding



(5) LEFT Side FRONT

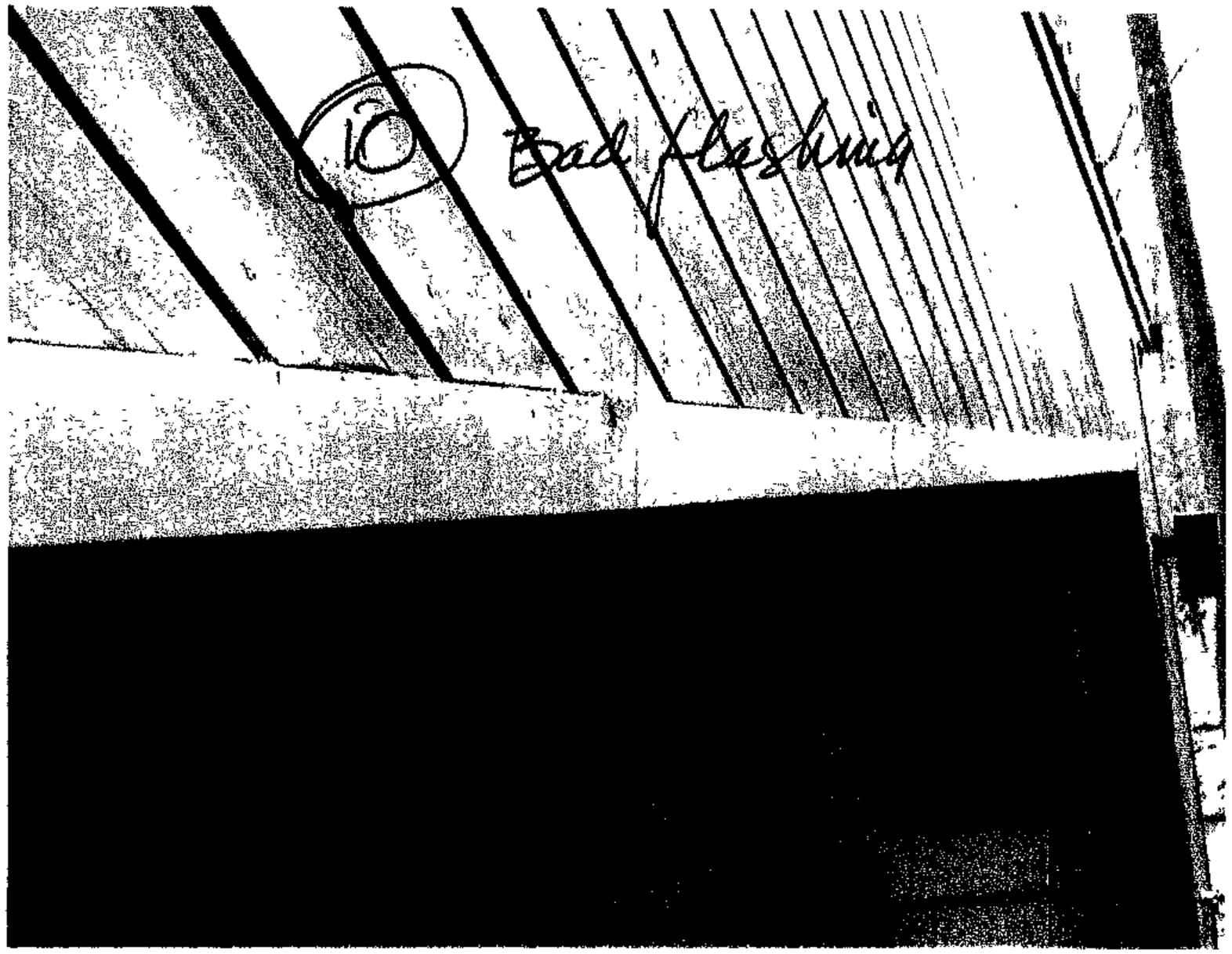


(8) Siding @ Roof

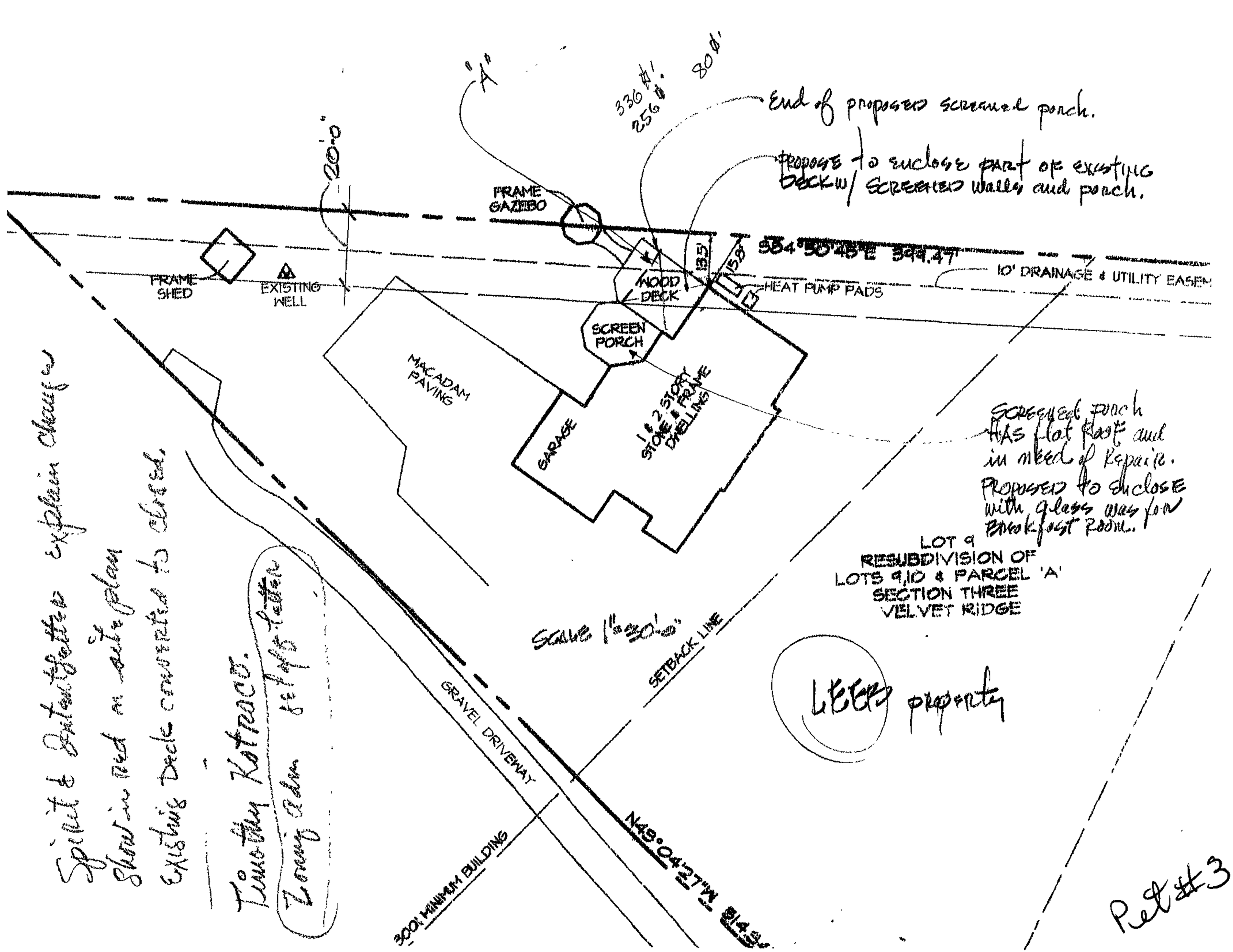
DECK on Ground

(9) Rear Deck.

(11) Bad Siding



(10) Bad flashing


"A"
336 ft.
256 ft.
80 ft.
End of proposed screened porch.
Propose to enclose part of existing Deck w/ screened walls and porch.
20'-0"
FRAME GAZEBO
FRAME SHED
EXISTING WELL
WOOD DECK
135'
158'
S84°50'45"E 349.47'
10' DRAINAGE & UTILITY EASEM
HEAT PUMP PADS
SCREEN PORCH
MACADAM PAVING
GARAGE
1 & 2 STORY STONE & FRAME DWELLING
Screened porch HAS flat roof and in need of Repair. PROPOSED to enclose with glass was for Breakfast Room.
LOT 9
RESUBDIVISION OF
LOTS 9,10 & PARCEL 'A'
SECTION THREE
VELVET RIDGE
SCALE 1"=30'-0"
SETBACK LINE
GRAVEL DRIVEWAY
N49°04'27"W 814.3'
300' MINIMUM BUILDING
Liberty property
Spirit & Intent letter explaining
Shown in red on site plan
Existing Deck converted to closed
Timothy Katracot.
Zoning Adm
Pet #3

Baltimore County Zoning Commissioner
Office of Planning
Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204

Photographs
#04-433-A
#4A-4H
Pet Exh.

Pet 9

IN RE: PETITION FOR ADMIN. VARIANCE N/S Velvet Ridge Drive, 148' W of the c/l Park Heights Avenue (2316 Velvet Ridge Drive) 3rd Election District 3rd Council District Melvyn J. Leeb, et ux Petitioners	* * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 01-390-A

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner for consideration of a Petition for Administrative Variance filed by the owners of the subject property, Melvyn J. and Leslie B. Leeb. As originally filed, the Petitioners sought relief from Section 1A04.3.b.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side/rear property line setback of 13.5 feet in lieu of the required 50 feet for the existing dwelling and proposed additions. The Petitioners filed their request through the administrative variance process, pursuant to Section 26-127 of the Baltimore County Code, which allows a residential property owner to obtain variance relief without a public hearing. Under that process, the Petition and related documents are filed with the Zoning Review Division of the Department of Permits and Development Management (DPDM). Thereafter, notice of the requested relief is conspicuously posted on the property for a period of 15 days, after which the file is forwarded to the Zoning Commissioner/Deputy Zoning Commissioner for consideration. If any adjacent property owner requests a hearing, or if the Zoning Commissioner determines that a hearing is necessary to determine the appropriateness of the relief requested, the matter is scheduled for a public hearing. If no hearing is requested or deemed necessary, relief can be granted without the necessity of a public hearing. In this case, however, the adjoining property owner, Mary Allinson, who resides to the rear of the subject property, requested that a hearing be held and the matter was subsequently scheduled. Although originally convened on May 17, 2001, the matter was continued in open hearing at that time to allow for continued negotiations between

ORDER RECEIVED FOR FILING
Date 6/19/01
By

the property owners and the Protestant and reconvened on June 14, 2001. The subject property and originally requested relief are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 3.

Appearing at the public hearing in support of the request were Melvyn and Leslie Leeb, property owners, and Katherine Daly, Architect, who prepared the building elevation drawings and site plan for this property. Appearing as a Protestant in the matter was Mary Allinson, and her attorney, J. Carroll Holzer, Esquire.

By way of background, the subject property is an irregularly shaped parcel, located on the north side of Velvet Ridge Drive, just west of Park Heights Avenue in Owings Mills in the Velvet Ridge subdivision in the Caves Valley. The property consists of a gross area of 1.94 acres, more or less, zoned R.C.5 and is improved with a one- and two-story dwelling, which, due to existing site and environmental constraints, is located towards the rear of the site. Mr. & Mrs. Leeb are the original owners of the dwelling, which was constructed in approximately 1989. The original plat which was prepared to secure building permits at that time was submitted and marked into evidence as Petitioner's Exhibit 4. That plat shows the proposed location of the house, and indicates a 50-foot rear yard setback and a 20-foot side yard setback on the north side. Although no evidence could be produced regarding the building permit application process for this dwelling, Mr. & Mrs. Leeb believe that a variance was obtained at that time to allow a 20-foot side yard setback. However, when the house was actually constructed, it was not sited in accordance with the building permit plat. In fact, a recently completed boundary survey of the subject property was submitted into evidence and marked as Petitioner's Exhibit 1. This survey was prepared by Gerhold, Cross & Etzel, Registered Professional Land Surveyors, and shows the location of the existing improvements on the subject property. As shown on the survey plat, the rear/(north) side corner of the house is actually located 13.5 feet from the adjacent property line. Thus, variance relief is necessary in order to legitimize that distance.

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By

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However, in view of Ms. Allinson's opposition, the Petitioners have now abandoned their request for a variance for the proposed construction. At the reconvened hearing, the Petition was amended so that the relief sought is limited only to legitimize existing conditions. In this regard, testimony was offered that no permanent construction has occurred since the original house was built. That is, variance relief is required due to the improper location of the house when originally constructed, and not because of some additional improvements constructed thereafter.

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Based upon the testimony and evidence offered, I am persuaded to grant the Petition for Variance. The unusual circumstances associated with this case are outlined above, and the property is certainly unique due to the environmental and topographic constraints associated therewith. In my judgment, the Petitioners would suffer a practical difficulty if relief were denied. Moreover, I find that the relief can be granted without adverse impact to adjacent properties. Thus, the amended relief shall be granted.

It is also to be noted that since the house was built, the Petitioners constructed a deck with a gazebo extension off the rear of the dwelling. Apparently, as a result of the recent survey, it was determined that a portion of these improvements extends over the property line into the adjacent property, which is not owned by the Leebs or Ms. Allinson. In order to clarify that issue and resolve any concerns related thereto, the grant of relief herein shall also constitute approval of the location of those open projections (the existing deck and gazebo). Thus, to the extent necessary, variance relief to allow a 0-foot setback for these open projections is hereby granted.

ORDER RECEIVED FOR FILING
Date 11/29/01
By

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 19th day of June, 2001 that the Petition for Administrative Variance seeking relief from Section 1A04.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side/rear property line setback of 13.5 feet in lieu of the required 50 feet for the existing dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance to permit a side setback of 0 feet for the existing open projections (deck and gazebo), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction;

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) Any future construction on the rear/north side of the subject property must comply with setback requirements or variance relief may be necessary.

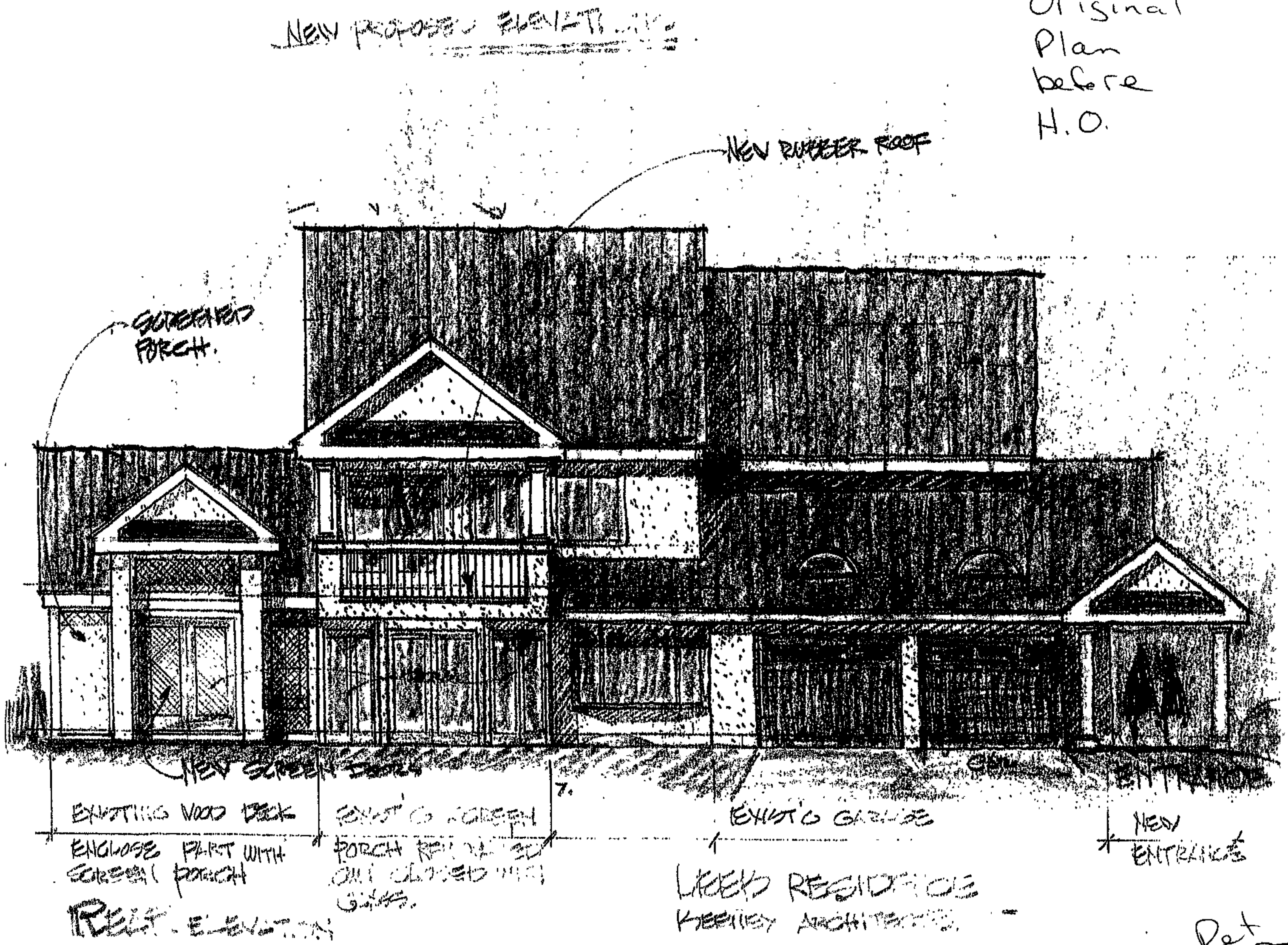
3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 6/19/01
By

Original Plan before H.O.



Pat

Pet 16

Mel and Leslie Leeb
2316 Velvet Ridge Dr.
Owings Mills, MD 21117

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

Re: Petition for Variance – In re: N/S. of Velvet Ridge Drive 2475 ft W Centerline of Park Heights Avenue,
3rd Election District, 2nd Councilmanic District
2316 Velvet Ridge Drive
Case No. 04-433-A

To the Members of the Board:

I/We write to express support for the granting of the variance requested by Mr. and Mrs. Leeb in the above-referenced case. I/We have reviewed the plans prepared on behalf of by Mr. and Mrs. Leeb and do not believe that the proposed improvements will affect the enjoyment of our property in any way or otherwise interfere with the health, safety, and general welfare of the neighborhood. I/We fully support Mr. and Mrs. Leeb in their efforts to improve their home.

Name: AARON FINKELSTEIN

Address: 2314 VELVET RIDGE DR

Phone: (410) 363-3465

Signature:

Mel and Leslie Leeb
2316 Velvet Ridge Dr.
Owings Mills, MD 21117

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

Re: Petition for Variance – In re: N/S. of Velvet Ridge Drive 2475 ft W Centerline of Park Heights Avenue,
3rd Election District, 2nd Councilmanic District
2316 Velvet Ridge Drive
Case No. 04-433-A

To the Members of the Board:

I/We write to express support for the granting of the variance requested by Mr. and Mrs. Leeb in the above-referenced case. I/We have reviewed the plans prepared on behalf of by Mr. and Mrs. Leeb and do not believe that the proposed improvements will affect the enjoyment of our property in any way or otherwise interfere with the health, safety, and general welfare of the neighborhood. I/We fully support Mr. and Mrs. Leeb in their efforts to improve their home.

Name: BARBARA HOLDRIDGE
Address: 2627 CAVES ROAD OWINGS MILLS, MD 21117
Phone: 410-363-3690
Signature:

Pet 17

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 2703 Caves Road

97-281-A

which is presently zoned RC-5

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

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 400.1, 400.2 & 400.3 to allow a detached (existing) accessory structure on proposed Lot 3 in front yard instead of rear yard, 0' from property line and 30' in height in lieu of the required 15' and a footprint larger than the principal structure.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty) The uniqueness and peculiarity of the property causes the zoning provisions to impact disproportionately upon the property.

Practical difficulty and unreasonable hardship result from the disproportionate impact of the provisions of the zoning regulations caused by the property's uniqueness.

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

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

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner

(Type or Print Name)

Signature

Address Phone No.

City State Zipcode

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.

Legal Owner(s):

Arthur Allinson

(Type or Print Name)

Arthur Allinson

Signature

Mary Allinson

(Type or Print Name)

Mary Allinson

Signature

2707 Caves Road

Address Phone No

Owings Mills, MD 21117

City State Zipcode

Name Address and phone number of representative to be contacted

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

Name

3723 Old Court Rd. 653-3838

Address Phone No

Baltimore, MD 21208

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: JAA DATE 8-1-97

281

ORDER RECEIVED FOR FILING

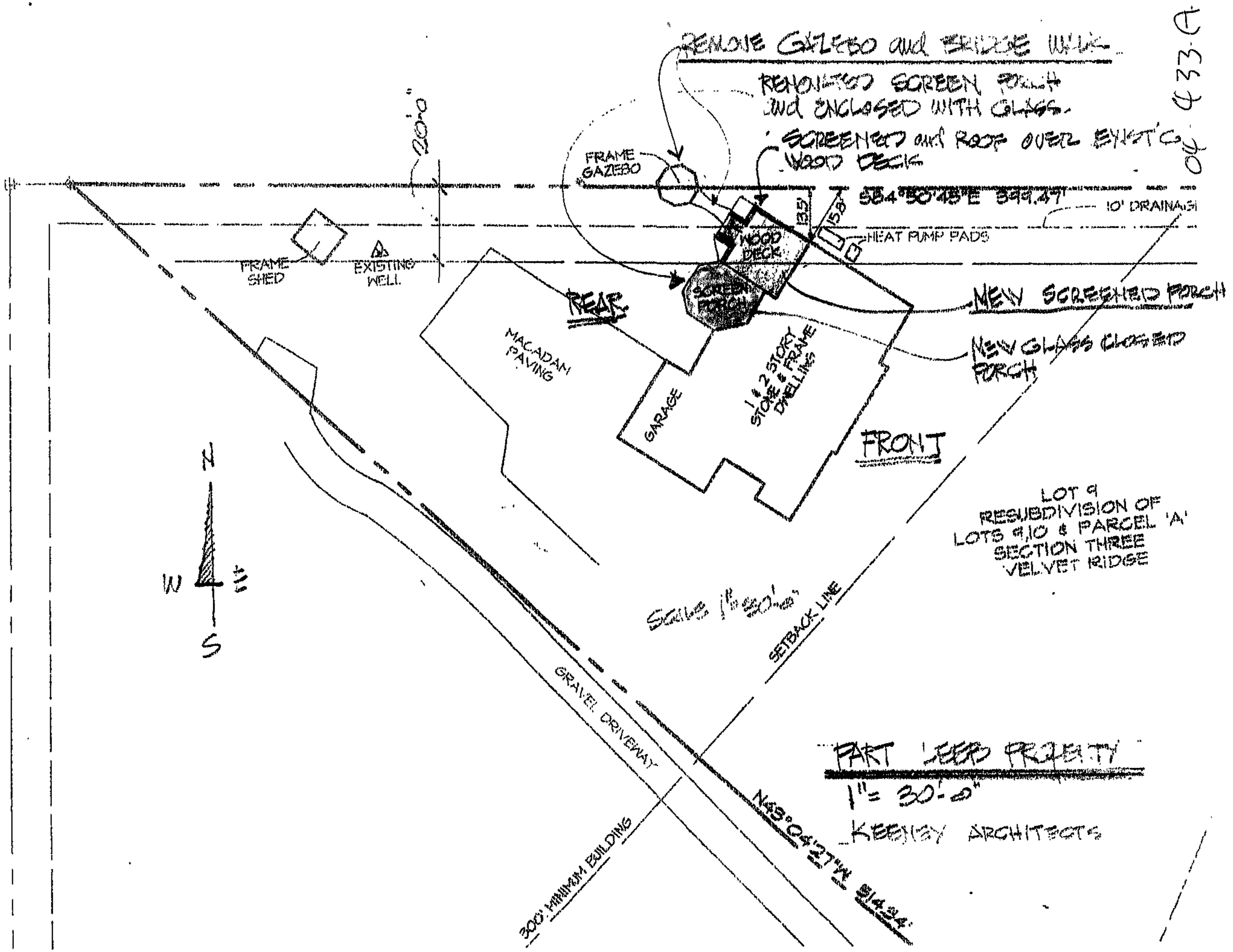
Date 8/21/97

By

Printed with Soybean Ink on Recycled Paper

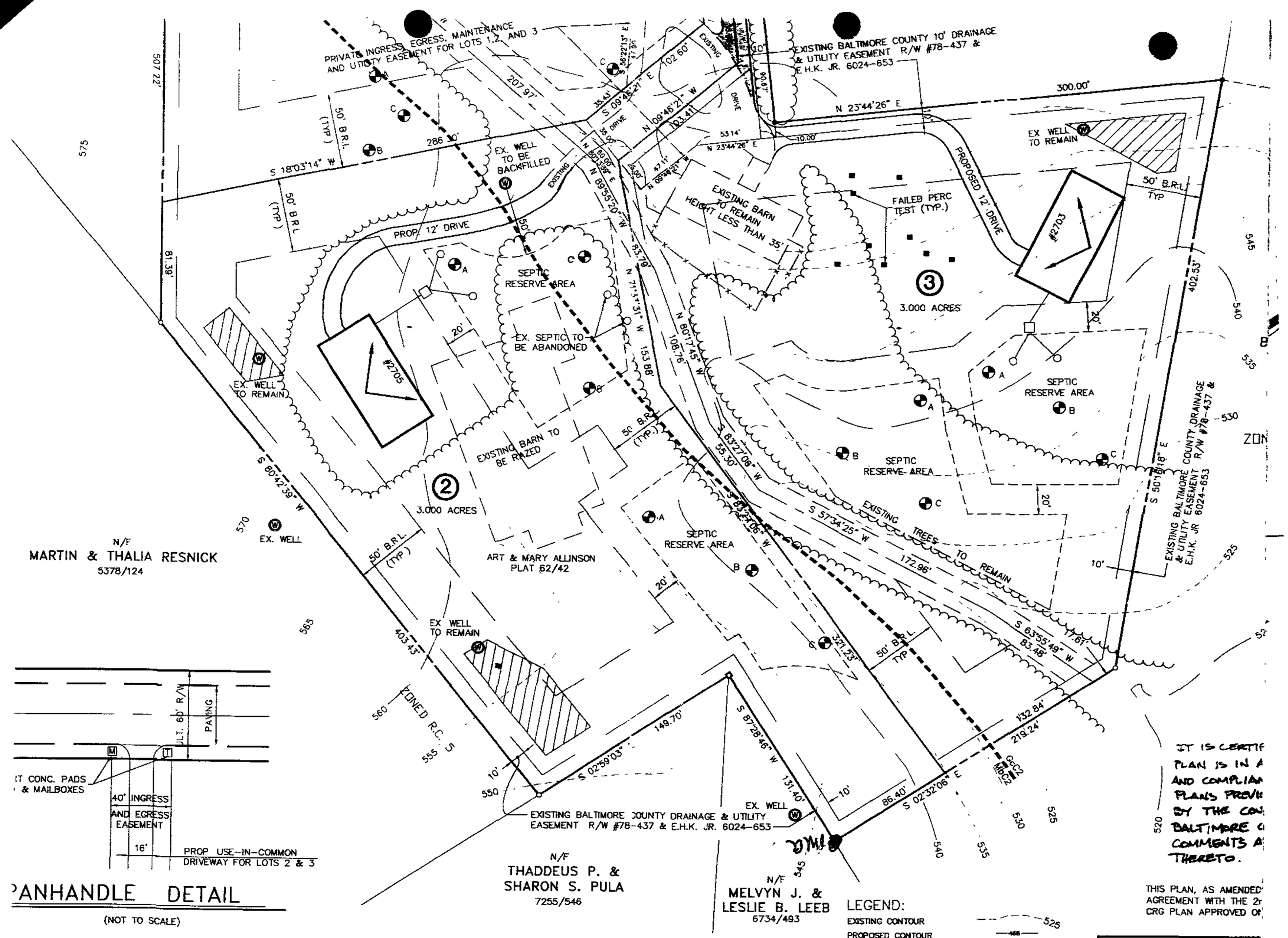
Zoning Administration & Development Management

MICROFILMED



04-433-A

04-421-A



PANHANDLE DETAIL

(NOT TO SCALE)

SOILS DATA

SYMBOL	NAME	SLOPE	CLASS	LIMITATIONS FOR HOMES	FOR STREETS & PARKING
2	GLENELG LOAM	3 – 8%	B	SLIGHT	MODERATE
2	GLENELG LOAM	8 – 15%	B	SLIGHT	MODERATE
2	MANOR LOAM	8 – 15%	B	MODERATE	SEVERE

LEGEND:

- EXISTING CONTOUR
- PROPOSED CONTOUR
- PROPOSED TREES TO REMAIN
- TEMPORARY SWALE
- SILT FENCE
- PROPOSED WELL AREA
- EARTH DIKE
- SUMP PIT
- RIP-RAP INFLOW PROTECTION
- REMOVABLE PUMPING STATION
- LIMIT OF DISTURBANCE
- STABILIZED CONSTRUCTION ENTRANCE

IT IS CERTIF
PLAN IS IN A
AND COMPLIAN
PLANS PREVI
BY THE CO
BALTIMORE C
COMMENTS A
THERETO.

THIS PLAN, AS AMENDED
AGREEMENT WITH THE 2
CRG PLAN APPROVED O

OFFICE OF PLANNING
APPROVED BY:

DIRECTOR OF PLANNING

DIRECTOR OF P.D.M.

Proof #1

County Board of Appeals of Baltimore County
ROOM 49 OLD COURTHOUSE
TOWSON, MARYLAND 21204

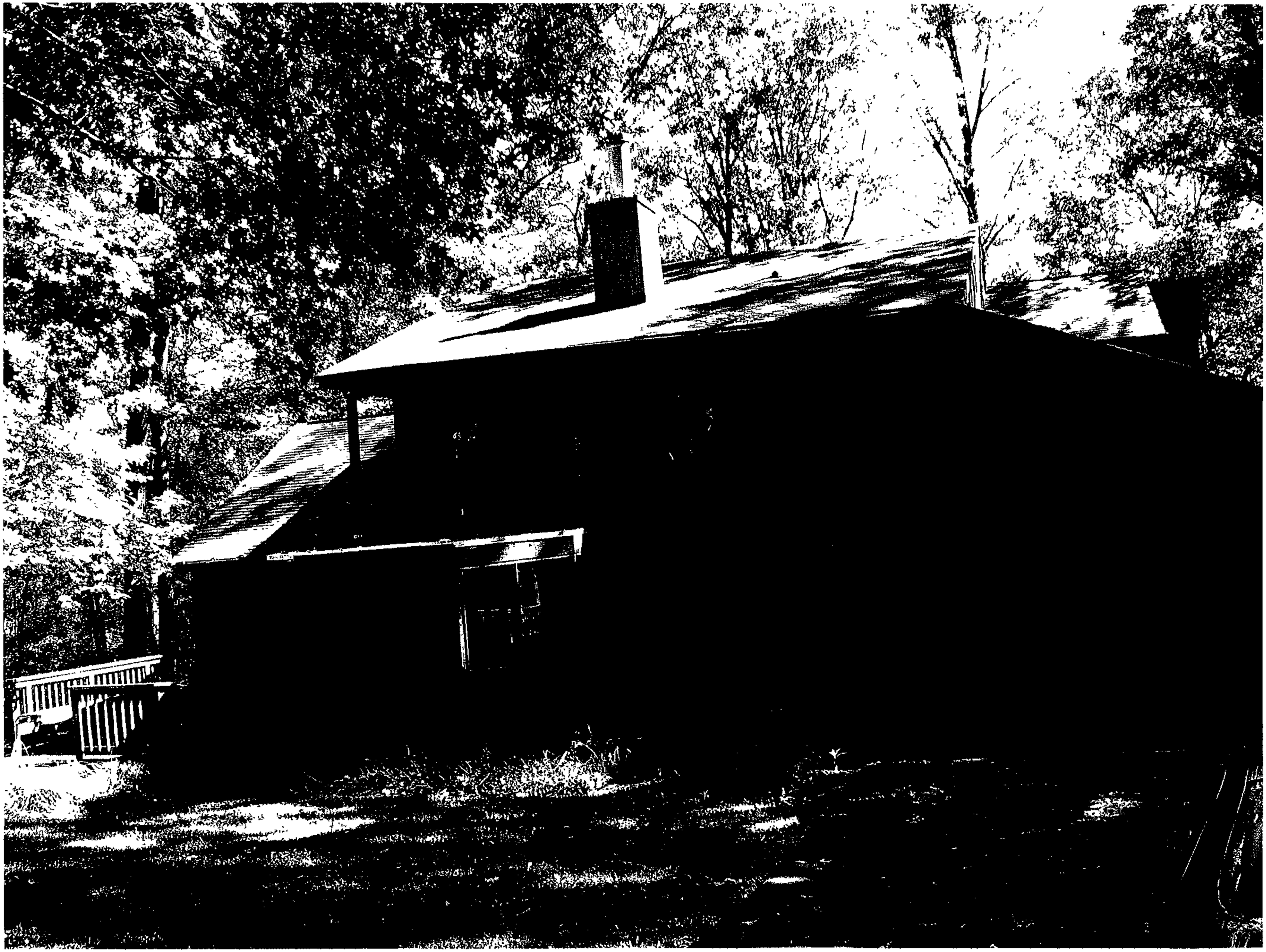
Return Service Requested

Protestants 1A-1D
(4 photos)

Leeb
04-433-A

P.O. #3B

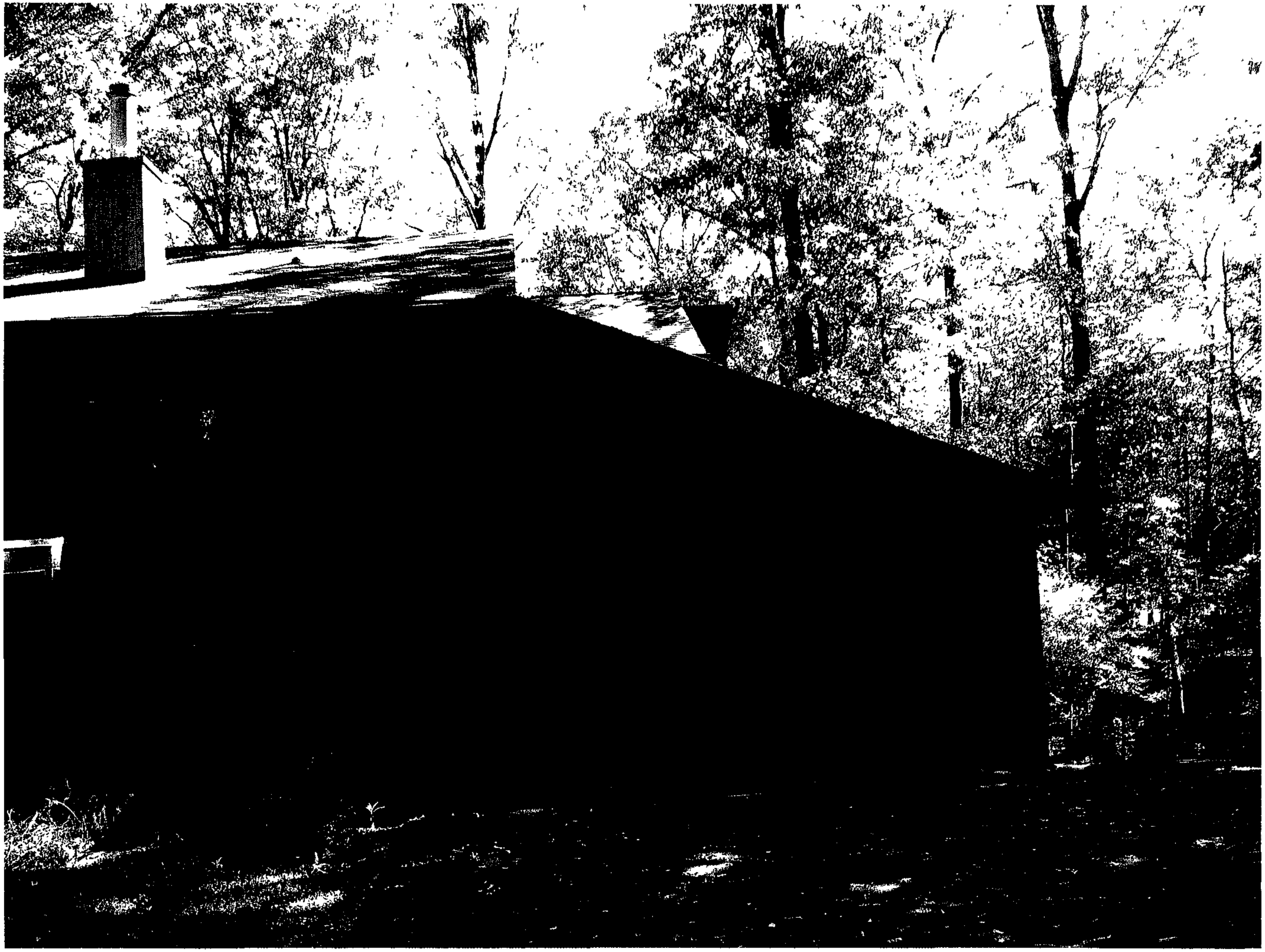
CBA
Pct 1B



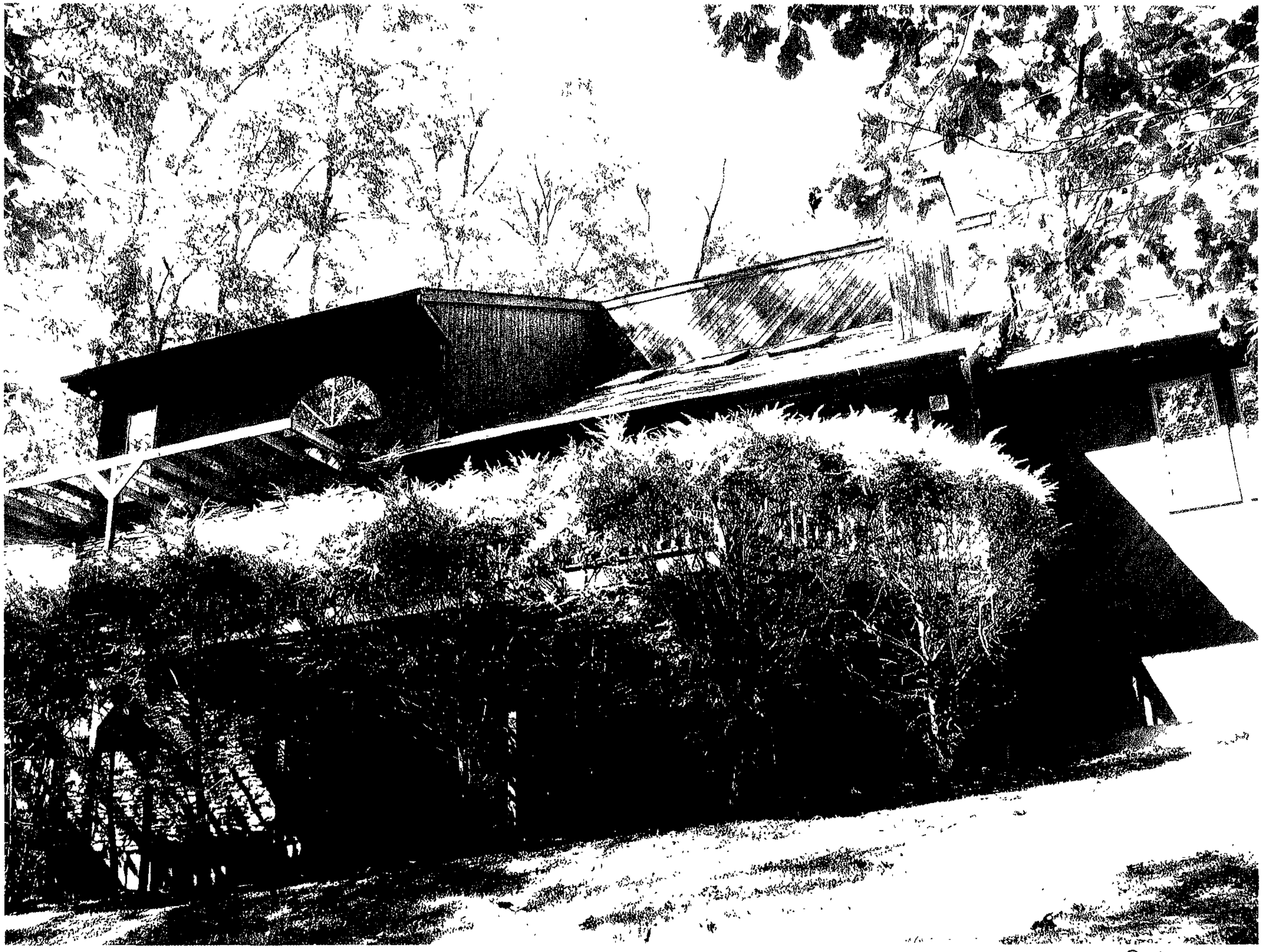
CBA Pet 6A

CBA Pet 6D

CBA Pet 6C



CBA Pet 6B



CBA Pet 6E

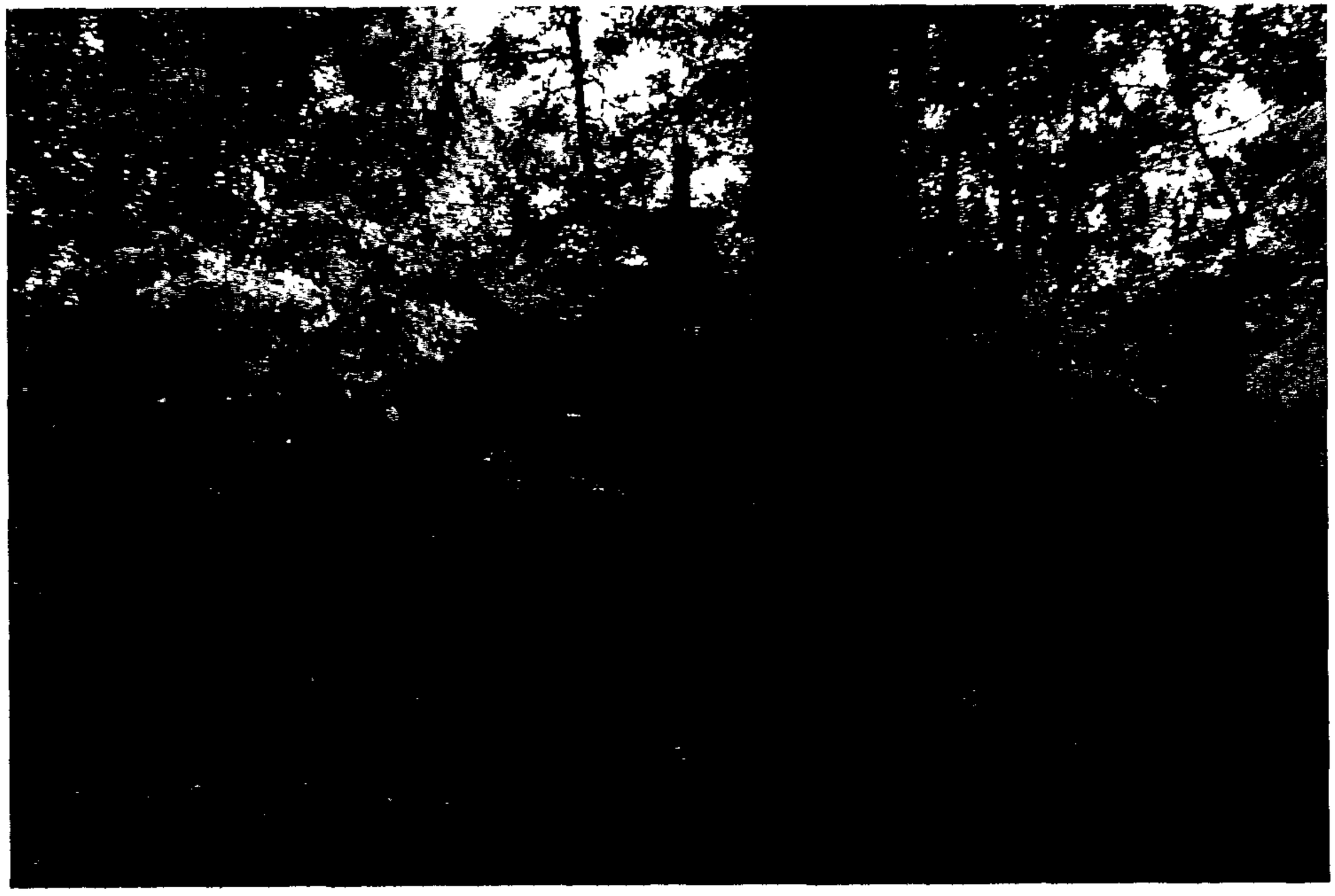
CBA
Pet 7

Bedroom Deck Photo

Ground Level Photo

10/04

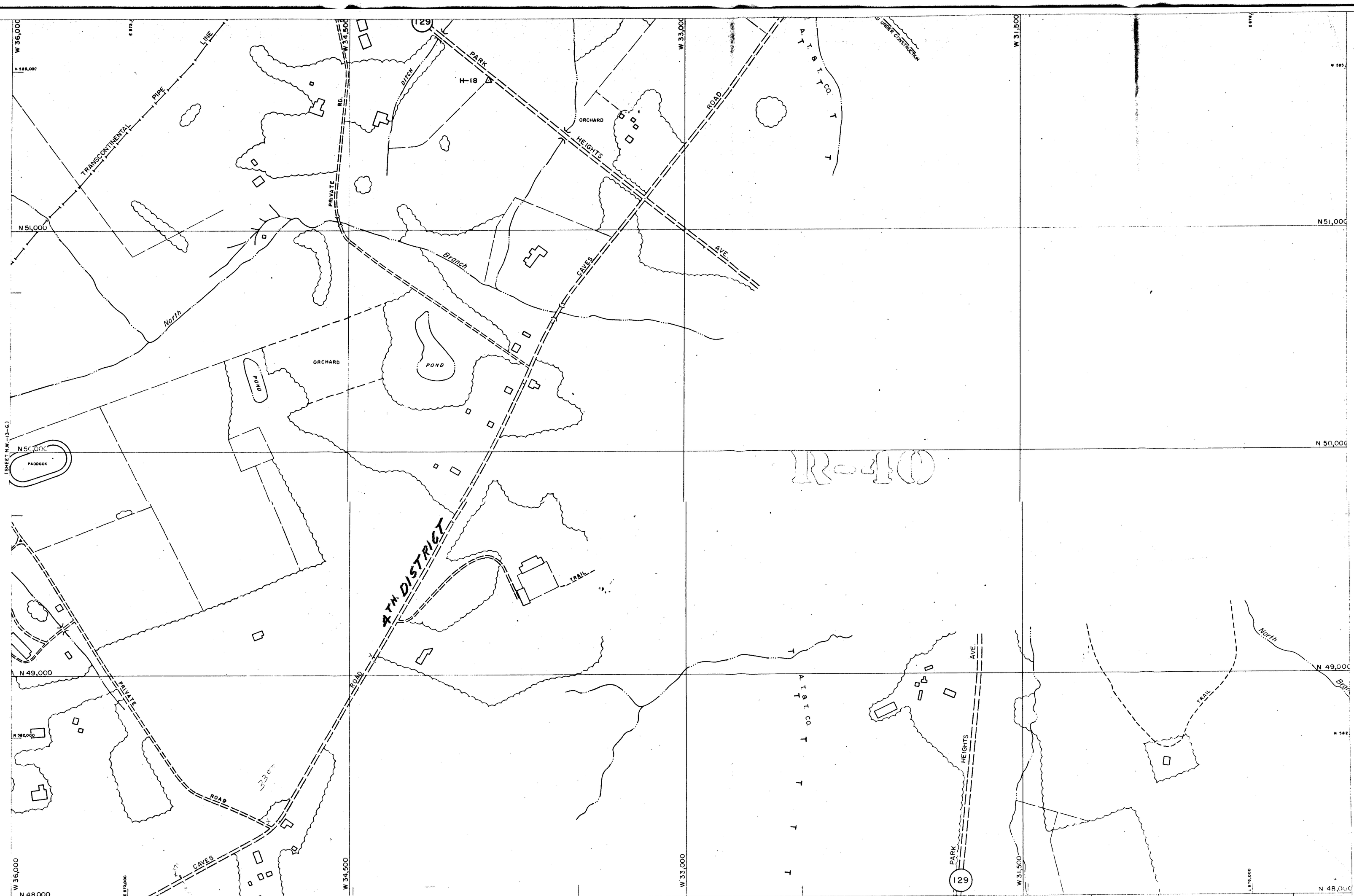
CBA
Pet 8A



CBA
Pet 8 B

CBA
Pet 8C

CBA
Pot 8D

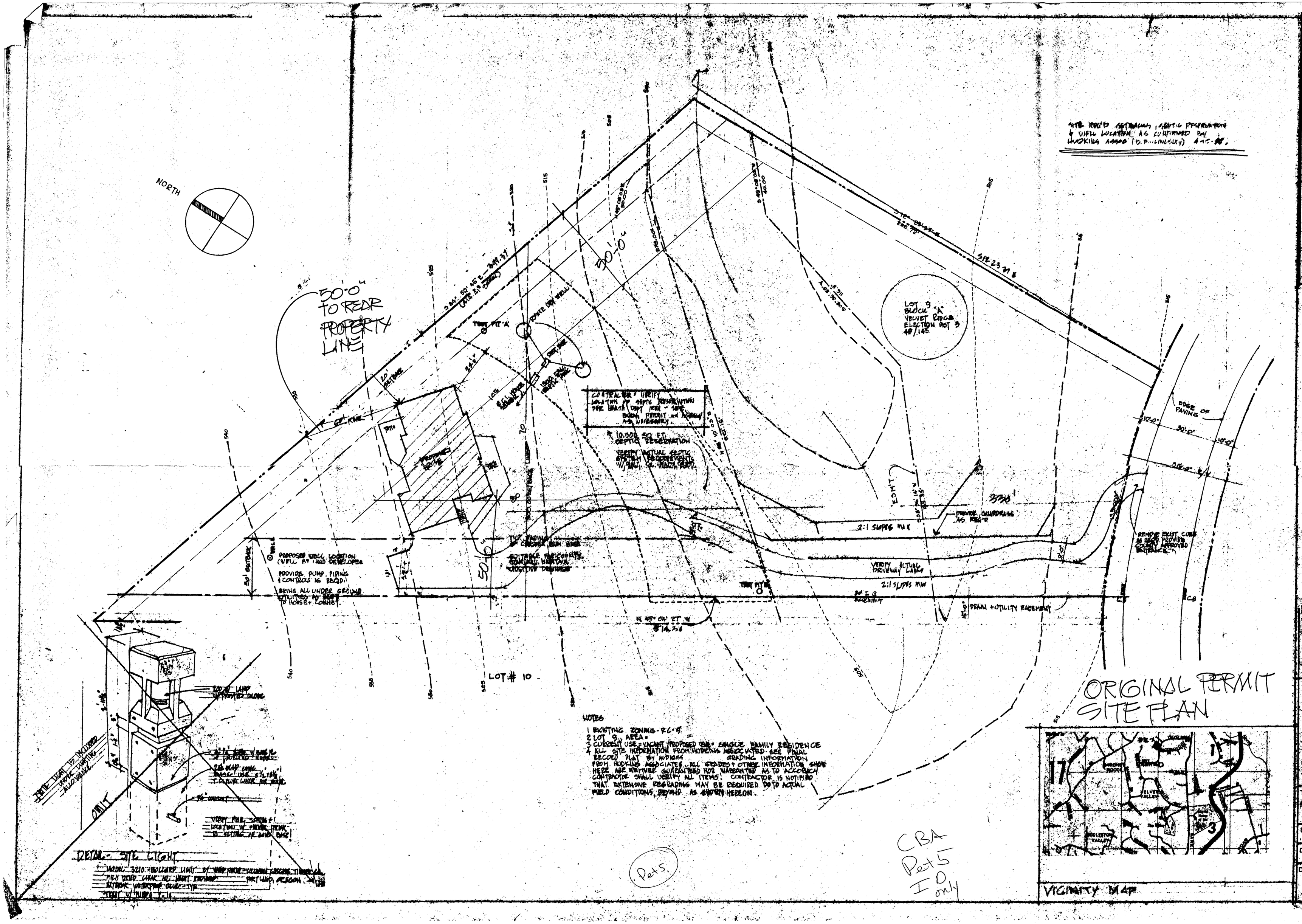


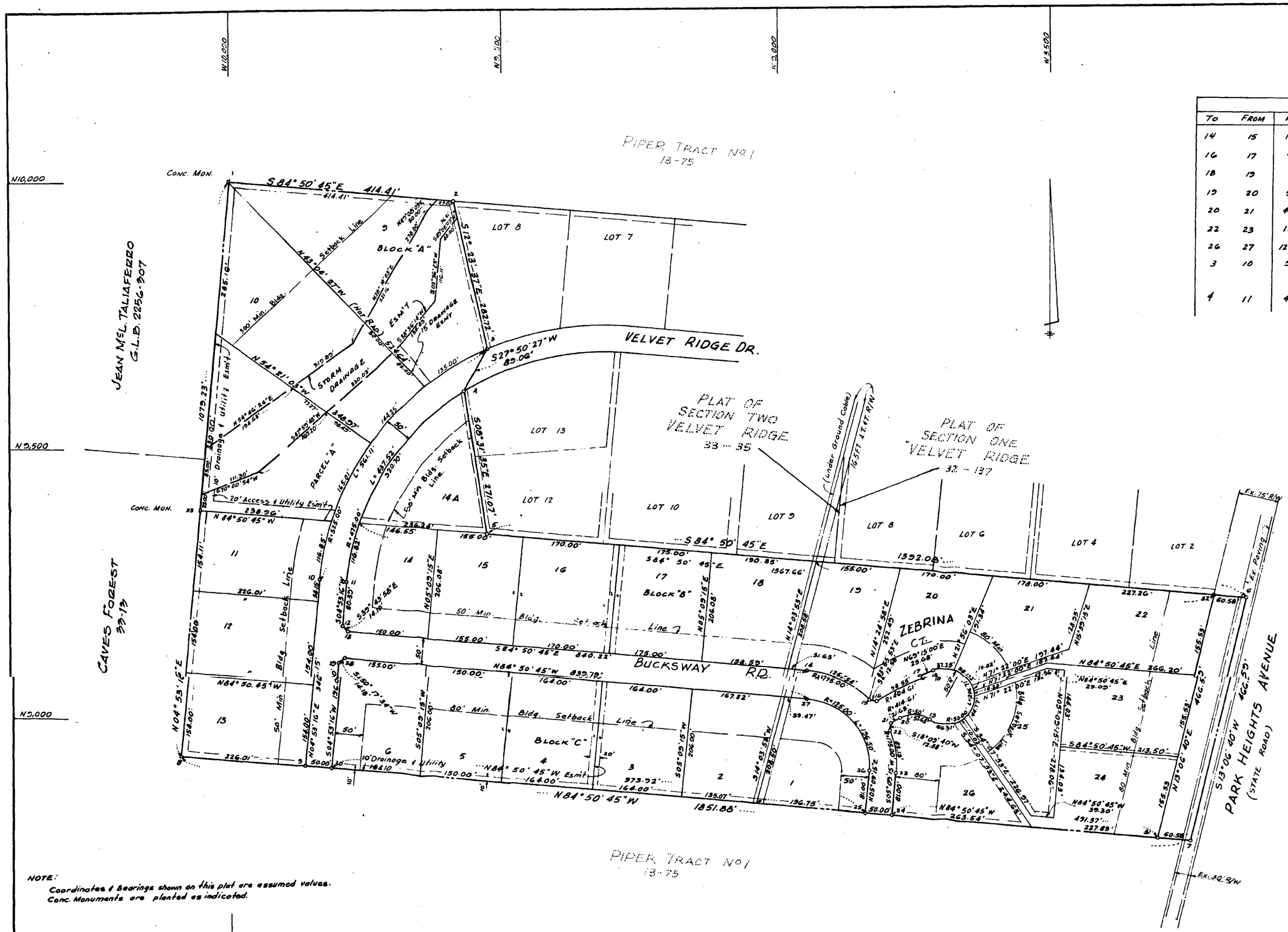
PHOTOGRAMMETRIC MAP OF
BALTIMORE COUNTY METROPOLITAN AREA

REVISIONS		SCALE	LOCATION	SHEET
BY	DATE	1" = 200'	THE CAVES	N. W.
		DATE OF PHOTOGRAPHY APRIL 1953	3RD DIST.	13-F

Compiled By Photogrammetric Methods
AERO SERVICE CORPORATION - PHILADELPHIA, PA.

CBA
Pet 10

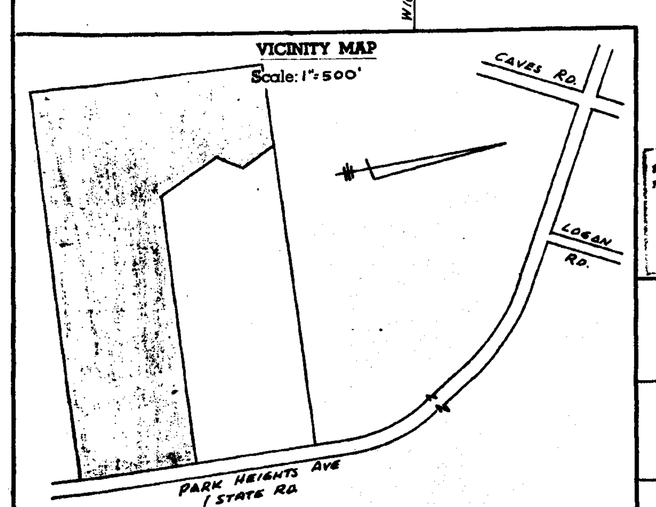

NORTH
50'-0" TO REAR PROPERTY LINE
50'-0"
LOT 9
BLOCK "A"
VELVET RIDGE
ELECTION DIST 3
LOT # 10
DRAIN + UTILITY EASEMENT
2:1 SLOPES MAX
VERIFY ACTUAL DRIVEWAY LAYOUT
PROVIDE CULVERT AS REQ'D
REMOVE EXIST CURB & REPAIR PROVIDE COUNTY APPROVED ENTRANCE
EDGE OF PAVING
PROPOSED WELL LOCATION (WELL BY LAND DEVELOPER)
PROVIDE PUMP, PIPING & CONTROLS AS REQ'D.
BRING ALL UNDER GROUND UTILITIES TO HOUSE + CONNECT.
TEST PIT 'A'
TEST PIT 'B'
TEST PIT 'C'
CONTRACTOR VERIFY LOCATION OF SEPTIC RESERVATION PER HEALTH DEPT REQ - SEE BLDG. PERMIT and NOTES AS SUBMITTED.
10,000 SQ FT SEPTIC RESERVATION
VERIFY ACTUAL SEPTIC SYSTEM REQUIREMENTS W/ WELL & HEALTH DEPT.
SUITABLE FOR COUNTY STANDARD MAINTAIN POSITIVE DRAINAGE
NOTES
1 EXISTING ZONING - RC-4
2 LOT 9 AREA =
3 CURRENT USE = VACANT / PROPOSED USE = SINGLE FAMILY RESIDENCE
4 ALL SITE INFORMATION FROM NUDIGNS ASSOCIATED - SEE FINAL RECORD PLAT BY NUDIGNS GRADING INFORMATION FROM NUDIGNS ASSOCIATES. ALL GRADES + OTHER INFORMATION SHOWN HERE ARE AVAILABLE SURVEY DATA NOT WARRANTED AS TO ACCURACY. CONTRACTOR SHALL VERIFY ALL ITEMS. CONTRACTOR IS NOTIFIED THAT EXTENSIVE REGRADING MAY BE REQUIRED DUE TO ACTUAL FIELD CONDITIONS, BEYOND AS SHOWN HEREON.
DETAIL - SITE LIGHT
ORIGINAL PERMIT SITE PLAN
VICINITY MAP
CBA
Pet 5
I D only
Pet 5.
A. ALLEN HITCHCOCK, AIA
2182 Warren Park Drive
Baltimore, Maryland 21208
301-653-0175
THE LEEB RESIDENCE
BALTIMORE COUNTY, MD
REVISIONS
TITLE:
SCALE:
DATE:
DRAWING:



CURVE DATA							
To	From	Rad.	Δ	L	Tan.	Chord	
14	15	175.00'	41°06'13"	125.54'	65.79'	S64°17'38.5E	122.87'
16	17	468.61'	12° 09'12"	98.55'	49.46'	N63°10'24"E	98.37'
18	19	50.00'	236° 52' 23"	206.71'	-	-	-
19	20	50.00'	66° 02' 14"	57.63'	32.49'	N86°53'44"W	54.49'
20	21	414.61'	02° 59' 21"	21.63'	10.82'	S58°35'38.5"W	21.63'
22	23	175.00'	27° 13' 07"	83.13'	42.37'	N08°27'18.5"W	82.36'
26	27	125.00'	08°54'54"	196.50'	125.00'	N39°50'45"W	138.95'
3	10	525.00'	61° 14' 13"	561.11'	451.82'	S 35°30'22.5"W	534.78'
4	11	475.00'	52° 46' 28"	437.52'	415.52'	S31°16'30"W	422.21'

COORDINATE VALUES					
Nº	NORTH	WEST	Nº	NORTH	WEST
1	10,000.00	10,000.00	19	8992.27	8725.15
2	9,962.72	9,587.28	20	8995.22	8779.36
3	9646.59	9526.59	21	8983.35	8798.02
4	9607.54	9568.18	22	8972.00	8801.54
5	9339.77	9527.99	23	8890.53	8785.83
6	9214.71	8141.55	24	8809.86	8797.11
7	8760.28	8247.39	25	8814.36	8846.91
8	8726.65	10091.78	26	8895.03	8839.63
9	8906.34	9866.68	27	9030.75	8952.87
10	9251.23	9837.19	28	9106.20	9789.27
11	9246.98	9787.37	29	9097.14	9800.18
12	9166.88	9794.22	30	8901.85	9816.88
13	9156.04	9785.21	31	8765.72	8807.73
14	9080.55	8748.41	32	9220.15	8201.80
15	9027.26	8837.69	33	9387.08	10 052.41
16	9025.93	8825.18			
17	9070.32	8757.40			
18	9079.42	8713.39			

NOTE:
Coordinates & Bearings shown on this plat are assumed values.
Conc. Monuments are planted as indicated.



3690799
Plat Book
Folio
Ch 10-29-69 EAM

APPROVED
George E. Gavrelis 10/8/69
Director Baltimore County Planning Board Date

APPROVED
Thomas J. Fleming 10/13/69
County Roads Engineer Date

APPROVED
Donald J. Roop 10/8/69
Deputy State & County Health Officer Date

NOTE

The streets and/or roads as shown hereon and the mention thereof in deeds are for the purpose of description only and the same are not intended to be dedicated to public use; the fee simple title to the beds thereof is expressly reserved in the grantors of the deed to which this plat is attached, their heirs and assigns.

OWNER'S CERTIFICATE

The requirements of Section 72 B, Article 17 of the Annotated Code of Maryland (Flack 1947 Supplement) as far as they relate to the making of this plat have been complied with.

LIBERTY MASONRY, INC.

By: _____
Vice President Date

SURVEYOR'S CERTIFICATE

I, Malcolm E. Hudkins, a registered Land Surveyor of the State of Maryland, do hereby certify that the land shown hereon has been laid out and the plat thereof prepared in accordance with the provisions of the law relating to the subdivision of lands known as House Bill 459, Chapter 1016 of the Acts of 1945 and subsequent Acts amendatory thereto.

Malcolm E. Hudkins 9/10/69
Reg. No. 5095 Date

MSA SSU 836-5/100

OTG 33 FOLIO 134

RECEIVED for Record
OCT 15 1969 at A.M. P.M.
same day recorded in Liber O.T.G. No. _____ folio _____ One of the Records of Baltimore County and examined.

Ruth T. Kendall

III-132

PLAT OF
SECTION THREE
"VELVET RIDGE"

A RESUBDIVISION OF LOTS 4 AND 5, PART OF LOTS 6, 7 AND 8
PIPER TRACT Nº 1
18-75

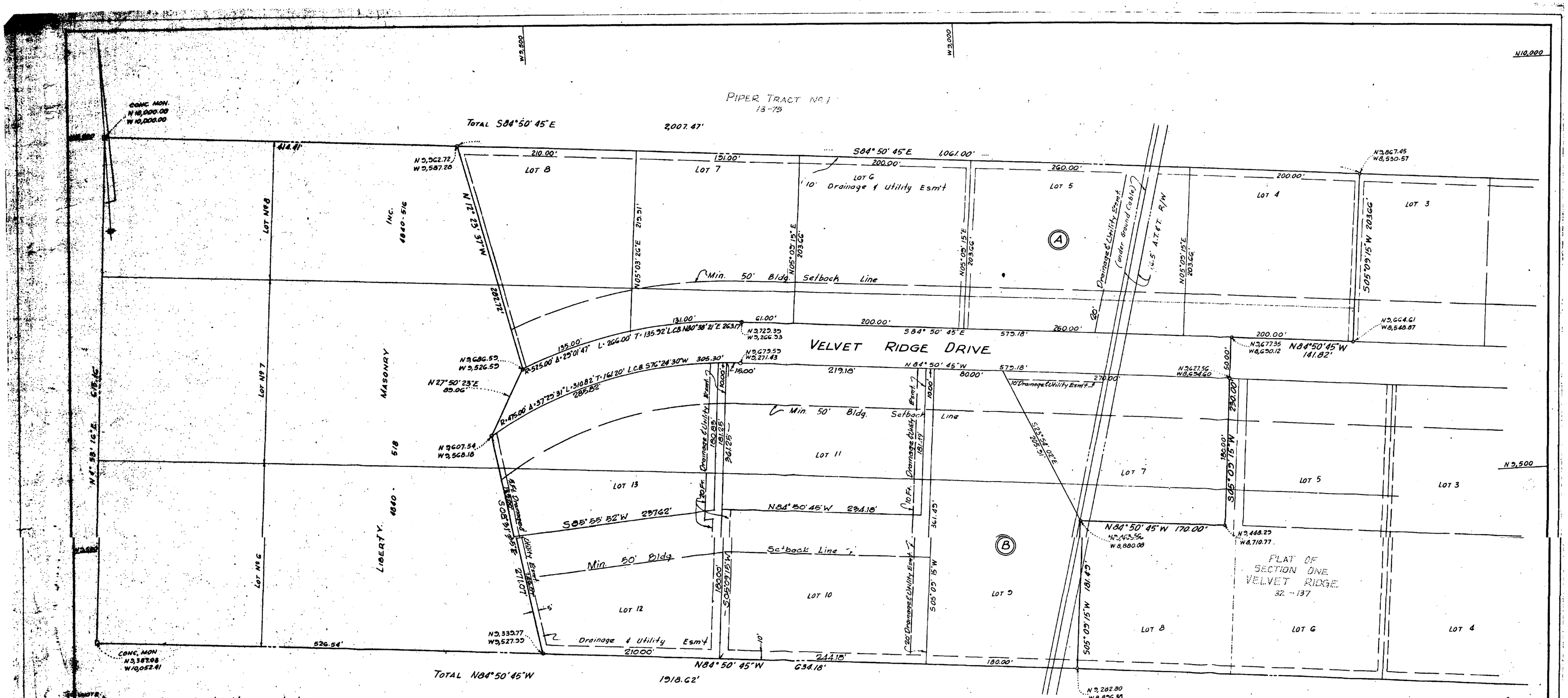
3RD. ELECTION DISTRICT BALTIMORE CO., MD.
SCALE: 1" = 100' JULY, 1969.

A DEVELOPMENT OF
LIBERTY MASONRY, INC.
9015 LIBERTY ROAD
BALTIMORE MARYLAND.

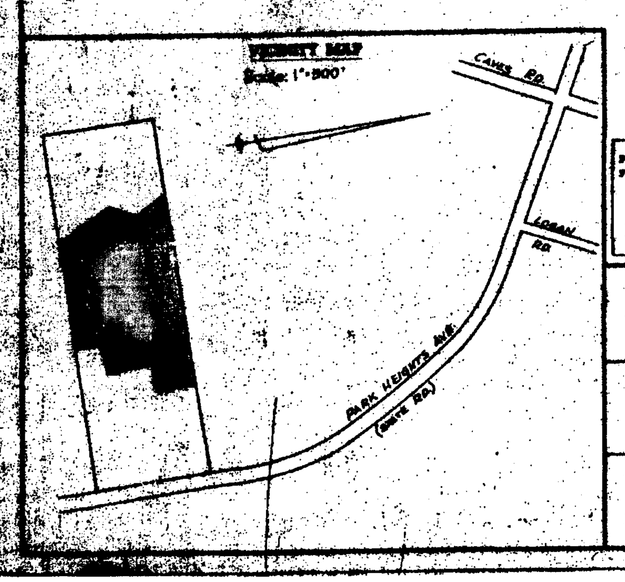
MALCOLM E. HUDKINS
305 W. CHESAPEAKE AVE.
TOWSON, MARYLAND.

STATE OF MARYLAND — MALCOLM E. HUDKINS — REGISTERED LAND SURVEYOR

Pet 3



NOTE:
Coordinates & Bearings shown on this plat are assumed values.
Conc. Monuments are planted as indicated.



O.T.G. 33 FOLIO 35
RECEIVED for Record
NOV 29 1968 at A.M. P.M.
same day recorded in liber O.T.G. No. ____ folio ____
One of the ____ Records of Baltimore County and examined, per

PLAT OF
SECTION TWO
"VELVET RIDGE"
3RD. ELECTION DISTRICT BALTIMORE CO., MD.
SCALE: 1" = 50' SEPTEMBER, 1968.

A DEVELOPMENT OF
LIBERTY MASONRY, INC.
9015 LIBERTY ROAD
BALTIMORE MARYLAND.

MALCOLM E. HUDKINS
305 W. CHESAPEAKE AVE.
TOWSON, MARYLAND.

P. W. A. Compliance 36818 R.G.
Final Plat Checked:
Plans:
Engineering
Street, Curbs
Sewer Size.
Water Size.

APPROVED
Baltimore County Planning Board 11/21/68 Date

APPROVED
County Roads Engineer 11/21/68 Date

APPROVED
County State & County Health Office 11-21-68 Date

NOTE

The streets and/or roads as shown hereon and the mention thereof in deeds are for the purpose of description only and the same are not intended to be dedicated to public use; the fee simple title to the beds thereof is expressly reserved in the grantors of the deed to which this plat is attached, their heirs and assigns.

OWNER'S CERTIFICATE

The requirements of Section 72 B, Article 17 of the Annotated Code of Maryland (Flack 1947 Supplement) as far as they relate to the making of this plat have been complied with.

LIBERTY MASONRY, INC.
By: _____ 11/14/68
President Date

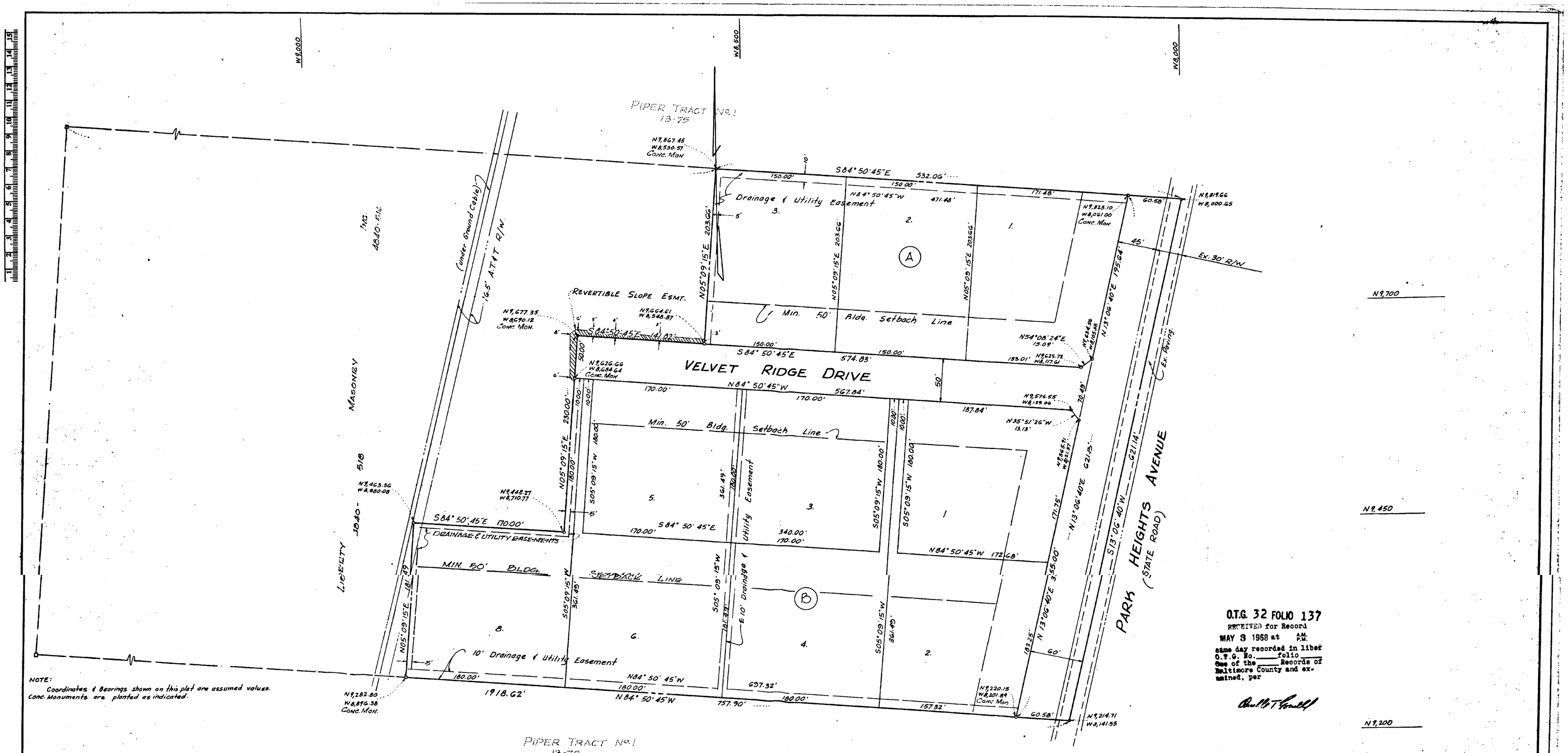
SURVEYOR'S CERTIFICATE

I, Malcolm E. Hudkins, a registered Land Surveyor of the State of Maryland, do hereby certify that the land shown hereon has been laid out and the plat thereof prepared in accordance with the provisions of the law relating to the subdivision of lands known as House Bill 459, Chapter 1076 of the Acts of 1945 and subsequent Acts amendatory thereto.

Malcolm E. Hudkins 11/14/68
Reg. No. 5055 Date

MSR 33U 1036-5100 33-35

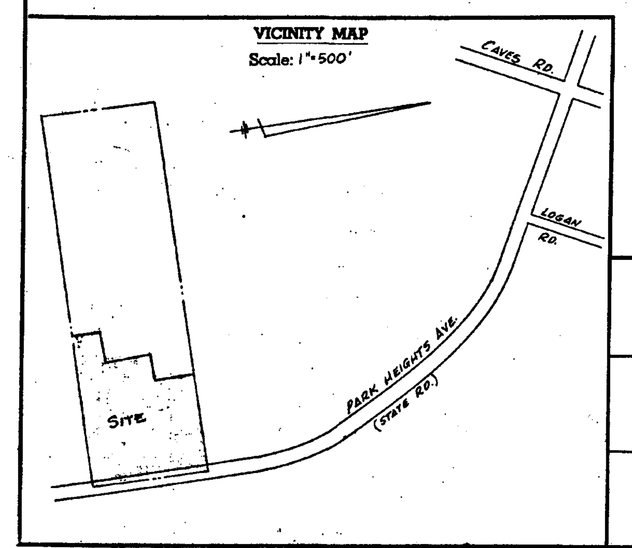
Pat 2



O.T.G. 32 FOLIO 137
RECEIVED for Record
MAY 3 1968 at A.M. P.M.
same day recorded in Libet O.T.G. No. folio one of the Records of Baltimore County and examined, per

PLAT OF
SECTION ONE "VELVET RIDGE"
BEING A RESUBDIVISION OF LOTS 6,7&8
PIPER TRACT No. 1 : 13-75
3RD. ELECTION DISTRICT BALTIMORE CO., MD.
SCALE: 1" = 50' FEBRUARY, 1968.

A DEVELOPMENT OF
LIBERTY MASONRY, INC.
9015 LIBERTY ROAD
BALTIMORE MARYLAND.



APPROVED
George E. Gavrelis 5/3/68
Director - Baltimore County Planning Board — Date

APPROVED
Albert R. Kalbfleisch 5/3/68
County Roads Engineer — Date

APPROVED
Donald J. Roop, M.D. 4-30-68
Deputy State & County Health Officer — Date

3680398
4-26-68

NOTE

The streets and/or roads as shown hereon and the mention thereof in deeds are for the purpose of description only and the same are not intended to be dedicated to public use; the fee simple title to the beds thereof is expressly reserved in the grantors of the deed to which this plat is attached, their heirs and assigns.

OWNER'S CERTIFICATE

The requirements of Section 72 B, Article 17 of the Annotated Code of Maryland (Flack 1947 Supplement) as far as they relate to the making of this plat have been complied with.

By: President — Date

SURVEYOR'S CERTIFICATE

I, Malcolm E. Hudkins, a registered Land Surveyor of the State of Maryland, do hereby certify that the land shown hereon has been laid out and the plat thereof prepared in accordance with the provisions of the law relating to the subdivision of lands known as House Bill 459, Chapter 1016 of the Acts of 1945 and subsequent Acts amendatory thereto.

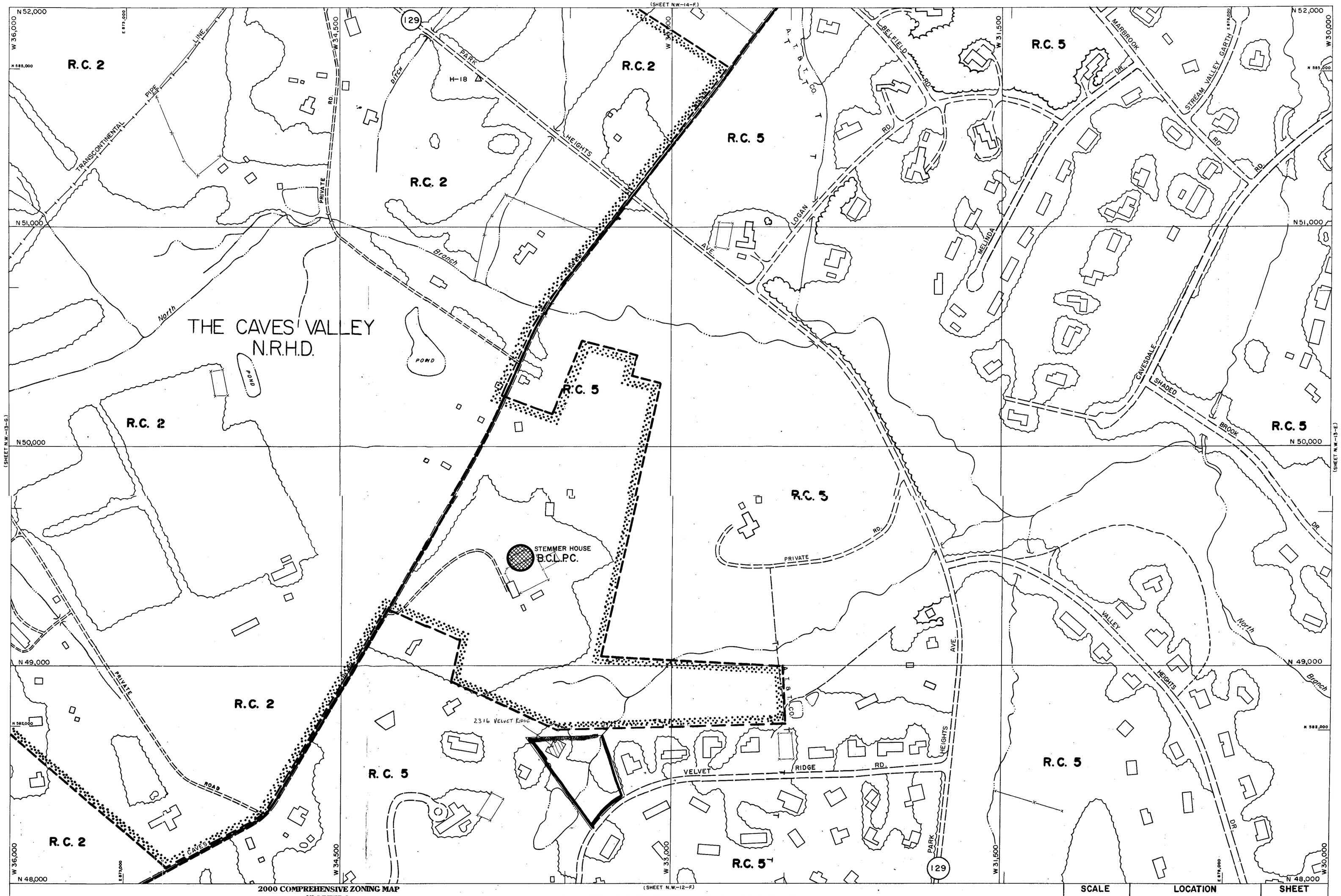
Malcolm E. Hudkins
Reg. No. 5095 — Date

MALCOLM E. HUDKINS
8214 PLEASANT PLAINS RD.
BALTO. CO. MARYLAND

MSA SSU 1336-5097

P. 1838

Pat 1



T-SE

T-NE

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

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

Joseph Bartenfelder
Chairman, County Council

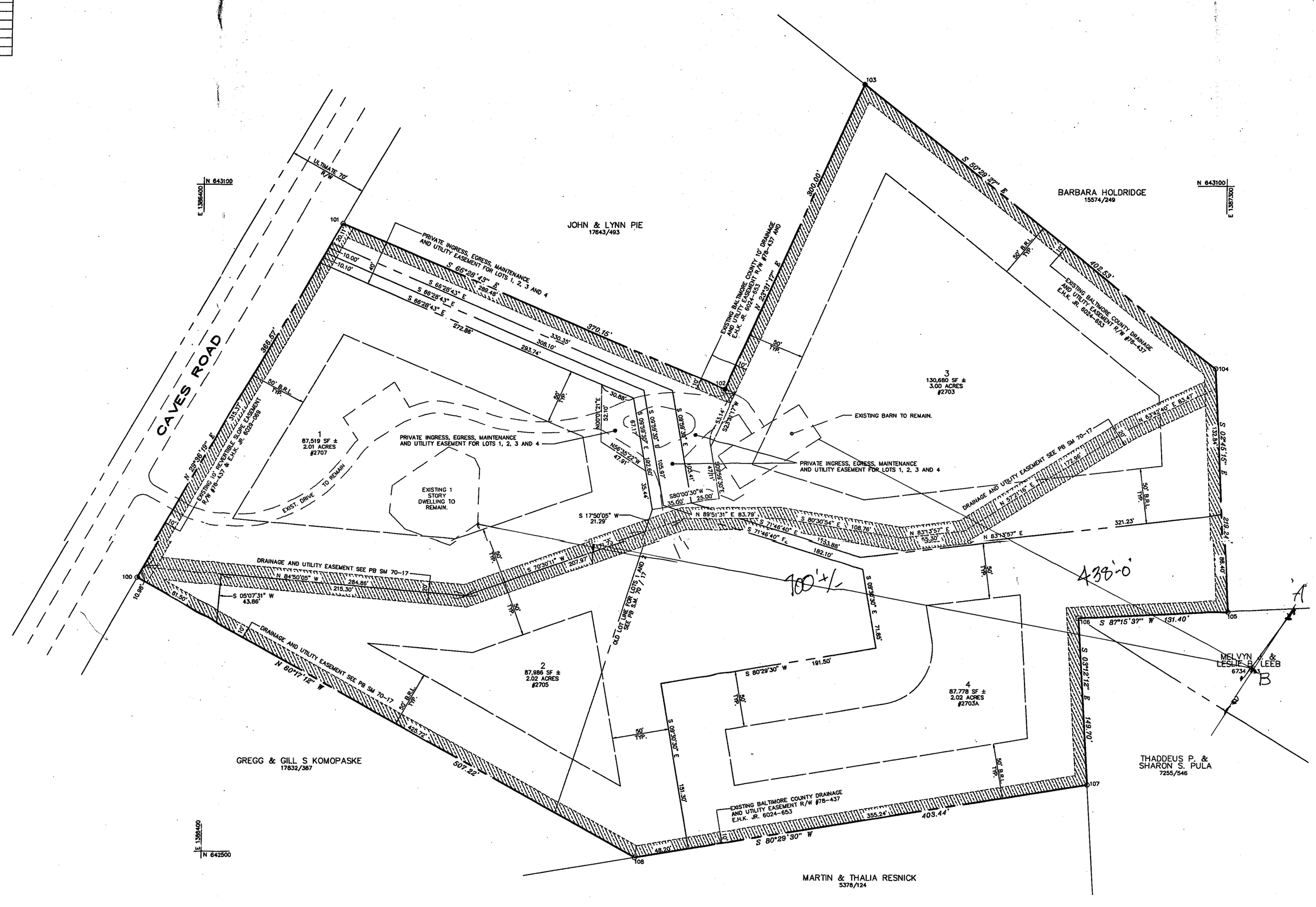
BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

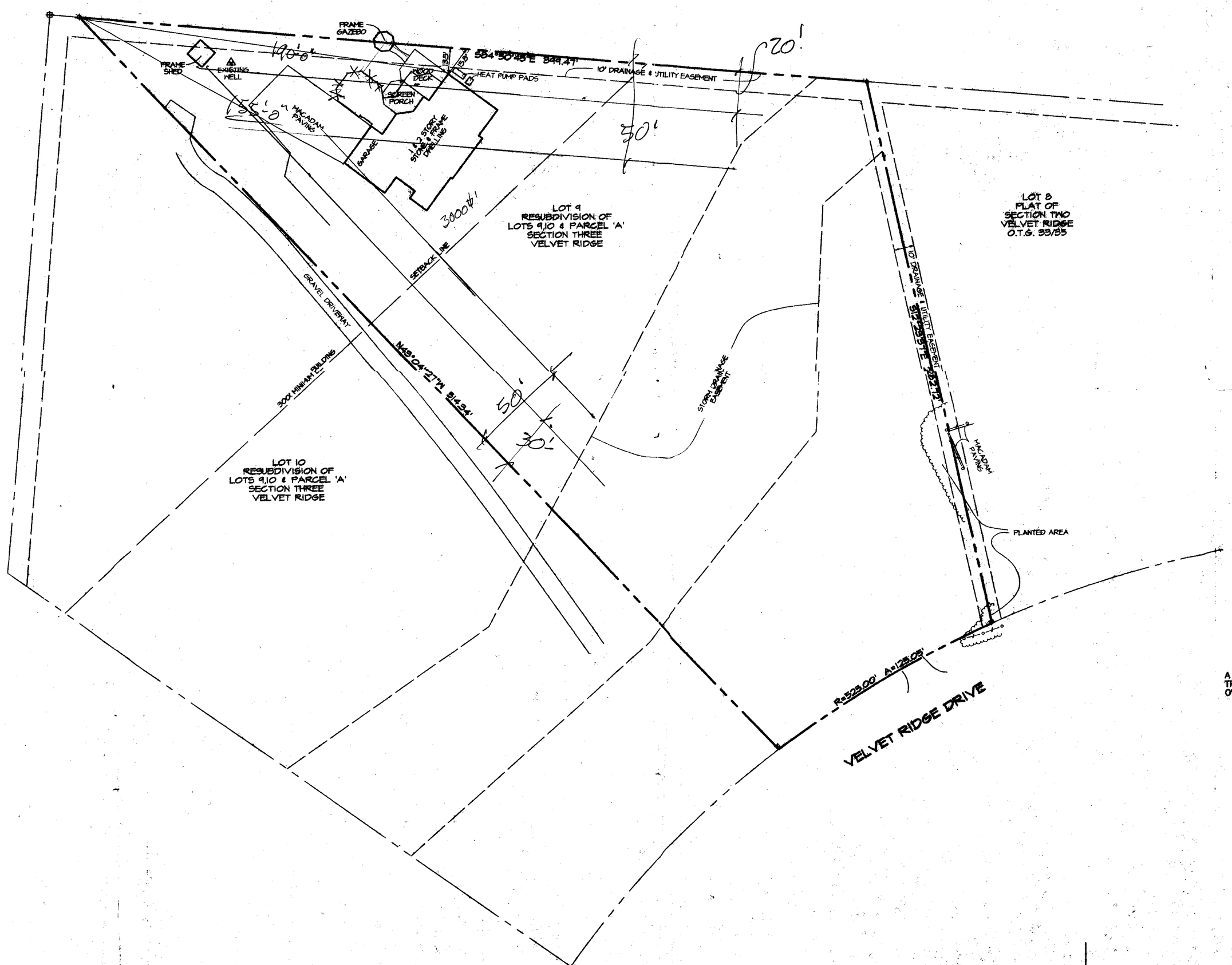
SCALE	LOCATION	SHEET
1" = 200'±	THE CAVES	N. W. 13-F
DATE OF PHOTOGRAPHY JANUARY 1986		

NW 13 F

04-433-A

COORDINATE TABLE		
POINT	NORTHING	EASTING
100	642746.3125	1386341.5764
101	643065.0269	1386522.6694
102	642917.3039	1386862.0643
103	643192.3775	1386981.7912
104	642936.2878	1387292.3528
105	642717.3011	1387302.8879
106	642711.0200	1387171.6381
107	642561.5498	1387180.0037
108	642494.9043	1386782.1056


CAVES ROAD
JOHN & LYNN PIE
17643/493
BARBARA HOLDRIDGE
15574/249
GREGG & GILL S KOMOPASKE
17832/387
MARTIN & THALIA RESNICK
5378/124
THADDEUS P. & SHARON S. PULA
7235/546
MELVYN & LESLIE B. LEEB
6744/
1
87,519 SF ±
2.01 ACRES
#2707
2
87,986 SF ±
2.02 ACRES
#2705
3
130,680 SF ±
3.00 ACRES
#2703
4
87,778 SF ±
2.02 ACRES
#2703A
EXISTING 1 STORY DWELLING TO REMAIN.
EXISTING BARN TO REMAIN.
PRIVATE INGRESS, EGRESS, MAINTENANCE AND UTILITY EASEMENT FOR LOTS 1, 2, 3 AND 4
DRAINAGE AND UTILITY EASEMENT SEE PB SM 70-17
EXISTING BALTIMORE COUNTY DRAINAGE AND UTILITY EASEMENT R/W #78-437 E.H.K. JR. 8024-653
EXISTING BALTIMORE COUNTY DRAINAGE AND UTILITY EASEMENT R/W #78-437 E.H.K. JR. 8024-653
EXIST. DRIVE TO REMAIN
ULTIMATE 70' R/W
N 643100
E 1386400
N 643100
E 1387300
N 642500
E 1386400
S 50°28'37" E
S 31°57'20" E
N 60°17'12" W
S 80°29'30" W
S 87°15'37" W 191.40'
N 22°38'10" E
S 17°50'05" W
21.29'
S 89°03'31" W
43.88'
S 80°00'30" W
35.60'
25.00'
N 89°31' E 83.79'
S 71°46'40" E
1353.88'
182.10'
S 80°29'30" E
71.95'
S 80°29'30" W
191.50'
S 80°29'30" E
191.95'
N 83°13'57" E
321.23'
S 31°57'20" E
191.70'
N 83°13'57" E
79.32'
S 71°46'40" E
182.10'
S 71°46'40" E
1353.88'
S 80°29'30" E
71.95'
S 80°29'30" W
191.50'
S 80°29'30" E
191.95'
S 31°57'20" E
191.70'
S 87°15'37" W 191.40'
S 80°29'30" W
403.44'
355.24'
48.20'
327.22'
657.72'
N 60°17'12" W
S 89°03'31" W
43.88'
S 17°50'05" W
21.29'
S 80°29'30" E
191.95'
S 80°29'30" W
191.50'
S 80°29'30" E
71.95'
S 71°46'40" E
1353.88'



NOTES

A BOUNDARY SURVEY WAS PERFORMED BY GERHOLD, CROSS & ETZEL, LTD. THE BOUNDARY SHOWN HEREON IS COMPILED FROM PLATS OF RECORD, AND OVERLAID AND ROTATED TO FIT MINIMAL MONUMENTATION RECOVERED IN THE FIELD.

Lot No 1

WORKSHEET
OF
LEEB PROPERTY

2316 VELVET RIDGE DRIVE
BALTIMORE COUNTY, MARYLAND

3rd ELECTION DISTRICT
SCALE: 1"=30' DATE: MARCH 7, 2000

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

COPYRIGHT 2001 BY GERHOLD, CROSS & ETZEL LTD.
THIS PLAT IS PROTECTED BY COPYRIGHT. THE USE OF THIS PRODUCT IS STRICTLY PROHIBITED WITHOUT THE WRITTEN PERMISSION OF GERHOLD, CROSS & ETZEL LTD.

REVISION	DATE	PLOT DATE: 3/8/2001	TECHNICIAN: DBH	FILE NAME: X:\Leeb\Leebprd

Pet 5

Velvet Ridge Subdivision

Map Produced By Baltimore County GIS Services
Aerial Photography From April 2002
Map Production Date: March 30, 2005

The Velvet Ridge Subdivision property information depicted on this map was compiled from record plats 32/137, 33/35, 33/134, and 48/145.

Case No. 04-433-A

Legend

- Parcel Of Interest
- Baltimore County Parcels

1:720

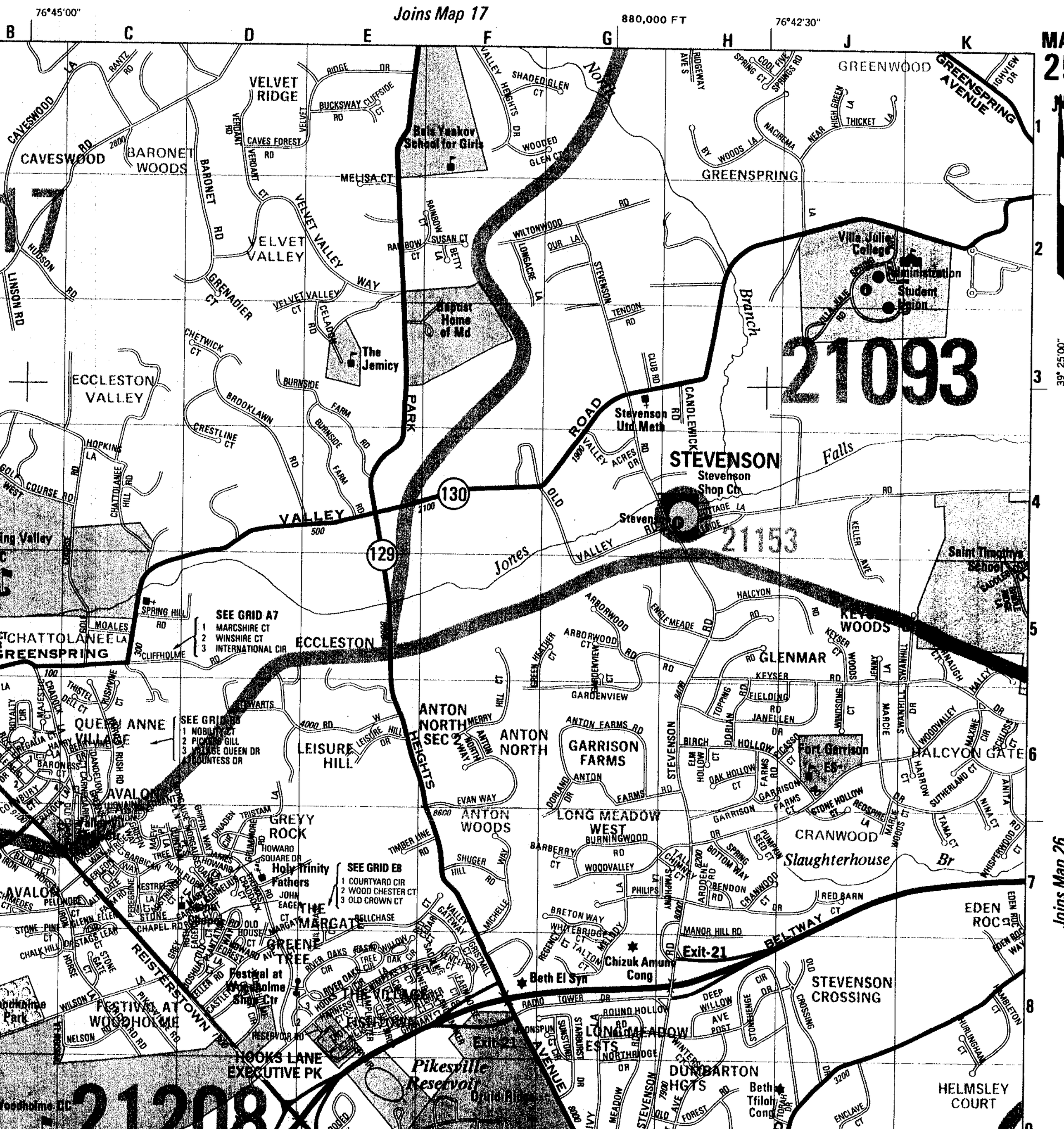
75 37.5 0 75 150 225 300 Feet

1 inch equals 60 feet

N W E S

CBA
Pet 4

CBA
Pat


Joins Map 17
76°45'00"
880,000 FT
76°42'30"
39° 25'00"
Joins Map 26
B
C
D
E
F
G
H
J
K
1
2
3
4
5
6
7
8
CAVESWOOD
CAVESWOOD RD
BARONET WOODS
VELVET RIDGE
VELVET VALLEY
VELVET VALLEY WAY
CAVES FOREST RD
MELISA CT
Beis Yankov School for Girls
VALLEY HEIGHTS DR
SHADED GLEN CT
WOODED GLEN CT
GREENWOOD
GREENSPRING AVENUE
GREENSPRING
Villa Julie College
Administration
Student Union
Baptist Home of Md
The Jemicy
ECCLESTON VALLEY
PARK
ROAD
Stevenson Utd Meth
STEVENSON
Stevenson Shop Ctr
Branch
Falls
Jones
VALLEY
130
129
21093
21153
Saint Timothy's School
SEE GRID A7
1 MARCSHIRE CT
2 WINSHIRE CT
3 INTERNATIONAL CIR
CHATTOLANEE
GREENSPRING
ECCLESTON
SEE GRID B6
1 NOBILITY CT
2 PICKERS GILL
3 VILLAGE QUEEN DR
4 COUNTESS DR
QUEEN ANNE VILLAGE
LEISURE HILL
ANTON NORTH SEC 2
ANTON NORTH
GARRISON FARMS
GLENMAR
KEYSER WOODS
HALCYON GATE
Fort Garrison ES
AVALON
GREYY ROCK
ANTON WOODS
LONG MEADOW WEST
CRANWOOD
Slaughterhouse Br
SEE GRID E8
1 COURTYARD CIR
2 WOOD CHESTER CT
3 OLD CROWN CT
Holy Trinity Fathers
THE MARGATE
GREENE TREE
EDEN ROC
REISTERSTOWN RD
Festival at Woodholme Shpg Ctr
FESTIVAL AT WOODHOLME
THE VILLAGE
Beth El Syn
Chizuk Amuno Cong
Exit-21
BELTWAY
STEVENSON CROSSING
LONG MEADOW ESTS
HOOKS LANE EXECUTIVE PK
Pikesville Reservoir
DUNBARTON HGTS
Beth Tfiloh Cong
HELMSLEY COURT
Woodholme Park
21208